The Council of State Governments, the multibranch association of the states and U.S. territories, works with state leaders across the nation and through its regions to put the best ideas and solutions into practice. To this end, The Council of State Governments:

- Builds leadership skills to improve decision-making;
- Advocates multistate problem-solving and partnerships;
- Interprets changing national and international conditions to prepare states for the future; and,
- Promotes the sovereignty of the states and their role in the American federal system.

Founded in 1933, CSG is an innovative, nonprofit, nonpartisan organization promoting excellence in state government. It is the premier information resource and institutional voice for the state government community.

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Foreword

The Council of State Governments (CSG) is pleased to bring you this volume of Suggested State Legislation, the 60th 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 2000
Lexington, Kentucky

Daniel M. Sprague
Executive Director
The Council of State Governments
CSG Committee on Suggested State Legislation 2000

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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 60 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 60th 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 60. At the SSL annual meeting in August 2000 in Colorado Springs, Colorado, 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 following 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. Thus, 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, P.O. Box 11910, Lexington, Kentucky 40578-1910, (859) 244-8000 or fax (859) 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. SSL abstracts are typically compiled from the bill summaries in legislation that is submitted and approved for inclusion in SSL volumes, or from the originating state's legislative staff analysis. Copies of other state bills or laws referenced in abstracts or in SSL 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,” “Repealer,” 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 capitalized.
“Sample Act”
Criminal Rehabilitation Research

This draft Act enables a state to facilitate research, including controlled experiments, in criminal senten-
cing 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 legisla-
tion, can be obtained from Yale Legislative Services, Yale Law School, New Haven, Connecticut 06520.

Submitted as:
State:
Act/Bill Number
Status:

Suggested Legislation

(Title, enacting clause, etc.)

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

2
Section 2. [Definitions.] As used in this Act:
3
(1) “Commission” means the [rehabilitation research commission].
4
(2) “Commissioner” means a member of the [rehabilitation research commission].
5
(3) “Offender” means a person adjudicated delinquent or convicted of a criminal offense under the laws
6 and ordinances of the state and its political subdivisions.

7

8

9

10 Section 3. [Rehabilitation Research Commission.]
11 (1) A [rehabilitation research commission] is established to review, approve, and facilitate research
12 directed at the rehabilitation of delinquent and criminal offenders and to disseminate the results of that re-
13 search to correctional officials and other interested individuals and agencies.
14 (2) The commission shall consist of [ten (10)] members appointed by the governor [with the advice and
15 consent of the senate].

16

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Section … [Severability.] [Insert severability clause.]
Section … [Repealer.] [Insert repealer clause.]
Section … [Effective Date.] [Insert effective date.]
Atypical Antipsychotic Medication — Distribution

This Act provides funding to the state department of health and social services to establish a program to promote access to atypical antipsychotic medications to people with schizophrenia or other psychiatric or neurological conditions. To qualify, a person's income must be less than 200 percent of the federal poverty level, and they cannot be covered by insurance or other benefits.

Contracts must be awarded to contractors who have a cost-effective distribution mechanism and target certain people. Participating pharmaceutical companies must increase access to their products for the targeted population through intensive outreach to their respective indigent drug programs.

Submitted as:
Washington
Chapter 217, Laws of 2000
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Atypical Antipsychotic Medication Act.”

Section 2. [Legislative Findings.] Schizophrenia is a devastating and costly disease. Atypical antipsychotic medications have been developed for treatment of schizophrenia and other similar psychiatric and neurological conditions, which have been effective at treating these conditions with less severe side effects than the side effects that accompany typical antipsychotics.

Atypical antipsychotic medications are commonly prescribed and are within the standard of care. In order to protect the public health, safety, and welfare, and reduce the economic and societal costs associated with untreated schizophrenia and other similar psychiatric and neurological conditions, the [Legislature] intends to promote access to atypical antipsychotic medications by those unable to access them and who present a risk of harm to themselves and to the community.

Section 3. [Promoting Access to Atypical Antipsychotic Medications.]

(1) To the extent funds are appropriated, the [department of social and health services] shall request proposals that promote access to atypical antipsychotic medications to people who meet the following criteria:

(a) The person has schizophrenia or other psychiatric or neurological condition that is treated with atypical antipsychotic medication;

(b) The person's income is less than [two hundred (200)] percent of the federal poverty level; and

(c) The person is not covered by insurance or other benefit that pays for atypical antipsychotic medications. The person may have a copayment requirement under available coverage, which is cost prohibitive for the person given his or her income level, which would not disqualify the person under the requirement of this section.

(2) Contracts shall be awarded to contractors whose proposal meets the following criteria:

(a) Has a distribution mechanism that achieves cost savings in service delivery and medication costs;

(b) Targets children and adults who are transitioning out of state or local correctional or detention facilities or who have recently received mental health services as defined under [insert citation];

(c) Is based on a clear statement of intended outcomes which are objective and identified in the proposal;

(d) Is designed to provide temporary access to these atypical antipsychotic medications until the person has obtained coverage or achieved financial capacity to retain them;

(e) Proposes to dispense the atypical antipsychotic medications as a part of a comprehensive pro-
gram designed to achieve an improved mental status and stable living situation; and
(f) Maximizes cost savings of the atypical antipsychotic medications.

(3) (a) “Atypical antipsychotic medications” mean drugs with a pharmacological classification of
dibenzodiazepines, benzisoxazoles, thienobenzodiazepines, and dibenzothiazepines, and such other drugs as
are defined in rule by the [department] which have the same or very similar utility in treating schizophrenia or
other similar psychiatric and neurological conditions.
(b) “Access to atypical antipsychotic medications” includes:
(i) Pharmaceutical companies participating in this program shall increase access to their prod-
ucts for the targeted population through intensive outreach to their respective indigent drug programs as of
the effective date of this Act. The eligibility criteria of their respective indigent drug programs shall not be
changed to decrease access or availability from the criteria as they exist on [March 15, 2000]; and
(ii) Other drugs or laboratory tests when used in conjunction with the atypical antipsychotic
medications to achieve maximum therapeutic effect, or to treat side effects.

(4) Nothing in this section creates or provides any individual with an entitlement to services or ben-
efits. It is the intent of the [Legislature] that atypical antipsychotic medications shall be made available under
this section only to the extent of the availability and level of appropriation made by the [Legislature].
(5) The distribution mechanism shall require successful recipients to comply with data collection
needs of the [Washington Institute for Public Policy],
(6) The [department] is authorized to establish rules necessary to implement the provisions of this Act.

Section 4. [Program Evaluation.]
(1) The [Washington Institute for Public Policy] shall conduct an evaluation of this Act to determine
the following:
(a) Outcomes for people receiving atypical antipsychotic medications under the provisions of this
Act, including, but not limited to the person’s:
(i) Ability to perform basic living skills and maintain a job;
(ii) adherence to medication regimens;
(iii) number of inpatient placement or acute care services after having received atypical antip-
sychotic medications; and
(iv) criminal conviction record for further offenses, if any, after having received atypical antip-
sychotic medications;
(b) The extent to which this Act increases access to atypical antipsychotic medications to the
targeted population; and
(c) The uniformity by health care providers in prescribing atypical antipsychotic medications among
the population identified under the provisions of this Act.

(2) The [Washington Institute for Public Policy] shall identify the number of children and the number
of adults served; and outcomes, access, and uniformity for both children and adults.

Section 5. [Severability.] [Insert severability clause.]

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

Section 7. [Effective Date.] [Insert effective date.]
Business Tax Relief for Biotechnology/High-Technology Industries Note

The movement of traditional industries overseas has prompted states to compete for high-tech companies to fill the void. This note highlights the efforts of Connecticut and New Jersey to attract or retain biotechnology industries, and offers model language from the biotech industry.

Connecticut

Between 1996 and 1999, Connecticut enacted several tax-relief provisions for the biotechnology industry. In 1996, Connecticut created a full sales and use tax exemption on machinery equipment, tools, materials, supplies and fuel used in the biotechnology industry. It created a property tax exemption on new machinery and equipment used in the biotechnology industry. Connecticut began also at this time to permit unused research and development tax credits to be carried over for 15 years.

In 1998, Connecticut increased research and development tax credits (non-incremental) to 6 percent from the first dollar forward for companies with $100 million or less in annual revenues. The Legislature also directed that further study be completed and reported on the sale of unused research and development tax credits and extending net operating loss carryforwards.

In 1999, the state extended the net operating loss carryforward from five years to 20 years (effective for income years beginning January 1, 2000). It also allowed businesses with $70 million or less in gross sales to exchange unused research and development tax credits to the state for a cash payment equal to 65 percent of the value of the credit (effective for income years beginning January 2000).

The two key provisions are in Connecticut SB 1 of 1999 (Public Act 99-173), an omnibus tax bill. Sec. 38 reads “(a) Any taxpayer that (1) is a qualified small business, (2) qualifies for a credit under section 12-217j of the general statutes or section 12-217n of the general statutes, as amended by this Act, and (3) cannot take such credit in the taxable year in which the credit could otherwise be taken as a result of having no tax liability under chapter 208 of the general statutes may elect to carry such credit forward under said chapter 208 or may exchange such credit with the state for a cash payment equal to 65 percent of the value of the credit.”

Part of Sec. 39 a (4) reads “Notwithstanding anything in this Section to the contrary, (A) any excess of the deductions provided in this Section for any income year commencing on or after January 1, 1973, over the gross income for such year or the amount of such excess apportioned to this state under the provisions of Section 12-218, shall be an operating loss of such income year and shall be deductible as an operating loss carryover for operating losses incurred prior to income years commencing January 1, 2000, in each of the five income years following such loss year, and for operating losses incurred in income years commencing on or after January 1, 2000, in each of the twenty income years following such loss year... .”

New Jersey

Between 1995 and 1999, New Jersey enacted a series of laws to stimulate development of emerging technology and biotechnology industries in the state.

The 1995 “New Jersey Emerging Technology and Biotechnology Financial Assistance Act” (P.L. 1995, c. 137) directed the New Jersey Economic Development Authority to establish a program and a fund to help finance the costs incurred by new or expanding emerging technology and biotechnology companies in the state.

It defines “biotechnology” as the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

According to the Act, “Biotechnology company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes,
including but not limited to, medical, pharmaceutical, nutritional and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production or provision.

It defines “Company” as a person, whose headquarters or base of operations is located in New Jersey, and who employs some combination of the following: highly educated or trained managers and workers, or both, employed in New Jersey who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service.

New Jersey enacted four additional bills on this issue in 1998: Senate Bills 446, 445, 447 and 449.

Senate Bill 446 requires the New Jersey Economic Development Authority to administer, as part of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program, a corporation business tax benefit certificate transfer program.

This program allows new or expanding emerging technology and biotechnology companies in the state with unused carryforward of research and development tax credits or unused net operating loss deduction carryforwards to transfer those tax benefits to other corporation business taxpayers. It enables small biotech and high-tech companies the opportunity to use tax benefits when research actually takes place.

The transfer of these unused tax benefits will be based upon the tax benefit recipient-corporation providing private financial assistance to the new or expanding emerging technology and biotechnology company under written financial-assistance agreements negotiated under the auspices of the state economic-development authority. The financial assistance to be provided must be at least 75 percent of the value of the transferred tax benefit and must assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the state, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, startup, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the economic development authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

Senate Bill 445 provides a credit under the corporation business tax for corporate taxpayer investment in small New Jersey-based high-technology businesses that conduct research in New Jersey in certain fields of science and technology or that conduct pilot scale manufacturing in New Jersey in order to bring their high-technology innovations into market production.

The tax credit is based on 10 percent of investments made in each small high-technology business with fewer than 225 employees, 75 percent of whom have jobs in New Jersey. The utilization of the credit is limited to $1 million per investment, per year, with carryforwards available for unutilized credits. The investment must be a nonrefundable investment at risk in the small high-technology business. The small high-technology business must conduct pilot-scale manufacturing or qualified research in New Jersey in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology and medical-device technology.

