SUGGESTED STATE LEGISLATION
2000 Volume 59

Developed by the
Committee on Suggested State Legislation

The Council of State Governments
Lexington, Kentucky
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Lexington, Kentucky

*Headquarters: (606) 244-8000
Fax: (606) 244-8001
E-mail: info@csg.org
Internet: www.csg.org

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Council Offices
Headquarters:
2760 Research Park Drive
P.O. Box 11910
Lexington, KY 40578-1910
Phone: (606) 244-8000
Fax: (606) 244-8001
E-mail: info@csg.org
Internet: www.csg.org

Daniel M. Sprague, Executive Director
Bob Silvanik, Deputy
Howard Moyes, Assistant Director

Washington, D.C.:
Jim Brown, General Counsel and Director
444 N. Capitol Street, NW, Suite 401
Washington, D.C. 20001, (202) 624-5460
Fax: (202) 624-5452,
E-mail: dcinfo@csg.org

Michael H. McCabe, Director
641 E. Butterfield Road, Suite 401
Lombard, IL 60148, (630) 810-0210
Fax: (630) 810-0145,
E-mail: csg-midwest@csg.org

Southern:
Colleen Cousineau, Director
3355 Lenox Road, Suite 1050
Atlanta, GA 30326, (404) 266-1271
Fax: (404) 266-1273,
E-mail: slc@csg.org

Western:
Kent Briggs, Director
121 Second Street, 4th Floor
San Francisco, CA 94105, (415) 974-6422
Fax: (415) 974-1747,
E-mail: csg-west@csg.org
Denver, CO: (303) 572-5454,
Fax: (303) 572-5499

Suggested State Legislation - iii
Foreword

The Council of State Governments (CSG) is pleased to bring you this volume of Suggested State Legislation, the 59th in a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this volume represents many hours of work completed by the Council’s Committee on Suggested State Legislation and by legislators and legislative staff across the country in the states that originated the bills.

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.

November 1999  Daniel M. Sprague
Lexington, Kentucky  Executive Director
The Council of State Governments
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Introduction

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

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of *Suggested State Legislation*. For 59 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policy-makers on a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype on interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to internal security. The result was a program of suggested state legislation published as *A Legislative Program for Defense*. The Committee reconvened following the nation’s entry into World War II in order to develop a general program of state war legislation. By 1946, the volume of *Suggested State War Legislation* and *Suggested State 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 59th compilation of *Suggested State Legislation*, represent the culmination of a yearlong process in which legislation submitted by state officials and staff, CSG Associates and CSG staff was received and reviewed by members of the SSL Committee. The Committee also considers legislation from other sources, but only when that legislation is submitted through a state official. Other sources include public interest groups and members of the corporate community who are not CSG Associates.

During this process, SSL Committee members convened as a Subcommittee on Scope and Agenda on three occasions to screen and recommend legislation for final consideration for volume 59. At the SSL annual meeting in July 1999 in New York, New York, the SSL 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 or act represent a practical approach to the problem?
- Does the bill or act 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 or act logically consistent?
- Are the language of and style of the bill or act clear and unambiguous?

All items selected for publication in the annual volume are presented in a general format as shown in the *Suggested State Legislation* Style Manual and Sample Act. However, beginning with the 1997 volume, items presented in *Suggested State Legislation* volumes more closely reflect the style and form as they were submitted to the program.

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. Readers should note that *Suggested State Legislation* drafts typically do not duplicate actual state legislation.

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.

Although a formal solicitation of the states is conducted annually to gather legislation for consideration by the SSL Committee, state officials and staff, CSG Associates and CSG staff 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 and review process, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, Information and Membership Services, The Council of State Governments, 2760 Research Park Drive, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 244-8000 or fax (606) 244-8001. Interested readers can find out more about the SSL program by visiting the SSL pages at CSG’s Internet Web site at www.csg.org.
Suggested State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. This means style is arbitrary. Beginning with the 1997 volume, items presented in Suggested State Legislation more closely reflect the style and form as they were submitted to the program. The word "Act" refers to proposed and enacted bills. Attempts are made to ensure that items presented to committee members are the most recent versions. However, interested parties should contact the originating state for the ultimate disposition in the state of any item in question, including substitute Acts and amendments.

Introductory Matter

The first component in a Suggested State Legislation draft is an abstract. Abstracts provide a brief description of the Act, highlight unique features, and provide background about other states, if applicable. Copies of other state bills or laws referenced in abstracts or Notes can be obtained by contacting the states directly.

Submitted As

This component indicates the state, title, bill number or legal citation and adoption date of the original bill or law as submitted to the Suggested State Legislation Program. Readers should be aware that although legislation presented in Suggested State Legislation is based on state bills and laws, the Committee on Suggested State Legislation does not guarantee that items presented on its dockets or in Suggested State Legislation volumes represent the exact versions of those items as enacted by a state.

Standardized Sections and Form

Items presented in this and future Suggested State Legislation volumes will retain, to the extent possible, the same enumeration as the bill or Act as submitted by a state. This includes sections, subsections and, paragraphs. However, modifications such as adding: "Severability," "Repealor," and "Effective Date," will be made to the draft as necessary.

Often it is also 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 case. For example, "director," "commissioner," and "agency" are not typically capitalized.
Sample Act
Criminal Rehabilitation Research

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.

Submitted as:
State
Act/Bill number
Status:

Suggested Legislation

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].

Section 3. [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.

***

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

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

Section ... [Effective Date.] [Insert effective date.]
Campaign Financing (Note)

In recent years several states have made an effort to reduce the cost of campaigning for public office. At least four states have enacted legislation to offer public funding to candidates and set campaign spending limits, Arizona, Maine, Massachusetts and Vermont.

Arizona enacted Proposition 200 in 1998. This ballot measure established a system for the public funding of election campaigns for political candidates who voluntarily participate in a system to limit campaign spending and fundraising in statewide and state legislative elections. The proposition reduced by 20 percent the amount per individual that can currently be contributed to a candidate if they opt not to receive the public funding.

Proposition 200 established a Citizens Clean Election Commission that consists of five members, no more than two of whom can be from the same political party or county. People would be eligible for membership on the Commission if they meet certain voter registration requirements, are not lobbyists and have not been candidates for public office or appointed to public office. Members are appointed by both the governor and the highest ranking statewide officeholder who is not from the same political party as the governor.

Candidates who agree to limit their fund raising and spending would qualify to receive money from the Citizens Clean Elections Commission. To qualify, a candidate would have to receive a specified number of $5.00 contributions from registered voters from within the candidate's district. The total money distributed by the Commission is limited to $5.00 multiplied by the number of individual state income tax returns filed that year.

Participating candidates are:

(1) Prohibited from spending more than the amounts established by the Commission for the primary and the general election;

(2) Limited in the amount of personal money that could be used in the campaign; and

(3) Prohibited from accepting other contributions, except as specified for emergency situations.

Proposition 200 establishes reporting requirements for participating candidates in addition to the requirements under current law and would provide for various penalties, including forfeiture of office, for violations.

This proposition establishes a 10 percent surcharge on certain civil penalties and criminal fines and a $100 annual fee on lobbyists representing for-profit entities, including trade groups of for-profit entities, and would allow any other person to donate to pay for public financing of candidates. Taxpayers who donate are eligible for a tax credit in the amount of the donation up to $500 or 20 percent of the taxpayer's total tax owed, whichever is more.
The Citizens Clean Elections Commission enforces and administers the system, including the allocation of money to qualified candidates, sponsors debates, adopts rules and ensures proper use of the money distributed to candidates and provide education to voters.

In November 1996, Maine enacted a ballot initiative to offer full public financing to candidates for state office who reject special-interest contributions and agree to campaign spending limits. This Act provides a public financing option for candidates for the offices of governor and lieutenant governor, limits campaign contributions and expenditures of all candidates and makes other reforms and revisions to the campaign finance laws.

Major features of the Vermont Campaign Finance Option for candidates for the offices of governor and lieutenant governor include the following:

(1) Limits Campaign Season: To be eligible for funding, the candidate can not have accepted $500 or more in campaign contributions or made expenditures of $500 or more prior to February 15 of general election year.

(2) Demonstrations of Support of Registered Voters: To be eligible for Vermont campaign finance grants, a candidate for governor must raise at least $35,000 in contributions of no more than $50 from at least 1,500 registered voters. A candidate for lieutenant governor must raise at least $17,500 in contributions of no more than $50 from at least 750 registered voters.

(3) The major sources of revenue for the public financing program are: 40 percent of annual report fees paid by domestic business corporations; 33 percent of annual report fees paid by foreign business corporations; a 5 percent tax on lobbyists’ expenditures; and a voluntary Vermont campaign fund add-on to the individual income tax.

The following provisions of the Act affect candidates, generally:

(1) All political advertisements must carry the name and address of the person who paid for the ad, and the name of the candidate, party or PAC by or on whose behalf the ad was published or broadcast.

(2) Any person who makes an expenditure of $500 or more for mass media activities within 30 days of a primary or general election must report these expenditures to the secretary of state, and to the candidate whose name or likeness is included in the activity, within 24 hours of making the expenditure. Activities covered by this section include television commercials, radio commercials, mass mailings, literature drops and central telephone banks.

(3) Contribution limitations are established and apply to an entire two-year general election cycle. These limitations are: state representative or local office, $200 from a single source, PACs and parties; state senator or county office, $300 from a single source, PACs and parties; statewide office, $400 from a single source, PACs and parties; PAC or political party, $2,000 from a single source, PACs and parties. In addition, a 25 percent limitation is imposed on total contributions to candidates, parties and PACS from out-of-state individuals, parties and PACS. Finally, the Act retains the “immediate family” exemption from these contribution limitations, but defines...
“immediate family” as individuals related to the candidate in the first, second or third degree of consanguinity.

(4) Expenditure limitations are established and apply to an entire two-year general election cycle. These limitations are: governor, $300,000; lieutenant governor, $100,000; other statewide offices, $45,000; state senator, $4,000 plus $2,500 for each additional seat in the district; county office, $4,000; state representative, $2,000/$3,000 for single and two-member districts, respectively. Expenditure limitations do not apply to candidates for local offices.

(5) Expenditures by a person other than the candidate, or the candidate's political committee, that are intended to promote the election of a specific candidate or group of candidates, or the defeat of an opposing candidate or group of candidates, that are intentionally facilitated by, solicited by or approved by a candidate or the candidate's political committee will be considered a contribution to the candidate and an expenditure by the candidate. An opposing candidate may seek a determination that an expenditure is a related expenditure by filing a petition in superior court. Within 24 hours, the court shall schedule a hearing on the petition and expedite the hearing in all ways.

(6) Campaign finance reports must be filed 40 days before the primary, on the 25th of each month thereafter until general election, and 40 days after the general election.

(7) In addition to other remedies provided in the act, a person who violates any provision of the campaign finance law will be subject to a civil penalty of up to $10,000 for each violation. If the candidate received campaign finance grants, she or he would be required to refund any unspent balance of the grants.

In 1996 Maine enacted a law to establish an alternative campaign financing option for candidates running for governor, state senator and state representative, beginning in the year 2000. Known as the Maine Clean Election Act (see Title 21-A, Chapter 14) candidates who collect a set number of contributions from voters within their districts are eligible for fixed and equal public campaign funding from a Clean Election Fund which was established by the Act.

Massachusetts enacted Ballot Measure 2 in 1998. This law created a new voluntary system allowing candidates for state office who agree to campaign spending limits and $100 contribution limits to receive a set amount of public funds for their campaigns, starting with the 2002 election. The law limits transfers of money from national political parties to state political parties for administrative, overhead, or party-building activities. It requires candidates for state office who had raised or spent at least a set minimum amount in an election cycle to file their required campaign finance reports with the state electronically, and requires that the public have prompt electronic access to such reports.

The new funding system replaces the previous system of limited public
financing of campaigns for statewide office. To participate in the new system, a candidate must raise a minimum number of contributions from registered voters in the relevant district. Such contributions must be between $5 and $100 and be collected during a limited period: for statewide candidates beginning on August 1 of the year before the election, for other candidates beginning on January 1 of the election year, and for all candidates ending on the last day to file nomination papers with the secretary of state.

For any election, a participating candidate cannot accept contributions of more than $100 from any person or political committee and can not raise or spend any money other than these contributions and public funds. Candidates meeting all of these requirements are subject to appropriation by the Legislature, receive public funding in the primary and general elections. This comes from a new state Clean Elections Fund, consisting of amounts voluntarily contributed through the check-off on the state income tax return, any amounts appropriated by the Legislature, and any money in the existing state election campaign fund.

A candidate can raise and spend private contributions in order to bring his or her spending up to the predetermined spending limit in the legislation. A participating candidate running unopposed receives only half the listed amount of public funds and can spend correspondingly less than a candidate with an opponent. All funds can be spent only for campaign purposes. Any unspent public funds from a primary or general election must be returned after that election. A participating candidate who violated the contribution or spending limits must return all public funds, become ineligible for further funds, and in some cases pay fines.

Candidates who do not accept public funds must to report any spending in excess of the limits can be fined for failing to do so. If such a non-participating candidate spent more than the limit, participating candidates in that race would immediately receive, and can spend, public “matching funds” equal to the amount of the excess spending.

The total amount of public funding (including matching funds) a candidate can receive is limited to twice the spending limit for that race. During the general election campaign, running mates for governor and lieutenant governor would be treated as teams in order to determine the distribution of any matching funds.

An individual or political committee’s total in-kind contributions (such as goods and some services) to a participating candidate is limited to $500 per election. Higher limits would govern political parties’ in-kind contributions. Participating candidates cannot accept more than a set amount in such contributions, ranging from $3,000 per election for representative up to $35,000 for governor. The expenditure, contribution, and public funding limits would be adjusted every two years for inflation. A special commission (including elected officials and private citizens) would be set up to meet every two years to review the system and recommend any needed changes.
The state director of campaign finance can issue regulations to interpret and enforce the law.

A Federal Election Commission chart on states with special tax or public financing provisions follows this Note.

### States with Special Tax or Public Financing Provisions

<table>
<thead>
<tr>
<th>State</th>
<th>Tax Provisions</th>
<th>Public Financing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Credit</td>
<td>Deduction</td>
</tr>
<tr>
<td>Alabama</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>Arizona</td>
<td>- -</td>
<td>$100 [a]</td>
</tr>
<tr>
<td>Arkansas</td>
<td>$50 for contributions to candidates; small donor PAC; approved PAC; or organized political party [a]</td>
<td>- -</td>
</tr>
<tr>
<td>California</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>50% of contribution to maximum of $50 [a]</td>
<td>- -</td>
</tr>
<tr>
<td>Florida</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>Hawaii</td>
<td>- -</td>
<td>$100 for contributions to central or county party committees, or $500 for contributions to candidates who abide by expenditure limits, with deductible maximum of $100 of a total contribution to a single candidate</td>
</tr>
</tbody>
</table>

Suggested State Legislation - 5
<table>
<thead>
<tr>
<th>State</th>
<th>Credit</th>
<th>Deduction</th>
<th>Checkoff</th>
<th>Surcharge</th>
<th>Source of Funds</th>
<th>Distribution of Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Idaho</td>
<td>- -</td>
<td>- -</td>
<td>$1</td>
<td>- -</td>
<td>Checkoff</td>
<td>To political party designated by taxpayer</td>
</tr>
<tr>
<td>Indiana</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>Revenues from personalized motor vehicle license plates</td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>- -</td>
<td>- -</td>
<td>$1.50 [a]</td>
<td>- -</td>
<td>Checkoff</td>
<td>To political party designated by taxpayer, divided among qualified parties as specified by taxpayer</td>
</tr>
<tr>
<td>Kentucky</td>
<td>- -</td>
<td>- -</td>
<td>$2 [a]</td>
<td>- -</td>
<td>Checkoff</td>
<td>To political party designated by taxpayer for party activities and distribution to general election candidates</td>
</tr>
</tbody>
</table>
| Maine      | - -    | - -       | - -      | (1) Any amount | (1) Surcharge | (1) To political party designated by taxpayer  
<pre><code>                                    |         |           |          | (2) $3 [a]       | (2) Checkoff, general fund, surplus candidate seed money, unspent candidate funds, voluntary donations, fines |
</code></pre>
<p>| Maryland   | - -    | - -       | - -      | Add-on not to exceed $500 per tax filer | Direct appropriations, fines, tax add-ons | To candidates for governor and lieutenant governor only |
| Massachusetts | - -    | - -       | $1 [a]   | - -       | Checkoff       | To candidates abiding by expenditure limits and raising qualifying contributions in statewide primary and general elections |
| Michigan   | - -    | - -       | $3 [a]   | - -       | Checkoff       | To candidates in gubernatorial primaries and candidates for governor and lieutenant governor in general election |
| Minnesota  | Refund up to $50 for contributions to political parties and qualified candidates [a] | - - | $5 [a] | - - | Direct appropriations, checkoff, anonymous contributions to candidates and committees | To qualifying candidates for governor, lieutenant governor, attorney general, other statewide offices, and state senator and state representative, after primary and general elections; to the state committee of a political party for multi-candidate expenditures; and to state general fund for administrative purposes |
| Montana    | - -    | $100 [a]  | - -      | - -       | - -            | - -                                                                                   |</p>
<table>
<thead>
<tr>
<th>State</th>
<th>Credit</th>
<th>Deduction</th>
<th>Checkoff</th>
<th>Surcharge</th>
<th>Source of Funds</th>
<th>Distribution of Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nebraska</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$2 of income tax refund</td>
<td>Direct appropriations, taxpayer contribution of income tax refund, amounts repaid to campaign finance limitation cash fund by candidates, civil penalties, and late filing fees</td>
<td>If highest estimated maximum expenditure of opponents not agreeing to abide by the statutory spending limitation for the office is greater than the spending limitation, the difference to otherwise qualified candidates for governor, lieutenant governor, secretary of state, attorney general, auditor of public accounts, legislature, public service commission, board of regents of the University of Nebraska, and state board of education who agree to abide by the statutory spending limitation. Applicable only to legislative offices in 1998 general election</td>
</tr>
<tr>
<td>New Jersey</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$1 [a]</td>
<td>Direct appropriations and checkoff</td>
<td>To qualified gubernatorial candidates</td>
</tr>
<tr>
<td>New Mexico</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$2 [a]</td>
<td>Checkoff</td>
<td>To political party designated by taxpayer</td>
</tr>
<tr>
<td>North Carolina</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$1 [a]</td>
<td>Checkoff for political parties fund; surcharge for candidates fund</td>
<td>Political parties fund divided among political parties according to registration. In non-general election years, not more than 50% in election campaign fund to state party and 50% to presidential election year candidates fund. In general election year, 100% in election campaign fund to state party (with 50% to special party committee). If presidential election year, 100% in presidential election year candidates fund to state party (with 50% to special party committee). Candidates fund divided among opposed candidates for governor who agree to abide by the expenditure limit and raise matching funds to 5% of expenditure limit. Matching funds are provided on a one-to-one basis for general election campaign.</td>
</tr>
</tbody>
</table>

### Campaign Financing (Note)

- **Nebraska**: If highest estimated maximum expenditure of opponents not agreeing to abide by the statutory spending limitation for the office is greater than the spending limitation, the difference to otherwise qualified candidates for governor, lieutenant governor, secretary of state, attorney general, auditor of public accounts, legislature, public service commission, board of regents of the University of Nebraska, and state board of education who agree to abide by the statutory spending limitation. Applicable only to legislative offices in 1998 general election.

- **New Jersey**: To qualified gubernatorial candidates.

- **New Mexico**: To political party designated by taxpayer.

- **North Carolina**: Political parties fund divided among political parties according to registration. In non-general election years, not more than 50% in election campaign fund to state party and 50% to presidential election year candidates fund. In general election year, 100% in election campaign fund to state party (with 50% to special party committee). If presidential election year, 100% in presidential election year candidates fund to state party (with 50% to special party committee). Candidates fund divided among opposed candidates for governor who agree to abide by the expenditure limit and raise matching funds to 5% of expenditure limit. Matching funds are provided on a one-to-one basis for general election campaign.
### Campaign Financing (Note)

<table>
<thead>
<tr>
<th>State</th>
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<th>Checkoff</th>
<th>Surcharge</th>
<th>Source of Funds</th>
<th>Distribution of Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio</td>
<td>$50 for</td>
<td></td>
<td>$1 [a]</td>
<td></td>
<td>Checkoff</td>
<td>Divided equally among major political parties each calendar quarter. Party allocation divided: 50% to state executive committee of party, and 50% to county executive committees of party according to proportion of income from tax return checkoffs in each county to total checkoff income</td>
</tr>
<tr>
<td></td>
<td>contributions to statewide candidates [a]</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>- -</td>
<td>$100</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>Oregon</td>
<td>Lesser of (1) total contributions with a maximum of $50 [a], or (2) the taxpayer's liability. No credit for contributions to statewide and state legislative candidates who do not file declaration of limitation on expenditures</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>- -</td>
<td>- -</td>
<td>$5 [a]</td>
<td>- -</td>
<td>Checkoff (&quot;credit&quot;)</td>
<td>First $2 ($4 for a joint return) of checkoff allocated to major political parties. Distributed to eligible political party designated by taxpayer. If a party is not designated, 5% of the amount is allocated to each party for each state officer elected, and the remainder to each party in proportion to the votes its candidate for governor received in previous election. Maximum of $200,000 allocated to all political parties. Remainder to qualifying candidates in general election for governor, lieutenant governor, secretary of state, attorney general, and general treasurer as state matching funds (maximum) for 1994 was $750,000 for governor and $187,500 for other candidates.</td>
</tr>
<tr>
<td>State</td>
<td>Credit</td>
<td>Deduction</td>
<td>Checkoff</td>
<td>Surcharge</td>
<td>Source of Funds</td>
<td>Distribution of Funds</td>
</tr>
<tr>
<td>------------</td>
<td>--------</td>
<td>-----------</td>
<td>----------</td>
<td>----------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Utah</td>
<td>- -</td>
<td>- -</td>
<td>$1</td>
<td>- -</td>
<td>Checkoff (although funds actually are from revenue from sales and use taxes)</td>
<td>To political party designated by taxpayer: 50% to state central committee, and 50% to county central committee in proportion to the number of taxpayers designating the party in each county to the total number of taxpayers in the state who designate the party.</td>
</tr>
<tr>
<td>Vermont</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>Up to amount of income tax refund or overpayment effective taxable years after January 1, 1998</td>
<td>To qualifying candidates for governor and lieutenant governor. Governor candidates: Non-incumbent—$75,000 minus qualifying contributions for primary; $250,000 for general election. Incumbent—$63,750 minus qualifying contributions for primary and $191,250 for general election. Lt. Governor candidates: Non-incumbent—$25,000 minus qualifying contributions for primary; $75,000 for general election. Incumbent—$21,250 minus qualifying contributions for primary; $63,750 for general election</td>
</tr>
<tr>
<td>Virginia</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>$25 [a] of income tax refund</td>
<td>Surcharge</td>
<td>To designated political party</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>- -</td>
<td>- -</td>
<td>$1 [a]</td>
<td>- -</td>
<td>Checkoff</td>
<td>According to formula, to state executive office, state legislative office and state supreme court candidates in a spring, general, or special election [e]</td>
</tr>
</tbody>
</table>

**Note:** This table details only those states that have a tax provision relating to individuals or a provision for public financing of state elections. Credits and deductions may be allowed only for certain types of candidates and/or political parties. Consult state law for further details.

**Key:**
- - - No provision
[a] For joint returns, amount indicated may be doubled
[b] And a separate designation of $1, $5, $10, or $25
[c] Additional amounts may be donated
[d] On intangibles tax return
[e] Candidates must meet certain qualifications
Charter Technical Career Centers

This Act enables school districts or community colleges to sponsor a charter technical career center (CTCC), largely consistent with the authority to operate a charter school granted in state law. "Charter technical career center" or "center" means a public school or a public technical center operated under a charter granted by the local school board or community college district board of trustees or a consortium, including one or more school boards and community college district boards of trustees that includes the district in which the facility is located, which is nonsectarian in its programs, admission policies, employment practices, and operations and is managed by a board of directors.

The Act directs the state commissioner of education to provide an annual comparative evaluation of charter technical career centers and public technical centers. It also contains conforming provisions relating to optional participation of a CTCC in the state retirement system or community college retirement system, as well as a provision for a school district to receive a declining enrollment calculation for transfers related to the creation of a CTCC.

Submitted as:
Florida
CH 98-302

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as “An Act to Establish Charter Technical Career Centers.”

2 Section 2. [Legislative Declarations.]

2 WHEREAS, the [Legislature] supports a strong, prosperous economy, with a well-trained, highly qualified workforce, and

4 WHEREAS, the [Legislature] continues to foster transition of [Work and Gained Economic Self-Sufficiency (WAGES)] participants from dependency on public funds to self-sufficiency, and

7 WHEREAS, local economies are dependent upon maximizing local workforce training and education resources, and

9 WHEREAS, the [Legislature] promotes more choices for parents and students, but has not authorized public chartering entities to encourage public or public and private partnerships for workforce education and training, and
WHEREAS, technical career centers that operate under a charter rather than under the direct supervision of a school board or a community college may be able to respond more rapidly to economic development and economic expansion opportunities, and

WHEREAS, traditional education and career training environments may be restricted in their flexibility to serve the individual education and career training needs of students, and

WHEREAS, charter technical career centers may be able to provide more innovative approaches to workforce preparation, and

WHEREAS, business and industry should have primary input in the design and structure of all career programs and services, and

WHEREAS, the [Legislature] desires to maintain and strengthen the mission of individual education and training delivery systems,

NOW, THEREFORE, Be It Enacted by the [Legislature]:

Section 3. [Authorization.] The [Legislature] finds that the establishment of charter technical career centers can assist in promoting advances and innovations in workforce preparation and economic development. A charter technical career center may provide a learning environment that better serves the needs of a specific population group or a group of occupations, thus promoting diversity and choices within the public education and public postsecondary technical education community in this state. Therefore, the creation of such centers is authorized as part of the state's program of public education. A charter technical career center may be formed by creating a new school or converting an existing school district or community college program to charter technical status.

Section 4. [Purpose.] The purpose of a charter technical career center is to:

(a) develop a competitive workforce to support local business and industry and economic development.

(b) create a training and education model that is reflective of market-place realities.

(c) offer a continuum of career educational opportunities using a school-to-work, tech-prep, technical, academy, and magnet school model.

(d) provide career pathways for lifelong learning and career mobility.

(e) enhance career and technical training.

Section 5. [Definitions.] As used in this Act, the term:

(a) "Charter technical career center" or "center" means a public school or a public technical center operated under a charter granted by the local school board or community college district board of trustees or a consortium, including [one (1)] or more school boards and community college district boards of trustees that includes the district in which the facility is located.
Charter Technical Career Centers

located, which is nonsectarian in its programs, admission policies, employment practices, and operations and is managed by a board of directors.

(b) “Sponsor” means a district school board, a community college district board of trustees, or a consortium of one or more of each.

Section 6. [Charter.] A sponsor may designate centers as provided in this section. An application to establish a center may be submitted by a sponsor or another organization that is determined, by rule of the [state board of education], to be appropriate. However, an independent school is not eligible for status as a center. The charter must be signed by the governing body of the center and the sponsor, and must be approved by the district school board and community college board of trustees in whose geographic region the facility is located. An applicant who wishes to establish a center must submit to the local school board or community college district board of trustees, or a consortium of one or more of each, an application that includes:

(a) the name of the proposed center.

(b) the proposed structure of the center, including a list of proposed members of the board of directors or a description of the qualifications for and method of their appointment or election.

(c) the workforce development goals of the center, the curriculum to be offered, the outcomes and the methods of assessing the extent to which the outcomes are met.

(d) the admissions policy and criteria for evaluating the admission of students.

(e) a description of the staff responsibilities and the proposed qualifications of the teaching staff.

(f) a description of the procedures to be implemented to ensure significant involvement of representatives of business and industry in the operation of the center.

(g) a method for determining whether a student has satisfied the requirements for graduation specified in [insert citation], and for completion of a postsecondary certificate or degree.

(h) a method for granting secondary and postsecondary diplomas, certificates, and degrees.

(i) a description of and address for the physical facility in which the center will be located.

(j) a method of resolving conflicts between the governing body of the center and the sponsor and between consortium members, if applicable.

(k) a method for reporting student data as required by law and rule.

(l) other information required by the local school board or community college district board of trustees.

Students at a center must meet the same testing and academic performance standards as those established by law and rule for students at public schools and public technical centers. The students must also meet any ad-
ditional assessment indicators that are included within the charter approved by the district school board or community college district board of trustees.

Section 7. [Application.] An application to establish a center must be submitted by [February 1] of the year preceding the school year in which the center will begin operation. The sponsor must review the application and make a final decision on whether to approve the application and grant the charter by [March 1], and may condition the granting of a charter on the center’s taking certain actions or maintaining certain conditions. Such actions and conditions must be provided to the applicant in writing. The local school board or community college district board of trustees is not required to issue a charter to any person.

Section 8. [Sponsor.] A district school board or community college district board of trustees or a consortium of one or more of each may sponsor a center in the county in which the board has jurisdiction.

(a) A sponsor must review all applications for centers received through at least [February 1] of each calendar year for centers to be opened at the beginning of the sponsor’s next school year. A sponsor may receive applications later than this date if it so chooses. To facilitate an accurate budget projection process, a sponsor shall be held harmless for full time equivalency (FTE) students that are not included in the FTE projection due to approval of applications after the FTE projection deadline. A sponsor must, by a majority vote, approve or deny an application no later than [sixty (60)] days after the application is received. If an application is denied, the sponsor must, within [ten (10)] days, notify the applicant in writing of the specific reasons for denial, which must be based upon good cause. Upon approval of a charter application, the initial startup must be consistent with the beginning of the public school or community college calendar for the district in which the charter is granted, unless the sponsor allows a waiver of this provision for good cause.

(b) An applicant may appeal any denial of its application to the [state board of education] within [thirty (30)] days after the sponsor’s denial and shall notify the sponsor of its appeal. Any response of the sponsor must be submitted to the [state board] within [thirty (30)] days after notification of the appeal. The [state board] must, by majority vote, accept or reject the decision of the sponsor no later than [sixty (60)] days after an appeal is filed, pursuant to [state board] rule. The [state board] may reject an appeal for failure to comply with procedural rules governing the appeals process, and the rejection must describe the submission errors. The appellant may have up to [fifteen (15)] days after notice of rejection to resubmit an appeal. An application for appeal submitted after a rejection is timely if the original appeal was filed within [thirty (30)] days after the sponsor’s denial. The [state board] shall remand the application to the sponsor with a written
Charter Technical Career Centers

recommendation that the sponsor approve or deny the application, consistent with the [state board's] decision. The decision of the [state board] is not subject to [insert citation].

(c) The sponsor must act upon the recommendation of the [state board of education] within [thirty (30)] days after it is received, unless the sponsor determines by competent substantial evidence that approving the [state board's] recommendation would be contrary to law or the best interests of the students or the community. The sponsor must notify the applicant in writing concerning the specific reasons for its failure to follow the [state board's] recommendation. The sponsor's action on the [state board's] recommendation is a final action, subject to judicial review.

(d) The [department of education] may provide technical assistance to an applicant upon written request.

(e) The terms and conditions for the operation of a center must be agreed to by the sponsor and the applicant in a written contract. The sponsor may not impose unreasonable requirements that violate the intent of giving centers greater flexibility to meet educational goals. The applicant and sponsor must reach an agreement on the provisions of the contract or the application is deemed denied.

(f) The sponsor shall monitor and review the center's progress towards charter goals and shall monitor the center's revenues and expenditures.

Section 9. [Legal Entity.] A center must organize as a nonprofit organization and adopt a name and corporate seal. A center is a body corporate and politic, with all powers to implement its charter program. The center may:

(a) be a private or a public employer.

(b) sue and be sued, but only to the same extent and upon the same conditions that a public entity can be sued.

(c) acquire real property by purchase, lease, lease with an option to purchase, or gift, to use as a center facility.

(d) receive and disburse funds.

(e) enter into contracts or leases for services, equipment, or supplies.

(f) incur temporary debts in anticipation of the receipt of funds.

(g) solicit and accept gifts or grants for career center purposes.

(h) take any other action that is not inconsistent with this section and rules adopted under this section.

Section 10. [Eligible Students.] A center must be open to all students as space is available and may not discriminate in admissions policies or practices on the basis of an individual's physical disability or proficiency in English or on any other basis that would be unlawful if practiced by a public school or a community college. A center may establish reasonable criteria by which to evaluate prospective students, which criteria must be outlined in the charter.
Section 11. [Facilities.] A center may be located in any suitable location, including part of an existing public school or community college building, space provided on a public worksite, or a public building. A center's facilities must comply with the [State Uniform Building Code for Public Educational Facilities Construction] adopted pursuant to [insert citation], or with applicable state minimum building codes pursuant to [insert citation], and state minimum fire protection codes pursuant to [insert citation], adopted by the authority in whose jurisdiction the facility is located. If K-12 public school funds are used for construction, the facility must remain on the local school district's [Florida Inventory of School Houses (FISH)] school building inventory of the local school board and must revert to the local school board if the consortium dissolves and the program is discontinued. If community college public school funds are used for construction, the facility must remain on the local community college's facilities inventory and must revert to the local community college district board if the consortium dissolves and the program is discontinued. The additional student capacity created by the addition of the center to the local school district's [FISH] may not be calculated in the permanent student capacity for the purpose of determining need or eligibility for state capital outlay funds while the facility is used as a center. If the construction of the center is funded jointly by K-12 public school funds and community college funds, the sponsoring entities must agree, before granting the charter, on the appropriate owner and terms of transfer of the facility if the charter is dissolved.

Section 12. [Exemption from Statutes.]
(a) A center must operate pursuant to its charter and is exempt from all statutes of the [insert citation] except provisions pertaining to civil rights and to student health, safety, and welfare, or as otherwise required by law.
(b) A center must comply with the [insert citation] with respect to providing services to students with disabilities.
(c) A center must comply with the antidiscrimination provisions of [insert citation].

Section 13. [Funding.]
(a) Each school board and community college that sponsors a charter technical career center shall pay directly to the center an amount stated in the charter. State funding shall be generated for the center for its student enrollment and program outcomes as provided in law. A center is eligible for funding from the [workforce development education fund], the [education finance program], and the [community college program fund], depending upon the programs conducted by the center.
(b) A center may receive other state and federal aid, grants, and revenue through the local school board or community college district board of trustees.
(c) A center may receive gifts and grants from private sources.
Charter Technical Career Centers

(d) A center may not levy taxes or issue bonds, but it may charge a student tuition fee consistent with authority granted in its charter and permitted by law.

(e) A center is subject to an annual financial audit in a manner similar to that of a school district or community college.

(f) A center must provide instruction for at least the number of days required by law for other public schools or community colleges, as appropriate, and may provide instruction for additional days.

(g) The sponsor, at the center’s request, may apply to the [commissioner of education] for a waiver of any requirements that inhibit maximizing the use of public education funds.

Section 14. [Employees of a Center.]

(a) A center may select its own employees.

(b) A center may contract for services with an individual, partnership, or a cooperative. Such persons contracted with are not public employees.

(c) If a center contracts with a public educational agency for services, the terms of employment must follow existing state law and rule and local policies and procedures.

(d) The employees of a center may bargain collectively, as a separate unit or as part of the existing district collective bargaining unit, as determined by the structure of the center.

(e) As a public employer, a center may participate in:

1. The [state retirement system] upon application and approval as a “covered group” under [insert citation]. If a center participates in the [state retirement system], its employees are compulsory members of the [state retirement system].

2. The [state community college system optional retirement program] pursuant to [insert citation], if the charter is granted by a community college that participates in the optional retirement program and meets the eligibility criteria of [insert citation].

(f) Teachers who are considered qualified by the career center are exempt from state certification requirements.

(g) A public school or community college teacher or administrator may take a leave of absence to accept employment in a charter technical career center upon the approval of the school district or community college.

(h) An employee who is on a leave of absence under this section may retain seniority accrued in that school district or community college and may continue to be covered by the benefit programs of that district or community college if the center and the district school board or community college board of trustees agree to this arrangement and its financing.

Section 15. [Board of Directors Authority.] The board of directors of a center may decide matters relating to the operation of the school, including budgeting, curriculum, and operating procedures, subject to the center’s charter.
Section 16. [Accountability.] Each center must submit a report to the participating school board or district community college board of trustees by [August 1] of each year. The report must be in such form as the sponsor prescribes and must include:

(a) A discussion of progress made toward the achievement of the goals outlined in the center’s charter; and

(b) A financial statement setting forth by appropriate categories the revenue and expenditures for the previous school year.

Section 17. [Terms of the Charter.] The term of an initial charter may not exceed [five (5)] years. Thereafter, the sponsor may renew a charter for a period up to [five (5)] years. The sponsor may refuse to renew a charter or may revoke a charter if the center has not fulfilled a condition imposed under the charter or if the center has violated any provision of the charter. The sponsor may place the center on probationary status to allow the implementation of a remedial plan, after which, if the plan is unsuccessful, the charter may be summarily revoked. The sponsor shall develop procedures and guidelines for the revocation and renewal of a center’s charter. The sponsor must give written notice of its intent not to renew the charter at least [twelve (12)] months before the charter expires. If the sponsor revokes a charter before the scheduled expiration date, the sponsor must provide written notice to the governing board of the center at least [sixty (60)] days before the date of termination, stating the grounds for the proposed revocation. The governing board of the center may request in writing an informal hearing before the sponsor within [fourteen (14)] days after receiving the notice of revocation. A revocation takes effect at the conclusion of a school year, unless the sponsor determines that earlier revocation is necessary to protect the health, safety, and welfare of students. The sponsor shall monitor and review the center in its progress towards the goals established in the charter and shall monitor the revenues and expenditures of the center.

Section 18. [Transportation.] The center may provide transportation, pursuant to [insert citation], through a contract with the district school board or the community college district board of trustees, a private provider, or parents of students. The center must ensure that transportation is not a barrier to equal access for all students in grades K-12 residing within a reasonable distance of the facility.

Section 19. [Immunity.] For the purposes of tort liability, the governing body and employees of a center are governed by [insert citation].

Section 20. [Rules.] The [state board of education] shall adopt rules, pursuant to [insert citation], relating to the implementation of charter technical career centers.
Section 21. [Evaluation; Report.] The [commissioner of education] shall provide for an annual comparative evaluation of charter technical career centers and public technical centers. The evaluation may be conducted in cooperation with the sponsor, through private contracts, or by department staff. At a minimum, the comparative evaluation must address the demographic and socioeconomic characteristics of the students served, the types and costs of services provided, and the outcomes achieved. By [December 30] of each year, the [commissioner of education] shall submit to the [governor], the [president of the Senate], the [speaker of the House of Representatives], and the [Senate] and [House] committees that have responsibility for secondary and postsecondary career education a report of the comparative evaluation completed for the previous school year.

Section 22. [Severability.] [Insert severability clause.]

Section 23. [Repealer.] [Insert repealer clause.]

Section 24. [Effective Date.] [Insert effective date.]
Community Dispute Resolution Centers and Juvenile Offenders

This Act authorizes community dispute resolution centers to mediate disputes between juvenile offenders and their victims. The draft also provides immunity from civil suits for members of the boards of directors and certain participants in youth courts.

Submitted as:
Alaska
Senate CS for CS for HB 7

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This Act may be cited as “An Act Authorizing Establishment of Community Dispute Resolution Centers to Foster the Resolution of Disputes Between Juvenile Offenders and Their Victims, and Providing Immunity from Civil Suits for Members of the Boards of Directors and Certain Participants in Youth Courts.”

Section 2. [Jurisdiction.]
(a) Whenever circumstances subject a minor to the jurisdiction of this Act, the court shall:

   (1) provide, under procedures adopted by court rule, that, for a minor who is alleged to be a delinquent minor under [insert citation], a state agency shall make a preliminary inquiry to determine if any action is appropriate and may take appropriate action to adjust the matter without a court hearing; if, under this paragraph,

   (A) the state agency makes a preliminary inquiry and takes appropriate action to adjust the matter without a court hearing, the minor may not be detained or taken into custody as a condition of the adjustment and, subject to [insert citation], the matter shall be closed by the agency if the minor successfully completes all that is required of the minor by the agency in the adjustment; in a municipality or municipalities in which a youth court has been established under [insert citation], adjustment of the matter under this paragraph may include referral to the youth court; if a community dispute resolution center has been established under [Section 5(a)] of this Act and has obtained recognition under [Section 5(b)], adjustment of the matter under this paragraph may include use of the services of the community dispute resolution center;
(B) the [agency] concludes that the matter may not be adjusted without a court hearing, the [agency] may file a petition under (2) of this subsection setting out the facts; or

(2) appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken; if, under this paragraph, the court appoints a person or [agency] to make a preliminary inquiry and to report to it, then upon the receipt of the report, the court may informally adjust the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts; if the court informally adjusts the matter, the minor may not be detained or taken into the custody of the court as a condition of the adjustment, and the matter shall be closed by the court upon adjustment.

Section 3. [Sentencing.]
(a) If the court finds that the minor is delinquent, it shall:
   (1) order the minor committed to the [department] for a period of time not to exceed [two (2)] [years] or in any event extend past the day the minor becomes [nineteen (19)] [years] of age, except that the [department] may petition for and the court may grant in a hearing (A) [two (2)] year extensions of commitment that do not extend beyond the minor's [nineteenth (19th)] birthday if the extension is in the best interests of the minor and the public; and (B) an additional [one (1)] [year] period of supervision past age [nineteen (19)] if continued supervision is in the best interests of the person and the person consents to it; the [department] shall place the minor in the juvenile facility that the [department] considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the [department], in its discretion, under [insert citation];
   (2) order the minor placed on probation, to be supervised by the [department], and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time not to exceed [two (2)] [years] and in no event to extend past the day the minor becomes [nineteen (19)] years of age, except that the [department] may petition for and the court may grant in a hearing:
      (A) [two (2)] year extensions of supervision that do not extend beyond the minor's [nineteenth (19th)] birthday if the extension is in the best interests of the minor and the public; and
      (B) an additional [one (1)] year period of supervision past age [nineteen (19)] if the continued supervision is in the best interests of the
person and the person consents to it;

(3) order the minor committed to the custody of the [department] and placed on probation, to be supervised by the [department], and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the [department] considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the [department] may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed [two (2)] years and in no event to extend past the day the minor becomes [nineteen (19)] years of age, except that the [department] may petition for and the court may grant in a hearing,

(A) [two (2)] year extensions of commitment that do not extend beyond the minor's [nineteenth (19th)] birthday if the extension is in the best interests of the minor and the public; and

(B) an additional [one (1)] year period of supervision past age [nineteen (19)] if the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the [commissioner] under [Section 5 (b)] to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution; and

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by [insert citation], that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent;

(5) order the minor committed to the [department] for placement in an adventure based education program established under [insert citation]
with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed;

(6) in addition to an order under (1) - (5) of this subsection, if the delinquency finding is based on the minor's violation of [insert citation], order the minor to perform [fifty (50)] hours of community service; for purposes of this paragraph, "community service" includes work:

(A) on a project identified in [insert citation]; or
(B) that, on the recommendation of the city council or traditional village council, would benefit people within the city or village who are elderly or disabled; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under [insert citation] including participation in treatment under [insert citation].

Section 4. [Immunity] An individual who is a member or an agent of the board of directors of a nonprofit corporation that has obtained recognition from the [commissioner] to serve as a [youth court] under this section is immune from suit in a civil action based upon the exercise or performance of or the failure to exercise or perform a discretionary function or a discretionary duty as a member of the board of directors or that has been properly delegated by the board of directors. An individual who tries, represents, or adjudicates a minor in a [youth court] is immune from suit in a civil action based upon the exercise or performance of or the failure to exercise or perform a discretionary function or a discretionary duty within the individual's quasi-judicial capacity with the [youth court]. A nonprofit corporation that has obtained recognition from the commissioner to serve as a youth court is immune from suit in a civil action based upon an act or failure to act for which an individual is granted immunity under this subsection.

Section 5. [Community Dispute Resolution Centers for Matters Involving Minors.]

(a) An entity organized for the purpose of providing community mediation services may establish and operate a community dispute resolution center to resolve disputes between minors who are alleged to have committed offenses and the victims of those offenses.

(b) The [commissioner] may recognize an entity organized for the purpose of providing community mediation services as a community dispute resolution center to serve as a center to resolve disputes between minors and victims. Before extending recognition under this subsection, the [commissioner] shall determine that the bylaws of the entity set out standards and procedures:

(1) for filing requests for dispute resolution services with the center and
for scheduling mediation sessions participated in by the parties to the dispute;

(2) to ensure that each dispute mediated meets the criteria for appropriateness for mediation and for rejecting disputes that do not meet the criteria;

(3) for giving notice of time, place, and nature of the mediation session to the parties, and for conducting mediation sessions that comply with the provisions of this section;

(4) to ensure that participation by all parties is voluntary;

(5) for obtaining referrals from public and private bodies;

(6) for providing mediators who, during the dispute resolution process, may not make decisions or determinations of the issues involved, but who shall facilitate negotiations by the participants themselves to achieve a voluntary resolution of the issues;

(7) for communicating to the agency making a referral under [Section 2] of this Act or the court making a referral under [Section 3 (a)(4)(A)] of this Act, as appropriate, the following:

(A) notice that the minor and victim have been unable to enter into a written agreement under (d)(2) of this Section or that the minor or victim has withdrawn from mediation as authorized by (f) of this Section;

(B) notice that the minor and victim have entered into a written agreement under (d)(2) of this Section; the center shall transmit a copy of the agreement to the agency or the court, as appropriate;

(C) notice that the minor has failed to perform fully the minor's obligations under the written agreement under (d)(2) of this Section;

(D) notice that the minor has successfully completed all that is required of the minor under the provisions of the written agreement under (d)(2) of this Section; and

(8) for informing and educating the community about the community dispute resolution center and encouraging the use of the center's services in appropriate cases.

(c) A center established under this Section shall provide dispute resolution services between a minor who has committed an offense and who, because of the commission of the offense, may be alleged to be a delinquent minor under [insert citation], and a person who was a victim of that offense. The center shall provide dispute resolution services either without charge to a participant or for a fee that is based on the participant's ability to pay.

(d) In conducting a dispute resolution process under this Section, a center shall require that:

(1) the minor and the victim enter into a written agreement that expresses the method by which they shall attempt to resolve the issues in dispute; and

(2) at the conclusion of the dispute resolution process, the minor and the victim enter into a written agreement that sets out the settlement of the issues and the future responsibilities, if any, of each party.
(e) Except for a notice or a communication described in (b)(7) of this Section, all memoranda, work notes or products, or case files of centers established under this Section are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by a participant, mediator, or another person is a privileged communication and is not subject to disclosure in a judicial or administrative proceeding unless all parties to the communication waive the privilege. However, privilege and limitation on evidentiary use set out in this subsection do not apply to a communication of a threat that injury or damage may be inflicted on a person or on the property of a party to the dispute to the extent the communication may be relevant evidence in a criminal matter.

(f) A minor or a victim who enters a dispute resolution process at a center established under this Section may revoke consent, withdraw from dispute resolution, and seek judicial or administrative redress before reaching a written resolution agreement. The withdrawal must be in writing. If a minor or a victim withdraws from dispute resolution, a legal penalty, sanction, or restraint may not be imposed upon the person for that withdrawal.

(g) A center established under this Section may seek and accept contributions and any other available money and may expend the money to carry out the purposes of this Section.

(h) An individual who is a member or an agent of the board of directors of or a mediator at a community dispute resolution center is immune from suit in a civil action based upon the exercise or performance of or the failure to exercise or perform a discretionary function or a discretionary duty within the official capacity of the individual. A community dispute resolution center is immune from suit in a civil based upon an act or failure to act for which an individual is granted immunity under this subsection.

(i) In this Section, “center” means a community dispute resolution center.

Section 6. [Severability.] [Insert severability clause.]

Section 7. [Repealer.] [Insert repealer clause.]

Section 8. [Effective Date.] [Insert effective date.]
Consumer Telemarketing Protection

This Act prohibits telephone solicitors from making unsolicited sales calls unless the solicitor has instituted procedures for maintaining a list of people who do not wish to receive such solicitations. The Act also prohibits telemarketers from blocking their number from displaying on the equipment of people who they call and who have caller ID.

Submitted as:
Tennessee
Tenn. Code Ann. § 47-18-1526
Status: This submission was compiled from two public Acts: Chapter 948 of 1996 and Chapter 734 of 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning Telemarketing.”

Section 2. [Telephone Solicitations.]
(a) As used in this Act, unless the context otherwise requires:
   (1) “Consumer” means an actual or prospective purchaser, lessee or recipient of consumer goods or services;
   (2) “Division” means the [division of consumer affairs] of the [department of commerce and insurance];
   (3) “Telephone solicitor” means any natural person, firm, organization, partnership, association or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices;
   (4) “Telephonic sales call” means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used by the solicitor or a third party for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes or in connection with prizes, gifts or awards presentations; and
   (5) “Unsolicited telephonic sales call” means a telephonic sales call other than a call made:
      (A) In response to an express request of the person called;
      (B) Primarily in connection with an existing debt or contract, pay-
ment or performance of which has not been completed at the time of such call; or

(C) To any person with whom the telephone solicitor has a prior or existing business relationship.

