Contents

Foreword .......................................................... v
CSG Committee on Suggested State Legislation 1991 ........ vi
Introduction ......................................................... xiii
Suggested State Legislation Style ................................. xv
Sample Act .......................................................... xvi

Suggested Legislation

Access to Health Care (Note) ........................................ 1
Breast Cancer Education, Detection and Screening Standards Acts ........................................... 6
Prenatal Exposure to Controlled Substances Act ............... 17
Prenatal Providers — Easing the Shortage ....................... 20
Home Care Volunteer Program for Maternal and Child Health ...................................................... 28
Home Dialysis Agencies Licensing Act ......................... 30
General Acute Care Hospital Interpreter Act .................. 45
Uniform Disciplinary Act for Regulated Health Professions (Statement) ..................................... 48
Health Care Decisions and Treatment: Provisions for Durable Power of Attorney and Health Care Agents (Note) 50
Organ Procurement and Storage Act ............................. 64
Insect Sting Emergency Treatment Act .......................... 61
College Student Immunization Act ............................... 63
Uniform Controlled Substances Act 1990 (Statement) ....... 66
Chlorofluorocarbon and Halon Compounds
Control Legislation (Note) ........................................... 67
Sanitary Landfill and Solid Waste
Management Legislation (Note) .................................. 70
Infectious Waste Act ............................................... 74
Hazardous Sites Cleanup Act (Statement) ....................... 78
Limited Immunity for Persons Responding to Oil Spills .................. 81
Aboveground Storage Tank Act ................................... 84
State Fuel Alternative Fuels Act .................................. 87
Campaign Finance, Ethics and Lobbying
Regulation (Statement) ............................................. 90
State Civil Rights Act .............................................. 93
Battered Woman Syndrome Defense Act ....................... 96
Domestic Violence (No-Contact) Act ......................... 99
Harassment Restraining Order Act ............................. 101
Visitation Dispute Resolution Act ............................... 104
State Volunteer Service Act (Statement) ....................... 106
Access to Adoption Information Act (Statement) ............ 108
Homeless Child Education Act (Statement) ................... 109
Private Vocational School Regulation Act (Statement) ........ 110
American Indian Endowed Scholarship Program Act ........ 112
Exchange Student Placement Agency Licensing Act ........ 115
Foreword

The Council of State Governments is pleased to bring you this volume of Suggested State Legislation, the 51st 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.

September 1991
Lexington, Kentucky

Daniel M. Sprague
Executive Director
The Council of State Governments
CSG Committee on
Suggested State Legislation 1991

Chairman
*Senator Kemp Hannon, New York

Vice Chair
*Terri Lauterbach, Legislative Counsel, Legislative Affairs Agency, Alaska

Alabama
Sen. Danny Corbett
Louis G. Greene, Director, Legislative Reference Service
*Rep. Albert Hall
*Robert McCurley, Director, Alabama Law Institute
Sen. Mac Parsons
Rep. Tony Petelos

Alaska
Tamara Brandt Cook, Director, Legal Services, Legislative Affairs Agency
Katie Drennan, Legislative Aide
Sen. Rick Halford
Rep. Mike Navarre
Sen. Patrick Rodey
Rep. Fran Ulmer

Arizona
Rep. Bev Hermon

Arkansas
*Sen. Mike Beebe
Sen. Allen Gordon
Bill Lancaster, Senate Chief of Staff
Rep. Sturgis Miller
Kern Treat, Director, Bureau of Legislative Research

California
Sen. Quentin Kopp
*Christine Minnehan, Federal Relations Coordinator to the California Senate
*Fred Silva, Chief Fiscal Advisor, California Senate
Assemblyman Stan Statham

Colorado
Charlie Brown, Director, Legislative Council
Sen. Ray Powers
Sen. Jeff Wells

Connecticut
Sharon Brais, Assistant Director, Legislative Commissioners Office
*Jeffrey B. Garfield, Executive Director and General Counsel, State Elections Enforcement Commission
Rep. David Lavine
Rep. Irving J. Stolberg

*Member, Subcommittee on Scope and Agenda
Delaware
Rep. Orlando J. George, Jr.
*Rep. Charles L. Hebner
Sen. Thomas B. Sharp
Lieutenant Governor Dale E. Wolf

Florida
Joe Brown, Secretary of the Senate
Sen. Winston W. Gardner
Rep. Edward J. Healey
James R. Lowe, Staff Director, House Bill Drafting Services
Mario Taylor, Staff Director, House Community Affairs Committee
Rep. Peter Rudy Wallace
Sen. Peter Weinstein

Georgia
Attorney General Michael Bowers
Debra Elovich, Executive Director of Policy, Office of Lieutenant Governor
Sen. Wayne Garner
Joy Hawkins, Director, Senate Research
Lieutenant Governor Pierre Howard
Sen. Mark Taylor

Hawaii
Yen Lew, Administrative Assistant, Office of the Senate President
Sen. Norman Mizuguchi

Idaho
Dan Chadwick, Deputy Attorney General
Rep. Celia Gould
Sen. George Vance

Illinois
*Rep. Jane M. Barnes
*Sen. John J. Cullerton
John M. McCabe, Legislative Director, National Conference of Commissioners on Uniform State Laws
Donald R. Vonnahme, Director, Division of Water Resources

Indiana
Rep. John R. Gregg
Sen. Dennis P. Neary
Sen. Edward A. Pease

Iowa
Sen. Beverly Hannon

Kansas
Sen. Ross O. Doyen

Kentucky
Rep. Larry D. Clark
*Joyce Honaker, Committee Staff Administrator, Legislative Research Commission
Sen. Joe Meyer
Sen. David Williams
Rep. James Bernard Yates

*Member, Subcommittee on Scope and Agenda
Louisiana
*Thomas A. Casey, Executive Counsel, Office of the Governor
Rep. E.J. Deano
Jerry J. Guillot, Administrator, Senate Research Services
Sen. William McLeod
Sen. Sydney Nelson

Maine
Sen. John E. Baldacci
Sen. Stephen M. Bost
*Rep. Donnell P. Carroll
John R. Selser, Legislative Analyst, Office of Policy and Legal Analysis

Maryland
Joseph M. Coble, Director, Fiscal Research Division, Department of Fiscal Services
Del. Ann Marie Doory
Sen. Thomas V. Mike Miller, Jr.
Sen. Ida G. Ruben
William G. Somerville, Deputy Director for Legislative Drafting & Revisor of Statutes, Department of Legislative Reference
Michael I. Volk, Director, Legislative Services Division, Department of Legislative Reference

Massachusetts
Rep. Mary Jane Gibson
Sen. William R. Keating
Rep. Shannon O'Brien
Rep. Angelo M. Scaccia
*Richard Walsh, Associate Counsel, Office of House Counsel

Michigan
Rep. Perry Bullard
Attorney General Frank Kelley
*William J. Pierce, Executive Director, National Conference of Commissioners on Uniform State Laws

Minnesota
Secretary of State Joan Growe
Sen. Gene Merriam
*Rep. James I. Rice
*Sen. Allan H. Spear

Mississippi
Lieutenant Governor Brad Dye
Joy Fergus, Office Supervisor, Senate
Charles Jackson, Jr., Clerk of the House
Rep. Percy Maples
Sen. Ollie Mohamed
Rep. Clem Nettles
Sen. Kenneth Williams

*Member, Subcommittee on Scope and Agenda
<table>
<thead>
<tr>
<th>State</th>
<th>Representative/Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missouri</td>
<td>Rep. Wayne Crump</td>
</tr>
<tr>
<td></td>
<td>Darrell Jackson, Director, House Research</td>
</tr>
<tr>
<td></td>
<td>*Sen. Robert T. Johnson</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Patrick J. O'Donnell, Clerk of the Legislature</td>
</tr>
<tr>
<td>Nevada</td>
<td>Sen. Ronald V. Cook</td>
</tr>
<tr>
<td></td>
<td>*Kim Morgan, Principal Deputy Legislative Counsel, Legislative Counsel Bureau</td>
</tr>
<tr>
<td></td>
<td>Assemblyman Robert M. Sader</td>
</tr>
<tr>
<td></td>
<td>Assemblyman Scott Scherer</td>
</tr>
<tr>
<td></td>
<td>Sen. Randolph J. Townsend</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Donald Hunter, Director, Research Division, Office of Legislative Services</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Sen. Gabriel Ambrosio</td>
</tr>
<tr>
<td></td>
<td>Kathleen Crotty, Executive Director, Senate Majority Office</td>
</tr>
<tr>
<td></td>
<td>Assemblyman Robert D. Franks</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Sen. Fernando R. Macias</td>
</tr>
<tr>
<td></td>
<td>Rep. Lynda M. Morgan</td>
</tr>
<tr>
<td></td>
<td>*Rep. Nick L. Salazar</td>
</tr>
<tr>
<td></td>
<td>Sen. Anthony J. Williams</td>
</tr>
<tr>
<td>New York</td>
<td>Salvatore R. Curiale, Superintendent of Insurance</td>
</tr>
<tr>
<td></td>
<td>Assemblyman James R. Tallon, Jr.</td>
</tr>
<tr>
<td></td>
<td>Sen. Caesar Trunzo</td>
</tr>
<tr>
<td>North Carolina</td>
<td>R. Terry Allen, President, National Association of Unclaimed Property Administrators</td>
</tr>
<tr>
<td></td>
<td>Gerry Cohen, Director, Legislative Bill Drafting Division, Legislative Services Office</td>
</tr>
<tr>
<td></td>
<td>Secretary of State Rufus L. Edmisten</td>
</tr>
<tr>
<td></td>
<td>Sen. Ralph A. Hunt</td>
</tr>
<tr>
<td></td>
<td>Sen. Herbert L. Hyde</td>
</tr>
<tr>
<td></td>
<td>*Terrence D. Sullivan, Director, Research, Legislative Services Office</td>
</tr>
<tr>
<td></td>
<td>Rep. Dennis Wicker</td>
</tr>
<tr>
<td>Ohio</td>
<td>*Sen. Stanley J. Aronoff</td>
</tr>
<tr>
<td></td>
<td>*Sen. Robert R. Cupp</td>
</tr>
</tbody>
</table>

*Member, Subcommittee on Scope and Agenda
Oklahoma
Scott Emerson, Chief Counsel
Rep. Jim Glover
George Humphreys, Director, House Research Division
Sen. Jerry Pierce
Sen. Darryl Roberts
Tom Stanfill, Director, Senate Committee Staff Division
Rep. George Vaughan

Oregon
Kathleen Beaufait, Chief Deputy, Legislative Counsel
Rep. Stan Bunn

Pennsylvania
Joseph K. Hoffman, Assistant Director, Bureau of Water Resources Management, Department of Environmental Resources
Edward C. Hussie, Chief Counsel, Office of the House Minority Leader
*Louis B. Kozloff, Senior Legislative Staff, House of Representatives
Joseph W. Murphy, Chief Counsel, House Republican Caucus
*Virgil F. Puskarich, Executive Director, Local Government Commission
Rep. Joseph A. Steighner
Rep. Fred Taylor

Rhode Island
Rep. Robert R. Brousseau
Sen. Anthony R. Marciano
Rep. Vincent Mesolella
Sen. John Orabona

South Carolina
*Frank Caggiano, Clerk of the Senate
*Michael N. Couick, Attorney, Senate
Rep. Michael L. Fair
*Peden B. McLeod, Code Commissioner and Executive Director, Legislative Council
Attorney General Travis Medlock
Sen. Thomas H. Pope III
Thomas Wyatt, Chief, Bureau of Drug Control, Department of Health and Environmental Control

South Dakota
Sen. James B. Dunn
Rep. Mary B. Edelen
Sen. Harold W. Halverson

*Member, Subcommittee on Scope and Agenda

x
Tennessee

Mike Bradley, Director, Parole Services, Field Service Office
James A. Clodfelter, Executive Secretary, Code Commission
Sen. Steve Cohen
Rep. Lois DeBerry
Sen. Joe M. Haynes
Rep. Jimmy Naifeh
Sen. Lou Patten

Texas

*Rep. Fred Blair
Jose Camacho, Research Assistant, Office of Lieutenant Governor
Sen. Bob Glasgow
Sen. Judith Zaffirini

Utah

William A. Arseneau, Chairman, Legislative Affairs Commission, National Association of State Agencies for Surplus Property
Rep. Allan C. Rushton
*Richard V. Strong, Director, Legislative Research and General Counsel
Rep. Daniel H. Tuttle

Vermont

Sen. William T. Doyle

Virginia

C. William Cramme, III, Senior Attorney, Senate
Sen. Edward M. Holland
Del. Thomas M. Jackson, Jr.
Sen. Thomas E. Michie, Jr.
E.M. Miller, Jr., Director, Division of Legislative Services
Del. William S. Moore, Jr.

Washington

Rep. Jennifer Belcher
Sen. Emilio Cantu
Rep. Dennis A. Dellwo
Rep. Steve Fuhrman
Rep. Jim Hargrove
Rep. Bruce Holland
Rep. Ken Jacobsen
*Rep. Richard King
Timothy A. Martin, Counsel for the Republican Caucus
Rep. Louise Miller
*Rep. Jean Silver
Rep. Georgette Valle

*Member, Subcommittee on Scope and Agenda
*John Welsh, Jr., Senior Counsel, House of Representatives  
Rep. Jesse Wineberry  
Rep. Shirley J. Winsley

West Virginia  
Del. W.E. Bill Anderson  
Del. Robert Chuck Chambers  
*Sen. Jae Spears  
Earl Vickers, Director, Office of Legislative Services

Wisconsin  
Sen. Tom Barrett  
*H. Rupert Theobald, Chief, Legislative Reference Bureau

Wyoming  
Rep. April Brimmer Kunz  
Rep. Cynthia Lummis  
Sen. Frank Prevedel  
Sen. Diemer True

American Samoa  
Rep. Talavou Ale  
Sen. Togiola T. Tufafono  
Rep. Tuana’itau F. Tuia  
Sen. Tagaloa Tuiolosega

Guam  
Spkr. Joe T. San Agustin

Former CSG Chairmen and Presidents  
(Ex Officio Voting Members)

Gov. Michael N. Castle, Delaware  
Sen. Arnold Christensen, Utah  
Rep. Roy Hausauer, North Dakota  
Gov. James G. Martin, North Carolina  
Rep. John E. Miller, Arkansas  
Spkr. Thomas B. Murphy, Georgia  
Sen. Kenneth C. Royall, Jr., North Carolina  
Rep. John J. Thomas, Indiana

*Member, Subcommittee on Scope and Agenda
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 23 years ago in the introduction to the 28th volume of Suggested State Legislation.

For 51 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 volumes of Suggested State War Legislation and Suggested State Post-War Legislation gave way to a volume simply titled Suggested State Legislation, an annual volume of draft legislation on topics of major governmental interest.

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

The items in this, the 51st 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 1990 in Savannah, Georgia, and again, in April 1991 in Santa Fe, New Mexico, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in August 1991 in Seattle, Washington, 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 health care.

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.

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.)

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

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

(1) "Commission" means the [rehabilitation research commission].

(2) "Commissioner" means a member of the [rehabilitation research commission].

(3) "Offender" means a person adjudicated delinquent or convicted of a criminal offense under the laws and ordinances of the state and its political subdivisions.

* * *

Section 4. [Rehabilitation Research Commission.]

(a) A [rehabilitation research commission] is established to review, approve, and facilitate research directed at the rehabilitation of delinquent and criminal offenders and to disseminate the results of that research to correctional officials and other interested individuals and agencies.

(b) The commission shall consist of [10] members appointed by the governor [with the advice and consent of the senate].

COMMENT: It is suggested that some commission members be ex-offenders.
Access to Health Care (Note)

In recent years, states have responded in a variety of ways to the reality of rising medical costs, increasing numbers of the uninsured and underinsured, shortages of physicians' services, and a host of other health care related crises.

During the past year, the Committee on Suggested State Legislation reviewed a number of complex and lengthy state approaches and reforms designed to address the critical cost control and access problems of the health care system. In lieu of presenting one item in the standard SSL format, the Committee chose instead to offer policymakers an overview of recent state actions aimed at providing their citizens with greater access to health services. This note highlights provisions from the 1990 enactments of five states: California, Kentucky, Maine, Mississippi and Missouri.

Health Care Mandate Waivers

Over the past two decades, more than 800 state laws have been enacted requiring that health insurance contracts include specific benefits or coverage. Overall, according to the Blue Cross and Blue Shield Association, the most frequently mandated services are alcoholism treatment, mammography screening, and mental health care; the most frequent provider mandates are for chiropractors, psychologists and optometrists.

Over the past three years, however, 19 states have enacted health care benefit mandate waiver provisions, authorizing insurers to offer limited benefits policies to individuals and small employers who may not want or may not be able to afford more comprehensive coverage. This is achieved by exempting such policies from some or all of the state's mandated benefits laws that expand the kinds of services to be covered, the types of providers eligible for payment, and the categories of persons eligible to receive benefits under a contract. The lower-cost, low-option contracts generally are limited to basic coverage of primary and acute care services.

Under Missouri's limited mandate act (HB 998, 1990), insurers are required to limit the sale of this lower-cost group coverage to employers with 50 or fewer workers, and to fully and clearly disclose that the policies are less expensive because they do not include mandated coverages. The act, for example, exempts insurers from a state requirement that they pay claims from "all duly licensed providers" of care, including psychologists, optometrists, physical therapists, chiropractors, social workers, pharmacists, and other licensed providers. They also are exempted from the requirement that maternity benefits cover both married and unmarried individuals and coverage of care resulting from alcohol use and drug addiction. Kentucky's limited mandate act (SB 239, Ch. 482, 1990) exempts insurers from all health insurance mandates when they provide low-cost health insurance coverage to small employers.
Suggested State Legislation

Health Insurance Pools

Both Kentucky (SB 239, Ch. 482, 1990) and Missouri (HB 996, 1990) provide for state health insurance pools. Kentucky's act allows small employers to join health insurance pools in their area development districts (ADDs), enabling them to purchase health insurance for their employees. It offers minimum coverage policies to companies employing up to 50 workers, and allows state employees and employees of local boards of education who earn less than 100 percent of the federal poverty income standard to participate in the minimum health insurance policy with the ADDs. In the latter case, the state pays the premium for the coverage.

Under the provisions of this act, a minimum health insurance policy includes at least 14 days hospitalization and pays for a minimum of 50 percent of inpatient physician fees. According to the bill's sponsor, the costs of a typical family policy could be less than $100 per month. To cover administrative costs, the ADDs receive one percent of premiums paid. Participating insurers pay premiums into a trust administered by one of the state's ADDs.

Missouri adopted a different approach based on a model law prepared by the National Association of Insurance Commissioners. The law focuses on providing uninsurable persons with access to coverage. Twenty-five states have enacted such laws, most in the past five years.

Under the Missouri provisions, all insurers issuing health insurance and health care coverage plans in the state are members of the pool. A board of directors—consisting of health insurance company and health maintenance organization officials, minority representatives and a public representative—oversees the pool. Through a competitive process, all participating insurers are invited to submit bids to serve as administering insurer. The administering insurer, selected by the board for a three-year period, collects premiums and evaluates claims on behalf of the pool, as well as prepares and submits reports regarding the pool's operations.

Each participating insurer is assessed a percentage of the total costs of the pool based on the dollar volume of insurance premiums and charges written within the state during the previous year. The amount of the assessment is offset against the premiums tax otherwise due from the insurer. If the insurer is not subject to the premiums tax, the insurer may offset the amount of the assessment against any state taxes due.

Under this act, Missouri residents are eligible for pool coverage if they: lack health insurance or health care coverage; do not receive Medicaid benefits and are not eligible for Medicare; are eligible for group health insurance benefits after termination of employment under state and federal law; terminated pool coverage within the previous 12 months or on whose behalf the pool has paid more than $1 million in benefits; or have a condition resulting from alcohol or drug abuse or self-inflicted injury. Any person may apply for pool coverage if their current source of health care coverage is terminated for reasons other than nonpayment of premiums, or their premium has increased to or exceeded 300 percent.
Access to Health Care (Note)

of the rates established by the insurance pool board of directors. No employee may lose group health insurance coverage because his or her employer terminates such coverage.

**Medicaid**

**Kentucky** (SB 239, Ch. 482, 1990) created a Medicaid payment fund which permits the state’s Cabinet for Human Resources to reimburse all hospitals for the total cost of treating Medicaid patients. Hospitals are assessed a fee of one percent of their gross revenues. Each quarter, hospitals are paid an amount based on the number of Medicaid patient days they had, with no hospital paying more into the fund than it receives. Collected fees are deposited into the state treasury and matched with Medicaid funds. Hospitals participating in the program must post signs stating *This hospital accepts patients regardless of race, creed, ethnic background or ability to pay.*

The act requires prenatal coverage of pregnant women and well-child care for infants up to age one whose families have incomes at 185 percent of the federal poverty level or less, as required by federal law. The act also provides a 25 percent increase in reimbursements to family practice physicians who serve areas where the patient-doctor ratio is 5,000 to one and increases Medicaid reimbursement rates for participating physicians and dentists. The act includes demonstration projects in three area development districts that offer case management services for the elderly.

**Missouri** (HB 998, 1990) established a Medicaid-funded program entitled *Partnership for Long Term Care,* which allows individuals to purchase long-term care insurance plans in an amount commensurate with the individual’s resources. The state’s Department of Social Services will request a waiver from the U.S. Department of Health and Human Services to initiate the program.

**Subsidized Coverage**

In 1990, **California** enacted legislation providing health insurance to residents who are medically uninsurable (AB 60, 1990). Residents unable to acquire sufficient private health coverage due to rejection by at least one private health plan are eligible to apply. The act authorizes that a major medical insurance board determine the eligibility of applicants, the scope of coverage, premium rate limitations of 125 percent of standard average individual rates, deductibles, copayments and methods of operation, and that it contract with public and private entities for program administration. The board, appointed by the governor with the consent of the state Senate, may contract with an insurer or provide insurance directly.

**Mississippi** legislation (HB 1269, 1990) authorizes the establishment of a statewide program for providing necessary medical services free of charge to persons who have no form of health insurance and who are unable to pay for medical services. The state Department of Health sets
Suggested State Legislation

eligibility criteria for the program and determines eligibility in specific cases in conjunction with county health departments. As the act authorizes the department to contract with the state's medical association to establish such a program, the association would identify physicians willing to participate, develop a network of those physicians, and arrange to serve eligible individuals. The act provides that the program maintain a toll-free number to receive calls from eligible persons and to refer any appropriate patient to a participating physician.

Rural Health Care

The availability of health care in many rural areas has been seriously affected by the decreasing number of medical and nursing school graduates and increasingly tight budgets at rural hospitals and medical centers. States have taken several approaches to make health care services more accessible to rural citizens, including forgiving education loans of graduates or making scholarship grants or loans to new students in exchange for a promise to work in medically-underserved areas for a certain period. In some states, these arrangements include nurses and physician's assistants, as well as doctors.

In 1990, Kentucky enacted legislation creating a health care network (SB 239, Ch. 482, 1990), that includes the establishment of a class of mid-level practitioners, or MLPs, to help serve persons in rural areas who suffer from chronic health conditions. MLPs include physicians' assistants, physical therapists, nurses and other health care workers. The availability of MLPs allows patients to receive care in small communities without having to travel to larger towns to visit doctors, and frees doctors from providing routine services, such as check-ups. MLPs may join a health care network, but they must have a state health care license or must have worked with a family physician for five years to qualify to take the board-certifying examination. MLPs may not work in hospitals or nursing homes.

The act requires health care networks to have a minimum of one physician for every MLP; to provide for hospitalization of patients, 24-hour coverage for medical emergencies, long-term care, social and educational services for patients, continuing education for MLPs, protocols for treatment for 20 health care problems that MLPs may treat in follow-up care; and to employ a medical chart auditor who will audit the medical chart of a patient seen by the MLP on the day of encounter.

The act also requires the medical schools at the state's two largest universities to recruit physicians from their residency programs to work in medically-underserved areas. Each school is provided monies annually to fund the program and then paid for each physician they recruit. The act further requires the schools to establish centers of excellence in rural health care that will: include family practice residencies in the eastern portion of the state; place emergency medicine residents in rural areas; offer bachelor's degrees in physical therapy and medical technology and master's degrees in nursing; and collect data and maintain a library on rural health care.
In some areas of the country, high medical malpractice insurance rates have resulted in a shortage of obstetricians. Maine enacted legislation (Ch. 931, 1990) designed to increase access to physicians who provide obstetrical and prenatal services — especially in underserved, largely rural areas — and to make health care more accessible through savings in professional liability insurance claims and claim settlement costs.

The act revises the use of the discovery rule for medical malpractice pre-litigation screening panel proceedings and subsequent litigation, and modifies the collateral source rule to require the judge to reduce a medical malpractice award by collateral source payments. It also establishes the medical liability demonstration project, a five-year program within the medical specialty areas of anesthesiology, emergency medicine and obstetrics and gynecology. The board of registration in medicine, the board of osteopathic examination and registration and specialty advisory committees are authorized to develop practice parameters and risk management standards that may be used by physicians as affirmative defenses in medical malpractice claims.

[Readers also may want to note a related entry, Perinatal Providers — Easing the Shortage, which appears on pp. 20-27 of this volume.]
Breast Cancer Education, Detection and Screening Standards Acts

Breast cancer is a leading cause of death among women. The American Cancer Society recently estimated that one in nine women will develop the disease at some point in their lives. Despite studies showing that a 30 percent reduction in deaths is possible through appropriate screening (physical examination combined with mammography), women in higher risk categories, such as older age groups and minorities, are not as likely to receive services necessary for the early detection and treatment of breast cancer.

The acts presented here, based on legislation from the states of New York and Michigan, establish programs to promote early screening and detection. Beyond the education programs, however, Michigan also has enacted provisions prohibiting the use of unauthorized mammography machines; regulating the machines; and requiring the state's department of public health to promulgate rules specifying minimum training and performance standards for non-physician mammography machine operators.

Breast Cancer Detection and Education Program Act

This act, based on 1989 New York legislation, establishes a program to promote the screening and detection of breast cancer among unserved and underserved populations; to educate the public on the benefits of early detection; and to provide counseling and referral services. It establishes an advisory council to provide consultation on the development of regulations and the awarding of grants for education and detection projects. The act authorizes the state commissioner of health to make grants to programs that provide early detection of breast cancer through mammography, clinical examinations, and breast self-examinations. Grant recipients are required to provide referral services and counseling, public education, and information concerning mammography and early detection.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the Breast Cancer Detection and Education Program Act.

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

1 (1) "Approved organization" means an organization approved by the [commissioner], in consultation with the [breast cancer detection and
education program advisory council] established in Section 5 of this act to provide services under Section 4 of this act. Such organizations shall include, but not be limited to, the following:

(i) a hospital licensed under [insert citation for appropriate state statute];
(ii) a health maintenance organization licensed under [insert citation for appropriate state statute] or certified under [insert citation for appropriate state statute];
(iii) an organization with program expertise in cancer related issues;
(iv) a [county] or [city] health department; or
(v) any combination of the above.

(2) “Commissioner” means the [state commissioner of health].
(3) “Department” means the [state department of health].
(4) “Unserved or underserved populations” means persons having inadequate access and financial resources to obtain breast cancer screening and detection services, including persons who lack health insurance or whose health insurance coverage is inadequate.

Section 3. [Establishment of Breast Cancer Detection and Education Program.]
(a) There is hereby created within the [department] the breast cancer detection and education program. This program is established to promote screening and detection of breast cancer among unserved or underserved populations, to educate the public regarding breast cancer and the benefits of early detection, and to provide counseling and referral services.
(b) The program shall include:
(1) establishment of a public education and outreach campaign to publicize breast cancer detection and education services, including the extent of coverage for such services by health insurance, the medical assistance program and other public and private programs;
(2) provision of grants to approved organizations under Section 4 of this act;
(3) compilation of data concerning the breast cancer detection and education program and dissemination of the data to the public; and
(4) development of professional education programs including the benefits of early detection of breast cancer and the recommended frequency of mammography.

Section 4. [Grants to Approved Organizations.]
(a) The [commissioner], in consultation with the [breast cancer detection and education program advisory council] established pursuant to Section 5 of this act, shall make grants within the amounts appropriated to approved organizations, for the provision of services relating to the screening and detection of breast cancer as part of this program. Such services shall include but not be limited to:
(1) promotion and provision of early detection of breast cancer, including mammography, clinical examination, and breast self examination;
(2) provision of counseling and information on treatment options and
Suggested State Legislation

referral for appropriate medical treatment;
(3) dissemination of information to unserved and underserved populations, to the general public and to health care professionals concerning breast cancer, the benefits of early detection and treatment, and the availability of breast cancer screening services;
(4) identification of local breast cancer screening services within the approved organization's region; and
(5) provision of information, counseling and referral services to individuals diagnosed with breast cancer.

(b) The [commissioner], in consultation with the [breast cancer detection and education program advisory council], shall give notice and provide opportunity for approved organizations to submit applications to provide breast cancer detection and education programs. In order to be considered for a grant to provide breast cancer detection and education programs, applicants must show evidence of the following:

(1) ability to provide and to ensure consistent and quality breast cancer detection services;
(2) expertise in breast cancer detection and treatment;
(3) capacity to coordinate services with physicians, hospitals and other appropriate local institutions or agencies;
(4) ability to provide breast cancer detection and education services to unserved or underserved populations; and
(5) ability to implement a breast cancer detection and education program in accordance with the standards specified in subsection (c) of this section.

Applications shall be made on forms provided by the [commissioner]. The [breast cancer detection and education program advisory council] shall review and evaluate applications and make recommendations to the [commissioner] for approval of grants to organizations to provide breast cancer detection and education programs.

(c) The [commissioner], in consultation with the [breast cancer detection and education program advisory council] shall develop standards for the implementation of breast cancer detection and education programs by approved organizations which shall ensure the following:

(1) integration of the approved organization with existing health care providers;
(2) maximizing third-party reimbursement;
(3) provision of services to unserved or underserved populations.

Section 5. [Breast Cancer Detection and Education Program Advisory Council.]

(a) There is hereby established in the [department] the [breast cancer detection and education program advisory council] to be composed of [13] members who shall be appointed in the following manner: [two] shall be appointed by the [senate president] and [one] by the [senate minority leader]; [two] shall be appointed by the [house speaker] and [one] by the [house minority leader]; [seven] shall be appointed by the [governor]. The [governor] shall designate the chair of the [advisory council]. The members of the [council] shall be representative of the public, persons
Breast Cancer Education/Detection/Screening

with breast cancer, local health departments, health care providers, and recognized experts in the provision of health services to women, cancer research, or environmental health.

(b) The [advisory council] shall be responsible for advising the [commissioner] with respect to the implementation of this act and shall make recommendations as to the selection of approved organizations and the standards to be established by the [commissioner] pursuant to Section 4(c) of this act. The [commissioner] shall consult with the [advisory council] prior to developing standards for approved organizations, selecting approved organizations, making grants to such organizations and implementing the breast cancer detection and education program.

(c) The [advisory council] shall perform an evaluation of the state's system for early detection and treatment of breast cancer and shall submit to the [legislature and the governor] a report detailing its findings and recommendations concerning the state's response to the high incidence of breast cancer. Such report shall be submitted no later than [insert date, year]. The [department] shall provide such information and assistance as the [advisory council] shall require in order to complete its report.

(d) The [advisory council] shall meet at least [three] times a year, at the request of the chair.

(e) The members of the [council] shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in performance of their duties.

Section 6. [Annual Report.] The [commissioner] shall submit an annual report to the [governor and the legislature] concerning the operation of the breast cancer detection and education program. Approved organizations shall provide such data and assessment as the [commissioner] may require for such report. Such report shall also include any recommendations for additional action to respond to the high incidence of breast cancer in this state.

Section 7. [Appropriations.] [Insert amount appropriated for grants, etc.]

Section 8. [Effective Date.] [Insert effective date.]
Suggested State Legislation

Breast Cancer Mortality Reduction Program Act

This act, based on 1990 Michigan legislation, creates a breast cancer mortality reduction program, consisting of education programs for health professionals and for the public, and an applied research and community demonstration grant program for local communities to demonstrate and evaluate methods of reducing breast cancer deaths.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Breast Cancer Mortality Reduction Program Act.

Section 2. [Creation of Breast Cancer Mortality Reduction Program.] The breast cancer mortality reduction program is created in the [state department of public health]. The program shall include, but is not limited to, all of the following:

1. Professional education programs for health professionals to develop state-of-the-art skills in cancer screening, diagnosis, referral, treatment, and rehabilitation.
2. Public education programs to assist the public in understanding all of the following:
   i. The benefits of regular breast cancer screening.
   ii. How to make the best use of the medical care system for cancer screening, diagnosis, referral, treatment, and rehabilitation.
   iii. The available options for treatment of cancer.
3. An applied research and community demonstration grant program that provides grants to local communities to demonstrate and evaluate one or more of the following:
   i. Methods to reduce cancer morbidity and mortality.
   ii. Economical and effective methods of providing access to breast cancer screening, diagnosis, referral, treatment, and rehabilitation services for populations with higher than expected rates of breast cancer morbidity or mortality.

Section 3. [Biennial Report.] The [state department of public health] shall [biennially] submit a report to the [senate and house committees with jurisdiction over matters pertaining to public health]. The report shall evaluate the effectiveness of the breast cancer mortality reduction program. The report shall include, but is not limited to, data describing the rate of breast cancer morbidity and mortality in this state and the extent of participation in breast cancer screening.

Section 4. [Effective Date.] [Insert effective date.]
Breast Cancer Screening Standards Act

This act, also based on the 1990 Michigan enactment, includes provisions prohibiting the use of unauthorized mammography machines; regulating the machines; and requiring the state's department of public health to promulgate rules specifying minimum training and performance standards for non-physician mammography machine operators.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Breast Cancer Screening Standards Act.

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

(1) “Department” means the [state department of public health].
(2) “General license” means a license, effective pursuant to rules promulgated by the [department] without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, radioactive material.
(3) “Ionizing radiation” means gamma rays and x-rays, alpha particles, beta particles, high speed electrons, neutrons, protons, high speed ions, and other high speed nuclear particles.
(4) “Mammography” means radiography of the breast for the purpose of enabling a physician to determine the presence, size, location, and extent of cancerous or potentially cancerous tissue in the breast.
(5) “Mammography authorization” means authorization under Section 5 of this act to use a radiation machine for mammography.
(6) “Mammography system” means the radiation machine used for mammography; automatic exposure control devices; films, screens, and cassettes; image processor; darkroom; and viewboxes.
(7) “Person” means a person as defined in [insert citation for appropriate state statute] or a governmental entity.
(8) “Radiation machine” means a machine, other than those exempted by [department] rule, that emits ionizing radiation.
(9) “Radioactive material” means a solid, liquid, or gas material which emits ionizing radiation spontaneously.
(10) “Radiography” means the making of a film or other record of an internal structure of the body by passing x-rays or gamma rays through the body to act on film or other image receptor.
(11) “Registration” means registration of a source of ionizing radiation in writing with the [department].
(12) “Source of ionizing radiation” means a device or material that emits ionizing radiation.
(13) “Specific license” means a license issued to use, manufacture, pro-
duce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing, radioactive material.

Section 3. [Rules for Licensing, Registration, Training and Performance Standards.]
(a) The [department] shall promulgate rules providing for general or specific licenses or registration, or exemption from licensing or registration, for radioactive materials and other sources of ionizing radiation. The rules shall provide for amendment, suspension, or revocation of licenses. In connection with those rules, the [department] may promulgate rules to establish requirements for record keeping, permissible levels of exposure, notification and reports of accidents, protective measures, technical qualifications of personnel, handling, transportation, storage, waste disposal, posting and labeling of hazardous sources and areas, surveys, and monitoring.
(b) The rules shall not limit the intentional exposure of patients to radiation for the purpose of lawful therapy or research conducted by licensed health professionals.
(c) The [department] shall promulgate rules specifying the minimum training and performance standards for an individual using a radiation machine for mammography as set forth in Section 5.

Section 4. [Avoidance of Dual Licensing; Rules for Fee Schedule]
(a) In promulgating rules pursuant to this act, the [department] shall avoid requiring dual licensing, insofar as practical. Rules promulgated by the [department] may provide for recognition of other state or federal licenses as the [department] considers desirable, subject to registration prescribed by the [department]. A person who, on the effective date of an agreement under [insert citation for appropriate state statute], possesses a license issued by the federal government for a source of ionizing radiation of the type for which the state assumes regulatory responsibility under the agreement, shall be considered to possess an identical license issued pursuant to this act which license shall expire either [90] days after receipt of a written notice of termination from the [department], or on the date of expiration stated in the federal license, whichever occurs first.
(b) The [department] shall promulgate rules to establish a schedule of fees to be paid by applicants for specific licenses for radioactive materials and devices and equipment utilizing the materials.
(c) The [department] shall promulgate rules to establish a schedule of fees to be paid by an applicant for a specific license for other sources of ionizing radiation and the renewal of the specific license, and by a person possessing sources of ionizing radiation which are subject to registration, except that the registration or registration renewal fee for a radiation machine registered under this act is [insert amount] for the first veterinary or dental x-ray or electron tube and [insert amount] for each additional veterinary or dental x-ray or electron tube annually, or [insert amount] annually per nonveterinary or nondental x-ray or electron tube plus a fee of [insert amount] for each followup inspection due to non-
compliance during the same year. The [department] may accept a written certification from the licensee or registrant that the items of non-compliance have been corrected instead of a follow-up inspection. If the [department] does not inspect a source of ionizing radiation for a period of [five] consecutive years, the licensee or registrant of the source of ionizing radiation shall be excused from payment of further license or registration fees as to that source of ionizing radiation until the first license or registration renewal date following the time an inspection of the source of ionizing radiation is made.

(d) A fee collected under this act shall be deposited in the state treasury and credited to the general fund of this state.

(e) Except as otherwise provided in subsection (f) of this section, the [department] shall assess the following nonrefundable fees in connection with mammography authorization:

1. Initial inspection, per radiation machine, [insert amount];
2. Annual inspection, per radiation machine, [insert amount];
3. Reinspection for reinstatement of mammography authorization, per radiation machine, [insert amount];
4. [Department] evaluation of compliance with Section 5(b)(1) of this act, first radiation machine, [insert amount]; each additional radiation machine, [insert amount].