Senate Bill 447 extends the carryforward period for utilizing the net operating loss deduction allowed under the corporation business tax for certain companies with advanced technology research expenditures in New Jersey. These taxpayers contributing to advanced technology research in New Jersey will be able to carry forward their net operating loss deduction for up to 15 years instead of the seven years allowed for other corporate taxpayers.

Senate Bill 449 extends the carryforward of the research and development tax credit under the corporation business tax from seven to 15 years for advanced technology corporations. The research and development tax credit allows a credit for increases in qualified research expenditures over a base amount and for certain basic research payments incurred in New Jersey beginning in January 1994. Currently, this credit may be carried forward up to seven years after the tax year in which the eligible expenditures are incurred if the full amount of the credit cannot be used because of tax-liability limitations. For high-technology businesses in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology and medical-device technology, this bill extends the carryforward period of the research and development tax credit from seven to 15 years following a credit's tax year.
The biotechnology industry developed the following model language to enact a net operating loss and tax credit incentive:

**Definitions:**

“Qualified high-technology business” This could be narrowly defined to include only those companies engaged in biomedical research or expanded to include high-technology industries including computer and information technologies.

“Qualified research” As defined refers to the sections 41(d)(1) and 41(d)(3) of the United States Internal Revenue Code.

A “qualified high-technology business” engaged in “qualified research” may apply to the [department of revenue/taxation] to sell its unused net operating losses or accrued tax credits to another taxpayer in the state. If approved, a qualified high-technology business may sell its unused net operating loss and/or other accrued tax credits for private financial assistance from another taxpayer in an amount equal to at least 75 percent of the amount of the surrendered tax benefit. The tax benefit purchased by the buyer shall be claimed in the year in which the benefit is purchased. The financial assistance gained by the seller qualified high-technology business shall be reported on its tax return but not be considered taxable income. The total amount of unused net operating losses or tax credits sold annually pursuant to this section shall not exceed $ __________.

No application for the sale of unused net operating losses or tax credits shall be approved in which the seller qualified high-technology business:

1. Has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements; or

2. Has demonstrated a ratio in excess of 110 percent or greater of operating revenues divided by operating expenses in any of the two previous full years of operations as determined on its financial statements; or

3. Is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net income in any of the two previous years of ongoing operations as determined by its financial statements or is part of a consolidated group of affiliate corporations, as filed for federal income tax purposes, that in aggregate has demonstrated positive net income in any of the two previous years of ongoing operations as determined on its combined financial statements.
Competitive Livestock Markets

Between 1999 and 2001, at least five states considered legislation to address livestock prices and contracts between livestock packers and livestock sellers: Iowa, Minnesota, Missouri, Nebraska and South Dakota.

Iowa SF 436 of 1999 regulates the information and contracting of livestock packers. It addresses the confidentiality of information about items such as the number of livestock purchased, committed for delivery, or slaughtered or the volume of daily purchases and the weight, grade and price paid for livestock, including all premiums, discounts or adjustments. If livestock is purchased pursuant to a contract, the state agriculture department may require information in the purchase report to be categorized by the type of contract. The purchase reports enable the department to compare prices paid under contract with cash market prices.

The Act listed below is based on a 1999 Nebraska law. It is designed to increase livestock market price transparency, ensuring that producers can compete in a free and open market. This is done by establishing minimum price and contract reporting requirements, eliminating volume premiums and volume-based incentives, scrutinizing livestock production contracts and marketing agreements, and statutorily reinforcing the constitutional prohibition against the ownership, keeping or feeding of livestock by packers for the production of livestock or livestock products.

Submitted as:
Nebraska
LB 835 (Slip Law version)
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Competitive Livestock Markets Act.”

Section 2. [Definitions.] For purposes of this Act:
(1) Animal unit means [one head (1)] of cattle, [three (3)] calves under [four hundred fifty (450)] pounds, or [five (5)] swine;
(2) Department means the [department of agriculture];
(3) Director means the [director of agriculture] or their designee;
(4) Livestock means live cattle or swine;
(5) Packer means a person, or agent of such person, engaged in the business of slaughtering livestock in this state in excess of [one hundred fifty thousand (150,000)] animal units per year; and
(6) Person includes people, firms, associations, limited liability companies, and corporations and officers or limited liability company members thereof.

Section 3. [Legislative Findings.] The [Legislature] finds family farmers and ranchers have been experiencing, with greater frequency, severely depressed livestock market prices. These market conditions are disproportionately affecting independent producers, which make up the majority of farms and ranches, and are threatening the economic stability of rural communities. The [Legislature] further finds that packer concentration, vertical integration, and contractual arrangements are undermining the system of price discovery. In the absence of any meaningful federal response to the conditions described, the purpose of the Competitive Livestock Markets Act is to increase livestock market price transparency, ensuring that producers can compete in a free and open market. This is accomplished by establishing minimum price and contract reporting requirements, eliminating volume premiums and volume-based incentives, scrutinizing livestock production contracts and marketing agreements, and statutorily reinforcing the constitutional prohibition against the ownership, keeping, or feeding of livestock by packers for the production of livestock or livestock products.
Section 4. [Unlawful Packer Activities: Owning, Keeping or Feeding Livestock.] It is unlawful for a packer to directly or indirectly be engaged in the ownership, keeping, or feeding of livestock for the production of livestock or livestock products, other than temporary ownership, keeping, and feeding, not to exceed [five (5)] days, necessary and incidental to the process of slaughter.

Section 5. [Enjoining Packer Livestock Operations.] Whenever the [attorney general] has reason to believe that a packer is violating section 4 of this Act, he or she shall commence an action in [district court] to enjoin the livestock operation. The [court], upon determination that such packer is in violation of section 4 of this Act, shall order such livestock to be removed and sold and shall assess the packer a fine of not less than [one thousand (1,000)] dollars for each day of violation.

Section 6. [Proceeds and Fines.] The proceeds from any livestock ordered to be sold pursuant to section 5 of this Act shall not be distributed until all fines and costs associated with such action have been paid. All money collected as a fine shall be remitted to the [state treasurer] for credit to the [permanent school fund]. All fines levied under this section remaining unpaid shall constitute a debt to this state which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of this state, in the [district court] of the county in which the violation occurred.

Section 7. [Unlawful Packer Contracts to Purchase Swine.] Except as provided in sections 8 and 9 of this Act, it is unlawful for a packer purchasing or entering into a contract to purchase swine to pay or enter into a contract to pay different prices to the sellers of the swine. This section shall not be construed to mean that a price or payment method must remain fixed throughout any marketing period.

Section 8. [Direct, Spot or Cash Purchases of Swine: Exceptions.] Section 7 of this Act does not apply to any direct, spot, or cash purchase of swine if the following requirements are met:

(1) The difference in price is based on:
   (a) A payment method specifying prices paid for criteria relating to carcass merit; or
   (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer; and
(2) After making the payment to a seller, the packer reports the payment information required under section 13 of this Act, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs.

Section 9. [Contract Purchases of Swine: Exceptions.] Section 7 of this Act does not apply to any contract to purchase swine at a certain date or time if the following requirements are met:

(1) The difference in price is based on:
   (a) A payment method specifying prices paid for criteria relating to carcass merit; or
   (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer;
(2) The packer reports the payment information required under section 13 of this Act, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs;
(3) The packer reports the information required under section 13 of this Act, including the price to be paid for swine to be delivered on specified delivery dates or times; and
(4) An offer to enter into a contract for the delivery of swine, according to the same terms and conditions, is made to other sellers.

Section 10. [Voiding Packer Contracts to Purchase Swine.] Any contract made by a packer in violation of section 7 of this Act is voidable by the seller.

Section 11. [Actions to Recover Damages to Sellers Concerning Contracts to Purchase Swine.] A seller may bring an action against any packer violating section 7 of this Act to recover damages sustained by reason of such violation.
Section 12. [Penalties: Unlawful Packer Contracts to Purchase Swine.] Any packer acting in violation of section 7 of this Act is guilty of a [Class IV misdemeanor] and shall be fined [five hundred (500)] dollars per violation.

Section 13. [Packer Reporting: Swine Purchases.] Beginning [February 15, 2000], a packer shall: [two (2)] times each day during which swine are purchased, report to the [department] and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased in the cash, spot, or direct market since the last report. A packer shall, [one (1)] time each day during which swine are purchased, report to the [department] and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased by contract that day. Such reports shall be completed on forms prepared by the [department], in consultation with the agricultural market service livestock news branch, and shall include:

1. The cash price paid and the number of swine purchased in the cash, spot, or direct market at price intervals representative of the day's trade;
2. The base price paid and premium and discount payment adjustments for quality characteristics including grade, yield, and backfat;
3. Base price and premium and discount factors for swine purchased using a formula-based pricing system; and
4. The number of swine purchased under contract, in which the date of delivery is set for more than [fourteen (14)] days after the making of the contract, and the base price to be paid or the formula that will be used to determine the base price to be paid. The report shall not include information regarding the identity of a seller.

Section 14. [Disclosing Packer Reports of Swine Purchases.] The [department] shall make report information received under section 13 of this Act available to the public in a timely manner to permit the use of the information while it is still relevant.

Section 15. [Failure to Report: Penalties.] The failure of a packer to report information to the [department] as required in section 13 of this Act is punishable by a [civil penalty] not to exceed [one thousand (1,000)] dollars for each day that a complete report is not made available to the [department]. The intentional reporting of false information by a packer in the report to the [department] required in section 13 of this Act is a [Class IV misdemeanor].

Section 16. [Enforcement: Sections 7 to 15.] The [attorney general] shall enforce the provisions of sections 7 to 15 of this Act, and the [director] shall refer any violations of these provisions to the [attorney general]. The [attorney general] or any person injured by a violation of these provisions may bring an action in [district court] to restrain a packer from violating these provisions.

Section 17. [Unlawful Contracts to Purchase Cattle for Slaughter.] It is unlawful for a packer to enter into a contract to purchase cattle for slaughter if:

1. The contract specifies that the seller is not allowed to report the terms of the contract; or
2. The date of delivery of such cattle is not specified.

Section 18. [Unlawful Contracts to Purchase Cattle for Slaughter: Exceptions.] Section 17 of this Act does not apply to any contract to purchase cattle for slaughter if the following conditions are met:

1. The contract to purchase cattle for slaughter specifies the month of delivery and allows the seller to set the week for delivery within such month; and
2. The packer reports the contract information as required under section 23 of this Act, including specified delivery dates or times.

Section 19. [Formula Grid Pricing.] It is unlawful for a packer to enter into a contract to purchase cattle for slaughter using a formula or grid pricing mechanism if the packer fails to negotiate a base price prior
to the cattle being committed or scheduled for slaughter.

Section 20. [Voiding Contracts to Purchase Cattle for Slaughter.] Any contract to purchase cattle for slaughter that is in violation of section 17 or 19 of this Act is voidable by the seller.

Section 21. [Actions to Recover Damages to Sellers for Unlawful Contracts to Purchase Cattle for Slaughter.] A seller may bring an action against any packer violating section 17 or 19 of this Act to recover damages sustained by reason of such violation.

Section 22. [Penalties: Unlawful Contracts to Purchase Cattle for Slaughter.] Any packer acting in violation of section 17 or 19 of this Act shall be guilty of a [Class IV misdemeanor] and shall be fined [five hundred (500)] dollars per violation.

Section 23. [Reporting: Packer Cattle Purchases.] Beginning [February 15, 2000], a packer shall, [two (2)] times each day during which cattle are purchased, report to the [department] and to the United States Department of Agriculture, Agricultural Market Service Livestock News Branch, all cattle that are purchased in the cash, spot, or direct market since the last report. A packer shall, [one (1)] time each day during which cattle are purchased, report to the [department] and to the United States Department of Agriculture, Agricultural Market Service Livestock News Branch, all cattle that are purchased by contract that day. Such reports shall be completed on forms prepared by the [department], in consultation with the Agricultural Market Service Livestock News Branch, and shall include:

(1) The cash price paid and the number of cattle purchased at price intervals representative of the day's trade;
(2) Quality characteristics, including sex of the cattle, estimated percentage of the meat which will be graded choice or better upon inspection based upon the United States Department of Agriculture official grades, and estimated live weight, as well as premium and discount factors that may apply to these characteristics;
(3) Base price and premium and discount factors for cattle purchased using a formula or grid pricing mechanism; and
(4) The delivery month, volume, and applicable basis level for all cattle purchased under basis contract.