(b) No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call to any residential, mobile or telephonic paging device telephone number unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephonic solicitations made by or on behalf of that person or entity, in compliance with 47 CFR 64 or 16 CFR 310.

(c) (1) No telephonic sales calls shall be made by a telephone solicitor to a consumer from a telephone if the telephone number of the caller is unlisted, or if the telephone solicitor is using telephone equipment which blocks the caller ID function on the telephone or telephone equipment of the number dialed so that the telephone number of the caller is not displayed on the telephone or telephone equipment which is technically capable of displaying the telephone number of the caller.

(2) (A) In addition to any other penalty provided by this Act, it is an offense for a person owning or directing the use of telephones or telephone equipment in violation of subdivision (c)(1) to use or intentionally employ or direct a telephone solicitor to use, or to contract for the use of, telephones or telephone equipment to make telephonic sales calls in violation of subdivision (c)(1).

(B) A violation of this subdivision (2) is a [Class A misdemeanor], punishable only by a fine not to exceed [two thousand five hundred (2,500)] dollars for each violation.

(d) The [division] shall investigate any complaints received concerning violations of this Act. The civil penalty shall not exceed [one thousand (1,000)] dollars per violation. This civil penalty may be recovered in any action brought under this part by the [division], or the [division] may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The [division] or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation. It shall be an affirmative defense in any action brought under this subsection that the defendant has established and implemented reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations established in this Act.

Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Continuity of Contract Under European Monetary Union

This Act amends state law to provide for the continuity of contracts when the Euro becomes the monetary unit of participating member states of the European Community. The purpose of this Act is to ensure that existing contracts do not become void if the Euro replaces the traditional currency under which they were negotiated.

Submitted as:
Pennsylvania
HB 2193
Status: enacted into law as Act 122, of 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Ensure Continuity of Contract Under European Monetary Union.”

Section 2. [Continuity of Contract.]
(1) If a subject or medium of payment of a contract, security or instrument is a currency that has been substituted or replaced by the Euro, the Euro shall be a commercially reasonable substitute and substantial equivalent that may be either:
(a) used in determining the value of that currency; or
(b) tendered;
In each case at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.
(2) If a subject or medium of payment of a contract, security or instrument is the ECU, the Euro will be a commercially reasonable substitute and substantial equivalent that may be either:
(a) used in determining the value of that currency; or
(b) tendered;
In each case at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.
(3) Performance of any of the obligations described in paragraph (1) or (2) may be made in the currency or currencies originally designated in the contract, security or instrument, so long as the currency or currencies remain legal tender, or in Euro, but not in any other currency, whether or not
Continuity of Contract Under European Monetary Union

the other currency:
(a) has been substituted or replaced by the Euro; or
(b) is a currency that is considered a denomination of the Euro and
has a fixed conversion rate with respect to the Euro.

Section 3. [Effect of Currency Substitution on Performance] None of the
following shall have the effect of discharging or excusing performance under
any contract, security or instrument or give a party the right unilaterally to
alter or terminate any contract, security or instrument:
(a) introduction of the Euro.
(b) tender of Euros in connection with any obligation in compliance
with Section 2 (1) or (2) of this Act.
(c) determination of the value of any obligation in calculation or de-
termination of the subject or medium of payment of a contract, security or
instrument with reference to an interest rate or other basis that has been
substituted or replaced due to the introduction of the Euro and that is a
commercially reasonable substitute and substantial equivalent.

Section 4. [References to ECU in Contracts] When the Euro first becomes
the monetary unit of participating member states of the European Union,
references to the ECU in a contract, security or instrument that also refers
in substance to the definition of the ECU as set forth in Section 8 of this Act
shall be replaced by references to the Euro at a rate of one Euro to one ECU.
References to the ECU in a contract, security or instrument without such a
definition of the ECU shall be presumed, rebuttable by proof of the con-
trary intention of the parties, to be references to the currency basket that is
from time to time used as the unit of account of the European Community.

Section 5. [Effect of Agreements] This section shall not alter or impair
and shall be subject to any agreements between parties with specific refer-
ence to the introduction of the Euro.

Section 6. [Application] Notwithstanding the provisions of [insert cita-
tion] (relating to commercial code) or any other law of this [commonwealth],
this section shall apply to all contracts, securities and instruments, includ-
ing contracts with respect to commercial transactions, and shall not be
deemed to be displaced by any other law of this [commonwealth].

Section 7. [No Application to Other Currency Alteration] In circumstances
of currency alteration other than the introduction of the Euro, this section
shall not be interpreted as creating any negative inference or negative pre-
sumption regarding the validity or enforceability of contracts, securities or
instruments denominated in whole or part in a currency affected by that
alteration.
Section 8. [Definitions.] As used in this Act, the following words and phrases shall have the meanings given to them in this section:

(a) “ECU” or “European Currency Unit” means the currency basket that is from time to time used as the unit of account of the European Community, as defined in European Council Regulation No. 3320/94.

(b) “Euro” means the currency of participating member states of the European Union that adopt a single currency in accordance with the Treaty on European Union signed February 7, 1992.

(c) “Introduction of the Euro” includes, but is not limited to, the implementation from time to time of economic and monetary union in member states of the European Union in accordance with the Treaty on European Union signed February 7, 1992.

Section 9. [Applicability.] This Act shall apply to contracts, securities and instruments entered into or issued before, on or after the effective date of this Act.

Section 10. [Severability.][Insert severability clause.]

Section 11. [Repealer.][Insert repealer clause.]

Section 12. [Effective Date.][Insert effective date.]
Cyberstalking

This Act is based on California law. California law prohibits stalking, which is defined as the willful, malicious, and repeated following or harassing of another, where a credible threat, as defined, has been communicated to the victim with the intent of placing the victim in reasonable fear for his or her safety. This Act expands the definition of “credible threat” to include threats communicated through the use of an electronic communication device, including telephones, cellular phones, computers, video recorders, fax machines, and pagers.

California law prohibits the willful issuance of a threat to commit a crime which will result in the death or great bodily injury to another, with the specific intent that the statement be taken as a threat even if there is no actual intent of carrying out the crime, where the threat is so unequivocal, immediate and specific so as to cause the recipient to reasonably be in sustained fear for his or her own safety or the safety of his or her immediate family. This Act clarifies that this provision applies to threatening statements made verbally, in writing, or by means of an electronic communication device.

California law prohibits, regardless of the good faith of the caller, the making of telephone calls to others with the intent to annoy, where the caller either uses obscene language or makes threats to the other parties person or property. It prohibits the repeated telephoning of another at the recipient’s residence or, under certain circumstances, place of work, with the intent to annoy, except where the repeated telephoning is conducted in good faith. It also provides that an offense under these provisions committed by use of a telephone may be deemed to have been committed at either the place of origin or receipt of the telephone call or calls. This Act expands these provisions to include contacts by means of an electronic communications device, including telephones, cellular phones, computers, video recorders, fax machines, and pagers. This Act creates a good-faith exception for obscene or threatening telephone calls or electronic contacts made with the intent to annoy. The legislation provides that an offense committed by means of an electronic communication device medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

This Act incorporates the definition of “electronic communication” used in subsection 12 of Section 2510 of Title 18 of the United States Code.

Submitted as:
California
CH 825
Status: enacted into law in 1998.
Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Deter Electronic Stalking.”

Section 2. [Legislative Intent.]
It is the intent of this Act to clarify that electronic communications are included in the actions that can constitute the crimes of harassment and stalking. It is not the intent of the [Legislature], by adoption of this Act, to restrict in any way the types of conduct or actions that can constitute harassment or stalking.

Section 3. [Stalking.]
(a) A person is liable for the tort of stalking when the plaintiff proves all of the following elements of the tort:

(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.

(2) As a result of that pattern of conduct, the plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this paragraph, “immediate family” means a spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the [six (6)] months preceding any portion of the pattern of conduct, regularly resided, in the plaintiff’s household.

(3) One of the following:

(A) The defendant, as a part of the pattern of conduct specified in paragraph (1), made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member and, on at least one occasion, the plaintiff clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct.

(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to [insert citation], prohibiting any act described in subdivision (a).

(b) For the purposes of this Section:

(1) “Pattern of conduct” means conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “pattern of conduct.”

(2) “Credible threat” means a verbal or written threat, including that
communicated by means of an electronic communication device, or a threat
implied by a pattern of conduct or a combination of verbal, written, or elec-
tronically communicated statements and conduct, made with the intent
and apparent ability to carry out the threat so as to cause the person who is
the target of the threat to reasonably fear for his or her safety or the safety
of his or her immediate family.

(3) “Electronic communication device” includes, but is not limited to, tele-
phones, cellular telephones, computers, video recorders, fax machines, or
pagers. “Electronic communication” has the same meaning as the term de-
fined in subsection 12 of Section 2510 of Title 18 of the United States Code.

(4) “Harass” means a knowing and willful course of conduct directed
at a specific person which seriously alarms, annoys, torments, or terrorizes
the person, and which serves no legitimate purpose. The course of conduct
must be such as would cause a reasonable person to suffer substantial emo-
tional distress, and must actually cause substantial emotional distress to
the person.

(c) A person who commits the tort of stalking upon another is liable to
that person for damages, including, but not limited to, general damages,
special damages, and punitive damages pursuant to [insert citation].

(d) In an action pursuant to this Section, the court may grant equitable
relief, including, but not limited to, an injunction.

(e) The rights and remedies provided in this Section are cumulative and
in addition to any other rights and remedies provided by law.

(f) This Section shall not be construed to impair any constitutionally pro-
tected activity, including, but not limited to, speech, protest, and assembly.

Section 4. [Crimes Involving Death or Great Bodily Injury.]

(a) Any person who willfully threatens to commit a crime which will
result in death or great bodily injury to another person, with the specific
intent that the statement, made verbally, in writing, or by means of an
electronic communication device, is to be taken as a threat, even if there is
no intent of actually carrying it out, which, on its face and under the cir-
cumstances in which it is made, is so unequivocal, unconditional, immedi-
ate, and specific as to convey to the person threatened, a gravity of purpose
and an immediate prospect of execution of the threat, and thereby causes
that person reasonably to be in sustained fear for his or her own safety or
for his or her immediate family’s safety, shall be punished by imprisonment
in the county jail not to exceed [one (1)] year, or by imprisonment in the
state prison.

(b) For the purposes of this Section, “immediate family” means any spouse,
whether by marriage or not, parent, child, any person related by consan-
guinity or affinity within the second degree, or any other person who regu-
larly resides in the household, or who, within the prior [six (6)] months,
regularly resided in the household.
(c) "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers.

(d) "Electronic communication" has the same meaning as the term defined in subsection 12 of Section 2510 of Title 18 of the United States Code.

Section 5. [Harassment.]

(a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than [one (1)] year or by a fine of not more than [one thousand dollars (1,000)], or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for [two (2)], [three (3)], or [four (4)] years.

(c) Every person who, having been convicted of a felony under this Section, commits a second or subsequent violation of this Section shall be punished by imprisonment in the state prison for [two (2)], [three (3)], or [four (4)] years.

(d) In addition to the penalties provided in this Section, the sentencing court may order a person convicted of a felony under this Section to register as a sex offender pursuant to [insert citation].

(e) For the purposes of this Section, "harasses" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. This course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.

(f) For purposes of this Section, "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this Section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or
her safety or the safety of his or her family. It is not necessary to prove that
the defendant had the intent to actually carry out the threat. The present
incarceration of a person making the threat shall not be a bar to prosecu-
tion under this Section.

(h) For purposes of this Section, the term “electronic communication
device” includes, but is not limited to, telephones, cellular phones, comput-
ers, video recorders, fax machines, or pagers. “Electronic communication”
has the same meaning as the term defined in subsection 12 of Section 2510
of Title 18 of the United States Code.

(i) This Section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is
suspended, for any person convicted under this Section, it shall be a condi-
tion of probation that the person participate in counseling, as designated
by the court. However, the court, upon a showing of good cause, may find
that the counseling requirement shall not be imposed.

(k) The sentencing court also shall consider issuing an order restraining
the defendant from any contact with the victim, that may be valid for up to
[ten (10)] years, as determined by the court. It is the intent of the [Legisla-
ture] that the length of any restraining order be based upon the serious-
ness of the facts before the court, the probability of future violations, and
the safety of the victim and his or her immediate family.

(l) For purposes of this Section, “immediate family” means any spouse,
parent, child, any person related by consanguinity or affinity within the
second degree, or any other person who regularly resides in the household,
or who, within the prior [six (6)] months, regularly resided in the house-
hold.

(m) The court shall consider whether the defendant would benefit from
treatment pursuant to [insert citation]. If it is determined to be appropri-
ate, the court shall recommend that the [department of corrections] make a
certification as provided in [insert citation]. Upon the certification, the de-
fendant shall be evaluated and transferred to the appropriate hospital for
treatment.

Section 6. [Intent to Annoy or Inflict Injury.]

(a) Every person who, with intent to annoy, telephones or makes contact
by means of an electronic communication device with another and addresses
to or about the other person any obscene language or addresses to the other
person any threat to inflict injury to the person or property of the person
addressed or any member of his or her family, is guilty of a misdemeanor.
Nothing in this subdivision shall apply to telephone calls or electronic con-
tacts made in good faith.

(b) Every person who makes repeated telephone calls or makes repeated
contact by means of an electronic communication device with intent to an-
noy another person at his or her residence, is, whether or not conversation
ensues from making the telephone call or electronic contact, guilty of a
misdemeanor. Nothing in this subdivision shall apply to telephone calls or
electronic contacts made in good faith.

(c) Every person who makes repeated telephone calls or makes repeated
contact by means of an electronic communication device with the intent to
annoy another person at his or her place of work is guilty of a misdemeanor
punishable by a fine of not more than [one thousand (1,000)] dollars, or by
imprisonment in a county jail for not more than [one (1)] year, or by both
the fine and imprisonment. Nothing in this subdivision shall apply to tele-
phone calls or electronic contacts made in good faith. This subdivision ap-
plies only if one or both of the following circumstances exist:

(1) There is a temporary restraining order, an injunction, or any other
court order, or any combination of these court orders, in effect prohibiting
the behavior described in this Section.

(2) The person makes repeated telephone calls or makes repeated
contact by means of an electronic communication device with the intent to
annoy another person at his or her place of work, totaling more than [ten
(10)] times in a 24-hour period, whether or not conversation ensues from
making the telephone call or electronic contact, and the repeated telephone
calls or electronic contacts are made to the workplace of an adult or fully
emancipated minor who is a spouse, former spouse, cohabitant, former co-
habitant, or person with whom the person has a child or has had a dating or
engagement relationship or is having a dating or engagement relationship.

(d) Any offense committed by use of a telephone may be deemed to have
been committed where the telephone call or calls were made or received.
Any offense committed by use of an electronic communication device or
medium, including the Internet, may be deemed to have been committed
where the electronic communication or communications were originally sent
or first viewed by the recipient.

(e) Subdivision (a), (b), or (c) is violated when the person acting with
intent to annoy makes a telephone call requesting a return call and per-
forms the acts prohibited under subdivision (a), (b), or (c) upon receiving
the return call.

(f) If probation is granted, or the execution or imposition of sentence is
suspended, for any person convicted under this Section, the court may or-
der as a condition of probation that the person participate in counseling.

(g) For purposes of this Section the term “electronic communication de-
vice” includes, but is not limited to, telephones, cellular phones, computers,
video recorders, fax machines, or pagers.

“Electronic communication” has the same meaning as the term defined
in subsection 12 of Section 2510 of Title 18 of the United States Code.

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

1  Section 8. [Repealer.] [Insert repealer clause.]

1  Section 9. [Effective Date.] [Insert effective date.]
Digital State

The purpose of this Act is to enable more efficient transactions with citizens and businesses using electronic commerce technologies, eliminate paperwork, increase customer service, and deliver educational opportunities.

The Act requires state entities to allow certain services to be transacted on the Internet by July 1, 2002. Potential examples include:

- application for and renewal of professional and occupational licenses;
- renewal of drivers licenses;
- application for hunting and fishing licenses;
- filings for income tax, sales tax, court documents, and Uniform Commercial Code;
- registrations for products, brands, motor vehicles, corporations, and businesses; and
- submission of an application for unemployment, welfare, and health benefits.

The draft addresses online educational opportunities such as:

- secure access by parents and students to student grades and progress reports;
- e-mail communications with teachers, parent-teacher associations, and school administrators;
- access to school calendars and schedules; and
- teaching resources that may include teaching plans, curriculum guides, and media resources.

The Act amends the state’s chief information officer’s duties in relation to Internet services and transactions. It creates a Rural Telecommunications Task Force and requires the task force to report to the Public Service Commission and to the state Legislature. The legislation also specifies that the Public Service Commission initiate a proceeding and make rules regarding the use of a Universal Service Fund for advanced telecommunications services in rural areas.

Submitted as:
Utah
SB 188
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Information Technology and Public Utilities; Requiring State Entities to...
Section 2. [Government Products and Services on Internet.]

(1) The appropriate state entities shall allow the following services to be transacted through the Internet by July 1, 2002:

(a) application for and renewal of professional and occupational licenses;
(b) renewal of drivers’ licenses; technology equipment, telecommunications equipment, and related services for all agencies of state government;
(c) application for hunting and fishing licenses;
(d) filings for income tax, sales tax, court documents, and Uniform Commercial Code;
(e) registrations for products, brands, motor vehicles, corporations, and businesses; and
(f) submission of an application for unemployment, welfare, and health benefits.

(2) The state system of public education, in coordination with the [state education network], shall make reasonable progress toward making the following services available through the Internet by July 1, 2002:

(a) secure access by parents and students to student grades and progress reports;
(b) e-mail communications with teachers, parent-teacher associations, and school administrators;
(c) access to school calendars and schedules; and
(d) teaching resources that may include teaching plans, curriculum guides, and media resources.

(3) State entities shall:

(a) in carrying out the requirements of this section, take reasonable steps to ensure the security and privacy of records that are private or controlled as defined by [insert citation] of the [Government Records Access and Management Act];

(b) in addition to those required services listed in subsections (1) through (3), determine any additional services which may be made available to the public through electronic means, including the Internet, by July 1, 2002; and

(c) as part of their budget reports to the [information technology commission] prescribed by [insert citation], report on the progress of compliance with subsections (1) through (3).

(4) A state entity is not required to provide a transaction through the Internet that is impractical, unreasonable, or not permitted by laws pertaining to privacy or security.
Section 3. [Chief Information Officer-Duties.]

(1) The [chief information officer] shall:

(a) develop specific information technology objectives, policies, procedures, and standards to guide the development of information systems within state government to achieve maximum economy and quality while preserving optimum user flexibility, including:

(i) policies, standards, and procedures for appropriate interchange of information, optimum service, and minimum costs;

(ii) policies for costing all information technology services performed by any state information technology cost recovery center so that every cost recovery center charges its users a rate for services that is both equitable and sufficient to recover all the costs of its operation, including the cost of capital equipment and facilities;

(iii) policies governing coordination, cooperation, joint efforts, working relationships, and cost accounting relative to the development and maintenance of information technology and information systems; and

(iv) policies to ensure the protection of individual privacy and guarantee the exclusive control to a user of its own data;

(b) coordinate the preparation of agency information technology plans within state government, encompassing both short-term and long-term needs that support the agency’s and the state’s strategic plans;

(c) require each state agency to submit semiannually an agency information technology plan containing the information required by subsection (2) before the legislative session in which the budget request will be heard and no later than [June 15] after the legislative session in which the budget request was authorized to the [chief information officer];

(d) upon receipt of a state agency’s information technology plan:

(i) provide a complete copy of that plan to the [director of the division of information technology services];

(ii) review and approve or disapprove agency information technology plans to ensure that these plans are the most economically viable and are the best solution to the agency’s needs and the state’s needs; and

(iii) approve or disapprove of and coordinate the acquisition of information technology equipment, telecommunications equipment, and related services for all agencies of state government;

(e) facilitate the implementation of agency plans;

(f) establish priorities in terms of both importance and time sequencing for the development and implementation of information systems;

(g) monitor information systems development to promote maximum use of existing state information resources;

(h) advise the [governor] on information technology policy and make recommendations to the [governor] regarding requests for appropriations for information technology equipment and personnel;

(i) maintain liaison with the legislative and judicial branches, the
(j) conduct performance audits of state information technology management, planning, and the use of information technology resources and distribute copies of the audit reports as provided in subsection (3);

(k) prepare an annual report to the [governor] and to the [legislature's public utilities and technology interim committee] and the [information technology commission] that:

(i) summarizes the state's current and projected use of information technology; and

(ii) includes a description of major changes in state policy and a brief description of each state agency's plan;

(l) inform each state entity of the requirements of [Section 2]; and

(m) as permitted by law, coordinate the efforts of state government to provide services and transactions through the Internet.

(2) (a) Each state agency information technology plan shall include information about planned information technology objectives and expenditures for the next year in the level of detail and format specified by the [chief information officer].

(b) The plans in subsection (2)(a) shall include the progress of each state agency toward making the agency's services available on the Internet as provided in Section 2.

(3) (a) Upon completion of an audit report, the [chief information officer] shall:

(i) provide copies of all audit reports to:

(A) the agency audited;

(B) the [governor];

(C) the [office of legislative fiscal analyst];

(D) the [public utilities and technology interim committee]; and

(E) the [information technology commission]; and

(ii) present the performance audit findings to the [information technology policy and strategy committee] at their next meeting.

(b) Each state agency shall provide the [chief information officer] with complete access to all information technology records, documents, and reports, including electronic, analog, or digital, when requested for the purpose of a performance audit.

(4) The rate for services established by an information technology cost recovery center, and reviewed by the chief information officer, may be lowered if the [Legislature] appropriates monies to the cost recovery center for the specific purpose of lowering rates.

Section 4. [Rural Telecommunications Task Force; Creation; Membership; Quorum; Compensation; Staff; Duties; Reports and Recommendations.]
(1) There is created within the governor's office the rural telecommunications task force consisting of the following eleven members:

(a) [one (1)] representative from state government appointed by the governor who shall serve as chair;
(b) [one (1)] member of the Senate appointed by the president of the Senate;
(c) [one (1)] member of the house of representatives appointed by the speaker of the House of Representatives;
(d) the chair of the public service commission or the chair's designee;
(e) the administrative secretary of the committee of consumer services or the administrative secretary's designee;
(f) the director of the division of public utilities or the director's designee;
(g) [two (2)] representatives from a local government organization in the rural areas of the state, [one (1)] representing cities and [one 1) representing counties, appointed by the governor; and
(h) [three (3)] representatives from telecommunications providers in the rural areas of the state to be appointed by the governor.

(2) A majority of the members of the task force constitute a quorum. The action of a majority of a quorum constitutes the action of the task force.

(3) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with [insert citation] and [insert legislative rule].

(b) members of the task force who are not legislators may not receive compensation for their work associated with the task force, but may receive per diem and expenses incurred as a member of the task force at the rates established by the division of finance under [insert citation].

(4) The governor's office shall provide staff support to the task force.

(5) The task force shall review and make recommendations on the following issues:

(a) identify appropriate eligibility criteria for [Universal Service Fund Support] for capital investment in broadband data services in rural areas of the state so that:

(i) such support is limited to areas lacking those services;
(ii) an appropriate fund balance is maintained;
(iii) such support begins [January 1, 2000]; and
(iv) increases in surcharges to support the fund are minimal;

(b) identify areas of the state where state government should assume liability for the costs of relocating facilities in the case of right-of-way realignments in order to encourage deployment of digital infrastructure to those areas; and

(c) other possible solutions to aid in the deployment of advanced telecommunications services in rural areas of the state.

(6) The task force shall provide:

(a) recommendations on rule changes to the [public service commis-
Section 5. [Severability.] [Insert severability clause.]

Section 6. [Repealer.] [Insert repealer clause.]

Section 7. [Effective Date.] [Insert effective date.]
Disposal of Hazardous Materials Used as Evidence (Statement)

In 1998 Missouri enacted HB 931 to provide law enforcement officials with legal mechanisms to collect and later dispose of hazardous materials and substances used as evidence in criminal investigations. This law:

- defines hazardous material;
- allows law enforcement, with court approval, to seize, collect representative samples and destroy or dispose of hazardous materials;
- establishes that in prosecution of cases, representative samples of hazardous materials accompanied by photos, videotapes, lab reports, or other means are admissible and deemed material;
- requires law enforcement officials to hold a sufficient amount of a controlled substance in any prosecution involving the proof of weight and quantity of the substance. Photos, videotapes, and lab analysis are admissible to show excess amounts of the controlled substances. Any excess of the controlled substance may be destroyed; and
- allows the state attorney general to file, upon proper motion by a requesting law enforcement agency, for the disposition of seized property should the prosecuting attorney fail to file a motion for disposition of the property with the court within 60 days of the request of the law enforcement agency having custody of the property.
Distribution System Improvement Charge

A serious and costly problem is facing drinking water companies throughout the country: the need to replace aging infrastructure. Many of the drinking water systems were built at the turn of the century and need to be replaced or improved by cleaning and relining. Aged and deteriorated water mains can mean poor service for customers, such as service interruptions due to frequent main breaks, discolored water, poor water pressure, water quality problems, and inadequate fire protection. The U.S. Environmental Protection Agency identified a national infrastructure replacement need of 77.2 billion dollars in pending expenditures. Adding to the significant pending cost is the high cost of infrastructure replacement. One foot of main installed in 1990 cost approximately one dollar. More recently, one foot of main can cost 100 dollars when installed.

The magnitude of need is so great that traditional rate making is unlikely to enable infrastructure improvements on a large enough scale at a rate that is affordable for rate payers. To meet that challenge in Pennsylvania, a mechanism has been developed for investor-owned water companies regulated by the Public Utility Commission. The mechanism is known as the Distribution System Improvement Charge. It is a surcharge on the water bill which enables water companies to collect revenues for certain infrastructure improvements on a quarterly basis. This helps to get improved service to the customers sooner. Customer benefits with the Distribution System Improvement Charge included improved water quality, increased pressure, fewer service interruptions, and more time between rate cases, leading to greater rate stability.

Rate payer protections weigh heavily in Pennsylvania’s approach because the surcharge is capped at five percent of the total water bill. An audit is conducted annually so that any over-charges will be refunded with interest, and finally, the surcharge is reset to zero at the time of the next rate case. Overall, the Distribution System Improvement Charge makes water distribution improvement projects more affordable for water customers at a substantially faster pace.

The Pennsylvania Public Service Commission says Pennsylvania is the first state to enact a law that enables water utilities to recover costs that are related to water utility improvement projects.

Submitted as:
Pennsylvania
Act 156, 1996
Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as an “Act to Provide Recovery of Costs Related to Water Distribution System Improvements.”

Section 2. [Sliding Scale of Rates; Adjustments Recovery of Costs Related to Distribution System; Improvement Projects Designed to Enhance Water Quality; Fire Protection Reliability and Long-Term System Viability.] Water utilities may file tariffs establishing a sliding scale of rates or other method for the automatic adjustment of the rates of the water utility as shall provide for recovery of the fixed costs (depreciation and pretax return) of certain distribution system improvement projects, as approved by the [state public utilities commission], that are completed and placed in service between base rate proceedings. The [state public utilities commission], by regulation or order, shall prescribe the specific procedures to be followed in establishing the sliding scale or other automatic adjustment method.

Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Education Accountability (Statement)

This Act is based on Delaware's “Educational Accountability Act of 1998,” (SB 250), which is aimed at improving the state's educational system by drastically reducing social promotion, rewarding the academic achievement of students, schools, and school districts, and holding students, schools and school districts accountable for inadequate results.

Generally, this Act takes an approach to accountability which recognizes:

- the paramount importance of core academic subjects (particularly reading and mathematics);
- that outstanding student achievement should be recognized and rewarded;
- that students will not meet challenging high school graduation standards if they are allowed to be “socially promoted” despite the fact that their academic performance is seriously below grade level standards;
- that students with deficient reading skills are especially harmed by social promotion because without reading skills they cannot learn other subjects;
- that students who are not performing at grade level standards must devote more time to their academic studies to catch up through participation in summer school and other extra instructional programs;
- that schools and school districts which perform well should be recognized and rewarded;
- that schools and school districts whose performance is deficient should be held accountable through a process which recognizes the state's tradition of local control and which makes local school boards the ultimate focus of accountability for improving schools in their districts; and
- that the state should not “take over” schools or school districts by administrative action.

It addresses three key areas; student accountability, school accountability and school district accountability.

Concerning student accountability, the Act:

- Requires the state department of education to define the levels of performance on state tests in English/language arts, mathematics, science, and social studies necessary for students to demonstrate grade level proficiency;
- Requires the state department of education to define the levels of performance on state tests in English/language arts, mathematics, science, and social studies sufficient to demonstrate superior performance meriting recognition for outstanding achievement.
- Requires the state department of education to define the levels of performance on state tests in English/language arts, mathematics, science, and social studies which are inadequate to demonstrate grade level proficiency and which warrant requiring students at that level to participate in aca-
demic improvement activities such as summer school before advancing to the next grade or testing level.

- Requires the state department of education to establish a program to reward students who demonstrate proficient and superior levels of performance through incentives such as the award of certificates or plaques; the endorsement of student transcripts; and the award of funds which may be used by the students performing at superior levels to defray the cost of postsecondary education.

- Recognizes that students who can't read cannot learn other subjects. Thus, the Act ends social promotion in the most important learning subject, reading, by requiring that students whose performance in reading is seriously deficient be retained at grades three, five, eight or 10 before promotion unless the student can demonstrate proficiency at the end of summer school. During the retention year, the student shall be required to pursue a course of study specifically designed to improve the student's reading ability. If a student's performance in reading continues to be deficient after the retention year, the Act doesn't require further retention but does require that the student's school district develop a specific individual improvement plan setting forth a course of study for the student to pursue to obtain grade level proficiency in reading.

The legislation also recognizes that students who are seriously below eighth grade performance levels cannot be expected to meet the state's new standards for high school graduation unless they improve their performance substantially. Thus, the Act ends social promotion to high school in the most important subjects, English/language arts and mathematics, by requiring that students whose performance in those subjects is seriously deficient be retained at current grade level for admission to high school unless the student can demonstrate proficiency at the end of summer school. During the retention year, the student shall be required to pursue a course of study specifically designed to improve the student's performance in English/language arts and mathematics.

If a student's performance in those subjects continues to be deficient after the retention year, this Act doesn't require further retention but does require that the student's school district develop a specific individual improvement plan setting forth a course of study for the student to pursue to obtain grade level proficiency in English/language arts and mathematics. It enables the state department of education to require that school districts undertake academic improvement activities with respect to students whose performance on the state assessments in English/language arts, mathematics, science, and social studies assessments is deficient. Such activities may include mandatory participation in summer school, extra instruction, or mentoring.

The department also requires that any student with deficient performance at a particular grade level demonstrate proficiency at that level be-
fore being permitted to take the assessment at the next level.

The Act requires the department to develop specific regulations govern-ning the applicability of these requirements to students with disabilities.

Districts may compel student participation in academic improvement activities such as summer school, and that a student’s refusal to attend shall be grounds for discipline and that summer school and other extra instruction sessions required by districts shall count the same as a regular school day for purposes of the state’s truancy laws.

Under school accountability, the Act provides that:

• The state department of education shall establish criteria for ranking schools on the basis of their performance in improving the academic perfor-mance of their students in the core subjects of English/language arts, mathematics, science, and social studies;

• The criteria must consider the collective performance of a school’s student body on the state assessments in these core subjects; and

• The performance of schools will be based on the following factors: 1) the absolute performance of the school’s students on the assessments (“ab-solute performance”); 2) the school’s record in improving the performance of the school’s students on the assessments (“improvement performance”); and 3) the school’s record in improving the performance of students at lower levels of achievements on the assessments (“distributional performance”).

• After at least two years of baseline data, the department shall rank schools in three basic categories: 1) “Superior Accredited” for schools which have demonstrated superior absolute performance, improvement performance, or distributional performance; 2) “Accredited” for schools which have demonstrated adequate performance; and 3) “Accreditation Watch” for schools whose student bodies demonstrate deficient absolute performance or whose student bodies’ academic performance is in serious decline;

• Schools which are denominated “Superior Accredited” shall receive recognition in the annual School Profiles, and shall be eligible for further recognition through: special ceremonies; the award of plaques or flags; and monetary awards of $250 per Division I unit to begin in fiscal year 2002 as provided for in the annual appropriations act. Such award is to be invested in the school pursuant to the determination of a school-based committee;

• Schools which are denominated “Accredited” shall be so recognized in the annual School Profiles and through plaques and flags.

• Schools which are denominated as on “Accreditation Watch” shall be so identified in the annual School Profiles and shall be subject to the follow-ing four-step process:

  1. The school must develop a school improvement plan which must be approved by the school’s local board of education. To the extent that the school does not have a shared decision making committee, such a committee shall be formed to develop the plan. The public must be given access to and an opportunity to comment on the plan before local board approval. Subject to available resources for this purpose, the department of educa-
tion shall provide technical assistance to schools in this process.

2. Schools on accreditation watch shall have their accreditation status reviewed at the end of each school year subsequent to being placed on accreditation watch. A school whose performance meets improvement goals may be moved into a higher status at that time. A school whose performance fails to demonstrate sufficient progress after two years shall be de-nominated as “Non-Accredited.”

3. A “Non-Accredited” school shall be identified as such in the annual School Profiles and shall be required to implement a revised school improvement plan specifically developed and adopted for it by the school’s local board of education. Such plan shall address specific criteria set forth in the bill. In addition, the secretary of education shall receive prior notice so that he or she may comment on any such proposed plan. The secretary’s comments may include public suggestions for staff changes at the school. Ultimate decision making authority is left to the local school board.

4. If a school remains in “non-accredited” status for two years, the state secretary of education shall also investigate the reasons for the continued deficiency of the school’s performance, and may request that the state board of education hold public hearings to assist in that investigation. Thereafter, the state secretary of education may make public his or her recommendations for improvement including recommendations that the school’s leadership, staff and school-based committee be changed. Ultimate decision making authority in these areas is left to the local school.

The legislation provides an appeal process for schools to contest their accreditation status.

The state department of education is required to conduct an annual customer satisfaction report to determine how well the department is serving education constituencies.

The Act requires the department, working with the state Congress of Parents and Teachers, to produce and maintain in current form a Parents’ Declaration of Responsibilities identifying the elements of effective parental involvement, and the responsibilities the public schools have to help parents meet such responsibilities.

It requires the department to encourage local school districts and schools to adopt the Declaration of Responsibilities as local policy and to encourage parents at the beginning of each school year to execute an agreement to commit themselves to carry out the agreement to the best of their abilities.

The Act requires the governor and state secretary of education to provide the General Assembly with a plan for professional accountability in January 1999. The plan shall be developed with stakeholder input and address the following critical areas: professional standards; professional recertification; evaluation of professionals; professional development; teacher skills requirements; the desirability of creating a Professional Standards Board; and administrator employment practices.
Electronic Commerce Security

This Act defines electronic signatures, electronic records and secure electronic records. It addresses their legal use and admissibility into evidence and fraud. It enables the Secretary of State to certify electronic signature security procedures. It also addresses state agencies' use of electronic signatures.

This draft appears to expand the concepts of a Utah Digital Signature Act that is highlighted in the 1997 SSL volume by including sections on electronic records and enforcement and civil remedy.

Submitted as:
Illinois
Public Act 90-0759 (HB 3180 enrolled)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Electronic Commerce Security Act.”

Section 2. [Purposes and Construction.] This Act shall be construed consistently with what is commercially reasonable under the circumstances and to effectuate the following purposes:

(1) To facilitate electronic communications by means of reliable electronic records.

(2) To facilitate and promote electronic commerce, by eliminating barriers resulting from uncertainties over writing and signature requirements, and promoting the development of the legal and business infrastructure necessary to implement secure electronic commerce.

(3) To facilitate electronic filing of documents with state and local government agencies, and promote efficient delivery of government services by means of reliable electronic records.

(4) To minimize the incidence of forged electronic records, intentional and unintentional alteration of records, and fraud in electronic commerce.

(5) To help to establish uniformity of rules and standards regarding the authentication and integrity of electronic records.

(6) To promote public confidence in the integrity and reliability of electronic records and electronic commerce.

Section 3. [Variation by Agreement.] As between parties involved in generating, sending, receiving, storing, or otherwise processing electronic records,
the applicability of provisions of this Act may be waived by agreement of
the parties, except for the provisions of Sections 20, 26, 27, 28, and subsec-
tion (b) of Section 18 of this Act.

Section 4. [Definitions.]

"Asymmetric cryptosystem" means a computer-based system capable of
generating and using a key pair consisting of a private key for creating a
digital signature and a public key to verify the digital signature.

"Certificate" means a record that at a minimum:

(a) identifies the certification authority issuing it;
(b) names or otherwise identifies its subscriber or a device or elec-
tronic agent under the control of the subscriber;
(c) contains a public key that corresponds to a private key under the
control of the subscriber;
(d) specifies its operational period; and
(e) is digitally signed by the certification authority issuing it.

"Certification authority" means a person who authorizes and causes the
issuance of a certificate.

"Certification practice statement" is a statement published by a certifi-
cation authority that specifies the policies or practices that the certification
authority employs in issuing, managing, suspending, and revoking certifi-
cates and providing access to them.

"Correspond," with reference to keys, means to belong to the same key
pair.

"Digital signature" means a type of electronic signature created by trans-
forming an electronic record using a message digest function and encrypt-
ing the resulting transformation with an asymmetric cryptosystem using
the signer's private key such that any person having the initial untrans-
formed electronic record, the encrypted transformation, and the signer's
corresponding public key can accurately determine whether the transfor-
mation was created using the private key that corresponds to the signer's
public key and whether the initial electronic record has been altered since
the transformation was made. A digital signature is a security procedure.

"Electronic" includes electrical, digital, magnetic, optical, electromag-
netic, or any other form of technology that entails capabilities similar to
these technologies.

"Electronic record" means a record generated, communicated, received,
or stored by electronic means for use in an information system or for trans-
mission from one information system to another.

"Electronic signature" means a signature in electronic form attached to
or logically associated with an electronic record.

"Information" includes data, text, images, sound, codes, computer pro-
grams, software, databases, and the like.

"Key pair" means, in an asymmetric cryptosystem, [two (2)] mathemati-
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41 cally related keys, referred to as a private key and a public key, having the
42 properties that (i) [one (1)] key (the private key) can encrypt a message that
43 only the other key (the public key) can decrypt, and (ii) even knowing [one
44 (1)] key (the public key), it is computationally unfeasible to discover the
45 other key (the private key).
46 “Message digest function” means an algorithm that maps or translates
47 the sequence of bits comprising an electronic record into another, generally
48 smaller, set of bits (the message digest) without requiring the use of any secret
49 information such as a key, such that an electronic record yields the same mes-
50 sage digest every time the algorithm is executed using such record as input
51 and it is computationally unfeasible that any [two (2)] electronic records can be
52 found or deliberately generated that would produce the same message di-
53 gest using the algorithm unless the [two (2)] records are precisely identical.
54 “Operational period of a certificate” begins on the date and time the
55 certificate is issued by a certification authority (or on a later date and time
56 certain if stated in the certificate) and ends on the date and time it expires
57 as noted in the certificate or is earlier revoked, but does not include any
58 period during which a certificate is suspended.
59 “Person” means an individual, corporation, business trust, estate, trust,
60 partnership, limited partnership, limited liability partnership, limited li-
61 ability company, association, joint venture, government, governmental sub-
62 division, agency, or instrumentality, or any other legal or commercial entity.
63 “Private key” means the key of a key pair used to create a digital signature.
64 “Public key” means the key of a key pair used to verify a digital signature.
65 “Record” means information that is inscribed, stored, or otherwise fixed
66 on a tangible medium or that is stored in an electronic or other medium
67 and is retrievable in perceivable form.
68 “Repository” means a system for storing and retrieving certificates or
69 other information relevant to certificates, including information relating to
70 the status of a certificate.
71 “Revoke a certificate” means to permanently end the operational period
72 of a certificate from a specified time forward.
73 “Rule of law” means any statute, ordinance, common law rule, court
decision, or other rule of law enacted, established or promulgated by this
74 state, or any agency, commission, department, court, other authority or po-
75 litical subdivision of this state.
76 “Security procedure” means a methodology or procedure used for the
77 purpose of (1) verifying that an electronic record is that of a specific person
78 or (2) detecting error or alteration in the communication, content, or storage
79 of an electronic record since a specific point in time. A security procedure
80 may require the use of algorithms or codes, identifying words or numbers,
81 encryption, answer back or acknowledgment procedures, or similar security
82 devices.
83 “Signature device” means unique information, such as codes, algorithms,
84 letters, numbers, private keys, or personal identification numbers (PINs),
or a uniquely configured physical device, that is required, alone or in con-
junction with other information or devices, in order to create an electronic
signature attributable to a specific person.

“Signed” or “signature” includes any symbol executed or adopted, or any
security procedure employed or adopted, using electronic means or other-
wise, by or on behalf of a person with intent to authenticate a record.

“State agency” means and includes all officers, boards, commissions,
courts, and agencies created by the [state constitution], whether in the ex-
ecutive, legislative or judicial branch, all officers, departments, boards, com-
missions, agencies, institutions, authorities, universities, bodies politic and
_corporate of the state; and administrative units or corporate outgrowths of
the state government which are created by or pursuant to statute, other
than units of local government and their officers, school districts and boards
of election commissioners; all administrative units and corporate outgrowths
of the above and as may be created by executive order of the [governor].

“Subscriber” means a person who is the subject named or otherwise
identified in a certificate, who controls a private key that corresponds to the
public key listed in that certificate, and who is the person to whom digitally
signed messages verified by reference to such certificate are to be attributed.

“Suspend a certificate” means to temporarily suspend the operational
period of a certificate for a specified time period or from a specified time
forward.

“Trustworthy manner” means through the use of computer hardware,
software, and procedures that, in the context in which they are used:
(a) can be shown to be reasonably resistant to penetration, compro-
mise, and misuse;
(b) provide a reasonable level of reliability and correct operation;
(c) are reasonably suited to performing their intended functions or
serving their intended purposes;
(d) comply with applicable agreements between the parties, if any;
and
(e) adhere to generally accepted security procedures.

“Valid certificate” means a certificate that a certification authority has
issued and that the subscriber listed in the certificate has accepted.

“Verify a digital signature” means to use the public key listed in a valid
certificate, along with the appropriate message digest function and asym-
metric cryptosystem, to evaluate a digitally signed electronic record, such
that the result of the process concludes that the digital signature was cre-
ated using the private key corresponding to the public key listed in the
certificate and the electronic record has not been altered since its digital
signature was created.

Section 5. [Legal Recognition.] Information, records, and signatures shall
not be denied legal effect, validity, or enforceability solely on the grounds
that they are in electronic form.
Section 6. [Electronic Records.]  
(a) Where a rule of law requires information to be “written” or “in writing,” or provides for certain consequences if it is not, an electronic record satisfies that rule of law.  
(b) The provisions of this Section shall not apply:  
(1) when its application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law, provided that the mere requirement that information be “in writing,” “written,” or “printed” shall not by itself be sufficient to establish such intent;  
(2) to any rule of law governing the creation or execution of a will or trust, living will, or health care power of attorney; and  
(3) to any record that serves as a unique and transferable instrument of rights and obligations including, without limitation, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored, and transferred in a manner that allows for the existence of only one unique, identifiable, and unalterable original with the functional attributes of an equivalent physical instrument, that can be possessed by only one person, and which cannot be copied except in a form that is readily identifiable as a copy.

Section 7. [Electronic Signatures.]  
(a) Where a rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law.  
(b) An electronic signature may be proved in any manner, including by showing that a procedure existed by which a party must of necessity have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of such party in order to proceed further with a transaction.  
(c) The provisions of this Section shall not apply:  
(1) when its application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law, provided that the mere requirement of a “signature” or that a record be “signed” shall not by itself be sufficient to establish such intent;  
(2) to any rule of law governing the creation or execution of a will or trust, living will, or health care power of attorney; and  
(3) to any record that serves as a unique and transferable instrument of rights and obligations including, without limitation, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored, and transferred in a manner that allows for the existence of
only one unique, identifiable, and unalterable original with the functional attributes of an equivalent physical instrument, that can be possessed by only one person, and which cannot be copied except in a form that is readily identifiable as a copy.

Section 8. [Original.]
(a) Where a rule of law requires information to be presented or retained in its original form, or provides consequences for the information not being presented or retained in its original form, that rule of law is satisfied by an electronic record if there exists reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as an electronic record or otherwise.

(b) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement or other information that arises in the normal course of communication, storage and display. The standard of reliability required to ensure that information has remained complete and unaltered shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

(c) The provisions of this Section do not apply to any record that serves as a unique and transferable instrument of rights and obligations including, without limitation, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored, and transferred in a manner that allows for the existence of only one unique, identifiable, and unalterable original with the functional attributes of an equivalent physical instrument, that can be possessed by only [one(1)] person, and which cannot be copied except in a form that is readily identifiable as a copy.

Section 9. [Admissibility Into Evidence]
(a) In any legal proceeding, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of an electronic record or electronic signature into evidence:

1. on the sole ground that it is an electronic record or electronic signature; or

2. on the grounds that it is not in its original form or is not an original.

(b) Information in the form of an electronic record shall be given due evidentiary weight by the trier of fact. In assessing the evidentiary weight of an electronic record or electronic signature where its authenticity is in issue, the trier of fact may consider the manner in which it was generated, stored or communicated, the reliability of the manner in which its integrity was maintained, the manner in which its originator was identified or the electronic record was signed, and any other relevant information or circumstances.
Section 10. [Retention of Electronic Records.]
(a) Where a rule of law requires that certain documents, records or information be retained, that requirement is met by retaining electronic records of such information in a trustworthy manner, provided that the following conditions are satisfied:

(1) the electronic record and the information contained therein are accessible so as to be usable for subsequent reference at all times when such information must be retained;

(2) the information is retained in the format in which it was originally generated, sent, or received or in a format that can be demonstrated to represent accurately the information originally generated, sent or received; and

(3) such data as enables the identification of the origin and destination of the information, the authenticity and integrity of the information, and the date and time when it was sent or received, if any, is retained.

(b) An obligation to retain documents, records or information in accordance with subsection (a) does not extend to any data the sole purpose of which is to enable the record to be sent or received.

(c) Nothing in this Section shall preclude any state agency from specifying additional requirements for the retention of records that are subject to the jurisdiction of such agency.

Section 11. [Electronic Use Not Required.] Nothing in this Act shall be construed to:

(1) require any person to create, store, transmit, accept, or otherwise use or communicate information, records, or signatures by electronic means or in electronic form; or

(2) prohibit any person engaging in an electronic transaction from establishing reasonable requirements regarding the medium on which it will accept records or the method and type of symbol or security procedure it will accept as a signature.

Section 12. [Applicability of Other Statutes or Rules.] Notwithstanding any provisions of this Act, if any other statute or rule requires approval by a state agency prior to the use or retention of electronic records or the use of electronic signatures, the provisions of that other statute or rule shall also apply.

Section 13. [Secure Electronic Record.]
(a) If, through the use of a qualified security procedure, it can be verified that an electronic record has not been altered since a specified point in time, then such electronic record shall be considered to be a secure electronic record from such specified point in time to the time of verification, if the relying party establishes that the qualified security procedure was:
Section 14. [Secure Electronic Signature.]

(a) If, through the use of a qualified security procedure, it can be verified that an electronic signature is the signature of a specific person, then such electronic signature shall be considered to be a secure electronic signature at the time of verification, if the relying party establishes that the qualified security procedure was:

(1) commercially reasonable under the circumstances;
(2) applied by the relying party in a trustworthy manner; and
(3) reasonably and in good faith relied upon by the relying party.

(b) A qualified security procedure for purposes of this Section is a security procedure to detect changes in the content of an electronic record that is:

(1) previously agreed to by the parties; or
(2) certified by the [secretary of state] in accordance with Section 19 as being capable of providing reliable evidence that an electronic record has not been altered.

Section 15. [Commercially Reasonable; Reliance.]

(a) The commercial reasonableness of a security procedure is a question of law to be determined in light of the purposes of the procedure and the commercial circumstances at the time the procedure was used, including the nature of the transaction, sophistication of the parties, volume of similar transactions engaged in by either or both of the parties, availability of alternatives offered to but rejected by either of the parties, cost of alternative procedures, and procedures in general use for similar types of transactions.
(b) Whether reliance on a security procedure was reasonable and in
good faith is to be determined in light of all the circumstances known to the
relying party at the time of the reliance, having due regard to the:
(1) information that the relying party knew or should have known of
at the time of reliance that would suggest that reliance was or was not
reasonable;
(2) the value or importance of the electronic record, if known;
(3) any course of dealing between the relying party and the pur-
ported sender and the available indicia of reliability or unreliability apart
from the security procedure;
(4) any usage of trade, particularly trade conducted by trustworthy
systems or other computer-based means; and
(5) whether the verification was performed with the assistance of an
independent third party.