(f) If an applicant for mammography authorization submits an evaluation report issued by the American college of radiology that evidences compliance with Section 5(b)(1) of this act, the [department] shall waive the fee under subsection (e) of this section for [department] evaluation of compliance with that provision.

Section 5. [Mammography Authorization.]

(a) Beginning [60] days after the effective date of this act, a person shall not use a radiation machine to perform mammography unless the radiation machine is registered with the [department] under [department] rules for registration of radiation machines and is specifically authorized under this section for use for mammography.

(b) The [department] shall authorize a radiation machine for use for mammography if the radiation machine meets all of the following standards:

1. The radiation machine meets the criteria for the American college of radiology mammography accreditation program as adopted in June 1987 and amended in September 1988 and published by the American college of radiology, which criteria are incorporated by reference. The [department] shall make copies of those criteria available to the public and may by rule adopt modified criteria. The [department] may accept an evaluation report issued by the American college of radiology as evidence that a radiation machine meets those criteria. If at any time the [department] determines that it will not accept any evaluation reports issued by the American college of radiology as evidence that a radiation machine meets those criteria, the [department] shall promptly notify each person who has registered a radiation machine under this act and the rules promulgated under this act.
Suggested State Legislation

(2) The radiation machine, the film or other image receptor used in the radiation machine, and the facility where the radiation machine is used meet the requirements set forth in [department] rules for radiation machines.

(3) The radiation machine is specifically designed to perform mammography.

(4) The radiation machine is used exclusively to perform mammography.

(5) The radiation machine is used in a facility that does all of the following:
   (i) At least [annually] has a qualified radiation physicist provide on-site consultation to the facility, including, but not limited to, a complete evaluation of the entire mammography system to ensure compliance with this act and the rules promulgated under this act.
   (ii) Maintains for at least [seven] years records of the consultation required in subparagraph (i) and the findings of the consultation.

(6) The radiation machine is used according to [department] rules on patient radiation exposure and radiation dose levels.

(7) The radiation machine is operated only by an individual who can demonstrate to the [department] that he or she is specifically trained in mammography or an individual who is a physician or an osteopathic physician. Beginning [60] days after the rules required under Section 3(c) of this act are promulgated, the radiation machine is operated only by an individual who can demonstrate to the [department] that he or she meets the standards required by those rules or an individual who is a physician or an osteopathic physician. If the [department] promulgates emergency rules covering the subject matter described in Section 3(c) of this act, then for a period beginning [60] days after those emergency rules are promulgated and ending on the day that those emergency rules cease to be in effect, the radiation machine is operated only by an individual who can demonstrate to the [department] that he or she meets the standards required by those emergency rules or an individual who is a physician or an osteopathic physician.

(c) The [department] may issue a nonrenewable temporary authorization for a radiation machine for use for mammography if additional time is needed to allow submission of evidence satisfactory to the [department] that the radiation machine meets the standards set forth in subsection (b) of this section for approval for mammography. A temporary authorization granted under this subsection during the first [18] months after the effective date of this act shall be effective for no more than [12] months. A temporary authorization granted under this subsection after [18] months after the effective date of this act shall be effective for no more than [six] months. The [department] may withdraw a temporary authorization prior to its expiration if the radiation machine does not meet [one] or more of the standards set forth in subsection (b) of this section.

(d) To obtain authorization from the [department] to use a radiation machine for mammography, the person who owns or leases the radiation machine or an authorized agent of the person shall apply to the
[department] for mammography authorization on an application form provided by the [department] and shall provide all of the information required by the [department] as specified on the application form. A person who owns or leases more than [one] radiation machine used for mammography shall obtain authorization for each radiation machine. The [department] shall process and respond to an application within [30] days after the date of receipt of the application. Upon determining to grant mammography authorization for a radiation machine, the [department] shall issue a certificate of registration specifying mammography authorization for each authorized radiation machine. A mammography authorization is effective for [three] years.

(e) No later than [60] days after initial mammography authorization of a radiation machine under this section the [department] shall inspect the radiation machine, except that for a period not to exceed [one] year after the effective date of this act, the [department] may conduct that initial inspection later than [60] days after initial mammography authorization under this section. After that initial inspection, the [department] shall annually inspect the radiation machine and may inspect the radiation machine more frequently. The [department] shall make reasonable efforts to coordinate the inspections under this section with the [department]'s other inspections of the facility in which the radiation machine is located.

(f) After each satisfactory inspection by the [department], the [department] shall issue a certificate of radiation machine inspection or a similar document identifying the facility and radiation machine inspected and providing a record of the date the radiation machine was inspected. The facility shall post the certificate or other document near the inspected radiation machine.

(g) The [department] may withdraw the mammography authorization for a radiation machine if it does not meet [one] or more of the standards set forth in subsection (b) of this section.

(h) The [department] shall provide an opportunity for a hearing in connection with a denial or withdrawal of mammography authorization.

(i) Upon a finding that a deficiency in a radiation machine used for mammography or a violation of this act or the rules promulgated under this act seriously affects the health, safety, and welfare of individuals upon whom the radiation machine is used for mammography, the [department] may issue an emergency order summarily withdrawing the mammography authorization of the radiation machine. The [department] shall incorporate its findings in the order and shall provide an opportunity for a hearing within [five] working days after issuance of the order. The order shall be effective during the proceedings.

(j) If the [department] withdraws the mammography authorization of a radiation machine, the radiation machine shall not be used for mammography. An application for reinstatement of a mammography authorization shall be filed and processed in the same manner as an application for mammography authorization under subsection (d) of this section, except that the [department] shall not issue a reinstated certificate of mammography registration until the [department] receives the reinst...
Suggested State Legislation

121 inspection fee required under Section 4(e) of this act, inspects the radiation machine, and determines that it meets the standards set forth in subsection (b) of this section. The [department] shall conduct an inspection required under this subsection no later than [60] days after receiving a proper application for reinstatement of a mammography authorization.

127 (k) In addition to the penalties provided in [insert citation for appropriate state statute] and the reinspection fee required under Section 4(e), if a person violates subsection (a) of this section, the [department] may impose an administrative fine against the owner of the radiation machine or, if a lessee of the radiation machine has effective control of the radiation machine, the lessee, of not more than [insert amount] for each calendar week in which a mammography is performed in violation of subsection (a) of this section. If a person continues to violate subsection (a) of this section for a period of [two] weeks after a fine is imposed under this subsection, the [department] shall post a conspicuous notice on the unauthorized radiation machine and at the entry to the facility where the radiation machine is located warning the public that the facility is performing mammography using a radiation machine that is a substantial hazard to the public health.

129 (l) The [department] may promulgate rules necessary to implement this section after consultation with the [radiation advisory board] established under [insert citation for appropriate state statute].

1 Section 6. [Effective Date] [Insert effective date.]
Prenatal Exposure to Controlled Substances Act

This act, based on a 1990 Illinois enactment that amends several sections of existing statute, is designed to bring treatment services to alcohol and/or substance abusing pregnant women. It amends the state's abused and neglected child reporting act to require substance abuse treatment personnel to report to the state department of children and family services any pregnant woman who is addicted to drugs or alcohol, and authorizes the referral of the woman to the state's department of public health. The department of public health, in turn, would notify the local infant mortality reduction network service provider or other public care provider in the area in which the woman resides (the provision, however, is not intended to interfere with any private prenatal care arrangements the woman already has).

The act further requires the department of alcoholism and substance abuse to create or contract with existing residences or recovery homes in areas having a disproportionate number of women who are substance abusers needing residential treatment and counseling. It gives priority to women who are pregnant and/or have children who are minors. Services offered must include educational and counseling services, substance abuse therapy, family therapy, programs to develop self-awareness, parent-child therapy and residential support groups.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Prenatal Exposure to Controlled Substances Act.

COMMENT: The Illinois legislation on which this draft act is based, adds substance abuse treatment personnel to the list of persons who are required to report to the state department of children and family services under the state's abused and neglected child reporting act. Section 2 of this draft act makes reference to persons required to report under such provision.

Section 2. [Referral of Alcohol and/or Substance Abusing Pregnant Women.]

(a) All persons required to report to the [state department of children and family services] under [insert citation for appropriate section of abused/neglected child reporting statute] may refer to the [state department of public health] any pregnant person in this state who is addicted as defined in the [insert citation for appropriate section of alcoholism/drug dependency statute]. The [state department of public health]
shall notify the [local infant mortality reduction network service provider] or [public health department]-funded prenatal care provider in the area in which the person resides. The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the [state department of alcoholism and substance abuse] or a licensed hospital which provides substance abuse treatment services. The [local infant mortality reduction network service provider] and [public health department]-funded prenatal care provider shall monitor the pregnant woman through the service program. The [state department of public health] shall have the authority to promulgate rules and regulations to implement this act.

(b) Any person, institution or agency, under this act, participating in good faith in the making of a report or referral, or in the investigation of such a report or referral shall have immunity from any liability, civil, criminal or that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any persons required to report or refer, or permitted to report, cases of suspected child abuse or neglect or permitted to refer individuals under this act, shall be presumed.

(c) All records concerning reports of child abuse and neglect or records concerning referrals under this act and all records generated as a result of such reports or referrals, shall be confidential and shall not be disclosed except as specifically authorized by this act or other applicable law. It is a [insert offense] to permit, assist, or encourage the unauthorized release of any information contained in such reports, referrals or records.


Section 4. [Duties, Services of Department of Alcoholism and Substance Abuse]

(a) As used in this section, "Department" means the [state department of alcoholism and substance abuse].

(b) The [department] shall supply to the [state department of public health] and prenatal care providers a list of all substance abuse service providers for addicted pregnant women in this state.

(c) The [department] shall adopt regulations for acceptance of persons for treatment, taking into consideration available resources and facilities, for the purpose of early and effective treatment of alcoholism and other drug abuse and dependency.

(d) The [department] shall create or contract with existing residences or recovery homes in areas having a disproportionate number of women who are substance abusers needing residential treatment and counseling. Priority shall be women who:

(1) are pregnant,
(2) have minor children,
(3) are both pregnant and have minor children, or
(4) are referred by medical personnel because they either gave birth
to a baby addicted to cocaine, or will give birth to a baby addicted to co-
caine.

The services provided by the home shall include, but need not be limit-
ed to:

(1) a range of educational or counseling services,
(2) coordinated social services, including:
   (i) substance abuse therapy groups,
   (ii) family therapy groups,
   (iii) programs to develop positive self-awareness,
   (iv) parent-child therapy, and
   (v) residential support groups.

COMMENT: The Illinois legislation on which Section 4 above is based
includes these provisions within a section on special services. That
section also outlines circumstances under which an individual might
voluntarily enter, or be taken to, a treatment facility.

Section 5. [Duties, Programs of Department of Public Health.]
(a) The [state department of public health] shall assist the [state depart-
ment of alcoholism and substance abuse] in the development of guide-
lines for use in non-hospital residential care facilities for pregnant ad-
dicted women with respect to the care of those clients.
(b) The [state department of public health] shall expand its existing
infant mortality and prenatal program, through its provider agencies,
to develop special programs for case finding and service coordination for
addicted pregnant women.

Section 6. [Effective Date] [Insert effective date.]
Perinatal Providers —
Easing the Shortage

A Legislative Proposal of the Southern Regional Project
on Infant Mortality

This legislative proposal is one of five drafted as a result of a policy
statement adopted by participants of the Southern Legislative Summit
on Healthy Infants and Families (October 4-7, 1990). The Summit was
organized by the Southern Regional Project on Infant Mortality, a pro-
ject established in 1984 by the Southern Governors’ Association and the
Southern Legislative Conference in response to the high infant mortality
rate in the South.

Summit participants were appointed by governors and legislative lead-
ers from every state and U.S. territory in the region. The policy state-
ment they adopted covered access to health care for all pregnant wom-
en, infants and children; the establishment of special services for high-
risk and substance-abusing pregnant women; the prevention of unin-
tended pregnancies; the establishment of a maternal and child health
commission; and ways to ease the shortage of perinatal providers. A team
of bill drafters from the Florida and Virginia legislatures constructed
model legislation keyed to each section of the policy document.

The proposal presented here relates to Section V of the policy state-
ment, Easing the Shortage of Perinatal Providers/Medical Mal-
practice, designed to ameliorate the shortage of such providers by de-
veloping programs that address the high cost or unavailability of medical
malpractice insurance, fear of law suits and changing patterns of prac-
tice. [Subsection and paragraph numbers have been inserted by the
editors of this volume.]

For further information on the Summit and the entire package of legis-
lative proposals, contact the Southern Regional Project on Infant Mor-
tality, 444 N. Capitol St., NW, Suite 240, Washington, DC 20001, (202)
624-5897.

Legislative Proposal 5.
Easing the Shortage of Perinatal Providers/Medical Malpractice

Section 1. [Prescriptive Authority and Expanded Practice for Certain
Health Professionals or Practitioners]
(a) The [professional governing board or boards] shall promulgate regul-
lations granting nurse practitioners [and certified or licensed nurse mid-
wives and physicians’ assistants] limited prescriptive authority [for ex-
ample, Schedule VI drugs and devices, e.g., certain antibiotics, etc.] to
prescribe, dispense, or administer controlled substances in good faith for
medicinal or therapeutic purposes under the supervision of a physician.
The regulations shall include, but need not be limited to, educational
requirements in pharmacology for such prescriptive authority, require-
ments for continuing education, appropriate intervals for random review
Perinatal Providers — Easing the Shortage

of medical charts by the physician and the requirements for written protocols.

(b) For the purposes of this section, "supervision" means that the physician documents being readily available for medical consultation by the licensed nurse practitioner [and certified nurse-midwives and physicians' assistants] or the client, with the physician maintaining ultimate responsibility for the agreed-upon course of medical treatment.

(c) The [board] shall also promulgate regulations authorizing nurse practitioners [and certified or licensed nurse-midwives and physicians' assistants] to practice without the presence or direct supervision of a physician and public health nurses to provide basic prenatal care under the supervision of a physician. The [board's] regulations shall include, but need not be limited to, required training and the specific services so authorized.

COMMENT: Many states already authorize "supervision" as defined above.

Section 2. [Practice Privileges for Certified Nurse-midwives.] Hospitals shall be required, as a condition for licensure or renewal of licensure, to extend practice privileges to certified nurse-midwives. The grant or denial of practice privileges to certified nurse-midwives by any hospital licensed in this [state/commonwealth] and the determination by the hospital of the scope of such privileges shall be based upon the certified nurse-midwife's certification, experience, competence, ability, and judgment, and the reasonable objectives and regulations of the hospital in which such privileges are sought.

Section 3. [Policy Providing for Reimbursement for Services that may be Performed by Certain Practitioners other than Physicians.] If any [insert appropriate state term for health insurance companies, Blue Cross/Blue Shield Organizations and health maintenance organizations] policy provides reimbursement for any service that may be legally performed by a person licensed in this state as a [list relevant mid-level practitioners, e.g., nurse practitioners, physicians' assistants], reimbursement under the policy shall not be denied because the service is rendered by the licensed practitioner. This section shall not apply to Medicaid, or any state fund.

Section 4. [Medical Scholarships for Practitioners to Serve in Underserved Areas.] (a) The [board or other appropriate entity governing public health services] shall establish criteria to identify medically underserved areas within the state. These criteria shall consist of quantifiable measures sensitive to the unique characteristics of urban and rural jurisdictions which may include the incidence of infant mortality, the availability of primary care resources, poverty levels, and other measures indicating the inadequacy of the primary health care system as determined by the [board].
Suggested State Legislation

(b) With such funds as are appropriated for this purpose, [the board or other appropriate entity governing public health services] shall establish annual medical scholarships for students who intend to enter the designated specialties of family practice medicine, general internal medicine, pediatrics, and obstetrics/gynecology for students in good standing at accredited [medical schools] within the state. No recipient shall be awarded more than five scholarships. The amount and number of such scholarships and the apportionment of the scholarships among the [medical school(s)] shall be determined annually as provided in the [appropriations act/budget]. The [insert appropriate official] shall act as fiscal agent for the [board] in the administration of the scholarship funds.

(c) The governing boards of the [medical school(s)] shall submit to the [insert appropriate official] the names of those eligible applicants who are most qualified as determined by the regulations of the [insert appropriate regulatory body] for these medical scholarships. The [insert appropriate official] shall award the scholarships to the applicants whose names are submitted by the governing boards.

(d) The [insert appropriate regulatory body], after consultation with the [medical school(s)] shall promulgate regulations to administer this scholarship program which shall include, but not be limited to:

(1) Qualifications of applicants;

(2) Criteria for award of the scholarships to assure that recipients will fulfill the practice obligations established in this section;

(3) Standards to assure that these scholarships increase access to primary health care for individuals who are indigent or who are recipients of public assistance;

(4) Assurances that bona fide residents of [state], as determined by [insert reference to appropriate state statute, if any], are given preference over nonresidents in determining scholarship eligibility and awards;

(5) Assurances that scholarship recipients will begin medical practice in one of the designated specialties in an underserved area of [state] within two years following completion of their residencies;

(6) Methods for reimbursement of the state by recipients who fail to complete medical school or who fail to honor the obligation to engage in medical practice for a period of years equal to the number of annual scholarships received;

(7) Procedures for reimbursing any recipient who has repaid the state for part or all of any scholarship and who later fulfills the terms of his contract;

(8) Procedures for transferring unused funds upon the recommendation of the [commissioner/director] and the approval of the [department of planning and budget/state comptroller] in the event any of the [medical school(s)] has not recommended the award of its full complement of scholarships by January of each year and the other [medical school(s)] has a demonstrated need for additional scholarships for that year; and

(9) Reporting of data related to the recipients of the scholarships by the medical school[s].

(e) Prior to the award of any scholarship, the applicant shall sign a con-
tract in which he agrees to pursue the medical course of the school
nominating him for the award until his graduation or to pursue his first
year of postgraduate training at the hospital or institution approved by
the school nominating him for the award and upon completing a term
not to exceed three years as an intern or resident at an approved insti-
tution or facility intends to promptly begin and thereafter engage con-
tinuously in one of the designated specialties of medical practice in an
underserved area in [state] for a period of years equal to the number of
annual scholarships received. The contract shall specify that no form
of medical practice such as military service or public health service may
be substituted for the obligation to practice in one of the designated
specialties in an underserved area in the [state].

(f) The contract shall provide that the applicant will not voluntarily
obligate himself for more than the minimum period of military service
required for physicians by the laws of the United States and that, upon
completion of this minimum period of obligatory military service, the
applicant will promptly begin to practice in an underserved area in one
of the designated specialties for the requisite number of years. The con-
tract shall include other provisions as considered necessary by the at-
torney general and the [commissioner/director] to ensure the integrity
and purpose of such scholarships.

(g) The contract may be terminated by the recipient while the recipi-
ent is enrolled in medical school upon providing notice and immediate
repayment of the total amount of scholarship funds received plus interest
at the prevailing bank rate for similar amounts of unsecured debt.

(h) In the event the recipient fails to maintain a satisfactory scholas-
tic standing, the recipient may, upon certification of the [commission-
er/director], be relieved of the obligations under the contract to engage
in medical practice in an underserved area upon repayment to the state
of the total amount of scholarship funds received plus interest at the
prevailing bank rate for similar amounts of unsecured debt.

(i) In the event the recipient dies or becomes permanently disabled so
as not to be able to engage in the practice of medicine, the recipient may,
upon certification of the [commissioner/director], be relieved of his obli-
gation under the contract to engage in medical practice in an under-
served area and repayment to the state of the total amount of any
scholarship funds.

(j) Except as provided in subsections (e) and (f) of this section, any re-
cipient of a scholarship who fails or refuses to fulfill his obligation to
practice medicine in one of the designated specialties in an underserved
area for a period of years equal to the number of annual scholarships
received shall reimburse the state three times the total amount of the
scholarship funds received plus interest at the prevailing bank rate for
similar amounts of unsecured debt. If the recipient has fulfilled part of
his contractual obligations by serving in an underserved area in one of
the designated specialties, the total amount of the scholarship funds
received shall be reduced by the annual scholarship multiplied by the
number of years served.

(k) The [commissioner/director] shall collect all repayments required
Suggested State Legislation

by this section and may establish a schedule of payments for reimburse-
ment consistent with the regulations of the [board]. No schedule of pay-
ments shall amortize the total amount due for a period of longer than
two years following the completion of the recipient’s postgraduate train-
ing or the recipient’s entrance into the full-time practice of medicine,
whichever is later. All such funds shall be transmitted to the [comptrol-
er] for deposit in the general fund. If any recipient fails to make any
payment when and as due, the [commissioner/director] shall notify the
attorney general. The attorney general shall take such action as he
deems proper. In the event court action is required to collect a delinquent
scholarship account, the recipient shall be responsible for the court costs
and reasonable attorneys’ fees incurred by the state in such collection.

Section 5. [Loan Repayment for Practitioners Who Serve in Underserved
Areas.] ]
(a) With such funds as are appropriated for this purpose, the [board
or other entity governing public health services] shall establish a loan
repayment program for students who have completed their residency or
training and are seeking placement in a medically underserved area,
or for practitioners established in an underserved area, in the special-
ty areas of family practice medicine, general internal medicine, pedi-
atrics, obstetrics/gynecology, osteopathy or nurse midwifery. The amount
and number of loan repayment awards shall be determined annually as
provided in the [appropriations act/budget].
(b) A loan repayment shall consist of payment on behalf of the individu-
al of the principal, interest and related expenses on government and com-
mercial loans received by the individual for tuition, other educational
expenses, and reasonable living expenses. For each year of obligated
service in a medically underserved area of the state, the [insert appropri-
ate official] may pay up to [20,000] dollars on behalf of the individual
for loans. No individual shall receive more than [60,000] dollars over a
four-year period in loan repayment awards.
(c) The [insert appropriate regulatory body], after consultation with
the [medical school(s)] and [public health agency] shall promulgate regu-
lations to administer this loan repayment program, including:
(1) Qualifications of applicants;
(2) Criteria for awarding loan repayments to ensure that placements
will increase access to primary care in medically underserved areas, and
ensure that the best qualified applicants receive awards;
(3) Methods of notifying established practitioners in medically un-
derserved areas, and students completing their training in the specified
field of study, of the availability of the loan repayment program;
(4) Methods of reimbursement to the state for individuals who fail
to begin their practice obligations within two years following receipt of
their award;
(5) Methods for reimbursing individuals who have repaid the state
but who later fulfill the terms of their contract;
(6) Disposition of any unused loan repayment programs funds.
Section 6. [Programs to Attract and Retain Practitioners in Underserved Areas.] The board of health, in cooperation with medical school(s), the medical association, and state health planning agency, shall design and implement a program to attract and retain medical care practitioners in underserved areas of the state. The program shall be designed to:

1. establish professional practice support systems linking the benefits of the medical expertise and research of the medical school(s) with the delivery of health services to indigent individuals, recipients of public assistance, and medically indigent pregnant women and their children;
2. encourage the graduates of medical school(s) to practice in underserved areas by recruiting students to enter primary care specialties and to practice in underserved areas;
3. provide incentives to licensed physicians and health care facilities, and community organizations to encourage them to offer technical or financial assistance, or both, to the graduates of medical school(s) who establish practices and health centers in underserved areas;
4. promote the development and implementation of innovations in the delivery of community health services such as extended or non-traditional clinic hours at the medical school(s) and community-based service demonstration projects; and
5. anticipate and avoid critical physician shortages by expanding opportunities for family practice preceptorships, clerkships, and residencies.

Section 7. [Medicaid Reimbursement Rates for Certain Providers.] The state Medicaid agency shall develop a proposal for increasing state Medicaid reimbursement rates for obstetrical providers through public and private funds, consistent with federal law and regulation. This proposal shall include incentives for physicians to get pregnant women into care early and to retain such women in care. The agency shall also review and revise as necessary from time to time provider reimbursement and pre-certification forms to facilitate timely reimbursement of claims filed by medical providers.

Section 8. [Plan to be Developed for Certain Insurance Mechanisms.] The state insurance agency shall develop plans for establishing a statewide insurance fund and regional insurance funds, to provide indemnification for or to subsidize medical malpractice insurance, and for establishing a state insurance risk pool tied to physicians' coverage on participation in a risk management program, for health care practitioners who provide obstetrical care to patients eligible for Medicaid or patients residing in medically underserved areas. The state insurance agency shall report to the governor and the legislature and/or relevant committees within the legislature on these plans by insert appropriate date.

Section 9. [Definition of State Employee to Include Certain Practitioners.] Any person licensed or certified by the [insert appropriate regula-
Suggested State Legislation

COMMENT: Section 9 or parts of it could be inserted in a state's torts claims act.

Section 10. [Immunity from Liability for Certain Practitioners.] No person who is licensed or certified by [insert appropriate regulatory agencies for relevant practitioner(s), i.e., doctors, nurses, etc.] who renders any health care services within the limits of his license voluntarily and without compensation to any indigent person, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of the licensee's gross negligence or willful misconduct.

Section 11. [Task Force on Tort and Insurance Reform.]

(a) There is hereby established the [state] Task Force on Tort and Insurance Reform for the purpose of examining the tort system in order to ease the pressure on obstetrical providers and to ensure access to care for pregnant women and children.

(b) The Task Force shall consist of [15] members to be appointed as follows: [one representative of the [medical society], one representative of the malpractice insurance industry, one representative of the health insurance industry, one representative of the trial lawyers association, and one representative of the state judiciary to be appointed by the governor; and [10] members of the [state legislature] who shall represent [insert names of relevant standing committees] to be appointed by [insert appropriate appointing authority within the legislature]]. The Task Force shall report such recommendations for modification of state law as it deems appropriate to the [state legislature] by [insert date].

(c) In its deliberations, the Task Force shall

(1) focus on the means to ensure that medical liability insurance is available at reasonable rates;

(2) ensure that problems with medical malpractice insurance do not provide obstacles to access to health care for pregnant women and children;

(3) consider the efficacy of establishing limited mandated benefit insurance plans;

(4) examine the policies of insurance companies concerning preexisting conditions, individual underwriting in group plans, opening enrollment, and any other issues related to its charge; and
Perinatal Providers — Easing the Shortage

27 (5) evaluate other state statutes and programs designed to address
28 access and availability of insurance coverage.
29 (c) This Task Force shall expire on [insert appropriate date].

1 Section 12. [Effective Date] [Insert effective date.]
Home Care Volunteer Program for Maternal and Child Health

This act, based on 1990 New York amendments to its public health law, establishes a home care volunteer program for maternal and child health for the purposes of assisting pregnant women and children. It defines a variety of services and assistance, including (but not limited to) guidance in: nutrition; exercise; hygiene; drug, tobacco and alcohol use; and breast feeding. The act further provides that the programs use volunteers, especially women who have had children and who are willing and able to provide non-medical assistance to women for prenatal and infant care.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Home Care Volunteer Program for Maternal and Child Health Act.

COMMENT: The New York legislation on which this draft is based authorizes the state commissioner of public health to make grants to certified public and voluntary non-profit home health agencies for the development of these programs and the development of programs to improve home care patients' access to primary health services. The language of that amendment is not included in this draft.

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

(1) “Home care volunteer program for maternal and child health” means a program developed, coordinated and provided by a certified home health agency for the purposes of assisting pregnant women and children.

(2) “Home health agency” means [insert state's definition for entity that provides a variety of health services, either directly or through contractual agreement, in a client's place of residence].

(3) “Program” means the [home care volunteer program for maternal and child health].

Section 3. [Creation of Home Care Volunteer Program for Maternal and Child Health.]

(a) The assistance provided by the program shall include, but not be limited to: guidance in self care related to prenatal care and post partum care such as information concerning proper nutrition, exercise, hygiene, drug, tobacco and alcohol use, and breast feeding; guidance in infant care; friendly visiting; and telephone reassurance. Such assistance may also include home maintenance, child care and shopping. Additional
services which the [home health agency] may provide in conjunction with
the program shall include nursing, social work, home health aide and
other approved agency services necessary to serve this population.
(b) In providing such program, a certified [home health agency] shall
utilize volunteers, especially women who have had children and who are
willing and able to provide non-medical assistance to women for prena-
tal care and infant care.
(c) The certified [home health agency] shall recruit, train and super-
vise volunteers for the program and shall assure that such volunteers
are competent to perform the required tasks and are suited to the cli-
ent. The agency shall designate a person responsible for management
of the program.
(d) Certified [home health agencies] which provide home care volun-
teer programs for maternal and child health shall establish provisions
for referral and case coordination with providers of prenatal care as-
sistance services as defined in [insert citation for appropriate state stat-
ute].

Section 4. [Effective Date] [Insert effective date.]
Dialysis, a treatment for kidney failure in which the patient's blood is mechanically filtered to remove wastes, is commonly provided in clinics or occasionally in hospitals for frail patients. The procedure is life-sustaining for kidney patients, and most frequently is administered three times per week, with each treatment requiring from one-and-a-half to three-and-a-half hours to complete.

This act, based on 1989 California legislation, expands dialysis care options for patients by authorizing the licensing of home dialysis agencies and allowing chronic dialysis services to be provided by a licensed home dialysis agency. Among its provisions, the act requires a qualified registered nurse to assess a patient's home environment prior to treatment and to be available by telephone whenever home treatments are in progress.

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Legislative Purpose]

(a) The purposes of this act are to provide for the licensure of home dialysis agencies by the [state department of health services] in order to ensure the health and safety of patients who receive hemodialysis in their homes and to permit qualified persons, political subdivisions of the state, and governmental agencies to comply with requirements of federal law regarding the provision of home dialysis services.

(b) In enacting this legislation, it is the intent of the legislature to allow all qualified persons, political subdivisions of the state, and governmental agencies to provide home dialysis services to the people of [state]. It is also the intent of the legislature to distinguish between the functions of a home dialysis agency and a home health agency licensed under [insert citation for appropriate state statute] and not to require a home dialysis agency to obtain licensure as, and perform the functions of, a home health agency. It is further the intent of the legislature to require the [state department of health services] to establish standards of quality patient care for home dialysis agencies.

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

(1) "Chief administrative office" means a place located in this state where more than [50] percent of an agency's administrative tasks are performed.
(2) "Department" means the [state department of health services.]

(3) "Dialysis treatment record" means a dated, written notation by the person providing dialysis treatment which contains a description of all of the following:
   (i) The signs and symptoms of the patient's health status.
   (ii) The machine parameters and pressure settings used during the treatment.
   (iii) The medications administered as part of the treatment.

(4) "Dietitian" means a person who satisfies both of the following:
   (i) Eligibility for registration with the American Dietetic Association.
   (ii) Satisfaction of the criteria specified in [insert citation for appropriate state statute].

(5) "End stage renal disease" or ESRD means the stage of renal impairment that appears irreversible and permanent and requires regular dialysis treatment or kidney transplantation to maintain life.

(6) "Home" means a house, apartment, skilled nursing facility, intermediate care facility, congregate living facility, or other setting determined appropriate by the patient's physician and surgeon in consultation with the home dialysis agency and the patient. Only a location where dialysis is provided by at least [one] staff person per patient is included in this definition.

(7) "Home dialysis agency" or "agency" means a person, political subdivision of the state, or governmental agency which is engaged in providing dialysis treatments and other therapeutic services to patients in their homes.

(8) "Home dialysis services" means the treatment and care given to patients of a home dialysis agency which are administered by a physician and surgeon, a qualified registered nurse, a qualified licensed nurse, or a qualified hemodialysis technician pursuant to a patient care plan.

(9) "Interdisciplinary treatment team" means the patient's physician and surgeon, who shall be board certified or board eligible in nephrology, and a qualified registered nurse, a dietitian, and a qualified social worker employed by the home dialysis agency and responsible for planning the care delivered to the patient.

(10) "Long-term program" means the written documentation of the selection of the home dialysis treatment suitable for the patient and the home setting which has been selected by the patient's physician and surgeon in consultation with the home dialysis agency and the patient.

(11) "Medical social service" means the initial and follow-up psychosocial evaluation of the patient, and the provision of assistance to the patient with identifying and obtaining access to community resources that may be of assistance to the patient.

(12) "Nursing director" means a registered nurse who is licensed under [insert citation for appropriate state statute] and has at least [18] months of experience or training in the care of patients with ESRD, including patients at an ESRD facility, which has occurred during the [six-year] period prior to the date the application for licensure under this act.
was filed.

(13) "Nursing service" means the provision of direct and indirect care which is associated with the treatment of existing or potential health problems and are provided to dialysis patients with end stage renal disease, including all of the following:

(i) The establishment of objectives for individualized patient care through an assessment of the patient and the patient's nursing history.
(ii) The supervision and coordination of care for dialysis patients with end stage renal disease by a qualified registered nurse pursuant to a patient's physician and surgeon's orders.
(iii) Teaching the patient about renal diseases, medications, and the scope of nursing services offered to the patients by the home dialysis agency.

(14) "Nutritional counseling" means the assessment of the patient's nutritional status, the instruction of the patient in proper nutrition, and the maintenance of ongoing nutritional follow-up care for patients as determined necessary by the [department].

(15) "Patient care plan" means a written document prepared by the interdisciplinary treatment team for a patient that satisfies the requirements of Section 12(d) of this act.

(16) "Qualified hemodialysis technician" means a person certified by the [department] pursuant to [insert citation for appropriate state statute] and who also satisfies the requirements specified in Sections 15 and 16 of this act.

(17) "Qualified licensed nurse" means a registered nurse who is licensed under [insert citation for appropriate state statute] or a licensed vocational nurse who is licensed under [insert citation for appropriate state statute] and who also satisfies the requirements specified in Section 16 of this act.

(18) "Qualified registered nurses" means a registered nurse who is licensed under [insert citation for appropriate state statute] and who has at least [12] months of experience providing direct nursing care to patients and at least an additional [six] months of experience in providing nursing care to patients with ESRD.

(19) "Qualified social worker" means a person who satisfies either of the following:

(i) A person who is licensed as a clinical social worker under [insert citation for appropriate state statute].
(ii) A person who holds a master's degree in social work and who has provided medical social services for at least [one] year in a dialysis treatment unit or a kidney transplantation program.

Section 4. [Licensure Requirement for Home Dialysis Agency.]

(a) No person, political subdivision of the state, or governmental agency, which is not operating a home dialysis agency as of [insert date, year], shall establish or operate a home dialysis agency without first obtaining a license under this act.

(b) Any person, political subdivision of the state, or governmental agency, which was operating a home dialysis agency as of [insert date, year],
Home Dialysis Agencies Licensing Act

may continue to operate the home dialysis agency only under the following conditions:

(1) The person, political subdivision of the state, or governmental agency shall apply to the [department] for a license under this act within [60] days after forms for the application of licensure under this act are available from the [department].

(2) The person, political subdivision of the state, or governmental agency shall cease operating the home dialysis agency upon a final decision of the [department] upholding the [department's] denial of an application for licensure under this act.

Section 5. [Licensure Requirement for Home Dialysis Services.] Except as otherwise provided in Section 4(b) of this act, no person, political subdivision of the state, or governmental agency shall provide home dialysis services unless a license has been issued under this act. Any person, political subdivision of the state, or governmental agency desiring a license for a home dialysis agency under this act shall file with the [department] a verified application on a form prescribed and furnished by the [department] which contains any information as may be required by the [department] for the proper administration and enforcement of this act.

Section 6. [Applicant Qualifications.] To qualify for a license under this act, an applicant shall satisfy all of the following:

(1) Be of good moral character. If the applicant is a franchise, franchisee, firm, association, organization, partnership, business trust, corporation, company, political subdivision of the state, or governmental agency, the person in charge of the home dialysis agency for which application for license is made shall be of good moral character.

(2) Demonstrate the ability of the applicant to comply with this act and any rules and regulations promulgated under this act by the [department].

(3) Have a governing body selected by the applicant to govern the services which the agency will provide and which is composed of a group of persons licensed pursuant to [insert citation for appropriate state statute], including at least [one] physician and surgeon with at least [two] years of experience treating patients with end stage renal disease and at least [one] registered nurse with at least [two] years' experience treating patients with end stage renal disease. The governing body of the agency shall appoint a nursing director after issuance of a license under this act but prior to commencing operation of the agency. The minutes of all meetings of the governing body of the agency shall be retained by the agency, be on file at the chief administrative office of the agency, and be available for inspection by the [department].

(4) File a completed application with the [department] which was prescribed and furnished pursuant to Section 5 of this act.

Section 7. [Application Fee.] (a) Each application for a license under this act shall be accompanied
Section 8. Issuance of License
(a) Upon filing an application for licensure under this act and compliance with this act and the rules and regulations adopted by the [department] under this act, the [department] shall issue to the applicant a license to operate a home dialysis agency. Any fees required pursuant to Section 7 of this act shall be paid before a license is issued. Licensure also may be denied by the [department] as specified in Section 26 of this act.
(b) Each license issued under this act shall expire [24] months from the date of its issuance.
(c) A [biennial] application for the renewal of a license, accompanied by any fee required pursuant to Section 7(b) of this act shall be filed with the [department] no less than [30] days prior to the expiration date of the license. The failure to file an application for renewal within the time required by this subsection shall result in the expiration of the license.

Section 9. Inspection of Home Dialysis Agency
(a) A home dialysis agency for which a license has been issued may, at the [department]'s option, be periodically inspected by a duly authorized representative of the [department]. Reports of each inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the [department] and filed with the [department]. The inspection shall be for the purpose of ensuring that this act and the rules and regulations of the [department] adopted under this act are being followed.
(b) Any officer, employee, or agent of the [department] may enter and inspect any building or premises where dialysis is being performed, recorded, or filed of a licensee at any reasonable time to assure compliance with, or to prevent violation of, any provision of this act.

Section 10. Home Dialysis Agency Duties
Each home dialysis agency shall do all of the following:
(1) Have policies established by the governing body to govern the services which the agency provides. The policies shall be written and include, but not be limited to, policies related to patient care, personnel, personnel training and orientation, personnel supervision, and evaluation of services provided by the agency.
(2) Maintain the following clinical records on each patient:
(i) A medical history and physical provided by the patient's physician and surgeon. The physical shall be updated [annually], and the [annual] update shall be maintained in the patient's medical files.
(ii) Clinical progress notes written by the patient's physician and sur-
geon, a qualified registered nurse, a qualified social worker, and a dietitian. In addition, if any home dialysis services are provided by a qualified licensed nurse or a qualified hemodialysis technician, clinical progress notes shall be maintained that were written by the qualified hemodialysis technician, the qualified licensed nurse, or both the qualified hemodialysis technician and qualified licensed nurse.