The report shall not include information regarding the identity of a seller.

Section 24. [Disclosing Packer Reports of Cattle Purchases.] The [department] shall make report information received under section 23 of this Act available to the public in a timely manner to permit the use of the information while it is still relevant.

Section 25. [Failing to Report Packer Purchases of Cattle.] The failure of a packer to report information to the [department] as required in section 23 of this Act is punishable by a [civil penalty] not to exceed [one thousand (1,000)] dollars for each day that a complete report is not made available to the [department]. The intentional reporting of false information by a packer in the report to the [department] required in section 23 of this Act is a [Class IV misdemeanor].

Section 26. [Enforcement: Packer Cattle Purchases.] The [attorney general] shall enforce the provisions of sections 17 to 25 of this Act, and the [director] shall refer any violations of these provisions to the [attorney general]. The [attorney general] or any person injured by a violation of these provisions may bring an action in [district court] to restrain a packer from violating these provisions.

Section 27. [Fees.] The [department] shall assess a fee not to exceed [two (2)] cents per animal unit reported under sections 13 and 23 of this Act as direct-purchased or contract-purchased.

Section 28. [The Competitive Livestock Markets Cash Fund.] The [Competitive Livestock Markets Cash Fund] is created. The [fund] shall be administered by the [department]. The [fund] shall consist of inves-
Section 29. [Rules and Regulations.] The [department] shall adopt and promulgate rules and regulations to carry out sections 7 to 28 of this Act.

Section 30. [Enforcement: General] The [attorney general], for the enforcement of this Act, shall have the authority to subpoena witnesses, compel their attendance, examine them under oath, and require the production of documents, records, or tangible things deemed relevant to the proper performance of his or her duties. Service of any subpoena shall be made in the manner prescribed by the rules of civil procedure.

Section 31. [Reciprocal Agreements.] The [attorney general] shall have the power and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, federal or state, for the exchange of information on a cooperative basis which may assist in the proper administration of this Act.

Section 32. [Severability.] [Insert severability clause.]

Section 33. [Repealer.] [Insert repealer clause.]

Section 34. [Effective Date.] [Insert effective date.]
Computer Contaminants

This Act establishes penalties for introducing computer viruses, computer worms or other damaging programs into computers.

Submitted as:
West Virginia
Enrolled Committee Substitute for SB 153

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Computer Contaminants Act.”

Section 2. [Definitions.] As used in this Act, unless the context clearly indicates otherwise:
(a) “Access” means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.
(b) “Authorization” means the express or implied consent given by a person to another to access or use said person’s computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.
(c) “Computer” means an electronic, magnetic, optical, electrochemical or other high speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. 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, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.
(d) “Computer contaminant” means any set of computer instructions that are designed to damage or destroy information within a computer, computer system or computer network without the consent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources or damage or destroy the normal operation of the computer.
(e) “Computer data” means any representation of knowledge, facts, concepts, instruction or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or computer software and may be in any medium, including, but not limited to, computer printouts, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.
(f) “Computer network” means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.
(g) “Computer operations” means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses.
A “computer operation” for a particular computer shall also mean any function for which that computer was designed.

(h) “Computer program” means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs or otherwise influences the functioning of a computer or computer network.

(i) “Computer software” means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

(j) “Computer services” means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.

(k) “Computer supplies” means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.

(l) “Computer resources” includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.

(m) “Owner” means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.

(n) “Person” means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department or agency thereof.

(o) “Property” includes:

(1) Real property;

(2) Computers and computer networks;

(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

(i) Tangible or intangible;

(ii) In a format readable by humans or by a computer;

(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and

(4) Computer services.

(p) “Value” means having any potential to provide any direct or indirect gain or advantage to any person.

(q) “Financial instrument” includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

(r) “Value of property or computer services” shall be:

(1) The market value of the property or computer services at the time of a violation of this Act; or

(2) If the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of this Act, the cost of reproducing or replacing the property or computer services at the time of the violation.

Section 3. [Alteration, Destruction, Etc., of Computer Equipment.]

(a) Misdemeanor offenses. -- Any person who knowingly, willfully and without authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services up to [one thousand (1,000)] dollars, is guilty of a [misdemeanor] and, upon conviction thereof, shall be fined not more than [one thousand (1,000)] dollars or confined in the county or regional jail not more than [six (6)] months, or both.

(b) Felony offenses. -- Any person who knowingly, willfully and without authorization, directly or indi-
Computer Contaminants

rectly, damages or destroys or attempts to damage or destroy any computer, computer network, computer
software, computer resources, computer program or computer data by knowingly introducing, directly or
indirectly, a computer contaminant into any computer, computer program or computer network which re-
sults in a loss of value of property or computer services more than [one thousand (1,000)] dollars is guilty of a
[felony] and, upon conviction thereof, shall be fined not less than [two hundred (200)] dollars and not more
than [ten thousand (10,000)] dollars or confined in a state correctional facility not more than [ten (10)] years,
or both, or, in the discretion of the court, be fined not less than [two hundred (200)] nor more than [one
thousand (1,000)] dollars and confined in the county or regional jail not more than [one (1)] year.

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

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

Section 6. [Effective Date.] [Insert effective date.]
Computerized Telephone Emergency Warnings

This Act allows a county or municipality to use 911 funds in excess of the funds necessary to pay the expenses of a 911 telephone system for a computerized telephone warning system that warns residents of an emergency situation by placing a telephone call to service users. It stipulates that customer data provided to a county or municipality for the purpose of implementing or updating an enhanced emergency telephone system may only be used to identify the telephone location or service user and may not be used or disclosed for any other purpose. It provides that a person who uses or discloses customer data in violation of the law commits a Class A misdemeanor.

The law requires that in providing 911 database information to a county or municipality, a service supplier shall provide for each service user in the county or municipality: (1) the telephone number service address; (2) the class of the service; and (3) a designation of listed, nonlisted or unpublished. It requires the service supplier to provide 911 database information to a county or municipality on a quarterly basis. It allows the service supplier to charge a reasonable fee to the political subdivision for the administrative costs of providing the 911 database information.

Submitted as:
Indiana
House Enrolled Act 1428
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 Address Computerized Telephone Emergency Warnings.”

Section 2. [Definition: Enhanced Emergency Telephone System.] As used in this Act, “enhanced emergency telephone system” means a telephone system that utilizes the three digit number 911 to send automatic number identification and automatic location identification for reporting police, fire, medical, or other emergency situations. The term also includes a telephone system that provides service users in the unit with a telephone warning of an emergency situation through a computerized warning system that uses 911 database information and technology if the emergency telephone fund of the telephone system’s political subdivision contains sufficient funds to pay all the expenses of the 911 telephone system.

Section 3. [Providing Customer Data to Implement an Enhanced Emergency Telephone System.] (a) Service suppliers shall provide upon request the necessary customer data to implement an enhanced emergency telephone system. Customer data provided to a county or municipality for the purpose of implementing or updating an enhanced emergency telephone system may be used only to identify the telephone location or service user, or both, and may not be used or disclosed by the county or municipality, or its agents or employees, for any other purpose unless the data is used or disclosed under a court order. A person who violates this subsection commits a Class A misdemeanor.

(b) In providing 911 database information under this Act, the service supplier shall provide:
   (1) the telephone number service address;
   (2) the class of service; and
   (3) a designation of listed, unlisted, or nonpublished;
for each service user in the county or municipality. The service supplier shall provide this 911 database information to the county or municipality on a quarterly basis. The service supplier may charge a reasonable fee to
the political subdivision for the administrative costs of providing the 911 database information. The service supplier may not be held liable in an action arising under this section.

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

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

Section 6. [Effective Date.] [Insert effective date.]
Contingency Fee Contracts for Legal Services to States Note

Contingency fee contracts are those in which an attorney's fee for a case is based on a portion of the proceeds that are recovered from the case. Between 1999 and 2000, at least three states acted to restrict contingency-fee contract arrangements by their state agencies: Kansas, North Dakota and Texas. This note highlights North Dakota and Texas.

North Dakota

Chapter 453 of the 1999 Laws of North Dakota prohibits the attorney general from appointing or allowing to be employed, a special assistant attorney general in a civil case in which the amount in controversy exceeds $150,000 and the special assistant attorney general is compensated by a contingent fee arrangement, unless the contingent fee arrangement is approved by an emergency commission. This Act also prohibits state agencies from contracting for legal services that are compensated by a contingent fee arrangement, unless the agency receives an appointment from the attorney general for a special assistant attorney general for each case in which there is a contingent fee arrangement.

Texas

Subchapter C of Texas 1999 General Appropriations Act (SB 178) specifies that it is the policy of the state that all funds recovered by state entities from an opposing authority in litigation, or in settlement of a matter that could have resulted in litigation, are the property of the state entities that recovered the funds. State entities include state boards, commissions, offices and other agencies of the executive branch that are constitutionally or statutorily created. They also include higher education institutions.

This subchapter requires that such funds be deposited in the manner that the public funds of the agency must be deposited. It directs that legal fees and expenses may be paid from such recovered funds under a contingent fee contract for legal services only after the funds have been appropriately deposited. The subchapter prohibits state agencies that have the authority to enter contingent fee contracts for legal services from entering such contracts unless the governing body of the agency approves the contract. Agencies that do not have governing boards cannot enter such contracts unless the elected or appointed head of the agency approves and signs the contract, or, in some cases, unless the governor signs the contract.

This provision prohibits the state attorney general from entering into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to them by another state government agency unless the governing board or presiding officers of the referring agency have approved and signed the contract.

It requires that before agencies can enter contingent fee contracts for legal services, they must prove there is a substantial need for such legal services that their own attorneys or other state-employed attorneys cannot meet, and that the need cannot be met by hiring attorneys from the private sector on an hourly basis, and primarily because the agencies do not have the money in their budgets to pay an hourly rate.

The subchapter requires contracts for contingent fees to indicate the method used to calculate contingent fees and state whether the projected contingent fees will include the contracting attorney’s expenses. Contingency fees are established by calculating a base fee to perform the work and applying a multiplier to determine the projected fees. The multiplier may not exceed four without approval by the Legislature. The percentage that can be charged is limited to 35 percent of the amount recovered unless approved by the Legislature. Contingent fee contracts for legal services that are estimated to recover more than $100,000 must be approved by a legislative budget board in addition to the aforementioned agency approval.

This Texas provision requires that contracting attorneys maintain current and complete written time and expense records that describe in detail the daily time and money spent on performing the contract. The contracting attorneys must make these records available for inspection to the agencies that they contract with and to the state auditor.

On conclusion of the matter for which legal services were obtained, the contracting attorneys must also provide a written statement that describes the outcome of the matter, the amount recovered, the amount of the contingency fee and the expense records mentioned above.
Counterfeiting Intellectual Property

This Act creates a new crime applicable to people who manufacture, produce, distribute, offer for sale, sell or possess with intent to sell, items or services bearing or identified by a counterfeit service mark, trademark or trade name. The criminal penalties for this conduct vary, depending on the number and value of the counterfeited items. The Act also authorizes forfeiture of the counterfeited items and makes it possible to prosecute an offender for racketeering if the counterfeiting activity is part of an organized pattern of criminal activity.

Submitted as:
Minnesota
Chapter 142, Laws of 1999
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 Address Counterfeiting Intellectual Property.”

Section 2. [Definitions.]
(a) As used in this Act, the following terms have the meanings given them.
(b) “Counterfeit mark” means:
(1) any unauthorized reproduction or copy of intellectual property; or
(2) intellectual property affixed to any item without the authority of the owner of the intellectual property.
(c) “Counterfeited item or service” means an item or service bearing or identified by a counterfeit mark.
(d) “Intellectual property” means any trademark, service mark, or trade name.
(e) “Retail value” means:
(1) the usual selling price of the article or service bearing or identified by the counterfeit mark; or
(2) the usual selling price of a finished product on or in which components bearing or identified by a counterfeit mark are used.
(f) “Service mark” means a mark used by a person to identify services and to distinguish them from the services of others.
(g) “Trademark” means a mark used by a person to identify goods and to distinguish them from the goods of others.
(h) “Trade name” means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement, used by a person to identify the person’s business, vocation, or occupation and to distinguish it from the business, vocation, or occupation of others.