Section 16. [Presumptions.]
(a) In resolving a civil dispute involving a secure electronic record, it
shall be rebuttably presumed that the electronic record has not been al-
tered since the specific point in time to which the secure status relates.
(b) In resolving a civil dispute involving a secure electronic signature, it
shall be rebuttably presumed that the secure electronic signature is the
signature of the person to whom it correlates.
(c) The effect of presumptions provided in this Section is to place on the
party challenging the integrity of a secure electronic record or challenging
the genuineness of a secure electronic signature both the burden of going
forward with evidence to rebut the presumption and the burden of per-
suading the trier of fact that the nonexistence of the presumed fact is more
probable than its existence.
(d) In the absence of a secure electronic record or a secure electronic
signature, nothing in this Act shall change existing rules regarding legal or
evidentiary rules regarding the burden of proving the authenticity and in-
tegrity of an electronic record or an electronic signature.

Section 17. [Creation and Control of Signature Devices.] Except as oth-
erwise provided by another applicable rule of law, whenever the creation,
validity, or reliability of an electronic signature created by a qualified secu-

rity procedure under Section 13 or 14 is dependent upon the secrecy or
control of a signature device of the signer:
(1) the person generating or creating the signature device must do
so in a trustworthy manner;
(2) the signer and all other persons that rightfully have access to
such signature device must exercise reasonable care to retain control and
maintain the secrecy of the signature device, and to protect it from any
unauthorized access, disclosure, or use, during the period when reliance on
a signature created by such device is reasonable;

(3) in the event that the signer, or any other person that rightfully has access to such signature device, knows or has reason to know that the secrecy or control of any such signature device has been compromised, such person must make a reasonable effort to promptly notify all persons that such person knows might foreseeably be damaged as a result of such compromise, or where an appropriate publication mechanism is available (which, for state agencies, may include the official newspaper designated pursuant to [the state purchasing act] where appropriate), to publish notice of the compromise and a disavowal of any signatures created thereafter.

Section 18. [Attribution of Signature.]
(a) Except as provided by another applicable rule of law, a secure electronic signature is attributable to the person to whom it correlates, whether or not authorized, if:

(1) the electronic signature resulted from acts of a person that obtained the signature device or other information necessary to create the signature from a source under the control of the alleged signer, creating the appearance that it came from that party;

(2) the access or use occurred under circumstances constituting a failure to exercise reasonable care by the alleged signer; and

(3) the relying party relied reasonably and in good faith to its detriment on the apparent source of the electronic record.

(b) The provisions of this Section shall not apply to transactions intended primarily for personal, family, or household use, or otherwise defined as consumer transactions by applicable law including, but not limited to, credit card and automated teller machine transactions except to the extent allowed by applicable consumer law.

Section 19. [Secretary of State Authority to Certify Security Procedures.]
(a) A security procedure may be certified by the [secretary of state], as a qualified security procedure for purposes of Sections 13 or 14, following an appropriate investigation or review, if:

(1) the security procedure (including any technology and algorithms it employs) has been generally accepted in the applicable information security or scientific community as being capable of satisfying the requirements of Section 13 or 14, as applicable, in a trustworthy manner.

(b) In making a determination regarding whether the security procedure (including any technology and algorithms it employs) has been generally accepted in the applicable information security or scientific community, the [secretary of state] shall consider the opinion of independent experts in the applicable field and the published findings of such community, including applicable standards organizations such as the American National Standards Institute (ANSI), International Standards Organization.
(ISO), International Telecommunications Union (ITU), and the National
Institute of Standards and Technology (NIST).

(c) Such certification shall be done through the adoption of rules in ac-
cordance with the provisions of the [state Administrative Procedure Act]
and shall specify a full and complete identification of the security procedure,
including requirements as to how it is to be implemented, if appropriate.

(d) The [secretary of state] may also decertify a security procedure as a
qualified security procedure for purposes of Sections 13 or 14 following an
appropriate investigation or review and the adoption of rules in accordance
with the provisions of the [state Administrative Procedure Act] if subse-
quent developments establish that the security procedure is no longer suf-
ficiently trustworthy or reliable for its intended purpose, or for any other
reason no longer meets the requirements for certification.

(e) The [secretary of state] shall have exclusive authority to certify secu-
ry procedures under this Section.

Section 20. [Unauthorized Use of Signature Device.]

(a) No person shall knowingly or intentionally access, copy, or otherwise
obtain possession of or recreate the signature device of another person with-
out authorization for the purpose of creating, or allowing or causing an-
other person to create, an unauthorized electronic signature using such
signature device. A person convicted of a violation of this subsection shall
be guilty of a [Class A misdemeanor].

(b) No person shall knowingly alter, disclose, or use the signature device
of another person without authorization, or in excess of lawful authoriza-
tion, for the purpose of creating, or allowing or causing another person to
create, an unauthorized electronic signature using such signature device. A
person convicted of a violation of this subsection shall be guilty of a [Class
4 felony]. A person convicted of a violation of this subsection who has previ-
ously been convicted of a violation of this subsection or Section 26 shall be
guilty of a [Class 3 felony]. A person who violates this Section in further-
ance of any scheme or artifice to defraud in excess of [fifty thousand (50,000)]
dollars shall be guilty of a [Class 2 felony].

Section 21. [Secure Electronic Record.] A digital signature that is cre-
ated using an asymmetric algorithm certified by the [secretary of state]
under item (2) of subsection (b) of Section 13 shall be considered to be a
qualified security procedure for purposes of detecting changes in the con-
tent of an electronic record under Section 13 if the digital signature was
created during the operational period of a valid certificate, and is verified
by reference to the public key listed in such certificate.

Section 22. [Secure Electronic Signature.] A digital signature that is cre-
ated using an asymmetric algorithm certified by the [secretary of state]
under item (2) of subsection (b) of Section 13 shall be considered to be a
qualified security procedure for purposes of identifying a person under Section 14 if:

(1) the digital signature was created during the operational period of a valid certificate, was used within the scope of any other restrictions specified or incorporated by reference in the certificate, if any, and can be verified by reference to the public key listed in the certificate; and

(2) the certificate is considered trustworthy (i.e., an accurate binding of a public key to a person's identity) because the certificate was issued by a certification authority in accordance with standards, procedures, and other requirements specified by the [secretary of state], or the trier of fact independently finds that the certificate was issued in a trustworthy manner by a certification authority that properly authenticated the subscriber and the subscriber's public key, or otherwise finds that the material information set forth in the certificate is true.

Section 23. [Secretary of State Authority to Adopt Rules.]

(a) The [secretary of state] may adopt rules applicable to both the public and private sectors for the purpose of defining when a certificate is considered sufficiently trustworthy under Section 22 such that a digital signature verified by reference to such a certificate will be considered a qualified security procedure under Section 14. The rules may include (1) establishing or adopting standards applicable to certification authorities or certificates, compliance with which may be measured by becoming certified by the [secretary of state], becoming accredited by [one (1)] or more independent accrediting entities recognized by the [secretary of state], or by other appropriate means and (2) where appropriate, establishing fees to be charged by the [secretary of state] to recover all or a portion of its costs in connection therewith.

(b) In developing the rules, the [secretary of state] shall endeavor to do so in a manner that will provide maximum flexibility to the implementation of digital signature technology and the business models necessary to support it, that will provide a clear basis for the recognition of certificates issued by foreign certification authorities, and, to the extent reasonably possible, that will maximize the opportunities for uniformity with the laws of other jurisdictions (both within the United States and internationally).

(c) The [secretary of state] shall have exclusive authority to adopt rules authorized by this Section.

Section 24. [Reliance on Certificates Foreseeable.] It is foreseeable that persons relying on a digital signature will also rely on a valid certificate containing the public key by which the digital signature can be verified, during the operational period of such certificate and within any limits specified in such certificate.
Section 25. [Restrictions on Publication of Certificate.] No person may publish a certificate, or otherwise knowingly make it available to anyone likely to rely on the certificate or on a digital signature that is verifiable with reference to the public key listed in the certificate, if such person knows that:

1. the certification authority listed in the certificate has not issued it;
2. the subscriber listed in the certificate has not accepted it;
3. the certificate has been revoked or suspended, unless such publication is for the purpose of verifying a digital signature created prior to such revocation or suspension.

Section 26. [Fraudulent Use.] No person shall knowingly create, publish, alter, or otherwise use a certificate for any fraudulent or other unlawful purpose. A person convicted of a violation of this Section shall be guilty of a [Class 4 felony]. A person convicted of a violation of this Section who previously has been convicted of a violation of this Section or Section 20 shall be guilty of a [Class 3 felony]. A person who violates this Section in furtherance of any scheme or artifice to defraud in excess of [fifty thousand (50,000)] dollars shall be guilty of a [Class 2 felony].

Section 27. [False or Unauthorized Request.] No person shall knowingly misrepresent his or her identity or authorization in requesting or accepting a certificate or in requesting suspension or revocation of a certificate. A person convicted of a violation of this Section shall be guilty of a [Class A misdemeanor]. A person who violates this Section [ten (10)] times within a [twelve (12)] month period, or in furtherance of any scheme or artifice to defraud, shall be guilty of a [Class 4 felony]. A person who violates this Section in furtherance of any scheme or artifice to defraud in excess of [fifty thousand (50,000)] dollars shall be guilty of a [Class 2 felony].

Section 28. [Unauthorized Use of Signature Device.] No person shall knowingly access, alter, disclose, or use the signature device of a certification authority used to issue certificates without authorization, or in excess of lawful authorization, for the purpose of creating, or allowing or causing another person to create, an unauthorized electronic signature using such signature device. A person convicted of a violation of this Section shall be guilty of a [Class 3 felony]. A person who violates this Section in furtherance of any scheme or artifice to defraud shall be guilty of a [Class 2 felony].

Section 29. [Trustworthy Services.] Except as conspicuously set forth in its certification practice statement, a certification authority and a person maintaining a repository must maintain its operations and perform its services in a trustworthy manner.
Section 30. [Disclosure.]
(a) For each certificate issued by a certification authority with the intention that it will be relied upon by third parties to verify digital signatures created by subscribers, a certification authority must publish or otherwise make available to the subscriber and all such relying parties:

1. its certification practice statement, if any, applicable thereto; and
2. its certificate that identifies the certification authority as a subscriber and that contains the public key corresponding to the private key used by the certification authority to digitally sign the certificate (its “certification authority certificate”).

(b) In the event of an occurrence that materially and adversely affects a certification authority's operations or system, its certification authority certificate, or any other aspect of its ability to operate in a trustworthy manner, the certification authority must act in accordance with procedures governing such an occurrence specified in its certification practice statement, or in the absence of such procedures, must use reasonable efforts to notify any persons that the certification authority knows might foreseeably be damaged as a result of such occurrence.

Section 31. [Issuance of a Certificate.] A certification authority may issue a certificate to a prospective subscriber for the purpose of allowing third parties to verify digital signatures created by the subscriber only after:

1. the certification authority has received a request for issuance from the prospective subscriber; and
2. the certification authority has:
   (A) complied with all of the relevant practices and procedures set forth in its applicable certification practice statement, if any; or
   (B) in the absence of a certification practice statement addressing these issues, confirmed in a trustworthy manner that:
       (i) the prospective subscriber is the person to be listed in the certificate to be issued;
       (ii) the information in the certificate to be issued is accurate; and
       (iii) the prospective subscriber rightfully holds a private key capable of creating a digital signature, and the public key to be listed in the certificate can be used to verify a digital signature affixed by such private key.

Section 32. [Representations Upon Issuance of Certificate.] (a) By issuing a certificate with the intention that it will be relied upon by third parties to verify digital signatures created by the subscriber, a certification authority represents to the subscriber, and to any person who reasonably relies on information contained in the certificate, in good faith and during its operational period, that:
(1) the certification authority has processed, approved, and issued, and will manage and revoke if necessary, the certificate in accordance with its applicable certification practice statement stated or incorporated by reference in the certificate or of which such person has notice, or in lieu thereof, in accordance with this Act or the law of the jurisdiction governing issuance of the certificate;

(2) the certification authority has verified the identity of the subscriber to the extent stated in the certificate or its applicable certification practice statement, or in lieu thereof, that the certification authority has verified the identity of the subscriber in a trustworthy manner;

(3) the certification authority has verified that the person requesting the certificate holds the private key corresponding to the public key listed in the certificate; and

(4) except as conspicuously set forth in the certificate or its applicable certification practice statement, to the certification authority's knowledge as of the date the certificate was issued, all other information in the certificate is accurate, and not materially misleading.

(b) If a certification authority issued the certificate subject to the laws of another jurisdiction, the certification authority also makes all warranties and representations, if any, otherwise applicable under the law governing its issuance.

Section 33. [Revocation of a Certificate.]

(a) During the operational period of a certificate, the certification authority that issued the certificate must revoke the certificate in accordance with the policies and procedures governing revocation specified in its applicable certification practice statement, or in the absence of such policies and procedures, as soon as possible after:

(1) receiving a request for revocation by the subscriber named in the certificate, and confirming that the person requesting revocation is the subscriber, or is an agent of the subscriber with authority to request the revocation;

(2) receiving a certified copy of an individual subscriber's death certificate, or upon confirming by other reliable evidence that the subscriber is dead;

(3) being presented with documents effecting a dissolution of a corporate subscriber, or confirmation by other evidence that the subscriber has been dissolved or has ceased to exist;

(4) being served with an order requiring revocation that was issued by a court of competent jurisdiction; or

(5) confirmation by the certification authority that:

(A) a material fact represented in the certificate is false;

(B) a material prerequisite to issuance of the certificate was not satisfied;
(C) the certification authority's private key or system operations were compromised in a manner materially affecting the certificate's reliability; or
(D) the subscriber's private key was compromised.

(b) Upon effecting such a revocation, the certification authority must notify the subscriber and relying parties in accordance with the policies and procedures governing notice of revocation specified in its applicable certification practice statement, or in the absence of such policies and procedures, promptly notify the subscriber; promptly publish notice of the revocation in all repositories where the certification authority previously caused publication of the certificate, and otherwise disclose the fact of revocation on inquiry by a relying party.

Section 34. [Obtaining a Certificate.] All material representations knowingly made by a person to a certification authority for purposes of obtaining a certificate naming such person as a subscriber must be accurate and complete to the best of such person's knowledge and belief.

Section 35. [Acceptance of a Certificate.] (a) A person accepts a certificate that names such person as a subscriber by publishing or approving publication of it to [one (1)] or more people, or in a repository, or otherwise demonstrating approval of it, while knowing or having notice of its contents.

(b) By accepting a certificate, the subscriber listed in the certificate represents to any person who reasonably relies on information contained in the certificate, in good faith and during its operational period, that:

(1) the subscriber rightfully holds the private key corresponding to the public key listed in the certificate;
(2) all representations made by the subscriber to the certification authority and material to the information listed in the certificate are true; and
(3) all information in the certificate that is within the knowledge of the subscriber is true.

Section 36. [Revocation of Certificate.] Except as otherwise provided by another applicable rule of law, if the private key corresponding to the public key listed in a valid certificate is lost, stolen, accessible to an unauthorized person, or otherwise compromised during the operational period of the certificate, a subscriber who has learned of the compromise must promptly request the issuing certification authority to revoke the certificate and publish notice of revocation in all repositories in which the subscriber previously authorized the certificate to be published, or otherwise provide reasonable notice of the revocation.
Section 37. [State Agency Use of Electronic Records.]
(a) Each state agency shall determine if, and the extent to which, it will send and receive electronic records and electronic signatures to and from other persons and otherwise create, use, store, and rely upon electronic records and electronic signatures.
(b) In any case where a state agency decides to send or receive electronic records, or to accept document filings by electronic records, the state agency may, by appropriate agency rule (or court rule where appropriate), giving due consideration to security, specify:
  (1) the manner and format in which such electronic records must be created, sent, received, and stored;
  (2) if such electronic records must be signed, the type of electronic signature required, the manner and format in which such signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by the person filing the document to facilitate the process;
  (3) control processes and procedures as appropriate to ensure adequate integrity, security, confidentiality, and auditability of such electronic records; and
  (4) any other required attributes for such electronic records that are currently specified for corresponding paper documents, or reasonably necessary under the circumstances.
(c) All rules adopted by a state agency shall include the relevant minimum security requirements established by the [department of central management services], if any.
(d) Whenever any rule of law requires or authorizes the filing of any information, notice, lien, or other document or record with any state agency, a filing made by an electronic record shall have the same force and effect as a filing made on paper in all cases where the state agency has authorized or agreed to such electronic filing and the filing is made in accordance with applicable rules or agreement.
(e) Nothing in this Act shall be construed to require any state agency to use or to permit the use of electronic records or electronic signatures.

Section 38. [Department of Central Management Services to Adopt State Standards.]
(a) The [department of central management services] may adopt rules setting forth minimum security requirements for the use of electronic records and electronic signatures by state agencies.
(b) The [department of central management services] shall specify appropriate minimum security requirements to be implemented and followed by state agencies for (1) the generation, use, and storage of key pairs, (2) the issuance, acceptance, use, suspension, and revocation of certificates, and (3) the use of digital signatures.
(c) Each state agency shall have the authority to issue, or contract for the issuance of, certificates to (i) its employees and agents and (ii) persons conducting business or other transactions with such state agency and to take other actions consistent therewith, including the establishment of repositories and the suspension or revocation of certificates so issued, provided that the foregoing is conducted in accordance with all the rules, procedures, and policies specified by the [department of central management services]. The [department of central management services] shall have the authority to specify the rules, procedures, and policies whereby state agencies may issue or contract for the issuance of certificates.

(d) The [department of central management services] may specify appropriate minimum standards and requirements that must be satisfied by a certification authority before:

(1) its services are used by any state agency for the issuance, publication, revocation, and suspension of certificates to such agency, or its employees or agents (for official use); or

(2) the certificates it issues will be accepted for purposes of verifying digitally signed electronic records sent to any State agency by any person.

(e) Where appropriate, the rules adopted by the [department of central management services] pursuant to this Section shall specify differing levels of minimum standards from which implementing state agencies can select the standard most appropriate for a particular application.

(f) The [General Assembly], through the [joint committee on legislative support services], and the [supreme court], separately for the respective branches, may adopt rules setting forth the minimum security requirements for the use of electronic records and electronic signatures by the respective branches. The rules shall generally be consistent with the rules adopted by the [department of central management services]. The [joint committee on legislative support services] and the [supreme court] may also accept the rules adopted by the [department of central management services] for the use of electronic records and electronic signatures by the respective branches.

(g) Except as provided in subsection (f) and in Section 37, the [department of central management services] shall have exclusive authority to adopt rules authorized by this Section.

Section 39. [Interoperability.] To the extent reasonable under the circumstances, rules adopted by the [department of central management services] or a state agency relating to the use of electronic records or electronic signatures shall be drafted in a manner designed to encourage and promote consistency and interoperability with similar requirements adopted by government agencies of other states and the federal government.

Section 40. [Enforcement.] The [secretary of state] may investigate complaints or other information indicating violations of rules adopted by the
[secretary of state] under this Act. The [secretary of state] shall certify to
the [attorney general], for such action as the [attorney general] may deem
appropriate, all information he or she obtains that discloses a violation of
any provision of this Act or the rules adopted by the [secretary of state]
under this Act.

Section 41. [Civil Remedy.] Whoever suffers loss by reason of a violation
of Section 20, 26, 27 or 28 of this Act or [insert citation] of the state [Crimi-
nal Code] may, in a civil action against the violator, obtain appropriate re-
lief. In a civil action under this Section, the court may award to the prevail-
ing party reasonable attorneys’ fees and other litigation expenses.

Section 42. [Severability.] The provisions of this Act are severable under
[insert citation] of the state [statute on statutes].

Section 43. [The Statute on Statutes.] The state [statute on statutes] is
amended as follows: “Written” and “in writing” may include printing, elec-
tronic, and any other mode of representing words and letters; but when the
written signature of any person is required by law on any official or public
writing or bond, required by law, it shall be (1) the proper handwriting of
such person or, in case he is unable to write, his proper mark or (2) an
electronic signature as defined in the state [Electronic Commerce Security
Act], except as otherwise provided by law.

Section 44. [The Freedom of Information Act.] The state [Freedom of
Information Act – Exemptions Section] is amended as follows:
(a) The following shall be exempt from inspection and copying:
(1) Information specifically prohibited from disclosure by federal or
state law or rules and regulations adopted under federal or state law.
(2) Information that, if disclosed, would constitute a clearly unwar-
ranted invasion of personal privacy, unless the disclosure is consented to in
writing by the individual subjects of the information. The disclosure of in-
formation that bears on the public duties of public employees and officials
shall not be considered an invasion of personal privacy. Information ex-
empted under this subsection (2) shall include but is not limited to:
(i) files and personal information maintained with respect to cli-
ents, patients, residents, students or other individuals receiving social,
medical, educational, vocational, financial, supervisory or custodial care or
services directly or indirectly from federal agencies or public bodies;
(ii) personnel files and personal information maintained with
respect to employees, appointees or elected officials of any public body or
applicants for those positions;
(iii) files and personal information maintained with respect to
any applicant, registrant or licensee by any public body cooperating with or
engaged in professional or occupational registration, licensure or discipline;

(iv) information required of any taxpayer in connection with the
assessment or collection of any tax unless disclosure is otherwise required
by state statute; and

(v) information revealing the identity of persons who file com-
plaints with or provide information to administrative, investigative, law
enforcement or penal agencies; provided, however, that identification of
witnesses to traffic accidents, traffic accident reports, and rescue reports
may be provided by agencies of local government, except in a case for which
a criminal investigation is ongoing, without constituting a clearly unwar-
ranted per se invasion of personal privacy under this subsection.

(3) Records compiled by any public body for administrative enforce-
ment proceedings and any law enforcement or correctional agency for law
enforcement purposes or for internal matters of a public body, but only to
the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated
law enforcement proceedings conducted by any law enforcement or correc-
tional agency;

(ii) interfere with pending administrative enforcement proceed-
ings conducted by any public body;

(iii) deprive a person of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source or
confidential information furnished only by the confidential source;

(v) disclose unique or specialized investigative techniques other
than those generally used and known or disclose internal documents of
rectional agencies related to detection, observation or investigation of
 incidents of crime or misconduct;

(vi) constitute an invasion of personal privacy under subsection
(b) of this Section;

(vii) endanger the life or physical safety of law enforcement per-
sonnel or any other person; or

(viii) obstruct an ongoing criminal investigation.

(4) Criminal history record information maintained by state or local
criminal justice agencies, except the following which shall be open for pub-
lic inspection and copying:

(i) chronologically maintained arrest information, such as tradi-
tional arrest logs or blotters;

(ii) the name of a person in the custody of a law enforcement
agency and the charges for which that person is being held;

(iii) court records that are public;

(iv) records that are otherwise available under state or local law; or

(v) records in which the requesting party is the individual identi-
fied, except as provided under [part (vii) of paragraph (c) of subsection (1) of
this Section]. “Criminal history record information” means data identifi-
able to an individual and consisting of descriptions or notations of arrests, detections, indictments, informations pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

(5) Records that relate to or affect the security of correctional institutions and detention facilities.

(6) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this [paragraph (f)] extends to all those records of officers and agencies of the [General Assembly] that pertain to the preparation of legislative documents.

(7) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including all information determined to be confidential under [Section 4002] of the [Technology Advancement and Development Act]. Nothing contained in this paragraph shall be construed to prevent a person or business from consenting to disclosure.

(8) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(9) Valuable formulae, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss.

(10) Test questions, scoring keys and other examination data used to administer an academic examination or to determine the qualifications of an applicant for a license or employment.

(11) Architects' plans and engineers' technical submissions for projects not constructed or developed in whole or in part with public funds and for projects constructed or developed with public funds, to the extent that disclosure would compromise security.

(12) Library circulation and order records identifying library users with specific materials.
(13) Minutes of meetings of public bodies closed to the public as provided in the [Open Meetings Act] until the public body makes the minutes available to the public under the state [Open Meetings Act].

(14) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(15) Information received by a primary or secondary school, college or university under its procedures for the evaluation of faculty members by their academic peers.

(16) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(17) Documents or materials relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(18) Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with respect to these obligations is made.

(19) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under [Article VII of the Code of Civil Procedure], records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the [state supreme court]. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

(20) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool.

(21) Information concerning a university's adjudication of student or employee grievance or disciplinary cases, to the extent that disclosure would reveal the identity of the student or employee and information concerning
any public body's adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.

(22) Course materials or research materials used by faculty members.

(23) Information related solely to the internal personnel rules and practices of a public body.

(24) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by state law.

(25) Information the disclosure of which is restricted under the state [Public Utilities Act].

(26) Manuals or instruction to staff that relate to establishment or collection of liability for any state tax or that relate to investigations by a public body to determine violation of any criminal law.

(27) Applications, related documents, and medical records received by the [experimental organ transplantation procedures board] and any and all documents or other records prepared by the [experimental organ transplantation procedures board] or its staff relating to applications it has received.

(28) Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(29) Information and records held by the [department of public health] and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the state [Sexually Transmissible Disease Control Act]

(30) Information the disclosure of which is exempted under [insert citation] of the state [Radon Industry Licensing Act].


(32) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the [regional transportation authority] under [Section 2.11] of the state [Regional Transportation Authority Act] or the State of [Missouri] under the [Bi-State Transit Safety Act].

(33) Information the disclosure of which is restricted and exempted under [insert citation] of the state [Prepaid Tuition Act].

(34) Information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the state [Electronic Commerce Security Act].

(b) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.
Section 45. [The State Comptroller Act: Digital Signatures.]
(a) In any communication between a state agency and the [comptroller] in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this Section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:
(1) It is unique to the person using it.
(2) It is capable of verification.
(3) It is under the sole control of the person using it.
(4) It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
(5) It conforms to regulations adopted by the [comptroller].
(b) The use or acceptance of a digital signature shall be at the option of the parties. Nothing in this Section shall require a state agency to use or permit the use of a digital signature.
(c) “Digital signature” has the meaning ascribed to that term in the state [Electronic Security Commerce Act].

Section 46. [Forgery.]
(a) A person commits forgery when, with intent to defraud, he knowingly:
(1) makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; or
(2) issues or delivers such document knowing it to have been thus made or altered; or
(3) possesses, with intent to issue or deliver, any such document knowing it to have been thus made or altered; or
(4) unlawfully uses the signature device of another to create an electronic signature of that other person, as those terms are defined in the state [Electronic Commerce Security Act].
(b) An intent to defraud means an intention to cause another to assume, create, transfer, alter or terminate any right, obligation or power with reference to any person or property.
(c) A document apparently capable of defrauding another includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated. A document includes any record or electronic record as those terms are defined in the state [Electronic Commerce Security Act].
(d) Forgery is a [Class 3 felony].

Section 47. [Repealer.] [Insert repealer clause.]

Section 48. [Effective Date.] [Insert effective date.]
Electronic Mail Advertising

This Act makes it easier for Internet users to control the e-mail they receive. Advertisers who send unsolicited commercial e-mail must identify advertising messages by including the label “ADV:“ in the subject line of the message. Advertisements for sexually explicit materials or other information inappropriate for minors must be labeled “ADV: ADLT.” The law also requires advertisers to include a toll-free telephone number or a valid e-mail address so recipients can ask to stop receiving junk e-mail.

Submitted as:
California, CH 865
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning Unsolicited Advertising by Facsimile or Electronic Mail.”

Section 2. [Facsimile Advertising and Electronic Mail Advertising – Requirements.]
(a) No person or entity conducting business in this state shall facsimile (fax) or cause to be faxed, or electronically mail (e-mail) or cause to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless:

(1) In the case of a fax, that person or entity establishes a toll-free telephone number that a recipient of the unsolicited faxed documents may call to notify the sender not to fax the recipient any further unsolicited documents.

(2) In the case of e-mail, that person or entity establishes a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(b) All unsolicited faxed or e-mailed documents subject to this Act shall include a statement informing the recipient of the toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or e-mail, as the case may be, notifying the sender not to fax or e-mail the recipient any further unsolicited documents to the fax number, or numbers, or e-mail address, or addresses, specified by the recipient. In the case of faxed material, the statement shall be in at least
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[nine (9)] point type. In the case of e-mail, the statement shall be the first text in the body of the message and shall be of the same size as the majority of the text of the message.

(c) Upon notification by a recipient of his or her request not to receive any further unsolicited faxed or e-mailed documents, no person or entity conducting business in this state shall fax or cause to be faxed or e-mail or cause to be e-mailed any unsolicited documents to that recipient.

(d) In the case of e-mail, this Act shall apply when the unsolicited e-mailed documents are delivered to a resident of this state via an electronic mail service provider's service or equipment located in this state. For these purposes “electronic mail service provider” means any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(e) As used in this Act, “unsolicited e-mailed documents” means any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that meet both of the following requirements:

1. The documents are addressed to a recipient with whom the initiator does not have an existing business or personal relationship; and
2. The documents are not sent at the request of, or with the express consent of, the recipient.

(f) As used in this Act, “fax” or “cause to be faxed” or “e-mail” or “cause to be e-mailed” does not include or refer to the transmission of any documents by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(g) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, the subject line of each and every message shall include “ADV:” as the first [four (4)] characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual [eighteen (18)] years of age and older, the subject line of each and every message shall include “ADV:ADLT” as the first eight characters.

(h) An employer who is the registered owner of more than one e-mail address may notify the person or entity conducting business in this state e-mailing or causing to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit of the desire to cease e-mailing on behalf of all of the employees who may use employer-provided
Electronic Mail Advertising

(i) This Act, or any part of this Act, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Electronic Proxy

This Act provides that a shareholder may appoint a proxy to vote or otherwise act for the shareholder by the following methods:
• execute a writing signed by the shareholder or a designated officer, director, employee or agent of the shareholder or causing the signature of the shareholder, or the designated officer, director, employee or agent of the shareholder to be affixed to the writing by any means including facsimile signature;
• transmit or authorize the transmission of an electronic submission; or
• any other method allowed by law.

A complete copy, facsimile telecommunication or other reliable reproduction of an entire writing or electronic submission may be used instead of the original. Anyone who determines the validity of proxies must specify the information upon which they rely in determining the validity of a proxy.

The Act also allows a corporation to reject a vote, consent, waiver or proxy appointment if the person authorized to tabulate votes has a reasonable basis for doubt about the validity of an electronic submission or the submitter’s authority to make the electronic submission.

Submitted as:
Indiana
HB 1152 (enrolled version)
Status: enacted as Public Law 9 in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Permit Electronic Proxies.”

Section 2. [Shareholder Voting.]
(a) A shareholder may vote the shareholder’s shares in person or by proxy.
(b) A shareholder may authorize a person or people to act for the shareholder as proxy by any of the following:
   (1) A shareholder or the shareholder’s designated officer, director, employee, or agent may execute a writing by:
      (A) signing it; or
      (B) causing the shareholder’s signature or the signature of the designated officer, director, employee, or agent of the shareholder to be affixed to the writing by any reasonable means, including by facsimile signature.
(2) A shareholder may transmit or authorize the transmission of an electronic submission. The electronic submission:

(A) may be transmitted by any electronic means, including data and voice telephonic communications and computer network;

(B) may be transmitted to:

(i) the person who will be the holder of the proxy;

(ii) a proxy solicitation firm; or

(iii) a proxy support service organization or similar agency authorized by the person who will be the holder of the proxy to receive the electronic submission; and

(C) must either contain or be accompanied by information from which it can be determined that the electronic submission was transmitted by or authorized by the shareholder.

(3) Any other method allowed by law.

(c) A copy, facsimile telecommunication, or other reliable reproduction of the writing or electronic submission created under subsection (b)(1) or (b)(2) may be used instead of the original writing or electronic submission for all purposes for which the original writing or electronic submission may be used if the copy, facsimile telecommunication, or other reproduction is a complete copy of the entire original writing or electronic submission.

(d) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for [eleven (11)] months unless a shorter or longer period is expressly provided in the appointment.

(e) An appointment of a proxy is revocable by the shareholder unless the appointment conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(1) a pledgee;

(2) a person who purchased or agreed to purchase the shares;

(3) a creditor of the corporation who extended it credit under terms requiring the appointment;

(4) an employee of the corporation whose employment contract requires the appointment; or

(5) a party to a voting agreement created under [insert citation].

(f) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy’s authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy’s authority under the appointment.

(g) An appointment made irrevocable under subsection (e) is revoked when the interest with which it is coupled is extinguished.

(h) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its
existence when the transferee acquired the shares and the existence of the
irrevocable appointment was not noted conspicuously on the certificate rep-
representing the shares or on the information statement for shares without
certificates.

(i) Subject to Section 5 of this Act and to any express limitation on the
proxy's authority contained in the writing or electronic submission, a cor-
poration is entitled to accept the proxy's vote or other action as that of the
shareholder making the appointment.

Section 3. [Shareholder Voting: Submitting and Accepting.]

(a) If the name signed on or submitted with a vote, consent, waiver, or
proxy appointment corresponds to the name of a shareholder, the corpora-
tion if acting in good faith is entitled to accept the vote, consent, waiver, or
proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on or submitted with a vote, consent, waiver, or
proxy appointment does not correspond to the name of its shareholder, the
corporation if acting in good faith is nevertheless entitled to accept the vote,
consent, waiver, or proxy appointment and give it effect as the act of the
shareholder if:

(1) the shareholder is an entity and the name purports to be that of
an officer or agent of the entity;

(2) the name purports to be that of an administrator, executor, guard-
ian, or conservator representing the shareholder and, if the corporation
requests, evidence of fiduciary status acceptable to the corporation has been
presented with respect to the vote, consent, waiver, or proxy appointment;

(3) the name purports to be that of a receiver or trustee in bank-
r uptcy of the shareholder and, if the corporation requests, evidence of this
status acceptable to the corporation has been presented with respect to the
vote, consent, waiver, or proxy appointment;

(4) the name purports to be that of a pledgee, beneficial owner, or
attorney-in-fact of the shareholder and, if the corporation requests, evidence
acceptable to the corporation of the person's authority to act for the share-
holder has been presented with respect to the vote, consent, waiver, or proxy
appointment; or

(5) [two (2)] or more people are the shareholder as cotenants or fidu-
ciaries and the name purports to be the name of at least [one (1)] of the co-
owners and the person acting appears to be acting on behalf of all the co-
owners.

(c) The inspectors or the people making a determination of the validity
of proxies shall specify the information upon which they rely in determin-
ing the validity of a proxy. The corporation is entitled to reject a vote, con-
sent, waiver, or proxy appointment if the secretary or other officer or agent
authorized to tabulate votes, acting in good faith, has reasonable basis for
doubt about:
(1) the validity of the signature on a writing or about the signatory’s authority to sign for the shareholder; or
(2) the validity of an electronic submission or the submitter’s authority to make the electronic transmission.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.
(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this Section is valid unless a court of competent jurisdiction determines otherwise.

Section 4. [Severability.] [Insert severability clause.]
Section 5. [Repealer.] [Insert repealer clause.]
Section 6. [Effective Date.] [Insert effective date.]
Filling Electronically Transferred Prescriptions

This Act says that nothing shall prohibit pharmacists from filling or refilling a valid prescription by way of electronic data processing equipment if certain conditions are met. These include:

- recording in writing certain information about the prescription (e.g., date of which the original prescription is on file);
- obtaining consent when required; and
- canceling the prescription on file.

The law also enables two or more pharmacies to establish and use a common electronic file to maintain required dispensing information.

Submitted as:
Kansas
CH 86, Laws of 1998
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning the Practice of Pharmacy; Filling Transferred Prescriptions.”

Section 2. [Filling or Refilling Prescriptions via Electronic Data Processing.]

(a) Nothing contained in state law shall prohibit a pharmacist licensed in this state from filling or refilling a valid prescription for prescription drugs not listed in schedule II of the Uniform Controlled Substances Act, which is on file in a pharmacy licensed in any state and has been transferred from one pharmacy to another by any means, including by way of electronic data processing equipment, upon the following conditions and exceptions:

1. Prior to dispensing pursuant to any such prescription, the dispensing pharmacist shall:
   (A) advise the patient that the prescription file at such other pharmacy must be canceled before the dispensing pharmacist will be able to fill the prescription;
   (B) determine that the prescription is valid and on file at such other pharmacy and that such prescription may be filled or refilled, as requested, in accordance with the prescriber’s intent expressed on such prescription;
   (C) notify the pharmacy where the prescription is on file that the prescription must be canceled;
Filling Transferred Prescriptions

(D) record the prescription order, the name of the pharmacy at which the prescription was on file, the prescription number, the name of the drug and the original amount dispensed, the date of original dispensing and the number of remaining authorized refills: and

(E) obtain the consent of the prescriber to the refilling of the prescription when the prescription, in the professional judgment of the dispensing pharmacist, so requires. Any interference with the professional judgment of the dispensing pharmacist by any other licensed pharmacist, agents of the licensed pharmacist or employees shall be grounds for revocation or suspension of the registration issued to the pharmacy.

(2) Upon receipt of a request for prescription information set forth in subsection (a)(1)(D), if the requested pharmacist is satisfied in the professional judgment of the pharmacist that such request is valid and legal, the requested pharmacist shall:

(A) provide such information accurately and completely;

(B) record on the prescription the name of the requesting pharmacy and pharmacist and the date of request; and

(C) cancel the prescription on file. No further prescription transfer shall be given or medication dispensed pursuant to such original prescription.

(3) In the event that, after the information set forth in subsection (a)(1)(D) has been provided, a prescription is not dispensed by the requesting pharmacist, then such pharmacist shall provide notice of this fact to the pharmacy from which such information was obtained, such notice shall then cancel the prescription in the same manner as set forth in subsection (a)(2)(C).

(4) When filling or refilling a valid prescription on file in another state, the dispensing pharmacist shall be required to follow all the requirements of state law which apply to the dispensing of prescription drugs. If anything in state law prevents the filling or refilling of the original prescription it shall be unlawful to dispense pursuant to this section.

(5) In addition to any other requirement of this section, the transfer of original prescription information for a controlled substance listed in schedules [II, IV and V] for the purposes of refill dispensing shall be made in accordance with the requirements of section 1306.25 of chapter 21 of the Code of Federal Regulations.

(b) Two or more pharmacies may establish and use a common electronic file to maintain required dispensing information. Pharmacies using such a common electronic file are not required to physically transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file, except that any such common file must contain complete and adequate records of such prescription and refill dispensed as required by applicable state law.

(c) The [board] may formulate such rules and regulations, not inconsis-
tent with law, as may be necessary to carry out the purposes of and to embrace the provisions of this section except that the [board] shall not impose greater requirements on either common electronic files or a hard copy record system.

(d) Drugs shall in no event be dispensed more frequently or in larger amounts than the prescriber ordered without direct prescriber authorization by way of new prescription order.

Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Floating Home Residency Laws (Note)

Most states have laws governing the relationship between landlords and tenants with respect to traditional buildings such as houses and apartments. This may not be true for atypical structures such as floating homes. However, at least two states, California and Idaho, have enacted laws within the last 10 years to address floating homes.

California Health and Safety Code Section 18075.55(d) defines a floating home as a floating structure which:
• as designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling;
• has no mode of power of its own;
• is dependent for utilities upon a continuous utility linkage to a source originating on shore; and
• has a permanent continuous hookup to a shoreside sewage system.

California Civil Code Section 800.01 et seq. addresses the legal relationship between marinas and floating homes that are moored in them. Such areas include:
• residency;
• tenancy;
• leasing;
• abandonment;
• marina service fees; and
• selling floating homes.

Generally, floating home marinas are areas where five or more floating homes berths are rented or where more than 10 percent of the total available berths are rented to floating homes.

Idaho Chapter 196, Laws of 1998 regulates the rental of moorages for floating homes. It requires written rental agreements and defines the rights and obligations of the owners of the marina and the owners of the floating homes. The law also provides remedies to the parties.

Idaho’s law is a form of rent control on marinas. According to Idaho legislative staff, Idaho basically applied laws that governed landlord-tenant relationships in mobile home parks to landlord-tenant relationships between marina owners and floating home owners who rented moorage or dock space at marinas. Idaho did this to create uniform guidelines and procedures for the latter.

There are approximately 200 floating homes on Idaho’s lakes. Most of these homes are located within marinas owned by parties other than the owners of the floating homes (i.e., commercial marinas). Moorage sites for floating homes are over and upon public waters of the state. It is the policy of the Idaho Land Board and the Department of Lands, which is charged with administering navigational encroachment permits under Title 58,
Chapter 13 of the Idaho Code, that no additional commercial moorage sites for floating home moorage will be permitted.

Although existing floating homes may be permitted to move to riparian property outside a commercial marina, this would require acquisition by a floating home owner of such riparian land. Thus, owners of floating homes have little or no recourse if they become subject to unfair rental practices. This legislation requires that the respective rights and responsibilities of floating home marina owners and owners of floating homes be set out in a written rental agreement. The legislation provides for remedies, imposes a good faith standard of conduct, provides for arbitration of disputes and an obligation to meet and confer with tenants and resident organizations.
Guide Dogs and Eviction of Personal Care Attendants (Statement)

Chapter 61 of the Delaware Acts of 1998 exempts from landlord and tenant laws the living arrangement between a disabled person and a personal care assistant or other person employed to assist and support the disabled person in daily living activities or housekeeping chores. This exemption applies if the personal care assistant is provided living space in the disabled person’s personal residence as a benefit or condition of employment. Landlord and tenant laws cover such things as rental agreement terms, eviction, collection of rent and security deposits and security deposit refunds. Thus, under the Act, a disabled person would not, for example, have to use the eviction process to get rid of an unwelcome personal care assistant who does not wish to leave. The disabled person could use any legal means necessary to remove the assistant, including locking him out. If the disabled person is a tenant, his relationship with the landlord continues to be governed by the landlord and tenant laws. As a tenant, the disabled person is responsible for the actions of his invitees or guests, such as a personal care assistant.

Delaware law generally requires dog owners or keepers to control and restrain their dogs on a leash when they are not on their property and a blind, deaf, or mobility-impaired person with a licensed guide dog is nearby. Violators are guilty of an infraction, punishable by a fine of $77. However, if an unrestrained dog attacks and injures the guide dog, this 1998 Act also makes the owner or keeper civilly liable for damage to the guide dog, including the cost of veterinarian care, rehabilitation or replacement of the guide dog, and reasonable attorney’s fees.
Health Care Plans/Policies – Disclosure and Continuity of Care

This Act prescribes disclosure requirements for health care service plans. It requires disability insurers and health care service plans to adopt a written policy on continuity of care for enrollees who receive care from a terminated provider for chronic conditions and high-risk or third trimester pregnancies. It requires the policy to describe how requests for continuity of care will be reviewed, allow expedited reviews and provide for continuity of care until treatment is completed or the enrollee may be safely transitioned to a new provider. The Act requires such health plans to file the policy with the state department of corporations and make it available to the health plan enrollees upon request.

Submitted as:
California
CH 180, Laws of 1998

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning Disclosure Requirements for Health Care Services and Providing Continuity of Health Care and Health Care Services.”

Section 2. [Health Care Service Plans – Disclosure.] (a) The [commissioner] shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the [commissioner] may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The [commissioner] may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this Act shall preclude the [commissioner] from permitting the disclosure form to be included with the evidence of coverage or plan contract. The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the [commissioner], in connection with the plan or plan contract:
(1) the principal benefits and coverage of the plan, including coverage for acute care and subacute care;
(2) the exceptions, reductions, and limitations that apply to the plan;
(3) the full premium cost of the plan;
(4) any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan;
(5) the terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums;
(6) a statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions. On the first page of the disclosure form, a notice that conforms with all of the following conditions:
   (A) states that the evidence of coverage discloses the terms and conditions of coverage and that the applicant has a right to view the evidence of coverage prior to enrollment. If the evidence of coverage is not combined with the disclosure form, the notice shall specify where the evidence of coverage can be obtained prior to enrollment;
   (B) includes a statement that the disclosure and the evidence of coverage should be read completely and carefully and that people with special health care needs should read carefully those sections that apply to them;
   (C) includes the plan's telephone number or numbers that may be used by an applicant to receive additional information about the benefits of the plan or a statement where the telephone number or numbers are located in the disclosure form;
   (D) for individual contracts, and small group plan contracts, the disclosure form shall state where the health plan benefits and coverage matrix is located; and
   (E) is printed in type no smaller than that used for the remainder of the disclosure form and is displayed prominently on the page.
(7) A statement as to when benefits shall cease in the event of non-payment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.
(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability which is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.
(9) A summary of the provisions.
(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.
(11) A summary of, and a notice of the availability of, the process the plan uses to authorize or deny health care services under the benefits pro-
vided by the plan.

   (12) A description of any limitations on the patient’s choice of primary care or specialty care physician based on service area and limitations on the patient’s choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

   (13) General authorization requirements for referral by a primary care physician to a specialty care physician.

   (14) Conditions and procedures for disenrollment.

   (15) A description as to how an enrollee may request continuity of care.

   (b) (1) As of [insert date], the [commissioner] shall require each plan offering a contract to an individual or small group to provide with the disclosure form for individual and small group plan contracts a uniform health plan benefits and coverage matrix containing the plan’s major provisions in order to facilitate comparisons between plan contracts. The uniform matrix shall include the following category descriptions together with the corresponding copayments and limitations in the following sequence:

   (A) Deductibles;

   (B) Lifetime maximums;

   (C) Professional services;

   (D) Outpatient services;

   (E) Hospitalization services;

   (F) Emergency health coverage;

   (G) Ambulance services;

   (H) Prescription drug coverage;

   (I) Durable medical equipment;

   (J) Mental health services;

   (K) Chemical dependency services;

   (L) Home health services; and

   (M) Other.

   (2) The following statement shall be placed at the top of the matrix in all capital letters in at least [ten (10)] point boldface type:

   THIS MATRIX IS INTENDED TO BE USED TO HELP YOU COMPARE COVERAGE BENEFITS AND IS A SUMMARY ONLY. THE EVIDENCE OF COVERAGE AND PLAN CONTRACT SHOULD BE CONSULTED FOR A DETAILED DESCRIPTION OF COVERAGE BENEFITS AND LIMITATIONS.

   (c) Nothing in this Section shall prevent a plan from using appropriate footnotes or disclaimers to reasonably and fairly describe coverage arrangements in order to clarify any part of the matrix that may be unclear.

   (d) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the [commissioner] pursuant to this Section for each plan so examined or sold.
(e) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contract holder upon delivery of the completed health care service plan agreement.

(f) Group contract-holders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. Where the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contract holder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all subscribers enrolled under the group contract.

(g) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the group contract which may be less favorable to subscribers or enrollees.

(h) In addition to the other disclosures required by this Section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of twenty five (25) or fewer people, disclose in writing the ratio of premium costs to health services paid for plan contracts with people and with groups of the same or similar size for the plan’s preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

(i) Subdivision (b) shall not apply to any coverage provided by a plan for the Medi-Cal program or the Medicare program pursuant to Title XVIII and Title XIX of the Social Security Act.

Section 3. [Health Care Service Plans – Continuation of Services.]

(a) Every health care service plan shall, at the request of an enrollee, arrange for the continuation of covered services rendered by a terminated provider to an enrollee who is undergoing a course of treatment from a terminated provider for an acute condition, serious chronic condition, or a pregnancy covered by subdivision (b), at the time of the contract termination, subject to the provisions of this Section.

(b) Subject to subdivisions (c) and (d), the plan shall, at the request of an enrollee, provide for continuity of care for the enrollee by a terminated provider who has been providing care for an acute condition or a serious chronic condition, for a high-risk pregnancy, or for a pregnancy that has reached the second or third trimester. In cases involving an acute condition or a serious chronic condition, the plan shall furnish the enrollee with health care services on a timely and appropriate basis from the terminated provider for up to ninety (90) days or a longer period if necessary for a safe transfer to another provider as determined by the plan in consultation with the terminated provider, consistent with good professional practice. In the
case of a pregnancy, the plan shall furnish the enrollee with health care
services on a timely and appropriate basis from the terminated provider
until postpartum services related to the delivery are completed or for a
longer period if necessary for a safe transfer to another provider as deter-
mined by the plan in consultation with the terminated provider, consistent
with good professional practice.

(c) The plan may require the terminated provider whose services are
continued beyond the contract termination date pursuant to this Section to
agree in writing to be subject to the same contractual terms and conditions
that were imposed upon the provider prior to termination, including, but
not limited to, credentialing, hospital privileging, utilization review, peer
review, and quality assurance requirements. If the terminated provider does
not agree to comply or does not comply with these contractual terms and
conditions, there shall be no obligation on the part of the plan to continue
the provider’s services beyond the contract termination date. Further, if the
terminated provider or provider group voluntarily leaves the plan, there
shall be no obligation on the part of the provider or the plan to continue the
provider’s services beyond the contract termination date.