(iii) Dialysis treatment records.

(iv) Laboratory reports.

(v) Patient care plan.

(vi) Patient’s long-term program.

(vii) Documentation of any supervisory visit made by a qualified registered nurse or other person.

(viii) A record of treatments prescribed by the patient’s physician and surgeon.

(3) Have an effective procedure for each patient, agreed upon with the patient’s physician and surgeon, for the immediate transfer of the patient to a general acute care hospital if emergency medical care is needed. The agency shall provide for the exchange of medical and other information necessary or useful in the care and treatment of patients who have been transferred to a general acute care hospital, including the patient care plan and long-term program.

(4) Ensure that the names of patients awaiting cadaveric donor kidney transplantation are entered in a participating recipient registry program.

(5) An interdisciplinary care team or a combination of more than one interdisciplinary care teams shall develop written criteria to guide the agency in the selection of patients suitable for home dialysis services and in specifying changes in a patient’s condition which would require termination of home dialysis services.

Section 11. [Home Dialysis Agency Nursing Director’s Duties.]

(a) The nursing director of the home dialysis agency shall be responsible for the following:

(1) Assuring adequate training of qualified registered nurses, qualified licensed nurses, and qualified hemodialysis technicians in dialysis techniques.

(2) Assuring adequate monitoring of patients and dialysis treatments.

(3) Determining whether treatment shall be given by a qualified registered nurse, a qualified licensed nurse, or a qualified hemodialysis technician, and assigning these personnel, as appropriate, to provide care.

(4) Assuring the development of a patient care policies and procedures manual, the availability of the manual to the employees of the agency, and the implementation of the policies and procedures contained in the manual.

(b) The agency shall maintain on file the following information regarding the nursing director:

(1) A curriculum vitae of the nursing director which documents undergraduate and all relevant postgraduate training.
Suggested State Legislation

(2) Evidence of current licensure of the nursing director under [[insert citation for appropriate state statute]].

(3) Evidence of the nursing director's minimum of [18] months of experience or training in the care of patients with ESRD, including patients at an ESRD facility, which has occurred during the [six-year] period prior to the date the application for licensure under this act was filed.

Section 12. [Requirements to be Satisfied Prior to Performance of First Home Dialysis Service]

(a) Prior to the performance of the first home dialysis service for a patient, a qualified registered nurse shall perform an assessment of the patient's home to ensure a safe physical environment for the performance of dialysis. In addition, if there is a change in the dialysis setting, such as a change in the patient's home, prior to the performance of the first dialysis service in the new setting, a qualified registered nurse shall perform an assessment of the patient's home to ensure a safe physical environment for the performance of dialysis.

(b) Prior to the performance of any dialysis treatment, the home dialysis agency shall obtain orders from a patient's physician and surgeon which outline the specifics of prescribed treatment. If these orders are received verbally, they shall be confirmed by the agency to the patient's physician and surgeon within [14] days of the physician and surgeon's verbal order. Orders by a patient's physician and surgeon shall be reviewed and updated at least every [six] months and also shall be revised as necessary.

(c) The initial orders from the patient's physician and surgeon for home dialysis services shall be received prior to the first treatment and shall include the patient's diagnosis, including, but not limited to the patient's mental status, the prognosis of the patient, and functional limitations of the patient. The initial orders also shall include activities permitted by the patient, nutritional requirements of the patient, medications and treatments to be given to the patient, and any safety measures to be taken to protect the patient against injury. Orders from a patient's physician and surgeon for home dialysis services shall include the frequency and length of treatment, weight to be maintained by the patient, the type of dialyzer, the dialysate heparin dosage, and the blood flow rate. The physician may consult with the nursing director to determine whether the treatment may be given by a qualified registered nurse, a qualified licensed nurse, or a qualified hemodialysis technician.

(d) Each patient of a home dialysis agency shall have a patient care plan to personalize the care to be given to the patient, to reflect ongoing psychological, social, and functional needs of the patient, and to enable short- and long-term goals to be met. The patient care plan shall be developed after consultation with the patient, the patient's family, or both the patient and the patient's family by the interdisciplinary treatment team. The plan shall implement the orders of the patient's physician and surgeon and shall include an identification of the patient's problems, methods of intervention in treating the problems, potential services to be given to the patient, and the assignment of agency personnel.
to care for the patient. The initial patient care plan shall be completed
by the interdisciplinary treatment team within [10] days after the first
home dialysis treatment. The patient care plan for nonstabilized pa-
tients, including, but not limited to, patients with changes in treatments,
changes in laboratory values, weight gains, and infections, shall be
reviewed at least [monthly] by the interdisciplinary treatment team. For
a stable patient, the patient care plan shall be reviewed at least every
[six] months by the interdisciplinary treatment team.
(e) Each patient of a home dialysis agency shall have a long-term pro-
gram. The long-term program shall be revised as needed and reviewed
by the interdisciplinary treatment team at least [annually].
(f) Medication shall be administered by a qualified registered nurse,
qualified licensed nurse, or a qualified hemodialysis technician only if
that medication has been ordered by the patient’s physician and surgeon.
A record of the administration of medication shall be entered in the di-
alysis treatment record by the person administering the medication.

Section 13. [Services to be Provided.]
(a) A home dialysis agency shall, at a minimum, provide nursing serv-
ices, nutritional counseling, and medical social services. Nursing serv-
ices and nutritional counseling shall be provided either at the patient’s
home or, if there is no health risk to the patient, as determined by a quali-
fied registered nurse, by telephone. Medical social services shall be
provided at the patient’s home or, if there is no risk to the patient, as
determined by a qualified social worker in consultation with a qualified
registered nurse, by telephone.
(b) The nursing director shall designate a qualified registered nurse
to be available by telephone whenever dialysis treatments are in pro-
gress in a patient’s home. The nursing director also shall designate an
alternate qualified registered nurse who also shall be available by tele-
phone in the event that the first qualified registered nurse is not avail-
able.
(c) A qualified social worker shall be employed by, or under contract
with, the agency to provide medical social services to patients.
(d) A dietician shall be employed by, or under contract with, the agen-
cy to provide nutritional counseling services to patients.
(e) Training of personnel to recognize and respond to emergency con-
ditions shall be provided by the agency to persons providing home dial-
ysis treatments.

Section 14. [Requirements to be Satisfied Prior to Provision of Treat-
ments by Qualified Registered Nurse, Licensed Nurse or Hemodialysis
Technician.]
(a) A qualified hemodialysis technician, a qualified licensed nurse, or
a qualified registered nurse may be employed or under contract with the
home dialysis agency except that no such individual may work under
contract with an agency for more than [20] hours per week for more than
[six] months unless at least [one] of the following requirements is met:
(1) The individual has continuously been, and remains, an employee
of another entity, such as a nurses' registry or other employment agency, and receives the rights and protections of an employee.

(2) The individual, who is not an employee, receives all the rights, benefits, and protections accorded to other full-time, permanent employees in a similar classification. For purposes of this act, all requirements applicable to employees of an agency shall apply to a qualified hemodialysis technician, a qualified licensed nurse, a qualified registered nurse, a qualified social worker, or dietician under contract with the agency.

(b) A qualified hemodialysis technician, a qualified licensed nurse, or a qualified registered nurse may administer home dialysis treatments to a patient only if the requirements of this act are satisfied.

(c) Every employee of a home dialysis agency shall be tested for hepatitis prior to employment. In addition, every employee providing patient care shall have a physical at least annually.

(d) All qualified hemodialysis technicians, qualified licensed nurses, and qualified registered nurses employed by an agency shall have current CPR certification.

(e) A home dialysis agency shall do performance evaluations of the nursing director and each qualified registered nurse, qualified licensed nurse, qualified hemodialysis technician, qualified social worker, and dietician employed by the agency at least annually.

Section 15. [Qualified Hemodialysis Technicians; Requirements, Prohibitions.]
(a) A qualified hemodialysis technician shall be certified by the [department] pursuant to [insert citation for appropriate state statute] and also shall satisfy either of the following requirements:

[(1) A minimum of a high school education or passage of a general educational development (GED) test, and one year of full-time experience performing dialysis.
(2) Eighteen months of full-time experience performing dialysis.]

(b) If the qualified hemodialysis technician is going to perform peritoneal dialysis, including, but not limited to, intermittent peritoneal dialysis, continuous ambulatory peritoneal dialysis, or continuous cycles peritoneal dialysis, then he or she, in addition to the requirements of subsection (a) of this section, shall have at least [six] months of full-time experience performing peritoneal dialysis.

(c) A qualified hemodialysis technician shall not do any of the following:

(1) Administer blood, blood products, antibiotics, albumin, or insulin.
(2) Draw blood.
(3) Draw arterial blood gases.
(4) Administer mesylate.
(5) Initiate patient home education on dialysis procedures, diagnosis, safety, or medications. The initial home education of a patient shall be provided by a qualified licensed nurse or qualified registered nurse. However, after the initial home education is provided by a licensed nurse or a registered nurse, the qualified dialysis technician may provide edu-

38
cation on dialysis procedures and safety.
(d) A qualified hemodialysis technician shall only administer the fol-
lowing medications:
(1) Lidocaine which shall only be administered subcutaneously.
(2) Heparin which shall only be administered intravenously.
(3) Saline solution which shall only be administered intravenously.
(4) Upon request for assistance with medications by a patient, a pa-
tient’s family, or both the patient and the patient’s family, a qualified
registered nurse employed by the agency may assign a qualified hemodi-
alysis technician to assist with the administration of oral medications
necessary for the performance of dialysis which normally would be self-
administered by a patient. The request shall be documented in the pa-
tient’s treatment record by the qualified registered nurse assigning the
task.
(5) Any other medication that the [department] finds is routinely
necessary for the performance of dialysis and which may be safely ad-
ministered by a qualified hemodialysis technician.

Section 16. [Orientation and Training Program for Qualified Hemodi-
alysis Technicians and Licensed Nurses]
(a) Qualified hemodialysis technicians and qualified licensed nurses
shall receive orientation and training and shall demonstrate knowledge
of the following:
(1) Anatomy and physiology of the normal kidney.
(2) Fluid, electrolyte, and acid-base balance.
(3) Pathophysiology of renal disease.
(4) Acceptable laboratory values for the patient with renal disease.
(5) Theoretical aspects of dialysis.
(6) Vascular access and maintenance of blood flow.
(7) Technical aspects of dialysis.
(8) If the person is going to be performing peritoneal dialysis, the
peritoneal dialysis catheter and peritoneal dialysis clearance.
(9) The monitoring of clients during the initiation of treatment, the
treatment itself, and the termination of treatment.
(10) The recognition of dialysis complications, emergency conditions,
and the institution of the appropriate corrective action, including the
use of emergency equipment for emergency conditions.
(11) Psychological, social, financial, and other aspects related to long-
term dialysis.
(12) Care of the client with chronic renal failure.
(13) Dietary modifications and medications for the uremic patient.
(14) Alternative forms of treatment for ESRD.
(15) The role of renal health team members including, the physician
and surgeon, qualified licensed nurse, qualified hemodialysis technician,
qualified social worker, and dietitian.
(16) Performance of the following laboratory tests:
(i) Hematocrit.
(ii) Clotting time.
(iii) Blood glucose.
Suggested State Legislation

(17) The theory of blood products and blood administration.
(b) A home dialysis agency shall develop an [80]-hour orientation and training program, which includes a classroom component that covers theory, written assignments, and direct observations of a qualified registered nurse, qualified licensed nurse, or qualified hemodialysis technician performing hemodialysis treatments on a patient in his or her home. The orientation and training shall be provided by a qualified registered nurse.
(c) If a qualified hemodialysis technician or qualified licensed nurse is able to demonstrate knowledge of the theory of those subjects specified in subsection (a) of this section by written examination, then the classroom component of the training program required by subsection (a) of this section may be waived by the home dialysis agency.
(d) A qualified registered nurse shall directly supervise a qualified hemodialysis technician or qualified licensed nurse for a minimum of [three] dialysis treatments prior to the qualified hemodialysis technician or qualified licensed nurse independently performing dialysis treatments. The qualified registered nurse who provided the direct supervision shall complete an orientation skills checklist relating to the qualified hemodialysis technician or qualified licensed nurse to assure that the level of his or her performance of dialysis treatments is of the quality to enable him or her to perform dialysis treatments independently. Depending upon the qualified dialysis technician's or qualified registered nurse's level of performance reflected on the skills checklist, additional supervised dialysis treatments may be required.
(e) A qualified registered nurse shall directly supervise each qualified hemodialysis technician and qualified licensed nurse employed by the agency at least [monthly] and more often if determined necessary by a qualified registered nurse.
(f) A home dialysis agency shall provide continuing education for qualified hemodialysis technicians and qualified licensed nurses employed by the agency at least [semiannually].

Section 17. [Laboratory Tests Authorized to be Performed in Patient's Home]
(a) Hematocrits, clotting times, and blood glucose tests may be performed at the patient's home by a qualified hemodialysis technician, qualified licensed nurse, or qualified registered nurse.
(b) Maintenance, calibration, and quality control studies of all laboratory equipment utilized to perform the laboratory tests specified in subsection (a) of this section by employees of the agency shall be performed according to the equipment manufacturer's suggestions, and the records and any results of the maintenance, calibration, and quality control studies shall be maintained in the records of the agency at its chief administrative office.
(c) Except as provided in subsection (a) of this section, all laboratory services ordered for the patient by the patient's physician and surgeon shall be performed by a clinical laboratory licensed pursuant to [insert citation for appropriate state statute], or a facility located outside of the
Home Dialysis Agencies Licensing Act

Section 18. [Maintenance of Supplies in Patient's Home]
(a) All drugs, biologics, and medical devices furnished by the home dialysis agency shall be obtained for each patient pursuant to the orders of a licensed physician and surgeon and in accordance with law.
(b) It shall be the agency's responsibility, in conjunction with the patient's physician and surgeon, to ensure that there are sufficient supplies maintained in each patient's home to perform the scheduled home dialysis services. In addition, backup supplies shall be maintained in each patient's home for replacements, if needed, for any purpose, including, but not limited to, breakage, contamination, or a defective product.
(c) All dialysis supplies, including drugs and biologics, shall be delivered directly to the patient's home by a vendor of the supplies. However, personnel of the agency may transport dialysis supplies, including drugs and biologics, from a vendor's place of business to the patient's home for the patient's convenience if the item is properly labeled with the patient's name and direction for use.
(d) There shall be no reuse or reprocessing of disposable medical devices, including, but not limited to, dialyzers, end caps, and blood lines.

Section 19. [Maintenance of Equipment in Patient's Home]
(a) A planned program for preventative maintenance of home dialysis equipment shall be established by a home dialysis agency to ensure the delivery of quality patient care. The program shall be in accordance with the equipment manufacturer's suggestions and as often as necessary. In the absence of specific manufacturer's suggestions, preventative maintenance shall be in accordance with the guidelines published by the Emergency Care Research Institute on Health Devices, July 1978, Volume 7, Number 9, and as subsequently revised. Copies of these guidelines shall be filed in the chief administrative office of an agency and shall be made available for public inspection during the agency's regular working hours.
(b) In the event that the water used for dialysis purposes or home dialysis equipment is found not to meet safe operating parameters and corrections cannot be done promptly to ensure safe patient care, the patient shall be transferred to a facility that can perform the dialysis treatments until the time when the water or equipment is found to be operating within safe parameters.
(c) Records of equipment maintenance required pursuant to this section shall be maintained at the chief administrative office of the agency.

Section 20. [Analysis of Water Used for Home Dialysis Treatments]
(a) Except as provided in subsection (b) of this section, a home dialysis agency shall have water used for home dialysis treatments analyzed at least annually and treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques as determined by the [department].

(b) Water used to prepare dialysate shall meet the requirements set forth in Sections 3.2 and 4.2 of the American National Standards for Hemodialysis Systems, as revised, published by the Association for the Advancement of Medical Instrumentation and as approved by the American National Standards Institute, Inc, and as subsequently revised. The frequency of monitoring water purity for water used to prepare dialysate shall be in accordance with the suggestions in Section B5 of Appendix B of these standards. Copies of Sections 3.2 and 4.2 and Section B5 of Appendix B of the standards shall be filed in the chief administrative office of an agency and shall be available for public inspection during the agency's regular working hours.

(c) Records of test results performed pursuant to subsections (a) and (b) of this section shall be maintained at the chief administrative office of the agency.

Section 21. [Removal and Disposal of Infectious Waste.] A home dialysis agency shall ensure that infectious waste, as defined in [insert citation for state statute pertaining to infectious waste], including, but not limited to, needles, syringes, artificial kidneys, arterial and venous lines, and any other blood contaminated material, is removed from the patient's home and disposed of in a lawful manner.

Section 22. [Policies and Procedures for Emergencies.]

(a) A home dialysis agency shall have written policies and procedures for emergencies which address fire, natural disaster, and medical emergencies.

(b) An agency shall familiarize the employees of the agency and each patient of the agency with the policies and procedures specified in subsection (a) of this section. Emergency procedures shall be individualized for each patient to include an appropriate evacuation from the patient's home and the emergency telephone numbers needed for each patient.

(c) An agency shall make each patient familiar with the procedure for disconnecting the patient's dialysis equipment in the event of an emergency.

(d) In the event of a medical emergency, an agency shall telephone the patient's physician and surgeon and follow his or her instructions. If the patient's physician and surgeon is not available and no other physician and surgeon is available who has been designated by the patients' physician and surgeon, then the agency shall telephone the nearest hospital emergency room and seek instructions from the emergency room.

Section 23. [Patient's Rights and Responsibilities] An agency shall provide to each patient a statement of the patient's rights and responsibilities, which shall include the following:
Home Dialysis Agencies Licensing Act

(1) The patient's right to be informed of all rules and regulations governing patient conduct and responsibilities, services available in the patient's home which are provided by the agency, and the patient's medical condition.

(2) The patient's opportunity to participate in the planning of his or her medical treatment.

(3) The patient's right to the confidential treatment of his or her clinical records and all information obtained by the agency, including, but not limited to, personal items observed in the home.

(4) The right to have assistance and understanding in exercising his or her patient's rights.

(5) There shall be a written grievance procedure under which the patient may file a grievance concerning the agency or its personnel and under which the patient can participate without fear of reprisal by the agency. Steps to resolve a grievance within the agency shall be outlined and instructions provided to allow the patient to contact the [department] if a dispute is not resolved with the agency.

(6) All agencies licensed pursuant to this act or [insert citation for other appropriate state statute] providing services to patients with end stage renal disease shall provide every patient, during the first treatment session, with information regarding other modalities of care, including in-center dialysis, home dialysis, peritoneal dialysis, and the potential for transplantation.

Section 24. [Rules and Regulations.] The [department] shall adopt, amend, or repeal, in accordance with [insert citation for appropriate state statute], reasonable rules and regulations as may be necessary or proper to carry out the purposes and intent of this act and to enable the [department] to exercise the powers and perform the duties conferred upon it by this act.

Section 25. [Suspension, Cancellation of License] Any licensee may, with the approval of the [department], surrender his or her license for suspension or cancellation by the [department]. Any license suspended or cancelled pursuant to this section may be reinstated by the [department] on receipt of an application showing compliance with this act.

Section 26. [Denial, Revocation of License] The [department] may deny any application for, or suspend or revoke any license issued under this act upon any of the following grounds:

(1) Violation by the applicant or licensee of any provision of this act or any rules and regulations promulgated by the [department] under this act.

(2) Any felony conviction of the applicant or licensee for the violation of any law of this state.

(3) Any conviction of the applicant or licensee for aiding, abetting, or permitting the commission of any act that is a felony in this state.

(4) The applicant's or licensee's misrepresentation of a material fact in the application for a license under this act.
Suggested State Legislation

**COMMENT:** The California legislation on which this draft is based also includes sections regarding proceedings for the denial, suspension or revocation of licenses under the act; penalties for violation; and actions to enjoin violation.

1. **Section 27.** *(Effective Date)* [Insert effective date.]
General Acute Care Hospital Interpreter Act

This act, based on 1990 California legislation, requires licensed general acute care hospitals to review existing policies regarding interpreters for patients who have limited proficiency in the English language or who are deaf, and to adopt and annually review a policy for providing language assistance services to such patients. The act requires such hospitals to develop and post notices advising patients and their families of the availability of interpreters, the procedures for obtaining interpreters and the telephone numbers where complaints may be filed. Procedures must ensure that interpreters are available on the hospital premises or accessible by telephone, 24 hours a day, to the extent feasible.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the General Acute Care Hospital Interpreter Act.

Section 2. [Legislative Findings and Declaration] The legislature finds and declares that [state] is becoming a land of people whose languages and cultures give the state a global quality. The legislature further finds and declares that access to basic health care services is the right of every resident of the state, and that access to information regarding basic health care services is an essential element of that right. Therefore, it is the intent of the legislature that where language or communication barriers exist between patients and the staff of any [general acute care hospital], arrangements shall be made for interpreters or bilingual professional staff to ensure adequate and speedy communication between patients and staff.

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

1. "Department" means the [state department of health services].
2. "General acute care hospital" means [insert appropriate citation for state statute].
3. "Interpreter" means a person fluent in English and in the necessary second language, who can accurately speak, read, and readily interpret the necessary second language, or a person who can accurately sign and read sign language. Interpreters shall have the ability to translate the names of body parts and to describe competently symptoms and injuries in both languages. Interpreters may include members of the medical or professional staff.
4. "Language or communication barriers" means:

   1. With respect to spoken language, barriers which are experienced
by individuals who are limited-English-speaking or non-English-speaking individuals who speak the same primary language and who comprise at least [five] percent of the population of the geographical area served by the hospital or of the actual patient population of the hospital. In cases of dispute, the state [department] shall determine, based on objective data, whether the [five] percent population standard applies to a given hospital.

(ii) With respect to sign language, barriers which are experienced by individuals who are deaf and whose primary language is sign language.

Section 4. [Procedures.] To ensure access to health care information and services for limited-English-speaking or non-English-speaking residents and deaf residents, licensed [general acute care hospitals] shall:

(1) Review existing policies regarding interpreters for patients with limited-English proficiency and for patients who are deaf, including the availability of staff to act as interpreters.

(2) Adopt and review annually a policy for providing language assistance services to patients with language or communication barriers. The policy shall include procedures for providing, to the extent possible, as determined by the hospital, the use of an interpreter whenever a language or communication barrier exists, except where the patient, after being informed of the availability of the interpreter service, chooses to use a family member or friend who volunteers to interpret. The procedures shall be designed to maximize efficient use of interpreters and minimize delays in providing interpreters to patients. The procedures shall ensure, to the extent possible, as determined by the hospital, that interpreters are available, either on the premises or accessible by telephone, 24 hours a day. The hospital shall annually transmit to the state [department] a copy of the updated policy and shall include a description of its efforts to ensure adequate and speedy communication between patients with language or communication barriers and staff.

(3) Develop, and post in conspicuous locations, notices that advise patients and their families of the availability of interpreters, the procedure for obtaining an interpreter and the telephone numbers where complaints may be filed concerning interpreter service problems, including, but not limited to, a T.D.D. number for the hearing impaired. The notices shall be posted, at a minimum, in the emergency room, the admitting area, the entrance, and in outpatient areas. Notices shall inform patients that interpreter services are available upon request, shall list the languages for which interpreter services are available, shall instruct patients to direct complaints regarding interpreter services to the state [department], and shall provide the local address and telephone number of the state [department], including, but not limited to, a T.D.D. number for the hearing impaired.

(4) Identify and record a patient’s primary language and dialect on one or more of the following: patient medical chart, hospital bracelet, bedside notice, or nursing card.

(5) Prepare and maintain as needed a list of interpreters who have been
General Acute Care Hospital Interpreter Act

identified as proficient in sign language and in the languages of the population of the geographical area serviced who have the ability to translate the names of body parts, injuries, and symptoms.

(6) Notify employees of the hospital's commitment to provide interpreters to all patients who request them.

(7) Review all standardized written forms, waivers, documents, and informational materials available to patients upon admission to determine which to translate into languages other than English.

(8) Consider providing its nonbilingual staff with standardized picture and phrase sheets for use in routine communications with patients who have language or communication barriers.

(9) Consider developing community liaison groups to enable the hospital and the limited-English-speaking and deaf communities to ensure the adequacy of the interpreter services.

Section 5. [Penalty for Noncompliance] Noncompliance with this act shall be reportable to licensing authorities.

Section 6. [Effective Date] [Insert effective date.]
Uniform Disciplinary Act for Regulated Health Professions (Statement)

This act was adopted by the state of Washington in 1984 as a voluntary uniform disciplinary act so that each health profession could consider and adopt it by administrative rule. In 1986, the legislature applied it to all of the regulated health professions after all but one had adopted or indicated an intention to adopt it. In lieu of presenting the 35-page 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 full text should consult Washington state statutes, RCW 18.130.010-18.130.901, 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.

A number of health professions are regulated by the states at the registration, certification or licensure levels, and all such regulatory acts contain disciplinary provisions for the purpose of protecting the public from professional incompetence. Some professions are monitored and disciplined by autonomous boards comprised of various professionals and public members, while others are regulated directly by centralized state regulatory agencies.

Regardless of the disciplinary authority, each of the regulatory acts enacted over time contain disparate disciplinary provisions. What may constitute unprofessional conduct in one profession may not be considered such in another. Similar violations may incur different sanctions in different professions. The procedures for notice, hearings and appeal may be different. Some practice acts may provide bona fide protections to the public with meaningful sanctions, while others may provide less satisfactory means for addressing violations of professional standards.

This act makes uniform the administrative disciplinary procedures, unprofessional conduct provisions and sanctions for use by all professional disciplinary authorities of regulated health professionals in the state, such as doctors, dentists, nurses, and many of their assistants. A number of the regulated professions utilize semi-autonomous disciplinary boards. The majority are disciplined by the state department of health. Each of these authorities are required to follow the uniform disciplinary provisions in disciplinary actions involving their respective professions.

The act includes a comprehensive list of 24 acts of unprofessional conduct. Nothing precludes the individual disciplinary authorities from having other prohibitions unique to their profession, however. A complete range of sanctions is provided in the act, including revocation of licenses, fines, reprimands, and restitution to the injured patient.

The costs of administering the individual professional regulatory programs are borne by licensing fees paid by those licensees, respectively. For example, the costs of regulating physicians are borne by the license
fees paid by the physicians. The act also places at least one public member on each of the disciplining boards, as well as the secretary of health, who is a non-voting member. In addition, the state department of health is required to report to the legislature every two years on the number and disposition of complaints for licensees charged with unprofessional conduct.
Health Care Decisions and Treatment: Provisions for Durable Power of Attorney and Health Care Agents (Note)

In response to circumstances created largely as a result of the increasing sophistication of life-sustaining medical technology, many states have enacted legislation authorizing procedures for health care decisions to be made on behalf of patients who have lost decision-making capacity. Legislative action typically has followed one of two paths. The majority of states have enacted *living will* legislation, allowing individuals to declare, in writing, instructions regarding life-sustaining medical treatment in the event they are incapacitated and cannot participate in treatment decisions. According to the Society for the Right to Die, at least 41 states and the District of Columbia have such provisions. A smaller number have enacted *durable power of attorney* or *health care agent* legislation. A *durable power of attorney for health care* is a document authorizing an attorney in fact to make health care decisions for an individual, if that individual is unable to give informed consent. An *attorney in fact* is the individual designated as an agent to make health care decisions on behalf of the incapacitated individual. According to the American Medical Association, at least 18 states and the District of Columbia have enacted such legislation.

During the past year, the Committee on Suggested State Legislation reviewed several pieces of legislation that incorporate provisions for durable power of attorney for health care or health care agents or surrogates. In lieu of presenting a single item, the Committee chose to offer policymakers an overview of recent state actions and draft measures in this area. Following is a review of legislation recently enacted by the states of Kentucky, Ohio, New York and Tennessee. Proposed measures drafted by the National Conference of Commissioners on Uniform State Laws, which includes provisions for both the *living will* and the *power of attorney* instruments, and the American Medical Association also are described. Finally, the provisions of New York's *do not resuscitate* act are summarized.

*State Legislation*

There are certain common elements among the state enactments establishing a durable power of attorney for health care decisions, the instrument through which an individual may designate another person to make health care decisions in the event the former loses the ability to make those decisions. The authorization may stipulate the patient's desires and instructions regarding health care decisions, the limitations associated with such decision-making, and the expiration date or circumstances under which the document would expire or be revoked. The
individual—who must be of sound mind and not subject to duress, fraud or undue influence—usually is required to sign and date the instrument in the presence of two adult witnesses, or a notary public. Some enactments contain specific format and language to be used in the power of attorney instrument.

Attending physicians usually are authorized to determine the mental capacity of the patient and their determinations must be made in writing and included in the patient’s medical records. When the patient loses the capacity to make health care decisions, the designated attorney is authorized to access the records. The attorney or agent must make the health care decisions in accordance with the patient’s wishes. Physicians and health care facilities are immune from prosecution or civil liability in carrying out a decision by an attorney in good faith. Some enactments specifically prohibit insurers and health care providers from making execution of a durable power of attorney for health care decisions a precondition of providing coverage or service.

Under Ohio legislation enacted in 1989 (SSB 13, Secs. 1337.11 to 1337.17) any competent adult may be designated as an attorney in fact, except an attending physician or other employee of the health care facility. The act sets several conditions of the attorney’s decision-making authority:

- unless the patient’s physical condition has deteriorated or the health care is no longer effective, the attorney may not refuse or withdraw informed consent to any health care decision previously made by the individual;
- unless the patient is in a terminal condition, the attorney does not have the authority to refuse or withdraw informed consent to health care treatment;
- unless the pregnancy poses a risk to an individual’s life or health, or the attending physician and one other physician determine the fetus could not be born alive, the attorney may not refuse health care to a pregnant individual if it would result in the termination of the pregnancy;
- unless the attending physician and one other physician believe nutrition and fluids would not comfort the patient (and either of the following situations exist—the patient’s death is imminent or the provisions could not be assimilated or would shorten the patient’s life), the attorney may not refuse or withdraw informed consent to these provisions.

New York (SB 6176-A, 1990) permits a competent adult to appoint a health care agent to make health care decisions on his or her behalf via a health care proxy or document delegating the authority. Health care agents do not have decision-making authority about artificial nutrition and fluids, unless they know the patient’s wishes. Under the act, alternate health care agents may be designated by the patient, and no one may serve as an agent for more than 10 individuals. The legislation recognizes health care proxies or similar instruments executed in other states, in compliance with the laws of those states.

Under Kentucky legislation (SB 88, 1990), if two or more individuals are serving as surrogates, their decisions must be made by unani-
Suggested State Legislation

Mous consent, unless the designation or instrument provides otherwise. Kentucky also enacted living will legislation during 1990 (HB 113).

Tennessee (HB 2345, 1990), like Ohio, requires that a warning be placed on any power of attorney document not drafted by the patient. Unlike the Ohio provision, however, one of the witnesses to the signing of the instrument may be a relative of the patient or an individual who might otherwise stand to gain from the death of the patient.

Draft Legislation

Legislation drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Uniform Rights of the Terminally Ill Act, provides alternative means by which a patient's wishes could be carried out with regard to life-sustaining medical treatment. This 1989 act reflects changes and additions to an NCCUSL proposal first approved in 1985. It allows a patient to execute an instrument designating another individual to make decisions regarding the withholding or withdrawal of medical treatment in the event a patient lacks the capacity to make health care decisions.

A patient may execute an instrument instructing a physician to withhold or withdraw life-sustaining medical treatment in the event the patient cannot make decisions because of terminal illness. The act also authorizes attending physicians to withhold or withdraw life-sustaining medical treatment in the absence of a declaration with the consent of a close relative of the patient, provided that the action would not conflict with the known intention of the patient.

Readers should note that NCCUSL is beginning work on a synthesis and revision of this act and its 1982 Model Health Care Consent Act. To obtain further information on (or copies of) these acts or information on the revision, contact John McCabe, National Conference of Commissioners on Uniform State Laws, 676 North Saint Clair Street, Suite 1700, Chicago, Illinois 60611, (312) 915-0195.

The American Medical Association's proposal (adopted in 1986) has features similar to the state legislation already discussed in this note. To be valid, the document must: specify an individual to serve as an attorney in fact; authorize the attorney in fact to make health care decisions and include the date of execution; be signed by the patient and two witnesses or acknowledged by a notary public. At least one of the witnesses must not be a relative of the patient or entitled to any part of the patient's estate; neither witness can be a health care provider or an employee of the health care facility serving the patient, nor can the witness be the attorney in fact named under the instrument. No treating health provider or employee may serve as attorney under the instrument. The act further stipulates that power of attorney forms must include a warning to potential signees of the possible results of executing such a document, and include a clause informing the patient that the document may be revoked, either orally or in writing.

52
Health Care Decisions and Treatment

To obtain further information or copies of the act, contact Jeffery Stokols, American Medical Association, 515 North State Street, Chicago, Illinois 60610, (312) 464-4768.

Do Not Resuscitate Legislation

In 1987, New York (AB 678) enacted legislation whereby every person admitted to a hospital is presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiopulmonary or respiratory arrest, unless there is consent to the issuance of an order not to resuscitate. A physician may issue an order not to resuscitate, provided that the order has been issued pursuant to the consent of the patient, a surrogate chosen by the patient, or a parent or legal guardian of a minor patient. The attending physician must provide the consenting person information about the patient’s diagnosis and prognosis, the reasonably foreseeable risks and benefits of cardiopulmonary resuscitation for the patient, and the consequences of an order not to resuscitate. Two physicians must concur before a patient may be declared to lack the capacity to make health care decisions.

Prior to or during hospitalization, an adult with decision-making capacity may express, in writing, a decision consenting to an order not to resuscitate. The written decision must be dated and signed in the presence of two adult witnesses, and included on the patient’s medical chart.

An adult patient with decision-making capacity also may designate a surrogate to make a decision regarding cardiopulmonary resuscitation in the event the patient loses that capacity. This may be carried out in writing, dated and signed in the presence of two witnesses, or by oral declaration in the presence of two adult witnesses. The two witnesses must then inform an attending physician of the patient’s designation of a surrogate. A surrogate may consent to an order not to resuscitate only when an attending physician, with the concurrence of another physician, can declare that the patient has a terminal condition, is permanently unconscious, resuscitation would be medically futile, or resuscitation would impose an extraordinary burden upon the patient. An attending physician may, in consultation with a minor’s parent or guardian, make a decision regarding whether the minor has the capacity to make a decision regarding resuscitation. The consent of the minor’s parent or legal guardian and the consent of the minor, if the latter is determined to have decision-making capacity, must be obtained prior to issuing an order not to resuscitate.
Organ Procurement and Storage Act

This act, based on 1990 New York legislation, establishes a transplant council to advise the state health commissioner on matters relating to organ procurement organizations, tissue banks and storage facilities, and to establish controls on the allocation of organs by organ procurement organizations. The act also authorizes the state department of health to license and regulate tissue banks and tissue storage facilities.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Organ Procurement and Storage Act.

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

(1) "Bank" or "storage facility" means any person or facility, which stores or arranges for the storage of (i) non-transplant organs, or (ii) tissue for transplantation, therapy, education, research, or fertilization purposes, including autologous procedures. An organ procurement organization shall not constitute a bank or storage facility solely by virtue of storing or arranging for the storage of heart valves, nor shall any person or entity which stores tissues solely for the purpose of research conducted by such person or entity be deemed a tissue bank.

(2) "Commissioner" means the [state commissioner of health].

(3) "Controlling person" means any person who by reason of a direct or indirect ownership interest (whether of record or as beneficiary) has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said corporation, partnership, or other entity. Neither the [commissioner] nor any employee of the [department] nor any member of a local legislative body of a county or municipality, nor any county or municipal official, shall, by reason of his or her official position, be deemed a controlling person of any corporation, partnership, or other entity, nor shall any person who serves as an employee of any corporation, partnership, or other entity as a result of such position or his or her official actions in such position.

(4) "Department" means the [state department of health].

(5) "Non-transplant organ" means an organ procured for education or research purposes.

(6) "Organ" means a human kidney, heart, heart valve, lung, pancreas, liver, and any other organ designated by the [commissioner] in regulation.

(7) "Organ procurement organization" or "procurement organization" means a person, facility, or institution engaged in procuring organs for
transplantation or therapy purposes, but does not include (i) facilities or institutions which permit procurement activities to be conducted on their premises by employees or agents of an approved organ procurement organization, or (ii) facilities or consortia of facilities which conduct transplantation activities in accordance with [insert citation for appropriate state statute] when the organ is procured through an approved organ procurement organization, licensed bank or storage facility, or a living donor. A bank or storage facility shall not constitute an organ procurement organization solely by virtue of procuring heart valves.

(8) “Person” means an individual, corporation, government or governmental subdivision or agency other than the [state office of mental health], business trust, estate trust, partnership or association, or any other legal entity.

(9) “Principal stockholder” means any person who owns (whether of record or as beneficiary), holds or has the power to vote, [10] percent or more of any class of securities issued by a corporation.

(10) “Procurement activities” means any activity which is necessary for the procurement of organs or tissue for transplantation, research, education, therapy, fertilization, or autologous purposes including solicitation, retrieval, donor selection and testing, clinical laboratory testing, including typing, preservation, transportation, allocation, distribution, storage, and payment activities.

(11) “Service area” means the geographic area of service approved by the [secretary of health and human services], or in the absence of such approval, by the [department of health].

(12) “Tissue” means a human eye, skin, bone, bone marrow, heart valve, sperm, ova, arteries, veins, tendons, ligaments, pituitary glands or fluids other than blood or blood derivatives.

Section 3. [Transplant Council.]

(a) There shall be created in the [department] a [transplant council] to consist of [21] members appointed by the [commissioner], one of whom the [commissioner] shall appoint chairperson. The [transplant council] shall advise the [commissioner] on matters relating to organ procurement organizations, banks, and storage facilities and other issues related to the procurement, storage, allocation, distribution, and transplantation of organs and tissue. The [transplant council] shall be composed of members of the general public, transplant recipients or the family members of transplant recipients, representatives of organ procurement organizations, physicians with expertise in organ and tissue transplantation and the care of persons with end stage renal disease resulting from organ failure and persons with expertise in histocompatibility typing, law and ethics.