Section 3. [Crime.] A person who intentionally manufactures, produces, distributes, offers for sale, sells, or possesses with intent to sell or distribute any counterfeited item or service, knowing or having reason to know that the item or service is counterfeit, is guilty of counterfeiting intellectual property and may be punished as provided in section 4.

Section 4. [Penalties.]
(a) A person who is convicted of violating section 3 of this Act may be sentenced to imprisonment for not more than [five (5)] years or to payment of a fine of not more than [one hundred thousand (100,000)] dollars, or both, if:

(1) the violation involves the manufacture or production of a counterfeited item or items;
Counterfeiting Intellectual Property

(2) the violation involves the distribution, offer for sale, sale, or possession with intent to sell or distribute [one thousand (1,000)] or more counterfeited items;

(3) the violation involves the distribution, offer for sale, sale, or possession with intent to sell or distribute counterfeited items or services having a retail value of more than [ten thousand (10,000)]; or

(4) the defendant has [two (2)] or more prior convictions for violating section 3 of this Act or a law of another state or the United States that provides criminal penalties for counterfeiting intellectual property.

(b) Except as otherwise provided in paragraph (a), a person who is convicted of violating section 3 may be sentenced to imprisonment for not more than [three (3)] years or to payment of a fine of not more than [fifty thousand (50,000)] dollars, or both, if:

(1) the violation involves more than [one hundred (100)] but fewer than [one thousand (1,000)] counterfeited items;

(2) the violation involves counterfeited items or services having a retail value of more than [one thousand (1,000)] dollars but not more than [ten thousand (10,000)] dollars; or

(3) the defendant has one prior conviction for violating this section or a law of another state or the United States that provides criminal penalties for counterfeiting intellectual property.

(c) A person may be sentenced to imprisonment for not more than [one (1)] year or to payment of a fine of not more than [three thousand (3,000)] dollars, or both, if the person is convicted of violating section 3, under circumstances not described in paragraph (a) or (b).

(d) If the defendant distributes, sells, offers for sale, or possesses with intent to sell or distribute more than [one (1)] item or service bearing or identified by more than [one (1)] counterfeit mark, the quantity or retail value of these items and services may be aggregated for purposes of determining penalties under this Act.

Section 5. [Alternative Fine.] In lieu of the fine authorized by section 4 of this Act, a person convicted of violating this Act who received economic gain from the Act or caused economic loss during the Act may be sentenced to pay a fine calculated in the manner provided in [insert citation].

Section 6. [Forfeiture.] Property used to commit or facilitate the commission of a violation of this Act, and all money and property representing proceeds of a violation of this Act, shall be forfeited in accordance with [insert citation]. Excepting the conditions described under [insert citation], forfeited items bearing or identified by a counterfeit mark must be destroyed unless the intellectual property owner consents to another disposition.

Section 7. [Prima Facie Evidence.] A certificate of registration of an intellectual property from this state or [insert federal agency] is prima facie evidence of the registrant’s ownership and exclusive right to use the intellectual property in connection with the goods or services described in the certificate.

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

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

Section 10. [Effective Date.] [Insert effective date.]
Day Labor Services

This Act establishes criteria for employing people as laborers on a daily or project basis. It does not apply to clerical or professional workers.

Submitted as:
Illinois
SB 79 (enrolled version)

Suggested Legislation

Section 1. [Short Title.] This Act may be cited as “The Day Labor Services Act.”

Section 2. [Definitions.] As used in this Act:
“Day laborer” means a natural person who contracts for employment with a day labor service agency.
“Day labor” means labor or employment that is occasional or irregular at which a person is employed for not longer than the time period required to complete the assignment for which the person was hired and where wage payments are made directly or indirectly by the day labor service agency or the third party employer for work undertaken by day laborers pursuant to a contract between the day labor service agency with the third party employer.
“Day labor” does not include labor or employment of a professional or clerical nature.
“Day labor service agency” means any person or entity engaged in the business of employing day laborers to provide services to or for any third party employer pursuant to a contract with the day labor service agency and the third party employer.
“Department” means the [department of labor].
“Third party employer” means any person that contracts with a day labor service agency for the employment of day laborers.

Section 3. [Statement.]
(a) Whenever a day labor service agency agrees to send one or more people to work as day laborers, the day labor service agency shall, upon request by a day laborer, provide to the day laborer a statement containing the following items: “Name and nature of the work to be performed,” “wages offered,” “destination of the person employed,” “terms of transportation,” and whether a meal and equipment is provided, either by the day labor service or the third party employer, and the cost of the meal and equipment, if any.
(b) No day labor service agency may send any day laborer to any place where a strike, a lockout, or other labor trouble exists without first notifying the day laborer of the conditions.
(c) The [department] shall recommend to day labor service agencies that those agencies employ personnel who can effectively communicate information required in subsections (a) and (b) to day laborers in Spanish, Polish, or any other language that is generally used in the locale of the day labor agency.

Section 4. [Meals.] A day labor service agency or a third party employer shall not charge a day laborer more than the actual cost of a meal. In no case shall the purchase of a meal be a condition of employment for a day laborer.

Section 5. [Transportation.] A day labor service agency or a third party employer shall charge no more than the actual cost to transport a day laborer to or from the designated work site; however, the total cost to
each day laborer shall not exceed [three (3)] percent of the day laborer’s daily wages. Any motor vehicle that is
owned or operated by the day labor service agency or a third party employer, or a contractor of either, which is
used for the transportation of day laborers shall have proof of financial responsibility as defined in [insert
citation].

Section 6. [Day Laborer Equipment.] For any safety equipment, clothing, accessories, or any other
items required by the nature of the work, either by law, custom, or as a requirement of the third party employer,
the day labor service agency or the third party employer may charge the day laborer the market value of the
item temporarily provided to the day laborer by the third party employer if the day laborer fails to return such
items to the third party employer or the day labor service agency. For any other equipment, clothing, accesso-
ries, or any other items the day labor service agency makes available for purchase, the day laborer shall not be
charged more than the actual market value for the item.

Section 7. [Wage Payment.]
(a) At the time of the payment of wages, a day labor service agency shall provide each day laborer with
an itemized statement showing in detail each deduction made from the wages.
(b) A day labor service agency shall provide each worker an annual earnings summary within a reason-
able time after the preceding calendar year, but in no case later than [February 1]. A day labor service agency
shall, at the time of each wage payment, give notice to day laborers of the availability of the annual earnings
summary or post such a notice in a conspicuous place in the public reception area.
(c) At the request of a day laborer, a day labor service agency shall hold the daily wages of the day laborer
and make either weekly or semimonthly payments. The wages shall be paid in a single check representing the
wages earned during the period, either weekly or semimonthly, designated by the day laborer. Day labor service
agencies that make daily wage payments shall provide written notification to all day laborers of the right to
request weekly or semimonthly checks. The day labor service agency may provide this notice by conspicuously
posting the notice at the location where the wages are received by the day laborers.
(d) No day labor service agency shall charge any day laborer for cashing a check issued by the agency for
wages earned by a day laborer who performed work through that agency.
(e) Day laborers shall be paid no less than the wage rate stated in the notice as provided in Section 10 of
this Act for all the work performed on behalf of the third party employer in addition to the work listed in the
written description.

Section 8. [Public Access Area.] Each day labor service agency shall provide adequate seating in the
public access area of the offices of the agency. The public access area shall be the location for the employment
and wage notices required by Section 10 of this Act. The public access area shall allow for access to restrooms
and water.

Section 9. [Work Restriction.] No day labor service agency shall restrict the right of a day laborer to
accept a permanent position with a third party employer to whom the day laborer has been referred for work or
restrict the right of such third party employer to offer such employment to a day laborer. Nothing in this
Section shall restrict a day labor service agency from receiving a placement fee from the third party employer
for employing a day laborer for whom a contract for work was effected by the day labor service agency.

Section 10. [Registration; Department of Labor.] A day labor service agency shall register with the
[department of labor] in accordance with rules adopted by the [department] for day labor service agencies that
operate within the state. The [department] may assess each agency a registration fee not exceeding [two hun-
dred fifty (250)] dollars. The [department] shall also adopt rules for violation hearings and penalties for viola-
tions of this Act or the [department]'s rules. The [department] shall cause to be posted in each agency a notice
which informs the public of a toll-free telephone number for day laborers and the public to file wage dispute
complaints and other alleged violations by day labor service agencies.
Section 11. [Violations.] The [department] shall have the authority to suspend or revoke the registration of a day labor service agency if warranted by public health and safety concerns or violations of this Act.

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

Section 13. [Repealer.] [Insert repealer clause.]

Section 14. [Effective Date.] [Insert effective date.]
Electronic Textbooks Statement

Ohio HB 32, which became law in 1999, contains provisions to enable cities, villages and local school district boards to furnish electronic textbooks, in lieu of textbooks, to pupils attending the public schools in the district. “Electronic textbooks” are defined as computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, online service, electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means. A school district that furnishes electronic textbooks to pupils must provide reasonable access to them and other necessary computer equipment to pupils who are required to complete homework assignments using electronic textbooks, and to the teachers who provide those homework assignments. Electronic textbooks must be selected, acquired and maintained by school districts in the same manner as textbooks.

This legislation also expands the items that school districts may purchase with state funds to lend to students of chartered nonpublic schools. These include secular electronic textbooks, workbooks and text supplements, plus local and remote computer assisted instruction. Electronic textbooks, consumable textbooks and text supplements lent to chartered nonpublic school students must be approved by the state superintendent of public instruction for use in the state's public schools.

Finally, this law specifies that computer software purchased for loan to chartered nonpublic school students may include site licensing. Site licensing allows the software licensee (the school district) to grant multiple users access to it at one site.
Exemplary Environmental Management Systems

This Act is based on Connecticut law. It establishes a program to recognize and reward businesses that demonstrate an exemplary record of compliance with environmental laws and are “registered as meeting the ISO 14001 environmental management system standard and have adopted principles for sustainability.” Any business that is required to obtain a permit or other approval from the state commissioner of environmental protection may apply for the benefits of this Act once the business has been certified in ISO 14001 and demonstrated that it has adopted other internationally recognized principles for environmental sustainability. Benefits offered under the Act include system-wide permits, accelerated permitting processes, and the possibility of waiving certain fees.

Connecticut’s law is reported to be the first of its kind in the United States.

Submitted as:
Connecticut
Public Act 99-226
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 Recognize Exemplary Environmental Management Systems.”

(a) Any business that is required to obtain a permit or other approval from the [commissioner of environmental protection] to operate in this state may apply to the [commissioner] for the benefits of the program established under subsection (e) of this Act. Such application shall be on forms and in a manner prescribed by the [commissioner]. The [advisory board] convened under subsection (c) of this Act shall consider, and may approve, such application if the business has demonstrated to the satisfaction of such board that such business:

(1) has an exemplary record of compliance with environmental laws which shall include, but shall not be limited to, evidence that such business has not been found in violation of any such law, other than a minor violation as determined under [insert citation], within the preceding [three (3) years];

(2) has complied with the provisions of any orders of the [commissioner] or [insert citation], with regard to any minor violation, as defined in [insert citation]; and

(3) consistently employs practices in its operation that ensure protection of the natural environment to a degree greater than that required by law.

(b) Upon approval of such application, the [commissioner] may provide the benefits of the program to the business if the [commissioner] finds that:

(1) the business is registered as meeting the ISO 14001 Environmental Management System Standard and has adopted principles for sustainability such as the CERES principles, the Natural Step, the Hanover Principles or equivalent internationally recognized principles for sustainability as determined by the [commissioner], or

(2) in the case of a small business, as defined in [insert citation], the business has an equivalent environmental management system which employs a data collection system for the categories of information described in 63 Federal Register 12094 (1998). The environmental management system of any business approved for the program system shall include provisions for commitment of the management of the business to the environmental management system, compliance assurance and pollution prevention, enabling systems, performance and accountability, third-party audits and measurement and improvement. Any business approved for the program shall be issued a certificate by the [commissioner] evidencing such approval.