(d) Unless otherwise agreed upon between the terminated provider and
the plan or between the provider and the provider group, the agreement
shall be construed to require a rate and method of payment to the termi-
nated provider, for the services rendered pursuant to this Section, similar
to rates and methods of payment used by the plan or the provider group for
currently contracting providers providing similar services who are not
capitated and who are practicing in the same or a similar geographic area
as the terminated provider. The plan or the provider group shall not be
obligated to continue the services of a terminated provider if the provider
does not accept the payment rates provided for in this Section.

(e) A description as to how an enrollee may request continuity of care
pursuant to this Section shall be provided in any plan evidence of coverage
and disclosure form issued after [insert date]. A plan shall provide a writ-
ten copy of this information to its contracting providers and provider groups.
A plan shall also provide a copy to its enrollees upon request.

(f) The payment of copayments, deductibles, or other cost sharing com-
ponents by the enrollee during the period of continuation of care with a
terminated provider shall be the same copayments, deductibles, or other
cost sharing components that would be paid by the enrollee when receiving
care from a provider currently contracting with or employed by the plan.

(g) If a plan delegates the responsibility of complying with this Section
to its contracting providers or contracting provider groups, the plan shall
ensure that the requirements of this Section are met.

(h) For the purposes of this Section:

(1) “Provider” means a person who is licensed under [insert citation].

(2) “Terminated provider” means a provider whose contract to pro-
vide services to plan enrollees is terminated or not renewed by the plan or one of the plan's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the plan or contracting provider group. (3) “Provider group” includes a medical group, independent practice association, or any other similar group of providers. (4) “Acute condition” means a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. (5) “Serious chronic condition” means a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature, and that does either of the following: (A) persists without full cure or worsens over an extended period of time. (B) requires ongoing treatment to maintain remission or prevent deterioration. (i) This Section shall not require a plan or provider group to provide for continuity of care by a provider whose contract with the plan or group has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in [insert citation], or fraud or other criminal activity. (j) This Section shall not require a plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract. (k) The provisions contained in this Section are in addition to any other responsibilities of health care service plans to provide continuity of care pursuant to this Act. Nothing in this Section shall preclude a plan from providing continuity of care beyond the requirements of this Section.

Section 5. [Disability Insurers – Continuation of Covered Services.] (a) Disability insurers who provide hospital, medical, or surgical coverage and that negotiate and enter into contracts with professional or institutional providers to provide services at alternative rates of payment pursuant to [insert citation], shall, at the request of an insured, arrange for the continuation of covered services rendered by a terminated provider to an insured who is undergoing a course of treatment from a terminated provider for an acute condition, serious chronic condition, or a pregnancy covered by subdivision (b), at the time of the contract termination, subject to the provisions of this section. (b) Subject to subdivisions (c) and (d), the insurer shall, at the request of an insured, provide for continuity of care for the insured by a terminated provider who has been providing care for an acute condition or a serious chronic condition, for a high-risk pregnancy, or for a pregnancy that has reached the second or third trimester. Continuity of care for an acute or serious chronic condition shall be provided for up to [ninety (90)] days or a
longer period if necessary to ensure a safe transfer to another provider, as
determined by the insurer, in consultation with the terminated provider,
consistent with good professional practice. In the case of pregnancy, con-
tinuity of care shall be provided through the course of the pregnancy and
during the postpartum period. After the required period of continuity of
care has expired pursuant to this Section, coverage shall be provided pur-
suant to the general terms and conditions of the insured’s policy.

(c) The insurer may require the terminated provider whose services are
continued beyond the contract termination date pursuant to this Section to
agree in writing to be subject to the same contractual terms and conditions
that were imposed upon the provider prior to termination, including, but
not limited to, credentialing, hospital privileging, utilization review, peer
review, and quality assurance requirements. If the terminated provider does
not agree to comply or does not comply with these contractual terms and
conditions, there shall be no obligation on the part of the insurer to con-
tinue the provider’s services beyond the contract termination date. Further,
if the terminated provider or provider group voluntarily cancels the con-
tract with the insurer, there shall be no obligation on the part of the pro-
vider or the insurer to continue the provider’s services beyond the contract
termination date.

(d) Unless otherwise agreed upon between the terminated provider and
the insurer or between the terminated provider and the provider group, the
agreement shall be construed to require a rate and method of payment to
the terminated provider, for the services rendered pursuant to this Section,
that is the same as the rates and method of payment for the same services
while under contract with the insurer and at the time of termination. The
provider shall accept the reimbursement as payment in full, and shall not
bill the insured for any amount in excess of the reimbursement rate, with
the exception of copayments and deductibles pursuant to subdivision (f).
The insurer or provider group shall not be obligated to continue the ser-
VICES of a terminated provider if the provider does not accept the payment
rates provided for in this section.

(e) Notice as to how an insured may request continuity of care pursuant
to this Section shall be provided in any insurer evidence of coverage and
disclosure form issued after [insert date]. An insurer shall provide a writ-
ten copy of this information to its contracting providers and provider groups.
An insurer shall also provide a copy to its insureds upon request.

(f) The payment of copayments, deductibles, or other cost sharing com-
ponents by the insured during the period of continuation of care with a
terminated provider shall be the same copayments, deductibles, or other
cost sharing components that would be paid by the insured when receiving
care from a provider currently contracting with the insurer.

(g) If an insurer delegates the responsibility of complying with this Sec-
tion to its contracting entities, the insurer shall ensure that the require-
(h) For the purposes of this Section:
(1) “Provider” means a person who is licensed under [insert citation].
(2) “Terminated provider” means a provider whose contract to pro-
vide services to insureds is terminated or not renewed by the insurer or one
of the insurer’s contracting provider groups. A terminated provider is not a
provider who voluntarily leaves the insurer or contracting provider group.
(3) “Provider group” includes a medical group, independent practice
association, or any other similar group of providers.
(4) “Acute condition” means a medical condition that involves a sud-
den onset of symptoms due to an illness, injury, or other medical problem
that requires prompt medical attention, and has a limited duration.
(5) “Serious chronic condition” means a medical condition due to a
disease, illness, or other medical problem or medical disorder that is seri-
ous in nature, and that does either of the following:
   (A) persists without full cure or worsens over an extended period
   of time; or
   (B) requires ongoing treatment to maintain remission or prevent
deterioration.
(i) This Section shall not require an insurer or provider group to provide
for continuity of care by a provider whose contract with the insurer or group
has been terminated or not renewed for reasons relating to medical discipli-
nary cause or reason, as defined in [insert citation], or fraud or other
criminal activity.
(j) This Section shall not require an insurer to cover services or provide
benefits that are not otherwise covered under the terms and conditions of
the insurer contract.
(k) The provisions contained in this Section are in addition to any other
responsibilities of insurers to provide continuity of care pursuant to this
Act. Nothing in this Section shall preclude an insurer from providing conti-
nuity of care beyond the requirements of this Section.

Section 8. [Severability.] [Insert severability clause.]

Section 9. [Repealer.] [Insert repealer clause.]

Section 10. [Effective Date.] [Insert effective date.]
Home Care Patient/Client Rights

This Act establishes a set of rights for people who receive nursing home care or nursing care at their home. These include being informed about the type of treatment being offered by the provider, billing amounts and procedures, and complaints.

Submitted as:
Rhode Island
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Home Health Care Patient/Client Rights.”

Section 2. [Written Notice of Rights of Home Care Patients/ Clients.] Each patient/dent of a home nursing care provider or home care provider agency has the right to be informed of his or her rights under this Act and the home nursing care provider or home care provider agency must protect and promote the exercise of these rights. The home nursing care provider or home care provider agency must provide the patient/dent with a written notice of the patient/dent rights in advance of furnishing care to the patient/dent or during the initial evaluation visit before the initiation of treatment. A copy of the written notice of rights signed by the patient/dent will be maintained in the patient/dent record by the home nursing care provider or home care provider agency and in the patient/dent’s home. The home nursing care provider or home care provider agency must maintain documentation showing that it has complied with the requirements of this section. The provisions of this Act shall not apply to nursing services or home health services conducted by and for those who rely exclusively upon spiritual means through prayer alone in accordance with the creed or tenets of a well recognized church or religious denomination.

Section 3. [Rights of Home Care Patients/ Clients.] Each home care patient/dent has the following rights:

1. to receive services without regard to race, creed, color, gender, sexual orientation, age, disability, or source of payment.
2. to receive safe, appropriate and high quality care and services in a timely manner with consideration, dignity, respect and privacy.
Home Care Patient/Client Rights

(3) to accept or refuse care and to be informed of the consequences of such action.

(4) to be free from mental or physical abuse, physical punishment, neglect, damage to or theft of property, or exploitation of any kind.

(5) to have his or her property treated with respect.

(6) to exercise his or her rights as a patient/client of the home nursing care provider or home care provider agency. When the patient/client is unable to exercise his or her rights, an agent or legal guardian may exercise the patient's/client's rights.

(7) to be informed, in advance, about the care to be furnished (and not to be furnished), the plan of care, and of any changes in the care to be furnished before the change is made.

(8) to help plan the care and services received or to help change the care and services.

(9) to be advised in advance of the disciplines that will furnish care, the frequency of visits proposed to be furnished, and the names and qualifications of all individuals providing care.

(10) to receive information necessary to make decisions about care (or to have a family member receive such information, as appropriate) and to have access to their records.

(11) to receive information and counseling about advanced directives such as the living will and durable power of attorney for health care, to formulate advanced directives, and to receive written information about the policy of the home nursing care provider or home care provider agency on client advanced directives and state mandated protocol.

(12) to have his or her personal and clinical records treated and maintained in a confidential manner and to be advised by the agency of its policies and procedures regarding disclosure of clinical records.

(13) to be advised, before care is initiated, if the provider is a full participating provider in the patient's/client's health care plan, the cost of services, the extent to which payment for the home nursing care provider or home care provider agency services may be expected from insurance, government and other sources, and the extent to which payment may be required from the patient/client and the charges they will be required to pay.

(14) to be informed of the home nursing care provider or home care provider agency's billing procedures and the patient/client payment responsibilities.

(15) to be informed of the home nursing care provider or home care provider agency's ownership and control.

(16) to be informed of any experimental research or investigational activities and the right to refuse such.

(17) to voice grievances (or to have the patient's/client's family or guardian voice grievances on the patient's/client's behalf if the patient/client is unable to do so) regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing
services on behalf of the home nursing care provider or home care provider agency; to be advised on how to voice grievances; and not to be subjected to discrimination or reprisal for doing so.

(18) to have the patient's/client's complaints investigated, or complaints made by the patient's/client's family or guardian, regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient/client or the patient's/client's property by anyone furnishing services on behalf of the home nursing care provider or home care provider agency, and the home nursing care provider or home care provider agency must document both the existence of the complaint and the resolution of the complaint.

(19) to be informed in writing of his or her rights to appeal a determination or decision made by the home nursing care provider or home care provider agency with regard to eligibility for service, the types or levels of service in the care plan, a termination or change in service, or if the patient/client feels that his or her rights under this Act have been violated.

(20) to be advised in writing of the availability of the state toll-free home health hotline, the hours of its operation, and that the purpose of the hotline is to receive complaints or questions about local home nursing care providers or home care providers.

Section 4. [Severability.] [Insert severability clause.]

Section 5. [Repealer.] [Insert repealer clause.]

Section 6. [Effective Date.] [Insert effective date.]
Identity Theft-Misuse of Personal Identifying Information (Note)

In today's world of easy credit and computer transactions, thieves have more opportunities to steal and misuse the identity of unsuspecting people. They have advanced from stealing identification from wallets and receipts to assuming someone's identity through pre-approved credit applications and accessing personal information stored in computer databases.

A Federal Trade Commission spokesperson testified before a U.S. Senate subcommittee in May 1998 that individual thieves and organized identity-theft rings are using more sophisticated theft schemes, even taking low-level jobs with financial institutions to gain access to consumer credit reports or other identifying data. Until recently, federal law and most state laws would not recognize as a crime a consumer using someone else's personal identifying information (i.e., name, Social Security number, address, date of birth or mother's maiden name) in order to obtain something of value.

The exact frequency and cost of identity theft is unknown. “Identity fraud can be an element in a variety of financial crimes, such as bank fraud, credit-card fraud, social-program fraud, tax-refund fraud, and mail fraud,” according to the 1998 Government Accounting Office briefing report, Identity Fraud: Information on Prevalence, Cost, and Internet Impact is Limited. In the report, the GAO found no comprehensive estimates of the prevalence or costs of identity fraud. Visa reported to the GAO that U.S. fraud losses among its member banks for fiscal 1997 totaled $490 million. The U.S. Public Interest Research Group, a consumer advocacy organization, estimates that 40,000 acts of identity theft occur each year.

The U.S. Secret Service's Financial Crimes Division, the federal agency with primary jurisdiction for investigations involving financial crimes, provided the GAO arrest and cost statistics of its financial-crime cases considered to be directly associated with identity fraud (see box). Between fiscal 1995 and 1997, the number of arrests rose from 8,806 to 9,455 and the costs increased from $442 million to $745 million.

These numbers only tell part of the story. Law-enforcement officials and consumer advocates are quick to point out that immeasurable human costs result from identity theft. Though the victim is not responsible for the debts accumulated by the thief (federal law limits a consumer's liability for credit card and banking fraud to $50 per account), he or she can be stuck with a bad credit record. In some instances, victims are even arrested for crimes the thief committed in their name.

The ultimate frustration for identity-theft victims is being told that no crime has been committed against them. Financial institutions, seen as the victim under fraud laws, often do not pursue the criminal because the losses
do not justify the expense. With no law against identity theft on the books, law-enforcement officials cannot file a report on behalf of the consumer.

Congress recently made identity theft a federal crime by passing H.R. 4151, the Identity Theft and Assumption Deterrence Act of 1998. Under previous federal statutes, law-enforcement officials could arrest criminals only after they had used the stolen identity to commit fraud. With H.R. 4151, just taking the Social Security number or assuming someone’s identity is now a federal crime. The law requires unlawful intent as to the taking, transferring, or use of personal information as a prerequisite to conviction. The law also sets stiff penalties for identity theft, allows consumer victims to seek restitution from the criminal, and directs the FTC to establish a centralized complaint and consumer education service. Federal officials say that H.R. 4151 complements state laws and does not pre-empt them.

Almost half of the states have enacted legislation to curb identity fraud; Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, North Dakota, Oklahoma, Tennessee, West Virginia, Wisconsin and Wyoming. Several other states introduced legislation on this subject.

Arizona was the pioneer in establishing an identity fraud law when it passed the first such law in 1996 (§ 13-2708). Simple in its approach, but groundbreaking in its reach, it recognized the crime of identity fraud applies to a “person if the person knowingly takes the name, birth date or social security number of another person, without the consent of that other person, with the intent to obtain or use the other person’s identity for any unlawful purpose or to cause loss to a person.”

California and the other identity fraud law states passed identity fraud laws in and after 1997. California state law traditionally regulated consumer credit reporting agencies that regularly engage in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties. It also prohibits a consumer credit reporting agency from furnishing a consumer credit report to any person unless it has reasonable grounds to believe that the consumer credit report will be used by this person for expressly provided purposes. A common theme in identity fraud laws is the prerequisite that the perpetrator have an unlawful or fraudulent intent and/or that the perpetrator use the victim’s personal information to pose as the victim.

In 1997, California amended its Civil Code to include several controversial sections, including § 1785.14. Section 1785.14 requires a prospective user of the consumer credit report who is a retail seller to provide the consumer credit agency with at least three categories of information regarding the consumer that match, as specified, information within a file assembled by the consumer credit reporting agency. The retail seller must also certify, in specified instances, that it requires its employees and agents to inspect a
The 1997 amendments specify procedures for the consumer credit reporting agency to follow in case a consumer disputes the completeness or accuracy of any item of information contained in his or her file. The law revises these procedures to, among other things, require the consumer credit reporting agency to promptly and permanently block the reporting of disputed information and so notify the furnisher of the information if the consumer submits a valid police report concerning the crime (identity theft), as specified. However, the Act specifies certain conditions under which the information may be unblocked.

Furthermore, the 1997 amendments prescribe civil remedies for the violation of the Act and provides that the prevailing parties in any action commenced to obtain these remedies shall be entitled to recover court costs and reasonable attorney's fees. That Act also prescribes a two-year statute of limitations from the date liability arises under that Act.

This law provides that the prevailing party shall be entitled to recover these costs and attorney's fees unless the plaintiff only seeks and obtains injunctive relief to compel compliance with the Act.

The key provision of the California identity fraud law is found in § 530.5 of the Penal Code. In this section “every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person without the authorization of that person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person is guilty of a public offense.”

Georgia is another example of many of the identity fraud laws. The Georgia statute, § 16-9-120 et seq. enacted in 1998 declares that a person commits financial identity fraud when without the authorization or permission of another person and with the intent unlawfully to appropriate financial resources of that other person to his or her own use or to the use of a third party he or she:

“Obtains or records identifying information which would assist in accessing the financial resources of the other person; or

Accesses or attempts to access the financial resources of the other person through the use of identifying information.”

The definition of what constitutes identifying information varies from state to state, but Georgia's law is emblematic of the other statutes in that it defines identifying information to include but not be limited to social security numbers; driver's license numbers; checking account numbers; savings account numbers; credit card numbers; debit card numbers; personal identification numbers; electronic identification numbers; digital signatures; or any other numbers or information which can be used to access a person's financial resources.

In addition to criminal penalties, which are a component of all state
identity fraud laws, eight states make provisions for court-ordered restitution, and these states make provisions civil recovery by a victim against a perpetrator. At the end of this Note, a table lists the state identity fraud laws and compares their provisions.

Arizona (§ 13-2708) calls for a class 5 felony for identity fraud and states that “A person commits taking the identity of another person if the person knowingly takes the name, birth date or social security number of another person, without the consent of that other person, with the intent to obtain or use the other person’s identity for any unlawful purpose or to cause loss to a person.”

Arkansas (Title 5, Chapter 37, Subchapter 2) creates a class D felony for identity fraud and provides that “A person commits the offense of taking the identity of another person if he knowingly takes the name, birth date, social security number, other identifying information of another person, without consent of the other person, with the intent to fraudulently represent that he or she is the other person for the purpose of making financial or credit transactions in the other person’s name.”

Colorado (§ 13-21-109.5) makes it a crime to buy or otherwise obtain or sell, offer for sale, take or give in exchange, pledge or give in pledge, or use any individual’s social security account number, or any derivative of such number, for the purpose of committing fraud or fraudulently using or assuming said individual’s identity.

Louisiana Senate Bill 113, which became law in 1999, imposes fines or prison terms for the crime of “identity theft”, which is the intentional use or attempted use with fraudulent intent by any person of any personal identifying information of another person to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the other person. Louisiana’s law defines “personal identifying information” as including but not limited to an individual’s social security number, driver’s license number, checking account number, savings account number, credit card number, debit card number, electronic identification number, digital signatures, birth certificate, date of birth or mother’s maiden name.

Minnesota (§ 609.527) provides criminal penalties for any person who transfers, possesses, or uses the identity of another with the intent to commit any felony-level activity or to commit any non-felony or fraud-related unlawful activity. The penalties for the conduct vary depending upon the number of victims involved and the amount of the loss incurred. The law also authorizes restitution.

Mississippi (§ 7-19-85) makes identity fraud and misuse of Social Security numbers a felony crime and requires the actor to act fraudulently or have the intent to deceive.

Wisconsin (§ 943.201) declares that whoever intentionally uses or attempts to use any personal identifying information or personal identification document of another individual to obtain credit, money, goods, services
or anything else of value without the authorization or consent of the other individual and by representing that he or she is the individual or is acting with the authorization or consent of the individual is guilty of a Class D felony. Personal identifying information includes a person's name, address or telephone number. Personal identification documents include a birth certificate or a financial transaction card.

Wyoming (§ 6-3-901) defines the criminal offense of theft of identity and providing penalties. The law also provides for restitution, civil actions; injunctive and other relief; and authorizes awarding attorney fees.

State Laws on Fraudulent Use of Identity

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102 - The Council of State Governments
Independent Review of Health Care Plans

This Act establishes procedures to enable health care plan enrollees to appeal to an independent authority when their health care plan refuses to pay to treat their life-threatening or disabling disease. It sets criteria for certifying external appeals reviewers and establishes prohibitions on insurance policies and managed care plans for excluding coverage of experimental treatments when such coverage is under external appeal.

Submitted as:
New York
S. 7838
Status: signed into law as Chapter 586, August 5, 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Authorizing External Appeals of Adverse Determinations Relating to Health Care Services.”

Section 2. [Definitions.] As used in this Act:
1. “Adverse determination” means a determination by a utilization review agent that an admission, extension of stay, or other health care service, upon review, based on information provided, is not medically necessary.
2. “Clinical peer review” means:
   (a) (i) a physician who possesses a current and valid non-restricted license to practice medicine; or
   (ii) a health care professional other than a licensed physician who:
      (A) where applicable, possesses a current and valid non-restricted license, certificate or registration or, where no provision for a license, certificate or registration exists, is credentialed by the national accrediting body appropriate to the profession; and
      (B) is in the same profession and same or similar specialty as the health care provider who typically manages the medical condition or disease or provides the health care service or treatment under review; and
   (b) for purposes of this Act:
      (i) a physician who:
         (A) possesses a current and valid non-restricted license to practice medicine;
         (B) where applicable, is board certified or board eligible in the same or similar specialty as the health care provider who typically manages the medical condition or disease or provides the health care service or
Independent Review of Health Care Plans

treatment under appeal;
(C) has been practicing in such area of specialty for a period of at least [five (5)] years; and
(D) is knowledgeable about the health care service or treatment under appeal; or
(ii) a health care professional other than a licensed physician who:
(A) where applicable, possesses a current and valid non-restricted license, certificate or registration;
(B) where applicable, is credentialed by the national accrediting body appropriate to the profession in the same profession and same or similar specialty as the health care provider who typically manages the medical condition or disease or provides the health care service or treatment under appeal;
(C) has been practicing in such area of specialty for a period of at least [five (5)] years;
(D) is knowledgeable about the health care service or treatment under appeal; and
(E) where applicable to such health care professional’s scope of practice, is clinically supported by a physician who possesses a current and valid non-restricted license to practice medicine.
(c) Nothing herein shall be construed to change any statutorily defined scope of practice.

5. For appeals pursuant to [insert citation], “health care service” means:
(i) health care procedures, treatments or services
(A) provided by a facility licensed pursuant to [insert citation]; or
(B) provided by a health care professional; and
(ii) the provision of pharmaceutical products or services or durable medical equipment.

6. For appeals pursuant to [insert citation], “health care services” shall mean experimental or investigational procedures, treatments or services, including:
(a) services provided within a clinical trial, and
(b) the provision of a pharmaceutical product pursuant to prescription by the enrollee’s attending physician for a use other than those uses for which such pharmaceutical product has been approved for marketing by the federal Food and Drug Administration; to the extent that coverage for such services are prohibited by law from being excluded under the plan. Provided that nothing in this subdivision shall be construed to define what are covered services pursuant to a subscriber contract or governmental health benefit program.

7. “Clinical standards” means those guidelines and standards set forth in the utilization review plan by the utilization review agent whose adverse determination is under appeal.
8. “Clinical trial” means a peer-reviewed study plan which has been
(a) reviewed and approved by a qualified institutional review board,
and
(b) approved by one of the National Institutes of Health (NIH), or
NIH cooperative group or a NIH center, or the Food and Drug Administra-
tion in the form of an investigational new drug exemption, or the federal
Department of Veteran Affairs, or a qualified nongovernmental research
entity as identified in guidelines issued by individual NIH Institutes for
center support grants, or an institutional review board of a facility which
has a multiple project assurance approved by the Office of Protection from
research risks of the National Institutes of Health.

As used in this subdivision, the term “cooperative groups” means formal
networks of facilities that collaborate on research projects and have estab-
lished NIH-approved peer review programs operating within their groups;
and that include, but are not limited to, the National Cancer Institute (NCI)
d clinical cooperative groups, the NCI Community Clinical Oncology Program
(CCOP), the AIDS Clinical Trials Groups (ACTG), and the Community Pro-
grams for Clinical Research in AIDS (CPCRA).

9. “Disabling condition or disease” means a condition or disease which,
according to the current diagnosis of the enrollee’s attending physician, is
consistent with the definition of “disabled person” pursuant to [insert
citation].

10. “Experimental and investigational treatment review plan” means:
(a) a description of the process for developing the written clinical
review criteria used in rendering an experimental and investigational treat-
ment review determination; and
(b) a description of the qualifications and experience of the clinical
peers who developed the criteria, who are responsible for periodic evalua-
tion of the criteria, and who use the written clinical review criteria in the
process of reviewing proposed experimental and investigational health ser-
dices and procedures.

11. “External appeal” means an appeal conducted by an external ap-
peals agent.

12. “External appeal agent” means an entity certified by the [commissioner].

13. “Final adverse determination” means an adverse determination which
has been upheld by a utilization review agent with respect to a proposed
health care service following a standard appeal, or an expedited appeal
where applicable.

14. “Health care plan” means any organization certified under [insert
citation.]

15. “Life-threatening condition or disease” means a condition or disease
which, according to the current diagnosis of the enrollee’s attending physi-
cian, has a high probability of causing the enrollee’s death.

16. “Material familial affiliation” means any relationship as a spouse,
111 child, parent, sibling, spouse's parent, spouse's child, child's parent, child's
112 spouse, or sibling's spouse.
113 17. “Material financial affiliation” means any financial interest of more
114 than [five (5)] percent of total annual revenue or total annual income of an
115 external appeal agent or officer, director, or management employee thereof;
116 or clinical peer reviewer employed or engaged thereby to conduct any exter-
117 nal appeal. The term “material financial affiliation” shall not include rev-
118 enue received from a health care plan by:
119 (a) an external appeal agent to conduct an external appeal; or
120 (b) a clinical peer reviewer for health services rendered to enrollees.
121 18. “Material professional affiliation” means any physician-patient re-
122 lationship, any partnership or employment relationship, a shareholder or
123 similar ownership interest in a professional corporation, or any indepen-
124 dent contractor arrangement that constitutes a material financial affiliation
125 with any expert or any officer or director of the independent organization.
126 19. “Medical and scientific evidence” means the following sources:
127 (a) peer-reviewed scientific studies published in, or accepted for pub-
128 lication by, medical journals that meet nationally recognized requirements
129 for scientific manuscripts and that submit most of their published articles
130 for review by experts who are not part of the editorial staff;
131 (b) peer-reviewed medical literature, including literature relating to
132 therapies reviewed and approved by a qualified institutional review board,
133 biomedical compendia and other medical literature that meet the criteria
134 of the National Institute of Health’s National Library of Medicine for in-
135 dexing in Index Medicus, Excerpta Medicus, Medline and Medlars data-
136 base health services technology assessment research;
137 (c) peer-reviewed abstracts accepted for presentation at major medi-
138 cal association meetings;
139 (d) peer-reviewed literature shall not include publications or supple-
140 ments to publications sponsored to a significant extent by a pharmaceutical
141 manufacturing company or medical device manufacturer;
142 (e) medical journals recognized by the Secretary of Health and Hu-
143 man Services, under section 1861 (t)(2) of the federal Social Security Act;
144 (f) the following standard reference compendia:
145 (i) the American Hospital Formulary Service - drug information;
146 (ii) the American Medical Association drug evaluation;
147 (iii) the American Dental Association accepted dental therapeu-
148 tics; and
149 (iv) the United States Pharmacopoeia - drug information;
150 (g) findings, studies, or research conducted by or under the auspices
151 of federal government agencies and nationally recognized federal research
152 institutes including the Federal Agency for Health Care Policy and Research, 
153 National Institutes of Health, National Cancer Institute, National Acad-
154 emy of Sciences, Health Care Financing Administration, Congressional
Section 3. [Right to External Appeal Established.]

1. There is hereby established an enrollee's right to an external appeal of a final adverse determination by a health care plan.

2. An enrollee, the enrollee's designee and, in connection with retrospective adverse determinations, an enrollee's health care provider, shall have the right to request an external appeal when:

   (a) (i) the enrollee has had coverage of a health care service, which would otherwise be a covered benefit under a subscriber contract or governmental health benefit program, denied on appeal, in whole or in part, on the grounds that such health care service is not medically necessary, and

      (ii) the health care plan has rendered a final adverse determination with respect to such health care service or both the plan and the enrollee have jointly agreed to waive any internal appeal; or

   (b) (i) the enrollee has had coverage of a health care service denied on the basis that such service is experimental or investigational, and such denial has been upheld on appeal under this Act or both the plan and the enrollee have jointly agreed to waive any internal appeal; and

      (ii) the enrollee's attending physician has certified that the enrollee has a life-threatening or disabling condition or disease (A) for which standard health services or procedures have been ineffective or would be medically inappropriate, or (B) for which there does not exist a more beneficial standard health service or procedure covered by the health care plan, or (C) for which there exists a clinical trial, and

      (iii) the enrollee's attending physician, who must be a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the enrollee's life-threatening or disabling condition or disease, must have recommended either (A) a health service or procedure (including a pharmaceutical product within the meaning of [insert citation], based on [two (2)] documents from the available medical and scientific evidence, is likely to be more beneficial to the enrollee than any covered standard health service or procedure; or (B) a clinical trial for which the enrollee is eligible. Any physician certification provided under this section shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation, and

      (iv) the specific health service or procedure recommended by the attending physician would otherwise be covered under the policy except for the health care plan's determination that the health service or procedure is experimental or investigational.

3. The health care plan may charge the enrollee a fee of up to [fifty (50)] dollars per external appeal; provided that, in the event the external appeal
agent overturns the final adverse determination of the plan, such fee shall be refunded to the enrollee. Notwithstanding the foregoing, the health plan shall not require the enrollee to pay any such fee if the enrollee is a recipient of medical assistance or is covered by a policy pursuant to [insert citation]. Notwithstanding the foregoing, the health plan shall not require the enrollee to pay any such fee if such fee shall pose a hardship to the enrollee as determined by the plan.

4. An enrollee covered under the Medicare or Medicaid program may appeal the denial of a health care service pursuant to the provisions of this Act, provided, however, that any determination rendered concerning such denial pursuant to existing federal and state law relating to the Medicare or Medicaid program or pursuant to federal law enacted subsequent to the effective date of this Act and providing for an external appeal process for such denials shall be binding on the enrollee and the insurer and shall supersede any determinations rendered pursuant to this Act.

Section 4. [Procedures for External Appeals of Adverse Determinations.]

1. The [commissioner] shall establish procedures by regulation to randomly assign an external appeal agent to conduct an external appeal, provided that the [commissioner] may establish a maximum fee which may be charged for any such external appeal, or the [commissioner] may exclude from such random assignment any external appeal agent which charges a fee which he/she deems to be unreasonable.

2. (a) The enrollee shall have [forty-five (45)] days to initiate an external appeal after the enrollee receives notice from the health care plan, or such plan’s utilization review agent if applicable, of a final adverse determination or denial or after both the plan and the enrollee have jointly agreed to waive any internal appeal. Such request shall be in writing in accordance with the instructions and in such form prescribed by subdivision 5 of this Section. The enrollee, and the enrollee’s health care provider where applicable, shall have the opportunity to submit additional documentation with respect to such appeal to the external appeal agent within such [forty-five (45)] day period; provided however that when such documentation represents a material change from the documentation upon which the utilization review agent based its adverse determination or upon which the health plan based its denial, the health plan shall have [three (3)] business days to consider such documentation and amend or confirm such adverse determination.

(b) The external appeal agent shall make a determination with respect to the appeal within [thirty (30)] days of the receipt of the enrollee’s request therefor, submitted in accordance with the [commissioner’s] instructions. The external appeal agent shall have the opportunity to request additional information from the enrollee, the enrollee’s health care provider and the enrollee’s health care plan within such [thirty (30)] day period, in which case the agent shall have up to [five (5)] additional business days if
necessary to make such determination. The external appeal agent shall notify the enrollee and the health care plan, in writing, of the appeal determination within [two (2)] business days of the rendering of such determination.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, if the enrollee’s attending physician states that a delay in providing the health care service would pose an imminent or serious threat to the health of the enrollee, the external appeal shall be completed within [three (3)] days of the request therefor and the external appeal agent shall make every reasonable attempt to immediately notify the enrollee and the health plan of its determination by telephone or facsimile, followed immediately by written notification of such determination.

(d) (A) For external appeals, the external appeal agent shall review a utilization review agent's final adverse determination and, in accordance with the provisions of this Act, shall make a determination as to whether the health care plan acted reasonably and with sound medical judgment and in the best interest of the patient. When the external appeal agent makes its determination, it shall consider the clinical standards of the plan, the information provided concerning the patient, the attending physician's recommendation, and applicable generally accepted practice guidelines developed by the federal government, national or professional medical societies, boards and associations. Provided that such determination shall:

(i) be conducted only by one or a greater odd number of clinical peer reviewers,
(ii) be accompanied by a notice of appeal determination which shall include the reasons for the determination; provided, however, that where the final adverse determination is upheld on appeal, the notice shall include the clinical rationale, if any, for such determination,
(iii) be subject to the terms and conditions generally applicable to benefits under the evidence of coverage under the health care plan,
(iv) be binding on the plan and the enrollee, and
(v) be admissible in any court proceeding.

(B) for external appeals requested pursuant to Section 3 of this Act, the external appeal agent shall review the proposed health service or procedure for which coverage has been denied and, in accordance with the provisions of this Act and the external agent's experimental and investigational treatment review plan, make a determination as to whether the patient costs of such health service or procedure shall be covered by the health care plan; provided that such determination shall:

(i) be conducted by a panel of [three (3)] or a greater odd number of clinical peer reviewers,
(ii) be accompanied by a written statement:
1. that the patient costs of the proposed health service or procedure shall be covered by the health care plan either: when a majority
of the panel of reviewers determines, upon review of the applicable medical
and scientific evidence (or upon confirmation that the recommended treat-
ment is a clinical trial), the enrollee's medical record, and any other perti-
nent information, that the proposed health service or treatment is likely to
be more beneficial than any standard treatment or treatments for the
enrollee's life-threatening or disabling condition or disease (or, in the case
of a clinical trial, is likely to benefit the enrollee in the treatment of the
enrollee's condition or disease); or when a reviewing panel is evenly divided
as to a determination concerning coverage of the health service or proce-
dure, or

(2) upholding the health plan's denial of coverage,

(iii) be subject to the terms and conditions generally applicable to
benefits under the evidence of coverage under the health care plan,
(iv) be binding on the plan and the enrollee, and
(v) be admissible in any court proceeding.

As used in this subparagraph with respect to a clinical trial, patient
costs shall include all costs of health services required to provide treatment
to the enrollee according to the design of the trial. Such costs shall not
include the costs of any investigational drugs or devices themselves, the
cost of any nonhealth services that might be required for the enrollee to
receive the treatment, the costs of managing the research, or costs which
would not be covered under the policy for noninvestigational treatments.

3. No external appeal agent or clinical peer reviewer conducting an ex-
ternal appeal shall be liable in damages to any person for any opinions
rendered by such external appeal agent or clinical peer reviewer upon
completion of an external appeal conducted pursuant to this Section, un-
less such opinion was rendered in bad faith or involved gross negligence.

4. Payment for an external appeal shall be the responsibility of the health
care plan. The health care plan shall make payment to the external appeal
agent within [forty-five (45)] days from the date the appeal determination
is received by the health care plan, and the health care plan shall be obli-
gated to pay such amount together with interest thereon calculated at a
rate which is the greater of the rate set by the [commissioner] of taxation
and finance for corporate taxes pursuant to [insert citation] or [twelve (12)]
percent per annum, to be computed from the date the bill was required to
be paid, in the event that payment is not made within such [forty-five (45)]
days.

5. The [commissioner], in consultation with the [superintendent of in-
insurance], shall promulgate by regulation a standard description of the ex-
ternal appeal process established under this Section, which shall provide a
standard form and instructions for the initiation of an external appeal by
an enrollee.

Section 5. [Oversight and Surveillance of the External Appeal Process.]
1. The commissioner shall have the power to:
   (a) review the activities of the health care plans and external appeal
   agents, including the extent to which such plans and agents adhere to the
   standards and time frames required pursuant to this Act;
   (b) investigate complaints by enrollees regarding requests for and
   processing of external appeals; and
   (c) conduct random audits of health care plans and external appeal
   agents to determine compliance with the provisions of this title.

2. Each health care plan and external appeal agent shall annually, in
   such form as the [commissioner] shall require, report the number of exter-
   nal appeals requested by enrollees and the outcomes of any such external
   appeals.

3. The [commissioner] shall annually report, by plan and agent, such
   information to the [governor] and the [Legislature], provided that no such
   information shall be included which would otherwise be deemed confidential.

Section 6. [Standards for Certification – External Appeals Reviewers.]
1. The [commissioner] shall develop an application for certification. At a
   minimum, applicants shall provide:
   (a) a description of the qualifications of the clinical peer reviewers
   retained to conduct external appeals of final adverse determinations, in-
   cluding such reviewers’ current and past employment history and practice
   affiliations;
   (b) a description of the procedures employed to ensure that clinical
   peer reviewers conducting external appeals are:
      (i) appropriately licensed, registered or certified;
      (ii) trained in the principles, procedures and standards of the ex-
      ternal appeal agent; and
      (iii) knowledgeable about the health care service which is the
      subject of the final adverse determination under appeal;
   (c) a description of the methods of recruiting and selecting impartial
   clinical peer reviewers and matching such reviewers to specific cases;
   (d) the number of clinical peer reviewers retained by the external
   appeal agent, and a description of the areas of expertise available from
   such reviewers and the types of cases such reviewers are qualified to review;
   (e) a description of the policies and procedures employed to protect
   the confidentiality of individual medical and treatment records in accor-
   dance with applicable state and federal laws;
   (f) a description of the quality assurance program established by the
   external appeal agent pursuant to paragraph (c) of subdivision two of this
   Section;
   (g) the names of all corporations and organizations owned or con-
   trolled by the external appeal agent or which owns or controls such agent,
   and the nature and extent of any such ownership or control;
Independent Review of Health Care Plans

(h) the names and biographies of all directors, officers, and executives of the external appeal agent;
(i) an experimental and investigational treatment review plan to conduct appeals; and
(j) a description of the fees to be charged by agents for external appeals.

2. The commissioner shall, at a minimum, require an external appeal agent to:
   (a) appoint a medical director, who is a physician in possession of a current and valid non-restricted license to practice medicine. Such director shall be responsible for the supervision and oversight of the external appeal process;
   (b) develop written policies and procedures governing all aspects of the appeal process, including, at a minimum:
      (i) procedures to ensure that appeals are conducted within the timeframes specified in [insert citation] and any required notices are provided in a timely manner;
      (ii) procedures to ensure the selection of qualified and impartial clinical peer reviewers. Such reviewers shall be qualified to render determinations relating to the health care service which is the subject of the final adverse determination under appeal;
      (iii) procedures to ensure the confidentiality of medical and treatment records and review materials; and
      (iv) procedures to ensure adherence to the requirements of this title by any contractor, subcontractor, subvendor, agent or employee affiliated by contract or otherwise with such external appeal agent;
   (c) establish a quality assurance program. Such program shall include written descriptions, to be provided to all individuals involved in such program, of the organizational arrangements and ongoing procedures for the identification, evaluation, resolution and follow-up of potential and actual problems in external appeals performed by the external appeal agent and to ensure the maintenance of program standards pursuant to this Section;
   (d) establish a toll-free telephone service to receive information on a 24-hour-a-day, 7-day-a-week basis relating to external appeals pursuant to this Act. Such system shall be capable of accepting, recording or providing instruction to incoming telephone calls during other than normal business hours, and;
   (e) develop procedures to ensure that:
      (i) appropriate personnel are reasonably accessible not less than [forty (40)] hours per week during normal business hours to discuss patient care and to allow response to telephone requests, and
      (ii) response to accepted or recorded messages shall be made not less than [one (1)] business day after the date on which the call was received.

3. No entity shall be qualified to submit such request for application if it owns or controls, is owned or controlled by, or exercises common control
with, any of the following:

(a) any national, state or local illness, health benefit or public advocacy group;
(b) any national, state or local society or association of hospitals, physicians, or other providers of health care services; or
(c) any national, state or local association of health care plans.

4. A health care plan shall transmit, and an external appeal agent shall be authorized to receive and review, an enrollee's medical and treatment records in order to conduct an external appeal pursuant to this Act.

5. An external appeal agent shall provide ready access to the [commissioner] to all data, records, and information collected and maintained concerning such agent's external appeal activities.

6. An external appeal agent shall agree to provide the [commissioner] such data, information, and reports as the [commissioner] determines necessary to evaluate the external appeal process established pursuant to this Act.

7. The [commissioner] shall provide, upon the request of any interested person, a copy of all non-proprietary information filed with the [commissioner] by the external appeal agent. The [commissioner] may charge a reasonable fee to the interested person for reproducing the requested information.

Section 7. [Certification of External Appeals Agents.]

1. The [commissioner] shall have the power to grant and revoke certifications of external appeal agents to conduct external appeals requested pursuant to this Act.

2. If, after reviewing an application authorized by [insert citation], the [commissioner] is satisfied that the applicant meets the requirements, the [commissioner] shall issue a certificate to the applicant. A certificate shall be valid for a period of not more than [two (2)] years.

3. In order to be recertified, an external appeal agent must demonstrate to the [commissioner] on forms prescribed by the [commissioner] that it continues to meet all applicable standards required by law. Recertification shall be valid for a period of not more than [two (2)] years.

Section 8. [External Review Agents – Provisions for Joint Certifications and Implementation.] The [commissioner of health] and the [superintendent of insurance] shall jointly certify external review agents pursuant to a memorandum of understanding for the implementation of the provisions of this Act, and shall jointly develop guidelines to effectuate the coordination of the activities of [the department of health] and the [state insurance department] with regard to their respective responsibilities pursuant to the provisions of this Act.
Section 9. [Conflict of Interest]

1. No external appeal agent or officer, director, or management employee thereof; or clinical peer reviewer employed or engaged thereby to conduct any external appeal pursuant to this Act, shall have any material professional affiliation, material familial affiliation, material financial affiliation, or other affiliation prescribed pursuant to regulation, with any of the following:
   (a) the health care plan;
   (b) any officer, director, or management employee of the health care plan;
   (c) any health care provider, physician’s medical group, independent practice association, or provider of pharmaceutical products or services or durable medical equipment, proposing to provide or supply the health service;
   (d) the facility at which the health service would be provided;
   (e) the developer or manufacturer of the principal health service which is the subject of the appeal; or
   (f) the enrollee whose health care service is the subject of the appeal, or the enrollee’s designee.

2. Notwithstanding the provisions of subdivision one of this Section, the commissioner shall promulgate regulations to minimize any conflict of interest where such conflict may be unavoidable.

Section 10. [Prohibited Practices] An external appeal agent shall not, with respect to external appeal activities, permit or provide compensation or anything of value to its employees, agents, or contractors based on:

1. Either a percentage of the amount by which a claim is reduced for payment or the number of claims or the cost of services for which the person has denied authorization or payment; or
2. Any other method that encourages the upholding of an adverse determination.

Section 11. [Prohibiting Exclusion of Coverage of Experimental or Investigational Health Care Services] No policy shall exclude coverage of a health care service, rendered or proposed to be rendered to an insured on the basis that such service is experimental or investigational, is rendered as part of a clinical trial or a prescribed pharmaceutical product referenced in [insert citation] that coverage of the patient costs of such service has been recommended for the insured by an external appeal agent upon an appeal conducted pursuant to this Act. The determination of the external appeal agent shall be binding on the parties.

Section 12. [Policies and Contracts to Include an Explanation of Provider Payment Methodologies, Time Periods for Provider Payments and Related Information]
1. No policy of group or blanket accident and health insurance delivered or issued for delivery in this state shall exclude coverage of a health care service, rendered or proposed to be rendered to an insured on the basis that such service is experimental or investigational, is rendered as part of a clinical trial or a prescribed pharmaceutical product referenced in [insert citation] provided that coverage of the patient costs of such service has been recommended for the insured by an external appeal agent upon an appeal. The determination of the external appeal agent shall be binding on the parties.

2. No contract issued by a medical expense indemnity corporation, a hospital service corporation or a health service corporation shall exclude coverage of a health care service, rendered or proposed to be rendered to an insured on the basis that such service is experimental or investigational, is rendered as part of a clinical trial, or a prescribed pharmaceutical provided that coverage of the patient costs of such service has been recommended for the insured by an external appeal agent upon an appeal. The determination of the external appeal agent shall be binding on the parties.

Section 13. [Explanation of Payment Methodologies.]

1. Contracts entered into between a plan and a health care provider shall include terms which prescribe:
   (a) the method by which payments to a provider, including any prospective or retrospective adjustments thereto, shall be calculated;
   (b) the time periods within which such calculations will be completed, the dates upon which any such payments and adjustments shall be determined to be due, and the dates upon which any such payments and adjustments will be made;
   (c) a description of the records or information relied upon to calculate any such payments and adjustments, and a description of how the provider can access a summary of such calculations and adjustments;
   (d) the process to be employed to resolved disputed incorrect or incomplete records or information, and to adjust any such payments and adjustments which have been calculated by relying on any such incorrect or incomplete records or information and to adjust any such payments and adjustments which have been calculated by relying on any such incorrect or incomplete records or information so disputed; provided, however, that nothing herein shall be deemed to authorize or require the disclosure of personally identifiable patient information or information related to other individual health care providers or the plan's proprietary data collection systems, software or quality assurance or utilization review methodologies; and
   (e) the right of either party to the contract to seek resolution of a dispute arising pursuant to the payment terms of such contract.

2. No contract entered into with health care providers shall be enforce-
able if it includes terms which transfer financial risk to providers, or penal-
ize providers for unfavorable case mix so as to jeopardize the quality of or
enrollees’ appropriate access to medically necessary services; provided, how-
ever, that payment at less than prevailing fee for service rates or capitation
shall not be deemed or presumed prima facie to jeopardize quality or access.

Section 14. [Rights in a Judicial Forum.] Nothing in this Act shall bar,
limit, impair, diminish or affect in any way any rights or remedies in any
judicial or other forum pursuant to state or federal law of any enrollee,
whether or not eligible to elect external appeal under this Act, for coverage
of a health service, including but not limited to an experimental or investi-
gational service, a clinical trial treatment, or provision of a pharmaceutical
product pursuant to prescription for a use other than those uses for which
such pharmaceutical product has been approved for marketing by the fed-
eral Food and Drug Administration. No enrollee may be required to pursue
or exhaust external appeal prior to seeking judicial relief.

Section 15. [Workers Compensation Law.] The provisions of this Act shall
not apply to claims under the state Workers’ Compensation law nor shall
the provisions of this Act be construed to alter, limit, modify, or repeal any
provision of such law.

Section 16. [Applicability and Severability.] If any provision of this Act
or the application thereof shall be held to be invalid, such invalidity shall
not affect other provisions of this Act which can be given effect without the
invalid provision, and to that end, the provisions of this Act are severable.

Section 17. [Effective Date.] This Act shall take effect immediately, provided:
(a) the [commissioner of health] and the [superintendent of insur-
ance] may promulgate regulations prior to such date;
(b) a standard or expedited appeal in progress on the effective date
of this Act shall be subject to the provisions of law in effect when such an
appeal was initiated, provided that any final adverse determination pursu-
ant to such an appeal made after the effective date of this Act may be exter-
nally appealed pursuant to the provisions of this Act.

Section 18. [Repealer Clause.] [Insert repealer clause.]
Industrial Hemp

This Act defines industrial hemp. It authorizes the state to allow privately funded industrial hemp research when the state department of public safety (DPS) issues a controlled substance registration, and the U.S. Department of Justice, Drug Enforcement Administration (DEA), issues a federally controlled substance registration for research on the agronomic potential of industrial hemp.

The draft also authorizes the state DPS, in cooperation with the DEA and the appropriate county law enforcement agency, to monitor all phases of the research.

Submitted as:
Hawaii
HB 32 (CD-1 final version)
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Permit Research on Industrial Uses for Hemp.”

Section 2. [Legislative Purpose.] The purpose of this Act is to allow privately funded industrial hemp research to be conducted in this state only when the [department of public safety] issues a controlled substance registration and the United States Department of Justice, Drug Enforcement Administration, issues a federally controlled substance registration for research on the agronomic potential of industrial hemp.

Section 3. [Affirmative Defense for the Possession or Cultivation of Marijuana.] (1) It shall be an affirmative defense to a prosecution for the possession or cultivation of marijuana under [insert citation] that:

   (a) the defendant was conducting industrial hemp research pursuant to this Act,
   (b) the defendant had valid controlled substance registrations from the [department of public safety] and the United States Department of Justice, Drug Enforcement Administration, to conduct the research; and
   (c) The defendant has fully complied with all the conditions of the controlled substance registrations.

   (2) This Section shall not be an affirmative defense to a charge for the
Industrial Hemp

Section 4. [Definitions.] As used in this Act, unless the context otherwise requires: “industrial hemp” and “cannabis” mean the schedule I substance marijuana as defined in [insert citation] of state law.