(b) The terms of office of members of the [transplant council] shall be [three] years, provided, however, that of the members first appointed [five] shall be appointed for terms which shall expire on [insert date, year], [five] shall be appointed for terms which shall expire on [insert date, year] and [five] shall be appointed for terms which shall expire [insert date, year]. Vacancies shall be filled by appointment by the [commissioner]
Suggested State Legislation

for the unexpired term.

(c) The [transplant council] shall meet as frequently as its business may
require, and at least [twice] in each year.

(d) The [transplant council] shall enact and from time to time may
amend by-laws in relation to its meetings and the transaction of its busi-
ness.

(e) The members of the [council] shall receive no compensation for their
services as members of the [council], but each of them shall be allowed
the necessary and actual expenses which are incurred in the perfor-
manee of his or her duties under this act.

(f) The [transplant council] shall review existing federal law and poli-
cies, including federal regulations and the policies of the federal organ
procurement and transplantation network governing organ procure-
ment organizations and procurement activities, and make recommen-
dations to the [commissioner] regarding state regulation of organ
procurement organizations and activities and tissue banks and tissue
procurement activities provided that the [council] shall make initial
recommendations to the [commissioner] on or before [insert date, year].

Section 4. [Organ Procurement Organizations.]

(a) No person shall own or operate an organ procurement organization
that is principally located in [state] unless:

(1) the person has been designated by the [secretary of health and
human services] as an organ procurement organization; and

(2) the organ procurement organization is operated by a not-for-profit
 corporation having a board of directors which meets no less than [four]
times annually or is operated by a hospital and has an advisory board
which meets no less than [four] times annually. At least [30] percent of
the members of the board of directors or advisory board shall be mem-
bers of the public not otherwise directly or indirectly affiliated with a
transplant center or organ procurement organization, and not more than
[50] percent shall be surgeons or physicians. Such board of directors or
advisory board shall include representatives of more than one transplant
center. The board of directors of an organ procurement organization oper-
ated by a not-for-profit corporation or the advisory board of an organ
procurement organization operated by a hospital shall be responsible
for developing and adopting the written by-laws and policies that gov-
ern the operation of the organ procurement organization. All such by-
laws and policies for an organ procurement organization operated by a
hospital shall be subject to approval by the board of directors of the hospi-
tal. Written policies shall include, but not be limited to: (i) policies and
procedures to educate the public and health care professionals about or-
gan donations; (ii) medical standards for donor screening; (iii) policies
and procedures for the distribution of organs; (iv) procedures to ensure
fiscal accountability of the organ procurement agency; and (v) policies
concerning any arrangements or agreements that the organ procure-
ment organization may enter with tissue banks or other organ procure-
ment organizations.

(b) No hospital or other facility and no physician shall permit any per-
Section 5. [Waiting Lists for Organs.]

(a) All organs retrieved for transplantation in [state] shall be allocated according to waiting lists developed by the organ procurement organization in the service area in which the organ is procured, provided, however, that nothing herein shall preclude the exercise of medical judgment in determining the suitability of a proposed recipient to receive a particular organ, and provided further, however, that if an organ is brought into a service area of an organ procurement organization from the service areas of another organ procurement organization, the organ shall be allocated according to the waiting list developed by the organ procurement organization in the service area in which the organ is to be implanted. Nothing in this section shall prohibit:

(1) an individual donor from designating the recipient of an organ;
(2) organ sharing with other organ procurement organizations in accordance with federal and state standards;
(3) organ sharing with other organ procurement organizations in accordance with organ sharing agreements approved by the [commissioner].

(b) No organ procurement organization shall place any person on a waiting list for the allocation of organs for transplantation if that person is listed on any other waiting list for the allocation of that organ maintained by any other organ procurement organization designated to serve any part of [state].

(c) No person may place his or her name on a waiting list maintained by an organ procurement organization if the person is listed on a waiting list maintained by any other organ procurement organization in [state] for the same organ. Each facility performing transplant services shall inform a patient of the prohibition against being placed on multiple waiting lists before arranging for the placement of the patient on a waiting list.

(d) In policies and procedures for distributing organs, no organ procurement organization shall consider or give any preference to patients in a facility based upon the facility's past or present procurement performance or its relationship with a donor hospital.

Section 6. [Licensure of Banks and Storage Facilities.]

(a) No person shall own or operate a bank or storage facility that conducts procurement activity in [state] unless a license has been issued pursuant to this act.

(b) An application for a license for a bank or storage facility shall contain the name of the operator, its officers, directors, principal stockholders, and controlling persons, a description of its organizational struc-
Suggested State Legislation

ture, the kind or kinds of procurement or storage services to be provid-
ed, the location and physical description of the institution, and such oth-
er information as the [department] may require.
(c) A license shall not be issued unless the [department] finds that the
premises, equipment, personnel, rules and by-laws, and standards of
service are fit and adequate and that the bank or storage facility will
be operated in the manner required by this act and rules and regu-
lations issued hereunder.
(d) Prior to approving an application for a license to operate a bank
or storage facility which procures or stores tissue for transplantation
or therapy purposes, the [department], in accordance with its rules and
regulations, shall consider:
(1) the applicant’s ability to arrange for the acquisition and preser-
vation of usable donated tissue within the geographic area of service ap-
proved by the [department] and to arrange for the transportation of such
tissue when necessary;
(2) the applicant’s ability to obtain effective agreements for tissue
procurement with hospitals;
(3) the applicant’s ability to conduct and participate in systematic
efforts, including professional and public education, to procure usable
tissue from potential donors;
(4) the applicant’s ability to establish and meet quality standards
for the acquisition and storage of tissue in accordance with rules and
regulations promulgated by the [department];
(5) the applicant’s ability to arrange for the selection and testing of
donors and donated tissue, including the performance of donor selection
and required laboratory tests including typing and processing;
(6) the character and competence of the operator, its officers, direc-
tors, principal stockholders and controlling persons, including the qual-
ity of care provided through any health care entities operated or con-
trolled by such persons; and
(7) the existence and activities of other tissue banks and storage fa-
cilities in the geographic area to be served by the applicant.
(e) No hospital or other facility and no physician shall permit any per-
son to procure tissue or non-transplant organs unless such person has
been licensed in accordance with this act, or has been asked by a licensed
bank to procure a specified tissue or non-transplant organ. No bank or
storage facility shall sell or otherwise transfer tissue for valuable con-
consideration. Valuable consideration shall not include reasonable costs as-
associated with the procurement, processing, storage and distribution of
tissue.

Section 7. [Powers and Duties of the Commissioner]
(a) The [commissioner] shall promulgate regulations to establish stan-
dards for banks and storage facilities other than those owned or operat-
ed by the [office of mental health]. Such standards may provide for: the
organizational structure of banks and storage facilities; the geograph-
ic scope of licensed entities; donor selection and solicitation practices;
tissue and non-transplant organ retrieval practices; transportation prac-
Organ Procurement and Storage Act

8 tices; required clinical laboratory tests for suitable donors, recipients
9 and tissue; compatibility standards; allocation criteria; reporting re-
10 quirements; record keeping requirements; accounting procedures; staff
11 requirements; and the content of agreements with hospitals from which
12 tissues and non-transplant organs will be procured, the content of agree-
13 ments with organ procurement organizations, educational institutions,
14 other banks and storage facilities, and other entities providing services
15 to banks or storage facilities in connection with the procurement, stor-
16 age, and distribution of tissue and non-transplant organs. The [commiss-
17 er] and the [commissioner of mental health] shall enter into a cooper-
18 ative agreement to establish standards for banks and storage facilities
19 owned or operated by the [office of mental health] which may include
20 standards for donor selection and solicitation practices; tissue and non-
21 transplant organ retrieval practices; transportation practices; reporting
22 requirements; record keeping requirements; the content of agreements
23 with hospitals from which tissues and non-transplant organs will be pro-
24 cured, and the content of agreements with other banks and storage fa-
25 cilities.
26 (b) The [commissioner] may promulgate regulations to establish qual-
27 ity control standards governing tissue typing conducted by or at the re-
28 quest of organ procurement organizations and facilities performing
29 transplant services. Such regulations may limit the number of labora-
30 tories within a service area performing histocompatibility matching and
31 tissue typing services for cadaveric organ donations for transplantation
32 purposes.
33 (c) The [commissioner] may inquire into the operation of banks and
34 storage facilities and may conduct periodic inspections of facilities in-
35 cluding methods, procedures, materials, staff and equipment.
36 (d) Organ procurement organizations, banks, storage facilities, and oth-
37 er persons engaged in procurement activities shall submit, in a form
38 prescribed by the [department], periodic reports of procurement, stor-
39 age and distribution activities and such other information as the [com-
40 missioner] may require to carry out the provisions of this act. Where
41 available, the [commissioner] shall utilize information reported by or-
42 gan procurement organizations to the organ procurement and transplan-
43 tation network established pursuant to Section 372 of the federal pub-
44 lic health services act.
45 (e) The [commissioner] is authorized to adopt such other rules and regu-
46 lations necessary or convenient to effectuate the provisions of this sec-
47 tion. Such rules and regulations may establish subcategories of licenses
48 based upon the tissue and non-transplant organs to be procured or stored
49 by banks and storage facilities and the activities to be conducted and
50 may include different standards for each subcategory of license.
51 (f) Nothing contained within this act shall limit the authority of the
52 [council on human blood and transfusion services] to adopt rules and
53 regulations concerning blood and bone marrow in accordance with [in-
54 sert citation for appropriate state statute].

1 Section 8. [Enforcement.]
Suggested State Legislation

(a) The [commissioner] may revoke, suspend, limit or annul, a bank or storage facility license or may fine the holder thereof on proof that the license holder or one or more persons in its employ:

(1) has engaged in misrepresentation in obtaining the license or in the operation of the bank or storage facility;

(2) has engaged or attempted to engage in or represented itself as being entitled to perform any procurement or storage activity not authorized in the license;

(3) has demonstrated incompetence or has shown recurrent errors in the performance of procurement or storage activities:

(4) has failed to file any report or maintain records required by the provisions of this act or the rules and regulations promulgated thereunder;

(5) has violated or aided and abetted the violation of any provision of this act, or the rules and regulations promulgated thereunder;

(6) has been convicted of a felony.

(b) No license shall be revoked, suspended, limited, or annulled or fine imposed without an opportunity for a hearing; provided, however, that a license may be temporarily suspended without a hearing for a period not in excess of [60] days upon notice to the license holder following a finding by the [commissioner] or his designee that the public health, safety, or welfare is in imminent danger.

(1) the [commissioner] or his designee shall fix a time and place for the hearing;

(2) a copy of the charges, together with a notice of the time and place of the hearing, shall be mailed to the license holder at the address of the bank or storage facility;

(3) all orders or determinations hereunder shall be subject to review as provided in [insert citation for state's civil practice law and rules].

(c) The [insert court] may enjoin violations or threatened violations of any provisions of this act or of the rules and regulations issued thereunder. Upon request of the [commissioner], the attorney general shall maintain an action in the [insert court] in the name of the people of the state to enjoin any such violation. In any action for an injunction brought pursuant to this act, any finding of the [commissioner] or hearing officer designated by the [commissioner] shall be prima facie evidence of the fact or facts found therein.

Section 9. [Severability.] [Insert severability clause.]

Section 10. [Effective Date.] [Insert effective date.]
Insect Sting Emergency Treatment Act

This act, based on 1990 South Carolina legislation, authorizes the state department of health and environmental control to train and certify individuals (other than licensed, registered or certified physicians, nurses and other such certified professionals) to administer certain forms of emergency treatment for medical hazards caused by insect stings. Applicants for such certification must be at least 18 years of age; have responsibility for others as a result of their occupational or volunteer status; and successfully complete the training program established by the department.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Insect Sting Emergency Treatment Act.

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

(1) "Certificate" means official acknowledgment by the [department] that an individual has completed the required training program pursuant to this act.

(2) "Department" means the [state department of health and environmental control].

(3) "Program" means the program established by the [department] for training and certifying individuals to administer treatment to persons suffering a severe adverse reaction to an insect sting which involves the administration of epinephrine.

Section 3. [Training and Certification Program.]

(a) The [department] is authorized to establish a program to provide for the training and certification of individuals to administer certain forms of emergency treatment for medical hazards caused by insect stings. The [department] shall develop standards, guidelines, and prescribed regulations for the implementation of the program. All administrative responsibility of the program is vested in the department.

(b) In the development of the curriculum for training and certification under the program, the [department] shall include the following subjects:

(1) techniques on how to recognize symptoms of systemic reactions to insect stings;

(2) standards and procedures for administering a subcutaneous injection of epinephrine.

Section 4. [Certification.]

(a) A person desiring certification for the administration of emergency treatment for insect stings, pursuant to this act, shall apply to the
Suggested State Legislation

[department] and complete the program established by the [department]
for training and certification.

(b) The [department] shall determine and establish the validation and
expiration periods for certificates issued pursuant to this act and require-
ments and procedures for renewals if the [department] considers it neces-
sary.

(c) The [department] may suspend or revoke a certificate at any time
it determines that the holder no longer meets the prescribed qualifica-
tions established by the [department] or has failed to provide services
or treatment of a quality acceptable to the [department] pursuant to this
act.

Section 5. [Applicant Requirements.]
(a) An applicant for certification shall meet the following require-
ments:
(1) be [18] years of age or older;
(2) have, or reasonably be expected to have, responsibility for at least
one other person as a result of one's occupational or volunteer status,
such as camp counselors, scout leaders, school teachers, forest rangers,
tour guides, or chaperones;
(3) successfully complete the training program established by the
[department].

(b) A person, who meets the qualifications of this section and is certi-
fied by the [department] pursuant to this act, is authorized to adminis-
ter in an emergency situation prescribed epinephrine to persons suffering
adverse reaction to an insect sting.

(c) A person, who is certified by the [department] to administer emer-
gency services for insect stings as provided in this act, is authorized to
obtain from a physician, pharmacist, or any other person or entity autho-
rized to prescribe or sell prescribed medicines or drugs, a prescription
for premeasured doses of epinephrine and the necessary supplies for the
administration of the drug.

Section 6. [Exceptions.] Licensed, registered, and certified physicians,
nurses, and other such certified professionals are not required to obtain
certification for the administration of emergency treatment to persons
suffering a severe adverse reaction to an insect sting as prescribed in
this act.

Section 7. [Fees.] The [department] may collect fees from applicants for
the training program for administration of this act.

Section 8. [Liability] No cause of action may be brought against a cer-
tificate holder authorized by the [department] pursuant to this act for
an act or omission of the certificate holder when acting in good faith
while rendering emergency treatment pursuant to the authority granted
by this act, except in cases of gross negligence.

Section 9. [Effective Date.] [Insert effective date.]
College Student Immunization Act

During the 1980s, college campuses around the country experienced outbreaks of the measles. The illness inflicted thousands of students and resulted in some deaths. This act, based on a 1989 New York state amendment to its public health law, requires post-secondary school students to provide proof of immunization against measles, mumps and rubella or to be legally exempted from the requirements if immunization would be detrimental to their health or would be contrary to their religious beliefs.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the College Student Immunization Act.

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

(1) "Commissioner" means the [state commissioner of higher education].

(2) "Health practitioner" means any person authorized by law to administer an immunization.

(3) "Immunization" means an adequate dose or doses of an immunizing agent against measles, mumps and rubella which meets the standards approved by the United States public health service for such biological products, and which is approved by the [state department of health] under such conditions as may be specified by the [public health council].

(4) "Institution" means a college as defined in [insert appropriate citation for state statute regarding institutions of higher education].

(5) "Part-time student" shall mean a student who is part-time as defined in [insert appropriate citation for state statute].

(6) "Student" means any person born on or after [January 1, 1957], who is registered to attend or attends classes at an institution, whether full-time or part-time.

Section 3. [Presentation of Certificate of Immunization.] Each student at an institution shall provide to the institution a certificate from a health practitioner or other acceptable evidence of such student's immunization, unless such student presents a certificate under Section 9 or is exempt under Section 10. Upon compliance, no student shall be denied attendance at an institution because of the requirements of this act.

Section 4. [Request for Immunization.] A student who has not complied with Section 3 of this act shall present himself or herself to a health practitioner and request such practitioner to administer such immunization.
Section 5. [Inability to Pay for Immunization.] If any person is unable to pay for the services of a private health practitioner, such person shall present himself or herself to the health officer of the county in which such person resides, or the county in which the institution is located who shall then administer the immunization without charge.

Section 6. [Immunization Certificate] The health practitioner who administers such immunization to any person shall give a certificate of such immunization to such person.

Section 7. [Notice of Immunization Requirement.] In the event that a student registers at an institution and has not complied with Section 3, the institution shall inform such student of the necessity to be immunized, that such immunization may be administered by any health practitioner, or that the student may be immunized without charge by the health officer in the county where the student resides or in which the institution is located. In the event that such student does not comply with this act, he or she shall be given notice that attendance at the institution requires immunization unless a valid reason is provided by such student pursuant to Sections 9 or 10 of this act.

Section 8. [Grace Period for Compliance] No institution shall permit any student to attend such institution in excess of [30] days without complying with Section 3 of this act. However, such [30]-day period may be extended to not more than [45] days for a student where such student is transferring from out-of-state or from another country and can show a good faith effort to comply with Section 3 of this act.

Section 9. [Exemption; Detrimental to Health.] If any licensed physician or nurse practitioner certifies that such immunization may be detrimental to the person's health or is otherwise medically contraindicated, the requirements of this act shall be inapplicable until such immunization is found no longer to be detrimental to such person's health or is no longer medically contraindicated.

Section 10. [Exemption; Contrary to Religious Beliefs.] This act shall not apply to a person who holds genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such person being admitted or received into or attending an institution.

Section 11. [Institutional Report on Compliance] The institution shall provide [annually] to the [commissioner], on forms provided by the [commissioner], a summary regarding compliance with this act.

Section 12. [Promulgation of Rules and Regulations] The [commissioner] may adopt and amend rules and regulations to effectuate the provisions and purposes of this act.
Section 13. [Report to Governor, Legislature.] The [commissioner] shall report [annually] to the governor and the legislature concerning the immunization of all students pursuant to this act.

Section 14. [Effective Date.] [Insert effective date.]
Uniform Controlled Substances Act 1990 (Statement)

A Revision of the 1970 Uniform Controlled Substances Act of the National Conference of Commissioners on Uniform State Laws

The Uniform Controlled Substances Act (1990) is designed to supplant the Uniform Controlled Substances Act that was adopted by the National Conference of Commissioners on Uniform State Laws in 1970, published in the 1972 volume of Suggested State Legislation, and enacted in 46 states. The 1970 act was designed to complement the 1970 federal Controlled Substances Act. However, since 1970, several changes have been made to the federal act, particularly in 1984, 1986 and 1988.

This uniform act was drafted to complement the federal enactment and provide an interlocking trellis of federal and state law to enable all levels of government to control more effectively the drug abuse problem.

Much of the increase in drug use and abuse has been attributed to the increased mobility and affluence of individuals. Drugs clandestinely manufactured or illegally diverted from legitimate channels in one part of a state are easily transported for sale to another part of that state or to another state. Moreover, the lines of product distribution of the legitimate pharmaceutical industry cross in and out of a state innumerable times during the manufacturing or distribution processes. To assure the continued free movement of controlled substances between states, while at the same time securing such states against drug diversion from legitimate sources, it becomes necessary to approach not only the control of illicit and legitimate traffic in these substances at the national and international levels, but also to approach this problem at the state and local level on a uniform basis.

A main objective of this uniform act is to continue a coordinated and codified system of drug control initiated with the federal act and the 1970 Uniform Act, and to update the schedules of controlled substances.

The act sets out prohibited activities in detail, but does not prescribe specific fines or sentences. It further provides for law enforcement tools to improve investigative efforts and for education and training programs relating to the drug abuse problem.

The act updates existing state laws and ensures legislative and administrative flexibility to enable states to cope with current and future drug problems. It further addresses the concern that because of the emphasis on controlling drug use, members of the medical profession may hesitate to prescribe narcotic drugs where the use of such drugs is warranted. The act acknowledges that legitimate use of controlled substances is essential for public health and safety, and the availability of these substances must be assured—at the same time, however, the illegitimate manufacture, distribution, and possession of controlled substances must be curtailed and eliminated.

For further information or copies of the full draft of the 1990 Uniform Act, contact John McCabe, National Conference of Commissioners on Uniform State Laws, 676 North Saint Clair Street, Suite 1700, Chicago, Illinois 60611, (312) 915-0195.
Chlorofluorocarbon and Halon Compounds Control Legislation (Note)

Increasingly, states are considering legislation designed to control the emission of chlorofluorocarbons (CFCs) into the atmosphere. CFCs are commonly used as coolants in refrigerators, refrigeration systems, freezers and air conditioners; as blowing agents in refrigeration systems, cleaning agents and aerosol propellants; and in the manufacture of polystyrene foam packaging. Halon compounds are used primarily in fire extinguishers. Emissions of CFC and halon compounds have been found to degrade the ozone layer, which protects the earth from harmful levels of the sun's ultraviolet radiation. Experts argue depletion of the ozone layer and the resultant increase in ultraviolet radiation poses danger to human health (including higher incidence of skin cancer, cataracts and depressed immune systems) and a possible increase in the greenhouse effect, as reflected in a warming of the earth's temperature.

Concern about the effect CFCs and halons have on the atmosphere has resulted in national and international action. In September 1987, the United States and 23 other nations agreed by treaty to reduce the most detrimental CFC and halon compounds. The agreement, known as the Montreal Protocol on Substances that Deplete the Ozone Layer, was ratified by the United States in April 1988, and became effective on January 1, 1989. The conference adopted a schedule beginning in 1989 that would lead to total phase out of these chemicals by the year 2000 in developed countries.

The 1990 federal Clean Air Act permits the U.S. Environmental Protection Agency (EPA) to develop regulations that will result in a more stringent CFC phase-out schedule than that required by the protocol, along with requirements for capturing and recycling CFCs; prohibiting the release of CFCs and the sale of non-essential plastic products containing CFCs; and including warning labels on products containing CFCs. In the meantime, however, since many substitute refrigerants are not compatible with existing equipment, capture and reuse of CFCs is necessary.

To that end, several states, including Colorado, Connecticut, New York and Wisconsin, have enacted legislation concerning CFCs and halons.

Recycling CFCs

A 1989 Colorado act (SB 77, Ch. 235) requires the state air quality control commission, a policy-making body appointed by the governor, to promulgate regulations concerning the recycling and reuse of refrigerants containing CFCs. It includes refrigerants removed from the refrigeration systems of retail stores, cold storage warehouses, commercial or industrial buildings. The recycling and reuse must be carried out by individuals who install, service, repair and/or dispose of such systems.
Suggested State Legislation

**Connecticut** legislation (SHB 5630, P.A. 89-227, 1989) requires the state’s commissioner of environmental protection to establish regulations for the collection, storage and recycling of CFCs used in refrigerators and air conditioning systems. In adopting these standards, the commissioner must consider ozone depletion and the cumulative effect of CFC emissions. The act further prohibits the sale of recharge containers holding CFCs to anyone except a licensed contractor. The commissioner may exempt individuals from compliance with the act for a period of one year, in cases where there is no immediate technological or economical alternative to using CFCs.

**New York** legislation (SB 3475D, 1990) requires the capturing and recycling of CFCs during the repair, servicing or disposal of large refrigeration systems or mobile air conditioners, beginning January 1, 1992. In making captured CFC compound refrigerants suitable for the marketplace, the captured CFCs must be recycled to a uniform level of quality recognized by the industry. That legislation also prohibits the sale of certain chlorofluorocarbons and halons: containers of CFC compounds used as air horn propellants, blow cleaning photographic products, and toys using CFC compounds as a foaming agent. It further bans the sale of hand held residential fire extinguishers containing halons.

**Wisconsin** legislation (Act 284, 1989) requires individuals who service or install refrigeration equipment containing at least five pounds of CFC refrigerant to use proper procedures for recycling the refrigerant, beginning January 1, 1992. Beginning in 1993, refrigerators and freezers containing less than five pounds of CFC will be affected. The act further requires, effective mid-1992, that ozone-depleting refrigerant be removed from any mechanical vapor compression refrigeration equipment, including mobile air conditioners, before salvaging or dismantling. These provisions do not apply to refrigerants with an ozone depletion weight of less than 0.1, such as HCFC-22.

**Emissions**

The 1989 **Colorado** legislation (SB 77, Ch. 235) is designed to implement measures that will be effective in reducing brown cloud and carbon monoxide levels in urban areas. However, the act also calls for regulations prohibiting the intentional venting or disposal of any refrigerant containing CFCs by owners or operators of retail, commercial and industrial refrigeration systems.

After January 1, 1992, **Connecticut** (SHB 5630, P.A. 89-227, 1989) will prohibit the sale of packaged products made partially or entirely of polystyrene foam if those products are manufactured with any CFCs that might deplete the ozone layer. [State agencies already are prohibited from purchasing such products.] Before mid-1992, manufacturers of such polystyrene foam products sold in the state must certify their compliance with this provision. Moreover, the manufacturer of any product packaged in or composed wholly or partially of polystyrene foam must
provide information on the controlled substances found in the product to any person who requests such information.

The act further requires the state commissioner of environmental protection to establish standards for the emission of ozone-depleting CFCs from industrial sources. By 1994, owners and operators of stationary air source contaminant sources emitting more than 10 tons of CFCs must submit a plan to reduce by 50 percent the emissions of controlled substances from the source.

Motor Vehicle Air Conditioners

Connecticut prohibits any person from selling or offering for sale containers of controlled substances to recharge automobile air conditioning systems unless the buyer is licensed by the state to perform work on those systems (HB 5630, P.A. 89-227, 1989). State agencies that own or lease motor vehicles and businesses that own or lease 10 or more vehicles must have any controlled substances in the automobile air conditioning systems reused or recycled when the systems are serviced.

New York legislation (SB 21021, 1990) authorizes the establishment of standards for the extraction and reclamation of fluids in automobile air conditioners. Another measure (SB 3475D, 1990) stipulates that individuals repairing or servicing automobile air conditioners must not knowingly release CFC compounds into the atmosphere and must capture and recycle the refrigerants using approved recycling equipment. Automobile repair shops with fewer than four covered bays are not included under the act until January 1, 1992.

Under the act, servicers of automobile air conditioning systems must report to the state as to whether they have purchased refrigerant recycling equipment in accordance with state standards. After January 1, 1992, applicants for renewal or registration as vehicle dismantlers also will be required to certify that they have purchased refrigerant recycling equipment or refrigerant recapturing equipment. All CFCs recaptured from automobile air conditioning systems must be recycled to a uniform level of quality meeting industry standards.

As of January 1, 1992, containers holding less than 15 pounds of CFC compounds, commonly used for recharging automobile air conditioners, may not be sold or offered for sale within the state except by those individuals who have purchased approved motor vehicle refrigerant recycling equipment.

Effective in 1996, a Wisconsin provision (Act 284, 1990) will prohibit the distribution or registration of new motor vehicles containing air conditioners that use CFCs with significant ozone depletion potential. As a phase-in measure, 25 percent of the vehicles distributed for sale in 1994, and 50 percent in 1995 must meet this requirement. The state department of agriculture, trade and consumer protection may grant one-year waivers on a case-by-case basis.

The act also requires anyone servicing or installing motor vehicle air conditioners to use proper procedures for recovering and recycling the refrigerant. Motor vehicle air conditioner refrigerant in containers holding less than 15 pounds may not be sold.
Sanitary Landfill and Solid Waste Management Legislation (Note)

Sanitary landfill space in the United States is decreasing rapidly, with recent reports showing that at least eight states have a landfill capacity of less than five years. At the same time, transportation of waste from the state where it is generated to others with greater landfill space has become a volatile issue. States may not ban imported waste because the U.S. Constitution gives sole authority for the regulation of interstate commerce to the U.S. Congress. In 1990, however, the U.S. Senate passed a bill that would have allowed a state to prohibit waste from outside its borders being placed in its landfills. The measure died in conference committee.

In the absence of federal action, several states have enacted measures to regulate and reduce the amount of waste that enters landfills. Several of these measures deal with specific problems, such as product packaging or state purchasing preferences for recycled products. In lieu of offering a single item in this volume, however, the Committee on Suggested State Legislation chose to give policymakers an overview of some of the actions states have taken in response to these issues. This note reviews provisions contained in nine pieces of solid waste management legislation recently enacted by six states — California, Connecticut, Delaware, Florida, Georgia and Indiana.

Tipping Fees and Interstate Transportation of Waste

In 1990, Indiana enacted legislation (HB 1240) requiring that out-of-state waste be charged the same fee per ton as it would be at a landfill near the source of generation. The minimum fee for all waste was set at 50 cents per ton. Designed to restrict the flow of waste from other states, the legislation was struck down by a federal district court judge on the grounds that it violated the commerce clause in the U.S. Constitution. In 1991, Indiana enacted HB 1585, which required the solid waste management board to adopt a fee for all waste generated out-of-state and deposited in Indiana landfills. In Georgia (SB 533, 1990), the fee to dump out-of-state waste in the state's landfills was increased from $1 to $10 per ton.

Landfill Application Regulation

Under recent Indiana legislation (HB 1388, 1990), an applicant obtaining a permit for landfill construction or operation must submit a statement of financial condition which reveals a net worth of $250,000, and which has been audited by an independent certified public accountant. The applicant also must demonstrate that it has no history of violations of environmental statutes or regulations. The state may investigate any information listed by an applicant and deny an application if the standards are not met. To ensure the proper maintenance, closure
and postclosure care of landfills, California (AB 1427, 1989) and Georgia (SB 70, 1989) also require landfill applicants to demonstrate financial stability.

In Georgia (SB 533, 1990), a permit may be denied to any proposed municipal solid waste landfill if any part of the site is within a significant groundwater recharge area, and it plans to accept waste from outside the county or from outside a special district. No permit may be issued for a regional municipal solid waste landfill to be located over a significant groundwater recharge area unless the boundaries of the counties or special districts are contiguous, and there is a joint contract for the collection and disposal of solid waste. Under another act (SB 70, 1989), Georgia, like Indiana, authorizes sanitary landfill permits to be denied if the applicant has violated state or federal environmental laws or has a history of flagrant and consistent violation of prohibited acts.

Another California measure (SB 937, 1990) prohibits a regional water board from issuing discharge permits for new landfills used for the disposal of non-hazardous solid waste if the land had been used primarily for the mining and excavation of gravel and sand. Florida (Ch. 403, F.S. 1989) requires some solid waste disposal areas to maintain monitoring wells in the direction of groundwater flow near the disposal sites.

### Landfill Operator Certification and Requirements

Georgia (SB 70, 1989) requires qualifications for the certification of sanitary landfill operators and of persons supervising sanitary landfills. The state's environmental protection division approves the examinations and courses used to certify landfill operators, and certifications may be transferred from other states.

California legislation (AB 1427, Ch. 527, 1989) requires landfill owners to submit plans, prepare estimates and make financial arrangements and trust fund deposits. Connecticut (P.A. 89-386, 1989) requires owners and operators of solid waste disposal areas and resource recovery facilities to submit quarterly reports to the state environmental protection commissioner on the amount of solid waste received and any other information deemed pertinent by the commissioner.

### Landfill Space

Connecticut (P.A. 89-386, 1989) further authorizes the state environmental protection commissioner, upon request, to identify solid waste facilities with the capacity to accept waste from municipal governments with no available landfill or contract. Florida (Ch. 403, F.S. 1989) may acquire, construct, reconstruct or operate sites for solid waste management facilities at the discretion of the state department of environmental regulation.

### Recycling and Recycled Content

California (SB 937, 1990) requires newsprint consumers to ensure
Suggested State Legislation

that at least 25 percent of all newsprint used is comprised of recycled contents, provided that the recycled materials are available at a price and quality level comparable to virgin materials. The act requires the state transportation director to review and modify all bid specifications regarding the purchase and use of recycled paving materials, and further requires the registration of waste tire collectors and facilities, the study of the use of waste tires as fuel, and the establishment of a tire recycling program.

Connecticut legislation (P.A. 89-386, 1989) authorizes the state environmental protection commissioner to exempt specified types of recycling facilities from the requirements associated with obtaining solid waste and water discharge permits, if the exemption does not adversely affect the environment and actually helps the state's solid waste and recycling plans. As an example, the act exempts leaf composting facilities from those requirements. As in the case of California, this act also requires the state transportation commissioner to review material specifications for transportation projects and encourage use of recycled materials to the maximum extent possible.

Georgia legislation (SB 533, 1990), which prohibits the disposal of lead acid batteries with mixed municipal solid waste, requires that battery retailers accept customers' batteries for recycling and post written notice that it is illegal to put lead acid vehicle batteries in the garbage. The legislation authorizes counties to ban the disposal of tires; require them to be shredded, processed, or recycled; or charge a $2.50 per tire disposal fee. It further establishes a recycling market development council to investigate ways of developing markets for recycled products and authorizes the establishment of government agency recycling programs for aluminum and paper.

Florida legislation (Ch. 403, F.S. 1989) promotes the planning and application of recycling and resource recovery systems and the dissemination of information concerning recovered materials markets and strategies. Counties are required to initiate recycling programs and are encouraged to form cooperative arrangements for implementing recycling programs with municipalities. The state has established a solid waste management trust fund to provide grants to local governments for recycling and recycling education programs, litter control and other waste management programs. Funds deposited in the account are derived from waste tire fees and revenues from the sale of products processed in state facilities. Florida's department of environmental regulation maintains a directory of recycling businesses operating in the state and matches recovered materials with markets.

Indiana legislation (HB 1240, 1990) also includes provisions that encourage the development of markets for recycled products. The act establishes the recycling promotion and assistance fund to promote and assist recycling efforts. Fund monies will be derived from legislative appropriations, repayment proceeds of loans made from the fund, and gifts and donations. The recycling and energy development board may use these funds to make loans to assist new recycling firms, help expand
existing recycling firms, or help manufacturers adapt their equipment to recycle or reuse secondary materials.

**Infectious Waste**

During 1989, Delaware enacted legislation (Ch. 64, 1989) establishing a statewide program for the management of infectious wastes generated in the state. The act creates a solid waste authority to maintain infectious waste incineration facilities. Generators of infectious waste who currently have on-site incinerators are permitted to continue disposing of their waste on-site. Under the act, infectious waste is defined to include biological wastes, laboratory wastes, animal tissue and human dialysis waste materials. Florida (Ch. 403, F.S. 1989) has directed its department of environmental regulation to promulgate rules for a system of tracking and packaging biohazardous waste for transportation from generators to treatment facilities.

[Readers will want to note a related item, Infectious Waste Act, based on 1989 Colorado legislation, which appears on pp. 74-77 of this volume.]

**Other Provisions**

Connecticut (P.A. 89-386, 1989) broadened its definition of solid waste to include all solids, liquids and gases that are discarded or unwanted. Previously, landfills were not subject to state solid waste laws unless they processed more than five tons of waste per year. Under this 1989 act, a landfill is subject to state laws if it is used for the disposal of more than 10 cubic yards of solid waste. The legislation also subjects solid waste transfer stations and wood burning facilities to state solid waste provisions. It requires owners and operators of solid waste disposal facilities to prepare plans for the disposal of ash residue and for recycling, and to submit them to the state’s commissioner of environmental protection for approval. Georgia (SB 533, 1990) has established solid waste reduction goals and a list of means to achieve them, including state and regional planning, disposal restrictions and collection programs.

Indiana (HB 1240, 1990) set solid waste reduction goals at 35 percent by 1996, and 50 percent by 2001. The act also requires county waste management districts to submit solid waste management plans to the state commissioner of environmental management for approval.
Infectious Waste Act

This act, based on 1989 Colorado legislation, is designed to clarify and provide uniformity regarding the definition of infectious waste and the handling, treatment and disposal of such waste. It defines infectious waste as waste that may produce an infectious disease and that requires the consideration of certain factors necessary for induction of disease. Under the act, each generator of infectious waste must develop and implement an on-site infectious waste management plan appropriate for each facility.

Readers will want to note a related item, Sanitary Landfill and Solid Waste Management Legislation (Note), pp. 70-73 of this volume, which describes other recently-enacted infectious waste legislation. Also, readers may wish to refer to Suggested State Legislation volume 48 (1989), pp. 30-41, for Infectious Waste Storage, Treatment and Disposal Acts.

Suggested Legislation

(Title, enacting clause, etc.)

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

2 Section 2. [Legislative Findings and Declaration.]

(a) The legislature hereby finds that there is a need for more clarity and uniformity regarding the definition of infectious waste and in the requirements for the handling, treatment, and disposal thereof and that the absence of such clarity and the inappropriate designation of general waste as infectious waste will result in further substantial and unnecessary costs, disparity, and confusion in the management of infectious waste, ultimately affecting many business and residential operations and facilities, including the operations and quality of care rendered by health care providers.

(b) For the purposes set forth in subsection (a) of this section, the provisions of this act are enacted as a matter of statewide concern. The provisions of this act shall not apply to infectious waste which is also deemed to be hazardous waste pursuant to [insert appropriate citation for state statute], nor shall infectious waste be deemed hazardous waste solely because it is characterized as infectious waste.

(c) The legislature further finds that, because of the nature of infectious waste and the manner of its designation as provided in this act and because this act recommends portions of the guidelines of the United States environmental protection agency, no rules or regulations governing the generators of infectious waste are necessary for, nor shall be applicable to, the implementation of this act. This limitation shall not be construed to limit any other rule-making which is permitted under other authorizing statutes.
Section 3. [Infectious Waste — Definitions; Designation.]

(a) For the purposes of this act and statewide applicability:

(1) “Infectious waste” means waste capable of producing an infectious disease and requires the consideration of certain factors necessary for induction of disease. These factors include:

(i) Presence of a pathogen of sufficient virulence;
(ii) Dose;
(iii) Portal of entry;
(iv) Resistance of host.

(2) For a waste to be infectious, it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in disease. All the factors specified in paragraph (1) of this subsection must be present simultaneously for disease transmission to occur and must be present in a manner which constitutes a substantial risk of infection to humans.