(c) The [commissioner] shall submit an application of a business under subsection (a) of this Act to an
(d) If the [commissioner] finds that a business that has been approved for the program ceases to be qualified for the program because it no longer complies with the requirements provided for in subsections (a) and (b) of this Act, the [commissioner] shall revoke the certificate issued under subsection (b) of this Act and the business shall not be entitled to any further benefits under the program. Any such business may reapply to the program at any time.

(e) The [commissioner of environmental protection] may establish a pilot program to attract to this state, or to support in this state, businesses which require a permit or other approval from the [commissioner] in order to operate in this state and which have a history of providing for the best protection of the natural environment in the operations of such business. Such program may be based on any model plan developed by a multistate working group or may replicate a pilot program developed by such a group. Such program shall provide for expedited review of permit applications and a public recognition process which may include issuance to businesses of a symbol or seal signifying the exemplary record of environmental protection and exclusive use of such symbol or seal by the business in its advertising or other public displays. Such program may provide for:

(1) less frequent reporting, consistent with federal law, of information otherwise required to be reported as a condition of the business’ operation in this state,

(2) a facility-wide permit for all approvals required from the [commissioner] for operation of a facility operated by the business in this state,

(3) a permit that would allow for changes in individual processes at a facility without the need for a new permit provided the total pollutant emissions or discharge from the facility does not increase, or

(4) reduced fees for any permit required from the [commissioner].

Section 2. [Severability.] [insert severability clause.]

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

Section 4. [Effective Date.] [insert effective date.]
Exposure to Bloodborne Pathogens

This Act is based on Article 26 of 1999 Texas HB 2085. Texas HB 2085 is an omnibus Act relating to the functions of the Texas Department of Health. Article 26 requires the state board of health and the state department of health to set up a plan to minimize the exposure of public health care workers to viruses that can result from accidental needlesticks or cuts from other medical equipment.

Submitted as:
Texas
Article 26 of Texas HB 2085 (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 Control Exposure to Bloodborne Pathogens.”

Section 2. [Definitions.] In this Act:
(1) “Bloodborne pathogens” means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus.
(2) “Engineered sharps injury protection” means:
   (A) a physical attribute that is built into a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids and that effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or another effective mechanism; or
   (B) a physical attribute built into any other type of needle device, into a nonneedle sharp, or into a nonneedle infusion safety securement device that effectively reduces the risk of an exposure incident.
(3) “Governmental unit” means:
   (A) this state and any agency of the state, including a department, bureau, board, commission, or office;
   (B) a political subdivision of this state, including any municipality, county, or special district; and
   (C) any other institution of government, including an institution of higher education.
(4) “Needleless system” means a device that does not use a needle and that is used:
   (A) to withdraw body fluids after initial venous or arterial access is established;
   (B) to administer medication or fluids; or
   (C) for any other procedure involving the potential for an exposure incident.
(5) “Sharp” means an object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.
(6) “Sharps injury” means any injury caused by a sharp, including a cut, abrasion, or needlestick.
(7) “Board” means the state board of health; and
(8) “Department” means the state health department.
(9) “Evaluation Committee” [Insert definition.]

Section 3. [Applicability.] This Act applies only to a governmental unit that employs employees who:
(1) provide services in a public or private facility providing health care-related services, including a home health care organization; or
Exposure to Bloodborne Pathogens

(2) otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps.

Section 4. [Exposure Control Plan.] The [department] shall establish an exposure control plan designed to minimize exposure of employees described by Section 3 of this Act to bloodborne pathogens. In developing the plan, the [department] must consider:

(1) policies relating to occupational exposure to bloodborne pathogens;
(2) training and educational requirements for employees;
(3) measures to increase vaccinations of employees; and
(4) increased use of personal protective equipment by employees.

Section 5. [Minimum Standards.] The [board] by rule shall adopt minimum standards to implement the exposure control plan and the other provisions of this Act. The rules shall be analogous to standards adopted by the federal Occupational Safety and Health Administration. Each governmental unit shall comply with the minimum standards adopted under this Act.

Section 6. [Needleless Systems.] (1) The [board] by rule shall recommend that governmental units implement needleless systems and sharps with engineered sharps injury protection for employees.
(2) The recommendation adopted under Subsection (1) does not apply to the use of a needleless system or sharps with engineered sharps injury protection in circumstances and in a year in which an [evaluation committee] has established that the use of needleless systems and sharps with engineered sharps injury protection will jeopardize patient or employee safety with regard to a specific medical procedure or will be unduly burdensome. A report of the [committee]'s decision shall be submitted to the [department] annually.
(3) At least half of the members of an [evaluation committee] established by a governmental unit to implement Subsection (2) must be employees who are health care workers who have direct contact with patients or provide services on a regular basis.
(4) The rules adopted under Subsection (2) may not prohibit the use of a prefilled syringe that is approved by the federal Food and Drug Administration. This Subsection expires [May 1, 2003].

Section 7. [Sharps Injury Log.] (1) The [board] by rule shall require that information concerning exposure incidents be recorded in a written or electronic sharps injury log to be maintained by a governmental unit. This information must be reported to the [department] and must include:
(A) the date and time of the exposure incident;
(B) the type and brand of sharp involved in the exposure incident; and
(C) a description of the exposure incident, including:
   (i) the job classification or title of the exposed employee;
   (ii) the department or work area where the exposure incident occurred;
   (iii) the procedure that the exposed employee was performing at the time of the incident;
   (iv) how the incident occurred;
   (vi) the employee's body part that was involved in the exposure incident; and
   (vii) whether the sharp had engineered sharps injury protection and, if so, whether the protective mechanism was activated and whether the injury occurred before, during, or after the activation of the protective mechanism.
(2) Information regarding which recommendations under Section 6 (1) were adopted by the governmental entity shall be included in the log.
(3) All information and materials obtained or compiled by the [department] in connection with a report under this Section are confidential and not subject to disclosure under [insert citation], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release by the [department].
Section 8. [Device Registration.]
(1) The [department], in accordance with rules adopted by the [board], shall implement a registration program for existing needleless systems and sharps with engineered sharps injury protection.
(2) The [department] shall compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection that are available in the commercial marketplace and registered with the [department] to assist governmental units to comply with this Act.
(3) The [department] shall charge a fee to register a device in an amount established by the [board]. The fees collected under this Section may be appropriated only to the [department] to implement this Act.

Section 9. [Deadlines.]
(1) The [board] shall adopt the exposure control plan and the rules required by this Act, not later than [September 1, 2000].
(2) Except as provided by Subsection (3) of this Section, a governmental unit, shall comply with this Act, not later than [January 1, 2001].
(3) The [department] may, in accordance with rules adopted by the [board], waive the application of this Act to a rural county if the [department] finds that the application of the Act to the county would be unduly burdensome. A waiver granted under this Subsection expires [December 31, 2001]. For purposes of this subsection, “rural county” means a county that:
(A) has a population of [fifty thousand (50,000)] or less; or
(B) has a population of more than [fifty thousand (50,000)] but:
(C) does not have located within the county a general or special hospital licensed under [insert citation], with more than [one hundred (100)] beds; and
(D) was not, based on the [1990] federal census, completely included within an area designated as urbanized by the Bureau of the Census of the United States Department of Commerce.

Section 10. In adopting the initial rules establishing the duties of an evaluation committee under Section 6 (3) of this Act, the [board] shall consider the duties of similar committees in existence on the effective date of this Act.

Section 11. [Severability.] [Insert severability clause.]

Section 12. [Repealer.] [Insert repealer clause.]

Section 13. [Effective Date.] [Insert effective date.]
Field Crop Products: Civil Liability

This Act makes people liable for knowingly damaging or destroying any field crop that is subject to testing or product development conducted under contract with a state college, university or other federal, state or local government agency. The maximum liable amount is twice the actual value of the damaged or destroyed crop.

Submitted as:
California
AB 2510
Status: enacted into law in August 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish Civil Liability for Damaging or Destroying Field Crop Products.”

Section 2. [Destruction of Field Crop Products: Penalties.]
(a) Any person who willfully and knowingly damages or destroys any field crop product, as specified in [insert citation], that is known by the person to be the subject of testing or a product development program being conducted by, or in conjunction or cooperation with the [state university], the [state university system], or any other federal, state, or local government agency, shall be liable for [twice] the value of the crop damaged or destroyed. For purposes of this Act, “in conjunction or cooperation with” means having a contract with the [state university], the [state university system], or any other federal, state, or local government agency involving testing or a product development program relating to that field crop product.
(b) Damages available under this Act shall be limited to [twice] actual damages involving research, testing, and crop development costs directly related to the crop that has been damaged or destroyed.
(c) The rights and remedies available under this Act are in addition to any other rights or remedies otherwise available in law or statute.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Health Care Industry Liability Note

Controversy about the availability and quality of care offered by managed care plans, health maintenance organizations (HMO) and health insurance policies has prompted states to examine the liability of such entities to their plan enrollees or policyholders, particularly concerning treatment decisions. It also prompted the states to add or modify their laws to address complaints against such entities. This note highlights legislative action in Arizona, California, Georgia, Louisiana, Maine, New Hampshire, New Mexico, Ohio, South Dakota, Texas and Washington. Illinois legislation for dental managed care plans also is summarized at the end of this note.

Arizona

Arizona Chapter 37 of 2000, Sections 3153-3155 declare:

A health care insurer is liable for any damages caused to the insurer’s enrollee by the insurer’s delay in authorizing or failure to authorize a request for medically necessary health care services covered under the health care plan or by the insurer’s denial of payment of benefits covered under the health care plan if both:

- The health care insurer delayed authorizing or failed to authorize the requested health care services or denied payment of the covered benefits without a reasonable basis for that action; and
- The health care insurer knew that it acted without a reasonable basis or failed to perform an investigation or evaluation adequate to determine whether its action was supported by a reasonable basis.

A health care insurer:

- Is liable if the insurer’s conduct was a cause of the enrollee’s damages and if the damages would not have occurred without that conduct; or
- Is not liable if the insurer’s conduct was inadvertent or unintentional.

Under Arizona’s Act, any person, enrollee or health care insurer may introduce into evidence for any purpose any of the documents, findings, decisions or information concerning events that occurred in the health care appeals process. The fact that an enrollee did not participate in the health care appeals process also may be introduced into evidence.

Before an enrollee files an action, the enrollee shall either:

- Complete a health care appeals process; or
- Provide written notice to the health care insurer at least thirty days before filing suit stating the enrollee’s intention to file suit and setting forth the basis for the suit.

If an enrollee provides notice, the enrollee shall deliver the notice to the health care insurer in compliance with the terms specified for delivery of written notices prescribed in the policy, contract or evidence of coverage. If the policy, contract or evidence of coverage does not specify the terms for delivery of written notices, the enrollee may provide notice to the last representative of the health care insurer who corresponded in writing with the enrollee.

California

Chapter 536 of the 1999 laws of California declares that a health care service plan or managed care entity has a duty of ordinary care to provide medically appropriate health care service to its subscribers and enrollees where the health care service is a benefit provided under the plan.

The law makes a health care service plan or managed care entity liable for any and all harm legally caused by the failure to exercise ordinary care in the arranging for the provision of, or denial of, health care services in specified circumstances. It establishes prohibitions against health care service plans or managed care entities seeking indemnity from the requirements of this provision and would make any provisions to the contrary in a contract with providers void and unenforceable. It makes any waiver of certain provisions in the law that are contrary to public policy, unenforceable and void. The legislation also requires that a person may not maintain a cause of action against a health care service plan unless he or she has exhausted the procedures provided by any applicable independent medical review system or independent review system, with certain exceptions.
Georgia

Georgia Chapter 261 of 1999 establishes a standard of care for entities that administer benefits or review or adjust claims under a managed care plan. The law provides for recovery for violations of that standard and prohibits waivers, modifications, shifting or delegation of liability. It provides conditions for maintaining certain causes of action and for court orders and abatement of actions. Georgia's Act provides certain enrollees of managed care plans with an independent review of plan determinations; and standards, conditions and procedures relating thereto.