Section 5. [Privately Funded Hemp Research.]
(1) The state may allow privately funded industrial hemp research to be conducted in the state when:
   (a) the [department of public safety] issues a controlled substance registration; and
   (b) the United States Department of Justice, Drug Enforcement Administration, issues a federally controlled substance registration for research on the agronomic potential of industrial hemp.
(2) The [department of public safety], in cooperation with the United States Department of Justice, Drug Enforcement Administration, and the appropriate county law enforcement agency, may monitor all phases of the industrial hemp research.
(3) During the course of the research, the principals responsible for the research shall:
   (a) submit a detailed copy of the research proposal and quarterly status reports to the appropriate county law enforcement agency; and
   (b) submit annual status reports to the [Legislature] prior to the convening of each regular session.

Section 6. [Severability.] [Insert severability clause.]

Section 7. [Repealer.] [Insert repealer clause.]

Section 8. [Effective Date.] [Insert effective date.]
Interstate Compact for Adult Offender Supervision

This compact updates language in the “Interstate Compact for the Supervision of Parolees and Probationers,” a compact that was first adopted by the states in the 1930s. This compact was drafted by state officials, representatives from the National Institute of Corrections (NIC) and CSG staff in 1998 and 1999. The NIC organized this team in response to feedback from the states that the language in the existing parole and probation compact is outdated.

This is the most recent language that is available from the drafting team as of September, 1999. The NIC will make the final revision of this compact available to the states in January 2000, but the drafting team does not expect to make significant changes from what is presented here.

CSG has tracked state actions on parole and probation for years. For example, the current parole and probation compact is listed in CSG’s 1998, 1995 and 1983 directories of interstate compacts and agencies. The 1955 Suggested State Legislation volume contains a statement about a “Standard Probation and Parole Act” and the 1990 SSL contains recommended amendatory language to the “Interstate Compact for the Supervision of Parolees and Probationers.” The American Probation and Parole Association is a CSG affiliate.

This compact establishes procedures to manage the movement of adult parolees and probationers who cross state lines. Specific provisions include:

• explicit establishment of an independent compact operating authority with legal power to manage ongoing compact activity;

• each state will have a State Council, whose membership must include at least one member from the legislative, judicial, and executive branches of government; victims groups, and compact administrators. The Councils are required to exercise oversight and advocacy concerning state participation in the compact, and other duties as may be determined by each member state. Each state will designate one representative to an Interstate Commission;

• the Interstate Commission will have clearly established authority and staff support to carry out its work in creating by-laws and passing rules that are binding on party states. The Interstate Commission will also elect officers;

• an Executive Committee will be comprised of officers elected by the Interstate Commission, plus ex-officio (non-voting) members of organizations including, but not limited to, governors, legislators, chief justices, attorneys general, and crime victims. Among other responsibilities, the Executive Committee will be available to function throughout the year, and it will hire and supervise compact staff on behalf of the Interstate Commission;

• explicit rule making authority, provisions for significant sanctions and
meaningful enforcement;
  • a formula based mandatory funding mechanism will be sufficient to support essential compact operations (staffing, data collection, training/education, etc);
  • authority to require collection of standardized information from compact states; and
  • requirements for regular reporting of Compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators.

Suggested Legislation

PREAMBLE

WHEREAS: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937: it is the earliest corrections “compact” established among the states and has not been amended since its adoption over 62 years ago;

WHEREAS: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

WHEREAS: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender registration;

WHEREAS: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

WHEREAS: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the General Assembly (Legislature) to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

BE IT ENACTED BY THE GENERAL ASSEMBLY (Legislature) of the state of ________________:

Short title: This Act may be cited as “The Interstate Compact for Adult Offender Supervision.”

ARTICLE I
PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community
who are authorized pursuant to the Bylaws and Rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states. In addition, this compact will: create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of Compact activities to heads of state councils, state executive, judicial and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct non-compliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity. The compacting states recognize that there is no “right” of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and Bylaws and Rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. “Adult” means both individuals legally classified as adults and juve-
niles treated as adults by court order, statute, or operation of law.

B. “By-laws” mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission’s actions or conduct.

C. “Compact Administrator” means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

D. “Compacting state” means any state which has enacted the enabling legislation for this compact.

E. “Commissioner” means the voting representative of each compacting state appointed pursuant to Article III of this compact.

F. “Interstate Commission” means the Interstate Commission for Adult Offender Supervision established by this compact.

G. “Member” means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

H. “Non compacting state” means any state which has not enacted the enabling legislation for this compact.

I. “Offender” means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

J. “Person” means any individual, corporation, business enterprise, or other legal entity, either public or private.

K. “Rules” means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

L. “State” means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

M. “State Council” means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article IV of this compact.

ARTICLE III
THE COMPACT COMMISSION

A. The compacting states hereby create the “Interstate Commission for Adult Offender Supervision.” The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of
the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of Commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state.

C. In addition to the Commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its by-laws for such additional, ex-officio, nonvoting members as it deems necessary.

D. Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

E. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven (27) or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an Executive Committee which shall include commission officers, members and others as shall be determined by the By-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and as directed by the Interstate Commission and performs other duties as directed by Commission or set forth in the By-laws.

ARTICLE IV
THE STATE COUNCIL

Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative,
judicial, and executive branches of government, victims groups and compact administrators. Each compacting state retains the right to determine the qualifications of the Compact Administrator who shall be appointed by the state council or by the governor in consultation with the Legislature and the Judiciary. In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:
1. To adopt a seal and suitable by-laws governing the management and operation of the Interstate Commission.
2. To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.
3. To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission.
4. To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means, including but not limited to, the use of judicial process.
5. To establish and maintain offices.
6. To purchase and maintain insurance and bonds.
7. To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.
8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.
9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.
10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.
11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.
12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or other-
wise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

14. To sue and be sued.

15. To provide for dispute resolution among Compacting States.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity.

19. To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. By-laws

1. The Interstate Commission shall, by a majority of the Members, within twelve months of the first Interstate Commission meeting, adopt By-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

   a. establishing the fiscal year of the Interstate Commission;
   b. establishing an executive committee and such other committees as may be necessary.
   c. providing reasonable standards and procedures:
      (i) for the establishment of committees, and
      (ii) governing any general or specific delegation of any authority or function of the Interstate Commission;
   d. providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
   e. establishing the titles and responsibilities of the officers of the Interstate Commission;
   f. providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the By-laws shall exclusively govern the personnel policies and programs of the Interstate Commission; and
   g. providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the Compact after the payment and/or re-
serving of all of its debts and obligations;
   h. providing transition rules for “start up” administration of the compact;
      i. establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff
1. The Interstate Commission shall, by a majority of the Members, elect from among its Members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the By-laws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The Officers so elected shall serve without compensation or remuneration from the Interstate Commission; PROVIDED THAT, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

Section C. Corporate Records of the Interstate Commission
The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws.

Section D. Qualified Immunity, Defense and Indemnification
1. The Members, officers, executive director and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The Interstate Commission shall defend the Commissioner of a Compacting State, or his or her representatives or employees, or the Interstate Commission’s representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that the actual or alleged act, error
or omission did not result from intentional wrongdoing on the part of such person.

3. The Interstate Commission shall indemnify and hold the Commissioner of a Compacting State, the appointed designee or employees, or the Interstate Commission’s representatives or employees, harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII
ACTIVITIES OF THE INTERSTATE COMMISSION

1. The Interstate Commission shall meet and take such actions as are consistent with the provisions of this Compact.

2. Except as otherwise provided in this Compact and unless a greater percentage is required by the By-laws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

3. Each Member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A Member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a State Council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The By-laws may provide for Members’ participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

4. The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the Members, shall call additional meetings.

5. The Interstate Commission’s By-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal pri-
vacy rights or proprietary interests. In promulgating such Rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

6. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission shall promulgate Rules consistent with the principles contained in the “Government in Sunshine Act,” 5 U.S.C. Section 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

a. relate solely to the Interstate Commission's internal personnel practices and procedures;

b. disclose matters specifically exempted from disclosure by statute;

c. disclose trade secrets or commercial or financial information which is privileged or confidential;

d. involve accusing any person of a crime, or formally censuring any person;

e. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

f. disclose investigatory records compiled for law enforcement purposes;

g. disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

h. disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

i. specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

7. For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflected in the vote of each Member on the question). All documents considered in connection with any action shall be identified in such minutes.

8. The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its By-laws and Rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.
ARTICLE VIII
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

1. The Interstate Commission shall promulgate Rules in order to effectively and efficiently achieve the purposes of the Compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;

2. Rulemaking shall occur pursuant to the criteria set forth in this Article and the By-laws and Rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter “APA”).

3. All Rules and amendments shall become binding as of the date specified in each Rule or amendment.

4. If a majority of the legislatures of the Compacting States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such Rule shall have no further force and effect in any Compacting State.

5. When promulgating a Rule, the Interstate Commission shall:
   a. publish the proposed Rule stating with particularity the text of the Rule which is proposed and the reason for the proposed Rule;
   b. allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;
   c. provide an opportunity for an informal hearing; and
   d. promulgate a final Rule and its effective date, if appropriate, based on the rulemaking record.

6. Not later than sixty (60) days after a Rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission’s principal office is located for judicial review of such Rule. If the court finds that the Interstate Commission’s action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the Rule unlawful and set it aside.

7. Subjects to be addressed within twelve (12) months after the first meeting must at a minimum include:
   a. notice to victims and opportunity to be heard;
   b. offender registration and compliance;
   c. violations/returns;
   d. transfer procedures and forms;
   e. eligibility for transfer;
   f. collection of restitution and fees from offenders;
   g. data collection and reporting;
   h. the level of supervision to be provided by the receiving state;
   i. transition rules governing the operation of the compact and the
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Interstate Compact for Adult Offender Supervision

Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact.

j. mediation, arbitration and dispute resolution.

The existing rules governing the operation of the previous compact superseded by this Act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

8. Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule.

ARTICLE IX
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

1. The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in Non-compacting States which may significantly affect Compacting States.

2. The courts and executive agencies in each Compacting State shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any judicial or administrative proceeding in a Compacting State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The Compacting States shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

2. The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the Compact and which may arise among Compacting States and Non-compacting States.

3. The Interstate Commission shall enact a By-law or promulgate a Rule providing for both mediation and binding dispute resolution for disputes among the Compacting States.

Section C. Enforcement

The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth
in Article XII, Section B, of this compact.

ARTICLE X
FINANCE

1. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

2. The Interstate Commission shall levy on and collect an annual assessment from each Compacting State to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each Compacting State and shall promulgate a Rule binding upon all Compacting States which governs said assessment.

3. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

4. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its By-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XI
COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any state, as defined in Article II of this compact, is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than thirty-five (35) of the States. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding, as to any other Compacting State, upon enactment of the Compact into law by that State. The governors of Non-member states or their designees will be invited to participate in Interstate Commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

3. Amendments to the Compact may be proposed by the Interstate Com-
mission for enactment by the Compacting States. No amendment shall be come effective and binding upon the Interstate Commission and the Com pacting States unless and until it is enacted into law by unanimous consent of the Compacting States.

ARTICLE XII
WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Section A. Withdrawal
1. Once effective, the Compact shall continue in force and remain bind ing upon each and every Compacting State; PROVIDED, that a Compacting State may withdraw from the Compact ("Withdrawing State") by en acting a statute specifically repealing the statute which enacted the Compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The Withdrawing State shall immediately notify the Chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

4. The Interstate Commission shall notify the other Compacting States of the Withdrawing State's intent to withdraw within sixty (60) days of its receipt thereof.

5. The Withdrawing State is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

6. Reinstatement following withdrawal of any Compacting State shall occur upon the Withdrawing State reenacting the Compact or upon such later date as determined by the Interstate Commission.

Section B. Default
1. If the Interstate Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the By-laws or any duly promulgated Rules the Interstate Commission may impose any or all of the following penalties:
   a. Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;
   b. Remedial training and technical assistance as directed by the Interstate Commission;
   c. Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the By-laws and Rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or Chief Judicial Officer of the state; the major-
ity and minority leaders of the defaulting state’s legislature, and the State Council.

The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission By-laws, or duly promulgated Rules. The Interstate Commission shall immediately notify the Defaulting State in writing of the penalty imposed by the Interstate Commission on the Defaulting State pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the Defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Compacting States and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension.

2. Within sixty days of the effective date of termination of a Defaulting State, the Interstate Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer and the Majority and Minority Leaders of the Defaulting State’s legislature and the State Council of such termination.

3. The Defaulting State is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the Defaulting State unless otherwise mutually agreed upon between the Interstate Commission and the Defaulting State.

5. Reinstatement following termination of any Compacting State requires both a reenactment of the Compact by the Defaulting State and the approval of the Interstate Commission pursuant to the Rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the Members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the Compact, its duly promulgated Rules and By-laws, against any Compacting State in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact

1. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

2. Upon the dissolution of this Compact, the Compact becomes null and
void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the By-laws.

ARTICLE XIII
SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV
BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a Compacting State that is not inconsistent with this Compact.

2. All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all Rules and By-laws promulgated by the Interstate Commission, are binding upon the Compacting States.

2. All agreements between the Interstate Commission and the Compacting States are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the Compacting States, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.
Invasion of Privacy

This Act provides that a person is liable for a physical invasion of privacy when the defendant knowingly committed an act of trespass in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity, as specified, and the physical invasion occurs in a manner that is offensive to a reasonable person. The Act also provides that a person is liable for a constructive invasion of privacy when the defendant attempted to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory device if the image, recording, or other physical impression could not have been captured without an act of trespass unless a visual or auditory enhancing device was used.

Submitted as:
California
SB 262

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Invasion of Privacy.”

Section 2. [Liability for Invasion of Privacy.]
(a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another without permission or otherwise committed a trespass, in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.
(b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy,
through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.

(c) A person who commits physical invasion of privacy or constructive invasion of privacy, or both, is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this Section. This person may also be liable for punitive damages, subject to proof according to [insert citation]. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the defendant shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this Section.

(d) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate subdivision (a) or (b) or both is liable for any general, special, and consequential damages resulting from each said violation. In addition, the person that directs, solicits, instigates, induces, or otherwise causes another person, regardless of whether there is an employer-employee relationship, to violate this Section shall be liable for punitive damages to the extent that an employer would be subject to punitive damages pursuant to [insert citation].

(e) Sale, transmission, publication, broadcast, or use of any image or recording of the type, or under the circumstances, described in this Section shall not itself constitute a violation of this Section, nor shall this Section be construed to limit all other rights or remedies of plaintiff in law or equity, including, but not limited to, the publication of private facts.

(f) This Section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law or pattern of business practices adversely affecting the public health or safety.

(g) In any action pursuant to this Section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subdivision (a) or (b).

(h) The rights and remedies provided in this Section are cumulative and in addition to any other rights and remedies provided by law.

(i) It is not a defense to a violation of this Section that no image, recording, or physical impression was captured or sold.
(j) For the purposes of this Section, “for a commercial purpose” means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.

(k) For the purposes of this Section, “personal and familial activity” includes, but is not limited to, intimate details of the plaintiff’s personal life, interactions with the plaintiff’s family or significant others, or other aspects of plaintiff’s private affairs or concerns. Personal and familial activity does not include illegal or otherwise criminal activity as delineated in subdivision (f). However, “personal and familial activity” shall include the activities of victims of crime in circumstances where either subdivision (a) or (b), or both, would apply.

(l) The provisions of this Section are severable. If any provision of this Section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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

Section 4. [Effective Date.] [Insert effective date.]
Leave from Employment for Crime Victims

This Act requires an employer to allow an employee who is a victim of violent crime or abuse to take leave from work to participate in legal proceedings, obtain medical treatment and obtain other necessary services arising from the crime or abuse. It is based on Maine law. An employer who fails to grant paid or unpaid leave for these purposes is subject to a $200 civil penalty, to be assessed by the state Department of Labor. The employer is not considered to be in violation of the law if the leave would cause undue hardship, is not requested in a timely manner, or is impractical, unreasonable or unnecessary.

Maine’s law is reported to be the first state to enact this type of legislation.

Submitted as:
Maine
LD 944

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Provide Employment Leave for Crime Victims.”

Section 2. [Required Leave.] An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:
A. prepare for and attend court proceedings;
B. receive medical treatment; or
C. obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

The leave must be needed because the employee is a victim of violence, assault, sexual assaults under [insert citation], stalking or any act that would support an order for protection under [insert citation]. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

Section 3. [Exceptions.] Section 2 of this Act is not violated if:
A. the employer would sustain undue hardship from the victim’s absence;
B. the request for leave is not communicated to the employer within a reasonable time under the circumstances; or
C. the requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer.
Section 4. [Civil Penalties.] The [department of labor] may assess civil penalties of up to [two hundred (200)] dollars for each violation of this Act, if notice of the violation was given to the employer and the department within [six (6)] months of the occurrence.

Section 5. [Notice] The [bureau of labor standards] shall include notice of the provisions of this Act in the next reprinting of the [regulation of employment poster].

Section 6. [Report.] The [department of labor] shall report back to the [joint standing committee on labor] regarding workplace safety as it pertains to violent crime by [insert date]. The committee is authorized to report out legislation to the [Legislature] in [insert date] in response to the report.

Section 7. [Appropriation.] The following funds are appropriated from the General Fund to carry out the purposes of this Act [insert amount].

Section 8. [Severability.] [Insert severability clause.]

Section 9. [Repealer.] [Insert repealer clause.]

Section 10. [Effective Date.] [Insert effective date.]
Loan Program to Fund Repairing Polluting Vehicles Which are Owned by Low-Income People

This Act is based on California law. California established a motor vehicle inspection and maintenance (smog check) program, administered by the state department of consumer affairs. It requires inspection of motor vehicles upon initial registration, biennially upon renewal of registration, upon transfer of ownership, and in certain other circumstances; and requires all motor vehicles that are registered in designated areas of the state to biennially obtain a certificate of compliance or noncompliance with motor vehicle emission standards, except for certain exempted motor vehicles.

California’s law provided that the cost limit for repairs under the smog check program shall be a minimum of $450, except as specified. It required the issuance of an emission cost waiver on a motor vehicle that has been properly tested but does not meet the applicable emission standards, if no adjustment or repair will reduce emissions from the vehicle without exceeding the $450 cost limit. The department must develop and implement either a repair subsidy program or a program that would provide for a 12-month economic hardship extension for motor vehicles from the biennial certificate of compliance requirement under specified circumstances, as prescribed. A violation of any provision relating to those requirements is a misdemeanor.

This Act changes references in previous state law from “emission cost waiver” to “repair cost waiver,” and requires that such a waiver be issued only upon request of the vehicle owner. This legislation prohibits the issuance of a repair cost waiver until all appropriate emissions-related partial repairs up to the amount of the repair cost limit have been performed. It modifies the $450 repair cost limit to provide that a motor vehicle owner shall qualify for a repair cost waiver only after expenditure of $450 for repairs, including parts and labor. It also lowers the $450 repair cost limit to $250, or not more than $200, as determined by the department, for motor vehicle owners that qualify as low income.

This Act requires a qualified low-income motor vehicle owner whose repair cost exceeds the applicable limit to be informed of all options for compliance with the program. It provides for the issuance of an economic hardship extension to a low-income vehicle owner, as specified, and would delete the provisions for those extensions as to other vehicle owners.

The Act subjects any person who obtains or attempts to obtain a repair cost waiver or hardship extension by falsifying information to a civil penalty of not less than $150 and not more than $1,000, and prohibits them from receiving any repair assistance pursuant to specified existing law.
Loan Program to Fund Repairing Polluting Vehicles Which are Owned by Low-Income People

Existing California law required the testing and repair portion of the smog check program to be conducted by licensed smog check stations, and authorized a station to be licensed as a smog check test-only station. This draft requires the department to provide for low-income repair assistance through entities authorized to perform referee functions.

Submitted as:
California
CH 804, Laws of 1997
Status: enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish a Loan Program to Fund Repairing Polluting Vehicles Which are Owned by Low-Income People.”

Section 2. [Legislative Findings.] The [Legislature] hereby finds and declares as follows:

(a) Under the state's previous smog check program, a motor vehicle owner could obtain unlimited repair cost waivers and, therefore, avoid repair of a polluting vehicle.

(b) As a result, many vehicles were reregistered year after year and allowed to continue to pollute the air.

(c) Repairing high-polluting and gross polluting vehicles (which pollute 2 to 25 times more than the average vehicle that passes a smog check) could significantly improve this state's air quality and allow the state to meet federal clean air goals.

(d) The existing repair cost limit for smog repairs is a minimum of [four hundred fifty (450)] dollars in all areas where the enhanced smog check program operates; [fifty (50)] to [three hundred (300)] dollars based on the model year of the vehicle where the enhanced program is not fully implemented; and no cost limit for the repair of gross polluting vehicles.

(e) Without state financial assistance to repair a vehicle, a low-income vehicle owner is forced to either scrap the vehicle or drive an unregistered vehicle.

Section 3. [Criteria for Certificate of Compliance.] (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this Act, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.
(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to [insert citation] and is participating in the pilot program pursuant to [insert citation].

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of [insert citation], a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit established under Section 4 of this Act that every defect specified by [insert citation] has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with [insert citation]. No repair cost waiver shall exceed [two (2)] years’ duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 4 of this Act.

(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 5 of this Act, that every defect specified in [insert citation], has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 5 of this Act have been performed.

(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to [date], as determined by the [department]. For waivers or extensions issued in the program operative on or after [date], a
waiver or extension may be issued for a motor vehicle only once per owner.

(2) Upon initial registration of all of the following: a direct import motor vehicle, a motor vehicle previously registered outside this state, a dismantled motor vehicle pursuant to [insert citation], a motor vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) A certificate of compliance or noncompliance shall be valid for [ninety (90)] days.

(f) A test may be made at any time within [ninety (90)] days prior to the date otherwise required.

Section 4. [Qualifying for Waivers.]

(a) Except as otherwise provided in this Section or Section 5 of this Act, a motor vehicle owner shall qualify for a repair cost waiver only after expenditure of not less than [four hundred fifty (450)] dollars for repairs, including parts and labor.

(b) The limit established pursuant to subdivision (a) shall not become operative until the [department] issues a public notice declaring that the program established pursuant to [insert citation] is operational in the relevant geographical areas of the state, or until the date that testing in those geographic areas is operative using loaded mode test equipment, as defined in this article, whichever occurs first. Prior to that time, the following cost limits shall remain in effect:

(1) For motor vehicles of 1971 and earlier model years, [fifty (50)] dollars.

(2) For motor vehicles of 1972 to 1974, inclusive, model years, [ninety (90)] dollars.

(3) For motor vehicles of 1975 to 1979, inclusive, model years, [one hundred twenty-five (125)] dollars.

(4) For motor vehicles of 1980 to 1989, inclusive, model years, [one hundred seventy-five (175)] dollars.

(5) For motor vehicles of 1990 to 1995, inclusive, model years, [three hundred (300)] dollars.

(6) For motor vehicles of 1996 and later model years, [four hundred fifty (450)] dollars.

(c) The [department] shall periodically revise the repair cost limits specified in subdivisions (a) and (b) in accordance with changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics.

(d) No repair cost limit shall be imposed in those cases where emissions control equipment is missing or is partially or totally inoperative as a result of being tampered with.

Section 5. [Low-Income Vehicle Owners].

(a) For purposes of this section, “low-income motor vehicle owner” means
a person whose income does not exceed \( \text{one hundred seventy-five (175)} \) percent of the federal poverty level.

(b) Notwithstanding subdivision (a) of Section 4 of this Act, for low-income motor vehicle owners qualified under Section 7 of this Act, the repair cost limit, including parts and labor, shall be \( \text{two hundred fifty (250)} \) dollars in all areas where the program operates. However, the [department] may decrease that amount, to not more than \( \text{two hundred (200)} \) dollars, if the [department] determines that participation rates are unsatisfactory.

(c) Until such time as a low-income repair assistance program becomes effective pursuant to Section 7 of this Act, an economic hardship extension shall be issued upon request to a qualified low-income motor vehicle owner whose motor vehicle has been tested but does not meet applicable emissions standards and the necessary repairs exceed the repair cost limit specified in subdivision (b).

Section 6. [Violations.]

(a) Except as otherwise provided in [insert citation], any person who violates this Act, or any order, rule, or regulation of the [department] adopted pursuant to this Act, is liable for a civil penalty of not less than \( \text{one hundred fifty (150)} \) dollars and not more than \( \text{two thousand five hundred (2,500)} \) dollars for each day in which each violation occurs. Any action to recover civil penalties shall be brought by the [attorney general] in the name of the state on behalf of the [department], or may be brought by any district attorney, city attorney, or attorney for a district.

(b) The penalties specified in subdivision (a) do not apply to an owner or operator of a motor vehicle, except an owner or operator who does any of the following:

1. Obtains, or who attempts to obtain, a certificate of compliance, noncompliance or a repair cost waiver, or an economic hardship extension without complying with Section 3 of this Act.
2. Obtains, or attempts to obtain, a certificate of compliance, a repair cost waiver, or economic hardship extension by means of fraud, including, but not limited to, offering or giving any form of financial or other inducement to any person for the purpose of obtaining a certificate of compliance for a vehicle that has not been tested or has been tested improperly.
3. Registers a motor vehicle at an address other than the owner’s or operator’s residence address for the purpose of avoiding the requirements of this Act.
4. Obtains, or attempts to obtain, a certificate of compliance by other means when required to report to the test-only facility after being identified as a tampered vehicle or gross polluter pursuant to Section 3 of this Act or [insert citation].
5. Any person who obtains or attempts to obtain a repair cost waiver, or economic hardship extension pursuant to this Act by falsifying information.
shall be subject to a civil penalty of not less than \[\text{one hundred fifty (150)}\] dollars and not more than \[\text{one thousand (1,000)}\] dollars, and shall be made ineligible for receiving any repair assistance of any kind pursuant to this Act.

Section 7. [Low-Income Repair Assistance.]

(a) The department shall offer a low-income repair assistance program beginning \[\text{insert date}\], through entities authorized to perform referee functions.

(b) (1) The repair assistance program shall be available to eligible people based on a maximum income level of \[\text{one hundred seventy-five (175)}\] percent of the federal poverty level, as published quarterly in the Federal Register by the Department of Health and Human Services.

(2) The \[\text{department}\] shall offer low-income repair cost assistance, funded by the \[\text{High Polluter Repair or Removal Account}\] in the \[\text{Vehicle Inspection and Repair Fund}\] created pursuant to \[\text{insert citation}\] and revenues generated by the smog impact fee pursuant to \[\text{insert citation}\], to people who obtain an economic hardship extension, based on the cost-effectiveness and air quality benefit of the needed repair. Repair assistance may include retesting costs.

(3) An applicant for low-income repair assistance shall file an application on a form prescribed by the \[\text{department}\] and shall certify under penalty of perjury that the applicant meets the applicable eligibility standards.

(4) Verification of low-income eligibility shall be based on at least \[\text{one (1)}\] form of documentation, as determined by the \[\text{department}\], including, but not limited to, (A) an income tax return, (B) an employment warrant, or (C) a form of public assistance verification.

(c) The low-income repair assistance program shall be funded by the \[\text{High Polluter Repair or Removal Account}\] until \[\text{insert date}\]. Thereafter, a minimum of \[\text{twenty million (20,000,000)}\] dollars shall be made available annually for the program through funding provided by revenues generated by the smog impact fee pursuant to \[\text{insert citation}\] of the state tax code.

(d) All repairs subsidized by the state through the program shall be performed at a repair station licensed and certified pursuant to \[\text{insert citation}\] at the time of testing and application for an economic hardship extension. Repair shall be based upon a preapproved list of repairs for cost-effective emission reductions.

(e) The qualified low-income motor vehicle owner receiving repair assistance pursuant to this Section shall contribute a copayment equivalent to the repair cost limit, as determined by the \[\text{department}\] as specified in Section 5 of this Act, either in cash, or in emissions-related partial repairs as verified by a test-only station pursuant to paragraph \(2)\) of subdivision \(c)\) of Section 3 of this Act, or a combination thereof. If the repair cost exceeds the applicable repair cost limit, the \[\text{department}\] shall inform a quali-
fied low-income motor vehicle owner of all options for compliance at the
time of testing and repair.
(f) The [department] shall collect data from the program to provide in-
formation on how to improve the program. Data collection shall include all
of the following:
(1) The number of low-income motor vehicle owners that are eligible
for repair assistance.
(2) The number of eligible motor vehicle owners that use repair as-
    sistance funds.
(3) The potential for fraud.
(4) The average repair bills.
(5) The types of repairs being done.
(6) The amount of partial repairs done prior to receipt of repair as-
    sistance.
(7) The emissions benefits of providing repair assistance.
(g) The [department] shall collect data and develop information and shall
report to the [Legislature] on or before [date], on eligibility criteria, pro-
gram participation, the cost of vehicle repairs, and the funding resources
needed to implement the program.
(h) For purposes of this Section, “low-income motor vehicle owner” means
a person whose income does not exceed [one hundred seventy-five (175)]
percent of the federal poverty level.

Section 8. [Severability.][Insert severability clause.]

Section 9. [Repealer.][Insert repealer clause.]

Section 10. [Effective Date.][Insert effective date.]
Long-Term Care Resident and Employee Immunization

This Act requires employees and residents of long-term care facilities to be immunized against influenza and pneumococcal disease.

Submitted as:
New York
SB 5462-B
Status: Passed Senate and Assembly as of September, 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Require Long-Term Care Facility Residents and Employees to be Immunized.”

Section 2. [Definitions.] For purposes of this Act:

1. “Long-term care facility” or “facility” means a residential health care facility as defined in [insert citation], adult home as defined in [insert citation] or enriched housing program as defined in [insert citation], adult day health program in accordance with [insert citation], and any other facility providing residential housing for [five (5)] or more people over the age of [sixty-five (65)] unrelated to the operator and supportive services including, but not limited to, food service, laundry, arranging for medical care, and assistance with daily living.

2. “Documentation” means written evidence from an individual’s health care provider indicating the date and place when the individual received the influenza vaccine or the pneumococcal vaccine.

3. “Medically contraindicated” means influenza or pneumococcal vaccine should not be administered to an individual because it may be detrimental to the individual’s health if the individual receives the vaccine.

4. “Employee” means an individual employed (whether directly, by contract with another entity or as an independent contractor) by a long-term care facility, on a part-time or full-time basis.

Section 3. [Long-Term Care Resident and Employee Immunization Required.] Every long-term care facility in this state shall require residents and employees to be immunized for influenza virus and pneumococcal disease in accordance with regulations of the [commissioner].
Section 4. [Resident Immunization.]

1. Upon admission, a long-term care facility shall notify the resident of the immunization requirements of this Act and request that the resident agree to be immunized against influenza virus and pneumococcal disease.

2. Every long-term care facility shall document the annual immunization against influenza virus and immunization against pneumococcal disease for each resident. Upon finding that a resident is lacking such immunization or the long-term care facility or individual is unable to provide documentation that the individual has received the appropriate immunization, the long-term care facility shall provide or arrange for immunization. Immunization and the documentation thereof shall take place no later than [insert date].

3. An individual who becomes a resident after [insert date] but before [date] shall have his or her status for influenza and pneumococcal immunization determined by the facility, and if found to be deficient, the facility shall provide or arrange for the necessary immunization.

Section 5. [Employee Immunization.]

1. Every long-term care facility shall notify every employee of the immunization requirements of this Act and request that the employee agree to be immunized against influenza virus and pneumococcal disease.

2. The long-term care facility shall require documentation of annual immunization against influenza virus and immunization against pneumococcal disease for each employee. Upon finding that an employee is lacking such immunization or the long-term care facility or individual is unable to provide documentation that the individual has received the appropriate immunization, the long-term care facility must provide or arrange for immunization. Immunization and the documentation thereof shall take place no later than [insert date] of each year.

3. An individual who is newly employed as an employee after [insert date] but before [date] shall have his or her status for influenza and pneumococcal immunization determined by the facility, and if found to be deficient, the facility shall provide or arrange for the necessary immunization.

Section 6. [Exceptions.]

No individual shall be required to receive either an influenza vaccine or pneumococcal vaccine if the vaccine is medically contraindicated, or if it is against his or her religious beliefs, or if he or she refuses the vaccine after being fully informed of the health risks of such action.

Section 7. [Rules and Regulations; Report.]

1. The [commissioner] shall promulgate regulations relating to the immunization requirements of this Act, taking into consideration the recommendations of the Centers for Disease Control and Prevention.
2. The [commissioner] is hereby directed to make available educational and informational materials to all long-term care facilities with respect to vaccination against influenza virus and pneumococcal disease.

3. The [commissioner] shall report [three (3)] years from the effective date of this Act to the [governor], the [president of the Senate], the [speaker of the Assembly], the [minority leader of the Senate] and the [minority leader of the Assembly] on the number of outbreaks in long-term care facilities each year due to influenza virus and pneumococcal disease and number of hospitalizations of long-term care facility residents each year due to influenza virus, pneumococcal disease and complications thereof.

Section 8. [Severability.] [Insert severability clause.]

Section 9. [Repealer.] [Insert repealer clause.]

Section 10. [Effective Date.] [Insert effective date.]
Medicaid Fraud

The Medicare-Medicaid Anti-Fraud Act and Abuse Amendments of 1977 (PL 95-142) permit states to restrict or suspend the eligibility of program recipients if they commit fraudulent acts in order to receive the services or benefits of these programs. Accordingly, most states have laws and regulations to address Medicaid fraud. At least three have laws that permit the state to seize property that has been obtained because of Medicaid fraud: Georgia, Ohio and Illinois.

Georgia law 49-4-146.3 provides that property and proceeds that are obtained as a result of Medicaid fraud are subject to forfeiture to the state. The law establishes procedures for initiating state forfeiture actions. These include:

- notice;
- filing time limits;
- seizing and disposing property; and
- the duties of law enforcement officers.

Georgia's law arose from the Georgia Medicaid Fraud Act of 1997 (HB 377) and subsequent amendments in 1998. Georgia used the state's drug forfeiture law as a model for its Medicaid fraud forfeiture provisions.

Ohio Revised Code 2933.73 directs that in addition to any other penalty or disposition authorized by law, if someone is convicted of or pleads guilty to any Medicaid fraud offense, the trial court shall conduct a civil forfeiture hearing to determine whether any property should be forfeited to the state in relation to the offense. Section 2933.75 directs that “upon the institution of any criminal proceeding charging a Medicaid fraud offense, the state, at any time during the pendency of the proceeding, may file a Medicaid fraud lien notice in any county in which property is subject to forfeiture.”

Illinois statute 305 ILCS 5/8A-7d directs that vendors or recipients who commit fraud in order to receive public assistance payments or benefits shall forfeit money, profits or proceeds, and any interest or property that they may have obtained as a result of such offenses. The law authorizes the director of the state police to sell the property that is forfeited and seized due to such offenses.

This Act is based on Georgia’s law.

Submitted as:
Georgia Code 49-4-146.3

Suggested Legislation

(Title, enacting clause, etc.)
Section 1. [Short Title.] This Act may be cited as “An Act to Reduce Medicaid Fraud.”

Section 2. [Definitions.]
(a) As used in this Act, the term:
(1) “Costs” means, but is not limited to:
(A) All expenses associated with the seizure, towing, storage, maintenance, custody, preservation, operation, or sale of the property; and
(B) Satisfaction of any security interest or lien not subject to forfeiture under this Act.
(2) “Court costs” means, but is not limited to:
(A) All court costs, including the costs of advertisement, transcripts, and court reporter fees; and
(B) Payment of receivers, conservators, appraisers, accountants, or trustees appointed by the court pursuant to this Act.
(3) “Interest holder” means a secured party within the meaning of [insert citation] or the beneficiary of a perfected encumbrance pertaining to an interest in property.
(4) “Medicaid fraud” means:
(A) A violation of [insert citation]; or
(B) A violation relating to the obtaining of medical assistance benefits or payments under [insert citation] of any provision of:
(i) [insert citation], relating to offenses involving theft;
(ii) [insert citation], relating to false statements and writings, concealment of facts, and fraudulent documents in matters within jurisdiction of state or political subdivisions; or
(iii) [insert citation], relating to conspiracy to defraud the state or its political subdivisions.
(5) “Owner” means a person, other than an interest holder, who has an interest in property and is in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value.
(6) “Proceeds” means property derived from or realized through, directly or indirectly, Medicaid fraud and includes property of any kind without reduction for expenses incurred for acquisition, maintenance, or any other purpose.
(7) “Property” means anything of value and includes any interest in anything of value, including real property and any fixtures thereon, and tangible and intangible personal property, including but not limited to currency, instruments, securities, or any kind of privilege, interest, claim, or right.
(8) “Prosecutor” means a [district attorney] or his or her designee or the [attorney general] or his or her designee.
Section 3. [Property Subject to Forfeiture.]
All property and proceeds obtained by a person or entity through or as a result of Medicaid fraud in the provision of services or equipment under [insert citation] are subject to forfeiture to the state by a Medicaid fraud forfeiture action brought by the state in accordance with this section. This Act shall not apply to cases involving alleged fraud by Medicaid recipients in obtaining medical assistance benefits.

Section 4. [Medicaid Fraud Forfeiture Proceedings.]
(a) A Medicaid fraud forfeiture proceeding shall be initiated by a complaint filed in the name of this state and may be brought in the case of:
   (1) An in rem action, by the [prosecutor] in the county in which the property is located or seized; or
   (2) An in personam action, by the [prosecutor] in the county in which the defendant resides.
(b) (1) An action pursuant to this Act may be commenced before or after the seizure of property.
   (2) Any Medicaid fraud forfeiture action filed under this Act shall be limited to a civil action.
(c) A property interest shall not be subject to forfeiture under this Act if the owner of such interest or interest holder establishes that the owner or interest holder:
   (1) is not legally accountable for the conduct giving rise to its forfeiture, did not consent to it, and did not know and there is no reason why he or she should have known of the conduct or that it was likely to occur;
   (2) had not acquired and did not stand to acquire substantial proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arm's length commercial transaction;
   (3) with respect to conveyances for transportation only, did not hold the property jointly, in common, or in community with a person whose conduct gave rise to its forfeiture;
   (4) does not hold the property for the benefit of or as nominee for any person whose conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the interest through any such person, the owner or interest holder acquired it as a bonafide purchaser for value without knowingly taking part in an illegal transaction; and
   (5) acquired the interest:
      (A) before the completion of the conduct giving rise to its forfeiture, and the person whose conduct gave rise to its forfeiture did not have the authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or
      (B) after the completion of the conduct giving rise to its forfeiture:
         (i) as a bona fide purchaser for value without knowingly taking part in an illegal transaction;
(ii) before the filing of a lien on it and before the effective date of a notice of pending forfeiture relating to it and without notice of its seizure for forfeiture under [insert citation]; and

(iii) at the time the interest was acquired, was reasonably without cause to believe that the property was subject to forfeiture or likely to become subject to forfeiture under [insert citation]. Upon the request of the owner or interest holder, for good cause shown, the court shall hold an expedited hearing to determine whether the property is subject to forfeiture under this Act.

(d) A rented or leased vehicle shall not be subject to forfeiture unless it is established in forfeiture proceedings that the owner of the rented or leased vehicle is legally accountable for the conduct which would otherwise subject the vehicle to forfeiture, consented to the conduct, or knew or reasonably should have known of the conduct or that it was likely to occur. Upon learning of the address or phone number of the company which owns any rented or leased vehicle which is present at the scene of an arrest or other action taken pursuant to this Act, the duly authorized authorities shall immediately contact the company to inform it that the vehicle is available for the company to take possession.

(e) (1) Property which is subject to forfeiture under this Act may be seized by any law enforcement officer of this state or of any political subdivision thereof who has power to make arrests or execute process or a search warrant issued by any superior court having jurisdiction over the property. A search warrant authorizing seizure of property which is subject to forfeiture pursuant to this Act may be issued at an ex parte hearing before a superior court judge of a county where the forfeiture action may be brought demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of this state, any other state, or the United States. The court may order that the property be seized on such terms and conditions as are reasonable. In entering any such seizure order, the court shall determine that appropriate conditions are included to ensure the physical safety and well-being of any recipients or patients who may be affected by such warrant and that sufficient steps will be taken to ensure that patient medical records are kept confidential. The property owner or interest holder, within [ten (10)] days of the seizure of property taken pursuant to a search warrant, may make a written demand to the court with notice to the prosecutor for a hearing to determine if probable cause still exists for the seized property to be subject to forfeiture pursuant to this Act. Said hearing shall be held within [twenty (20)] days of said demand unless continued by the court for good cause.

(2) At the ex parte hearing for the issuance of a search warrant authorizing the seizure of property under paragraph (1) of this subsection, a reasonable estimate of the approximate fair market value of the property
sought to be seized shall be presented to the court. Based upon such evi-
dence, the court shall establish a bond amount for the release of any prop-
erty ordered seized, not to exceed double the fair market value of that prop-
erty. The property owner or interest holder may file in the clerk’s office of
the court where the forfeiture action is brought, a bond with good security, conditioned for the payment of the bond amount established by the court.
The bond shall be subject to approval by the clerk of the court. Upon receipt
of a bond deemed acceptable by the clerk, the court which ordered the sei-
zure of the property shall issue an order to the persons having custody of
the seized property to release such property to the property owner or inter-
est holder filing such bond, unless the property is being held as evidence. If
the seized property so released is ordered to be forfeited, the state shall be
entitled to entry of judgment upon such bond against the principal and
sureties therein, as judgment may be entered against securities upon ap-
peal. If the property seized is released pursuant to this paragraph and is
later otherwise required to be released under any other provision of this
section, the principal and sureties upon any bond given for the release of
such property under this paragraph shall also be released from their obli-
gations under that bond.

(f) (1) When property is seized pursuant to this Act, the sheriff or law
enforcement officer seizing the same shall report the fact of seizure, in writ-
ing, within [twenty (20)] days thereof to the [prosecutor] of the judicial cir-
cuit having jurisdiction in the county where the seizure was made.

(2) Within [thirty (30)] days from the date of seizure, a complaint for
forfeiture shall be initiated as provided for in Sections 7, 8 or 9 of this Act.

(3) If the state fails to initiate forfeiture proceedings against prop-
erty seized for forfeiture by notice of pending forfeiture within the time
limits specified in paragraphs (1) and (2) of this subsection, the property
must be released on the request of an owner or interest holder, pending
further proceedings pursuant to this Act, unless the property is being held
as evidence.

(g) (1) Seizure of property by a law enforcement officer constitutes no-
tice of such seizure to any person who was present at the time of seizure
who may assert an interest in the property.

(2) When property is seized, the [prosecutor] or the sheriff or law
enforcement officer seizing the same shall give notice of the seizure to any
owner or interest holder who is not present at the time of seizure by per-
sonal service, publication, or the mailing of written notice:

(A) If the owner’s or interest holder’s name and current address
are known, by either personal service or mailing a copy of the notice by
certified mail to that address;

(B) If the owner’s or interest holder’s name and address are re-
quired by law to be on record with a government agency to perfect an inter-
est in the property but the owner’s or interest holder’s current address is
Section 5. [Liens.]

(a) A prosecutor may file, without a filing fee, a lien for forfeiture of property upon the initiation of any civil proceeding under this Act or upon seizure for forfeiture. The filing constitutes notice to any person claiming an interest in the property owned by the named person. The filing shall include the following:

(1) The lien notice must set forth:

(A) The name of the person and, in the discretion of the state, any alias and any corporations, partnerships, trusts, or other entities, including nominees, that are either owned entirely or in part or controlled by the person; and

(B) The description of the property, the civil proceeding that has been brought under this article, the amount claimed by the state, the name of the court where the proceeding or action has been brought, and the case number of the proceeding or action if known at the time of filing;

(2) A lien under this subsection applies to the described property and to the named person and to any aliases, fictitious names, or other names, including names of corporations, partnerships, trusts, or other entities, that are either owned entirely or in part or controlled by the named person and any interest in real property owned or controlled by the named person. A separate lien for forfeiture of property must be filed for any other person;

(3) The lien creates, upon filing, a lien in favor of the state as it relates to the seized property or to the named person or related entities with respect to said property. The lien secures the amount of potential liability for civil judgment and, if applicable, the fair market value of seized property relating to all proceedings enforcing the lien. The forfeiture lien referred to in this subsection must be filed in accordance with the provisions of the laws in this state pertaining to the type of property that is subject to the lien. The state may amend or release, in whole or in part, a lien filed under this subsection at any time by filing, without a filing fee, an amended lien in accordance with this subsection which identifies the lien amended. The state, as soon as practical after filing a lien, shall furnish to any person named in the lien a notice of the filing of the lien;
(4) Upon entry of judgment in favor of the state, the state may proceed to execute on the lien as in the case of any other judgment;

(5) A trustee, constructive or otherwise, who has notice that a lien for forfeiture of property, a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as the owner of record shall furnish, within [ten (10)] days, to the prosecutor or the prosecutor’s designee the following information:

(A) The name and address of the person or entity for whom the property is held;

(B) The names and addresses of all beneficiaries for whose benefit legal title to the seized property, or property of the named person or related entity, is held; and

(C) A copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as the owner of record of the property; and

(6) A trustee, constructive or otherwise, who fails to comply with this subsection shall be guilty of a [misdemeanor].

Section 6. [Releasing Seized Property.] Property taken or detained under this Act is not subject to replevin, conveyance, sequestration, or attachment. The seizing law enforcement agency or the [prosecutor] may authorize the release of the property if the forfeiture or retention is unnecessary or may transfer the action to another agency or prosecutor by discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other law enforcement agency or prosecutor. An action under this Act may be consolidated with any other action or proceeding under this Act relating to the same property on motion by an interest holder and must be so consolidated on motion by the prosecutor in either proceeding or action. The property is deemed to be in the custody of the state subject only to the orders and decrees of the superior court having jurisdiction over the forfeiture proceedings.

Section 7. [Handling Seized Property.]

(a) (1) If property is seized under this Act, the prosecutor may:

(A) remove the property to a place designated by the superior court having jurisdiction over the forfeiture proceeding;

(B) place the property under constructive seizure by posting notice of pending forfeiture, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of seizure in any appropriate public record relating to the property;

(C) remove the property to a storage area, within the jurisdiction of the court, for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, the prosecutor may au-
authorize its being deposited in an interest-bearing account in a financial
institution in this state. Any accrued interest shall follow the principal in
any judgment with respect thereto;
(D) provide for another governmental agency, a receiver appointed
by the court pursuant to [insert citation], an owner, or an interest holder to
take custody of the property and remove it to an appropriate location within
the county where the property was seized; or
(E) require the sheriff or chief of police of the political subdivision
where the property was seized to take custody of the property and remove
it to an appropriate location for disposition in accordance with law.
(2) If any property which has been attached or seized pursuant to
this Act is perishable or is liable to perish, waste, or be greatly reduced in
value by keeping or if the expense of keeping the same is excessive or dis-
proportionate to the value thereof, the court, upon motion of the state, a
declant, or the custodian, may order the property or any portion thereof to
be sold upon such terms and conditions as may be prescribed by the court;
and the proceeds shall be paid into the registry of the court pending final
disposition of the action.
(b) As soon as possible, but not more than [thirty (30)] days after the
seizure of property, the seizing law enforcement agency shall conduct an
inventory and estimate the value of the property seized. All reasonable
steps shall be taken so as not to interfere with or disrupt the provision of
medical care by the provider when such inventory is conducted. Such in-
ventory shall be conducted in a manner which assures the confidentiality
of patient medical records.
(c) If the estimated value of personal property seized is [twenty-five thou-
sand (25,000)] dollars or less, the prosecutor may elect to proceed under the
provisions of this subsection in the following manner:
(1) Notice of the seizure of such property shall be posted in a promi-
inent location in the courthouse of the county in which the property was
seized. Such notice shall include a description of the property, the date and
place of seizure, the conduct giving rise to forfeiture, a statement that the
owner of such property has [thirty (30)] days within which a claim must be
filed, and the violation of law alleged;
(2) A copy of the notice, which shall include a statement that the
owner of such property has [thirty (30)] days within which a claim must be
filed, shall be served upon an owner, interest holder, or person in possession
of the property at the time of seizure and shall be published for at least
[three (3)] successive weeks in a newspaper of general circulation in the
county where the seizure was made;
(3) The owner or interest holder may file a claim within [thirty (30)]
days after the second publication of the notice of forfeiture by sending the
claim to the seizing law enforcement agency and to the prosecutor by certi-
fied mail, return receipt requested;
The claim must be signed by the owner or interest holder under penalty of perjury and must substantially set forth:

(A) The caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(B) The address at which the claimant will accept mail;

(C) The nature and extent of the claimant's interest in the property;

(D) The date, identity of the transferor, and circumstances of the claimant’s acquisition of the interest in the property;

(E) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture; and

(F) The precise relief sought;

(5) If a claim is filed, the prosecutor shall file a complaint for forfeiture as provided in Section 8 or 9 of this Act within [thirty (30)] days of the actual receipt of the claim. A person who files a claim shall be joined as a party; and

(6) If no claim is filed within [thirty (30)] days after the second publication of the notice of forfeiture, all right, title, and interest in the property are forfeited to the state and the prosecutor shall dispose of the property as provided in Section 12 of this Act.