(b) Infectious waste shall be designated as such by the generator in accordance with this act. Such designation shall not be based solely upon any source or type of waste but shall be based upon the factors specified in subsection (a) of this section.

It is recommended by the legislature that the following categories of waste, as published in the “EPA Guide for Infectious Waste Management,” May 1986, by the United States environmental protection agency, be designated as infectious:

(1) Isolation wastes from persons diagnosed as having a disease caused by an organism requiring, pursuant to recommendations by the centers for disease control in the 1988 publication “Biosafety in the Microbiological and Biomedical Laboratory” (second edition), biosafety level IV containment;

(2) Cultures and stocks of infectious agents and associated biologicals;

(3) Human blood and blood products and body fluids consisting of serum, plasma and other blood components, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, and amniotic fluid;

(4) Human pathological/anatomical waste consisting of tissues and body parts that are discarded from surgical, obstetrical, autopsy, and laboratory procedures;

(5) Contaminated sharps;

(6) Contaminated laboratory or research animal carcasses, body parts, and bedding.

Section 4. [Generator Management Plan.]

(a) Each generator of infectious waste shall develop and implement an on-site infectious waste management plan which is appropriate for the particular facility. Such plan shall include:

(1) The designation of infectious waste generated by the facility;

(2) The handling of infectious waste which includes segregation, identification, packaging, storage, transportation, treatment techniques for each waste type, if applicable, and disposal;

(3) Contingency planning for spills or loss of containment;
(4) Staff training and the designation of a person responsible for implementation of the management plan;

(5) If on-site treatment is not available, the management plan shall provide for appropriate off-site treatment or disposal.

(b) The management plan, including the documentation provided in Section 5(b) of this act, shall be available for inspection to the hauler of any waste, to the disposal facility, and to the licensing or regulatory agency, if applicable, of the generator.

Section 5. [On-site Disinfection.]

(a) Any infectious waste which has been appropriately treated at the site of generation by the generator so as to render it noninfectious shall not thereafter be deemed infectious for purposes of disposal.

(b) Appropriate treatment shall include any method of treatment which renders the infectious waste noninfectious. Use of a treatment method recommended by the United States environmental protection agency, as published in the “EPA Guide for Infectious Waste Management,” May 1986, shall be conclusively presumed to be an appropriate treatment method. Any method of treatment shall include:

(1) Documentation by the generator that the method of treatment utilized for his operation is effective in rendering infectious waste noninfectious in such operation;

(2) Written standard operating procedures for the use of or implementation of the treatment method;

(3) Regular monitoring of the standard operating procedures and the effectiveness of such disinfective method.

(c) Upon request of the [chairman of either of the legislative committees on health and environment], the [state department of health] shall make a report to the [legislative committees on health and environment] on the current status, in view of scientific knowledge and technology, of the recommendations contained in the “EPA Guide for Infectious Waste Management,” May 1986, and may make any additional recommendations it deems necessary.

Section 6. [Appropriate Treatment and Disposal — Nonliability.]

(a) A generator of infectious waste using an appropriate treatment method with appropriate documentation as provided in Section 5(b) and, in good faith, utilizing disposal facilities for such waste shall not be civilly or criminally liable for injuries or damages allegedly resulting from the infectious character of such waste; except that any generator who does not use an appropriate treatment method or any generator who fails to utilize disposal facilities in good faith shall not be relieved of civil or criminal liability.

(b) When any infectious waste has been appropriately treated, the generator shall either identify it as such or provide the hauler and disposal facility with a written statement that its general waste includes infectious waste which has been appropriately treated to render it noninfectious.

76
Section 7. [Penalty.]

(a)(1) Any generator who knowingly removes, causes to be removed, or allows to be removed from the site of generation any infectious waste which he knew was not appropriately treated and not identified as untreated when such infectious waste was so removed from the site of generation shall be subject to the civil penalties set forth in paragraph (2) of this subsection.

(2) Upon conviction of a first offense, a generator shall be subject to a civil penalty of not more than [insert amount] dollars per day for each day of violation, not to exceed [insert amount] dollars. Upon conviction of a second or subsequent offense which occurs within [five] years of a previous conviction, a generator shall be subject to a civil penalty of [insert amount] dollars per day for each day of violation, not to exceed [insert amount] dollars.

(b)(1) Any person who knowingly hauls untreated infectious waste and recklessly spills or loses such waste or knowingly disposes of such waste at an unlawful site of disposal or treatment facility shall be subject to the civil penalties set forth in paragraph (2) of this subsection.

(2) Upon conviction of a first offense, a person shall be subject to a civil penalty of not more than [insert amount] dollars per day for each day of violation, not to exceed [insert amount] dollars. Upon conviction of a second or subsequent offense which occurs within [five] years of a previous conviction, a person shall be subject to a civil penalty of [insert amount] dollars per day, not to exceed [insert amount] dollars.

(c) All civil penalties set forth in this section shall be determined by a court of competent jurisdiction upon action instituted by the [state department of health].

Section 8. [Presumption of Noninfectiousness.] It is conclusively presumed that any infectious waste which has been appropriately treated and documented in Section 5(b) of this act either on the site or off the site is not infectious after it has been so treated.

Section 9. [Effective Date.] [Insert effective date.]
Hazardous Sites Cleanup Act
(Statement)

This legislation, enacted by Pennsylvania in 1988, authorizes its state department of environmental resources to participate in the investigation, assessment and cleanup of sites under the federal superfund act and to establish an independent state response program for these activities for any sites that are releasing or threatening the release of hazardous substances or contaminants into the environment. The department is authorized to administer funds for hazardous waste facilities siting and other requirements of the act, to promulgate state standards and requirements for hazardous sites cleanup, to develop public participation programs in site assessment and remedial response selection, and to institute prosecutions. Under this act, a person who causes or allows the release of a hazardous substance shall be liable for all damages, contamination or pollution within 2,500 feet of the perimeter of the area where the release has occurred.

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 Act 108, or contact the Suggested State Legislation Program, The Council of State Governments, P.O. Box 11910, Iron Works Pike, Lexington, Kentucky 40578-1910, (606) 231-1939, for a copy of the complete text (62 pages).

Site Investigation

The legislation requires the department to establish a special science and technology staff (who may be civil service exempt) to review materials, prepare assessments, serve as expert witnesses, support rulemaking activities and perform other duties necessary to the implementation of the act. It further authorizes the department to take necessary steps to identify the source, nature and extent of the danger of releases in order to respond, recover costs of the response and enforce the act. This investigation may entail gathering relevant information, entering, inspecting and obtaining samples from a site on which a hazardous substance or contaminant has been, is being, or threatens to be released. The act requires the department to establish a temporary and a permanent priority list among sites and to encourage the siting of new hazardous waste management facilities.

Response Actions

The act authorizes emergency response before the development of an administrative record if there is reason to believe that prompt action is required to protect the public health or safety or the environment. The department may issue orders requiring access to information, entry onto property, restraining interference or requiring a responsible person to
take a response action. The department may apply to a court to enforce its order and may include a civil penalty assessment. Orders may be appealed to the state’s environmental hearing board.

The act specifies the content of the administrative record and public notices. It provides for a public comment period and hearing to assess sites and select appropriate responses, a statement of the basis and purpose for the department’s decision, and conditions for reopening the administrative record. It provides a method of challenging either the administrative record or the department’s decision based on that record and remand. The act provides sovereign immunity for state and political subdivision response actions to hazardous substance release or threatened releases.

**Hazardous Sites Cleanup Act (Statement)**

**Hazardous Sites Cleanup Fund**

The act directs the department to establish and administer a hazardous sites cleanup fund, with monies to be provided by hazardous waste transportation and management fees; cost recovery, including punitive damages from responsible persons; administrative and legal costs incurred by the department; civil penalties; interest from the investment of fund money; legislative appropriations; and federal superfund act moneys. The department may make grants, not to exceed $50,000, to municipalities for independent technical evaluations of proposed remedial actions to sites in their jurisdiction.

**Other Provisions**

Persons are not responsible for releases of hazardous substances caused by an act of God, an act of war, an act of omission by a third party under certain circumstances or as a contractee to implement provisions of the act, barring negligence. The department may acquire, but is not liable for, any real property or interest in the same necessary to conduct a response action. The department can contract as necessary without requiring indemnification for assistance in the implementation of the act.

The act provides for closure and conveyance of treated property. Hazardous substance disposal must be acknowledged in the property deed for all future conveyances or transfers.

**Hazardous Waste Litigation**

The matter of disposing of hazardous waste across state lines has been an area for litigation. A 1990 Alabama act (Act 326) designed to restrict the flow of hazardous wastes generated out-of-state was challenged as a violation of the U.S. Constitution’s clause on interstate commerce. It was consequently overturned in the U.S. Court of Appeals for the Eleventh Circuit in August 1990 in the case of *Alabama Department of Environmental Management v. National Solid Wastes Management Association* (910 F2d 713, 31 ERC 1793, 21 ER 787). The court ruled that hazardous waste is an object of interstate commerce, and that the Alabama
Suggested State Legislation


The act banned waste imports from any state that had not certified its capacity to manage hazardous wastes generated within its borders. It effectively banned wastes from 22 states and the District of Columbia, which did not have such plans.
Limited Immunity for Persons Responding to Oil Spills

A Model Act of the Marine Spill Response Corporation

This model act, developed by the Marine Spill Response Corporation (MSRC), is designed to make state laws consistent with the federal Oil Pollution Act of 1990 (PL 101-380), which provides limited immunity from liability for removal costs and damages for those persons responding to an oil spill or the threat of an oil spill. As the federal action did not preempt state liability laws, the MSRC has proposed this uniform legislation to allow responders to act without being forced to consider the boundaries or interactions of varying liability provisions. Language in this act was drawn from Section 4201 of the Oil Pollution Act.

The immunity applies if those activities are performed in a manner consistent with the Federal National Contingency Plan, or under the direction of the federal on-scene coordinator or the appropriate state official. Because the plans and orders may not cover every detail or eventualty of a spill response, actions that are in keeping with the overall objectives of the plans or the coordinator’s orders are deemed to be within the scope of this act.

The liability for damages resulting from the oil spill cleanup efforts falls on the party responsible for the initial discharge, not on the persons trying to help clean up or mitigate the damage. In addition, immunity for responders is limited. It does not extend to actions for personal injury or wrongful death, or for actions that rise to the level of gross negligence or willful misconduct.

The MSRC, incorporated in August 1990, is an independent nonprofit entity organized to promote the public welfare by mitigating environmental damage to the coastal and certain upstream waters of the United States. It reports that as of August 1991, 17 coastal states had adopted legislation consistent with the federal responder immunity standard. For further information, contact the MSRC at 1220 L St., NW, Suite 650, Washington, DC 20005, (202) 962-4717.

Other states have taken different approaches in this area. Alaska, the site of a massive oil spill in 1989, enacted responder immunity legislation that also relieves oil spill responders from liability for negligent actions (with certain exceptions) and places on the original spiller all liability for damages caused by negligent responders (AS 46.03.825, with related provisions in AS 46.03.822(k) and 46.03.826(14) and (15)). However, the limited immunity is not available: to responders who substantially deviate from an oil spill contingency plan previously approved by the state if the contractor prepared the plan or contracted to provide contingency services under the plan; for damages to tangible personal property not caused by oil; or for acts or omissions that occur more than 15 days after the spill. A responder, who does not receive immunity for negligent actions because the actions substantially deviated from a contingency plan or because they occurred more than 15 days after the spill,
Suggested State Legislation

is still relieved of strict liability for damages.

[Alaska's legislation is in effect until July 1992. If there is no legislative action in the 1992 session, the responder immunity law will return to one under which oil spill responders are treated the same as responders to releases of other hazardous substances — that is, they will only be relieved of strict liability.]

MSRC Model State Act Regarding Limited Immunity for Persons Responding to Oil Spills

Section 1. [Short Title] This act may be cited as the [state] Act Regarding Liability for Persons Responding to Oil Spills.

Section 2. [Definitions.] For the purposes of this act, the term:

(1) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2) "Discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(3) "Federal On-Scene Coordinator" means the federal official predesignated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan.


(5) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(6) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(7) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.


Section 3. [Exemption from Liability.]

(a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice con-
Limited Immunity for Oil Spill Responders

5 consistent with the National Contingency Plan or as otherwise directed by
6 the Federal On-Scene Coordinator [or by the state official with respon-
7 sibility for oil spill response].
(b) Subsection (a) does not apply
9 (1) to a responsible party;
10 (2) with respect to personal injury or wrongful death; or
11 (3) if the person is grossly negligent or engages in willful misconduct.
(c) A responsible party is liable for any removal costs and damages that
12 another person is relieved of under subsection (a).
(d) Nothing in this section affects the liability of a responsible party
15 for oil spill response under state law.
Aboveground Storage Tank Act

The act presented below, based on 1990 Colorado legislation, permits small service stations in rural areas to store gasoline, with restrictions, in aboveground storage tanks. This is one response to the expense of underground storage tank operation and maintenance, including the attendant costs of liability insurance.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Aboveground Storage Tank Act.

Section 2. [Legislative Declaration] The legislature hereby finds and declares that the rising expense attendant to operation and maintenance of underground storage tanks, including but not limited to the cost of liability insurance, has resulted in the discontinuance of business by several small gasoline service station operators and imposes an increasing hardship on those service stations still in operation. The legislature further finds that the viability of aboveground storage tanks is being recognized and that rules and regulations for aboveground storage tanks have been promulgated and endorsed by the regional fire chiefs association's uniform fire code committee and the national fire protection association's automotive and service station code committee. The legislature further finds that aboveground storage tanks for fuel products are feasible and economical and should be permitted under certain narrowly drawn circumstances.

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

1. "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, constructed of nonearthen materials including, but not limited to, concrete, steel, or plastic which provides structural support, used to contain or dispense fuel products and the volume of which including the pipes connected thereto is 90 percent or more above the surface of the ground.

2. "Fuel products" means all gasoline, benzine, benzene, naphtha, benzol, kerosene, and other volatile and inflammable liquids, produced, compounded, and offered for sale or used for the purpose of generating heat, light, power in internal combustion engines, cleaning, or for any other similar usage.

3. "Municipality" means any city or any town operating under general or special laws of the state of [state] or any home rule city or town, the charter or ordinances of which contain no provisions inconsistent with the provisions of this act.
Aboveground Storage Tank Act

(4) "Operator" means any person in control of, or having responsibility for, the operation of an aboveground storage tank.

(5) "Owner" means any person who owns an aboveground storage tank.

(6) "Person" means any individual, trust, firm, joint-stock company, corporation (including a government corporation), partnership, association, commission, municipality, state, county, city and county, political subdivision of a state, interstate body, consortium, joint venture, or commercial entity or the government of the United States.

(7) "Unincorporated area" means any territory within a county which is not within the boundaries of any municipality.

Section 4. [Duties of State Inspector of Oils.]

(a) The State Inspector of Oils shall make, promulgate, and enforce regulations for aboveground storage tanks containing fuel products described in Section 5 of this act which are no more stringent than the requirements contained in the current edition of the national fire code published by the national fire protection association, as revised by the association from time to time.

(b) The State Inspector of Oils shall include rules concerning the design, construction, and installation of aboveground storage tanks permitted to be used under Section 5 of this act.

Section 5. [Aboveground Storage Tanks.]

(a) Except as provided by subsections (b) and (c) of this section, fuel products shall not be stored at retail service stations in tanks of more than [60] gallons gross capacity above the surface of the ground.

(b) Fuel products may be stored in an aboveground storage tank with a capacity of not more than [3,000] gallons at a retail service station or aircraft fueling facility located in an unincorporated area or in a municipality with a population of fewer than 5,000 inhabitants according to the most recent federal decennial census upon approval of the governing body of such municipality which approval shall not be withheld in order to provide a competitive advantage to another retailer, and if the retail service station or aircraft fueling facility is located more than [five] miles from the limits of a municipality with a population of 15,000 or more inhabitants according to the most recent federal decennial census. The service station or aircraft fueling facility may have an aboveground storage tank of that capacity for each separate grade of fuel product but may not have more than one aboveground storage tank of that capacity for the same grade.

(c) Fuel products may be stored in an aboveground storage tank with a capacity of not more than [4,000] gallons at a retail service station or aircraft fueling facility located in an unincorporated area if the retail service station or aircraft fueling facility is located more than [10] miles from the limits of a municipality with a population of 15,000 or more inhabitants according to the most recent federal decennial census. The service station or aircraft fueling facility may have an aboveground storage tank of that capacity for each separate grade of fuel product but may not have more than one aboveground storage tank of that capacity for
Suggested State Legislation

28 the same grade.
29 (d) The authority of a retail service station or aircraft fueling facility
30 to store flammable liquids in an aboveground storage tank as provided
31 by subsections (b) and (c) of this section shall not be affected by a change
32 in the boundaries or population of a municipality that occurs after the
33 retail service station or aircraft fueling facility begins operation.

1 Section 6. [Effective Date] [Insert effective date.]
State Fleet Alternative Fuels Act

This act, based on 1990 Colorado legislation, requires state agencies to purchase or lease motor vehicles that operate on clean-burning alternative fuels. [The requirement applies principally to use within a designated program area.] Alternative fuels include natural gas, liquified petroleum gas, a fuel mixture containing not less than 85 percent ethanol or methanol, and electricity. Ten percent of the vehicles acquired during fiscal year 1991-92 must meet the new criteria. That percentage increases to 20 percent, 30 percent and 40 percent in succeeding fiscal years. Under the act, dual-fueled vehicles will satisfy the requirements, and emergency and heavy-duty vehicles are exempted.

(The 1990 federal Clean Air Act amendments require that by the 1998 model year, 30 percent of all fleet vehicles must use alternative fuels, increasing to 70 percent by the model year 2000. Readers will want to note other requirements of the Clean Air amendments as outlined in Federal Mandates for State Action (Note), pp. 153-59 of this volume.)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the State Fleet Alternative Fuels Act.

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

1. "Advisory council" means the [motor vehicle advisory council created pursuant to executive order of the governor].
2. "AIR program area" shall have the same meaning as "program area" under the [automobile inspection and readjustment area as defined in existing statute].
3. "Authorized emergency vehicle" shall have the same meaning as defined in [insert citation for appropriate state statute].
4. "Clean-burning alternative fuel" means natural gas, liquified petroleum gas, a fuel mixture containing not less than [85] percent ethanol or methanol, electricity or any other alternative fuel approved by the [commission] pursuant to [insert citation for appropriate state statute].
5. "Commission" means the [state air quality control commission].
6. "Dual-fueled motor vehicle" means a motor vehicle which is capable of operating on either a clean-burning alternative fuel or a traditional fuel including, but not limited to, gasoline or diesel fuel.
7. "Heavy-duty vehicle" means any motor vehicle with an empty weight exceeding [7,500] pounds.
8. "State agency" means any board, commission, department, division, section, bureau, institution of higher education, or other agency of the executive, legislative or judicial branch of state government.
Suggested State Legislation

(9) "State fleet alternative fuels plan" or "plan" means a plan for the achievement of the following goals:

(i) That [10] percent of the total number of new motor vehicles purchased or leased by state agencies during [fiscal year 1991-92] for use in operations principally within the [AIR program area] shall operate on clean-burning alternative fuel;

(ii) That [20] percent of the total number of new motor vehicles purchased or leased by state agencies during [fiscal year 1992-93] for use in operations principally within the [AIR program area] shall operate on clean-burning alternative fuel;

(iii) That [30] percent of the total number of new motor vehicles purchased or leased by state agencies during [fiscal year 1993-94] for use in operations principally within the [AIR program area] shall operate on clean-burning alternative fuel; and

(iv) That no less than [40] percent of the total number of new motor vehicles purchased or leased by state agencies during [fiscal year 1994-95] for use in operations principally within the [AIR program area] shall operate on clean-burning alternative fuel.

For the purposes of the percentage goals contained in this paragraph, new motor vehicles which operate on clean-burning fuels shall include, but shall not be limited to, dual-fueled motor vehicles. Authorized emergency vehicles and heavy-duty vehicles shall not be included in calculating the number of new motor vehicles purchased by state agencies.

Section 3. [State Fleet Alternative Fuels Plan.] The [motor vehicle advisory council created pursuant to executive order of the governor], together with such other personnel in the executive branch as the governor shall designate, shall develop a state fleet alternative fuels plan. In developing the plan, the [advisory council] shall consider any input or comments received from the private sector.

Section 4. [Criteria for Plan.] The criteria to be considered by the [advisory council] in developing the plan shall include, but shall not be limited to, the following:

(1) The use for which a state agency operates a motor vehicle;

(2) The necessary engine power of a motor vehicle;

(3) The storage and hauling capacity needed in a motor vehicle; and

(4) The availability of alternative fuels.

Section 5. [Timeframe for Completion of Plan.] The [advisory council] shall complete the plan no later than [insert date]. Upon completion, the [advisory council] shall deliver the plan to the legislature and the governor.

Section 6. [Fiscal Impact.] The plan developed by the [advisory council] shall contain an analysis of the fiscal impact of meeting the plan's percentage goals for alternative fuel motor vehicle purchases and leases during each fiscal year. Such analysis shall include, but shall not be limited to, any projected positive fiscal impacts, such as reduced operating and maintenance costs.
State Fleet Alternative Fuels Act

Section 7. [Purchases Contingent upon Appropriations.] Motor vehicles purchased or leased by state agencies after [insert date], shall comply with the percentage goals contained in the plan, but this requirement shall be contingent upon annual legislative appropriations to the affected state agencies of adequate funds for purchase or lease of and operation of the requisite number of alternative fuel motor vehicles.

Section 8. [Conversion.] For the purposes of achieving the percentage goals contained in the plan, conversion of one existing motor vehicle in the state fleet to operate on a clean-burning alternative fuel shall be deemed to be the equivalent of the purchase or lease of a new motor vehicle which operates on clean-burning alternative fuel.

Section 9. [Report on Program.] On or before [insert date], the [commission] shall present a report to the legislature concerning the application of the provisions of this act. Such report shall include, but shall not be limited to, the following:

1. The [commission's] evaluation of the effectiveness of the program created by this act in improving air quality;
2. Suggestions of the [commission] for legislation to improve the operation of the program; and
3. The [commission's] opinions concerning the feasibility of expanding the scope of the program.

Section 10. [Repealer.] [Insert repealer clause.]

Section 11. [Effective Date.] [Insert effective date.]
Campaign Finance, Ethics and Lobbying Regulation (Statement)

A Model Law of the Council on Governmental Ethics Laws

Campaign finance, ethics and lobbying are three areas of growing concern to legislators and the electorate to whom they are responsible. Although some individuals might draw distinctions among these areas, in reality, they are three facets of the same issue: integrity in government. The players are the same: elected and appointed officials on the one hand; special interests on the other. Even the rules within the three areas, particularly those governing disclosure, are functionally alike.

While recognizing that fundamental ethical norms cannot be legislated, elected officials nonetheless seek unambiguous standards distinguishing acceptable from unacceptable conduct and a clear assignment of authority for issuing advice, enforcing compliance and administering public disclosure.

The Council on Governmental Ethics Laws (COGEL) — a professional organization for agencies and individuals with responsibilities in governmental ethics, elections, campaign finance and lobby law regulation — has developed a comprehensive model law intended to be a guide for jurisdictions seeking to change their system of regulating governmental ethics and elections.

The law is the result of a three year effort by over 40 staff members from COGEL member agencies who cooperated in the drafting sessions. Comment by the full membership of the organization was received on successive versions of the law. The process was completed in 1990.

The model is fully integrated, as the drafters believe that campaign finance, ethics and lobbying regulation cannot be viewed in isolation. Users are cautioned, however, to identify the implications that could result from the adoption of separate pieces of the model, and to examine the entire model for an indication of how a given change might affect a different area of reform. Moreover, as states differ from one another, in terms of constitutional constraints, political culture and scale, the model affords alternative approaches and flexibility in setting quantitative thresholds. The full text is formatted to give the reader italic comment on each significant provision immediately following the provision in question.

Several states already are considering the model, or portions of it, as they draft new governmental ethics legislation, and are adapting the provisions to fit their individual circumstances. The state of South Carolina, for example, recently enacted legislation (H. 3743) which, while based on the model act, differs in its administration and its system of campaign finance regulation, which does not require the creation of a committee entity. The legislation also does not establish a system of public funding.
Because of the length and complexity of the COGEL model law, it cannot be presented in its entirety here. Instead, the Committee on Suggested State Legislation approved the inclusion of this statement, which summarizes the provisions of the act. Readers who are interested in the full text (89 pages) should contact COGEL through its secretariat, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939.

Campaign finance

The campaign finance section of the model law begins with a statement of findings and purpose that is intended to provide guidance to a court that might have to rule on the constitutionality of a particular provision. The definitions section is likely more exhaustive than that of any state and addresses both activities that are and are not covered under the provisions.

Limitations are placed on aggregate contributions by individuals, political committees and political parties. There also are restrictions on loan repayments to a candidate or a candidate's immediate family after an election. Registration is triggered by certain specified events, and a statement of financial disclosure is required of candidates. Quarterly reporting is generally required, except that a monthly reporting requirement by candidates receiving public funding is imposed. A blanket itemization threshold of $100 has been established for reporting purposes. That which must be reported is set out in detail. Restrictions are placed on the use of surplus funds, including a ban on their use for personal purposes or for pursuing a different elective office.

A separate public funding section includes a tax checkoff that would not increase taxpayers' liability or decrease their refund. Qualification is based on receipt of an amount based on a percentage of expenditure limits, and entitles the recipient to a grant that is not tied to a dollar-for-dollar match. Restrictions are placed on types and amounts of expenditures for those who opt into the public funding program and on the amounts a candidate or a candidate's immediate family may contribute.

Many of the dollar amounts that serve as registration thresholds or ceilings on contributions and expenditures are expressed as ranges in order to fit the circumstances of individual states.

Ethics

The ethics, conflict of interest and personal finance disclosure section of the model law also contains an extensive set of definitions. Many of the issues surrounding the administration of rules of ethics center on definitions — i.e., what does or does not constitute a gift.

Use of title and prestige of office for private purposes, nepotism and misuse of office resources are each controlled by separate provisions. Constraints are placed on the ability of a public officer or employee to represent another in a public proceeding. The model spells out situations for recusal from discussions, deliberations or voting on matters in which
Suggested State Legislation

a conflict might exist, and restraints are imposed on solicitation or acceptance of gifts and gratuities. Post-employment restrictions are set forth, as are standards for actions taken while negotiating for employment.

Lobbying

The model law’s section on lobbying defines necessary terms and imposes registration requirements on lobbyists and their employers. Reporting is required twice a year, and includes the information specified in the model. A limited set of exemptions are outlined to allow for lobbying on one’s own behalf or at a minimal level. Gifts and contributions to legislators are prohibited during legislative sessions. Gifts may not exceed $50 in value annually to a legislative official or legislator by a lobbyist or the lobbyist’s employer. Contingent fee lobbying is prohibited.

Administration

The model law proposes the establishment of a single agency to oversee all three aspects of accountability laws. The agency described in the model is headed by a collegial body of five members serving in staggered four-year terms. Appointment is made by the governor from a list of nominees made by the chief justice of the highest court in the state. Explicit powers are delegated to the agency, including the ability to investigate complaints on its own motion, issue subpoenas, hold hearings, and make recommendations for penalties, including levying civil fines.

The model provides for the informal resolution of investigations through fines and settlement agreements. The agency may recommend sanctions to the pertinent executive department, attorney general or legislature, either in the first instance, if warranted, or upon failure of the informal settlement process. The agency must act upon a complaint it receives, and is empowered to issue authoritative and binding advice on specific issues presented to it. The model’s incorporation of a single administrative agency was proposed to eliminate inconsistency between rules governing the same persons on the same general topic, and to provide for uniform disclosure provisions in all three areas.
State Civil Rights Act

This act, based on 1990 Tennessee legislation, prohibits state officials, employees and agencies from sponsoring state business-related meetings and activities in establishments and facilities that do not afford full membership rights and privileges to persons because of sex, race, creed, color, religion, ancestry, national origin or disability. It further prohibits state expenditures in connection with activities at facilities that discriminate in allocating membership privileges, and prohibits commercial agreements between the state and such facilities. Persons who are the victims of discrimination may enforce the act's provisions by means of civil action.

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Restrictions on Sponsorship, Expenditures, Reimbursements.]

(a) No state official, employee or agency shall sponsor and/or organize a meeting or other activity, the purpose of which is related to state business, including any athletic competition, in an establishment or facility which does not afford full membership rights and privileges to a person because of sex, race, creed, color, religion, ancestry, national origin or disability. This provision shall not apply to state officials, employees or agents acting in the course of ongoing law enforcement, code enforcement or other required investigations and inspections.

(b) No state funds shall be expended in connection with a meeting or other activity held at an establishment or facility which does not afford full membership rights and privileges to a person because of sex, race, creed, color, religion, ancestry, national origin or disability. This provision shall not apply to state funds expended during the course of ongoing law enforcement, code enforcement or other required investigations and inspections.

(c) No state official, employee or agent shall be reimbursed for dues or other expenses incurred at an establishment or facility which does not afford full membership rights and privileges to a person because of sex, race, creed, color, religion, ancestry, national origin or disability. This provision shall not apply to expenditures incurred by state officials, employees or agents acting in the course of ongoing law enforcement, code enforcement or other required investigations and inspections.

(d) For the purposes of this section, a "state official" is a person who holds an elected or appointed position in state government.
Section 3. [Restrictions on Commercial Agreements.]

(a) No state official, employee or agent shall enter into a commercial agreement on behalf of the state with a club which denies to a person entry, use of facilities or membership, or unreasonably prevents the full enjoyment of such club on the basis of sex, race, creed, color, religion, ancestry, national origin or disability.

(b) Prior to entering into a commercial agreement with the state, a club must file a statement, verified by the president or chief executive officer of the club, that it does not deny a person entry, use of facilities or membership or unreasonably prevents the full enjoyment of such club on the basis of sex, race, creed, color, religion, ancestry, national origin or disability.

Section 4. [Prohibitions Relating to Institutions of Higher Education.]

No adjunct organization, including but not limited to booster groups, of a state university, community college or institution of higher learning shall enter into a contract on behalf of, or purchase membership for, an employee of such university, college or institution of higher learning to a club which denies to a person entry, use of facilities or membership, or unreasonably prevents the full enjoyment of such club on the basis of sex, race, creed, color, religion, ancestry, national origin or disability.

Section 5. [Penalties for Violation.]

(a) The state or a person who is discriminated against in violation of this act may enforce the provisions of this act by means of a civil action. A person found to violate any of the provisions of this act shall be liable for the actual damages caused by such violation and such other amount as may be determined by a jury or a court sitting without a jury, but in no case less than [insert dollar amount], plus reasonable attorney’s fees and court costs as may be determined by the court in addition thereto.

(b) A person who commits an act or engages in any pattern and practice of discrimination in violation of this act may be enjoined therefrom by a court of competent jurisdiction. An action for injunction under this subsection may be brought by a person who is discriminated against in violation of this act by the state, or by a person or entity which will fairly and adequately represent the interests of the protected class.

(c) Nothing in this act shall preclude any person from seeking any other remedies, penalties or procedures provided by law. Provided, no criminal penalties shall attach for a violation of the provisions of this act.

Section 6. [Exemptions.] Nothing in this act shall be construed to prohibit a religious organization or any organization operating solely for religious, charitable, educational or social welfare purposes, from restricting membership or facilities to persons of the same religious faith, where necessary to promote the religious principles under which it was established and is currently maintained. This exemption shall apply
only to organizations whose primary purpose is to serve members of a particular religion.

Section 7. [Severability] [Insert severability clause.]

Section 8. [Effective Date] [Insert effective date.]
Battered Woman Syndrome
Defense Act

This act, based on 1990 Ohio legislation, authorizes expert testimony relative to the battered woman syndrome to be introduced in a criminal action — to establish the belief of an imminent danger of death or great bodily harm that is an element of the affirmative defense of self-defense, or to establish the impairment of reason that is an element of a finding of not guilty by reason of insanity.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Battered Woman Syndrome Defense Act.

Section 2. [Legislative Declaration.] The legislature hereby declares that it recognizes both of the following, in relation to the “Battered Woman Syndrome”:

(1) That the syndrome currently is a matter of commonly accepted scientific knowledge;

(2) That the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

Section 3. [Self-Defense; Introduction of Expert Testimony on Syndrome] If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self-defense, the person may introduce expert testimony of the “Battered Woman Syndrome” and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger or death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question. The introduction of any expert testimony under this section shall be in accordance with the [state] rules of evidence.

Section 4. [Evaluation of Mental Condition; Consideration of Evidence of Syndrome] [(a) If a defendant enters a plea of not guilty by reason of insanity, the court may order one or more, but not more than three, evaluations of the defendant's mental condition at the time of the commission of the offense. The court shall order that each evaluation be conducted through examination of the defendant by any of the following:
(1) A forensic center designated by the [department of mental health] to conduct such examinations and make such evaluations in the area in which the court is located;

(2) Any other program or facility that is designated by the [department of mental health or the department of mental retardation and developmental disabilities] to conduct such examinations and make such evaluations, provided the center, program, or facility is operated by the appropriate [department] or is certified by such [department] as being in compliance with the standards established under [insert appropriate citation for state statute].

(3) A center, program or facility designated by the court other than one designated by the appropriate [department].

In any case, the court may designate examiners other than the personnel of the center, program, facility, or [department] to make the examination. If more than one examination is ordered, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to have perform one of the examinations.

In conducting an evaluation pursuant to this section of a defendant’s mental condition at the time of the commission of the offense, the examiner shall consider all relevant evidence. If the offense charged involves the use of force against another, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the “Battered Woman Syndrome.”

(b) If an evaluation is ordered, the defendant shall be available at the times and places established by the center, program, facility, or examiners. The court may order a defendant who has been released on bail or recognizance to submit to an examination under this section. If a defendant who has been released on bail or recognizance refuses to submit to a complete examination, the court may amend the conditions of bail or recognizance and order the [sheriff] to take the defendant into custody and deliver him to a program or facility operated by the [department] where he may be held for a reasonable time not to exceed [20] days.

(c) A defendant who has not been released on bail or recognizance may be examined at his place of detention, or the court at the request of the examiner may order the [sheriff] to transport the defendant to a program or facility operated by the [department of mental health or the department of mental retardation and developmental disabilities], where he may be held for examination for a reasonable time not to exceed [30] days, and to return the defendant to the place of detention after the examination.

The court shall inform any examiner it appoints of the offense of which the defendant is charged.

The court shall notify the prosecutor and defense counsel immediately upon the appointment of an examiner under this section, and specify the name and address of the examiner. An examiner appointed under this section may be called as a witness by the court or any party and shall be subject to direct and cross-examination by the prosecutor and defense counsel. Neither the appointment nor the testimony of an examiner
appointed under this section precludes the prosecutor or defense counsel from calling other witnesses to testify on the insanity issue.

The examiner shall complete the examination within [30] days after the court's order for the evaluation and shall prepare and provide to the court, prosecutor, and defense counsel a written report concerning the mental condition of the defendant.

If the court does not designate an examiner recommended by the defendant pursuant to subsection (a) of this section, the court shall inform the defendant that he may have independent expert evaluation and that if he is unable to obtain independent expert evaluation, it will be obtained for him, at public expense if he is indigent.

Persons appointed as examiners under this section shall be paid a reasonable amount for their services and expenses, as certified by the court and paid by the [county in the case of county courts and courts of common pleas and by the legislative authority], as defined in [insert appropriate citation for state statute], in the case of [municipal courts].

(d) No statement made by a defendant in an examination or hearing relating to his mental condition at the time of the commission of an offense shall be used in evidence against him on the issue of guilt in any criminal action.

COMMENT: Section 4 represents the portion of existing Ohio code that was amended to authorize evidence of the "battered woman syndrome." Jurisdictions will have to consider appropriate modifications to conform to local practices.
Domestic Violence (No-Contact) Act

This act, based on 1991 Utah legislation, provides that an alleged perpetrator, during the 24 hours immediately following arrest or issuance of a citation for domestic violence, may not contact or enter the premises of the alleged victim's residence or temporary dwelling. At the time of the arrest or citation issuance, oral and written notice of the no-contact requirement must be provided to the alleged perpetrator and the alleged victim.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Domestic Violence (No-Contact) Act.

Section 2. [No-Contact Stay] During the [24] hours immediately following the arrest or issuance of a citation for domestic violence, or until the close of the next court day, whichever is later, the alleged perpetrator may not enter onto the premises of the alleged victim's residence and, if applicable, any premises temporarily occupied by the alleged victim, and may not contact or cause any person, other than attorneys for the alleged perpetrator, to contact the alleged victim. In no event may the time provided by this section extend beyond [four] days, or [96] hours.

Section 3. [Penalty for Violation] Violation of the provisions of Section 2, after receiving notice as provided in Section 4, is a [insert offense].

Section 4. [Procedures]

(a) At the time a citation is issued or an arrest is made for domestic violence, oral and written notice of the no-contact requirement described in Section 2, and of the penalty for violation of that requirement shall be provided to the alleged perpetrator and to the alleged victim.

(b) The notice shall include all of the following:

(1) the date and time the no-contact requirement expires;
(2) the address of the appropriate court in the district or county in which the alleged victim resides; and
(3) the following statement:

"To the Alleged Victim: This no-contact requirement lasts only until the date and time noted above. If you wish to seek continuing protection, you must apply for a criminal protective order from the court, at the address noted above, when it opens, or you may request a civil ex parte protective order from the [district] court. You may request either of those protective orders yourself, or you may seek the advice of an attorney as to any matter connected with your application for any court order."
order. The attorney should be consulted promptly so that he may assist
you in making that application.

To the Accused Party: This no-contact requirement lasts until the
date and time noted above. The protected party may, however, obtain a
protective order when the court opens. You may seek the advice of an
attorney as to any matter connected with protective orders. The attor-
ney should be consulted promptly so that he may assist you in respond-
ing to any request for a protective order.”