Louisiana

Louisiana revised its health insurance laws through Public Act 401 of 1999. Prior law required every HMO to establish procedures for utilization review. It relieved any person who participated in a utilization review by a peer review committee from any monetary or civil liability absent malice. It provided that peer review committees were not subject to discovery and that no person was to be required to testify as to what transpired at such a review. It further required that the utilization review requirements of an HMO not fall below the appropriate standard of care and not impinge upon the independent medical judgment of the treating health care provider. It provided that prior law not be construed to prevent an HMO from conducting a utilization review program.

Public Act 401 provides that HMOs shall assure full compliance with new law in establishing procedures for medical necessity reviews. It retains the requirement that the medical necessity review requirements of an HMO shall not fall below the appropriate standard of care and shall not impinge upon the independent medical judgment of the treating health care provider. It provides that new law shall not be construed to prevent an HMO from conducting a medical necessity review program.

Prior Louisiana law required any entity operating a managed care plan to approve or disapprove an authorization for medical diagnostic testing or treatment requested from a health care provider that was of an urgent need within two working days of obtaining sufficient information or an authorization for elective care within five working days. It provided that failure to so timely approve or disapprove the request by the managed care entity constituted an authorization under the plan for the requested testing or treatment. It further authorized the commissioner of insurance, with the consent of the department of health and hospitals (DHH), to issue necessary rules relative to utilization review. It specified that accreditation by a nationally recognized accrediting body or entity recognized by the commissioner would be evidence of meeting the requirements of prior law.

Louisiana Public Act 401 provides that no health insurance issuer shall determine medical necessity or make other similar medical determinations unless authorized as a medical necessity review organization (MNRO) by the commissioner of insurance. It provides that no entity acting on behalf of or as an agent of a health insurance issuer and no entity other than a health insurance issuer shall make such medical necessity determinations unless licensed as an MNRO by the commissioner. It exempts MNROs from present law requiring certification by DHH as private review agents performing utilization review. It establishes separate procedures for authorization as an MNRO and for licensure of other entities as an MNRO, including information to be submitted to the commissioner. It provides for two-year licenses and requires renewal. It provides that the initial licensure fee and the renewal fee shall each be $1,500.

This Act also provides that a MNRO's medical necessity determination process may include the following requirements:

• An MNRO shall have a licensed physician as its medical director, who shall administer the program and oversee all review decisions; and

• All adverse determinations shall only be made by a licensed physician or clinical peer, and any adverse determination made by an MNRO in a second level review shall only become final when a clinical peer has evaluated and concurred with such determination.

Maine

Maine's Public Law 621 of 1998, "An Act to Ensure Fair Claims Settlement Practices" declares:
1. Civil actions. A person injured by any of the following actions taken by that person’s own insurer may bring a civil action and recover damages, together with costs and disbursements, reasonable attorney’s fees and interest on damages at the rate of 1\% per month:

A. Knowingly misrepresenting to an insured pertinent facts or policy provisions relating to coverage at issue;
B. Failing to acknowledge and review claims, which may include payment or denial of a claim, within a reasonable time following receipt of written notice by the insurer of a claim by an insured arising under a policy;
C. Threatening to appeal from an arbitration award in favor of an insured for the sole purpose of compelling the insured to accept a settlement less than the arbitration award;
D. Failing to affirm or deny coverage, reserving any appropriate defenses, within a reasonable time after having completed its investigation related to a claim; or
E. Without just cause, failing to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear.

2. Without just cause. An insurer acts without just cause if it refuses to settle claims without a reasonable basis to contest liability, the amount of any damages or the extent of any injuries claimed.

Nothing in this Maine Act prohibits any other claim or cause of action a person has against an insurer, nor does it apply to Workers’ Compensation claims.

New Hampshire
New Hampshire’s 2000 HMO Accountability Act (Chapter 18 of the 2000 Session (HB 640)) creates an independent external consumer appeal process to review certain determinations made by managed care entities. The law requires health carriers that conduct utilization review and licensed utilization review entities to employ a medical director who shall be licensed as a physician. It prohibits contracts between health carriers and participating providers from including provisions that create financial incentives to deny medically necessary care. It requires that health insurers disclose certain information necessary for consumers to hold managed care entities accountable for health care treatment decisions. The law also extends the jurisdiction of a board of medicine to include disciplinary action over medical directors for misconduct.

New Mexico
New Mexico’s 1998 Patient Protection Act (H 361) contains a provision entitled, “Private Remedies to Enforce Patient and Provider Insurance Rights, Enrollee as Third-Party Beneficiary to Enforce Rights.” Under this provision:

• A person who suffers a loss as a result of a violation of a right protected pursuant to the provisions of the Patient Protection Act, its regulations or a managed health care plan may bring an action to recover actual damages or the sum of $100, whichever is greater;
• A person likely to be damaged by a denial of a right protected pursuant to the provisions of the Patient Protection Act or its regulations may be granted an injunction under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage or intent to violate a right is not required; and
• To protect and enforce an enrollee’s rights in a managed health care plan, an individual enrollee participating in or eligible to participate in a managed health care plan shall be treated as a third-party beneficiary of the managed health care plan contract between the plan and the party with which the plan directly contracts. An individual enrollee may sue to enforce the rights provided in the contract that governs the managed health care plan; provided, however, that the plan and the party to the contract may amend the terms of, or terminate the provisions of, the contract without the enrollee’s consent.

The relief provided by this provision is in addition to other remedies available against the same conduct under the common law or other statutes of the state.

In any class action filed pursuant to this provision, the court may award damages to the named plaintiffs as and may award members of the class the actual damages suffered by each member of the class as a result of the unlawful practice.
Nothing in New Mexico's Patient Protection Act is intended to make a plan vicariously liable for the actions of independent contractor health care providers.

Ohio

Ohio HB 4 of 1999, as introduced, contained provisions to make a health insuring corporation liable for damages for harm to an enrollee proximately caused by the health insuring corporation's failure to exercise ordinary care in making a health care coverage decision. It also made changes to the law governing health insuring corporations to expedite enrollee appeals of health care coverage decisions by health insuring corporations. These provisions were removed from the version that was enacted into law.

As enacted, Ohio HB 4 provides for the review of health care coverage decisions made by a health insuring corporation by establishing requirements for conducting reviews within the corporation (internal reviews) and apart from the corporation through independent review organizations or the Superintendent of Insurance (external reviews).

Ohio's law requires a health insuring corporation to provide enrollees with at least one toll-free telephone number for health plan information, including information on the plan's internal and external review processes, and it requires that sickness and accident insurers and public employee benefit plans implement external review processes in the same manner as health insuring corporations.

South Dakota

South Dakota HB 1012 of 1999 (Chapter 243 of 1999) establishes criteria for the use of utilization review by health carriers, utilization review organizations and other contracted entities. This law applies to any health carrier that provides or performs utilization review services and to any designee of the health carrier or utilization review organization that performs utilization review functions on the carrier's behalf.

It declares that a health carrier is responsible for monitoring all utilization review activities carried out by, or on behalf of, the health carrier and for ensuring that all requirements of the Act and applicable rules are met. The health carrier also shall ensure that appropriate personnel have operational responsibility for the conduct of the health carrier's utilization review program. If a health carrier contracts to have a utilization review organization or other entity perform the utilization review functions required by the Act or applicable rules, the director shall hold the health carrier responsible for monitoring the activities of the utilization review organization or entity with which the health carrier contracts and for ensuring that the requirements of the Act and applicable rules are met.

A health carrier that conducts utilization review shall implement a written utilization review program that describes all review activities, both delegated and nondelegated, for covered services provided. The program document shall describe the following:

- Procedures to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health services;
- Data sources and clinical review criteria used in decision-making;
- The process for conducting appeals of adverse determinations;
- Mechanisms to ensure consistent application of review criteria and compatible decisions;
- Data collection processes and analytical methods used in assessing utilization of health care services;
- Provisions for assuring confidentiality of clinical and proprietary information;
- The organizational structure that periodically assesses utilization review activities and reports to the health carrier's governing body; and
- The staff position functionally responsible for day-to-day program management.

A health carrier shall prepare an annual summary report of its utilization review program activities and file the report, if requested, with the director and the secretary of the department of health.

A utilization review program shall use documented clinical review criteria that are based on sound clinical evidence and are evaluated periodically to assure ongoing efficacy. A health carrier may develop its own clinical review criteria, or it may purchase or license clinical review criteria from qualified vendors. A health carrier shall make available its clinical review criteria upon request to authorized government agencies, including the division of insurance and the department of health.
Qualified licensed health care professionals shall administer the utilization review program and oversee review decisions. Any adverse determination shall be evaluated by an appropriately licensed and clinically qualified health care provider.

A health carrier shall issue utilization review decisions in a timely manner pursuant to the requirements of South Dakota's Act. A health carrier shall obtain all information required to make a utilization review decision, including pertinent clinical information. A health carrier shall have a process to ensure that utilization reviewers apply clinical review criteria consistently. A health carrier shall routinely assess the effectiveness and efficiency of its utilization review program. A health carrier's data system shall be sufficient to support utilization review program activities and to generate management reports to enable the health carrier to monitor and manage health care services effectively. If a health carrier delegates any utilization review activities to a utilization review organization, the health carrier shall maintain adequate oversight, which shall include:

- A written description of the utilization review organization's activities and responsibilities, including reporting requirements;
- Evidence of formal approval of the utilization review organization program by the health carrier; and
- A process by which the health carrier evaluates the performance of the utilization review organization.

A health carrier shall coordinate the utilization review program with other medical management activities conducted by the carrier, such as quality assurance, credentialing, provider contracting data reporting, grievance procedures, processes for assessing member satisfaction and risk management.

A health carrier shall provide covered people and participating providers with access to its review staff by a toll-free number or collect call telephone line.

When conducting utilization review, the health carrier shall collect only the information necessary to certify the admission, procedure or treatment, length of stay, frequency and duration of services.

Compensation to people providing utilization review services for a health carrier may not contain incentives, direct or indirect, for these people to make inappropriate review decisions. Compensation to any such people may not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

A health carrier shall maintain written procedures for making utilization review decisions and for notifying covered people and providers acting on behalf of covered people of its decisions.

For initial determinations, a health carrier shall make the determination within two working days of obtaining all necessary information regarding a proposed admission, procedure, or service requiring a review determination:

- In the case of a determination to certify an admission, procedure, or service, the health carrier shall notify the provider rendering the service by telephone within 24 hours of making the initial certification; and provide written or electronic confirmation of the telephone notification to the covered person and the provider within two working days of making the initial certification; or
- In the case of an adverse determination, the health carrier shall notify the provider rendering the service by telephone within 24 hours of making the adverse determination; and provide written or electronic confirmation of the telephone notification to the covered person and the provider within one working day of making the adverse determination.

For concurrent review determinations, a health carrier shall make the determination within one working day of obtaining all necessary information:

- In the case of a determination to certify an extended stay or additional services, the health carrier shall notify by telephone the provider rendering the service within one working day of making the certification; and the health carrier shall provide written or electronic confirmation of the telephone notification to the covered person and the provider within one working day after the telephone notification. The written notification shall include the number of extended days or next review date, the new total number of days or services approved, and the date of admission or initiation of services; or
- In the case of an adverse determination, the health carrier shall notify by telephone the provider rendering the service within 24 hours of making the adverse determination; and the health carrier shall provide written or electronic notification to the covered person and the provider within one working day of the telephone notification. The service shall be continued without liability to the covered person until the covered person has been notified of the determination.
For retrospective review determinations, a health carrier shall make the determination within thirty working days of receiving all necessary information:
• In the case of a certification, the health carrier may notify in writing the covered person and the provider rendering the service; or
• In the case of an adverse determination, the health carrier shall notify in writing the provider rendering the service and the covered person within five working days of making the adverse determination.