Section 8. [In rem Proceedings.]

(a) In rem proceedings.

(1) In actions in rem, the property which is the subject of the action shall be named as the defendant. The complaint shall be verified on oath or affirmation by a duly authorized agent of the state in a manner required by the laws of this state. Such complaint shall describe the property with reasonable particularity; state that it is located within the county or will be located within the county during the pendency of the action; state its present custodian; state the name of the owner or interest holder, if known; allege the essential elements of the violation which is claimed to exist; state the place of seizure, if the property was seized; and conclude with a prayer of due process to enforce the forfeiture.

(2) A copy of the complaint and summons shall be served on any person known to be an owner or interest holder and any person who is in possession of the property.

(A) Service of the complaint and summons shall be as provided in [insert citation].

(B) If real property is the subject of the action or the owner or interest holder is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceeding shall be published once a week for [two (2)] successive weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by
such proceeding and from any sale of the property resulting therefrom, but
shall not constitute notice to an interest holder unless that person is un-
known or resides out of the state or departs the state or cannot after due
diligence be found within the state or conceals himself or herself to avoid
service.

(C) If tangible property, which has not been seized, is the subject
of the action, the court may order the sheriff or another law enforcement
officer to take possession of the property. If the character or situation of the
property is such that the taking of actual possession is impracticable, the
sheriff shall execute process by affixing a copy of the complaint and sum-
mons to the property in a conspicuous place and by leaving another copy of
the complaint and summons with the person having possession or such
person’s agent. In cases involving a vessel or aircraft, the sheriff or other
law enforcement officer is authorized to make a written request with the
appropriate governmental agency not to permit the departure of such ves-
sel or aircraft until notified by the sheriff or the sheriff’s deputy that the
vessel or aircraft has been released.

(3) An owner of or interest holder in the property may file an answer
asserting a claim against the property in the action in rem. Any such an-
swer shall be filed within [thirty (30)] days after the service of the sum-
mons and complaint. Where service is made by publication and personal
service has not been made, an owner or interest holder shall file an answer
within [thirty (30)] days of the date of final publication. An answer must be
verified by the owner or interest holder under penalty of perjury. In addi-
tion to complying with the general rules applicable to an answer in civil
actions, the answer must substantially set forth:

(A) the caption of the proceedings as set forth in the complaint
and the name of the claimant;

(B) the address at which the claimant will accept mail;

(C) the nature and extent of the claimant’s interest in the property;

(D) the date, identity of transferor, and circumstances of the
claimant’s acquisition of the interest in the property;

(E) the specific provision of this Section relied on in asserting
that the property is not subject to forfeiture; and

(F) the precise relief sought.

(4) If at the expiration of the period set forth in paragraph (3) of this
subsection no answer has been filed, the court shall order the disposition of
the seized property as provided for in this Act.

(5) If an answer is filed, a hearing must be held within [sixty (60)]
days after service of the complaint unless continued for good cause and
must be held by the court with a jury unless waived by the claimant.

(6) An action in rem may be brought by the state in addition to or in
lieu of any other in rem or in personam action brought pursuant to [insert
citation].
Section 9. [In Personam Proceedings.]

(a) In personam proceedings.

(1) The complaint shall be verified on oath or affirmation by a duly authorized agent of the state in a manner required by the laws of this state. It shall describe with reasonable particularity the property which is sought to be forfeited; state its present custodian; state the name of the owner or interest holder, if known; allege the essential elements of the violation which is claimed to exist; state the place of seizure, if the property was seized; and conclude with a prayer of due process to enforce the forfeiture.

(2) Service of the complaint and summons shall be as follows:

(A) Except as otherwise provided in this subsection, service of the complaint and summons shall be as provided by [insert citation]; and

(B) If the defendant is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceedings shall be published [once] a week for [two (2)] successive weeks in the newspaper in which the sheriff’s advertisements are published. Such publication shall be deemed sufficient notice to any such defendant.

(3) A defendant shall file a verified answer within [thirty (30)] days after the service of the summons and complaint. Where service is made by publication and personal service has not been made, a defendant shall file such answer within [thirty (30)] days of the date of final publication. In addition to complying with the general rules applicable to an answer in civil actions, the answer must contain all of the elements set forth in paragraph (3) of Section 8 of this Act.

(4) Any interest holder or person in possession of the property may join any action brought pursuant to this subsection as provided by [insert citation].

(5) If at the expiration of the period set forth in paragraph (3) of this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this section.

(6) If an answer is filed, a hearing must be held within [sixty (60)] days after service of the complaint unless continued for good cause and must be held by the court with a jury unless waived by the claimant.

(7) On a determination of liability of a person for conduct giving rise to forfeiture under this Act, the court must enter a judgment of forfeiture of the property described in the complaint and must also authorize the prosecutor or the prosecutor’s agent or any law enforcement officer or peace officer to seize all property ordered to be forfeited which was not previously seized or was not then under seizure. Following the entry of an order declaring the property forfeited, the court, on application of the state, may enter any appropriate order to protect the interest of the state in the property ordered to be forfeited.
Section 10. [Other Remedies.]

(a) In conjunction with any civil action brought pursuant to this Act:

(1) The court, on application of the [prosecutor], may enter any re-
straining order or injunction; require the execution of satisfactory perfor-
mance bonds; appoint receivers, conservators, appraisers, accountants, or
trustees; or take any action to seize, secure, maintain, or preserve the avail-
ability of property subject to forfeiture under this Section, including issuing
a warrant for its seizure and writ of attachment, whether before or after
the filing of a complaint for forfeiture;

(2) A temporary restraining order may be entered on application of
the [prosecutor], without notice or an opportunity for a hearing, if the [pros-
secutor] demonstrates that:

(A) there is probable cause to believe that the property with re-
spect to which the order is sought, in the event of final judgment or convic-
tion, would be subject to forfeiture under this Act; and

(B) provision of notice would jeopardize the availability of the
property for forfeiture;

(3) Notice of the entry of a restraining order and an opportunity for a
hearing must be afforded to persons known to have an interest in the prop-
erty. The hearing must be held at the earliest possible date consistent with
the date set in [insert citation] and is limited to the issues of whether:

(A) there is a probability that the state will prevail on the issue of
forfeiture and that failure to enter the order will result in the property's
being destroyed, conveyed, encumbered, removed from the jurisdiction of
the court, concealed, or otherwise made unavailable for forfeiture; and

(B) the need to preserve the availability of property through the
entry of the requested order outweighs the hardship on any owner or inter-
est holder against whom the order is to be entered;

(4) If property is seized for forfeiture or a forfeiture lien is filed with-
out a previous judicial determination of probable cause or order of forfei-
ture or a hearing under paragraph (2) of this subsection, the court, on an
application filed by an owner of or interest holder in the property within
[thirty (30)] days after notice of its seizure or lien or actual knowledge of
such seizure or lien, whichever is earlier, and complying with the require-
ments for an answer to an in rem complaint, and after [five (5)] days' notice
to the prosecutor of the judicial circuit where the property was seized or, in
the case of a forfeiture lien, to the prosecutor filing such lien, may issue an
order to show cause to the seizing law enforcement agency for a hearing on
the sole issue of whether probable cause for forfeiture of the property then
exists. The hearing must be held within [thirty (30)] days unless continued
for good cause on motion of either party. If the court finds that there is no
probable cause for forfeiture of the property, the property must be released
pending the outcome of a judicial proceeding which may be filed pursuant
to this Act; and

(5) The court may order property that has been seized for forfeiture

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to be sold to satisfy a specified interest of any interest holder, on motion of any party, and after notice and a hearing, on the conditions that:

(A) The interest holder has filed a proper claim and:
   (i) is authorized to do business in this state and is under the jurisdiction of a governmental agency of this state or of the United States which regulates financial institutions, securities, insurance, or real estate; or
   (ii) has an interest that the prosecutor has stipulated is exempt from forfeiture;

(B) The interest holder must dispose of the property by commercially reasonable public sale and apply the proceeds first to its interest and then to its reasonable expenses incurred in connection with the sale or disposal; and

(C) The balance of the proceeds, if any, must be returned to the actual or constructive custody of the court, in an interest-bearing account, subject to further proceedings under this Act.

Section 11. [Acquittal or Dismissal or Conviction in Criminal Proceedings.]
(a) An acquittal or a dismissal or a conviction in any criminal proceeding, either by a verdict or a plea of guilty or nolo contendere, shall be admissible in evidence in any proceeding pursuant to this Act.

(b) In hearings and determinations pursuant to this Act:
   (1) The court may receive and consider, in making any determination of probable cause or reasonable cause, all evidence admissible in determining probable cause at a preliminary hearing or by a magistrate pursuant to [insert citation], together with inferences therefrom; and

   (2) The fact that the state has established probable cause to believe that a person has engaged in conduct giving rise to forfeiture or that the property was acquired by a person during a period of the conduct giving rise to forfeiture or within a reasonable time thereafter shall not give rise to any presumption, rebuttable or otherwise, that the property is subject to forfeiture. The state shall, at all times, have the burden to prove, by a preponderance of the evidence, that the property is subject to forfeiture.

(c) (1) All property declared to be forfeited under this Act vests in this state at the time of commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any property or proceeds transferred later to any person remain subject to forfeiture and thereafter must be ordered to be forfeited unless the transferee claims and establishes in a hearing under this Section that the transferee is a bona fide purchaser for value and the transferee's interest is exempt under Section 4 of this Act.

   (2) On entry of judgment for a person claiming an interest in the property that is subject to proceedings to forfeit property under this Section, the court shall order that the property or interest in property be released or delivered promptly to that person free of liens and encumbrances, as provided under [insert citation].
(3) The court is authorized to order a claimant who files a frivolous claim to pay the reasonable costs relating to the disproving of the claim which were incurred by the state, including costs for investigation, prosecution, and attorney’s fees.

Section 12. [Disposition of Forfeited Property.]
(a) (1) The court may, after judgment of forfeiture, make any of the following orders for disposition of the property:
(A) judicial sale of the property;
(B) retention of the property by any party having a property interest therein, as such interest is described in Section 4 of this Act, upon payment or approval of a plan for payment into court of the value of any forfeited interest in the property. The plan may include, in the case of a party having such a property interest who holds a lien on or security interest in the property, the sale of the property by any such party under such terms and conditions as may be prescribed by the court and the payment into court of any proceeds from such sale over and above the amount necessary to satisfy the lien or security interest; or
(C) destruction of any contraband, the possession of which is illegal.
(2) The proceeds from any judicial sale or payments from a party having a property interest as described in paragraph (1) of this subsection shall be delivered to the [department of medical assistance]. The proceeds shall then be disbursed in accordance with the requirements of federal law.

Section 13. [Civil Proceedings.]
(a) An acquittal or dismissal in a criminal proceeding does not preclude civil proceedings under [insert citation], provided that no property shall be forfeited after an acquittal or dismissal in a criminal proceeding unless the state obtains a civil judgment for forfeiture under [insert citation].
(b) For good cause shown, the court may stay civil forfeiture proceedings during the criminal trial resulting from a related indictment or information alleging a violation of [insert citation].
(c) (1) The court shall order the forfeiture of any property of a claimant or defendant up to the value of property found by the court to be subject to forfeiture under the provisions of this Act if any of the forfeited property:
(A) cannot be located;
(B) has been transferred or conveyed to, sold to, or deposited with a third party;
(C) is beyond the jurisdiction of the court;
(D) has been substantially diminished in value while not in the actual physical custody of the receiver or governmental agency directed to maintain custody of the property; or
(E) has been commingled with other property that cannot be divided without difficulty.
(2) In addition to any other remedy provided for by law, a [prosecutor] on behalf of the state may institute an action in any court of this state or of the United States or any of the several states against any person acting with knowledge or any person to whom notice of a lien for forfeiture of property has been provided in accordance with Section 5 of this Act; to whom notice of seizure has been provided in accordance with Section 4 of this Act; or to whom notice of a civil proceeding alleging conduct giving rise to forfeiture under this Act has been provided, if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a forfeiture lien notice or notice of seizure or after the filing and notice of a civil proceeding alleging conduct giving rise to forfeiture under this Act, as the case may be. The state may recover judgment in an amount equal to the value of the lien but not to exceed the fair market value of the property or, if there is no lien, in an amount not to exceed the fair market value of the property, together with reasonable investigative expenses and attorney's fees. If a civil proceeding is pending, the action must be heard by the court in which the civil proceeding is pending.

(3) A [prosecutor] may file and prosecute in any of the courts of this state or of the United States or of any of the several states such civil actions as may be necessary to enforce any judgment rendered pursuant to this Act.

(4) No person claiming an interest in property subject to forfeiture under [insert citation] may commence or maintain any action against the state concerning the validity of the alleged interest other than as provided in this Act. Except as specifically authorized by this Act, no person claiming an interest in such property may file any counterclaim or cross-claim to any action brought pursuant to this Act.

(5) A civil action under [insert citation] must be commenced within [five (5)] years after the last conduct giving rise to forfeiture or to the claim for relief became known or should have become known, excluding any time during which either the property or defendant is out of the state or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(d) In the event the state fails to prove that the property is subject to forfeiture under this section, the property may still be subject to lien, levy, and other processes in order to satisfy any judgment which orders the payment of restitution based upon a conviction or judgment of Medicaid fraud.

(e) This Act must be liberally construed to effectuate its remedial purposes.

Section 14. [Severability.] [Insert severability clause.]

Section 15. [Repealer.] [Insert repealer clause.]

Section 16. [Effective Date.] [Insert effective date.]
Mobile Home Rehabilitation

This Act adopts a rehabilitation program for mobile homes manufactured prior to June 15, 1976 and provides that once a home has been rehabilitated consistent with the provisions of the Act, no zoning or other ordinances shall prohibit the relocation or installation of the home.

Submitted as:
Idaho
SB 1373

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish a Program to Rehabilitate Mobile Homes.”

Section 2. [Legislative Intent.] In order to ensure a continued supply of safe, affordable housing, [state] hereby adopts a rehabilitation program for existing mobile homes constructed prior to June 15, 1976, the effective date of the federal Manufactured Housing and Safety Standards Act (HUD code), that are currently sited within this state or that may be brought into this state after the effective date of this Act. It is the legislative intent that the relocation and installation of these homes be approved when the rehabilitation on the home has been completed as required in this Act and proof of compliance has been issued by the [administrator] of the [state division of building safety].

Section 3. [Application of Chapter - Rehabilitation Required - Certificate of Compliance]
(1) This Act shall apply to the installation of mobile homes constructed prior to June 15, 1976, within the jurisdiction of a city or county requiring an installation permit pursuant to [insert citation].
(2) Before a permit for the installation of the mobile home may be issued, the home must meet the rehabilitation requirements specified in this Act and receive a certificate of compliance from the [administrator] of the [state division of building safety].
(3) Upon submission of the rehabilitation form required pursuant to Section 4 of this Act, and any other information required by the [administrator] to establish compliance with this Act, the [administrator] shall issue a certificate of compliance to the homeowner. The certificate of compli-
Mobile Home Rehabilitation

The mobile home shall meet the following rehabilitation requirements:

(1) A smoke detector (which may be a single station alarm device) shall be installed on any wall in a hallway or space communicating with each bedroom area and the living area on the living area side and, when located in a hallway, the detector shall be between the return air intake and the living area. Each smoke detector shall be installed in accordance with its listing and the top of the detector shall be located on a wall [four (4)] inches to [twelve (12)] inches below the ceiling. The detector may be battery-powered or may be connected to an electrical outlet box by a permanent wiring method into a general electrical branch circuit, without any switch between the over-current protection device protecting the branch circuit and the detector.

(2) The walls, ceilings and doors of each compartment containing a gas-fired furnace or water heater shall be lined with [five-sixteenth (5/16)] inch gypsum board, unless the door opens to the exterior of the home, in which case, the door may be all metal construction. All exterior compartments shall seal to the interior of the mobile home.

(3) Each room designated expressly for sleeping purposes shall have an exterior exit door or at least [one (1)] outside egress window or other approved exit device with a minimum clear dimension of [twenty-two (22)] inches and a minimum clear opening of [five (5)] square feet. The bottom of the exit shall not be more than [thirty-six (36)] inches above the floor.

(4) All electrical systems shall be tested for continuity to assure that metallic parts are properly bonded, tested for operation to demonstrate that all equipment is connected and in working order, and given a polarity check to determine that connections are proper. The electrical system shall be properly protected for the required amperage load. If the unit wiring is of aluminum conductors, all receptacles and switches rated [twenty (20)] amperes or less directly connected to the aluminum conductors shall be marked CO/ALR. Exterior receptacles other than heat tape receptacles shall be of the ground fault circuit interrupter (GFI) type. Conductors of dissimilar metals (copper/aluminum or copper clad aluminum) must be connected in
according with Section 110-14 of the National Electrical Code.

(5) The mobile home’s gas piping shall be tested with the appliance valves removed from the piping system and piping capped at those areas. The piping system shall withstand a pressure of at least [six (6)] inch mercury or [three (3)] psi gauge for a period of not less than [ten (10)] minutes without showing any drop in pressure. Pressure shall be measured with a mercury manometer or a slope gauge calibrated so as to read in increments of not greater than [one-tenth (1/10)] pound or an equivalent device. The source of normal operating pressure shall be isolated before the pressure test is made. After the appliance connections are reinstalled, the piping system and connections shall be tested with line pressure of not less than [ten (10)] inches nor more than [fourteen (14)] inches water column air pressure. The appliance connections shall be tested for leakage with soapy water or a bubble solution. All gas furnaces and water heaters shall be vented to the exterior in accordance with [Chapter 9 of the Uniform Mechanical Code].

(6) A full water or air pressure test will be performed on the mobile home’s water and sewer system.

(a) Water piping shall be tested and proven tight under a water pressure not less than the working pressure under which it is to be used. The water used for tests shall be obtained from a potable source of supply. A [fifty (50)] pound per square inch (344.5kPa) air pressure may be substituted for the water test. In either method of test, the piping shall withstand a test without leaking for a period of not less than [fifteen (15)] minutes.

(b) A water test shall be applied to the drainage and vent system either in its entirety or in sections. If applied to the entire system, all openings in the piping shall be tightly closed, except at the highest opening, and the system filled with water to the point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest opening of the section under the test and each section shall be filled with water, but no section shall be tested with less than a [ten (10)] foot [three (3)] meters head of water. In testing successive sections, at least the upper [ten (10)] feet [three (3)] meters of the next preceding section shall be tested, so that no joint or pipe in the structure, except the uppermost [ten (10)] feet [three (3)] meters of the system, shall have been submitted to a test of less than a [ten (10)] foot [three (3)] meters head of water. The water shall be kept in the system or in the portion under testing for at least [fifteen (15)] minutes before inspection starts. The system shall be tight at all points.

(7) All repairs or other work necessary to bring the mobile home into compliance with the requirements of this section shall be completed before a certificate of compliance may be issued.
Mobile Home Rehabilitation

form shall be completed and signed by an authorized representative of a state-licensed manufactured home service company or installer or dealer holding an installer’s license. Electrical, gas, water and sewer inspections and any necessary repairs must be performed by a person or company properly licensed and authorized to perform the work under [state] law, with the person or company performing the inspections and repairs to be noted on the rehabilitation form. A properly completed rehabilitation form shall be presented to the [state division of building safety] before a certificate of compliance may be issued.

(2) The [administrator] of the [state division of building safety] may, by rule, establish an administrative fee to cover the costs of administering the provisions of this Act.

(3) In addition to the rulemaking authority provided in this section, the [administrator] of the [state division of building safety] may promulgate rules in accordance with the provisions of [insert citation] deemed necessary to implement the provisions of this Act.

Section 6. [Severability.] [Insert severability clause.]

Section 7. [Repealer.] [Insert repealer clause.]

Section 8. [Effective Date.] [Insert effective date.]
The National Guard's Youth ChalleNGe targets unemployed “at-risk” high-school dropouts, 16 to 18 years of age. The goals of the program are to use military-based training to improve the life skills and employment potential of youth who cease to attend secondary school before graduating.

Core components of the national program are citizenship, academic excellence (GED/high school diploma attainment), life-coping skills, community service, health and hygiene, skills training, leadership and physical training. Generally, the program involves a five-month residential phase which is followed by a year-long mentoring relationship with a specially trained member from each youth's community.

Participants in the national program must be: (1) a volunteer; (2) 16-18 years old; (3) high school dropout at least one month prior to application; (4) a citizen or legal resident of the United States and resident of the state where the program is operated; (5) unemployed; (6) drug free; (7) not on parole or probation, not indicted or charged, and free of felony convictions or capital offenses; and (8) physically and mentally capable of completing the program, with reasonable accommodation for physical or other handicaps. Eligible youth must apply, be nominated by a member of the local community, and selected by a state appointed committee.

As of March 1999, fifteen states participate in the national program: Alaska, Arizona, Arkansas, Georgia, Hawaii, Illinois, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Oklahoma, Virginia and West Virginia. All participants receive some form of certification when they graduate from a state program. Some states also award general equivalency diplomas.

For example, nearly 80 percent of the Alaska ChalleNGe Program graduates received their General Education Development (GED) certificates through the Youth Corps. Others have returned to traditional high schools following graduation from the ChalleNGe program. More than 1,390 teens have graduated from the Youth ChalleNGe Academy (YCA) since the program was initiated in Georgia in 1991.

Maryland's 22-week residential program located at Aberdeen Proving Ground has graduated more than 450 students since 1993.

Georgia’s Youth ChalleNGe Academy at Fort Stewart, Georgia provides teen dropouts the opportunity to complete basic academic courses to receive a high school diploma or GED, and to acquire the necessary life skills to turn around once troubled lives. More than 12 percent of Youth ChalleNGe students plan to enter the military following graduation. Approximately 29 percent of the class will continue their education through enrollment in colleges or vocational schools, while the remaining students plan to return to their local communities with marketable skills. Once returning to their
local communities, YCA graduates are assigned local mentors to assist them in the community.

This Act is based on the law that created Mississippi’s program under the national umbrella. It authorizes the state National Guard to award adult high school diplomas to program participants who meet certain academic requirements for graduation. Mississippi’s program director says participants can get a general equivalency diploma or an adult high school diploma. The requirements to get the adult high school diploma are more rigorous than the GED and involve apprenticeship training. Mississippi is the only state that offers this option.

Submitted as:
Mississippi
HB 653 (As Passed the House)
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Create a Youth Challenge Program under the National Guard and to Authorize the Program to Award Participants Adult High School Diplomas.”

Section 2. [Youth Challenge Program Created.]
(1) There is created under the [state] National Guard a program to be known as the “Youth Challenge Program.” The program shall be an interdiction program designed for children determined to be “at risk” by the National Guard.
(2) The [state] National Guard shall implement and administer the Youth Challenge Program and shall promulgate rules and regulations concerning the administration of the program. The National Guard shall prepare written guidelines concerning the nomination and selection process of participants in the program, and such guidelines shall include a list of the factors considered in the selection process.
(3) Participation in the Youth Challenge Program shall be on a voluntary basis. No child may be sentenced by any court to participate in the program; however, a youth court judge may refer the program to a child when, under his determination, such program would be sufficient to meet the needs of the child.
(4) The [state] National Guard, under the auspices of the Challenge Academy, may award an adult high school diploma to each participant who meets the requirements for a general educational development (GED) equivalent under the policies and guidelines of the GED Testing Service of
the American Council on Education and any other minimum academic re-
quirements prescribed by the National Guard and Challenge Academy for
graduation from the Youth Challenge Program. Participants in the pro-
gram who do not meet the minimum academic requirements may be awarded
a special certificate of attendance. The [state] National Guard and the Chal-
lenge Academy shall establish rules and regulations for awarding the adult
high school diploma and shall prescribe the form for such diploma and the
certificate of attendance.

(5) The [state] National Guard may accept any available funds that may
be used to defray the expenses of the program, including, but not limited to,
federal funding, public or private funds and any funds that may be appro-
priated by the [Legislature] for that purpose.

(6) The [state] National Guard shall make an annual report to the [Leg-
islature] on the Youth Challenge Program to include, but not limited to, the
number of applicants to the program by county, race and sex, the number of
applicants accepted, the number of applicants rejected, the number of per-
sons completing the program, the number of GEDs awarded, the number of
certificates awarded and data regarding sources of funding, employees and
expenditures.

Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Natural Gas Deregulation (Note)

As the trend to deregulate public utilities continues, the CSG SSL Committee believes the efforts to deregulate natural gas utilities by Colorado, Georgia, Ohio, and Pennsylvania are noteworthy.

Georgia enacted SB 215 in 1997 to set up a new regulatory framework that will give all customers, large and small, the opportunity to benefit from a competitive natural gas market with more choices and lower prices.

Georgia's law only applies to customers of Georgia's two investor-owned utilities, Atlanta Gas Light Company (AGL) and United Cities Gas Company (UCG). Marketers will compete to arrange for the purchase and transportation of natural gas to these customers. The gas companies will continue to operate the pipe system, through which the natural gas flows, as a distribution company selling gas to state public service commission (PSC) certified marketers. Because the pipeline system will not be duplicated and will remain in monopoly control, the prices distribution companies charge marketers will remain regulated. However, the marketers will set their own competitive price to supply customers with gas. The distribution companies, AGL or UCG, may also operate affiliated marketers who will compete with other marketers for pipeline capacity that will be determined by their ability to secure market share. The marketers will compete to serve firm (residential and small business) customers in order to have the transportation capacity to serve the more profitable large interruptible market. This safeguard is in place to prevent marketers from "cherry-picking" or "cream-skimming" the most profitable customers leaving the small customers unserved or with high rates. Competition should eventually bring most consumers lower gas bills with reliable and efficient service.

Georgia's law allows a gas utility to apply for performance-based regulation (PBR) through proceedings at the PSC. It gives the PSC latitude to establish criteria that any new PBR plan must meet. The gas utility will continue to contract for interstate space on pipelines to move gas from production areas to firm delivery markets in Georgia. The gas utility will maintain the authority to sell unused space on its pipes for use by other companies and end-users. Any profits from these sales will be shared between the gas company and the firm users. Twenty percent will go to the gas company if the gas is transported to users in Georgia and 10 percent if it is transported out-of-state.

All marketers who offer to provide service to residential and small business customers must be approved by the PSC. This will ensure that marketers are capable of meeting the necessary requirements to provide firm gas service, both financially and technically.

The marketers' first obligation is to ensure that the needs of the firm customers (residential and small commercial/industrial) are met. Any un-
used capacity may then be used to serve interruptible customers.

The PSC will have the authority to grant, modify, impose conditions upon or revoke a marketer's certificate, adopt rules governing service quality, and resolve complaints against a marketer regarding their service. All marketers will be subject to inquiries by the PSC and the governor's Office of Consumer Affairs in order to ensure compliance with all standards set forth in this legislation and the “Fair Business Practices Act.”

The gas utility's operation of the pipes will continue to be fully regulated by the PSC. With regard to services that are deregulated, the legislation permits the PSC to re-regulate those services if it determines that effective competition no longer exists.

An electing gas utility will offer services to marketers at rates initially approved by the PSC. When the PSC determines that there are sufficient competitive options for these services, they will no longer be regulated. Where the PSC does not find sufficient competition for a particular service, that service will continue to be provided at PSC-approved rates.

The PSC has the authority to determine that there is effective competition, based on criteria mentioned above, before removing regulation of ancillary services. For example, for services such as meter reading, billing, customer turn-on and turn-off, other providers of this service must be performing these services before they can be deregulated at the utility. Gas commodity costs, as opposed to delivery charges, are deregulated only after there is effective competition. Similarly, rates for interruptible delivery services are deregulated only after an effectively competitive market has developed. The rate a gas utility may charge for delivery services relating to small business and residential customers remains regulated by the PSC.

Customers will have ample opportunity to select a gas marketer. This is similar to the choices available in selecting a long-distance telephone company several years ago. If a customer ultimately does not choose a marketer, the PSC will randomly assign them to a marketer.

The gas utility must offer distribution as a separate service and provide that service without discrimination or preference to any marketer. The gas utility may impose operational conditions on firm delivery service provided that the conditions are filed and approved as part of its firm distribution tariff. The gas utility will continue to serve new customers consistent with its approved line extension policies on file with the PSC.

A universal service fund will be established for each gas company and will be administered by the PSC in order to ensure that all customers within a marketer's territory will receive reliable natural gas service.

Georgia's law in no way affects gas companies owned by counties, municipalities or other governmental authorities.

CSG Southern Office staff believe Georgia is one of the first states to comprehensively deregulate natural gas utilities. Other states are deregulating this industry on a more limited basis. Georgia's law also ap-
plies to more consumers (i.e., 1.4 million) than are typically involved in the pilot or limited deregulation efforts in other states. The feature that requires consumers to choose a gas company or the PSC will assign them one is also a unique feature of the Georgia law.

Colorado enacted an amended version of SB 153 in May 1999 to permit natural gas public utilities to file voluntary restructuring plans for opening the natural gas supply markets to consumers, subject to the review and approval of the Public Utilities Commission (PUC), Department of Regulatory Agencies. The Act requires restructuring plans to contain specified provisions designed to preserve the integrity and reliability of natural gas service to consumers. The law allows the utility company to recover “transition costs” including investments and costs incurred that the PUC finds to have been made reasonably and prudently before the effective date of the restructuring plan.

The law imposes a “public benefits” charge until at least December 31, 2005, and thereafter until and unless it is replaced with a different legislatively adopted funding mechanism for statewide low-income energy assistance programs. It directs the Colorado Energy Assistance Foundation (CEAF), a non-state agency, to contract with a private party to study the effects of restructuring the natural gas market on low-income consumers. The study would begin within one year following implementation of the first restructuring plan that affects a significant number of low-income households. It requires CEAF to report its findings and recommendations to the General Assembly within two years following the initial implementation.

In 1996, Ohio enacted HB 476 to deregulate all services of a natural gas company other than commodity sales, distribution, and ancillary services. This Act authorizes the Public Utilities Commission (PUCO) to grant an exemption from regulation for any commodity sales or ancillary service of a natural gas company, subject to specified conditions. It authorizes the rates and charges for a distribution service or a nonexempt commodity sales or ancillary service of a natural gas company to be established by a method other than the traditional, rate-base, rate-of-return method. It authorizes the rates and charges for the regulated services of a natural gas company to be adjusted automatically for changes in specified cost or costs; and authorizes a natural gas company, for the purpose of establishing rates for regulated services, to designate which of its natural gas supplies were obtained to provide exempt services.

Ohio’s law requires natural gas companies to offer regulated services on a comparable basis to all similarly situated consumers and to offer on an unbundled basis a bundled service that includes both regulated and exempt services. The law prohibits them from limiting the availability of a regulated service based on the identity of the supplier or on the purchase of unregulated services. It establishes a state policy generally promoting choice in the supply of natural gas services; subjects transactions involving un-
regulated or exempt natural gas services to the Consumer Sales Practices Law. It authorizes the Consumers Counsel to investigate and enforce the law as to such transactions and to investigate practices that would give rise to a complaint before the PUCO. It also specifies that the taxable basis of a natural gas company under the state public utilities excise tax does not include amounts a company bills on behalf of other entities.

The Act requires the PUCO staff to conduct an audit or other investigation of a company having 15,000 or fewer customers in Ohio, and prohibits the PUCO from imposing the cost of the audit or investigation on the company. The Act limits the kinds of audits that a natural gas company having 15,000 or fewer customers in Ohio can be subject to concerning its operations under the purchased gas adjustment rule. It provides that the requirement to submit an annual long-term energy forecast report to the PUCO does not apply to a company that furnishes gas or natural gas to no more than 15,000 customers in Ohio, or to a company that furnishes electricity to no more than 15,000 customers in Ohio unless it owns or operates a major utility facility in the state.

Finally, Ohio provides exceptions regarding access to the public records of the PUCO and the Consumers’ Counsel.

Pennsylvania enacted HB 1331 in 1999 to allow for the collection of actual natural gas acquisition costs, adjusted on a monthly basis, as necessary, to provide for the supply choice for customers of natural gas utilities, and to restructure the natural gas utility industry.

According to a summary of the Act, major provisions include:

- Natural gas would become a price-deregulated commodity for home and small commercial and business users on November 1, 1999.
- Local natural gas distribution companies would be required to file restructuring plans with the public utilities commission.
- The mandatory assignment of pipeline capacity or commission approved use of alternate capacity is provided for in the Act.
- No utility customer will be required to shop for natural gas.
- A supplier of last resort and appropriate consumer protections under the regulations of the Commission will continue.
- Repeal of the gross receipts tax, as of January 1, 2000, insofar as yet applies to natural gas utilities, thereby providing for a 79 million dollar tax cut upon approval of deregulation legislation.
- Public utilities commission jurisdiction of natural gas distribution in cities which deliver natural gas service (currently only Philadelphia) will begin July 1, 2000, with competition to follow at a later date.
Notice for Withdrawing Groundwater

This Act:
• requires notice of groundwater withdrawals of 57,600 gallons or more in a 24-hour period to governing bodies of municipalities and water suppliers within the anticipated zone of contribution of the well;
• requires the commissioner of the department of environmental services to adopt rules regarding identification of impacts on surface waters, subsurface waters, water-related natural resources, and public, private, residential and farm wells of new groundwater withdrawals of 57,600 gallons or more in a 24-hour period;
• requires the commissioner of the department of environmental services to adopt rules regarding conservation management plans and approvals for new groundwater withdrawals of 57,600 gallons or more in a 24-hour period;
• requires a recommendation by the department of environmental services for exemptions for water supply-related structures by the public utilities commission from local planning and zoning requirements for public utilities; and
• requires approval by the department of environmental services for new groundwater withdrawals of 57,600 gallons or more in a 24-hour period.

Submitted as:
New Hampshire
SB 374
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This Act may be cited as “An Act to Require Notice for Withdrawing Groundwater.”

Section 2. [New Large Groundwater Withdrawals by Public Water Systems.]
(1) The [commissioner] of the [state department of environmental services] shall adopt rules relative to new groundwater withdrawals of [fifty-seven thousand six hundred (57,600)] gallons or more in any [twenty-four (24)] hour period by public water systems. Such rules shall include:
(a) Criteria and procedures for requiring public water systems to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the anticipated zone of contribution to the withdrawal;
(b) Requirements relative to conservation management plans which
demonstrate the need for the proposed withdrawals, to be submitted by the
public water system seeking approval for a withdrawal; and
(c) Procedures by which the [department] may deny permission for with-
drawals or order the applicant to provide a response policy, as provided by
[department] rules, for provision of alternative water supply at no initial
capital cost to persons whose wells are adversely affected by the proposed
withdrawal or order reduced withdrawals if hydrogeologic data indicate
that water-related resources are being adversely affected by the withdrawals.

Section 3. [New Large Groundwater Withdrawals by Non-public Water
Systems or Other Entities].
(1) The [commissioner] of the [state department of environmental ser-
vices] shall adopt rules relative to new groundwater withdrawals of [fifty-
seven thousand six hundred (57,600)] gallons or more in any [twenty-four
(24)] hour period. Such rules shall include:
(a) Criteria and procedures for requiring persons to identify and ad-
dress impacts of withdrawals on surface waters, subsurface waters, water-
related natural resources, and public, private, residential, and farm wells
within the anticipated zone of contribution to the withdrawal;
(b) Requirements relative to conservation management plans which
demonstrate the need for the proposed withdrawals, to be submitted by the
persons seeking approval for a withdrawal;
(c) Procedures by which the [department] may deny permission for with-
drawals or order the applicant to provide a response policy, as provided by
[department] rules, for provision of alternative water supply at no initial
capital cost to persons whose wells are adversely affected by the proposed
withdrawal or order reduced withdrawals if hydrogeologic data indicate
that water-related resources are being adversely affected by the withdrawals.

Section 3. [Notification of Large Groundwater Withdrawals.]
(1) Notwithstanding any provision of law to the contrary, before any
person may withdraw [fifty-seven thousand six hundred (57,600)] gallons
or more of water in any [twenty-four (24)] hour period from a well, such
person shall provide written notice to the governing body of the municipal-
ity in which the well is located and to the governing bodies of each municipi-
ality and each supplier of water within the anticipated zone of contribu-
tion to the well. This Section shall apply only to wells established after the
effective date of this Section.

Section 4. [Approval for Large Groundwater Withdrawals.]
(1) No person may withdraw [fifty-seven thousand six hundred (57,600)]
gallons or more of water in any [twenty-four (24)] hour period from a well
sited after the effective date of this Section without the prior approval of
the [department].
Notice for Withdrawing Groundwater

(2) Applications for approval of water withdrawals of [fifty-seven thousand six hundred (57,600)] gallons or more per day shall be filed with the [department] in a form approved by the [department]. A preliminary report submitted by a public water system pursuant to [department] rules shall be an application for purposes of this Section. Copies of the application shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the anticipated zone of contribution to the well.

(3) Following the submission of the application, the [department] shall hold a public hearing on the application in the municipality in which the proposed withdrawal is to be made upon the request of the governing body of any municipality or supplier of water within the anticipated zone of contribution, provided that such a hearing is requested within [fifteen (15)] days of receipt of the application.

(4) The [department] shall hold the public hearing within [thirty (30)] days after the request of the governing body of the municipality or the supplier of water made pursuant to paragraph 3. Notice of the hearing shall be made by the applicant and shall be published [twice] in [two (2)] different weeks, the last publication to be [seven (7) days] before the hearing, in [one (1)] newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in [two (2)] public places in the municipality.

(5) The applicant and the governing body of each municipality and each supplier of water within the anticipated zone of contribution to the well may submit comments to the [department] relative to the proposed withdrawal within [forty-five (45)] days after the public hearing in the municipality or, if no hearing is requested, within [forty-five (45)] days after the receipt of the application. If the comments relative to the application make recommendations to the [department], the [department] shall specifically consider such recommendations and shall issue written findings with respect to each issue raised that is contrary to the decision of the [department].

(6) Rehearings and appeals from a decision of the [department] under this Section shall be in accordance with [insert citation].

Section 5. [Local Land Use Planning; Emergency Temporary Zoning and Planning Ordinances; Utility Structures; Exemption; Environmental Services Recommendation Added.] A public utility which uses or proposes to use a structure which does not fit the criteria described in [insert citation], or fits those criteria and has been denied a waiver, or has been granted a waiver with conditions unacceptable to the utility when the waiver was applied for pursuant to [insert citation], may petition the [public utilities commission] to be exempted from the operation of any local ordinance, code, or regulation enacted under this Act. The [public utilities commission], fol-
following a public hearing, may grant such an exemption if it decides that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public and, if the purpose of the structure relates to water supply withdrawal, the exemption is recommended by the [department of environmental services].

Section 6. [Water Management and Protection; Groundwater Protection Act; Effect on Local Ordinances; Groundwater Withdrawals Excepted.] Nothing in this Act shall be deemed to pre-empt the authority of municipalities, under other statutes, to enact local ordinances or regulations affecting groundwater, other than groundwater withdrawals; provided, however, that requirements imposed under this Act shall be considered as minimum.

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

Section 8. [Repealer.] [Insert repealer clause.]

Section 9. [Effective Date.] [Insert effective date.]
Patient Freedom of Information

This Act requires disclosure of information about the practice and history of physicians and surgeons, osteopathic physicians and surgeons, physical therapists, dentists, podiatrists, chiropractors, optometric physicians, psychologists, physicians assistants, nurse practitioners and certified registered nurse anesthetists.

Submitted as:
Idaho
S 1376
Status: enacted into law as Chapter 33, Laws of 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Patient Freedom of Information.”

Section 2. [Declaration of Purpose.] In recognition of the importance of health care to residents of this state, it is the intent of the [Legislature] to provide patients with easily accessible profile information on specified licensed or registered health care professionals. By creating a database of individual profiles that the public may access, patients will be able to make more informed decisions about whom they wish to engage when in need of health care services. The database should include educational background and work history, disclosure of any final board disciplinary actions, criminal convictions, malpractice history, and other pertinent information as required by this Act. The following licensed and registered professional health care providers are subject to this Act: physicians and surgeons and osteopathic physicians and surgeons, physical therapists, dentists, podiatrists, chiropractors, optometric physicians, psychologists, physicians’ assistants, nurse practitioners, and certified registered nurse anesthetists.

Section 3. [Definitions.] As used in this Act, the following terms have the following meaning:
(1) “Board” means the professional licensing and registration board, respectively, for each of the named providers.
(2) “Patient” means all past, current or future consumers of health care services.
(3) “Provider(s)” means the following licensed or registered professional health care providers:
(a) podiatrists licensed pursuant to [insert citation];
(b) chiropractors licensed pursuant to [insert citation];
(c) dentists licensed pursuant to [insert citation];
(d) nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to [insert citation];
(e) optometric physicians licensed pursuant to [insert citation];
(f) physicians and surgeons and osteopathic physicians and surgeons, licensed pursuant to [insert citation];
(g) physicians’ assistants registered pursuant to [insert citation];
(h) physical therapists registered pursuant to [insert citation]; and
(i) psychologists licensed pursuant to [insert citation].

Section 4. [Patient Access to Provider Information.]

(1) Each person who applies for initial licensure or registration as a provider must, at the time of application, and each provider who applies for license or registration renewal must, in conjunction with the renewal of a license or registration, and under procedures which shall be adopted by the [board], and in addition to any other information that may be required from the applicant, furnish the following information to the [board]:
(a) names and addresses of medical/professional schools or other institutions of higher learning that provider attended, including any graduate education, and dates of graduation;
(b) speciality certifications that are recognized by the [board];
(c) appointments to faculty of any medical/professional school and indication whether provider has had a responsibility for graduate education within the most recent [ten (10)] years (optional);
(d) location and type of practice for the most recent [ten (10)] years;
(e) current location of provider’s primary practice setting, and if more than [one (1)] setting, the approximate percentage of time spent at each location;
(f) the hospital(s) that serves as the provider’s primary admitting facility and at which the provider has active clinical privileges in good standing;
(g) disclosure of whether the provider participates in Medicaid and Medicare programs (but not necessarily accepting new patients), or has ever been barred from participation in either program;
(h) disclosure of any translating services that may be available at the provider’s practice location(s) (optional);
(i) description of any criminal convictions for felonies or other crimes of moral turpitude within the most recent [ten (10)] years. For purposes of this subsection, a person shall be deemed convicted of a crime if he pled guilty or if he was found or adjudged guilty by a court of competent jurisdiction;
(j) description of any final board disciplinary actions within the most recent [ten (10)] years that are considered to be public in accordance with
(k) description of any final disciplinary actions by a [board] from any other state including, but not limited to, revocation or suspension of license, within the most recent [ten (10)] years;

(l) description of revocation or involuntary restriction of hospital privileges, or a reduction in credentialing for more than [one hundred eighty (180)] days, from any state, for reasons related to competence or character, that have been taken by a hospital's governing body or any other official of a hospital after procedural due process has been afforded; or the resignation from or nonrenewal of a medical staff membership, or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital, within the most recent [ten (10)] years;

(m) whether the provider carries professional malpractice insurance, and if not, has ever been denied malpractice insurance;

(n) disclosure of all malpractice court judgments and all malpractice arbitration awards in which a payment was awarded to a complaining party during the most recent [ten (10)] years. Pending malpractice claims shall not be disclosed by the [board] to patients; however, nothing herein shall be construed to prevent the [board] from investigating and disciplining a provider on the basis of pending malpractice claims.

(o) disclosure of settlements of professional malpractice claims within the most recent [five (5)] years of continuous practice;

(i) Providers need only disclose malpractice settlements if there have been [five (5)] or more settlements in the most recent [five (5)] years of continuous practice, of [fifty thousand (50,000)] dollars, or more, per settlement, or if there have been more than [ten (10)] settlements within the most recent [five (5)] years of continuous practice of any dollar amount.

(ii) Settlements that result solely in an adjustment to the fee charged for a provider's services shall not be disclosed pursuant to this Act.

(iii) Information concerning all settlements shall be accompanied by the following statement: “Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of a provider. A payment in settlement of a malpractice action or claim should not be construed as creating presumption that malpractice has occurred. Malpractice histories tend to vary by speciality. Some specialties are more likely than others to be the subject of litigation.”

(iv) Nothing herein shall be construed to limit or prevent the [board] from providing further explanatory information regarding settlements.

(p) percentage of ownership interest provider has in other health facilities, laboratories, equipment or therapy, except for ownership interest in the primary practice business, to which the provider's patients are, have been, or may be referred.

(2) Each profile submitted by a provider must include a statement, signed
(3) The [board] shall not be held liable for the correctness or completeness of the information contained in the provider profiles, and shall include a disclaimer statement on all released profiles, attesting to the self-reporting nature of the program, and that the information has not been verified by the board.

(4) The [board] shall, at the time of issuing a new license or registration, or in conjunction with license or registration renewal, collect and maintain the information required in this Act, as submitted by the provider, for the purpose of creating individual profiles on providers that shall be made available to the public as provided in this Act.

(5) No state law that would otherwise prohibit, limit, or penalize disclosure of information about a provider shall apply to disclosure of information required by this Act.

(6) If a provider fails to comply with the provisions of this Act with full and truthful disclosure of information to the [board] within the time specified by the [board], the [board] may:

(a) fine the provider up to [fifty (50)] dollars for each day that the provider is not in compliance with the provisions of this Act;

(b) take any other disciplinary action it deems appropriate, except the [board] may not revoke, suspend, refuse to issue or refuse to renew a provider's license or registration solely because the provider failed to comply with the provisions of this Act.

Section 5. [Information and Access to Provider Profile Information.] The [boards] and providers subject to the provisions of this Act shall inform the public that provider profile information is available and make the information available upon request. The [boards] and providers shall fully implement the provisions of this Act no later than January 1, 2000.

The [boards] and providers shall be responsible for promoting public awareness of and access to provider profiles as provided in this Act, which shall include the creation of printed materials and signs to be available in board and provider offices. Profile information on individual providers shall be available at the office(s) of the provider, and their respective board, in written form, upon request, and electronically where available, and shall be considered public information.

Section 6. [Severability.] [Insert severability clause.]

Section 7. [Repealer.] [Insert repealer clause.]

Section 8. [Effective Date.] [Insert effective date.]
Poultry Waste Management

This Act requires the state water control board to establish a regulatory program for poultry waste management. The program will require that growers with more than 200 animal units of poultry (about 20,000 chickens) obtain coverage under a general permit and have and implement nutrient management plans. The plans will limit poultry litter land application rates based on crop nutrient needs and crop nutrient uptake.

The legislation also requires commercial poultry growers to file plans with the state department of environmental quality detailing the ways in which they will provide assistance to the poultry growers with whom they contract to ensure that poultry waste is properly stored and managed and transported to areas where it can be used.

Submitted as:
Virginia
CH 1, Laws of 1998
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Poultry Waste Management.”

Section 2. [Definitions.]
“Commercial poultry processor” means any animal food manufacturer that contracts with poultry growers for the raising of poultry.
“Confined poultry feeding operation” means any confined animal feeding operation with [two hundred (200)] or more animal units of poultry.
“Nutrient management plan” means a plan developed or approved by the [department of conservation and recreation] that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.
“Poultry grower” means any person who owns or operates a confined poultry feeding operation.

Section 3. [Program Established.]
A. The [board] shall develop a regulatory program governing the storage, treatment and management of poultry waste, including dry litter, that:
1. Requires the development and implementation of nutrient man-
agement plans for any person owning or operating a confined poultry feeding operation;

2. Provides for waste tracking and accounting; and
3. Ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan.

B. The program shall include, at a minimum:

1. Provisions for permitting confined poultry feeding operations under a general permit; however, the [board] may require an individual permit upon determining that an operation is in violation of the program developed under this section;

2. Provisions requiring that:
   a. nitrogen application rates contained in nutrient management plans developed pursuant to this Section shall not exceed crop nutrient needs as determined by the [department of conservation and recreation]. The application of poultry waste shall be managed to minimize runoff, leaching, and volatilization losses, and reduce adverse water quality impacts from nitrogen;
   b. for all nutrient management plans developed pursuant to this Section after [insert date], phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal, as determined by the [department of conservation and recreation]. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus;
   c. by [insert date], the [department of conservation and recreation], in consultation with the [department of environmental quality], shall (i) complete an examination of current developments in scientific research and technology which shall include a review of land application of poultry waste, soil nutrient retention capacity, and water quality degradation and (ii) adopt and implement regulatory or other changes, if any, to its nutrient management plan program that it concludes are appropriate as a result of this examination; and
   d. for all nutrient management plans developed pursuant to this section after [insert date], and not prior thereto, phosphorus application rates shall conform to the provisions of subdivision 2 b. of this subsection and shall be in accordance with other regulatory criteria and standards, if any, amended or adopted by the [department of conservation and recreation] pursuant to subdivision 2 c of this subsection to protect water quality or to reduce soil concentrations of phosphorus or phosphorus loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus.

D. The program shall reflect [board] consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the [board] determines appropriate for the protection of state waters.
E. After [insert date], anyone owning or operating a confined poultry feeding operation shall operate in compliance with the provisions of this Act and any regulations promulgated thereunder.

F. Any person violating this Act shall be subject to [insert citation] or a civil penalty shall not to exceed [two thousand five hundred (2,500)] dollars.