Section 5. [Waiver of No-Contact Requirement.] 
(a) At any time during the [24] hours or other designated time described 
in Section 2, the alleged victim may sign a written waiver of the no-
contact requirement described in Section 2.
(b) The law enforcement officer responsible for the arrest or citation 
shall notify the alleged victim of the possibility of, procedure for, and 
effect of a waiver.
(c) When a waiver has been executed, the law enforcement agency 
responsible for the arrest or citation shall inform the alleged perpetra-
tor, if he has been arrested, and shall make reasonable efforts to inform 
an alleged perpetrator who has been issued a citation of the waiver and 
its effect.

Section 6. [Failure to Comply.] Failure of a law enforcement officer or 
agency or an alleged victim to comply with the procedures or require-
ments of this act does not affect any criminal allegations or proceedings 
against the alleged perpetrator.

Section 7. [Liability.] A law enforcement officer or agency acting, or fail-
ing to act, pursuant to this act may not be held civilly or criminally lia-
ble if the action, or failure to act, was in good faith.

Section 8. [Effective Date.] [Insert effective date.]
Harassment Restraining Order Act

This act, based on 1990 Minnesota legislation, enables a person or the parent or guardian of a person who is a victim of harassment to obtain a restraining order from the court requiring the perpetrator to cease the harassing behavior and to have no further contact with the complainant. Harassment, as defined in the act, includes repeated, intrusive or unwanted acts, words or gestures that are intended to adversely affect the safety, security or privacy of another, regardless of the relationship between the alleged perpetrator and the alleged victim.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Harassment Restraining Order Act.

Section 2. [Definition.] As used in this act, “Harassment” means repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target.

Section 3. [Restraining Order; Jurisdiction.] A person who is a victim of harassment may seek a restraining order from the [district] court in the manner provided in this act. The parent or guardian of a minor who is a victim of harassment may seek a restraining order from the [juvenile] court on behalf of the minor.

Section 4. [Contents of Petition.] A petition for relief must allege facts sufficient to show the following:

1. the name of the alleged harassment victim;
2. the name of the respondent; and
3. that the respondent has engaged in harassment.

The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this act.

Section 5. [Temporary Restraining Order.] (a) The court may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person or to have no contact with that person if the petitioner files a petition in compliance with Section 4 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment.

(b) Notice need not be given to the respondent before the court issues a temporary restraining order under this section. A temporary restrain-
Suggested State Legislation

...
of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order issued under this act.

Section 9. [Notice] An order granted under this act must contain a conspicuous notice to the respondent:
1. (1) of the specific conduct that will constitute a violation of the order;
2. (2) that violation of an order is a [insert offense] punishable by imprisonment for up to [insert number] days or a fine of up to [insert amount] dollars or both; and
3. (3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

Section 10. [Effective Date] [Insert effective date.]
Visitation Dispute Resolution Act

This act, based on 1989 Minnesota legislation, provides for the court appointment of a visitation expeditor to resolve ongoing visitation disputes that may arise when a divorce case is pending or after the decree is finalized. This method may only be used with the consent of both parties. In developing a list of expeditor candidates, the court must give preference to persons willing to volunteer their services.

A visitation dispute covers any specific disagreement between the custodial and noncustodial parent about visitation with a child, and could include matters ranging from interference with or denial of visitation to the time of day when a holiday begins or ends. A visitation expeditor meets with the parties within five days of a dispute and makes an effort to help the parties resolve it. If this is not possible, the expeditor may make a non-binding decision. If a party does not comply with an agreement or an expeditor’s decision, either party could initiate a judicial resolution of the dispute.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Visitation Dispute Resolution Act.

Section 2. [Definition.] As used in this act, “Visitation dispute” means a disagreement among parties about visitation with a child. “Visitation dispute” includes a claim by a custodial parent that a noncustodial parent is not visiting a child as well as a claim by a noncustodial parent that a custodial parent is denying or interfering with visitation.

Section 3. [Visitation Expeditor] Upon agreement of all parties, the court may appoint a visitation expeditor to resolve visitation disputes that occur under a visitation order while a matter is pending under [insert appropriate state statute] or after a decree is entered. Prior to appointing the visitation expeditor, the court shall give the parties notice that the costs of the visitation expeditor will be apportioned among the parties and that if the parties do not reach an agreement, the visitation expeditor will make a nonbinding decision resolving the dispute.

Section 4. [Appointment; Costs] The court shall appoint the visitation expeditor. If the parties cannot agree on a visitation expeditor, the court shall present a list of candidates with one more candidate than there are parties to the dispute. In developing the list of candidates, the court must give preference to persons who agree to volunteer their services. Each party shall strike one name and the court shall appoint the remaining individual as the visitation expeditor. In its order appointing the visi-
Visitation Dispute Resolution Act

Section 5. [Agreement or Decision.]
(a) If a visitation dispute arises, the visitation expeditor shall meet with the parties within [five] days and make a diligent effort to facilitate an agreement to resolve the visitation dispute.
(b) If the parties do not reach an agreement, the expeditor shall make a decision resolving the dispute as soon as possible. If a party does not comply with an agreement of the parties or a decision of the expeditor, any party may bring a motion with the court to resolve the dispute. The court may consider the agreement of the parties or the decision of the expeditor, but neither is binding on the court.

Section 6. [Other Agreements.] This act does not preclude the parties from voluntarily agreeing to submit their visitation dispute to a neutral third party.

Section 7. [Effective Date] [Insert effective date.]
State Volunteer Service Act
(Statement)

A Model Act of the White House

The term volunteer covers individuals engaged in a wide range of services and activities — from direct service providers and directors and officers of volunteer organizations to certain state and local government officials.

The Bush Administration has promoted the concept of volunteerism, most recently through its support of the mission of the Points of Light Foundation. However, a working group of the White House Domestic Policy Council reported that such efforts were being thwarted by individuals’ fears of personal liability and the limited availability and high cost of insurance to protect against liability.

While states have adopted legislation protecting volunteers and/or volunteer organizations, the statutes vary in definition and scope of immunity. Most states, for example, have more than one volunteer protection law. According to the Nonprofits’ Risk Management and Insurance Institute, every state has a provision applying to directors and officers of organizations, but many do not apply to direct service volunteers. About half of the states have provisions for general volunteers, while around 20 focus specifically on sports-related volunteers.

In an effort to promote uniformity and remove some of the obstacles faced by organizations providing volunteer services in more than one state, the Bush Administration has developed a comprehensive model state act that would afford protection to volunteers working with 501(c) organizations and governmental entities that use volunteers in carrying out their official functions. The model statute, however, would continue to allow recovery against volunteer organizations and governmental entities to the extent permitted by existing state law.

Versions of the model act have been introduced in some jurisdictions, and at least one state, Alabama, enacted the legislation in 1991. The Alabama enactment (H. 85) matches the model in all aspects, with one variation; it does not incorporate the model’s language regarding the operation of motor vehicles and an injured party’s recovery of damages up to the limits of a volunteer’s auto insurance for harm resulting from a motor vehicle accident (see summary below).

In lieu of presenting the complete text of this model, the Committee on Suggested State Legislation has approved the inclusion of the following statement, which summarizes the provisions of the proposal. For further information or to receive a copy of the full text, readers should contact Mary McClure, Special Assistant to the President for Intergovernmental Affairs, Old Executive Office Bldg., 17th St. & Pennsylvania Ave., NW, Washington, DC 20500, (202) 456-6697.
Definitions

Under the model act, volunteer is defined as a person performing services for a nonprofit organization, nonprofit corporation, hospital, or other governmental entity without compensation other than reimbursement for actual expenses incurred. It includes individuals serving as directors, officers, trustees or direct service volunteers. It applies to volunteers at any organization exempt from taxation under Section 501(c) of the Internal Revenue Code (including charities, schools, colleges, hospitals, business leagues, trade associations and credit unions).

Scope of Immunity

The act grants a volunteer with immunity from civil liability in any action on the basis of any act or omission resulting in damage or injury: if the volunteer was acting in good faith and within the scope of the his or her official functions or duties, and the damage was not caused by willful and wanton misconduct. However, nonprofit organizations, nonprofit corporations and hospitals remain liable for harm caused by volunteers.

The act further provides that civil damages may be recovered from a volunteer based on a negligent act or omission involving the operation of a motor vehicle during an activity; however, the amount recovered may not exceed the limits of applicable insurance coverage maintained by the volunteer.
Access to Adoption Information Act
(Statement)

In 1989, Colorado enacted legislation declaring that adult adoptees, adoptive parents, biological parents, and biological siblings have a qualified right of access to any records regarding their adoption, their adoptive children's adoption or the adoption of their biological children or siblings. The qualified right of access to records coincides with the right of these parties to privacy and confidentiality.

In lieu of presenting this item in the standard format (as it amends several sections of existing statute), the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the provisions of the enactment. Readers interested in the full text should consult Ch. 177, 1989, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, PO Box 11910, Lexington, Kentucky 40576-1910, (606) 231-1939.

Confidential Intermediaries

The act establishes a confidential process whereby adult adoptees and adoptive parents desiring information concerning their adoption or their children's adoption and biological parents and siblings who desire information concerning an adult adoptee may pursue access to such information. It authorizes the creation of a pool of individuals, confidential intermediaries, whom the courts and interested parties may call upon to initiate a search for a biological relative.

The legislation establishes a seven-member commission responsible for drafting a manual of standards for training confidential intermediaries, monitoring training programs for confidential intermediaries, and maintaining an up-to-date list of those who complete the training program.

Intermediaries are authorized to inspect confidential relinquishment and adoption records upon a motion to the court by an adult adoptee, adoptive parent, biological parent or biological sibling. All information obtained by the intermediary must be used exclusively for the purpose of arranging a contact between the individual who initiated the search and the relative sought. However, no one may seek to contact a party who is below the age of 21. When a sought-after biological relative is located, the confidential intermediary may seek and obtain consent from both parties to arrange personal communication. If consent for communication is not obtained from both parties, all records and information obtained by the intermediary must be returned to the court and remain confidential. The court must protect the anonymity of the natural parents, adoptive parents, and children, except to the extent disclosure is made pursuant to a designated adoption.
Homeless Child Education Act  
(Statement)

In 1990, in response to a growing population of homeless families, Colorado enacted legislation designed to ensure that homeless children would not be denied the benefits of public education. It establishes a residence for homeless children, as defined under the act, for the purpose of determining the public school districts in which they should attend classes.

In lieu of presenting this item in the standard format (as it amends several sections of existing education provisions), the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the provisions of the act. Readers interested in the full text should consult SB 90-44, Ch. 142 (Secs. 22-1-102, 22-1-102.5, 22-20-107.5, 22-33-103.5) 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.

Definition

The act defines a homeless child as one who lacks a fixed, regular and adequate nighttime residence or who has a primary nighttime residence which is: a supervised, publicly- or privately-operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill; an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings. It specifically excludes individuals imprisoned or otherwise detained pursuant to federal or a state law.

Residence

The act amends existing provisions regarding current district of residence to accommodate children found to be homeless, as defined. However, it does allow children who attended school in another district at the time they became homeless to choose to continue attending school in that district for the remainder of the school year. The legislation further amends existing statute to apply the provisions to handicapped children.
Private Vocational School Regulation Act (Statement)

In 1990, Washington state amended existing legislation in response to a growing concern about the quality and recruiting practices of certain vocational schools. Previously, private vocational schools were not required by law to counsel potential students on the obligations those students incur when they sign enrollment contracts or apply for federal loans. Moreover, the schools were under no obligation to assess the skills of potential students to ensure they could complete the contemplated vocational program. Some schools recruited individuals entering welfare and unemployment offices, and some of those individuals signed enrollment contracts, applied for federal educational loans, and then, for various reasons, defaulted on those loans. Students who defaulted on federal educational loans denied themselves any further access to state or federal financial aid.

The 1990 enactment that addresses these issues amends several portions of existing Washington state statutes and cannot be presented here in the standard format. However, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes provisions of the act. Readers interested in the text should consult SSB 5545, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1399, for a copy of the complete text.

Basic Skills Assessment

The act requires the state commission for vocational education to adopt by rule certain standards for private vocational schools. Private vocational schools must assess the basic skills and relevant aptitudes of each prospective student to determine whether the student has the ability to complete his or her preferred program. The commission is required to develop guidelines for such assessments, and the method of assessment chosen by each school must be reported to the commission. Assessment records must be maintained in each student's file.

Student Obligation Disclosure

Private vocational schools must discuss with each prospective student his or her obligations in signing any enrollment contract and when incurring any debt for educational purposes. Any enrollment contract must have an attachment in a format provided by the commission that stipulates the school has complied with the act and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment, which must be signed by the school and the student, must also stipulate that the enrollment contract is not binding for at least five days, excluding Sundays and hol-
Private Vocational School Regulation Act

days, following signature of the enrollment contract by both parties.

Recruiting Restrictions

The act prohibits private vocational schools from advertising directly or by implication that the school is an employment agency. The schools also are prohibited from recruiting students in or within 40 feet of a building that contains a public assistance or unemployment office. Recruiting includes canvassing and surveying, but does not include leaving materials at or near an office or handing a brochure or leaflet to a person, provided that no attempt is made to obtain information to pursue the enrollment of the individual.
American Indian Endowed Scholarship Program Act

This act, based on 1990 Washington state legislation, establishes an endowed college scholarship program for American Indians, to be administered by the state's higher education coordinating board. It authorizes the creation of an American Indian endowed scholarship fund to be administered by the state treasurer. Monies received from the higher education coordinating board, private donations, state matching funds and other sources may be deposited into the fund.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the American Indian Endowed Scholarship Program Act.

2 Section 2. [Legislative Findings.] The legislature recognizes the benefit to our state and nation of providing equal educational opportunities for all races and nationalities. The legislature finds that American Indian students are underrepresented in [state's] colleges and universities. The legislature also finds that past discriminatory practices have resulted in this underrepresentation. Creating an endowed scholarship program to help American Indian students obtain a higher education will help to rectify past discrimination by providing a means and an incentive for American Indian students to pursue a higher education. The state will benefit from contributions made by American Indians who participate in a program of higher education.

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

4 (1) “Board” means the [state higher education coordinating board].

5 (2) “Eligible student” or “student” means an American Indian student as defined by the [board] in consultation with the [advisory committee] described in Section 5 of this act, who is a financially needy student, as defined in [insert citation for appropriate state statute], who is a resident student, as defined by [insert citation for appropriate state statute], who is a full-time student at an institution of higher education, and who promises to use his or her education to benefit other American Indians.

6 (3) “Institution of higher education” or “institution” means a college or university in the state of [state] which is accredited by an accrediting association recognized as such by rule of the [higher education coordinating board].

7 (4) “Private donations” means monies from nonstate sources that include, but are not limited to, [federal monies, tribal monies, and assess-
Section 4. [Establishment of American Indian Endowed Scholarship Program.] The American Indian endowed scholarship program is created. The program shall be administered by the higher education coordinating board. In administering the program, the board's powers and duties shall include, but not be limited to:

1. Selecting students to receive scholarships, with the assistance of a screening committee composed of persons involved in helping American Indian students to obtain a higher education. The membership of the committee may include, but is not limited to representatives of Indian tribes, urban Indians, the governor's office of Indian Affairs, the state Indian education association, and institutions of higher education;
2. Adopting necessary rules and guidelines;
3. Publicizing the program;
4. Accepting and depositing donations into the endowment fund created in Section 8 of this act;
5. Requesting and accepting from the state treasurer monies earned from the trust fund and the endowment fund created in Sections 7 and 8 of this act;
6. Soliciting and accepting grants and donations from public and private sources for the program; and
7. Naming scholarships in honor of those American Indians from the state who have acted as role models.

Section 5. [Establishment of Advisory Committee.] The higher education coordinating board shall establish an advisory committee to assist in program design and to develop criteria for the screening and selection of scholarship recipients. The committee shall be composed of representatives of the same groups as the screening committee described in Section 4 of this act. These criteria shall include a priority for upper-division or graduate students. The criteria may include a priority for students who are majoring in program areas in which expertise is needed by the state's American Indians.

Section 6. [Scholarship Awards.] The board may award scholarships to eligible students from monies earned from the endowment fund created in Section 8 of this act, or from funds appropriated to the board for this purpose, or from any private donations, or from any other funds given to the board for this program. For an undergraduate student, the amount of the scholarship shall not exceed the student's demonstrated financial need. For a graduate student, the amount of the scholarship shall not exceed the student's demonstrated need, or the stipend of a teaching assistant, including tuition, at the [insert state university], whichever is higher. In calculating a student's need, the board shall consider the student's costs for tuition, fees, books, supplies, transportation, room, board, personal expenses, and child care. The student's
Section 7. [Establishment of American Indian Endowed Scholarship Trust Fund] The American Indian endowed scholarship trust fund is established. The trust fund shall be administered by the state treasurer. Funds appropriated by the legislature for the trust fund shall be deposited into the fund. All monies deposited in the fund shall be invested by the state treasurer. Notwithstanding [insert citation for appropriate state statute], all earnings of investments of balances of the trust fund shall be credited to the fund. At the request of the [higher education coordinating board], and [insert other conditions that must be met], the treasurer shall deposit state matching monies in the trust fund into the American Indian endowment fund. No appropriation is required for expenditures from the trust fund.

Section 8. [Establishment of American Indian Scholarship Endowment Fund] The American Indian scholarship endowment fund is established. The endowment fund shall be administered by the state treasurer. Monies received from the [higher education coordinating board], private donations, state matching monies, and funds received from any other source may be deposited into the endowment fund. All monies deposited in the endowment fund shall be invested by the state treasurer. Notwithstanding [insert citation for appropriate state statute], all earnings of investments of balances of the endowment fund shall be credited to the endowment fund. At the request of the [higher education endowment board], the treasurer shall release earnings from the endowment fund to the [board] for scholarships. No appropriation is required for expenditures from the endowment fund.

The principal of the endowment fund shall not be invaded. The earnings on the fund shall be used solely for the purposes set forth in Section 6 of this act.

Section 9. [Effective Date] [Insert effective date.]
Exchange Student Placement Agency Licensing Act

This act, based on 1990 Washington state legislation, requires exchange (foreign) student placement agencies to be licensed pursuant to the provisions of the act and to maintain records on services provided to host families and students. It defines an exchange (foreign) student placement agency as a person, partnership, corporation or other entity that provides services to foreign students under the age of 21, for the purpose of allowing them the opportunity to study in the United States. Public educational institutions and approved private schools are exempt from the requirements.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Exchange Student Placement Agency Licensing Act.

Section 2. [Legislative Intent.] It is the intent of the legislature:

1. To protect the health, safety, and welfare of foreign students studying in [state];
2. To promote quality education and living experiences for foreign students living in [state];
3. To promote international awareness among [state] residents by encouraging [state] residents to interact with foreign students;
4. To encourage public confidence in exchange (foreign) student placement agencies; and
5. To encourage and assist with compliance with federal immigration regulations, United States information agency regulations, and nationally established guidelines.

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

1. “Department” means the [state department of licensing].
2. “Director” means the [director of the state department of licensing].
3. “Exchange student placement agency” means a foreign student placement agency.
4. “Foreign student placement agency” means a person, partnership, corporation, or other entity that provides services to foreign students under the age of [21] for the purpose, in whole or in part, of allowing the students an opportunity to study in the United States, but does not include:
5. Any nonprofit organization that does not charge an agency administrative fee for the foreign student services and that makes a suitable placement in the home of a member of the nonprofit organization.
Suggested State Legislation

or in a home well known to and recommended by the [president] of the nonprofit organization;
(ii) Any institution of higher education as defined in [insert citation for appropriate state statute];
(iii) Any postsecondary private institution which awards an associate of arts or bachelor of arts degree;
(iv) Any school which is a component of the [state common school system]; and
(v) Any approved private school, authorized by law to issue a high school diploma.

(5) “Student” means a foreign student instructed at a postsecondary education institution in [state] for [one academic quarter or more]; or a foreign student instructed at public or approved private secondary schools in [state] for [one-half an academic year or more].

(6) “Suitable placement” means placement of a foreign student with a host family or a school operated dormitory which provides a healthful and safe living environment, which provides adequate living space and an adequate diet for the student, which supports the educational goals of the student, and which does not require the student to provide services in exchange for the placement.

Section 4. [Prohibition Against Agency Operation Without License] It shall be unlawful for any person or other entity to operate in this state as a foreign student placement agency, unless the agency is licensed pursuant to the provisions of this act.

Section 5. [Agency Obligations and Records Maintenance]
(a) Each foreign student placement agency shall have the following obligations and shall keep records in [state] of services rendered to host families and students. The records and obligations shall include:
(1) The name, home address, and telephone number of the student to whom services are provided or promised;
(2) A statement that in the judgment of the placement agency each student placed in a publicly supported educational institution has sufficient English language capabilities to benefit from the educational program;
(3) The name, address, and phone number of the host family with whom the student is placed, which shall be on file at least [seven] days prior to the student’s arrival in the state of [state];
(4) The amount of the foreign student placement agency’s fee or fees charged to a student by the American and the international organization and an itemization of the services attributable to individual portions of the fee or fees;
(5) A complete copy of any written agreements entered into between the agency and students and the host families which must include a signed agreement from the host family to provide a suitable placement;
(6) Proof of health and accident insurance policies which are in force in the state of [state] for the appropriate period for each student; and
(7) Copies of visas and other federal documents required for the students to remain in the United States.
Placement Agency Licensing Act

(b) Unless otherwise provided by the rules adopted by the [director],
the records shall be maintained for a period of [one] year from the date
on which the student arrives in the state. For purposes of investigating
a complaint or otherwise assuring compliance with this act and rules
adopted thereunder, the records shall be subject to inspection by the
[department] at the place at which they are kept, upon at least [three]
days written notice.

Section 6. [Informational Document.] A foreign student placement
agency shall provide each student and host family with an informational
document regarding the agency services, in English, which shall have
printed on it or attached to it a copy of this act and shall contain at mini-
mum the following:
(1) The name, address, and telephone number of the foreign student
placement agency, including an emergency telephone hot-line availa-
ble [24] hours a day, which is regularly answered by agency staff or
representatives, or a live answering service, which can page agency staff
[24] hours a day, and the telephone number of the appropriate [division
within the state department of licensing];
(2) Trade name of the foreign student placement agency, if any;
(3) The amount of the fee to be charged the student, and an itemiza-
tion of the services attributed to individual portions of the fee or the
method of computation of the fee, and the time and method of payments;
(4) The name and address of the financial institution in which the trust
account required in Section 12 of this act will be deposited;
(5) The name, address, and phone number of the carriers providing in-
surance coverage as provided in Section 5(aX6) of this act; and
(6) The name, address, and phone number of the agency representa-
tive located nearest to the host family.

Section 7. [Director’s Duties and Powers.]
(a) The [director] shall administer this act and shall adopt rules for en-
forcing and carrying out this act.
(b) The [director] shall appoint an [advisory committee] composed of
representatives from foreign student placement agencies, United States
immigration and naturalization service, [office of the superintendent of
public instruction], host parents, foreign students, resident students,
representatives of public and private high schools and institutions of
postsecondary education. These individuals shall advise the [director]
on implementation of this act, including development of rules. The mem-
ers shall serve at the discretion of the [director].
(c) The [director] shall have supervisory and investigative authority
over all foreign student placement agencies.
(d) The [director] may investigate the individuals responsible for
screening and selecting host families and determining suitable place-
ment in terms of their suitability and competence to perform these
duties.
(e) The [director] shall have the power to compel the attendance of wit-
nesses and the production of documents by the issuance of subpoenas,
to administer oaths, and to take testimony and proofs concerning all mat-
ters pertaining to the administration of this act.
(f) Upon receipt of a complaint, the [director] may investigate the liv-
ing conditions and circumstances of the student. Persons authorized to
conduct the investigation must be determined by the [department] to
be competent to conduct such investigation. The investigation may in-
clude a criminal background check.
(g) All records and other information received or compiled by the
[department] in the investigation of a complaint, including the complaint
itself, shall be exempt from public inspection and copying pursuant to
[insert citation for appropriate state statute.]

Section 8. [Application for License]
(a) Every applicant for a foreign student placement agency license shall
file with the [director] a written application stating:
(1) The name, address, and phone numbers of the applicant;
(2) The street and number of the building in which the business of
the agency is to be conducted;
(3) The name and phone number of the person who is to have the
general management of the agency;
(4) The name under which the business of the agency is to be car-
ried on;
(5) The name, address, phone number, and occupation or employer
of anyone holding over [20] percent interest in the agency;
(6) The name, address, and phone numbers and occupation or em-
ployer of the officers and directors of the agency, which shall be signed
and sworn to by the [president and secretary of the corporation];
(7) Business relationships with organizations in which officers, board
members, or agency employees have a financial interest;
(8) A unified business identifier number;
(9) The type or types of immigration visas used to bring students to
the United States;
(10) A student orientation procedure;
(11) The names and addresses of all partners of the business, which
shall be signed and sworn to by all of them, and which shall also state
whether or not the applicant is, at the time of making the application,
or has at any previous time been, engaged in or interested in or employed
by anyone engaged in the business of a foreign student placement
agency;
(12) The applicant accepts responsibility for assuring suitable place-
ments for all students;
(13) The applicant accepts responsibility for meeting the responsi-
bilities to students that are advertised in agency brochures or other ad-
vertisements;
(14) The applicant accepts responsibility for arranging suitable as-
sistance to students upon their arrival and departure from the state;
(15) The applicant has in place a dispute resolution mechanism that
allows for both students and host families to express their views to the
Placement Agency Licensing Act

placement agency as it makes decisions about the suitability of placement of a student;

(16) The name, address, and qualifications of the individuals responsible for screening host families and determining suitable placement;

and

(17) The address at which the records required by Section 5 of this act are or will be kept.

The application shall be signed by the applicant and sworn to before a notary public.

(b) The [director] shall establish a renewal procedure whereby the licensee shall only be required to update information provided in the original license application.

(c) The application shall require disclosure of any officer, manager, or holder of more than [20] percent interest in the business who has been convicted of a crime involving moral turpitude, dishonesty, or corruption relating to the conduct of a foreign student placement agency or has had any judgment entered against such person in any civil action involving fraud, misrepresentation, or conversion.

(d) The application shall contain a copy of the articles of incorporation or partnership agreement covering the agency.

(e) All applications for foreign student placement agency licenses shall be accompanied by a copy of the form of any agreement and fee schedule to be used between the agency and students or host families.

(f) All applications shall be accompanied by [one] copy each of all promotional materials and advertisements used in recruiting students.

(g) An organization which sets standards for high quality international educational travel and monitors compliance with those standards may be authorized by an agency to submit a license application on behalf of the agency. However, the agency on whose behalf a license is sought shall certify in writing the accuracy of the information submitted on its behalf. The [director] shall develop rules for considering the eligibility of such organizations for this application procedure.

Section 9. [Expiration of License] A foreign student placement agency license shall expire [insert date] of each year. A license shall not be issued upon application for reinstatement until all fees and penalties previously accrued under this act have been paid.

Section 10. [Non-transferability of License] A license granted under this act is not transferable. A foreign student placement agency shall not permit any person not mentioned in the license application to become connected with the business as an owner, member, or officer without notifying the [director] and modifying the license application.

Section 11. [Fees] The [director] shall determine the fee to be charged for original applications, renewals, and late renewals. The fees shall be set at a level sufficient to recover the costs of administering this act. The [director] may establish a sliding fee scale based on the number of students placed in [state].
Section 12. [Trust Account.] A separate trust account shall be established and maintained by each license applicant or licensee for all funds to be disbursed to students or host families. The [director] shall have the authority to examine financial records in such trust accounts. The trust account shall be established and administered pursuant to rules promulgated by the [director].

Section 13. [Denial, Suspension, Revocation of License.] In accordance with [insert citation for appropriate state statute], the [director] may by order deny, suspend, or revoke the license of any foreign student placement agency if he or she finds that the applicant or licensee or any director or officer or individual managing a program in [state]:

1. Was previously the holder of a license issued under this act, which was revoked for cause and never reissued by the [director], or which license was suspended for cause and the terms of the suspension have not been fulfilled;
2. Has been found guilty of any crime involving moral turpitude, dishonesty, or corruption relating to the conduct of a foreign student placement agency or has had any judgment entered against such person in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence is suspended or deferred. Nothing in this section abrogates rights granted under [insert citation for appropriate state statute];
3. Has made a false statement of a material fact in his or her application or in any data attached to the application;
4. Fails to provide a suitable placement for a foreign student with whom the agency has contracted for services unless the contract is terminated pursuant to the contractual agreement of the student and the agency;
5. Has violated any provisions of this act, or failed to comply with any rule or regulation issued by the [director] pursuant to this act;
6. Has violated any requirement of federal law pertaining to students, including but not limited to immigration requirements;
7. Fails to provide a promised or agreed upon airline ticket for the student’s return to his or her home country;
8. Has failed to make a good faith effort to assure the student’s safe and timely departure from the United States; or
9. Fails to maintain records as required in Section 5 of this act.

Section 14. [Penalties.]
(a) The [director] may refer evidence as may be available to the [director] concerning violations of this act or of any rule adopted under this act to the attorney general or the [prosecuting attorney of the county] in which the alleged violation arose. The attorney general or [prosecuting attorney] may, in his or her discretion, with or without the reference and in addition to any other action that might be commenced, bring an action in the name of the state against any person to restrain the doing
of any act or practice prohibited by this act. This act shall be considered
in conjunction with [insert citation for appropriate state statute] and the
powers and duties of the attorney general and the [prosecuting attorney]
as provided in [insert citation for appropriate state statute] shall apply
against all persons subject to this act.

(b) In the enforcement of this act, the attorney general or [prosecut-
ing attorney] may accept an assurance of discontinuance from a person
deemed in violation of this act. The assurance shall be in writing and
shall be filed with and subject to the approval of the [insert court of the
county] in which the alleged violator resides or has the principal place
of business.

(c) Any person who violates the terms of any court order or temporary
or permanent injunction issued under this act, shall be subject to a civ-
il penalty of not more than [insert amount] dollars per violation. For the
purpose of this section, the [insert court] issuing an injunction shall re-
tain continuing jurisdiction and the attorney general or the [prosecut-
ing attorney] acting in the name of the state may petition for the recov-
ery of civil penalties.

(d) The [director] may refer evidence as maybe available to the [direc-
tor] concerning violations of this act or of any rule adopted under this
chapter to the United States immigration and naturalization service,
the United States internal revenue service, or other federal law enforce-
ment agencies.

Section 15. [Reassignment of Students.] The [director] shall reassign
students from an agency whose license is suspended or revoked prior to
a student's departure from [state]. The [director] shall reassign students
to an appropriate licensed agency, subject to the agreement of the receiv-
ing agency.

Section 16. [Cause of Action.]
(a) A foreign student placement agency may not bring or maintain a
cause of action in any court of this state for compensation for, or seek-
ing equitable relief in regard to, services rendered to students or host
families unless the agency alleges and proves that at the time of ren-
dering the services or contracting for the services, it was validly licensed
under this act.

(b) Any person who gives consideration of any kind to any foreign stu-
dent placement agency for the placement of foreign students in this state
when the agency is not validly licensed under this act shall have a cause
of action against the agency. Any court having jurisdiction may enter
judgment for [treble] the amount of the consideration paid, plus reason-
able attorneys' fees and costs.

Section 17. The legislature finds and declares that any violation of this
act substantially affects the public interest and is an unfair and decept-
ive act or practice and unfair method of competition in the conduct of
trade or commerce as set forth in [insert citation for appropriate state
statute].
Suggested State Legislation

1 Section 18. It is a gross [insert offense] for any person to operate a foreign student placement agency in this state unless he or she is licensed as required by this act.

1 Section 19. [Effective Date] [Insert effective date.]
Stop Payment Orders for Cashier’s, Teller’s or Certified Checks

This act, based on 1990 New York legislation, limits the burden placed on a customer if a certified check, cashier’s check or teller’s check is lost, destroyed or stolen. Previously, a customer would have to post a bond for twice the amount of the item in order to either obtain a replacement check or to recover the funds. If a customer was unable to post a bond or provide the necessary collateral, the funds could not be recovered for at least six years because of the statute of limitations.

The legislation amends sections of the Uniform Commercial Code (UCC) to provide that 90 days after an item is issued or certified, a customer may order a bank to stop payment on the certified, cashier’s or teller’s check, and subsequently recover the funds. The item, if ever presented, would be treated as a regular check.

Readers will want to note the various ways in which the act amends the UCC: defines “obligated bank” and “remitter”; adds a new subsection providing that 90 days after the item is issued or certified, a customer may order a bank to stop payment on the affected check; and adds a new section on the rights and liabilities of the remitter or payee regarding the affected check (see Section 4 in the draft act presented below.)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [Stop Payment Orders for Cashier’s, Teller’s or Certified Checks] Act.

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

1. “Obligated bank” means the acceptor of a certified check, the issuer of a cashier’s check, or the drawer of a teller’s check.
2. “Remitter” means the buyer from the obligated bank of a cashier’s check or a teller’s check, and the drawer of a certified check.

Section 3. [Stop Payment Order.]

1. A remitter or payee of a cashier’s check or certified check may by order to the obligated bank stop payment of such a check, and a remitter or payee of a teller’s check may order the obligated bank to order the payor bank to stop payment of such a check, at any time after [90] days from the date of issuance of either a cashier’s check or teller’s check, and date of certification of a certified check. The stop payment is effective if either the remitter or payee delivers to the obligated bank at a time and in a manner affording a reasonable opportunity to act before any of the following actions are taken:

1. A written order to stop payment, which shall describe the item
Suggested State Legislation

with reasonable certainty, and
(2) An affidavit of the remitter or payee containing an averment that
the check was destroyed, its whereabouts cannot be determined, or it
is in the wrongful possession of an unknown person or a person that can-
not be found or is not amenable to service of process.
(b) The burden of establishing the fact and amount of loss resulting
from the payment of an item contrary to a binding stop payment order
is on the customer, remitter or payee.

Section 4. [Rights and Liabilities of Remitter or Payee With Respect to
Cashier’s Check, Teller’s Check and Certified Check.]
(a) This section applies if a cashier’s check, teller’s check or certified
check is not presented for payment on or before [90] days from the date
of issuance of a cashier’s check or teller’s check, or the date of certifica-
tion of a certified check.
(b) The remitter or payee that causes payment of a cashier’s check,
teller’s check or certified check to be stopped pursuant to Section 3(a)
of this act engages that upon dishonor of the check and any necessary
notice of dishonor he will pay, subject to defenses, the amount of the check
to any subsequent holder or indorser who takes it up.
(c) When a stop payment order pursuant to Section 3(a) becomes effec-
tive the obligated bank shall refund the amount of the item to the remit-
ter or payee that issued the stop payment order, and shall have no fur-
ther liability on the item.

Section 5. [Effective Date] [Insert effective date.]
Funds Transfers Act (Statement)

Uniform Commercial Code, Article 4A — Funds Transfers
A Draft Act of the National Conference of Commissioners on Uniform State Laws

The Funds Transfers Act is Article 4A of the Uniform Commercial Code and was drafted in 1989 by the National Conference of Commissioners on Uniform State Laws. Article 4A focuses upon funds transfers and is an amendment to the Uniform Commercial Code.

There are many mechanisms for making payments through banks, including checks and credit cards. Payment by check is covered under Articles 3 and 4 of the Uniform Commercial Code and some aspects of payment by credit card are covered under federal law.

Electronic transfers of funds have become increasingly common in recent years as a substitute to paper transactions. Article 4A focuses primarily upon wholesale wire transfers. These funds transfers are large payment orders among businesses or banking institutions. Article 4A was drafted in part because of the increasing volume of funds being exchanged by wire transfer. Wholesale fund transfers by wire over the two principal wire payment systems, the Federal Reserve wire transfer network (Fedwire) and the New York Clearing House Interbank Payments Systems (CHIPS), now average $1 trillion per day, as opposed to a $300 million per day average five years ago. Other than network rules, there is no law governing these transfers. Although governable by contract, the time constraints upon individual transactions usually preclude negotiation of a contract. Article 4A is designed to provide the comprehensive body of law governing wire transfers which does not exist today.

Funds transfers generally involve a large amount of money, averaging $5 million per transfer. The participants in transactions are usually businesses or financial organizations. Funds transfers are usually high speed transactions completed within minutes, and the transactions themselves are usually low cost endeavors, with multi-million dollar transactions costing only a few dollars.

Article 4A is designed to determine how risk of loss in wire transfer transactions is to be allocated if: a payment is not received because of insolvency; a payment order is not executed or is executed late; there is an error in the payment order with regard to amount paid or the naming of the entity to be paid. Because the payments are commonly very large, the risk of loss is also large.

The act defines payment order as an instruction of a sender to a receiving bank — transmitted orally, electronically or in writing — to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary when: (i) the instruction does not state a condition to payment to the beneficiary other than time of payment; (ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from the sender; and (iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system or communication system for transmittal to the receiving bank. Article 4A establishes procedures for the issuance and accep-
Suggested State Legislation

A fund transfer is defined as a series of transactions, beginning with the originator's payment order, for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A fund transfer is completed by the beneficiary bank's acceptance of a payment order for the benefit of the beneficiary of the originator's payment order.

Consumer funds transfers are governed by the Electronic Fund Transfers Act of 1978 (EFTA), which preempts state law on the subject. Article 4A expressly excepts transactions subject to EFTA. Article 4A also recognizes, by express reference, the preemptive effect of Federal Reserve Board regulations and operating circulars of the Federal Reserve Banks.

For further information or copies of the full draft of Article 4A — Funds Transfers, contact John McCabe, National Conference of Commissioners on Uniform State Laws, 676 North Saint Clair Street, Suite 1700, Chicago, Illinois 60611, (312) 915-0195.
Collateral Pool for Public Deposits Act

This act, based on 1990 Tennessee legislation, permits any public depository to apply for permission to participate in a collateral pool to secure all public deposits. Every qualified public depository shall deposit with the state treasurer collateral equal to or in excess of the required collateral of the depository. Under this act, a public depository is defined as any bank, savings and loan association or savings bank located in the state, which has been designated to hold public deposits by a public depositor, including the state or any of its subdivisions.

The act assures that any bank or savings and loan designated as a qualified public depository guarantees public depositors against loss caused by default or insolvency of other depositories within the pool.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Collateral Pool for Public Deposits Act.