Any written notification of an adverse determination shall include the principal reason or reasons for the determination, the instructions for initiating an appeal, grievance, or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale used to make the determination. A health carrier shall provide the clinical rationale in writing for an adverse determination to any party who received notice of the adverse determination and who follows the procedures for a request. The clinical rationale shall contain sufficient specificity to allow the covered person to understand the basis of the adverse determination.

Under South Dakota's Act, a health carrier shall have written procedures to address the failure or inability of a provider or a covered person to provide all necessary information for review. If the provider or a covered person will not release necessary information, the health carrier may deny certification.

In the certificate of coverage or member handbook provided to covered people, a health carrier shall include a clear and comprehensive description of its utilization review procedures, including the procedures for obtaining review of adverse determinations, and a statement of rights and responsibilities of covered people with respect to those procedures. A health carrier shall include a summary of its utilization review procedures in materials intended for prospective covered people. A health carrier shall print on its membership cards a toll-free telephone number to call for utilization review decisions.

Nothing in South Dakota's law applies to dental only, vision only, accident only, school accident, travel, or specified disease plans or plans that primarily provide a fixed daily, fixed occurrence, or fixed per procedure benefit without regard to expenses incurred.

If the director of the division of insurance and the secretary of the department of health find that the requirements of any private accrediting body meet the requirements of utilization review as set forth in the Act, the health carrier may, at the discretion of the director and secretary, be deemed to have met the applicable requirements.

The director may, after consultation with the secretary of the department of health, promulgate rules to carry out the Act. The rules shall be designed to afford the public timely administration of utilization review and to assure that utilization review decisions are made in a fair and clinically acceptable manner. The rules may include the following:
• Definition of terms;
• Timing, form, and content of reports;
• Application of clinical criteria as it relates to utilization review;
• Written determinations; and
• Utilization review procedures.

Texas

Texas enacted SB 386 in 1997 to require health benefit plans and managed care entities to exercise ordinary care when making health care treatment decisions. The law holds those entities liable for damages for harm to an insured or enrollee proximately caused by the health care entity's failure to exercise ordinary care. Prior to this legislation, Texas law prohibited the corporate practice of medicine. This prevented managed care organizations from being held legally accountable when making health care treatment decisions which affect the quality of the diagnosis, care and treatment of an enrollee of a health care plan.

Washington

Section 17 of Washington's Patient Bill of Rights (Chapter 5 of 2000), specifies that health carriers are liable for any and all harm proximately caused by its failure to follow a specified standard of care when the
failure resulted in the denial, delay, or modification of the health care service recommended for, or furnished to, an enrollee. This section makes health carriers liable for harm to an enrollee proximately caused by health care treatment decisions that result from a failure to follow the accepted standard of care made by its:

• Employees;
• Agents; or
• Ostensible agents who are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control.

Washington’s provisions may not be waived, shifted, or modified by contract or agreement and responsibility for the provisions shall be a duty that cannot be delegated. Any effort to waive, modify, delegate, or shift liability for a breach of the duty established by this section, through a contract for indemnification or otherwise, is invalid.

This section of Washington law does not create any new cause of action, or eliminate any presently existing cause of action, with respect to health care providers and health care facilities that are included in and subject to the provisions of other state law.

It is a defense to any action or liability asserted against a health carrier if:

• The health care service in question is not a benefit provided under the plan or the service is subject to limitations under the plan that have been exhausted;
• Neither the health carrier, nor any employee, agent, or ostensible agent for whose conduct the health carrier is liable, controlled, influenced, or participated in the health care decision; or
• The health carrier did not deny or unreasonably delay payment for treatment prescribed or recommended by a participating health care provider for the enrollee.

This section does not create any liability on the part of an employer, an employer group purchasing organization that purchases coverage or assumes risk on behalf of its employers, or a governmental agency that purchases coverage on behalf of individuals and families.

The governmental entity established to offer and provide health insurance to public employees, public retirees, and their covered dependents under state law is subject to liability.

A person may not maintain a cause of action against a health carrier unless:

• The affected enrollee has suffered substantial harm. “Substantial harm” means loss of life, loss or significant impairment of limb, bodily or cognitive function, significant disfigurement, or severe or chronic physical pain; and
• The affected enrollee or the enrollee’s representative has exercised the opportunity to seek independent review of the health care treatment decision.

This does not prohibit an enrollee from pursuing other appropriate remedies, including injunctive relief, a declaratory judgment, or other relief available under law, if its requirements place the enrollee’s health in serious jeopardy.

In an action against a health carrier, a finding that a health care provider is an employee, agent, or ostensible agent of such a health carrier shall not be based solely on proof that the person’s name appears in a listing of approved physicians or health care providers made available to enrollees under a health plan.

Any action under this Washington provision must commence within three years of the completion of an independent review process.

Illinois

Illinois Public Act 91-0355 of 1999 may be the forerunner of a trend by defining the rights of dental patients who are enrolled in managed care dental benefit plans.

Under Illinois’ Act, a managed care dental plan shall provide upon request to prospective enrollees a written summary description of all of the following terms of coverage:

• Information about the dental plan, including how the plan operates and what general types of financial arrangements exist between dentists and the plan. Nothing in this section shall require disclosure of any specific financial arrangements between providers and the plan.
• The service area.
• Covered benefits, exclusions, or limitations.
• Pre-certification requirements including any requirements for referrals made by primary care dentists to specialists, and other preauthorization requirements.

• A list of participating primary care dentists in the plan’s service area, including provider address and phone number, for an enrollee to evaluate the managed care dental plan’s network access, as well as a phone number by which the prospective enrollee may obtain additional information regarding the provider network, including participating specialists. However, a managed care dental plan offering a preferred provider organization (PPO) product that does not require the enrollee to select a primary care dentist shall only be required to make available for inspection to enrollees and prospective enrollees a list of participating dentists in the plan’s service area.

• Emergency coverage and benefits.

• Out-of-area coverages and benefits, if any.

• The process about how participating dentists are selected.

• The grievance process, including the telephone number to call to receive information concerning grievance procedures.

Under the Act, an enrollee shall be provided with evidence of coverage as required under the Illinois Insurance Code provisions applicable to the managed care dental plan. An enrollee or prospective enrollee has the right to the most current financial statement filed by the managed care dental plan by contacting the department of insurance. The department may charge a reasonable fee for providing such information.

The law requires a managed care dental plan to provide to the department, on an annual basis, a list of all participating dentists. Nothing in the Act requires a particular ratio for any type of provider.

If the managed care dental plan uses a capitation method of compensation to its primary care providers (dentists), the plan must establish and follow procedures that ensure that:

• The plan application form includes a space in which each enrollee selects a primary care provider (dentist);

• If an enrollee who fails to select a primary care provider (dentist) is assigned a primary care provider (dentist), the enrollee shall be notified of the name and location of that primary care provider (dentist); and

• The primary care provider (dentist) to whom an enrollee is assigned is physically located within a reasonable travel distance, as established by rule adopted by the director, from the residence or place of employment of the enrollee.

Nothing in Illinois’ Act shall be deemed to require a plan to assign an enrollee to a primary care provider (dentist).
Hepatitis C: Education, Screening and Reporting

Hepatitis C is a virus that damages the liver and can ultimately lead to death. It is estimated that more than 4 million Americans are infected with hepatitis C. Like other contagious diseases, combating hepatitis C involves treating the infected people and taking steps to control its spread to people who are not infected. Between 1998 and 2000, at least four states legislatively addressed hepatitis C, California, New Jersey, Pennsylvania and Texas.

Chapter 867 of the California laws of 1998 requires the state department of health services to make available protocols and guidelines developed by the National Institutes of Health and California legislative advisory committees on hepatitis C for educating physicians and health professionals and training community service providers. However, the law does not require the department to develop or produce any protocol, guideline, or proposal.

Chapter 116 of the New Jersey laws of 1998 directs the state commissioner of health to provide guidelines to health care providers on screening and reporting cases of hepatitis C. It also mandates that such cases be reported to the state department of health.

Pennsylvania SB 1336 directs the state emergency management agency, in consultation with the state department of health, to establish a hepatitis C prevention, screening, treatment and education program for health care professionals, firefighters, emergency response personnel, correctional facilities personnel and police officers. SB 1336 was pending in a legislative committee as of June 2000.

The draft in this SSL volume is based on Texas HB 1652, which was enacted into law in 1999. This Act directs the state department of health to develop a program to heighten public awareness about hepatitis C.

The law directs the department to establish voluntary hepatitis C testing programs to be performed at facilities that provide voluntary HIV testing in each public health region. It enables the department to contract with public and private entities to perform the testing, and according to local circumstances. The results of a test conducted by a testing program or department program may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

Submitted as:
Texas
HB 1652 (enrolled version)
Status: enacted into law in 1999.

Suggested Legislation

Section 1. [Short Title]. This Act may be entitled as “An Act Relating to An Education and Prevention Program for Hepatitis C.”

Section 2. [Hepatitis C Education and Prevention Program.] The [department] shall develop a program to heighten awareness and enhance knowledge and understanding of hepatitis C. The [department] shall:

(1) conduct a seroprevalence study to estimate the current and future impact of hepatitis C on the state;

(2) conduct health education, public awareness, and community outreach activities to promote public awareness and knowledge about the risk factors, the value of early detection, available screening services, and the options available for the treatment of hepatitis C;

(3) provide training to public health clinic staff regarding the treatment, detection, and methods of transmission of hepatitis C;

(4) identify to health care providers and employers the benefits of disease awareness and prevention; and

(5) develop a prevention program to reduce the risk of transmission of hepatitis C.
Section 3. [Department Voluntary Testing Programs.]

(a) The [department] shall establish voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under [insert citation] in each public health region to make confidential counseling and testing available.

(b) The [department] may contract with public and private entities to perform the testing as necessary according to local circumstances.

(c) The results of a test conducted by a testing program or [department] program under this Section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who intentionally violates Subsection (c) is liable to a person injured by the violation. The injured person may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):

   (1) the greater of [one thousand (1,000)] dollars or actual damages; and

   (2) reasonable attorney's fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

Section 4. [Training of Counselors.]

(a) The [department] shall develop and offer a training course for people who provide hepatitis C counseling. The training course must include information relating to the special needs of people with positive hepatitis C test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(b) The [department] shall maintain a registry of people who successfully complete the training course.

(c) The [department] may charge a fee for the course to people other than employees of entities receiving state or federal funds for hepatitis C counseling and testing programs through a contract with the [department]. The [department] shall set the fee in an amount to cover the costs of providing the course.

(d) The [department] may contract for the training of counselors.

Section 5. [Severability.] [Insert severability clause.]

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

Section 7. [Effective Date.] [Insert effective date.]
Holocaust Victims' Insurance Relief

This Act enables the state insurance commissioner to set up a Holocaust survivor assistance office and a Holocaust insurance company registry to help Holocaust victims recover proceeds from insurance policies that were improperly denied or processed because of the Nazi regime and World War II. It authorizes the insurance commissioner to cooperate and exchange information with other states that establish similar Holocaust survivor assistance offices and to enter agreements whereby a single processing office may be established on behalf of, and to provide services to the residents of, several states.

The law requires any insurer that sold life, property, liability, health, annuities, dowry, educational or casualty insurance policies, to people in Europe, that were in effect between 1920 and 1945, to file the following information with the insurance commissioner for entry into the Holocaust insurance company registry:

- a list of such insurance policies;
- the insureds, beneficiaries and face amounts of such policies; and
- a comparison of the names and other available identifying information of insureds and beneficiaries of such policies and the names and other identifying information of the victims of the Holocaust.

The Act authorizes the insurance commissioner to suspend the certificate of authority to conduct insurance business in the state of any insurer that fails to comply with the Act until the insurer complies with the Act.

Submitted as:
Washington
Substitute Senate Bill 5509 (enrolled version)
Status: enacted as Chapter 8, Laws of 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Holocaust Victims' Insurance Relief Act.”

Section 2. [Intent.]