G. On or before [insert date], or prior to commencing operations, each commercial poultry processor operating in the state shall file with the [board] a plan under which the processor, either directly or under contract with a third party, shall:

1. provide technical assistance to the poultry growers with whom it contracts on the proper management and storage of poultry waste in accordance with best management practices;
2. provide education programs on poultry waste nutrient management for the poultry growers with whom it contracts as well as for poultry litter brokers and persons utilizing poultry waste;
3. provide a toll-free hotline and advertising program to assist poultry growers with excess amounts of poultry waste to make available such waste to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes;
4. participate in the development of a poultry waste transportation and alternative use equal matching grant program between the state and commercial poultry processors to (i) facilitate the transportation of excess poultry waste in the possession of poultry growers with whom it contracts to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes and (ii) encourage alternative uses to land application of poultry waste;
5. conduct research on the reduction of phosphorus in poultry waste, innovative best management practices for poultry waste, water quality issues concerning poultry waste, or alternative uses of poultry waste; and
6. conduct research on and consider implementation of nutrient reduction strategies in the formulation of feed. Such nutrient reduction strategies may include the addition of phytase or other feed additives or modifications to reduce nutrients in poultry waste.

H. Any amendments to the plan required by subsection G shall be filed with the [board] before they are implemented. After [insert date], each commercial poultry processor shall implement its plan and any amendments thereto. Each commercial poultry processor shall report annually to the [board] on the activities it has undertaken pursuant to its plan and any amendments thereto. Failure to comply with the provisions of this Section or to implement and follow a filed plan or any amendments thereto shall constitute a violation of this Act.

I. The [state water control board] shall adopt the regulations required by this Act no later than [insert date]. The [board] shall impanel an advisory group to assist in the development of the program in accordance with
its public participation guidelines. Membership of the group shall be balanced among organizations and people who express an interest in the program and shall include a minimum of [three (3)] representatives of poultry growers, [three (3)] representatives of commercial poultry processors, and [three (3)] representatives of environmental organizations.

J. The [director of the department of conservation and recreation], with the consultation of the [director of the department of environmental quality] and the [commissioner of agriculture and consumer services], shall, by [insert date], recommend to the [governor], the [Senate committee on agriculture conservation and natural resources], the [House committee on conservation and natural resources], and the [House committee on the Chesaapeake and its tributaries] ways that the state should assist poultry growers and processors to improve the economic feasibility of transporting and selling poultry waste, and pursue alternative uses for poultry waste, including the establishment of the equal matching grant program referred to in Section 3, subdivision G 4 of this Act.

K. On or before [insert date], the [director of the department of environmental quality], in consultation with the [director of the department of conservation and recreation] and the [commissioner of agriculture and consumer services], shall report to the [governor] and the [General Assembly] on the effectiveness of the plans implemented by commercial poultry processors pursuant to this Act in assisting poultry growers with whom they contract with the proper management, storage, disposal, and transportation of poultry waste, including excess poultry waste, for the protection of water quality.

Section 4. [Severability.] [Insert severability clause.]

Section 5. [Repealer.] [Insert repealer clause.]

Section 6. [Effective Date.] [Insert effective date.]
Private Property Ombudsman

This Act establishes a private property ombudsman within the state department of natural resources. The primary purpose of this ombudsman is to arbitrate disputes over private property “takings” and government entities. The law sets the criteria for such arbitration and directs the ombudsman to provide information and advice to the public about “takings” law and procedures.

Submitted as:
Utah
HB 388
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish a Private Property Ombudsman.”

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

(1) “Agency” means a department, division, agency, commission, board, council, committee, authority, political subdivision, or other instrumentality of the state or of a political subdivision of the state whether one or more.

(2) “Business” means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease, or rental of personal or real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(3) “Displaced person” means any person who, after the effective date of this Act, moves from real property, or who moves his personal property from real property, or moves or discontinues his business or moves his dwelling as a result of the acquisition of the real property, in whole or in part, or as a result of a written order of the acquiring agency to vacate real property for a program of purchase undertaken by an agency or as a direct result of
activities or a program of rehabilitation of buildings conducted pursuant to a federal or state assisted program.

(4) “Farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

(5) “Nonprofit organization” means all corporations, societies, and associations whose object is not pecuniary profit, but is to promote the general interest and welfare of the members, whether temporal, social, or spiritual.

(6) “Person” means any individual, partnership, corporation, or association.

Section 3. [Dispute Resolution.]

If the agency and the private property owner or displaced person disagree on any issue arising out of this Act, the private property owner may submit the dispute for arbitration according to the procedures and requirements of Section 4 of this Act.

Section 4. [Private Property Ombudsman - Powers - Arbitration Procedures.]

(1) As used in this section:

(a) “Constitutional taking” or “taking” means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by:

(i) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

(ii) [insert citation in the state constitution].

(b) “Takings law” means the provisions of the federal and state constitutions, the case law interpreting those provisions, and any relevant statutory provisions that require a governmental unit to compensate a private property owner for a constitutional taking.

(2) (a) There is created a [private property ombudsman] in the [department of natural resources].

(b) The [executive director] of the [department of natural resources] shall hire a person with background or expertise in takings law to fill the position.

(c) The person hired to fill the position is an exempt employee.

(3) The [private property ombudsman] shall:

(a) develop and maintain expertise in and understanding of takings law;

(b) assist state agencies and local governments in developing the guidelines required by this Act and [insert citation in state constitution];

(c) at the request of a state agency or local government, assist the state agency or local government in analyzing actions with potential takings implications;
(d) advise private property owners who have a legitimate potential or actual takings claim against a state or local government entity;
(e) identify state or local government actions that have potential takings implications and, if appropriate, advise those state or local government entities about those implications;
(f) provide information to private citizens, civic groups, government entities, and other interested parties about takings law and their rights and responsibilities under it; and
(g) if appropriate and requested to do so by the private property owner, mediate or conduct or arrange arbitration for disputes between private property owners and government entities that involve:
   (i) takings issues law;
   (ii) actions for eminent domain under [insert citation]; or
   (iii) disputes about relocation assistance under [insert citation].

(4) (a) (i) In conducting or arranging for arbitration, the [private property ombudsman] shall follow the procedures and requirements of [insert citation] of the [state Arbitration Act].
(ii) In applying [insert citation], the arbitrator and parties shall treat the matter as if:
   (A) it were ordered to arbitration by a court; and
   (B) the [private property ombudsman] or other arbitrator chosen as provided for in this section was appointed as arbitrator by the court.
(iii) For the purpose of arbitrations conducted under this section, if the dispute to be arbitrated is not already the subject of legal action, the [district court] having jurisdiction over the county where the private property involved in the dispute is located shall act as the court referred to in [insert citation] of the [state Arbitration Act].
(iv) The award from an arbitration conducted under this Act may not be vacated under the provisions of [insert citation], of the [state Arbitration Act], because of the lack of an arbitration agreement between the parties.
(b) The [private property ombudsman] shall decline to arbitrate or to appoint an arbitrator when, in the opinion of the [private property ombudsman]:
   (i) the issues are not ripe for review;
   (ii) assuming the alleged facts are true, no cause of action exists under United States or [insert citation] of state law;
   (iii) all issues raised are beyond the scope of the [ombudsman]'s statutory duty to review; or
   (iv) the arbitration is otherwise not appropriate.
(c) (i) The [private property ombudsman] shall appoint another person to arbitrate the dispute when:
   (A) either party objects to the [private property ombudsman] serving as the arbitrator and agrees to pay for the services of another arbi-
(B) the [private property ombudsman] declines to arbitrate the dispute and [one (1)] or both parties are willing to pay for the services of another arbitrator.

(ii) In appointing a person other than himself to arbitrate a dispute, the [private property ombudsman] shall appoint an arbitrator who is:

(A) agreeable to both parties; or

(B) agreeable to the party paying for the arbitrator and the [private property ombudsman].

(iii) The [private property ombudsman] may, on his own initiative or upon agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

(d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law, regulations, and rules of this state and the United States in conducting the arbitration and in determining the award.

(e) Arbitration by or through the [private property ombudsman] is not necessary before bringing legal action to adjudicate any claim.

(f) The lack of arbitration by or through the [private property ombudsman] does not constitute, and may not be interpreted as constituting, a failure to exhaust available administrative remedies or as a bar to bringing legal action.

(g) Arbitration under this Section is not subject to [insert citation] of the [state Administrative Procedures Act], nor [insert citation] of the [state Alternative Dispute Resolution Act].

(h) Within [thirty (30)] days after the arbitrator issues the final award, any party may submit the award or any issue upon which the award is based to the [district court] for de novo review.

(5) The [private property ombudsman] may not be compelled to testify in a civil action filed with regard to the subject matter of any review or arbitration by the [ombudsman].

(6) (a) Except as provided in Subsection (6)(b), evidence of a review by the [private property ombudsman] and his opinions, writings, findings, and determinations are not admissible as evidence in an action subsequently brought in court and dealing with the same dispute.

(b) Subsection (6)(a) does not apply to:

(i) actions brought under authority of [insert citation], [small claims court];

(ii) a judicial confirmation or review of the arbitration itself as authorized in [insert citation] of the [state Arbitration Act]; or

(iii) actions for de novo review of an arbitration award or issue brought under the authority of [Subsection (4)(h).]

(7) The [private property ombudsman] may not represent private property owners, state agencies, or local governments in court or in adjudicative proceedings under [insert citation] of the [state Administrative Procedures Act].
Section 5. [Appeals of Decisions.]

(1) Each political subdivision shall enact an ordinance that:
   (a) establishes a procedure for review of actions that may have con-
       stitutional taking issues; and
   (b) meets the requirements of this Section.

(2) (a) (i) Any owner of private property whose interest in the property
       is subject to a physical taking or exaction by a political subdivision may
       appeal the political subdivision’s decision within [thirty (30)] days after the
       decision is made.

       (ii) The legislative body of the political subdivision, or an indi-
           vidual or body designated by them, shall hear and approve or reject the
           appeal within [fourteen (14)] days after it is submitted.

       (iii) If the legislative body of the political subdivision fails to hear
           and decide the appeal within [fourteen (14)] days, the decision is presumed
           to be approved.

   (b) The private property owner need not file the appeal authorized
       by this section before bringing an action in any court to adjudicate claims
       that are eligible for appeal.

   (c) A property owner’s failure to appeal the action of a political subdi-
       vision does not constitute, and may not be interpreted as constituting, a
       failure to exhaust available administrative remedies or as a bar to bringing
       legal action.

Section 6. [Occupancy of Premises Pending Action – Deposit Paid Into
Court – Procedure for Payment of Compensation.]

(1) At any time after the commencement of suit, and after giving notice
    to the defendant as provided in the [state rules of civil procedure], the plaintiff
    may file a motion with the court requesting an order permitting the plain-
    tiff to:

    (a) occupy the premises sought to be condemned pending the action,
        including appeal; and
    
    (b) to do whatever work on the premises that is required.

(2) The court shall:

    (a) take proof by affidavit or otherwise of:

       (i) the value of the premises sought to be condemned;
       
       (ii) the damages that will accrue from the condemnation; and

       (iii) the reasons for requiring a speedy occupation; and

    (b) grant or refuse the motion according to the equity of the case and
       the relative damages that may accrue to the parties.

(3) (a) If the motion is granted, the court shall enter its order requiring
    that the plaintiff, as a condition precedent to occupancy, file with the clerk
    of the court a sum equal to the condemning authority’s appraised valuation
of the property sought to be condemned.

(b) That amount shall be for the purposes of the motion only and is not admissible in evidence on final hearing.

(4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the plaintiff.

(b) The court may issue orders governing encumbrances, liens, rents, assessments, insurance, and other charges, if any, as required.

(5) (a) The rights of just compensation for the land taken as authorized by this section or damaged as a result of that taking vests in the parties entitled to it.

(b) That compensation shall be ascertained and awarded as provided in [insert citation].

(c) (i) Except as provided in subsection (5)(c)(ii), judgment shall include, as part of the just compensation awarded, interest at the rate of [eight percent] per annum on the amount finally awarded as value of the property and damages, from the date of taking actual possession of the property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the date of judgment.

(ii) The court may not award interest on the amount of the judgment that was paid into court.

(6) (a) Upon the application of the parties in interest, the court shall order that the money deposited in the court be paid before judgment as an advance on the just compensation to be awarded in the proceeding.

(b) This advance payment to a defendant shall be considered to be an abandonment by the defendant of all defenses except a claim for greater compensation.

(c) If the compensation finally awarded exceeds the advance, the court shall enter judgment against the plaintiff for the amount of the deficiency.

(d) If the advance received by the defendant is greater than the amount finally awarded, the court shall enter judgment against the defendant for the amount of the excess.

(7) Arbitration of a dispute under Section 7 or Section 4 of this Act is not a bar or cause to stay the action for occupancy of premises authorized by this section.

Section 7. [Dispute Resolution.]

(1) In any dispute between a condemner and a private property owner arising out of this Act, the private property owner may submit the dispute for arbitration to the [private property ombudsman] under Section 4.

(2) An action submitted to the private property ombudsman under authority of this section does not bar or stay any action for occupancy of premises authorized by Section 6 of this Act.

(3) (a) The private property owner or displaced person may request that
the mediator or arbitrator authorize an additional appraisal.

(b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:

(i) have an additional appraisal of the property prepared by an independent appraiser; and

(ii) require the agency to pay the costs of the first additional appraisal.

Section 8. [Severability.] [Insert severability clause.]

Section 9. [Repealer.] [Insert repealer clause.]

Section 10. [Effective Date.] [Insert effective date.]
Safe School Helpline (Note)

Parents, teachers and school administrators are concerned about violence in America's schools. “Safe School Helplines” or “tip lines” represent new tools that schools are using to prevent violence. At least three states have established these “helplines”, Georgia, Ohio and Oklahoma.

Generally, a Safe School Helpline is a toll free, 24-hour phone number that people can call to report threats against students, teachers or other school personnel or property. Transcripts of the calls are relayed to a designated contact in the affected school district within twenty-four hours of the call. In the event of a life-threatening or premises destruction situation or any other situation that needs immediate attention after school hours, the contact person will be notified regardless of the time of day.

Georgia began operating its Toll-free School Safety Hotline in August 1998. The hotline is housed at Georgia’s department of education. Georgia used posters, information packets and wallet-sized cards to publicize the new program.

The Ohio Legislature appropriated 1.8 million dollars in the education budget in 1999 to establish safe school helplines throughout the state. The Legislature directed the Ohio department of education to prescribe the minimum program components and develop guidelines for participation in the program. It required the department of education to solicit bids to implement the hotlines, which must be available to all students attending public middle-schools, junior high schools, and high schools, and at a cost not to exceed $1.80 per student per year.

The Ohio department of education must notify in writing the superintendent of schools for each of the public school districts in Ohio that the Safe Schools Helpline services will be available to students attending their schools and encourage their involvement and participation.

The local school superintendent must inform school students, staff, and parents that the program is available for their use and distribute education materials about the program when it becomes operational.

Oklahoma’s department of education describes Oklahoma’s SAFECALL line as “a toll-free confidential hotline for students, parents, teachers, neighbors and anyone concerned about the safety of their local school.” Once a call is made to SAFECALL, a caller is given a case number, which allows the caller to call back in three school days to learn what happened as a result of their call. Callers are asked to name their school, the town where they reside and specific information about any potential danger. The call is then immediately transcribed and sent to local officials, who receive prior notification that a SAFECALL report is being faxed to them. If the call is an emergency, such as a bomb threat or threat of bodily injury, school officials and local law enforcement authorities are informed within five minutes by telephone of the potential danger.
State Immunization Registry

This Act directs the state health department to establish and maintain a state immunization registry. The registry shall be a single repository of accurate, complete and current immunization records to aid, coordinate, and promote effective and cost-efficient disease prevention and control efforts.

Submitted as:
New Hampshire
SB 379
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Establishing an Immunization Registry.”

Section 2. [Statement of Purpose.]
I. In authorizing the establishment of an immunization registry the [General Court] intends to:
(a) ensure that the registrant, or the registrant’s parent or guardian if the registrant is a minor, can more easily and thoroughly keep track of immunization histories when they change health care providers or provide immunization information;
(b) provide health care providers who have permission to access the immunization registry with an enhanced ability to determine relevant immunization history;
(c) provide schools and child care agencies which have permission to access the immunization registry with accurate information concerning immunizations;
(d) provide the state with greatly improved accuracy in its records concerning immunization rates among the state’s communities; and
(e) improve the state’s ability to respond to outbreaks of communicable diseases in a manner which reduces the risk of unnecessary additional immunizations.

II. The [General Court] directs the [department of health and human services] to ensure that only the minimal amount of medical information necessary to implement an immunization registry under this Act be disclosed, and that the system be designed to protect the confidentiality of personal information to the greatest degree consistent with implementing the registry.
Section 3. [Immunization Registry.]

I. The [department] shall establish and maintain a state immunization registry. The registry shall be a single repository of accurate, complete and current immunization records to aid, coordinate, and promote effective and cost-efficient disease prevention and control efforts.

II. No patient, or the patient's parent or guardian if the patient is a minor, shall be required to participate in the immunization registry.

III. Physicians, nurses, and other health care providers may report an immunization to the immunization registry unless the patient, or the patient's parent or guardian if the patient is a minor, refuses to allow reporting of this information.

IV. Access to the information in the registry shall be limited to primary care physicians, nurses, other appropriate health care providers as determined by the commissioner, schools, child care agencies, and government health agencies or researchers demonstrating a legitimate need for such information as determined by the [commissioner].

V. The information contained in the registry shall be used for the following purposes:

(a) to ensure that registrants receive all recommended immunizations in a timely manner by providing access to the registrant's immunization record;

(b) to improve immunization rates by facilitating notice to registrants of overdue or upcoming immunizations; and

(c) to control communicable diseases by assisting in the identification of individuals who require immediate immunization in the event of a disease outbreak.

VI. The [commissioner] shall adopt rules under [insert citation] concerning the following:

(a) the establishment and maintenance of the immunization registry;

(b) the methods for submitting and content of reports of immunizations;

(c) procedures for the patient, or the patient's parent or guardian if the patient is a minor, to decline to participate in the registry;

(d) procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to review and correct information contained in the registry;

(e) procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to withdraw consent for participation at any time and to remove information from the registry;

(f) limits on and methods of access to the registry by those authorized to gain access under paragraph IV of this Section; and

(g) procedures for managed care organizations to obtain summary statistics of immunization information on managed care organization mem-
bers from the immunization registry.

VII. Any person reporting, receiving, or disclosing information to or from the immunization registry as authorized by this Section or by any rule adopted pursuant to this Section shall not be liable for civil damages of any kind connected with such submission or disclosure of immunization information.

VIII. Nothing in this Section is intended to affect the obligations of people under [insert citation] to have their children properly immunized.

IX. Nothing in this Section shall preclude the right of the patient, or the patient’s parent or guardian if the patient is a minor, to claim exemption from immunization as defined in [insert citation]; nor shall anything in this Section require such patient to be included in the registry if the patient, or the patient’s parent or guardian if the patient is a minor, objects thereto on any grounds, including but not limited to, that such registry conflicts with the religious beliefs of the patient, or the patient’s parent or guardian if the patient is a minor.

X. No health care provider shall discriminate in any way against a person solely because that person elects not to participate in the immunization registry.

1 Section 5. [Severability.] [Insert severability clause.]

1 Section 6. [Repealer.] [Insert repealer clause.]

1 Section 7. [Effective Date.] [Insert effective date.]
Street Gangs

This Act makes it unlawful to participate in criminal street gang activity or cause, encourage or otherwise coerce someone to participate in a street gang. The law prohibits threatening someone who is helping a gang member withdraw from the gang. It establishes procedures for seizing property that is acquired from gang activity and enables people who are injured by gangs to sue for three times the actual damages sustained and punitive damages.

Submitted as:
Georgia
HB 1391
Status: enacted into law in 1998.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the "Street Gang Terrorism and Prevention Act."

Section 2. [Legislative Findings.]
(a) The [General Assembly] finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Act to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The [General Assembly] recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The [General Assembly], however, further finds that this state is in a crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The [General Assembly] finds that there are criminal street gangs operating in this state and that the number of gang related murders is increasing. It is the intent of the [General Assembly] in enacting this Act to seek the eradication of criminal activity by street gangs by focusing upon
patterns of criminal gang activity and upon the organized nature of street
gangs which together are the chief source of terror created by street gangs.
(d) The [General Assembly] further finds that an effective means of punish-
ing and deterring the criminal activities of street gangs is through for-
feiture of the profits, proceeds, and instrumentalities acquired, accumu-
lated, or used by street gangs.

Section 3. [Definitions.] As used in this Act:
(1) "Criminal street gang" means any organization, association, or
group of [three (3)] or more people associated in fact, whether formal or
informal which engages in a pattern of criminal gang activity as defined in
subsection (2) of this Section. The existence of such organization, associa-
tion, or group of people associated in fact may be established by evidence of
a common name or common identifying signs, symbols, tattoos, graffiti, or
attire or other distinguishing characteristics.
(2) "Pattern of criminal gang activity" means the commission, at-
tempted commission, conspiracy to commit, or solicitation, coercion, or in-
timidation of another person to commit at least [two (2)] of the following
offenses, provided that at least [one (1)] of these offenses occurred after
[insert date], and the last of such offenses occurred within [three (3)] years,
excluding any periods of imprisonment, of prior criminal gang activity:
(A) Any offense defined as racketeering activity by [insert citation];
(B) Any offense relating to stalking as defined in [insert citation];
(C) Any offense defined as rape in [insert citation], aggravated
sodomy as defined in [insert citation], statutory rape as defined in [insert
citation], or aggravated sexual battery as defined in [insert citation];
(D) Any offense relating to escape and other offenses related to
confinement as defined in [insert citation];
(E) Any offense relating to dangerous instrumentalities and prac-
tices as defined in [insert citation];
(F) Any offense relating to the security of state or county correc-
tional facilities as defined in [insert citation]; and
(G) Any offense relating to aiding or encouraging a child to es-
cape from custody as defined in [insert citation].

Section 3. [Pattern of Criminal Gang Activity.] 
(a) It shall be unlawful for any person employed by or associated with a
criminal street gang to conduct or participate in such criminal street gang
through a pattern of criminal gang activity.
(b) It shall be unlawful for any person to acquire or maintain, directly or
indirectly, through a pattern of criminal gang activity or proceeds derived
therefrom any interest in or control of any real or personal property of any
nature, including money.
(c) It shall be unlawful for any person who occupies a position of orga-
nizer, supervisory position, or any other position of management with re-
gard to a criminal street gang to engage in, directly or indirectly, or con-
spire to engage in a pattern of criminal gang activity.

(d) It shall be unlawful for any person to cause, encourage, solicit, or
coerce another to participate in a criminal street gang.

(e) It shall be unlawful for any person to communicate, directly or indi-
rectly, with another any threat of injury or damage to the person or prop-
erty of the other person or to any associate or relative of the other person
with the intent to deter such person from assisting a member or associate
of a criminal street gang to withdraw from such criminal street gang.

(f) It shall be unlawful for any person to communicate, directly or indi-
rectly, with another any threat of injury or damage to the person or prop-
erty of the other person or to any associate or relative of the other person
with the intent to punish or retaliate against such person for having with-
drawn from a criminal street gang.

(g) (1) Any person who violates subsection (a) or (b) of this Section shall,
in addition to any other penalty imposed by law, be punished by imprison-
ment for not less than [three (3)] nor more than [fifteen (15)] years or by a
fine of not less than [five thousand (5,000)] dollars nor more than [ten thou-
sand (10,000)] dollars, or both.

(2) Any person who violates subsection (c) of this Section may, in
addition to any other penalty provided by law, be punished by imprison-
ment for an additional [ten (10)] years which shall be served consecutively
to any other sentence imposed on such person by law.

(3) Any person who violates subsection (d), (e), or (f) of this Section
shall, in addition to any other penalty provided by law, be punished by
imprisonment for not less than [one (1)] nor more than [ten (10)] years.

(h) Any crime committed in violation of this Section shall be considered
a separate offense.

Section 4. [Contraband.]
(a) The following are declared to be contraband and no person shall
have a property interest in them:

(1) All property which is directly or indirectly used or intended for
use in any manner to facilitate a violation of this Act; and

(2) Any property constituting or derived from gross profits or other
proceeds obtained from a violation of this Act.

(b) In any action under this Section, the court may enter such restrain-
ing orders or take other appropriate action, including acceptance of perfor-

(c) Within [sixty (60)] days of the date of the seizure of contraband pur-

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property which is subject to forfeiture under this Section the applicable provisions of [insert citation]. Property which is forfeited pursuant to this Section shall be disposed of as provided in [insert citation] and the proceeds of such disposition shall be paid to the [criminal justice coordinating council] for use in funding gang prevention projects.

Section 5. [Local Ordinances Relating to Gangs.] Nothing in this Act shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence which are consistent with this Act. Where local laws duplicate or supplement the provisions of this Act, this Act shall be construed as providing alternative remedies and not as preempting the field.

Section 6. [Nuisances.]
(a) Any real property which is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by [insert citation], relating to nuisances.
(b) An action to abate a nuisance pursuant to this Section may be brought by the district attorney, solicitor-general, prosecuting attorney of a municipal court or city, or county attorney in any superior, state, or municipal court.
(c) Any person who is injured by reason of criminal gang activity shall have a cause of action for [three (3)] times the actual damages sustained and, where appropriate, punitive damages; provided, however, that no cause of action shall arise under this subsection as a result of an otherwise legitimate commercial transaction between parties to a contract or agreement for the sale of lawful goods or property or the sale of securities regulated by [insert citation] or by the federal Securities and Exchange Commission. Such person shall also recover attorney’s fees in the trial and appellate court and costs of investigation and litigation reasonably incurred. All averments of a cause of action under this subsection shall be stated with particularity. No judgment shall be awarded unless the finder of fact determines that the action is consistent with the intent of the [General Assembly] as set forth in Section 2 of this Act.
(d) The state, any political subdivision thereof, or any person aggrieved by a pattern of gang activity may bring an action to enjoin violations of this Act in the same manner as provided in [insert citation].

Section 7. [Estoppel.] A conviction of an offense defined as criminal gang activity shall estop the defendant in any subsequent civil action or proceeding as to matters proved in the criminal proceeding.

Section 8. [Relating to Bailable Offenses.] If probable cause is shown
that the offense charged is in furtherance of a pattern of criminal gang
activity as defined by Section 3 of this Act, the court shall require increased
bail and shall include as a condition of bail or pretrial release that the
defendant shall not have contact of any kind or character with any other
member or associate of a criminal street gang and that the defendant shall
not have contact of any kind or character with the victim or any member of
the victim's family or household.

Section 9. [Education Facilities.] Each educational facility which em-
ploys campus policemen, including institutions of the state university sys-
tem, shall report to the [Georgia Bureau of Investigation] and to the local
law enforcement agency incidents of criminal gang activity as defined by
Section 3 of this Act which occur on or adjacent to the campus of such edu-
cational facility.

Section 10. [Policies, Procedures and Training about Gang Activities.]
(a) The [General Assembly] recognizes that criminal street gangs have
succeeded at times in maintaining their structure, organization, and disci-
pline in penal institutions and have continued to conduct criminal activi-
ties while incarcerated. Therefore, the [General Assembly] requests and
encourages state and local officials with responsibility for the operation of
adult and juvenile penal institutions and related facilities to develop poli-
cies and procedures which will identify members of criminal street gangs
and, where necessary, to separate members and associates of the same crimi-
nal street gang in order that such gang members cannot maintain the gang's
structure, organization, and discipline and will have a more difficult time
in conducting criminal activities while incarcerated in this state.
(b) The [General Assembly] [directs/recommends] that the [Georgia Peace
Officer standards and training council] establish as part of the curriculum
for basic and in-service training courses for all peace officers training on
organized criminal activity and criminal street gangs.

Section 11. [Severability.] [Insert severability clause.]

Section 12. [Repealer.] [Insert repealer clause.]

Section 13. [Effective Date.] [Insert effective date.]
Study on Sales and Use Tax Compact and Agreement

This Act is based on Utah law. It allows the state tax commission to conduct preliminary negotiations with other states to develop uniform sales and tax use collection procedures for certain businesses and study ways to simply the administration of the sales and use tax. Specific items for study include:

- Sales and use tax license forms;
- Sales and use tax return filing requirements;
- Sales and use tax payment requirements, including payments by electronic funds transfer;
- Procedures for issuing sales and use tax refunds;
- Tax definitions;
- Auditing; and
- Exemptions.

The Northwest Regional Sales Tax Pilot Project between Utah, Idaho and Washington is one example of efforts that this Act is designed to foster. The project seeks to simplify sales tax collection and reduce the cost of compliance while preserving state and local revenues. The participating states hope this project will become a model for state and national tax simplification.

Submitted as:
Utah
SB 178 (enrolled version)
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Require A Study of A Sales and Use Tax Compact.”

Section 2. [Legislative Findings.]
(1) The [Legislature] finds that it is advisable to:
(a) study sales and use tax simplification; and
(b) develop policies, procedures, and requirements to reduce the burdens of administering and complying with sales and use tax laws.
(2) The [Utah State Tax Commission] may enter into preliminary negotiations regarding a compact:
(a) with [one (1)] or more states; and
(b) that has [one (1)] or more of the following objectives:
   (i) developing uniformity in the sales and use tax systems of the
   states;
   (ii) simplifying the sales and use tax systems of the states;
   (iii) creating a sales and use tax system that allows taxpayers
        engaging in interstate sales and use transactions to comply more efficiently
        with the sales and use tax laws of each state;
   (iv) reducing sales and use tax administration costs for taxpayers;
   (v) enhancing the efficiency of state tax administration while
        maintaining sales and use tax revenues; or
   (vi) developing a model for sales and use tax simplification.

(3) (a) The [state tax commission] may study [one (1)] or more of the
     following issues:
     (i) developing uniformity between this state and [one (1)] or more
         other states for purposes of:
         (A) sales and use tax license forms;
         (B) sales and use tax return filing requirements;
         (C) sales and use tax payment requirements, including payments
             by electronic funds transfer;
         (D) procedures for issuing sales and use tax refunds;
         (E) sales and use tax exemption certificate documentation
             requirements;
         (F) sales and use tax definitions; and
         (G) audit procedures;
     (ii) developing an electronic sales and use tax filing system;
     (iii) developing a geographic information system to verify the sales
         and use tax rates imposed by different jurisdictions;
     (iv) using uniform product codes to identify taxable or exempt
         sales and use transactions;
     (v) whether to develop [one (1)] sales and use tax rate that applies to
         all taxable sales and use transactions in the state; or
     (vi) any other issue related to sales and use tax simplification.

(b) If the [state tax commission] studies an issue under Subsection
    (3)(a), the [state tax commission] shall present:
    (i) an initial report on the issue to the [revenue and taxation interim
        committee] beginning on or before the [May 1999 interim] meeting;
    and
    (ii) additional reports to the [revenue and taxation interim commis-
        sion] as the [revenue and taxation interim committee] requests.

(4) The [tax review commission] shall:
    (a) study sales and use tax simplification during the [1999 interim];
    and
    (b) make reports to the [revenue and taxation interim committee] as
Study on Sales and Use Tax Compact and Agreement

the [revenue and taxation interim committee] requests.

(5) If the [revenue and taxation interim committee] drafts legislation during the [1999 interim] that authorizes the [state tax commission] to enter into a compact with [one (1)] or more states, the legislation shall include:

(a) procedures and criteria for entering into, amending, and terminating the compact; and

(b) a requirement that the [state tax commission] makes reports to the [Legislature].

Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Timely Payment of Health Insurance Claims


This Act is based on Louisiana's law. This draft establishes standards for payment of claims by health insurance issuers, including insurers, health maintenance organizations (HMOs), and state employees group benefits program. The Act:

• requires payment of an electronic claim within 25 days of furnishing a correctly completed uniform claim to the issuer.
• defines a “uniform claim form” as a form prescribed by rule by the state department of insurance;
• requires payment of non-electronic claims submitted by health care providers for covered benefits within 45 days or 60 days, depending upon the date of submission of a correctly completed uniform claim form and requires payment of claims due an insured or not otherwise payable to the provider within 30 days of such submission;
• requires health insurance issuers to have appropriate handling procedures approved by the state department of insurance for the acceptance of both electronic and non-electronic claims, including a process for documenting the date of their receipt and reviewing them for accuracy and acceptability within a reasonable period of time;
• requires that health insurance issuers pay a late payment adjustment of 1 percent of the amount due to any claimant not paid within the time frames specified above. It also provides that for any period of more than 25 days following such time frames, an additional late payment adjustment of 1 percent of the unpaid balance due shall be paid for each month or partial month that the claim remains unpaid.
• allows health insurance issuers to use a standard 30-day payment standard for compliance by providing written notice to the commissioner of insurance;
• provides that issuers which limit the time that a provider has to submit a claim shall be limited to the same period of time following its payment to review or audit the claim;
• provides for standards for coordination of benefits requirements by health insurance issuers. Further authorizes the commissioner of insurance to adopt regulations on the order of benefits payments when a person is covered by two or more health plans;
• authorizes the commissioner of insurance, after notice and hearing, to
address violations by issuing cease and desist orders, imposing fines, or suspending, or revoking a health insurance issuer’s certificate of authority. It also provides for penalties for violation of cease and desist orders and provides that hearings are subject to the provisions of Title 49, relative to adjudicatory hearings within the state division of administrative law;

- requires that notice of any intentional violation of proposed law by the State Employees Group Benefits Program be submitted to the governor and the chairmen of the House Appropriations Committee and the Senate Finance Committee; and
- authorizes the commissioner to adopt regulations necessary to implement proposed law.

Submitted as:
Louisiana
HB 2052 (re-engrossed version)
Status: enacted as Act 1017 of 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Ensure Timely Payment of Health Insurance Claims.”

Section 2. [Definitions.] As used in this Act the following terms shall be defined as follows:

“Commissioner” means the [commissioner of insurance].

“Department” means the [department of insurance].

“Electronic claim” means the transmission of data for purposes of payment of covered medical services in an electronic data format specified by a health insurance issuer and approved by the department.

“Health insurance coverage” means benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer. However, “health insurance coverage” shall not include benefits due under [insert citation].

“Health insurance issuer” means an insurance company, including a health maintenance organization as defined and licensed pursuant to [insert citation] unless pre-empted as an employee benefit plan under the Employee Retirement Income Security Act of 1974. For purposes of this Act, “health insurance issuer” shall include the [State Employees Group Benefits Program].
Timely Payment of Health Insurance Claims

Section 3. [Nonelectronic Claims Submission.]

A. (1) Any claim submitted by a health care provider within [forty-five (45)] days of the date of service or discharge under a contract for provision of covered benefits with a health insurance issuer shall be paid not more than [forty-five (45)] days from the date upon which a correctly completed uniform claim form is furnished, unless just and reasonable grounds such as would put a reasonable and prudent businessman on his guard exist.

(2) Any claim submitted by a health care provider under a contract for provision of covered benefits with a health insurance issuer more than [forty-five (45)] days after the date of service or resubmitted because the original claim was incomplete shall be paid not more than [sixty (60)] days from the date upon which a correctly completed uniform claim form is furnished, unless just and reasonable grounds such as would put a reasonable and prudent businessman on his guard exist.

(3) Any other claim for health insurance coverage benefits, whether submitted for payment by an insured or by the health care provider rendering covered medical services that are not otherwise payable to the provider under a medical service contract with the health insurance issuer, shall be paid not more than [thirty (30)] days from the date upon which a correctly completed uniform claim form is furnished to the health insurance issuer, unless just and reasonable grounds such as would put a reasonable and prudent businessman on his guard exist.

B. Health insurance issuers shall have appropriate handling procedures approved by the [department] for the acceptance of nonelectric claim submissions. Such procedures shall include:

(1) A process for documenting the date of actual receipt of nonelectronic claims.

(2) A process for reviewing nonelectronic claims for accuracy and acceptability.

Such procedures shall assure that all such claims received are reviewed for correct completion within a reasonable period of time. For any claim that is found to be incomplete or otherwise not payable, the health insurance issuer shall provide written notice of the reasons that the claim cannot be processed for payment within [two (2)] business days from the date of reviewing such claim for completion.

C. Health insurance issuers shall establish appropriate procedures approved by the [department] to assure that any claimant who is not paid within the time frames specified in this Section receives a late payment adjustment equal to [one (1)] percent of the amount due. For any period greater than [twenty-five (25)] days following the time frames specified in this Section, the health insurance issuer shall pay an additional late pay-
section 4. [Electronic Claim Submission Standards.]

A. Any claim for payment of covered medical services that is permitted to a health insurance issuer as an electronic claim shall be paid not more than [twenty-five (25)] days from the date upon which a correctly completed uniform claim form is electronically transmitted to the health insurance issuer, unless just and reasonable grounds such as would put a reasonable and prudent businessman on his guard exist.

B. Health insurance issuers shall have appropriate handling procedures approved by the department for the acceptance of nonelectronic claim submissions. Such procedures shall include:

(1) A process for electronically dating the time and date of actual receipt of nonelectronic claims.

(2) A process for reviewing electronic review of transmitted claims for accuracy and acceptability. Such procedures shall assure all such claims received are reviewed for correct completion within a reasonable period of time. For any claim that is found to be incomplete or otherwise not payable, the health insurance issuer shall provide written notice of the reasons that the claim cannot be processed for payment within [two (2)] business days from the date of reviewing such claim for completion.

(3) A process for reporting all claims rejected during electronic transmission and the reason for the rejection.

C. Health insurance issuers shall establish appropriate procedures approved by the [department] to assure that any claimant who is not paid within the time frame specified in this Section receives a late payment adjustment equal to [one (1)] percent of the amount due. For any period greater than [twenty-five (25)] days following the time frames specified in this Section, the health insurance issuer shall pay an additional late payment adjustment equal to [one (1)] percent of the unpaid balance due for each month or partial month that such claim remains unpaid.

Section 5. [Thirty-Day Payment Standard Limitations on Claim Filing and Audits.]

A. A health insurance issuer may elect to utilize a [thirty (30)] day payment standard for compliance with Sections 4 and 5 of this Act by providing written notice to the [commissioner]. Such notice shall be in a form prescribed by the [commissioner] and shall remain in effect until withdrawn.
in writing as may be required by the [commissioner]. Any health insurance
issuer electing to utilize a [thirty (30)] day payment standard shall con-
tinue to meet all other requirements of this Act.

B. Health insurance issuers that limit the period of time that a pre-
ferred provider or entity under contract for delivery of covered benefits has
to submit claims for payment under Sections 4 or 5 of this Act shall have
the same limited period of time following payment of such claims to per-
form any review or audit for purposes of reconsidering the validity of such
claims.

Section 6. [Regulations.] The [commissioner] may, after notice and hear-
ing, promulgate such rules and regulations as may be necessary or proper
to carry out the provisions of this Act. Such rules and regulations shall be
promulgated and adopted in accordance with the state [Administrative
Procedure Act].

Section 7. [Coordination of Benefits.]
A. Coordination of benefit requirements adopted by health insurance
issuers shall, at a minimum, adhere to the following requirements:
(1) No plan shall contain a provision that its benefits are “always
excess” or “always secondary” except in accordance with rules adopted by
the [commissioner] pursuant to this Act.
(2) A coordination of benefit provision may not be used that permits
a plan to reduce its benefits on the basis of any of the following:
(a) that another plan exists and the covered person did not enroll
in the plan.
(b) that a person is or could have been covered under another
plan, except with respect to Part B of Medicare; or
(c) that a person has elected an option under another plan pro-
viding a lower level of benefits than another option that could have been
elected.

B. The [commissioner] shall be authorized to adopt such reasonable regu-
lations as necessary for determining the order of benefit payments when a
person is covered by [two (2)] or more plans of health insurance coverage.

Section 8. [Violations; Cease and Desist Orders; Penalties.]
A. Whenever the [commissioner] has reason to believe that any health
insurance issuer is not in full compliance with the requirements of this Act,
he shall notify such issuer and, after notice and opportunity for hearing
pursuant to [insert citation], the [commissioner] shall issue and cause to be
served an order requiring the health insurance issuer to cease and desist
from any violation and order any one or more of the following:
(1) Payment of a monetary penalty of not more than [one thousand
(1,000)] dollars for each and every act or violation, not to exceed an aggre-
gate penalty of [one hundred thousand (100,000)] dollars. However, if the
health insurance issuer knew or reasonably should have known that it was
in violation of this Act, the penalty shall be not more than [twenty-five
thousand (25,000)] dollars for each and every act or violation, but not to
exceed an aggregate penalty of [two hundred fifty thousand (250,000)] in
any [six (6)] month period.

(2) Suspension or revocation of the certificate of authority of the health
insurance issuer to operate in this state if it knew or reasonably should
have known it was in violation of this Act. However, notice of any such
violation by the [State Employees Group Benefits Program] shall be sub-
mitted to the [governor] and the [chairmen] of the [House committee on
appropriations] and the [Senate committee on finance].

B. Any health insurance issuer who violates a cease and desist order
issued by the [commissioner] pursuant to this Section while such order is
in effect shall, after notice and opportunity for hearing, be subject at the
discretion of the [commissioner] to any one or more of the following:
(1) A monetary penalty of not more than [twenty-five thousand
(25,000)] dollars for each and every act or violation, not to exceed an aggre-
gate of [two hundred fifty thousand (250,000)] dollars.
(2) Suspension or revocation of the certificate of authority of the health
insurance issuer to operate in this state. However, notice of any such viola-
tion by the [State Employees Group Benefits Program] shall be submitted
to the [governor] and the [chairmen] of the [House committee on appropria-
tions] and the [Senate committee on finance].

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

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

Section 11. [Effective Date.] [Insert effective date.]
Unsolicited Bulk Electronic Mail

The purpose of this Act is to curb a practice known as “spamming,” the sending of unsolicited electronic mail to unsuspecting recipients.

This Act is based on legislation that amends Virginia’s long-arm statute to establish personal jurisdiction over any “person” who transmits or causes the transmission of unsolicited bulk electronic mail to or through an “electronic mail service provider’s” “computer network” located in Virginia, as those terms are defined in the Act.

The Act:

• expands the definitions of “computer services” and “without authority” and provides a new definition for “electronic mail service provider” in the state Computer Crimes Act;
• makes it the crime of computer trespass to falsify or forge e-mail message transmission information in connection with unsolicited bulk e-mail and to sell, give, distribute, or possess software whose principal purpose is to facilitate unsolicited bulk e-mail;
• provides that electronic mail service providers shall not be liable for actions they take to prevent unsolicited bulk e-mail;
• provides civil relief to an injured person, other than an electronic mail service provider, for actual damages or the lesser of $10 for each unsolicited bulk e-mail message or $25,000 per day and states that the injured person shall not have a cause of action against an electronic mail service provider which merely transmits the e-mail message;
• provides civil relief to an injured electronic mail service provider for actual damages or the greater of $10 for each unsolicited bulk e-mail message or $25,000 per day; and
• cross-references the state long-arm statute in the state Computer Crimes Act to ensure the establishment of personal jurisdiction in state court.

It is reported that Virginia and California are the first states to criminalize spamming. The “State Internet Note” in the 1999 SSL volume mentions a Washington law to establish a task force to study electronic mail issues and a Nevada law that allows e-mail recipients to collect civil damages and attorney’s fees if an unsolicited e-mail does not contain certain disclosures.

Submitted as:
Virginia
H 1668
Status: enacted as Chapter 904 of 1999.

Suggested Legislation

(Title, enacting clause, etc.)
Section 1. [Short Title.] This Act may be cited as “An Act to Curb Unsolicited Bulk Electronic Mail.”

Section 2. [When Personal Jurisdiction Over a Person May be Exercised.] Using a computer or computer network located in the state shall constitute an act in the state. For purposes of this subsection, “use” and “computer network” shall have the same meanings as those in Section 3 of this Act.

When jurisdiction over a person is based solely upon this Act, only a cause of action arising from acts enumerated in this Act may be asserted against him; however, nothing contained in this Act shall limit, restrict or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to the provisions of any other statute.

Section 3. [Definitions.]

“Computer” means an electronic, magnetic, optical, hydraulic or organic device or group of devices which, pursuant to a computer program, to human instruction, or to permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. The term “computer” includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.

“Computer data” means any representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared and is intended to be processed, is being processed, or has been processed in a computer or computer network.

“Computer data” may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards, or stored internally in the memory of the computer.

“Computer network” means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities.

“Computer operation” means arithmetic, logical, monitoring, storage or retrieval functions and any combination thereof, and includes, but is not limited to, communication with, storage of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A “computer operation” for a particular computer may also be any function for which that computer was generally designed.

“Computer program” means an ordered set of data representing coded
instructions or statements that, when executed by a computer, causes the
computer to perform one or more computer operations.

“Computer services” means computer time or services, including data
processing services, Internet services, electronic mail services, electronic
message services, or information or data stored in connection therewith.

“Computer software” means a set of computer programs, procedures and
associated documentation concerned with computer data or with the op-
eration of a computer, computer program, or computer network.

“Electronic mail service provider” means any person who is an interme-
diary in sending or receiving electronic mail and provides to end-users of
electronic mail services the ability to send or receive electronic mail.

“Financial instrument” includes, but is not limited to, any check, draft,
warrant, money order, note, certificate of deposit, letter of credit, bill of ex-
change, credit or debit card, transaction authorization mechanism, mar-
ketable security, or any computerized representation thereof.

“Owner” means an owner or lessee of a computer or a computer network
or an owner, lessee, or licensee of computer data, computer programs, or
computer software.

“Person” shall include any individual, partnership, association, corpora-
tion or joint venture.

“Property” shall include:
1. real property;
2. computers and computer networks.
3. Financial instruments, computer data, computer programs, com-
puter software and all other personal property regardless of whether they
are:
   a. tangible or intangible;
   b. in a format readable by humans or by a computer;
   c. in transit between computers or within a computer network or
   between any devices which comprise a computer; or
   d. located on any paper or in any device on which it is stored by a
computer or by a human; and
4. computer services.

Section 4. [Computer Use and Authority.]
(A) A person “uses” a computer or computer network when they:
1. attempt to cause or causes a computer or computer network to
perform or to stop performing computer operations;
2. attempt to cause or causes the withholding or denial of the use of
a computer, computer network, computer program, computer data or com-
puter software to another user; or
3. attempt to cause or causes another person to put false information
into a computer.

(B) A person is “without authority” when they have no right or permis-
sion of the owner to use a computer, or, he uses a computer in a manner
exceeding such right or permission or they use a computer, a computer
network, or the computer services of an electronic mail service provider to
transmit unsolicited bulk electronic mail in contravention of the authority
granted by or in violation of the policies set by the electronic mail service
provider. Transmission of electronic mail from an organization to its mem-
bers shall not be deemed to be unsolicited bulk electronic mail.

Section 5. [Computer Trespass; Penalty.]

(A) It shall be unlawful for any person to use a computer or computer
network without authority and with the intent to:

1. temporarily or permanently remove, halt, or otherwise disable any
computer data, computer programs, or computer software from a computer
or computer network;

2. cause a computer to malfunction, regardless of how long the mal-
function persists;

3. alter or erase any computer data, computer programs, or com-
puter software;

4. effect the creation or alteration of a financial instrument or of an
electronic transfer of funds;

5. cause physical injury to the property of another; or

6. make or cause to be made an unauthorized copy, in any form, in-
cluding, but not limited to, any printed or electronic form of computer data,
computer programs, or computer software residing in, communicated by, or
produced by a computer or computer network; or

7. falsify or forge electronic mail transmission information or other
routing information in any manner in connection with the transmission of
unsolicited bulk electronic mail through or into the computer network of an
electronic mail service provider or its subscribers.

(B) It shall be unlawful for any person knowingly to sell, give or other-
wise distribute or possess with the intent to sell, give or distribute software
which is:

1. primarily designed or produced for the purpose of facilitating or
enabling the falsification of electronic mail transmission information or other
routing information;

2. has only limited commercially significant purpose or use other
than to facilitate or enable the falsification of electronic mail transmission
information or other routing information; or

3. is marketed by that person or another acting in concert with that
person with that person's knowledge for use in facilitating or enabling the
falsification of electronic mail transmission information or other routing
information.

(C) Any person who violates this Section shall be guilty of computer
trespass, which offense shall be punishable as a [Class 3 misdemeanor]. If
there is damage to the property of another valued at [two thousand five hundred (2,500)] dollars or more caused by such person’s reckless disregard for the consequences of his act in violation of this Section, the offense shall be punished as a [Class 1 misdemeanor]. If there is damage to the property of another valued at [two thousand five hundred (2,500) dollars or more caused by such person’s malicious act in violation of this Section, the offense shall be punishable as a [Class 6 felony].

(D) Nothing in this Section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by a state-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this Act.

Section 6. [Civil Relief; Damages.]

(A) Any person whose property or person is injured by reason of a violation of any provision of this Act may sue therefor and recover for any damages sustained, and the costs of suit. Without limiting the generality of the term, “damages” shall include loss of profits.