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

1. “Average daily balance” means the average daily balance of public deposits held during the calendar month immediately preceding the current month. The average daily balance must be determined by totaling the daily balances in excess of any applicable deposit insurance held by the depositor and then dividing the totals by the number of calendar days in the month.

2. “Average monthly balance” means the average monthly balance of public deposits held by the depository during any 12 calendar months. The average monthly balance of the previous 12 calendar months must be determined by adding the average daily balance for the calendar month immediately preceding the current month and the average daily balances for the 11 months preceding that month and dividing the total by 12.

3. “Collateral pool” means an arrangement whereby the repayment of public deposits deposited with any qualified public depository are secured through the sum total of eligible collateral pledged by all qualified public depositories within the same collateral pool, and contingent liability agreements as provided by the appropriate collateral pool board;

4. “Board,” for banks, means the [bank collateral pool board] created pursuant to Section 6 of this act, and for savings institutions, means the [savings institution collateral pool board] created pursuant to Section 7 of this act.

5. “Collateral-pledging levels,” for a qualified public depository, means that level of collateral determined to be required to be pledged by the
Suggested State Legislation

appropriate [collateral pool board].

(6) "Default" may include but is not limited to:

(i) The failure of any qualified public depository to return any public deposit, including earned interest in accordance with the terms of the deposit contract;

(ii) The failure of any qualified public depository to pay any properly payable check, draft or warrant drawn by the public depository;

(iii) The failure of any qualified public depository to honor any valid request for electronic transfer of funds;

(iv) The failure of any qualified public depository to account for any check, draft, warrant, order, deposit certificate or money entrusted to it;

(v) The issuance of any order of any court or the taking of any formal action by any supervisory authority, which has the effect of restraining a qualified public depository from making payments of deposit liabilities;

(vi) The appointment of a conservator or receiver for a qualified public depository; or

(vii) Any other action which the treasurer determines to place public deposits in jeopardy.

(viii) Failure to provide the required collateral as established by the board.

(7) "Deposit insurance" means the insurance provided by the federal deposit insurance corporation.

(8) "Depository pledge agreement" means the contract between the treasurer, a qualified public depository, and a trustee custodian providing for the pledge and deposit of collateral, and other provisions determined by the treasurer;

(9) "Eligible collateral" shall have the meaning set forth in [insert citation for appropriate state statute]. For savings institutions securing local government deposits, eligible collateral shall also include securities described in [insert citation for appropriate state statute] under such additional conditions as the treasurer deems appropriate.

(10) "Loss" includes but is not limited to:

(i) The principal amount of the public deposit;

(ii) All accrued interest through the date of default;

(iii) Additional interest at the rate the public deposit was earning on the total of subparagraphs (i) and (ii) through the date of payment by a liquidator or other third party or through the date of sale of eligible collateral by the treasurer or his agent; and

(iv) Attorney's fees incurred in recovering public deposits.

(11) "Public deposit" shall have the same meaning as "public funds" as set forth in [insert citation for appropriate state statute].

(12) "Public deposit security trust fund" or the "fund" means the fund created pursuant to Section 14 of this act;

(13) "Public depositor" means the state of [state], or any of its agencies, or any county, [state] incorporated municipality and their political subdivisions, or any utility district organized under the laws of the state of [state] or any interstate compact to which the state of [state] is a party.
Collateral Pool for Public Deposits Act

(14) “Public depository” means any bank, savings and loan association or savings bank (collectively referred to as savings institutions) located in the state of [state] which is under the supervision of the [state department of financial institutions], the United States comptroller of the currency, or the [office of thrift supervision] and which has been appropriately designated to hold public deposits by a public depositor.

(15) “Required collateral” of a qualified public depository means eligible collateral, excluding accrued interest, having a market value equal to or in excess of the greater of the average daily balance or average monthly balance of public deposits multiplied by the qualified public depository’s collateral-pledging level as determined by the [board].

(16) “Task force” shall mean the [security for public deposits task force] created pursuant to Section 21 of this act.

(17) “Treasurer” means the treasurer of the state of [state].

(18) “Trustee custodian” means a financial institution designated to hold eligible collateral on behalf of the treasurer and a qualified public depository pursuant to [insert citation for appropriate state statute].

(19) “Qualified public depository” means any public depository that meets all of the requirements of this act and that has been authorized by the appropriate [board] to secure public deposits through a collateral pool.

Section 3. [Application for Participation in Collateral Pool.]

(a) Any public depository which holds public deposits may apply to the [board] for permission to participate in a collateral pool to secure all public deposits at such public depository.

(b) An application submitted pursuant to this act is subject to the approval of the appropriate [board]. The [board] shall set the number of votes required for the approval of such applications.

(c) The appropriate [board] may require such information regarding the financial condition of the public depository as the [board] deems necessary for determining the suitability of that depository to participate in a collateral pool. Prior to participation in the applicable collateral pool, a qualified public depository shall execute a depository pledge agreement.

Section 4. [Collateral for Public Deposits.]

(a) Every qualified public depository shall deposit with the treasurer eligible collateral equal to or in excess of the required collateral of the depository. Each qualified public depository shall calculate monthly the amount of its required collateral based upon notice of its collateral-pledging level from the appropriate [board].

(b) A qualified public depository shall maintain required collateral to secure public deposits. Provided, a qualified public depository which accepts any public deposit that would increase its required collateral by 25 percent shall deposit additional eligible collateral to secure such increase within [two] business days of the deposit.

(c) Upon approval to participate in a collateral pool, a qualified public depository may secure public deposits through the collateral pool.
(d) A qualified public depository shall notify its public depositors that all their public deposits are secured through a collateral pool as provided in this act. The notification shall be made at the time the public depository is admitted to a collateral pool, or when an account is established by a public depositor with the qualified public depository. A qualified public depository must notify its public depositors of any change in the manner collateral is held. Notice to public depositors under this section shall constitute the mailing of the appropriate information to the individual indicated on the account authorization.

(e) A qualified public depository shall carry in its accounting records a general ledger or other appropriate account of all public deposits to be secured through the collateral pool and the total value of eligible collateral pledged to secure such deposits.

Section 5. [Custodians.]

(a) Upon being designated as a qualified public depository, the qualified public depository shall select [one or more] trustee custodians for the deposit of eligible collateral by the qualified public depository.

(b) Designation of trustee custodians shall be made in accordance with the provisions of [insert citation for appropriate state statute].

(c) The provisions contained in [insert citations for appropriate state statutes] shall apply to trustee custodians designated under this act.

(d) Trustee custodians shall submit a report [quarterly] to the treasurer providing a description of eligible collateral securities deposited by the qualified public depository and the current par value of eligible collateral as well as other reasonable reports requested by the treasurer.

(e) Neither the state, the treasurer, nor the collateral pool shall be liable to either the qualified public depository or the public depositors for eligible collateral deposited with or held by any trustee custodian for any loss arising from any breach of the trust or from any other cause whatsoever.

Section 6. [Bank Collateral Pool Board.]

(a) There is hereby created a bank collateral pool board composed of [seven] members. [Two of the members shall be the state commissioner of financial institutions and the state treasurer. The state bankers' association board of directors shall appoint [one] member to represent banks with assets of [500,000,000 dollars or more], [one] member to represent banks with assets of [less than 500,000,000 dollars] and [two] members at large. The [security for public deposits task force] shall appoint [one] member in accordance with Section 21(c) of this act].

(b) Initially, [three] members shall be appointed for a term of [one] year, [one] of whom shall be the member appointed by the [security for public deposits task force]. The remaining [two] members shall be appointed for a term of [two] years. Upon expiration of these terms, members shall be appointed thereafter for [two]-year terms. Any member is eligible for reappointment and shall serve until a successor qualifies. The [board] shall annually elect from its membership a chair and a vice-chair and shall designate a secretary who need not be a member of the [board]. The
Collateral Pool for Public Deposits Act

Section 7. [Savings Institution Collateral Pool Board.]
(a) There is hereby created a [savings institution collateral pool board] composed of [seven] members. [Two of the members shall be the commissioner of financial institutions and the state treasurer. The state league of savings institutions board of directors shall appoint [four] members, and the security for public deposits task force shall appoint [one] member in accordance with Section 21(c) of this act].

(b) Initially, [three] members shall be appointed for a term of [one] year, [one] of whom shall be the member appointed by the [security for public deposits task force]. The remaining [two] members shall be appointed for a term of [two] years. Upon expiration of these terms, members shall be appointed thereafter for [two]-year terms. Any member is eligible for reappointment and shall serve until a successor qualifies. The [board] shall annually elect from its membership a chair and a vice-chair and shall designate a secretary who need not be a member of the [board]. The secretary shall keep a record of the proceedings of the [board] and shall be the custodian of all printed materials filed with or by the [board]. Notwithstanding the existence of vacancies on the [board], a majority of the members constitutes a quorum and the [board] may not take official action in the absence of a quorum. The [board] shall convene as needed.

(c) If a vacancy occurs in the position of any appointed member, the original appointing authority shall fill the position for the remainder of the unexpired term.

(d) A member of a [board] shall receive no compensation for service on the [board], but a member of the [board] shall be reimbursed for the member's travel expenses in accordance with the comprehensive travel regulations promulgated by the [department of finance and administration and approved by the attorney general].

(e) The [board] shall be attached for administrative purposes to the [state department of treasury].

Section 8. [Duties and Powers of Boards.] Each [collateral pool board] shall have the following powers together with all powers incidental there-
Suggested State Legislation

3 to or necessary for the performance of those thereinafter stated:
4 (1) Establish criteria, as may be necessary, to:
5 (i) Approve entry into the collateral pool by a public depository;
6 (ii) Order discontinuance of participation in the program by a qual-
7 fied public depository;
8 (iii) Restrict the total amount of public deposits a public depository
9 may hold;
10 (iv) Establish collateral-pledging levels based on qualitative and
11 quantitative standards; and
12 (v) Suspend or disqualify, or disqualify after suspension, any qualifi-
13 fied public depository that has violated any of the provisions of this act
14 or of rules adopted hereunder. Any public depository that is suspended
15 or disqualified pursuant to this paragraph is subject to the provisions
16 of Section 17 of this act governing withdrawal from the public deposit
security program and return of pledged collateral.
18 (2) If the [board] has reason to believe that any qualified public deposi-
tory or any other financial institution holding public deposits is or has
been violating any of the provisions of this act or of rules adopted here-
under, it may issue to the qualified public depository or other financial
institution an order to cease and desist from the violation or to correct
the condition giving rise to or resulting from the violation. The [board]
may suspend or disqualify any qualified public depository for violation
of any order issued pursuant to this paragraph.
20 (3) Establish a minimum amount of required collateral to provide for
the contingent liability.
22 (4) Review administration of the pools by the treasurer and prepare
an annual report on the condition of the pools.
24 (5) The [board] may, at its discretion, require every qualified public
depository to pay on a periodic basis an operating fee as may be set by
the [board].
26 (6) The [board] upon a unanimous vote may terminate the applicable
collateral pool. The [board] shall establish a date for such termination,
and provide for the withdrawal of all participating qualified public
depositories.
28 (7) The [board] upon a unanimous vote may terminate the applicable
collateral pool. The [board] shall establish a date for such termination,
and provide for the withdrawal of all participating qualified public
depositories.
30 (8) The [board] upon [six] affirmative votes may promulgate reason-
able substantive and procedural rules as are necessary to carry out the
purpose and intent of this act. Such rules shall be adopted pursuant to
the [insert citation for state's administrative procedures act].
32 (9) The [board] may delegate any of its powers herein conferred to the
state treasurer.

Section 9. [Administrative Procedures.] The provisions of the [insert
citation for state's administrative procedures act], shall govern all mat-
ters and procedures respecting the hearing and judicial review of any
contested case, as defined therein, arising under this act.

132
Section 10. [Mutual Responsibility.] Any bank or savings institution that is designated as a qualified public depository shall guarantee public depositors against loss caused by the default or insolvency of other qualified public depositories within the same pool as provided in Section 12 of this act. The treasurer shall maintain separate and totally independent contingent liability agreements; one such agreement exclusively for banks and another exclusively for savings institutions.

Section 11. [Powers of the Treasurer.] In fulfilling the requirements of this act, the treasurer has the power to:

1. Require such collateral, or increase the collateral-pledging level, of any qualified public depository as may be necessary to administer the provisions of this act and to protect the integrity of the collateral pools as directed by the [board].
2. Decline to accept, or reduce the reported value of, collateral as circumstances may require in order to ensure the pledging of sufficient marketable collateral to meet the purposes of this act.
3. Verify the reports of any qualified public depository relating to public deposits it holds when necessary to protect the integrity of the collateral pool.
4. Sell pledged securities, or move pledged securities to an account established in the treasurer's name, for the purpose of paying losses to public depositors not covered by deposit insurance or to perfect the treasurer's interest in the pledged securities.
5. Transfer funds directly from the trustee custodian to public depositors or the receiver in order to facilitate prompt payment of claims.
6. Provide data as may be necessary to assist the [boards] in developing standards and criteria for the program.
7. Review, implement, monitor, evaluate, and modify, as needed, all or any part of the standards and policies recommended by the [board].
8. Confirm public deposits, to the extent possible under current law, when needed.
9. Monitor and confirm, as often as deemed necessary by the treasurer, the pledged collateral held by trustee custodians.
10. Audit or verify the reports under this act or under rules adopted hereunder.
11. Maintain perpetual inventory of pledged collateral and perform monthly market valuations and quality ratings.
12. Perform financial analysis of all qualified public depositories.
13. Perfect interest in pledged collateral by having pledged securities moved into an account established in the treasurer's name. This action shall be taken at the discretion of the treasurer.
14. Promulgate necessary substantive and procedural rules for administration of the program.

Section 12. [Procedure for Payment of Losses.] When the treasurer determines that a default or insolvency has occurred, he shall provide notice as required in Section 13 of this act and implement the following procedures:
Suggested State Legislation

(1) The treasurer, in cooperation with the [state commissioner of financial institutions], the appropriate federal regulator, or the conservator or receiver of the qualified public depository in default, shall ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits.

(2) The potential loss to public depositors shall be calculated by compiling claims received from such depositors. Such claims shall be validated by the treasurer. The loss to public depositors shall be satisfied, insofar as possible, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting depository.

(3) If the loss to public depositors is not covered by such insurance or the proceeds of such sale, the treasurer shall provide coverage of the remaining loss by assessment against the other qualified public depositories within the same pool as the depository in default. However, if the sale of securities cannot be accomplished within [seven] business days the treasurer may proceed with the assessment to qualified public depositories. Such assessment shall be determined by multiplying the total amount of the loss to all public depositors by a percentage which represents the average share of public fund deposits held by that depository during the previous [12] months divided by the average total public deposits held by all depositories within the same pool during the same [12]-month period, excluding the public deposits of the defaulting depository.

(4) Each qualified public depository shall pay its assessment to the treasurer within [seven] business days after it receives notice of the assessment. If a depository fails to pay its assessment when due, the treasurer shall satisfy the assessment by selling securities pledged by that depository.

(5) The treasurer shall distribute the funds to the public depositors of the depository in default according to their validated claims.

(6) Public depositors receiving payment under the provisions of this section shall assign to the treasurer any interest they may have in funds that may subsequently be made available to the qualified public depository in default. If the qualified public depository in default or its receiver provides the funds to the treasurer, the treasurer shall distribute the funds, plus all accrued interest which has accumulated from the investment of the funds, if any, to the depositories which paid assessments on the same pro rata basis as the assessments were paid.

Section 13. [Notice to Claimants.]

(a) Within [30] days after the date of default or insolvency of a qualified public depository, the treasurer shall publish or cause to be published notice of such default or insolvency once a week for [two] consecutive weeks, in a newspaper of general circulation in [each grand division of the state and in the state administrative register]. The notice shall direct all public depositors having claims or demands against the public deposit security trust fund occasioned by the default or insolvency to file their claims with the treasurer within [90] days after the date of the first publication of the notice.
(b) No claim against the public deposit security trust fund is binding on the fund unless presented within [90] days after the date of the first publication of the notice.

(c) This section does not affect any proceeding to:

(1) Enforce any real property mortgage, chattel mortgage, security interest, or other lien on property of a qualified public depository that is in default, or insolvency; or

(2) Establish liability of a qualified public depository that is in default or insolvency to the limits of any federal or other casualty insurance protection.

Section 14. [Public Deposit Security Trust Fund]

(a) In order to facilitate the administration of this act, there is created the [public deposit security trust fund], hereafter in this section designated the “fund.” The fund shall be composed of securities pledged as collateral from any defaulting institution, proceeds from the sale of such securities, or from any assessment.

(b) The treasurer is authorized to pay any loss to public depositors from the fund, and there are hereby appropriated from the fund such sums as may be necessary from time to time to pay the losses.

Any money in the fund estimated not to be needed for immediate cash requirements shall be invested pursuant to [insert citation for appropriate state statute].

Section 15. [Effect of Merger or Acquisition; Change of Name or Address]

(a) In the event a qualified public depository not in default is merged into, acquired by, or consolidated with a bank or savings institution that is not a qualified public depository, the resulting institution shall become a qualified public depository, and the contingent liability of the former institution shall be a liability of the resulting institution. Within [30] days after the effective date of the merger, acquisition, or consolidation, the resulting institution shall execute in its own name and deliver to the treasurer the contingent liability agreement required by Section 10 of this act. If the resulting institution chooses not to remain a qualified public depository, it shall comply with the procedures for withdrawal from the collateral pool as provided in Section 16 of this act.

(b) The qualified public depository shall notify the treasurer of any acquisition or merger within [three] days after the final approval of the acquisition or merger by its appropriate regulator.

(c) Collateral subject to a depository pledge agreement may not be released by the treasurer or the custodian until the assumed liability is evidenced by the deposit of collateral pursuant to the depository pledge agreement of the successor entity. The reporting requirement and pledge of collateral will remain in force until the treasurer determines that the liability no longer exists. The surviving or new qualified public depository shall be responsible and liable for all of the liabilities and obligations of each qualified public depository merged with or acquired by it.

(d) Each qualified public depository shall report any change of name
Suggested State Legislation

Section 16. [Voluntary Withdrawal From Collateral Pool.]
(a) A qualified public depository may withdraw from the collateral pool by giving written notice to the treasurer and to the public depositors having public deposits at the qualified public depository.
(b) Notice of withdrawal shall be mailed or delivered in sufficient time to be received by the treasurer and by the public depositors at least [180] days before the effective date of withdrawal. The treasurer shall timely publish the withdrawal notice in the [state administrative register] which shall constitute notice to all depositors. On the effective date of withdrawal, the treasurer is authorized to transfer eligible collateral as jointly directed by the public depository and public depositors to ensure that public depositors are adequately collateralized individually.
(c) The contingent liability for any loss prior to the effective date of withdrawal of the depository withdrawing from the collateral pool shall continue after the effective date of the withdrawal. The [board] may establish minimum collateral and reporting requirements sufficient to meet the needs to satisfy and potential contingent liability of a withdrawing qualified public depository.

Section 17. [Mandatory Withdrawal From Collateral Pool.]
(a) A qualified public depository shall be required to withdraw upon a majority vote of the [board]. The [board] may vote to require a qualified public depository to withdraw upon a default by the qualified public depository, or upon the failure of the qualified public depository to meet the eligibility or pledging criteria established by the [board]. The [board] shall establish an effective date for such withdrawal.
(b) The treasurer shall notify the qualified public depository of the effective date of the withdrawal not less than [30] days prior to such effective date. Within [10] business days after receipt of such notification, the qualified public depository must notify the public depositors having deposits at the qualified public depository of the effective date of the withdrawal. On the effective date of withdrawal, the treasurer is authorized to transfer eligible collateral as jointly directed by the public depository and public depositors to ensure that public depositors are adequately collateralized individually.
(c) The contingent liability for any loss prior to the effective date of withdrawal of the depository withdrawing from the collateral pool shall continue after the effective date of the withdrawal. The [board] may establish minimum collateral and reporting requirements sufficient to meet the needs to satisfy any potential contingent liability of a withdrawing qualified public depository.

Section 18. [Reports of Qualified Public Depositories.]
(a) Within [15] days after the end of each calendar month, or when requested by the treasurer, each qualified public depository shall submit
to the treasurer a written report, under oath, indicating the average
daily balance of all secured public deposits held by it during the month,
the average monthly balance of all public deposits held for the previous
[12] calendar months, a detailed schedule of all securities pledged as col-
lateral, a statement of selected financial information, and any other in-
formation that the treasurer determines necessary to administer this
act.
(b) [Annually], not later than [insert date] of each year, each qualified
public depository shall cause to be delivered to the treasurer from a per-
sion qualified to conduct audits a statement of all public deposits held
for the credit of all public depositors at the close of business on the last
business day in the year.
(c) In addition to the reports required in subsections (a) and (b), each
qualified public depository shall submit to the treasurer:
(1) A copy of the quarterly report of condition required by the Federal
Deposit Insurance Act, 12 U.S.C. Section 1817 et seq., if such deposi-
tory is a bank; or
(2) A copy of the monthly and quarterly reports required to be filed
with the [state office of thrift supervision], or such other federal regula-
tor by whatever name called, if such depository is a savings institution.
(d) In addition to the requirements of subsection (a), the following forms
shall be made under oath:
(1) The contingent liability agreement.
(2) The depository pledge agreement.
(3) The public depository change of name, address, and charter of in-
stitution.
(e) Any information contained in a report by a qualified public deposi-
tory required under this act or any rule adopted under this act, which
is confidential by any law of the United States or of this state, shall be
considered confidential and not subject to dissemination to anyone oth-
er than the treasurer and the [board] under the provisions of this act,
and the [state comptroller of the treasury, or his designated represen-
tatives], for purposes of audit. The confidentiality of such information
shall be maintained by the [state comptroller of the treasury] in the same
manner as he maintains the confidentiality of his working papers which
are not subject to [insert citation for appropriate state statute]. It shall
be the responsibility of each qualified public depository from which in-
formation is required to inform the treasurer of information that is con-
fidential and the treasurer does not have a duty to inquire into whether
information is confidential.
(f) The provisions of [insert citation for appropriate state statute], shall
not apply to information deemed confidential as provided in subsection
(e). All meetings of the [board] wherein such information is discussed
shall be exempt from the provisions of [insert citation for appropriate
state statute].

Section 19. [Requirements for Public Depositors.]
(a) Public depositors shall comply with the following requirements:
(1) A public depositor shall ensure that the name of the public de-
positor is on the account or certificate provided to the public depositor
by the qualified public depository in a manner sufficient to disclose the
identity of the public depositor.

(2) A public depositor who has assets on deposit in a qualified pub-
lic depository that is in default or is insolvent shall notify the treasurer
of that fact within [three] business days after receiving actual notice of
the default from publications made pursuant to Section 13(a) of this act.

(3) Not later than [insert date] of each year, a public depositor shall
notify the treasurer of its official name, address, and federal tax iden-
tification number. A public entity established during the year shall fur-
nish its official name, address, and federal tax identification number to
the treasurer prior to making any public deposit.

(b) If a public depositor does not comply with subsection (a)(1) of this
section, the pool shall not be liable for the loss incurred to that particu-
lar account created by the public depositor. The waiver of immunity
provided in Section 20 of this act shall be ineffective as to that public
depositor for such account.

Section 20. [Liability of Public Depositors and the State] Under no cir-
cumstance is the state, or any state agency, or public depositor, liable
for all or any portion of any loss resulting from the default or insolven-
cy of a qualified public depository except as provided in Section 19(b) of
this act.

Section 21. [Security for Public Deposits Task Force]
(a) There is created the [security for public deposits task force]. The
[task force] shall consist of the [state treasurer, the state comptroller of
the treasury, and (11) voluntary members who shall be appointed by the
treasurer and who shall serve at his pleasure]. Provided, however, mem-
bership shall terminate upon separation of a member from employment
with the local government or profession the member represents on the
[task force]. The voluntary members shall have the following represent-
ation:

(1) Two members must be officers or directors of a bank;
(2) Two members must be officers or directors of a savings institution;
(3) Two members must be county officers or employees;
(4) Two members must be officers or employees of a municipality;
(5) One member must be a registered securities broker or dealer;
(6) Two members must be officers or employees of any of the follow-
ing: a school district, a special district, an institution of higher educa-
tion, a metropolitan government, or an agency, board, bureau, commis-
sion, or institution of any of the foregoing or of any court.]

(b) The members referred to subsection (a)(3) of this section shall be
appointed by the treasurer from a list of [five] nominees submitted by
the state county services association. The members referred to in sub-
section (a)(4) of this section shall be appointed from a list of [five]
nominees submitted by the state municipal league. The nominees select-
ed by the league and association shall have at least [two] years ex-
perience in the field of finance.]
(c) The [task force] shall elect from among the [four] members referred to in subsections (a)(3) and (a)(4) of this section [one] representative to serve as a member of the [bank collateral pool board], and [one] representative to serve as a member of the [savings institution collateral pool board].

(d) The [security for public deposits task force] shall meet at least [once every two years] and review this act. The meeting shall take place in time to make recommendations for changes in legislation, procedure or regulations to the treasurer or the legislature as may be appropriate.

Section 22. [Deposits of Funds — Operating Expenses.] Any fees collected under the provisions of this act shall be paid into the treasury of the state and the same are hereby appropriated exclusively to the [state department of treasury] to be used in carrying out the provisions of this act.

Section 23. [Commencement of Operation.] (a) The collateral pool for each type of public depository shall be established when at least [50] percent of depositories of that type, or when depositories representing [60] percent of the total deposits in the state in depositories of that type, provide written notice to the appropriate board of their desire to participate in a collateral pool.

(b) The [board] shall establish and notify each public depository of the date the collateral pool shall commence operating. Such notice shall be given not less than [30] days prior to the date established.

(c) At such time as the [board] notifies public depositories that the pool shall begin or at such time after a public depository joins a collateral pool, the treasurer is empowered to assume responsibility as successor pledgee of any and all collateral pledged to individual depositors by that public depository.

(d) The treasurer is empowered to sign such documents on behalf of individual public depositories as may be required by a trustee custodian.

Section 24. [Effective Date.] [Insert effective date.]
Property Insurance Declination, Termination and Disclosure Act

This act, based on 1990 West Virginia legislation, regulates declinations, cancellations and refusals to renew certain property insurance policies and provides for disclosure of these actions. It requires the insurer to provide the applicant with a written explanation outlining the specific reasons for declining to provide insurance, and prohibits discriminatory terminations or declinations.

Suggested Legislation

Section 1. [Short Title] This act may be cited as the Property Insurance Declination, Termination and Disclosure Act.

Section 2. [Scope] This act applies to policies of property insurance, other than policies of inland marine insurance and policies of property insurance issued through a residual market mechanism, covering risks to property located in this state which take effect or are renewed after the effective date of this act and which insure any of the following contingencies:

1. Loss of or damage to real property which is used predominantly for the residential purposes of the named insured and which consists of not more than [four] dwelling units; or
2. Loss of or damage to personal property in which the named insured has an insurable interest where:
   (i) The personal property is used for personal, family or household purposes; and
   (ii) The personal property is within a residential dwelling.

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

1. “Declination” is the refusal of an insurer to issue a property insurance policy on a written application or written request for coverage. For the purposes of this act, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the application or written request for coverage or the offering of insurance upon different terms than requested in the application or written request for coverage is not considered a declination if such offering of such insurance is based upon any valid underwriting reason which involves a substantial increase in the risk. Each company or groups of companies instituting such transfer shall give notice in the manner provided in Section 4(c) of this act, to the insured as to the reasons for such transfer.
(2) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on policies of property insurance, subject to this act, whether the payments are directly payable to the insurer or its agent or indirectly payable to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" includes the failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing property insurance coverage.

(3) "Renewal" or "to renew" means the issuance and delivery by an insurer at the end of a policy period of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term. For the purpose of this act, any policy period or term of less than [six] months is considered a policy period or term of [six] months, and any policy period or term of more than [one] year or any policy period with no fixed expiration date is considered a policy period or term of [one] year.

(4) "Termination" means either a cancellation or nonrenewal of property insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in paragraph (3) of this section. For purposes of this act, the transfer of a policyholder between companies within the same insurance group is not considered a termination, if such transfer is based upon any valid underwriting reason which involves a substantial increase in the risk. Each company or group of companies instituting such transfer shall give notice in the manner provided in Section 4(c) of this act, to the insured as to the reasons for such transfer. Requiring a reasonable deductible, reasonable changes in the amount of insurance or reasonable reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date of the policy.

Section 4. [Notification and Reasons for a Transfer, Declination or Termination.]

(a) Upon declining to insure any real or personal property, subject to this act, the insurer making a declination shall provide the insurance applicant with a written explanation of the specific reason or reasons for the declination at the time of the declination. The provision of such insurance application form by an insurer shall create no right to coverage on the behalf of the insured to which the insured is not otherwise entitled.

(b) A notice of cancellation of property insurance coverage by an insurer shall be in writing, shall be delivered to the named insured or sent by first class mail to the named insured at the last known address of the named insured, shall state the effective date of the cancellation and shall be accompanied by a written explanation of the specific reason or reasons for the cancellation.

(c) At least [30] days before the end of a policy period, as described in Section 3(3) of this act, an insurer shall deliver or send by first class mail
Suggested State Legislation

Section 5. [Permissible Cancellations.] After coverage has been in effect for more than [60] days or after the effective date of a renewal policy, a notice of cancellation may not be issued unless it is based on at least one of the following reasons:

1. Nonpayment of premium;
2. Conviction of the insured of any crime having as one of its necessary elements an act increasing any hazard insured against;
3. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;
4. Discovery of willful or reckless acts or omissions on the part of the named insurer which increase any hazard insured against;
5. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;
6. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
7. A determination by the [state insurance commissioner] that the continuation of the policy would place the insurer in violation of the insurance laws of this state;
8. Real property taxes owing on the insured property have been delinquent for [two or more] years and continue delinquent at the time notice of cancellation is issued;
9. The insurer which issues said policy of insurance ceases writing the particular type or line of insurance coverage contained in said policy throughout the state or should such insurer discontinue operations within the state; or
10. Substantial breach of the provisions of the policy.

Section 6. [Discriminatory Terminations and Declinations Prohibited.] No insurer may decline to issue or terminate a policy or insurance subject to this act if the declination or termination is:

1. Based upon the race, religion, nationality, ethnic group, age, sex or marital status of the applicant or named insured;
2. Based solely upon the lawful occupation or profession of the applicant or named insured, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination: Provided, that this
provision shall not apply to any insurer, agent or broker which limits
its market to one lawful occupation or profession or to several related
lawful occupations or professions;
(3) Based upon the age or location of the residence of the applicant or
name issued unless the decision is for a business purpose which is not
a mere pretext for unfair discrimination or unless the age or location
materially affects the risk;
(4) Based upon the fact that another insurer previously declined to in-
sure the applicant or terminated an existing policy in which the appli-
cant was the named insured;
(5) Based upon the fact that the applicant or named insured previous-
ly obtained insurance coverage through a residual market insurance
mechanism;
(6) Based upon the fact that the applicant has not previously been in-
sured; or
(7) Based upon the fact that the applicant did not have insurance cover-
age for a period of time prior to the application.

Section 7. [Hearings and Administrative Procedure] Hearings for the
violation of any provision of this act, and the administrative procedure
prior to, during and following these hearings, shall be conducted in ac-
cordance with the provisions of [insert citation for appropriate state
statute].

Section 8. [Sanctions.] If the [state insurance commissioner] deter-
mines in a final order that:
(1) An insurer has violated Section 5 or 6 of this act, he may require
the insurer to:
   (i) Accept the application or written request for insurance coverage
   at a rate and on the same terms and conditions as are available to other
   risks similarly situated;
   (ii) Reinstate insurance coverage to the end of the policy period; or
   (iii) Continue insurance coverage at a rate and on the same terms
   and conditions as are available to other risks similarly situated.
(2) Any person has violated any provision of this act, he may:
   (i) Issue a cease and desist order to restrain the person from engag-
ing in practices which violate this act; and
   (ii) Assess a penalty against the person of up to [insert amount] dol-
lars for each willful and knowing violation of this act.

Section 9. [Civil Liability and Actions.]
(a) If the [state insurance commissioner] determines in a final order
that an insurer has violated Section 5 or 6 of this act, the applicant or
named insured aggrieved by the violation may bring an action in a court
of competent jurisdiction in this state to recover from the insurer any
loss, not otherwise recovered through insurance, which would have been
paid under the insurance coverage that was declined or terminated in
violation of this act.
(b) Any amount recovered under subsection (a) of this section may not
Suggested State Legislation

be duplicative of any recovery obtained through the exercise of any other statutory or common law cause of action arising out of the same occurrence. No action under this section may be brought [two] years after the date of a final order of the [state insurance commissioner] finding a violation of Section 5 or 6 of this act.

Section 10. [Immunity.]
(a) There is no liability on the part of and no cause of action shall arise against the [state insurance commissioner], any insurer or its authorized representative, or any licensed insurance agent or broker for furnishing information to an insurer as to reasons for a termination or declination, or for any communication giving reasons for a termination or declination, or for any communication giving notice of, or specifying the reasons for a declination or termination.
(b) Subsection (a) of this section does not apply to statements made in bad faith with malice in fact.

Section 11. [Severability.] [Insert severability clause.]

Section 12. [Effective Date.] [Insert effective date.]
Prizes and Gifts Act

Under this act, based on 1989 Virginia legislation, consumers who win a prize, gift or any item of value must receive the same within 10 days of the representation, without further obligation. It requires: that consumers be told who is conducting the contest or promotion; the disclosure of any conditions the consumer must meet to be eligible and any costs that must be incurred to receive the prize or gift; and that shipping charges not exceed the cost of postage or delivery service. The act also bans the use of notifications that resemble checks or documents that resemble invoices. Consumers who suffer loss as a result of violations of the provisions may bring civil action.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Prizes and Gifts Act.

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

1. "Anything of value," "item of value" or "item" means any item or service with monetary value.
2. "Handling charge" means any charge, fee or sum of money which is paid by a consumer to receive a prize, gift or any item of value including, but not limited to, promotional fees, redemption fees, registration fees or delivery costs.
3. "Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

Section 3. [Representation of Having Won a Prize, Gift or any Item of Value]

(a) No person shall, in connection with the sale or lease or solicitation for the sale or lease of goods, property, or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

1. The recipient of the prize, gift or item of value shall be given the prize, gift or item of value without obligation; and
2. The prize, gift or item of value shall be delivered to the recipient at no expense to him, within [10] days of the representation.

(b) The use of language that may lead a reasonable person to believe he has won a contest or anything of value, including, but not limited to "Congratulations," or "You have won," or "You are the winner of," shall be considered a representation of the type governed by this section.

Section 4. [Representation of Eligibility to Win or to Receive a Prize, Gift or Item of Value.]
(a) No person shall, in connection with the sale or lease or solicitation
for sale or lease of goods, property or service, represent that another per-
son has a chance to win or to receive a prize, gift or item of value with-
out clearly and conspicuously disclosing on whose behalf the contest or
promotion is conducted, as well as all material conditions which a par-
ticipant must satisfy. In an oral solicitation all material conditions shall
be disclosed prior to requesting the consumer to enter into the sale or
lease. Additionally, in any written material covered by this section, each
of the following shall be clearly and prominently disclosed:
(1) immediately adjacent to the first identification of the prize, gift
or item of value to which it relates; or
(2) in a separate section entitled “Consumer Disclosure” which ti-
tle shall be printed in no less than [10-point bold face] type and which
section shall contain only a description of the prize, gift or item of value
and the disclosures outlined in subparagraphs (i), (ii) and (iii):
(i) The actual retail value of each item or prize, which for purposes
of this section shall be:
(A) the price at which substantial sales of the item were made
in the area in which the offer was received within the last [90] days; or
(B) the actual cost of the item of value, gift or prize to the person
on whose behalf the contest or promotion is conducted plus no more than
(7001 percent, but in no case shall it exceed such person's good faith es-
timate of the appraised retail value;
(ii) The actual number of each item, gift or prize to be awarded; and
(iii) The odds of receiving each item, gift or prize.
(b) All disclosures required by this act to be in writing shall comply
with the following:
(1) all dollar values shall be stated in arabic numerals and be preceded
by a dollar sign ($).
(2) the number of each item, gift or prize to be awarded and the odds
of receiving each item, gift or prize shall be stated in arabic numerals
and shall be written in a manner which is clear and understandable.
(c) It shall be unlawful to notify a person that he will receive a gift,
prize or item of value that has as a condition of receiving the gift, prize
or item of value the requirement that he pay any money, or purchase,
lease or rent any goods or services, unless there shall have been clearly
and conspicuously disclosed the nature of the charges to be incurred, in-
cluding, but not limited to, any shipping charge and handling charges.
Such disclosure shall be given:
(1) on the face of any written materials; or
(2) prior to requesting or inviting the person to enter into the sale
or lease in any oral notification.
(d) The provisions of this section shall not apply where to be eligible:
(1) participants are asked only to complete and mail, or deposit at
a local retail commercial establishment, an entry blank obtainable lo-
cally or by mail, or to call in their entry by telephone; or
(2) participants are never required to listen to a sales presentation
and never requested or required to pay any sum of money for any mer-
chandise, service or item of value.
Prizes and Gifts Act

(e) Nothing in this section shall create any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.

Section 5. [Representation of Being Specially Selected.]
(a) No person shall represent that another person has been specially selected in connection with the sale or lease or solicitation for sale or lease of goods, property, or service, unless the selection process is designed to reach a particular type or types of persons.
(b) The use of any language that may lead a reasonable person to believe he has been specially selected, including but not limited to "carefully selected," or "You have been selected to receive," or "You have been chosen," shall be considered a representation of the type governed by this section.

Section 6. [Simulation of Checks and Invoices.] In connection with a consumer transaction, no person shall issue any writing which simulates or resembles:
(1) a check unless the writing clearly and conspicuously discloses its true value and purpose, and the writing would not mislead a reasonable person; or
(2) an invoice unless the intended recipient of the invoice has actually contracted for goods, property, or services for which the issuer seeks proper payment.