(B) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys’ fees and costs, and may elect, in lieu of actual damages, to recover the lesser of [ten (10)] dollars for each and every unsolicited bulk electronic mail message transmitted in violation of this Act, or [twenty-five thousand (25,000)] dollars per day. The injured person shall not have a cause of action against the electronic mail service provider which merely transmits the unsolicited bulk electronic mail over its computer network.

(C) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorneys’ fees and costs, and may elect, in lieu of actual damages, to recover the greater of [ten (10)] dollars for each and every unsolicited bulk electronic mail message transmitted in violation of this Act, or [twenty-five thousand (25,000)] dollars per day.

(D) At the request of any party to an action brought pursuant to this Section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

(E) The provisions of this Act shall not be construed to limit any person’s right to pursue any additional civil remedy otherwise allowed by law.

(F) A civil action under this Section must be commenced before expira-
Unsolicited Bulk Electronic Mail

In actions alleging injury arising from the transmission of unsolicited bulk electronic mail, personal jurisdiction may be exercised pursuant to Section 2 of this Act.

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

1. Section 8. [Repealer.] [Insert repealer clause.]

1. Section 9. [Effective Date.] [Insert effective date.]
Water Quality Management

This Act is based on Maryland legislation. Maryland agriculture department staff believe the most significant features of Maryland's law are provisions that require nutrient management plans for virtually all the farms in the state. This Act contains those provisions, establishes an Animal Waste Technology Fund and requires commercial contract feed to contain specified ingredients by a specified date and to a specified extent. It addresses poultry, commercial feed and commercial fertilizer. It does not contain all the tax provisions that are in Maryland's law.

CSG environmental affairs staff believe Maryland and Pennsylvania are two of the first states to attempt to legislate controls on farms in order to reduce nutrient levels in area streams, rivers or bays. Pennsylvania passed its Nutrient Management Act in 1993, but the law apparently did not take effect until 1998.

Submitted as:
Maryland
CH 324, Laws of 1998
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This Act may be cited as “The Water Quality Improvement Act.”

Section 2. [Animal Waste Technology Fund: Definitions.]
(A) In this Act, the following words mean:
(B) “Animal waste technology project” means the research, development, implementation, or market development of technology that is intended to:
(1) reduce the amount of nutrients in animal waste;
(2) alter the composition of animal waste;
(3) develop alternative waste management strategies; or
(4) use animal waste in a production process.
(C) “Fund” means the Animal Waste Technology Fund.
(D) “Program” means the organizational unit in the department that administers the Animal Waste Technology Fund.

Section 3. [Animal Waste Technology Fund: Purpose]
The purpose of the Animal Waste Technology Fund is to provide financial assistance to people and businesses that conduct research or develop...
technologies that reduce the amount of nutrients in animal waste, alter the
composition of animal waste, develop alternative animal waste manage-
ment strategies, or use animal waste in a production process. The goal of
the fund is to encourage the development and implementation of economi-
cally feasible technologies that help protect the public health and the envi-
ronment by reducing the amount of nutrients from animal waste that are
released into state waters.

Section 4. [Animal Waste Technology Fund: Creation.]
(A) There is hereby created an Animal Waste Technology Fund in [de-
partment].
(B) The fund is a special continuing, nonlapsing fund.
(C) The fund may consist of:
(1) money appropriated by the state;
(2) money made available through federal programs or private
contributions;
(3) income from investments that the [state treasurer] makes from
money in the fund;
(4) repayments of principal and interest from loans made from the
fund;
(5) income from equity investments that the [department] makes
from the fund;
(6) proceeds from the sale, disposition, lease, or rental by the [de-
partment] of collateral related to any financing provided by the [depart-
ment] under this Act;
(7) application or other fees in connection with the processing of re-
quests for assistance from the fund; and
(8) any other money made available to the fund.
(D) The program may use money in the fund to:
(1) provide financial assistance to defray the costs of animal waste
technology projects; and
(2) pay expenses for administrative, actuarial, legal, and technical
services associated with operating the fund.

Section 5. [Financial Assistance from Animal Waste Technology Fund: General.]
Financial assistance provided from the fund may be:
(1) Used only to pay the costs of carrying out an animal waste tech-
nology project; and
(2) In the form of:
   (i) a grant;
   (ii) a loan;
   (iii) a loan guarantee;
   (iv) a loan that is convertible in whole or in part to a grant on the
satisfaction of specified conditions; or
(v) an equity investment.

Section 6. [Financial Assistance from Animal Waste Technology Fund: Eligibility.]
(A) To be eligible for assistance from the fund, an animal waste technology project must have strong potential for:
(1) improving the public health and the environment;
(2) preserving the viability of the agricultural industry; and
(3) having a positive economic development impact in the state.
(B) If the amount of financial assistance requested exceeds the amount of money available in the fund, preference shall be given to the animal waste technology projects that demonstrate the greatest potential for:
(1) improving the public health and the environment;
(2) preserving the viability of the agricultural industry; and
(3) having a positive economic development impact in the state.

Section 7. [Financial Assistance from Animal Waste Technology Fund: Terms and Conditions.] The program may impose terms and conditions on financial assistance provided from the fund.

Section 8. [Animal Waste Technology Fund: Fund Holdings and Accounting.]
(A) The [state treasurer] shall hold the fund and the [state comptroller] shall account for the fund.
(B) Any investment earnings of the fund shall be paid into the fund.

Section 9. [Nutrient Management Plans: Cost Sharing and Compliance.]
(A) In this Section, “gross income” means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.
(B) This Section does not apply to:
(1) an agricultural operation with less than [two thousand five hundred (2,500)] dollars in gross income; or
(2) a livestock operation with less than [eight (8)] animal units as defined in [insert citation].
(C) The [governor] shall provide sufficient funding in each fiscal year’s budget to:
(1) assist in the development of nutrient management plans;
(2) meet the technical assistance and evaluation requirements of this Section;
(3) meet the state’s requirements for the implementation of the Poultry Litter Transportation Pilot Project under Section 9 of this Act; and
(4) provide state assistance under the state [agricultural water quality...]

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ity cost share program] in the [department].

(D)(1) State cost sharing may be made available to farmers to help off-
set the costs of having a nutrient management plan prepared by a certified
nutrient management consultant who is not employed by the federal, state,
or a local government.

(2) State cost share funds are to be made available for eligible costs
up to [fifty (50)] percent per acre, not to exceed [three (3)] dollars per acre.

(3) The [secretary of agriculture] shall adopt regulations authorizing
the disbursement of state cost sharing funds under this subsection.

(E) (1) By [insert date], a person who, in operating a farm, uses chemical
fertilizer, shall have a nutrient management plan for nitrogen and phos-
phorus that meets the requirements of this Act.

(ii) By [insert date], a person who, in operating a farm, uses sludge
or animal manure, shall have a nutrient management plan for nitrogen.

(ii) By [insert date], a person who, in operating a farm, uses sludge
or animal manure, shall have a nutrient management plan for nitrogen
and phosphorus.

(F) (1) By [insert date], a person who in operating a farm, uses chemical
fertilizer, shall comply with a nutrient management plan for nitrogen and
phosphorus that meets the requirements of this Act.

(ii) By [insert date], a person who, in operating a farm, uses sludge
or animal manure, shall comply with a nutrient management plan for ni-
trogen that meets the requirements of this Act.

(ii) By [insert date], a person who, in operating a farm, uses sludge
or animal manure, shall comply with a nutrient management plan for ni-
trogen and phosphorus that meets the requirements of this Act.

(G) A person may meet the requirements of subsection (E) of this Sec-
tion by requesting, at least [sixty (60)] days before the applicable date set
forth in subsection (E) of this Section, the development of a nutrient man-
agement plan by a certified nutrient management consultant.

(H) Notwithstanding the provisions of subsections (E) and (F) of this
Section, if a person receives state funds for the development of a nutrient
management plan for chemical fertilizer or a nutrient management plan
for sludge and animal manure based on nitrogen, the person shall imple-
ment the plan upon completion of the development of the plan.

(I) (1) If a person violates the provisions of subsection (F) of this Sec-
tion, the [department] shall notify the person that the person is in violation
of the requirement to have a nutrient management plan.

(2) After a reasonable period of time, if the person fails to have a
nutrient management plan, the person is subject to an administrative pen-
alty not to exceed [two hundred fifty (250)] dollars.

(J) (1) A person who violates any provision of subsection (F) of this Sec-
tion or of any rule, regulation, or order adopted or issued under this Section
is subject to
(i) for a first violation, a warning; an
(ii) for a second or subsequent violation, after an opportunity for
a hearing which may be waived in writing by the person accused of a viola-
tion, an administrative penalty that may be imposed by the [department of
agriculture].

(2) The penalty imposed on a person under paragraph (1)(ii) of this sub-
section shall be:
(i) up to [one hundred (100)] dollars for each violation, but not
exceeding [two thousand (2,000)] dollars per farmer or operator per year;
and
(ii) assessed with consideration given to:
1. the willfulness of the violation, the extent to which the ex-
istence of the violation was known to but uncorrected by the violator, and
the extent to which the violator exercised reasonable care;
2. any actual harm to the environment or to human health or
the natural resources of this state;
3. the available technology and economic reasonableness of
controlling, reducing, or eliminating the violation; and
4. the extent to which the current violation is part of a recur-
rent pattern of the same or similar type of violation committed by the violator.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, each
day a violation occurs is a separate violation under this subsection.
(ii) Daily penalties do not continue to accrue as long as the farmer
takes reasonable steps to correct the violation.

(4) Any penalty imposed under this subsection is payable to the [state
agricultural water quality cost share program] within the [department].

(K) If a person violates any provision of this Section, the [department] may:
(1) require repayment of cost share funds for the project that is in
violation; or
(2) deny or restrict future cost share payments.

(L) The [department] shall determine compliance with the provisions of
this Section.
Water Quality Management

tors including:
(1) levels of bioavailable nitrogen and phosphorus in the soil;
(2) levels of bioavailable nitrogen and phosphorus in all fertilizer
materials to be applied;
(3) the amount of nitrogen and phosphorus necessary to achieve the
expected crop yield for the land that is the subject of the nutrient manage-
ment plan, as determined by:
   (i) the field’s actual yield record and soil productivity for that
crop; or
   (ii) if information concerning actual yield record and soil produc-
tivity for a crop is unavailable, relevant information concerning similar fields
and soil;
   (iii) soil erodibility and nutrient retention capacity;
   (iv) the best reasonable scientific methods accepted by the [de-
   partment] and the [University of Maryland cooperative extension service];
and
   (vi) existing best management practices.
   (E) Each nutrient management plan shall provide flexibility for man-
agement decisions that may be required by conditions beyond the control of
the farmer.
   (F) (1) Each nutrient management plan shall be filed with the [department]:
      (i) when it is developed; and
      (ii) each time it is updated.
      (2) Submission of the plan shall include a grant by the property owner
or operator to the [department] of a right of entry on the property to evalu-
ate compliance with the plan as long as the [department]:
         (i) enters the property in daylight hours at a reasonable time
that allows the property owner or operator the opportunity to be present;
and
         (ii) conducts its evaluation in a manner that minimizes any in-
convenience to the farmer.
   (G) The department shall maintain a copy of each nutrient manage-
ment plan for [three (3)] years in a manner that protects the identity of the
individual for whom the nutrient management plan was prepared.
   (H) A person may not prepare a nutrient management plan unless the
person is certified or licensed by the state.
   (I) An individual may apply to the [department] for certification as a
certified nutrient management consultant.
   (J) A person engaged in the business of providing a nutrient manage-
ment plan provided under this Section shall hold an annual license from
the [department].
   (K) The department may impose a penalty not exceeding [two hundred
fifty (250)] dollars for a violation of the provisions of this Section.

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Section 11. [Nutrient Management Advisory Committee]

(A) (1) The [department] shall establish a nutrient management advisory committee. The [secretary] shall appoint to the committee representatives of the agricultural community, the environmental community, [industry] the commercial lawn care, biosolids, and agricultural fertilizer industries, academia, and appropriate government units. The [secretary] also shall appoint to the committee a representative of county government from a list submitted by the state association of counties. The [president of the Senate] shall appoint to the committee [one (1)] senator and the [speaker of the House] shall appoint to the committee [one (1)] delegate.

(2)(i) The nutrient management advisory committee shall report to the [governor] and the [General Assembly] by [insert date] of each year on the implementation of the requirements of this Act.

(ii) The report required under subparagraph (i) of this paragraph shall include information regarding:
   1. the level of participation in the nutrient management plan program;
   2. additional resources that may be needed to meet the requirements of this Act;
   3. the effectiveness of nutrient application education programs;
   and
   4. the effectiveness of the Poultry Litter Transportation Pilot Project set forth in this Act and the potential economic impact on farmers if the pilot project is terminated.

(B) In consultation with the nutrient management advisory committee, the [department] shall by regulation:

(1) prescribe the criteria, form, and content for certified nutrient management plans applicable to licensees and certificate holders;

(2) establish continuing education requirements for certified nutrient management consultants and persons receiving vouchers of completion; [and]

(3) adopt guidelines and requirements for licensees, on record keeping and on reporting requirements to the department on nutrient management plans.

Section 13. [Reporting Requirements: Nutrient Management Plans.]

On or before [insert date] of each year, the [department of agriculture] shall report to the [governor], and the [General Assembly], on the farm acreage covered by nutrient management plans and the implementation and evaluation of those plans.

Section 14. [Targeted Funding for Nutrient Management Plans.]

The [governor] is requested to take the steps necessary to target funding received by the state under the conservation reserve enhancement pro-
gram of the U.S. Department of Agriculture to farms, located in watersheds that contribute to water bodies and basin segments listed as impaired by nutrients by the state under § 303 of the Federal Clean Water Act, that implement nutrient management plans in accordance with this Act.

Section 15. [Nutrient Application Education Program.]

(A) This Section does not apply to:

(1) a person who applies nutrients to [ten (10)] acres or less of land each year; or

(2) a person who applies nutrients for hire.

(B) A person who engages in the activity of applying nutrients to land which the person owns or manages and which is used for agricultural purposes shall complete an educational program in nutrient application every [three (3)] years.

(C) (1) The [secretary], in consultation with the nutrient management advisory committee under this Act, shall create or approve educational programs under this Section.

(2) The nutrient application educational programs are to be offered at sites distributed throughout the state.

(3) The [department] shall issue to a participant upon completion of an education program under this Section, a voucher of completion.

(4) The [department] shall maintain a registry of persons who have received vouchers of completion in a nutrient application educational program under this Section.

Section 16. [Documentation of Certified Nutrient Consultant.]

(A) A person who applies nutrients for hire to land used for agricultural purposes shall be a certified nutrient management consultant or work under a certified nutrient management consultant pursuant to this Act.

(B) A person who applies nutrients for hire to land used for agricultural purposes, who is not a certified nutrient management consultant, shall make available documentation, in the form of a work order, bill of lading, or similar document, to the landowner or land manager that the person is working under a certified nutrient management consultant.

(C) The [secretary] shall adopt regulations to implement this Section.

Section 17. [Nutrient Management Consultants: Certification.]

(A) To apply for certification as a nutrient management consultant, an applicant shall:

(1) submit to the [department] an application on the form the [department] requires; and

(2) pay to the [department] the certification fee stated in Section 28 of this Act.

(B) The [department] shall certify any individual who:
Section 17. [Nutrient Management Licensing and Certification

(A) An individual or a corporation may be licensed as a

(1) meets the requirements of this subtitle;
(2) meets the [department's] educational requirements, including a
program on the proper application of nutrients;
(3) passes a [department] approved examination; and
(4) (i) is employed by a person licensed under this subtitle; or
(ii) holds a license as required by this subtitle.

(C) To apply for a license an applicant shall:
(1) submit to the [department] an application on the form the [de-
partment] requires; and
(2) pay to the [department] the applicable license fee stated in Sec-
tion 28 of this Act.

(D) The [department] shall license a person who meets the requirements
of this Section.

(E) A certificate or license is issued for [one (1)] year unless the certifi-
cate or license is renewed as provided by this subtitle.

(F) The [department] shall renew the certificate or license of any appli-
cant for an additional [one (1)] year term if the applicant:
(1) submits a renewal application on the form that the [department]
requires;
(2) pays to the [department] the applicable fee stated in Section 28 of
this Act;
(3) complies with applicable continuing education requirements; [and]
(4) complies with applicable recordkeeping and reporting require-
ments; and
(5) otherwise is entitled to be certified or licensed.

Section 18. [Tax Credits for Converting Agricultural Production to a
Nutrient Management Plan.]

(A) Subject to the provisions of this Section, an individual or a corpora-
tion may claim a credit against the state income tax for a taxable year in
the amount equal to [fifty (50)] percent of the certified additional commer-
cial fertilizer costs necessary to convert agricultural production to a nutri-
ment management plan.

(B) (1) The credit allowed under this Section may only be claimed by an
individual or a corporation for up to [three (3)] consecutive taxable years.
(2) The credit allowed under this Section may not exceed [four thou-
sand five hundred (4,500)] dollars in any taxable year.
(3) (i) If the credit allowed under this Section in any taxable year
exceeds the total tax otherwise payable by the individual or corporation for
that taxable year, the individual or corporation may apply the excess as a
credit for succeeding taxable years until the earlier of:
1. the full amount of the excess is used; or
2. the expiration of the 5th succeeding taxable year.
(ii) any excess credit carried forward under this paragraph does

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not apply to the credit limit specified in paragraph (2) of this subsection.

(C) The credit allowed under this Section may not be earned for any credit year beginning on or after [insert date].

(D)(1) To qualify for the credit under this Section, an individual or a corporation must receive a statement from the [department of agriculture] certifying:

(i) that the individual or corporation has submitted a nutrient management plan to the department in;

(ii) that the additional commercial fertilizer costs are necessary to convert agricultural production to comply with a nutrient management plan; and

(iii) the amount of the credit that the individual or corporation is eligible to take for the taxable year.

(2) an individual or a corporation must file proof of certification by the department of agriculture in a manner prescribed by the comptroller.

(E) Subject to the provisions of this subsection, the [state department of agriculture] shall adopt regulations necessary to carry out the provisions of this Section.

Section 19. [Poultry.]

(A) (1) In this Section the following words have the meanings indicated.

(2) “Commercial poultry producer” means any entity that contracts with a farmer to raise poultry for the producer on property owned or leased by the farmer.

(3) “Pilot project” means the Poultry Litter Transportation Pilot project established by this Act.

(B) It is the intent of the [General Assembly] that:

(1) for a [four (4)] year period the state and the commercial poultry producers shall facilitate the prompt transportation of poultry litter from farms in all areas of the state that experience phosphorus over enrichment;

(2) a pilot project shall encourage voluntary participation to achieve the removal of poultry litter produced by at least [twenty (20)] percent of the poultry in the [four (4)] [lower eastern shore counties] in the state; and

(3) a pilot project shall be implemented in conjunction with the poultry litter matching service set forth in this Act.

(C) The purpose of the pilot project is to establish a cost-share matching program to assist in the transportation of poultry litter from farms over a period of [four (4)] years:

(1) to be used on land with soil having the capacity to hold additional phosphorus; or

(2) to be used in environmentally acceptable ways other than land application.

(D) The state shall provide funding for the pilot project by matching the amount of funds contributed by the commercial poultry producer industry
for eligible costs associated with the transportation and handling of poultry
litter. The state share may not exceed [ten (10)] dollars per ton.

(E) The [department of agriculture] shall adopt regulations authorizing
the disbursement of cost-share matching funds consistent with the pur-
poses of the pilot program.

(F) The [department of agriculture] shall provide the assistance neces-
sary to ensure that poultry litter is tested in accordance with departmental
procedures before transportation of the litter occurs.

Section 20. [Poultry Litter Matching Service.]

(A) There is created a poultry litter matching service to be administered
by [department].

(B) The purpose of the service is to develop transfer programs and mar-
keting techniques to promote and facilitate the transfer of poultry litter.

(C) The service shall be implemented in conjunction with the Poultry
Litter Transportation Pilot Project set forth in this Act.

(E) The [governor] shall include in the annual budget bill sufficient funds
to carry out this Section.

Section 21. [Reporting Requirements: Poultry Litter Transportation.]
The [secretary of agriculture] is requested to submit a report to the
[General Assembly], by [insert date] on the Poultry Litter Transportation
Pilot Project established under this Act. The report shall include informa-
tion on the participation levels in the pilot project, the amount of litter
transported, and the amount of funds raised and distributed. The report
shall also evaluate the potential economic impact on farmers if the pilot
project is terminated.

Section 22. [Commercial Fertilizer.] For purposes of this Act, “Commer-
cial fertilizer” means any substance containing a recognized plant nutrient
used for its plant nutrient content and designed for use or claimed to have
value in promoting plant growth, except unmanipulated animal and veg-
etable manure, marl, lime, wood ashes, and gypsum.

Section 23. [Applying Commercial Fertilizer.]

(A) Application of commercial fertilizer as defined in this Act:

(1) that is performed by:

(i) a person who applies commercial fertilizer for hire; or

(ii) an employee of the owner or manager of the property; and

(2) to property that is:

(i) not used for agricultural purposes; and

(ii) [three (3)] or more acres; or

(B) A person may apply commercial fertilizer only if the person applies
the commercial fertilizer in a manner that is consistent with the recom-
mendations of the [University of Maryland cooperative extension service].

(C) (1) A person who violates any provision of this Section is subject to a civil penalty of not more than [one thousand (1,000)] dollars for a first violation.

(2) A person who violates any provision of this Section is subject to a civil penalty of not more than [two thousand (2,000)] dollars for each subsequent violation.

(3) Each day a violation occurs under this Section is a separate violation.

(4) The total penalties imposed on a person for violations of this Section that result from the same set of facts and circumstances may not exceed [ten thousand (10,000)] dollars.

(D) The penalty imposed on a person under this Section shall be assessed with consideration given to:

(1) the willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(2) any actual harm to human health or to the environment including injury to or impairment of the use of the waters of the state or the natural resources of the state;

(3) the cost of control;

(4) the nature and degree of injury to or interference with general welfare, health, and property;

(5) the extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety; and

(6) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(E) penalties collected by the secretary under this Section shall be paid into the general fund of the state.

Section 24. [Commercial Feed.]

(A) In this Act, the following words have the meanings indicated.

(B) “Commercial feed” means a material which is distributed for use as feed or for mixing in feed for any animal, other than man, except:

(1) unmixed and unprocessed whole seeds or meal made directly from the entire seeds;

(2) unground hay; or

(3) whole or ground straw, stover, silage, cobs, and hulls not mixed with any other material.

(E) “Contract feed” means a commercial feed which is formulated according to an agreement between a distributor and a contract feeder.
Section 25. [Compliance.]
(A) By [insert date], all contract feed that is fed to chickens must include phytase or other enzyme or additive that reduces phosphorus in poultry waste to the maximum extent that is commercially and biologically feasible.

(B) Subject to the provisions of subsection (A) of this Section, the [secretary] shall adopt regulations to monitor compliance with subsection (A) of this Section.

(C) If the [secretary] determines that the requirements set forth in subsection (A) of this Section have a significant detrimental effect on poultry production or the poultry market, the [secretary] shall:
   (1) suspend the program for a reasonable period of time; or
   (2) recommend to the [General Assembly] that the requirement be modified or terminated.

(D) In developing regulations under subsection (B) of this Section and in making a determination under subsection (C) of this Section, the [secretary] shall consult with the poultry industry, the state farm bureau, and the [University of Maryland department of animal and avian science].

Section 26. [Commercial Feed: Sampling.]
(A) The [secretary of agriculture] shall sample, inspect, test and make analyses of commercial feed distributed in the state at any time and place and to the extent the [secretary] considers necessary to ensure compliance with this Act. The [state chemist] shall administer the provisions of this Section subject to the supervision of the [secretary].

(B) The [secretary] shall adopt the methods of sampling and analysis from sources, such as the journal of the [Association of Official Analytical Chemists], or methods that ensure representative sampling and accurate examination.

(C) In determining for administrative purposes whether a commercial feed is deficient in any component, the [secretary] shall be guided solely by the official sample obtained and analyzed as provided by this Section.

(D) When inspection and analysis of an official sample indicates a commercial feed is adulterated or misbranded, or does not contain an enzyme or other additive in accordance with Section 12 of this Act, the [secretary] shall forward the results of the analysis to the person who registers the product and the person from whom the sample is taken. The [secretary] shall furnish the distributor with a portion of the sample concerned within [thirty (30)] days if he requests it.

(E) The [secretary] may enter on any public or private premises, including any transportation vehicle, during regular business hours to obtain access to commercial feeds or to records relating to their distribution.

Section 27. [Commercial Feed: Enforcement.]
(A) The [secretary] may issue and enforce a written stop-sale order to
the owner, custodian, or distributor of any commercial feed that the [secretary] finds is in violation of any provision of this Act or regulation under this Act, or has been found by federal or state authorities to cause unreasonable adverse effects to humans, animals, or the environment.

(B) The order prohibits sale or distribution of the commercial feed until the [secretary] has evidence that the feed is in compliance with the law and until the [secretary] provides a written release from the stop-sale order.

(C) The [secretary] may file a petition for condemnation in the circuit court of the county in which the commercial feed is located. If the court finds the commercial feed to be in violation of the provisions of this subtitle and orders the condemnation, the commercial feed shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. The court may not dispose of the commercial feed without first giving the claimant an opportunity to apply to the court for release of it or for permission to process or relabel the commercial feed so that it complies with the provisions of this subtitle.

Section 28. [Remediation Research on Phosphorus.]
The [governor] is requested to support and fund, in cooperation with the private sector and appropriate public agencies, continuing research into management and remediation of phosphorous as a nutrient derived from animal waste and as a pollutant, including:

(1) the development of a reliable phosphorous index;
(2) composting and incineration of animal waste and litter;
(3) marketing and transportation of products derived from animal waste and litter; and
(4) commercial animal feed management and additives that may reduce phosphorus deposition in animal waste.

Section 29. [Reporting Requirements: Phosphorus Mitigation.]
(A) By [insert date], the [University System of Maryland] shall report to the nutrient management advisory committee, the [governor] and the [General Assembly] on:

(1) the latest developments in phosphorus mitigation, including the effectiveness of phytase and other enzymes, genetically engineered corn, soil additives, and other innovations; and
(2) for targeted areas determined by the [secretary of agriculture], background levels of phosphorus in the soil, current levels of phosphorus in the soil, and the movement of phosphorus in and on the land.

(B) In preparing the report, the [University System of Maryland] shall coordinate the activities at member institutions and consult with the agricultural industry. To the extent possible, the university system shall coordinate its efforts with research projects conducted by the agricultural industry.
Section 30. [Notice.] The [department of agriculture] shall provide written notice to farmers concerning the requirements of this Act and explaining the state financial and technical assistance that is available to assist farmers in complying with the requirements of the Act.

Section 31. [Exemptions.] If requested, the [department] shall adopt regulations providing for religious exemptions to this Act in the event the requirements of this Act conflict with the bona fide religious beliefs and practices of people subject to this Act.

Section 32. [Fees.]
(A) Except for a government agency, the [department] shall charge the following fees under this Act:

1. certificate (nutrient management consultant) [fifty (50)] dollars;
2. license (individual or sole proprietorship) [fifty (50)] dollars;
3. license (corporation or partnership) [one hundred (100)] dollars;
and
4. renewal [fifty (50)] dollars.
(B) The [department] shall charge an applicant for the full cost of any training provided by the department under this Act.

Section 33. [Certification and Licensing: Suspension.] Subject to the provisions of the state [Administrative Procedure Act], the [department] may deny, suspend, or revoke a certificate or license for a violation of this Act or for a violation of any regulation adopted under this Act.

Section 34. [Severability.] [Insert severability clause.]

Section 35. [Repealer.] [Insert repealer clause.]

Section 36. [Effective Date.] [Insert effective date.]
Youth Smoking Prevention Fund

This legislation allocates a percentage of money a state will receive under the Master Settlement Agreement to fund youth smoking prevention efforts. It establishes a grant program to be administered by an independent Youth Smoking Prevention Commission to fund such prevention efforts, including anti-smoking media campaigns directed at youth, school and community-based youth education and development programs, and increased enforcement and education of youth-access laws.

The Act provides that the commission must develop a State Plan for Youth Smoking Prevention to include criteria for evaluating grant requests as well as identify the types of programs eligible for funding. Such programs, at a minimum, include the four prevention efforts mentioned above. The bill requires funding for an annual statewide student-based survey to measure cigarette use and behaviors towards cigarette use by students. In addition, reports by grantees and the commission must be provided for ongoing monitoring and evaluation of the success of the program.

Submitted as:
South Carolina
SB 894

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This Act may be cited as “An Act to Establish a Youth Smoking Prevention Commission.”

2 Section 2. [Definitions.] As used in this Act:
3 (1) “Commission” means the [Youth Smoking Prevention Commission] established pursuant to [insert citation] to develop a state plan for youth smoking prevention and to award grants from the fund for the purpose of reducing the consumption of cigarettes by minors.
4 (2) “Grantee” means a public entity or private nonprofit entity approved by the Commission to receive monies from the [Fund for Qualified Youth Smoking Prevention Programs].
5 (3) “Master Settlement Agreement” means the settlement agreement and related documents between the state and leading United States tobacco product manufacturers dated November 23, 1998.
6 (4) “Qualified Youth Smoking Prevention Program” means a program that meets the criteria set forth in the [State Plan for Youth Smoking Prevention].

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(5) “State Plan” means the [State Plan for Youth Smoking Prevention] adopted pursuant to Section 3 of this Act.

Section 3. [Youth Smoking Prevention Commission.]

(1) There is established in [the office of the governor] a [Youth Smoking Prevention Commission]. The [commission] is vested with all of the political and corporate powers as provided in this Act. The commission shall adopt a [State Plan for Youth Smoking Prevention] and shall award grants from the fund. The [commission] has only the powers enumerated in Section 4 of this Act.

(2) Notwithstanding the provisions of Section 8 of this Act, the membership of the [commission] is as follows:

(a) [two (2)] members appointed by the [speaker of the House of Representatives] from the membership of the [House of Representatives];
(b) [two (2)] members appointed by [the president pro tempore of the Senate] from the membership of the [Senate]; and
(c) [thirteen (13)] members appointed by the [governor] subject to confirmation by the [General Assembly], as follows:
(d) [three (3)] designated representatives of public health agencies;
(e) [three (3)] health professionals;
(f) [two (2)] youths between the ages of [twelve (12)] and [eighteen (18)]; and
(g) [five (5)] citizens of the state with knowledge, competence, experience, or interest in youth smoking prevention, or other relevant background including, but not limited to, youth education, public health, social science, and business expertise.

(3) Members serve for a term of [two (2)] years and until their successors are appointed and qualify. A vacancy on the [commission] must be filled in the same manner as the original appointment for the remainder of the unexpired term. All members listed in subsection (2) are voting members. All members must be residents of the state.

(4) The [governor] shall convene the [commission’s] first meeting by [March 15, 2000], and its members of the [commission] shall elect a chairman and vice chairman. A majority of members of the [commission] serving at any one time constitute a quorum for the transaction of business.

(5) Members of the [commission] serve without pay but are allowed the usual mileage, per diem, and subsistence as provided by law for members of state boards, committees, and [commissions].

(6) Members of the [commission] and its employees of the foundation are subject to the provisions of [insert citation].

Section 4. [Commission Powers and Duties.] The [commission] is granted all powers necessary or appropriate to carry out and effectuate its corporate purposes including, without limitation, the following:

Youth Smoking Prevention Fund
Youth Smoking Prevention Fund

(1) adopt and use an official seal;
(2) have succession until dissolved by the [General Assembly], in which event title to the properties of the commission, both real and personal, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the [commission], must pass to and become vested in the state;
(3) maintain its office in [state capital city];
(4) accept, hold, and administer any monies appropriated or distributed to the commission and other money, securities, or other property appropriated, given, or bequeathed to the [commission], absolutely or in trust, for the purposes for which the [commission] is created;
(5) distribute the monies in the fund to entities in accordance with the [State Plan];
(6) make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
(7) appoint and prescribe the duties of officers, agents, employees, advisors, and consultants as are necessary to carry out its functions, and to fix and pay compensation to them for their services as the [commission] determines;
(8) make bylaws for the management and regulations of its affairs;
(9) receive and accept aid, grants, contributions, and cooperation of any kind from any source for the purposes of this chapter subject to the conditions, acceptable to the commission, upon which the aid, grants, contributions, and cooperation may be made;
(10) invest its funds as provided in this Act or permitted by applicable law; and
(11) do any lawful act necessary or appropriate to carry out the powers granted or reasonably implied, including use of any lawful act necessary or appropriate to recover payments wrongfully made from the fund.

Section 5. [Commission Director.] The [commission] is authorized to employ a [director] who serves at the pleasure of the [commission]. The [director] administers, manages, and directs the affairs and business of the [commission] in accordance with the provisions of this chapter, subject to the commission’s control. The [commission] may employ technical experts and other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The [commission] may delegate to one or more of its agents or employees the administrative duties as it considers proper. The actual expenses incurred in the performance of these duties shall be paid from the fund.

Section 6. [Youth Prevention Fund.] The [commission] shall create and administer a fund to be known as the [State Youth Smoking Prevention Fund]. The fund shall consist of mon-
ies received by the state under the Master Settlement Agreement for the purpose of the prevention of youth smoking and all other monies, including appropriations, gifts, grants, or other funds, designated for the fund. All interest derived from the deposit and investment of monies in the fund must be credited to the fund.

(2) All monies in the fund are subject to annual appropriations by the [General Assembly] for the purposes described in this Act and are available for the award of grants for qualified Youth Smoking Prevention programs and the administrative costs of the [commission].

(3) Monies from the fund must not be used to engage in political activity or lobbying including, but not limited to, support of or opposition to candidates, ballot questions, referenda, or similar activities.

Section 7. [State Plan for Youth Smoking Prevention.]

(1) On or before [June 30, 2000], the commission shall propose a [State Plan for Youth Smoking Prevention]. On or before [June 30] of each subsequent year the [commission] may propose amendments to the plan. The [commission] shall submit its proposed State Plan or any proposed amendments to it to the [governor], the [General Assembly], the [department of health and human services], the [department of health and environmental control], and the [attorney general]. The [governor], the [General Assembly], the named departments, and the [attorney general] may submit comments to the [commission] on the proposed State Plan on or before [September 30, 2000], and may submit comments to the [commission] on its proposed amendments to the State Plan on or before [September 30] of each subsequent year. On or before [January 30, 2001], the [commission] shall adopt a final State Plan and shall make the plan public. On or before [January 30] of each subsequent year, the [commission] shall adopt any amendments to the State Plan and shall make the amended State Plan public.

(2) The State Plan shall set out the criteria by which grant proposals are considered by the [commission]. The plan shall also describe the types of youth smoking prevention programs that shall be eligible for consideration for grants from the fund. The eligible programs shall include, but are not limited to:

(a) media campaigns directed to youth to prevent underage consumption of cigarettes;
(b) school-based education programs to prevent youth smoking;
(c) community-based youth programs involving youth smoking prevention through general youth development; and
(d) enforcement and administration of the state law related to the prevention of cigarette sales to minors, related retailer education, and compliance efforts.

(3) The State Plan shall provide that no less than [fifty (50)] percent of the dollar value of the grants awarded in each year is dedicated to pro-
grams described in subsections (2)(b) and (2)(c).

(4) The State Plan further shall provide for a grant for an annual state-wide school-based survey to measure cigarette use and behaviors towards cigarette use by individuals in grades 6-12. This survey shall:

(a) involve a statistically valid sample of the individuals in each grade from sixth through twelfth;

(b) not include any individual who is [eighteen (18)] years of age or older; and

(c) be made available to the public, along with the resulting date, excluding respondent identities and respondent-identifiable date, before [September 1] of each year.

(5) The State Plan shall provide that no more than [five (5)] percent of the fund shall be expended on the administrative costs of the commission.

(6) The development and adoption of the State Plan is not subject to the notice and comment provisions of the state Administrative Procedures Act as provided in [insert citation].

Section 8. [Grants for Youth Smoking Prevention Programs.]

(1) The [commission] shall meet at least [four (4)] times a year to review applications for grants for youth smoking prevention programs. A grant may not be awarded without the approval of the vote of a majority of the commission. To the extent practicable and consistent with the criteria for qualified applicants set forth in the State Plan, the [commission] shall make awards equal to the total amount of funds appropriated in each fiscal year for Qualified Youth Smoking Prevention Programs less the administrative costs of the commission.

(2) An applicant for a grant for a Qualified Youth Smoking Prevention Program must file an application with the commission no later than [November 1] of the year preceding the fiscal year for which the grant is requested.

(3) An applicant that requests funding to initiate, continue, or expand a youth smoking prevention program shall demonstrate, by means of application, letters of recommendation, and other means as the [commission] may designate, that the proposed youth smoking prevention program for which it seeks funds meets the criteria set forth in the State Plan. Previous grant recipients shall include recent evaluations of their programs with their applications. The [commission] may not award a grant unless it makes a specific finding, as to each applicant, that the program proposed to be funded meets the criteria set forth in the State Plan.

(4) In addition to evaluating the funding request pursuant to the criteria set out in the State Plan, the [commission] shall consider:

(a) in the case of applications to fund media campaigns directed to youth to prevent underage consumption of cigarettes, whether the campaign provides for sound management and periodic evaluation of the campaign's relevance to the intended audience, including audience aware-
ness of the campaign and recollection of the main message.

(b) in the case of applications to fund school-based education pro-
grams to prevent youth smoking, whether there is credible evidence that
the program is effective in reducing youth smoking.

(c) in the case of applications to fund community-based youth pro-
grams involving youth smoking prevention through general youth develop-
ment, whether the program:

(d) has a comprehensive strategy with a clear mission and goals;
(e) has committed, caring, and professional leadership;
(f) offers a diverse array of youth-centered activities in
youth-accessible facilities;
(g) is culturally sensitive, inclusive, and diverse;
(h) involves youth in the planning, delivery, and evaluation of ser-
vices that affect them; and
(i) offers a positive focus including all youth.

(5) In the case of applications to fund enforcement and administration
of state law related to the prevention of cigarette sales to minors, related
retailer education and compliance efforts, whether those activities and ef-
forts can reasonably be expected to reduce the extent to which tobacco prod-
ucts are available to individuals under the age of [eighteen (18)]

(6) State and local government departments and agencies are eligible
for grants provided pursuant to this Act.

Section 9. [Grant Award Announcements.] On or before [March 1] each
year, the [commission] shall announce the award of grants for the next
fiscal year. Any funds appropriated for Qualified Youth Smoking Preven-
tion Programs not expended in any fiscal year shall be retained in the fund
and available for Qualified Youth Smoking Prevention Programs in the
following year.

Section 10. [Commission Accounts and Records.]

(1) The accounts and records of the [commission] showing the receipt
and disbursement of funds from whatever source derived must be in the
form as the [comptroller general] prescribes.

(2) The accounts of the [commission] must be audited annually by the
[comptroller general] or his designee. Copies of the annual audit must be
distributed to the [governor] and to the [chairmen] of the [House ways and
means committee] and the [Senate finance committee], pursuant to Sec-
tion 11(1)(c).

Section 11. [Reports.]

(1) As a condition for the receipt of funds under this chapter, a grantee
shall agree to file a report with the [commission], on or before [September
30] after the end of the fiscal year for which the grant was awarded, as to
Youth Smoking Prevention Fund

the following:
(a) amount received as a grant and the expenditures made with the
proceeds of the grant;
(b) a description of the program offered and the number of youths
who participated in the program; and
(c) specific elements of the program meeting the criteria set forth in
the State Plan.

(2) A grantee failing to timely file the report required under this section
shall be subject to the jurisdiction of the [attorney general] for repayment
of the full amounts of the grant expended.

(3) The [commission] shall review and evaluate the reports of grantees
required under this Section and file a written report with the [governor]
and the [chairmen] of the [House ways and means committee] and the [Sen-
ate finance committee] on or before [February first] of each year on the
status of the fund and the activities of the fund for the fiscal year most
recently ended. The report shall include a copy of the annual audit, the
name of each grantee, and the amount of each grant made, the criteria used
to award each grant, and whether the program implemented by each grantee
met the criteria. The report shall be publicly available immediately upon
its filing.

Section 12. [Exercise of Powers.]
(1) The exercise of the powers granted by this Act must be in all respects
for the benefit of the inhabitants of the state and for the promotion of their
safety, health, welfare, knowledge, convenience, and prosperity.

(2) The [commission] is performing an essential governmental function
in the exercise of the powers conferred upon it by this Act, and the property
of the commission and its income and operations are exempt from taxation
or assessments upon property acquired or used by the foundation under
the provisions of this Act.

Section 13. [Administration by Governor.] Effective [date,] the following
agencies, boards, and commissions, including all of the allied, advisory, af-
iliated, or related entities as well as the employees, funds, property, and all
contractual rights and obligations associated with any such agency, except
for those subdivisions specifically included in another department, are hereby
transferred to and incorporated in and shall be administered as part of the
[office of the governor]: [Youth Smoking Prevention Commission], provided
for at Section 3 of this Act.

Section 14. [Severability.] [Insert severability clause.]

Section 15. [Repealer.] [Insert repealer clause.]

Section 16. [Effective Date.] [Insert effective date.]
Federal Mandates for State Action (Note)

Federal mandates are traditionally described as actions by the federal government to force states to do something or pre-empt state authority. The national 55-mph speed limit was a classic example of an unfunded mandate, while congressional legislation that induced a moratorium or would prevent states from taxing Internet commerce is an example of pre-emption. Mandates and pre-emptions can come from any branch of the federal government, and arise in the form of laws, regulations and court rulings. Suggested State Legislation volumes have highlighted congressional mandates since 1992, beginning with the legislation in the 101st Congress.

105th Congress

This portion of the “Note” addresses the second session of the 105th Congress, which began on January 27, 1998 and concluded on October 21, 1998, wherein 241 bills were enacted into law.

Defining congressional mandates was supposedly made easier by the Unfunded Mandates Reform Act of 1995 (UMRA). UMRA requires the Congressional Budget Office (CBO) to review virtually all bills reported by congressional committees for the presence of federal mandates and to estimate the costs of such mandates. Federal legislation that imposes $50 million or more in unfunded annual costs to the states is officially considered a mandate.

According to CBO’s annual “Assessment of the Unfunded Mandates Reform Act of 1998,” 12 percent of the bills enacted into law as a result of the second session of the 105th Congress contained intergovernmental mandates that would have an impact on state, local and tribal governments. Only one was determined to cross the threshold of the cost of $50 million or more, a bill to cap federal financial contributions to states to administer the Food Stamp programs.

Other laws from this session that contain mandates but did not meet the dollar threshold or which are pre-emptions that limit state and local authority include:

“The Internet Tax Freedom Act” (P.L. 105-277) places a three-year moratorium on state and local sales tax application on Internet tax sales and appoints a commission to study the issue with the intent of making recommendations for Congress to consider at the end of the moratorium.

“The Transportation Equity Act for the 21st Century” (TEA-21) (P.L. 105-178) pre-empts state or local laws that are different from federal regulations on liability for using drivers’ safety records in hiring motor carrier drivers.

“The Credit Union Membership Access Act” (P.L. 105-219) pre-empts state laws regulating credit unions and establishes national safety, sound-
ness and audit requirements.

“The Year 2000 Information and Readiness Disclosure Act” (P.L. 271) pre-empts state liability laws to give limited protection from lawsuits to firms that share information about the Year 2000 computer problem. Congress and the president passed the law understanding that preventing Y2K problems would possibly prevent a national emergency.

“The Securities Litigation Uniform Standards Act of 1998” (P.L. 105-353) pre-empts state securities laws so that class action lawsuits involving certain types of securities fraud can be maintained only in federal courts.

106th Congress

This portion of the “Note” addresses the first session of the 106th Congress, which began on January 6, 1999 and is scheduled to continue through October, 1999. As of June 25, 1999, 35 public bills were enacted into law.

Using UMRA criteria, the CBO reports that Congress did not enact any legislation since the start of the first session of the 106th Congress in 1999 that exceeded the $50 million threshold. According to annual reports on UMRA, CBO says the procedures established by UMRA appear to be achieving their goals by focusing greater attention on the costs of federal mandates and ensuring that Congress knows about those costs when it considers legislation. At present, CBO has not reviewed any bills during this session of Congress that would exceed the UMRA mandates threshold.

While the procedures that UMRA instituted to assess intergovernmental mandates appear to be preventing some mandates on state and local governments, pre-emption of traditional state authority granted by the Constitution remains a problem on the federal level, in addition to mandates brought forward by regulations. Although UMRA does not address pre-emptions, they may be viewed as mandates on state’s authority. The following bills under congressional consideration would pre-empt areas where states have traditional authority or state law and replace it with “one size fits all” federal law:

H.R. 775, “The Year 2000 (Y2K) Readiness and Responsibility Act” was passed by the House, and S. 96, “The Y2K Act” was passed by the Senate and both bills are being considered by a conference committee. Both bills would pre-empt current state contract and tort law and induce a federal 90-day waiting period to remedy Y2K problems before lawsuits could be brought forward for date-related error problems.

S. 655, “The National Salvage Motor Vehicle Consumer Protection Act of 1999” would require uniform national titling and registration requirements for salvage, rebuilt and non-repairable passenger vehicles. States receiving federal grants to implement the national standard would have to follow nationally uniform disclosure and labeling procedures and would have to make titling information available to the proposed National Motor Vehicle Title Information System.

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H.R. 2014, “To prohibit a state from imposing a discriminatory commuter tax on non-residents” would limit states from taxing income from citizens of other states at a higher rate than it taxes its own residents.

H.R. 1691, “The Religious Liberty Protection Act of 1999,” would pre-empt state and local governments from applying zoning ordinances to religious-based land-uses under certain criteria.

S. 573, S. 587, S. 881 and H.R. 1941 would set privacy standards for medical records as required under the August 1999 deadline set by the “Health Insurance Portability and Accountability Act of 1996 (HIPAA).” The bill would pre-empt existing state privacy laws if the state law was not as strong as federal law and possibly cause complications in the payment of state workers’ compensation claims that would result in penalties to states.


H.R. 1501, “The Juvenile Offenders Act of 1999” was passed by the House and is awaiting conference committee action. A provision of this bill would reduce the Juvenile Accountability Block Grant funds by 10 percent if a state does not have a law in effect that would suspend, until the age of 21, the driver’s license of a juvenile who illegally possesses or commits a crime with a firearm. This provision would pre-empt state laws and penalize states that do not comply with the federal standard.

S. 254, “The Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999” and the aforementioned H.R. 1501 are awaiting conference committee action. Provisions in both bills would penalize states that do not have state laws that meet a set of federal set criteria, known as “Aimee’s Law,” in truth-in-sentencing laws directed towards violent offenders. States without state laws that meet the federal criteria would have to pay for the costs of incarceration, prosecution and apprehension of a violent offender who is released and commits a violent crime in another state.

S. 331, “Work Incentives Improvement Act” was approved by the Senate, but funding sources for expanded benefits are unclear. The bill would extend federal health benefits to persons who leave the disability rolls to return to work. States now contribute to portions of this funding and any increases may result in increased contributions by the state, which would be decided on a state-by-state basis. The bill includes provisions that would provide for optional programs for states that would result in greater state spending if they chose to participate, as well as additional grants to states for specific programs.

The trend in this Congress has been to pre-empt state and local government authority, rather than mandate action by state and local governments. Traditional federal models of cross sanctioning state governments that do not comply with federal “recommendations” for state law have become more

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prevalent. For example, implementation of sanctions for states that did not implement a blood-alcohol requirement, open container laws and other alcohol control measures were included in provisions of the Transportation Efficiency Act for the 21st Century (TEA-21) passed during the 105th Congress.

Legislation has been introduced in the Senate, “Federalism Accountability Act of 1999” (S. 1214) and the House, “Federalism Act of 1999” (H.R. 2245) to require Congress and the Administration to identify each section of the bill or regulation that would pre-empt state or local law and the reasons for pre-emption. The bill forces the federal government to recognize the impacts on state and local authority and to consider alternatives.

From a state perspective, the second session of Congress will focus on issues such as property “takings,” tax reform, electrical utility deregulation and education reform.
Cumulative Index, 1980-2000

This following cumulative index covers volumes of Suggested State Legislation from 1980 through this, the 2000 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. Some entries are listed under several headings.

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 bill drafts, by subject. These references do not list the full title of the draft bill, but cite only the year and the page numbers.

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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, Federal Mandates for State Action (Note), (1997); Regulatory Reform Comparative Risk Assessment and Cost/Benefit Analysis,(1997) 63-5
contracts: State Civil Rights Act, (1992) 93-95
firefighters: (1981) 67-75
pay equity: Pay Equity for State Employees, (1985) 147-49
public relations:
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

Tourism, see culture, the arts and recreation

Toxic substances, see hazardous materials and waste

Trade regulation, see business and commerce; consumer protection

Traffic laws, see transportation


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

Welfare, see public assistance

Wetlands, see conservation and the environment

Wills, see domestic relations - marital property

Work release, see criminal justice and correction

Workers’ compensation, see labor

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