Section 7. [Conditions for Handling Charges and Shipping Charges.]
(a) It shall be unlawful to notify a person that he will receive a gift, prize or item of value and that as a condition of receiving the gift, prize or item of value he will be required to pay any money, or purchase or lease (including rent) any goods or services, if any one or more of the following conditions exist:
(1) The shipping charges exceeds:
   (i) the cost of postage or the charge of a delivery service in the business of delivering goods of like size, weight, and kind for shipping the gift, prize or item of value from the geographic area in which the gift, prize or item of value is being distributed; or
   (ii) the exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift, prize or item of value; or
(2) The handling charge exceeds the lesser of [five] dollars or the actual cost of handling.
(b) This section shall apply to all offers of prizes, gifts or items of value covered by this act.
Suggested State Legislation

Section 8. [Action to Enforce the Provisions of Act.] Any consumer who suffers loss by reason of a violation of any provision of this act may bring a civil action to enforce such provisions. Any consumer who is successful in such an action shall recover reasonable attorney's fees, and court costs incurred by bringing such action.

Section 9. [Enforcement; Penalties.] Any violation of this act shall constitute a prohibited practice under the provisions of [insert citation for section of statute regarding fraudulent acts or practices committed by a supplier in connection with a consumer transaction] and shall be subject to any of the enforcement provisions of [insert appropriate statutory citation].

Section 10. [Exemptions.] The provisions of Sections 4 through 7 shall not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, videocassettes, periodicals and similar goods through a membership group or club which is regulated by the Federal Trade Commission trade regulation rule concerning use of negative option plans by sellers in commerce or through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive such goods and the recipient of such goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods, or unused portion thereof, upon return of the goods, or unused portion thereof, undamaged.

Section 11. [Effective Date] [Insert effective date.]
Motor Vehicle Theft Prevention Act

This act, based on 1990 Illinois legislation, establishes a motor vehicle theft prevention council responsible for distributing monetary grants to law enforcement agencies, community groups, federal and state agencies, local government agencies and corporations which would use the monies to implement auto theft prevention programs. The council is responsible for assessing the scope of the auto theft problem and reporting annually the results of the program to the state legislature and the governor.

______________________________

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Motor Vehicle Theft Prevention Act.

Section 2. [Legislative Purpose] The purpose of this act is to prevent, combat and reduce motor vehicle theft in [state]; and to improve and support motor vehicle theft law enforcement, prosecution and administration of motor vehicle theft laws by establishing statewide planning capabilities for and coordination of financial resources.

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

(1) “Authority” means the [state criminal justice information authority].

(2) “Council” means the [state motor vehicle theft prevention council], established within the [authority] by this act.

(3) “Trust fund” means the [motor vehicle theft prevention trust fund].

Section 4. [Creation of Motor Vehicle Theft Prevention Council.] There is hereby created within the [authority], a [motor vehicle theft prevention council], which shall exercise its powers, duties and responsibilities independently of the [authority]. There shall be [11] members of the [council] consisting of [insert designated officials], and the following additional [six] members, each of whom shall be appointed by the governor: [insert appropriate representatives].

The governor from time to time shall designate the [chairman of the council] from the membership. All members of the [council] appointed by the governor shall serve at the discretion of the governor for a term not to exceed [four] years. The initial appointed members of the [council] shall serve from [insert date] until [insert date] or until their successors are appointed. The [council] shall meet at least [quarterly].

COMMENT: The Illinois legislation on which this draft is based, provides for the membership of the council to be composed of the secre-
Suggested State Legislation

tary of state (or designee), the director of the state insurance department, the director of the state police, state's attorneys, chief executive law enforcement officials, representatives of insurers, and a representative of motor vehicle insurance purchasers.

Section 5. (Compensation.) Members of the [council] shall serve without compensation. All members shall be reimbursed for reasonable expenses incurred in connection with their duties.

Section 6. (Staffing.) The [executive director of the authority] shall employ, in accordance with the provisions of the [state personnel code], such administrative, professional, clerical, and other personnel, as may be required, and may organize such staff as may be appropriate to effectuate the purposes of this act.

Section 7. (Powers and Duties of the Council.) The [council] shall have the following powers, duties and responsibilities:

(1) To apply for, solicit, receive, establish priorities for, allocate, disburse, contract for, and spend funds that are made available to the [council] from any source to effectuate the purposes of this act.

(2) To make grants and to provide financial support for federal and state agencies, units of local government, corporations, and neighborhood, community and business organizations to effectuate the purposes of this act.

(3) To assess the scope of the problem of motor vehicle theft, including particular areas of the state where the problem is greatest and to conduct impact analyses of state and local criminal justice policies, programs, plans and methods for combating the problem.

(4) To develop and sponsor the implementation of statewide plans and strategies to combat motor vehicle theft and to improve the administration of the motor vehicle theft laws and provide an effective forum for identification of critical problems associated with motor vehicle theft.

(5) To coordinate the development, adoption and implementation of plans and strategies relating to interagency or intergovernmental cooperation with respect to motor vehicle theft law enforcement.

(6) To promulgate rules or regulations necessary to ensure that appropriate agencies, units of government, private organizations and combinations thereof are included in the development and implementation of strategies or plans adopted pursuant to this act and to promulgate rules or regulations as may otherwise be necessary to effectuate the purposes of this act.

(7) To report annually, on or before [insert date], to the governor, legislature, and upon request, to members of the general public on the [council's] activities in the preceding year.

(8) To exercise any other powers that are reasonable, necessary or convenient to fulfill its responsibilities, to carry out and to effectuate the objectives and purposes of the [council] and the provisions of this act, and to comply with the requirements of applicable federal or state laws or regulations; provided, however, that such powers shall not include the
Section 8. [Creation of Motor Vehicle Theft Prevention Trust Fund.]

(a) A special fund is created in the state treasury known as the [motor vehicle theft prevention trust fund], which shall be administered by the [executive director of the authority] at the direction of the [council]. All interest earned from the investment or deposit of monies accumulated in the trust fund shall, pursuant to [insert citation for state finance act], be deposited in the trust fund.

(b) Money deposited in this trust fund shall not be considered general revenue of the state of [state].

(c) Money deposited in the trust fund shall be used only to enhance efforts to effectuate the purposes of this act as determined by the [council].

(d) Prior to [insert date], and prior to [insert month] of each year thereafter, each insurer engaged in writing motor vehicle insurance coverages which are included in [insert citation for state insurance code], as a condition of its authority to transact business in this state, shall pay into the trust fund an amount equal to [one] dollar multiplied by the insurer’s total earned car years of motor vehicle insurance policies providing physical damage insurance coverage written in this state during the preceding calendar year.

(e) Money in the trust fund shall be expended as follows:

(1) To pay the [authority’s] costs to administer the [council] and the trust fund.

(2) To achieve the purposes and objectives of this act, which may include, but not be limited to, the following:

(i) To provide financial support to law enforcement and correctional agencies, prosecutors, and the judiciary for programs designed to reduce motor vehicle theft and to improve the administration of motor vehicle theft laws.

(ii) To provide financial support for federal and state agencies, units of local government, corporations and neighborhood, community or business organizations for programs designed to reduce motor vehicle theft and to improve the administration of motor vehicle theft laws.

(iii) To provide financial support to conduct programs designed to inform owners of motor vehicles about the financial and social costs of motor vehicle theft and to suggest to those owners methods for preventing motor vehicle theft.

(iv) To provide financial support for plans, programs and projects consistent with the purposes of this act.

(f) In the event the trust fund were to be discontinued or the [council] were to be dissolved by act of the legislature or by operation of law, then, notwithstanding the provisions of [insert citation for appropriate section of state finance act], any balance remaining therein shall be returned to the insurers writing motor vehicle insurance in proportion to their financial contributions to the trust fund in the preceding calendar year and any assets of the [council] shall be liquidated and returned after deduction of administrative costs.
Suggested State Legislation

1 Section 9. [Effective Date.][Insert effective date.]

COMMENT: The Illinois legislation on which this draft is based, also amends portions of the state's criminal justice information act; insurance code; limited health insurance organization act; and state finance act.
Federal Mandates for State Action (Note)

Federal mandates, with substantial requirements and costs to the states, have increased dramatically in recent years. In the 1980s, new regulations for domestic programs were established and federal preemptive power expanded—this during a period when federal grant program monies dwindled and the federal budget deficit grew.

There are some mechanisms in place at the federal level designed to alert lawmakers to excessive expense or burdens associated with pending legislation. For example, the U.S. Congressional Budget Office (CBO) is required by the State and Local Government Cost Estimate Act of 1981 (PL 97-108) to prepare estimates of costs that would be incurred by state governments in complying with proposed federal legislation. The act was permanently reauthorized in 1987. However, revenue and appropriation legislation, such as the Omnibus Budget and Reconciliation Act of 1990, which will be discussed in this note and is a source of many unfunded mandates, is exempt from this requirement.

The Committee on Suggested State Legislation approved the inclusion of this note to provide state policymakers with an overview of recent federal provisions requiring state legislative or regulatory action and/or additional expenditures, as well as mandates preempting state policies. The reader should take caution, however, in that this is an overview, and as such is not intended to serve as the primary source of information on all aspects—technical and otherwise—of the federal legislation and requirements.

The Committee intends to incorporate such reviews in future volumes of Suggested State Legislation not only as a mechanism for tracking major enactments, but also as an historical reference for the states. This note covers a set of enactments from the 101st Congress (1989-90).

The 101st Congress

Enactments from the 101st Congress (1989-90) are expected to cost states more than $15 billion over the next five years, according to recent estimates reported by the National Conference of State Legislatures. Approximately $13.3 billion of that $15 billion can be attributed to the Omnibus Budget and Reconciliation Act of 1990 (OBRA, PL 101-508).

Omnibus Budget and Reconciliation Act Provisions

Medicaid

Provisions in the 1990 OBRA include an expansion of Medicaid, requiring states to extend coverage to all children born after September 30, 1983, in households with incomes up to 100 percent of the poverty level (Title IV, Subtitle B, Part 3). By 2002, under this plan, all children up to age 19 will be covered. Under the act, states are required to pro-
Suggested State Legislation

Provide first-year-of-life Medicaid coverage to infants born to Medicaid-eligible women, as long as the infant remains in the mother’s household and the mother would have remained eligible if she were still pregnant. States must provide at least 60 days of coverage to low-income women after they give birth, even if they otherwise would have lost eligibility because of a change in income. States are further required to receive and process Medicaid applications from children and pregnant women at locations other than public assistance offices, such as hospitals that serve large numbers of low-income patients and community and migrant health centers.

With regard to states that have chosen or choose to offer prescription drug coverage under Medicaid, the act requires they cover all drugs sold by manufacturers who have entered a rebate agreement, with certain drugs excepted. For a period of four years, states are prohibited from reducing payments to pharmacists for providing drugs to Medicaid patients. And, for the purpose of improving prescribing and dispensing practices, states also must initiate programs to educate physicians and pharmacists on common drug therapy problems (Title IV, Subtitle B, Part I).

Under other provisions, states are required to pay premiums and other cost sharing for group health plans for which Medicaid beneficiaries may be eligible, if enrollment in such a group plan could save money for the Medicaid program; to provide coverage to ensure that beneficiaries remain eligible for all Medicaid-related services (Title IV, Subtitle B, Part IV); and, in the case of state Medicaid agencies, to notify state licensing boards when a physician is terminated, suspended or sanctioned by Medicaid (Title IV, Subtitle B, Part 4, Subpart B).

Medicare

The states’ liability for the Medicare program was also expanded. States are required to pay all premiums, deductibles and co-insurance payments for certain qualified Medicare beneficiaries — i.e., those who are otherwise eligible for Medicaid, but who have incomes under 100 percent of the federal poverty level and assets worth no more than twice the amount allowed to qualify for Supplemental Security Income (SSI). Coverage is to be phased in, beginning January 1, 1992, with payments generally required for those individuals with incomes up to 95 percent of the poverty level; January 1, 1993, for beneficiaries with incomes up to 110 percent of the level; and January 1, 1995, for those with incomes up to 120 percent of the poverty level (Title IV, Subtitle B, Part 2). As employers, states will bear the cost of an increase in the amount of wages subject to the Medicare payroll tax, from $54,300 to $125,000.

All Medigap policies — private insurance policies designed to supplement Medicare coverage—must be approved in advance either by the state, if the state has implemented a regulatory program approved by the U.S. Department of Health and Human Services (HHS), or by the HHS, if the state does not have a plan. In order for a state’s regulatory program to be approved by HHS, it must have in place a process to re-
view proposed premium increases, including public hearings on the subject (Title IV).

Social Security

The provisions of the 1990 OBRA also extend Social Security and Medicare coverage (and the payroll taxes used to fund those programs) to all state and local government employees not covered by an existing public retirement plan. The act does exempt students employed at public schools, colleges and universities (although they may be covered at the states’ discretion), and exempts the federal employee health benefits program from state insurance premium taxes (Title IV, Subtitle F, Part 4).

Child care

The 1990 OBRA included several provisions regarding child care (Title V). To receive funds under the Child Care and Development Block Grant, states must designate a primary agency to coordinate the program with other federal, state and local child care programs, and develop a plan to carry out the requirements of the act. States would be required to reserve at least 25 percent of their grant funds for activities designed to improve the quality of child care and to increase the availability of early childhood development programs and child care programs both before and after school. Of that 25 percent, states must spend at least one-fifth on one of five activities: resource and referral programs; grants and loans to child care providers to help them with improvements; improving enforcement of applicable standards; providing training or technical assistance for child care providers in health and safety, nutrition, first aid or other areas; and improving salaries or benefits for child care staff.

Under further requirements, states must ensure that parents receiving assistance under the act may use the child care provider of their choice. States must have a child care voucher program in place by October 1, 1992, and assure that all child care providers receiving aid under the act give parents unlimited access to their children while they are under the providers’ care. States must maintain a record of substantiated parental complaints and make that and other information pertaining to licensing and regulatory requirements, complaint procedures and other policies and practices related to child care services, available to parents and the general public.

The 1990 OBRA requires states and localities to set and enforce minimum health and safety standards for child care programs — standards concerning the prevention and control of infectious diseases; the safety of buildings used to house child care facilities; and appropriate health and safety training for child care staff. States may use federal grant funds to supplement, not replace, other child care funds, and must ensure that all eligible families have access to child care services comparable to that available to families not receiving assistance.
Suggested State Legislation

Coastal zone management

The Coastal Zone Reauthorization Amendments authorize the U.S. Secretary of Commerce to make annual grants to coastal states for the development of coastal zone management programs (Title IV, Subtitle C). It prohibits the states from receiving more than two federal grants under the program. The Commerce Secretary may suspend financial assistance to any coastal state or withdraw any unspent portion of such assistance if the state fails to adhere to a management program or state plan to manage a national estuarine reserve or to the terms of any grant or cooperative agreement. States with approved coastal zone management programs must submit coastal nonpoint source pollution control programs to the administrator of the U.S. Environmental Protection Agency for approval. Certain coastal management and water pollution control assistance must be withheld from states that do not submit approved programs.

The Clean Air Act

The 1990 Clean Air Act Amendments (PL 101-549) set standards to reduce smog, acid rain, toxics and automobile emissions. Under Title I, following the development of new or revised ambient air quality (smog) standards by the U.S. Environmental Protection Agency (EPA), states must designate each area as non-attainment, attainment or unclassifiable (because of a lack of information) depending upon whether the areas meet air quality standards.

Each state must develop an implementation plan that includes, among other things: enforceable emission limits; provisions for developing air quality data; and provisions to control interstate pollution. The EPA administrator may disapprove the plan if it does not meet all federal requirements. If a state does not submit a plan that meets with approval within two years, the administrator may formulate one, and the administrator may use further sanctions, including a reduction of federal highway funding.

Motor vehicle inspection/maintenance

States are required to implement enhanced motor vehicle inspection and maintenance programs (Title I). Such programs will include annual emissions tests, unless the EPA administrator determines that biennial inspection is sufficient. These programs will apply to urbanized areas with populations of 200,000 or more, which are designated as serious ozone non-attainment areas. The act also requires states to gauge vehicle miles traveled, emissions, traffic and other factors every three years, beginning in 1996. If the data do not match the assumptions used for the demonstration of attainment, the state would have 18 months to revise its implementation plan to include transportation control measures to reduce emissions.
Federal Mandates for State Action (Note)

**Solid waste incinerator emissions**

States must submit to EPA a plan to implement and enforce federal guidelines to reduce emissions for certain solid waste incineration units (Title III). The act explicitly allows states to develop standards for solid waste incineration emissions and hazardous waste accident prevention that are more stringent than the federal standards.

**Permit programs**

By the end of 1993, all states must submit to EPA a permit program for sources of pollutants, along with legal opinions that state, local or interstate compact laws have sufficient authority to carry out the program (Title V). The permit programs are designed to facilitate compliance with emission reduction standards by major stationary sources of air pollutants. The EPA administrator must approve or disapprove such a program in whole or in part within one year of receiving it. If the proposal is disapproved and the state does not develop a new one within two years, the EPA administrator could apply sanctions (such as a reduction in federal highway funds or an increase in emission reduction requirements) or develop and enforce a permit program. The act explicitly allows states to establish additional permitting requirements above those developed by the EPA. States also must submit, by the end of 1992, a compliance assistance program implementation plan for small businesses that are stationary sources of pollution.

The EPA administrator is required to notify a state if violations of an implementation plan or an approved permit program are so widespread that they appeared to result from the state's failure to enforce the plan or permit. If the situation is not corrected within 30 days, the administrator could enforce the requirements of the plan or permit program by issuing an order of compliance to the violator, issuing an administrative penalty, or civil action (Title VII).

**The Americans with Disabilities Act**

The Americans with Disabilities Act (P.L. 101-336), a major civil rights measure enacted in 1989, is designed to ensure that disabled individuals are not subject to employment discrimination or denied access to public accommodations or public services (Title I). It stipulates that no qualified individual with a disability may be excluded from participation in, denied the benefits of, or subjected to discrimination by, a public entity (Title II). Under this act, public entity includes a state, an agency, political subdivision, or other instrumentality of a state or states. The U.S. Attorney General must certify that state laws and local building codes meet the minimum requirements of the act.

**The Crime Control Act**

The 1990 Omnibus Crime Control Act (P.L. 101-647), among its pro-
Suggested State Legislation

visions, decreases the percentage of grant and contract funds available to states for rural drug enforcement programs and activities (Title VIII). It further provides that a portion of funds may be withheld from states that do not have in effect, and do not enforce, legislation requiring the state (at the request of a victim of a sexual act) to: test the convicted defendant for the presence of human immunodeficiency virus (HIV); disclose test results to the defendant and victim; and provide the victim with counseling regarding HIV disease, testing and referral.

The omnibus act also includes provisions for child search assistance, requiring federal, state and local law enforcement agencies to report each missing child case to the National Crime Information Center (NCIC) within the U.S. Department of Justice (Title XXXV). States are required to ensure that no state law enforcement agency establishes a policy requiring a waiting period before accepting a missing child or unidentified person report; that each report is made available to the NCIC computer network, the state law enforcement agency and the Missing Children Information Clearinghouse within the state; and that state agencies entering reports into NCIC verify and update records with any additional information.

Education

The 101st Congress enacted several pieces of education legislation with provisions affecting the states. For example, the Vocational Education Act of 1990 (P.L. 101-392), which amends the Carl D. Perkins Vocational Education Act, provides grant funds to the states and requires them to revise programs under which they must use specified reserve funds to conduct certain programs and leadership activities (including professional development activities for vocational education teachers and curricula development). States also must develop programs for displaced homemakers and single parents and provide corrections education.

The Student Right-to-Know and Campus Security Act of 1990 (P.L. 101-542, Title I) amends the Higher Education Act of 1965, and includes several provisions that could create added expense for state universities. It requires all four-year colleges and universities to disclose the percentage of full-time students who graduate within six years of enrollment. Schools awarding athletic scholarships will be required to report athlete graduation rates for each sport. Colleges and universities also are required to provide students and applicants with an annual security report listing crimes committed against students during the previous school year.

The Drug-Free Schools and Community Act (P.L. 101-226), which amends the Drug-Free Schools and Communities Act of 1986, requires all public elementary and secondary schools to have anti-drug policies to qualify for federal funding. State education agencies must use specified funds to make grants to local agencies for anti-drug programs. State applications for grants must include plans for drug-abuse education programs for juveniles in detention facilities. The act prohibits any insti-
Federal Mandates for State Action (Note)

tution of higher education from receiving federal funds unless it implements a program to prevent drug use and alcohol abuse among students and employees.

Transportation

The Hazardous Materials Transportation Safety Improvement Act (PL 101-615) establishes uniform federal standards in technical areas and route designation that the states must enforce. It preempts state hazardous materials transportation requirements. Within federal guidelines for such routes, states are authorized to establish and enforce specific highway routes over which hazardous materials may or may not be transported in their respective jurisdictions. States also will be required to adhere to federal guidelines for dispute resolution among states. The act also establishes several grant programs, including an emergency grant program to help states develop emergency response plans.

The Driver's License Revocation Act (PL 101-516) requires states to revoke all drivers' licenses in specified cases involving drugs and alcohol or suffer a reduction in federal highway funds.

Other mandates

The Nutrition Labeling and Education Act (PL 101-535) sets federal requirements for nutrition labeling on most packaged foods. The act requires labels providing various types of nutritional information, including: calories per serving; carbohydrates, protein, fat and cholesterol content; vitamins; and number of servings per container. Nutrition information would have to be available for commonly-consumed products. The provisions preempt state nutrition labeling standards that are not identical to those provided under the federal act. It does, however, permit exemption petitions by states, if a state or local requirement would not cause any food to be in violation of federal law, would not burden interstate commerce, and addresses a need for nutritional information not met under the act.

The Cash Management Improvement Act (PL 101-453) sets uniform standards for cash flow between the federal and state governments, and is intended to minimize the time elapsing during the transfer of funds from the Treasury and the issuance or redemption of checks, warrants or payments by other means. It requires states to pay interest on funds from the time of deposit to the time of disbursement, and requires the federal government to pay interest to states which allocate their own funds under a federal program. States must identify grant funds in state accounts as federal grant money.

Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act (OMB Circular A-129) requires that states must establish certification procedures for real estate appraisers, including a real estate appraisal board, certification process and classes of certification for real estate appraisers (PL 101-73).
The following cumulative index covers volumes of *Suggested State Legislation* since 1973 and includes the legislation through this current edition. This index uses extensive subject headings, sub-headings and cross references ("see" and "see also" entries). Draft legislation is listed by title under appropriate subjects. Individual bills are often included under several headings, if they cover more than one topic.

Specific entries are of two kinds:

1. Titles of bills 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 1973 may be found in Volume 43 (1984).

**Abortion**, see health care

**Academic records**, see records management

**Acid rain**, see conservation and the environment

**Adoption**, see domestic relations

**Aged**


banking: Lifeline Banking, (1986) 140-44

crimes against the elderly: (1977) 94-110; Vulnerable Adults Abuse and Exploitation Registry (Statement), (1991) 131


transportation: School Bus Service for the Elderly, (1983) 95

see also: state and local government—public pensions

**Agriculture**


inspection: (1981) 151-154

licenses and licensing: (1986) 198-203; State Grain Insurance Act (Statement), (1988) 282


see also: conservation and the environment; labor—migrant workers

160
Air pollution, see conservation and the environment
Alcohol, see drugs and alcohol; consumer protection
Art, see business and commerce—copyright; culture, the arts and recreation
Asbestos, see hazardous material and waste
Assistance for handicapped, see handicapped persons
Atomic energy, see nuclear energy
Auditors, see public finance and taxation—accounting and auditors
Automobiles, see transportation
Ballot, see election
Bonds and notes, see public finance and taxation
Budgets, see public finance and taxation
Buildings, see housing, land and property; culture, the arts and recreation—historic preservation
Burial sites: Desecration of Burial Sites, (1985) 101-03
Business and commerce
advertisements; Celebrity Rights Act, (1988) 276-81
Copyrights and patents: Unauthorized Copies of Recorded Material, (1975) 91-92; Act
Suggested State Legislation


Communal development, see growth management

Community health services, see health care

Comparable worth, see labor—pay equity

Computer crime, see crime and criminals

Conflict of interest, see ethics

Conservation and the environment


Index


see also: fish and wildlife; hazardous materials and waste; public utilities and public works—water treatment

Construction, building, see housing, land and property


credit and creditors: Credit Services Regulation, (1986) 96-100; Credit, Charge Card, and Retail Installment Account Disclosure Acts, (1986) 292-300


Suggested State Legislation

Food, Drug, and Cosmetic (Statement), (1986) 217


see also: hazardous materials and waste—household use

Controlled substances, see drugs and alcohol

Copyrights, see business and commerce

Corporate acquisitions, see business and commerce

Courts


judiciary organization: Court of Claims, (1973) 199-204

juries: Uniform Jury Selection and Service Act Amendment, (1973) 286


see also: business and commerce—small business; public finance and taxation

Credit, see consumer protection; crime and criminals

Crime and criminals


see also: hazardous materials and waste—household use

Controlled substances, see drugs and alcohol

Credit, see consumer protection; crime and criminals

Crime and criminals


crime prevention: State Criminal Justice Planning Commission, (1978) 64-70; Missing


see also: criminal justice and corrections; courts; drugs and alcohol

Criminal justice and corrections


temporary leave: Interstate Furlough Compact, (1977) 23-28; (1979) 10-14


see also: state and local government — police

Criminal procedure, see criminal justice and corrections

Culture, the arts and recreation


carnival amusement rides: Carnival Amusement Rides Safety and Inspection, (1983) 137-44


Dams and reservoirs, see conservation and the environment — environmental protection

Index
Suggested State Legislation

**Deficit financing**, see public finance and taxation—public debt

**Dentists**, see health care

**Deregulation**, see communications

**Development**, see growth management

**Developmental disabilities**, see handicapped persons

**Disabled persons**, see handicapped persons

**Disasters**, see state and local government—emergency management

**Discrimination in employment**, see labor

**Disease control**, see health care

**Disposal of waste**, see conservation and the environment; hazardous materials and waste

**Distressed communities**, see growth management—community development

**Divorce**, see domestic relations

**Domestic relations**


- Divorce: Uniform Marriage and Divorce—Revised, (1973) 277-95


- Juveniles: Crisis Intervention Unit, (1984) 82-85

- Marriage: (1973) 277-95; Marital Property, (1985) 79-85

**see also**: crime and criminals—child abuse and domestic violence; labor—housewives and homemakers

**Domestic violence**, see crime and criminals—child abuse and domestic violence

**Drugs and alcohol**


- Boating: Alcohol Boating Safety, (1986) 131-33


- Treatment: Perinatal Providers — Easing the Shortage, (1992) 17-19

**Early release**, see criminal justice and correction

**Economic development**


**Education**

- Attendance: Homeless Child Education Act (Statement), (1992) 109


reform: Education Legislation (Note), (1991) 1-13
special: Model Compulsory School Attendance Law and Education of the Handicapped, (1973) 172-88
vocational: Private Vocational School Regulation Act (Statement), (1992) 110-11
see also: public finance and taxation; records management—academic
Elderly, see aged
Elections
campaign finance: Campaign Finance, Ethics and Lobbying Regulation (Statement), (1992) 90-92
precincts: Precinct Boundaries and Mapping, (1976) 116-17
Electronic banking, see banks and financial institutions—funds transfer
Emergency management, see state and local government
Employees, see state and local government; labor
Employment, see labor
Energy
see also: nuclear energy
Environment, see conservation and the environment
Environmental protection, see conservation and the environment
Equal access, see handicapped persons
Erosion, see conservation and the environment
Ethics: Campaign Finance, Ethics and Lobbying Regulation (Statement), (1992) 90-92
Conflict of interest: Conflict of Interest, (1976) 164-70
Euthanasia, see health care—right to die
Explosives and fireworks: (1983) 128-29
see also: hazardous materials and waste
Exports
development: Export Development Authority and Assistance, (1985) 115-22
Family, see domestic relations
Farm credit, see agriculture
Farms, see agriculture
Finance, public, see public finance and taxation
Financial emergencies, local, see public finance and taxation—fiscal crises
Financial institutions, see banks and financial institutions
Firearms, see guns, firearms and other weapons
Firefighters, see hazardous materials—rules and regulations; state and local government
Suggested State Legislation

Fireworks, see explosives and fireworks
Fiscal crises, local, see public finance and taxation
Fiscal crises, local, see public finance and taxation
habitat: Fish Habitat Improvement, (1984) 191-97
Flammable liquids, see hazardous materials and waste cleanup-disposal
Food, drug, and cosmetics, see consumer protection—household hazards
Food stamps, see public assistance—welfare
Forestry, see conservation and the environment
Funds transfer, see banks and financial institutions
Games of chance, see business and commerce—unfair trade practices
Garbage, see conservation and the environment—refuse disposal
Gifted, education of, see education—special
Gold and silver dealers, see business and commerce—small business
Good samaritan laws, see hazardous materials—cleanup; public assistance—food
Governors, see state and local government—executive branch
Growth management
zoning: County Powers in Relation to Local Planning and Zoning Actions, (1976) 70-74; County Planning, Zoning and Subdivision Control in Unincorporated Areas, (1976) 75-85; State Aviation Development Act (Statement), (1988) 194
see also: economic development; housing, land and property; transportation—airports
Guns, firearms and other weapons
replica: Replica Firearm Warning Label Act, (1990) 144
Handicapped, education of, see education—special
subsidies: Subsidy Program for Qualified Parents, (1982) 203-05

168


see also: conservation and the environment; consumer protection — household hazards; explosives and fireworks


abortion: Uniform Abortion, (1973) 300-01


dentists: Dental Practice, (1980) 164-86


hospices: Hospice Program Licensing, (1985) 43-45

hospitals and clinics: Health Facilities Authority, (1976) 43-57; General Acute Care Hospital Interpreter Act, (1992) 45-47

laboratories: Clinical Laboratory Billing Information, (1981) 29


physicians: Disabled Physician, (1979) 92-96; Medical Discipline, (1979) 97-105; Perinatal
Suggested State Legislation

Providers — Easing the Shortage, (1992) 20-27
records: Health Care Provider Records Access Act (Statement), (1988) 259
right to die: Natural Death, (1978) 3-8; Uniform Brain Death, (1980) 199-200
Health maintenance organizations, see health care
Hereditary diseases, see health care
Historic preservation, see culture the arts and recreation
Home care, see aged—nursing homes
Home purchases, see housing, land and property
Hospices, see health care
Hospitals, see health care
Housewives, see labor
Housing, land and property
emergency assistance: Emergency Assistance to Homeowners, (1986) 31-34
manufacture: Common Interest Ownership (Statement), (1986) 36
see also: growth management; public finance and taxation; public assistance—housing; aged—housing
Information systems
see also: banks and financial institutions; crime and criminals
Infrastructure bank, see public finance and taxation
Inspector general, see public finance and taxation
Insurance
insurance companies: Limitations on Cancellation and Non-Renewal of Commercial


property: Property Insurance Declination, Termination and Disclosure Act, (1992) 140-44

product liability: (1978) 109-13


Intergovernmental relations: ACIR State Legislative Program (Statement), (1977) 198-200; Federal Mandates for State Action (Note), (1982) 153-59

local relations: Transfer of Functions, (1976) 58-60


see also: state and local government Interstate agreements, see intergovernmental relations—state/state

Inventions, see business and commerce

Investments, see banks and financial institutions; public finance and taxation

Itinerant vendors, see public finance and taxation

Judicial branch, see courts

Juries, see courts

Labor


employment agencies: State Employment Offices Credit for Military Referrals Which Result in Enlistment, (1975) 84


Suggested State Legislation

pay equity: Pay Equity for State Employees, (1985) 147-48
unions: Assistance Offered to States by the Federal Mediation and Conciliation Service, (1975) 103
see also: state and local government—employees
Land, see housing, land and property
Land development, see growth management
Land use planning, see growth management—land development
Landfills, see conservation and the environment—refuse disposal and recycling
Landlords and tenants, see housing, land and property
Law and lawyers, see courts; criminal justice and corrections
Law enforcement, see crime and criminals
Legal services, see courts—lawyers
Legislatures, see state and local government
Licensing, enforcement and regulation
see also: agriculture; business and commerce—security guards; health care—hospices; natural resources—mining
Lieutenant governors, see state and local government
Litter, see conservation and the environment—refuse
Livestock, see agriculture
Index

Loans, see banks and financial institutions
Local government, see state and local government
Marital property, see domestic relations—marriage
Marriage, see domestic relations
Medicine, see health care
Mental health, see health care; handicapped persons
Migrant workers, see labor
Missing persons: Missing Persons, (1986) 152
Mortgages: Reverse Annuity Mortgage, (1986) 40-41
see also: housing, land and property
Motor vehicles, see consumer protection; transportation
see also: burial sites
Natural resources
Negligence, see courts—tort liability and negligence
Noise pollution, see conservation and the environment
Nominations, see elections
Nuclear energy
decommissioning: Decommissioning Nuclear Power Plants, (1983) 52-60
environmental protection: Environmental Radiation Protection, (1980) 130-32
radiation control: Regulations for the Control of Radiation (Statement), (1978) 185; Radiation Control, (1983) 27-43
see also: hazardous materials and waste—disposal
Nursing homes, see aged
Ombudsman, see state and local government—public relations
One man-one vote, see elections— reapportionment
Paramilitary training, see guns, firearms and other weapons
Parks, see culture, the arts and recreation
Parole, see criminal justice and corrections
Pay equity, see state and local government
Pensions, see banks and financial institutions, state and local government
Personal property, see housing, land and property
Pest control, see agriculture
Pesticides, see agriculture
Physicians, see health care
Plea bargaining, see criminal justice and corrections—sentencing
Police, see state and local government
Pollution, see conservation and the environment
Pornography, see crime and criminals—child abuse
Postal savings, see banks and financial institutions
Prepaid medical services, see health care—health maintenance organizations
Preschool education, see education
Prevention of retardation, see handicapped persons
Primaries, see elections
Prisons, see criminal justice and corrections
Privacy, see information systems
Probate, see wills
Probation, see criminal justice and corrections
Procurement, see state and local government—purchasing
Product safety, see consumer protection; courts; insurance
Property, see domestic relations—marriage; housing, land and property; public finance and taxation
Prosecutors, see criminal justice and corrections
Protected tenancy, see aged—housing
Public assistance
insurance or security funds: (1986) 187-97, 198-203; see also: health care
welfare: Food Stamps—False Statements, Alterations or Misuse of Documents, (1974) 236; Administrative Procedures Act—Food

173
Suggested State Legislation

see also: courts—public guardians
Public buildings, see housing, land and property
Public debt, see public finance and taxation
Public employees, see state and local government
Public finance and taxation
itinerant vendors: Registration of Itinerant Vendors, (1985) 144-46
taxation (insurance): (1983) 247-49
taxation (motor vehicles): Weight-Distance Tax, (1987) 79-91
taxation (sales): Local Sales and Out-of-State Use Tax, (1976) 64-65
see also: business and commerce; courts; transportation
Public guardian, see courts
Public utilities and public works

cable television: Cable Subscriber Privacy Protection Act, (1990) 134-38
see also: communications; conservation and the environment—water pollution, nuclear energy
Purchasing, see state and local government
Radiation, see nuclear energy; state and local government—emergency management
Railroads, see transportation
Rape, see crime and criminals—sexual assault
Real estate, see housing, land and property
Receiverships, see banks and financial institutions—liquidation
Records management and data collection
public records: (1981) 14-15, 39-40, 79-80; Vulnerable Adults Abuse and Exploitation...
Registry (Statement), (1991) 131; Criminal History Record Check for Transfer of Firearms, (1991) 132-35
see also: domestic relations—adoption
Recreation, see culture, the arts and recreation
Recycling, see conservation and the environment—refuse disposal
Refuse disposal, see conservation and the environment
Relocation assistance, see housing, land and property
Reorganization, governmental, see state and local government
Ridesharing, see state and local government—employees
Right to die, see health care
Roads, see growth management; transportation
Sales practices, see consumer protection
Securities, see banks and financial institutions; public finance and taxation
Senior citizens, see aged
Sewage disposal, see public utilities and public works—water treatment
Sexual assault, see crime and criminals
Shoplifting, see crime and criminals
Smoking laws, see health care
Snowmobiles, see transportation
Solar energy, see energy
Sovereign immunity, see state and local government
Special education, see education
Spouse abuse, see crime and criminals
State bill payments, see state and local government—administration of agencies
State funding, see public finance and taxation—investments
State and local government administration of agencies: (1986) 65-68; Prompt Payment, (1986) 102-08
contracts: State Civil Rights Act, (1992) 93-95
employee pensions: Municipal Pension Funding and Recovery (Statement), (1986) 101
pay equity: Pay Equity for State Employees, (1985) 147-49
productivity: Incentive Pay for State Employees, (1982) 158-60; Forms Management Center, (1982) 37-38; Reduced

Index
Suggested State Legislation

public relations: State Ombudsman, (1975) 100-01; Local Government Impact Fiscal Notes, (1979) 190-93
sovereign immunity: Court of Claims, (1973) 199-204; Government Model Tort Liability for Law Enforcement Actions, (1973) 214-19
see also: intergovernmental relations; records management and data collection
State-federal relations, see intergovernmental relations
Statistics, see records management and data collection
Takeover legislation, see business and commerce—corporate acquisitions
Taxation, see public finance and taxation
Telephones, see communications
Television, see communications
Timesharing agreements, see housing, land and property—real estate transactions
Tort liability and negligence, see courts
Toxic substances, see hazardous materials and waste
Trade regulation, see business and commerce; consumer protection
Traffic laws, see transportation
Transportation
airports: Small Airport Zoning Regulation and Restriction, (1985) 2966; State Aviation Development Act (Statement), (1988) 194
see also: insurance—motor vehicles
Unemployment insurance, see labor
Unfair trade practices, see business and commerce
Unions, see labor
Universities, see education
Urban development, see growth management
Veterans, see health care—treatment
Victims' rights, see criminal justice and correction
Vital statistics, see records management and data collection
Voting, see elections
Waste disposal, see conservation and the environment
Water pollution, see conservation and the environment
Water treatment, see public utilities and public works
Weapons, see guns, firearms and other weapons
Weather control, see conservation and the environment
Welfare, see public assistance
Wetlands, see conservation and the environment
Wills: Uniform Deposition of Community Property Rights at Death, (1973) 249-56
see also: domestic relations, marital property
Work release, see criminal justice and correction
Workers' compensation, see labor
Zoning, see growth management

176