(1) The [Legislature] recognizes the existence of allegations that certain insurers doing business in this state, either directly or through related companies and affiliates, have failed to honor insurance policies issued during the World War II era. Although such policies were issued outside of this state, the state has a clear obligation to seek justice for its citizens and residents.

(2) The [Legislature] recognizes that allegations regarding a failure to pay legitimate insurance claims threaten the integrity of the insurance market. The basic commodity that insurers sell is trust. Policyholders pay substantial sums to insurers trusting that at a future date, perhaps decades later, the insurer will protect them and their loved ones. An insurer that violates this trust should not be authorized to do business in this state or own or control insurers doing business in this state, lest the integrity of this state's insurance market be compromised.

(3) The [Legislature] recognizes that hundreds of Holocaust survivors and heirs of Holocaust victims are citizens or residents of [state]. The [Legislature] is concerned by allegations that citizens or residents of this state may have been deprived of their contractual entitlement to benefits under insurance policies issued by insurance companies operating in Europe prior to and during World War II. [State] has a public policy interest in assuring that all of its citizens and residents, including Holocaust survivors, their families and the heirs of Holocaust victims, who are entitled to proceeds of insurance policies are treated reasonably and fairly and that any contractual obligations are honored.

(4) The [Legislature] recognizes that the business of insurance is one affected by the public interest, requiring that all people conducting it be actuated by good faith, abstain from deception, and practice honesty.
and equity in all insurance matters. The insurance commissioner is currently authorized to refuse, suspend, or revoke the certificate of authority of insurers that are affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations with any person, people, or entities whose business operations are or have been marked, to the detriment of policyholders or the public, or by bad faith. The insurance commissioner also is currently authorized to provide assistance to members of the public in resolving complaints involving insurers. It is the intent of the Legislature to provide additional resources to the insurance commissioner to implement this authority, to authorize the insurance commissioner to cooperate with other state regulators with regard to such policies, and to authorize the insurance commissioner to cooperate with and act through the international commission concerning World War II era policies established under the efforts of the National Association of Insurance Commissioners.

Section 3. [Findings.] The Legislature finds the following:

(1) In addition to the many atrocities that befell the victims of the Nazi regime, in many cases insurance policy proceeds were not paid to the victims and their families.

(2) In many instances, insurance company records are the only proof of insurance policies held. In some cases, recollection of those policies’ very existence may have perished along with the Holocaust victims.

(3) Several hundred Holocaust survivors and their families, or the heirs of Holocaust victims live in [state] today.

(4) Insurance companies doing business in this state have a responsibility to ensure that any involvement they or their related companies had with insurance policies of Holocaust victims are disclosed to the state to ensure the rapid payment to victims and their survivors of any proceeds to which they may be entitled.

(5) There has been established an international commission to investigate and facilitate the payment of insurance policies to victims of the Holocaust and their survivors. It is in the best interest of the people of this state to authorize the insurance commissioner to cooperate with and coordinate his or her activities with the international commission.

(6) Other states are establishing Holocaust survivor assistance offices and registries of insurance policies and Holocaust victims in order to identify policyholders and their survivors to whom policy proceeds may be payable. It is in the best interest of the people of this state to authorize the insurance commissioner to cooperate with and coordinate his or her activities with those other states.

(7) In addition to unpaid insurance policies, Holocaust victims lost unknown billions of dollars of assets seized by Nazi Germany and its allies and collaborators in Germany and Nazi-occupied Europe between 1933 and 1945.

Section 4. [Definitions.] Under this Act:

(1) “Holocaust survivor” or “Holocaust victim” means any person who was persecuted, imprisoned or liable to imprisonment, or had property taken or confiscated during the period of 1933 to 1945, inclusive, by Nazi Germany, its allies, or sympathizers based on that person’s race, religion, ethnicity, physical or mental disability, sexual orientation, or similar class or group-based animus.

(2) “Related company” means any parent, subsidiary, successor in interest, managing general agent, or other person or company affiliated directly or indirectly through ownership, control, common ownership or control, or other business or insurance relationship with another company or insurer.

(3) “Insurer” means an entity holding a certificate of authority or license to conduct the business of insurance in this state, or whose contacts with this state satisfy the constitutional requirements for jurisdiction, that sold life, property, liability, health, annuities, dowry, educational, casualty, or any other insurance covering people or property to people in Europe at any time before 1945, whether directly or through or as result of sales by a related company, or is itself a related company to any person, entity, or insurance company that sold such policies, whether the sale of the insurance occurred before or after becoming related.

(4) “Proceeds” means the face or other payout value of policies and annuities plus reasonable interest to date of payments without diminution for wartime or immediate postwar currency devaluation legally due under any insurance policy issued by an insurer or any related company.
(5) "International commission" means the international commission on Holocaust era insurance claims, referenced in and established under a memorandum of understanding originally dated April 8, 1998, between and among the insurance commissioner, various other state insurance regulators, various alien insurance companies, and world-wide Jewish groups, which commission held its first meeting in New York on October 21, 1998, and any successor.

(6) "Other assets" means the proceeds of bank accounts, gold, art, houses, businesses, other real estate properties or land, or the contents of homes, businesses, or other real estate properties of Holocaust survivors or victims.

Section 5. [Holocaust Survivor Assistance Office.]
(1) To assist Holocaust victims, their heirs, or their beneficiaries to recover proceeds from insurance policies that were improperly denied or processed, or from other assets, or both, the insurance commissioner may establish a Holocaust survivor assistance office.

(2) The insurance commissioner may appoint or deputize personnel to be engaged or employed by the Holocaust survivor assistance office and use insurance department personnel to resolve or settle claims of Holocaust victims. The insurance commissioner may also engage outside auditors or other qualified personnel to assist in the investigation of claims made by Holocaust victims, their heirs, or their beneficiaries.

(3) The insurance commissioner may cooperate and exchange information with other states that establish similar Holocaust survivor assistance offices and with the international commission, and may enter into agreements whereby a single processing office may be established on behalf of, and to provide services to the residents of, several states.

Section 6. [Holocaust Insurance Company Registry.]
(1) To facilitate the work of the Holocaust survivor assistance office, the insurance commissioner may establish and maintain a central registry containing records and information relating to insurance policies, as described in section 7 of this Act, of victims, living and deceased, of the Holocaust. The registry shall be known as the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to make the information in the registry available to the public to the extent necessary and appropriate to determine the existence of insurance policies and to identify beneficiaries, successors in interest, or other people entitled to the proceeds of such policies, and to enable such people to claim proceeds to which they may be entitled, while protecting the privacy of policyholders, their survivors, and their family members.

All information received by the Holocaust insurance company registry or Holocaust survivor assistance office from any insurer, related company, or foreign government or regulator shall be considered and deemed to be matters and information relating to an examination and part of an examination report that the insurance commissioner may treat as confidential and withhold from public inspection under [insert citation]. To the extent necessary and appropriate to secure access to documents and information located in or subject to the jurisdiction of other states and countries, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all documents and information received from an entity regulated by or subject to the laws of such other state or country, or received from any agency of the government of any such state or country, will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the appropriate authority of such state or country or except as permitted or authorized by the laws of such state or country, and any such agreement shall be binding and enforceable notwithstanding [insert citation]. To the extent necessary and appropriate to secure access to documents and information from or in the possession of the international commission as to which the international commission has given assurances of confidentiality or privacy, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all such documents and information will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the international commission or as permitted by any agreement or assurances given by the international commission, and any such agreement shall be binding and enforceable notwithstanding [insert citation].

(2) The insurance commissioner may cooperate and exchange information with other states estab-
Section 7. [Operations Of Holocaust Insurance Company Registry.]

(1) Any insurer that sold life, property, liability, health, annuities, dowry, educational, or casualty insurance policies, to people in Europe, that were in effect any time between 1933 and 1945, regardless of when the policy was initially purchased or written, shall within [ninety (90)] days following the effective date of this Act, or such later date as the [insurance commissioner] may establish, file or cause to be filed the following information with the [insurance commissioner] to be entered into the [Holocaust insurance company registry]:

(a) A list of such insurance policies;

(b) The insureds, beneficiaries, and face amounts of such policies;

(c) A comparison of the names and other available identifying information of insureds and beneficiaries of such policies and the names and other identifying information of the victims of the Holocaust. The names and other identifying information of victims of the Holocaust shall be provided by the office of the [insurance commissioner] and may be obtained from the United States Holocaust museum and the Yad Vashem repository in Israel, or other sources;

(d) For each such policy, whichever of the following that may apply:

(i) That the proceeds of the policy have been paid to the designated beneficiaries or their heirs where that person or people, after diligent search, could be located and identified;

(ii) That the proceeds of the policies where the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors;

(iii) That a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders, their heirs, and beneficiaries, a plan for the distribution of the proceeds;

(iv) That the proceeds have not been distributed and the amount of those proceeds.

(2) The destruction of any records or other materials pertaining to such policies shall be a [class C felony] according to [insert citation]. Evidence of the destruction of such material shall be admissible in both administrative and judicial proceedings as evidence in support of any claim being made against the insurer involving the destroyed material.

(3) An insurer currently doing business in the state that did not sell any insurance policies in Europe prior to 1945 except through or as a result of sales by a related company shall not be subject to this section if a related company, whether or not authorized and currently doing business in the state, has made a filing with the [insurance commissioner] under this section.

(4) The [insurance commissioner] may fund the costs of operating both the [Holocaust survivor assistance office] and the [Holocaust claims registry] by assessments upon those insurers providing information to the [Holocaust insurance company registry]. The [insurance commissioner] shall establish standards and procedures to fairly allocate the costs of the [Holocaust insurance company registry] and [Holocaust survivor assistance office] among such insurers. The [insurance commissioner] is expressly authorized to allocate such costs based on the number of policies reported or, based on the total monetary amount of the policies as determined by their face amounts without regard to inflation, interest, or depreciation.

(5) The [insurance commissioner] is authorized to conduct investigations and examinations of insurers for the purpose of determining compliance with this Act, verifying the accuracy and completeness of any and all information furnished to the [Holocaust insurance company registry] and the [Holocaust survivor assistance office], and developing and securing such additional information as may be necessary or appropriate to determine those entitled to payment under any policy and the proceeds to which such person may be entitled, if any. Any such investigation shall be considered to be an examination under [insert citation]. The costs of any such examination will be borne by the insurer investigated, or the insurer to whom the related company is related, pursuant to [insert citation]. Examinations may be conducted in this state, or in the state or country of residence of the insurer or related company, or at such other place or country where the records to be examined may be located.
(6) The [insurance commissioner] may permit the [Holocaust insurance company registry] or the [Holocaust survivor assistance office] or both to accept information and to assist claimants with regard to the location and recovery of property or assets taken or confiscated from Holocaust victims other than insurance policies if the [insurance commissioner] finds that doing so would not adversely affect the operations of the registry or [Holocaust survivor assistance office] with regard to insurance policies. However, all costs and expenses, including that of personnel, attributable to such noninsurance assets shall be separately accounted for and shall not be assessed against insurers under subsections (4) and (5) of this section and shall not be paid from the general funds of the office of the [insurance commissioner], but shall be paid solely from contributions or donations received for that purpose.

(a) The [insurance commissioner] may accept contributions from any other person wishing to fund the operations of the [Holocaust survivor assistance office] or the [Holocaust insurance company registry] to facilitate the resolution of claims involving Holocaust victims.

(b) The [insurance commissioner] is authorized to assist in the creation of an entity to accept tax deductible contributions to support activities conducted by the [Holocaust survivor assistance office] and the [Holocaust insurance company registry].

(c) The [insurance commissioner], through the [Holocaust survivor assistance office], is authorized, with the consent of the parties, to act as mediator of any dispute involving the claim of a Holocaust victim or his or her heirs or beneficiaries arising from an occurrence during the period between January 1, 1933, and December 31, 1945.

(7) The [insurance commissioner] is authorized to cooperate with and exchange information with other states with similar [Holocaust insurance company registries] or [Holocaust survivor assistance offices], with the National Association of Insurance Commissioners, with foreign countries and with the international commission. The [insurance commissioner] is authorized to enter into agreements to handle the processing of claims and registry functions of other states, and to have other states handle all or part of the registry and claims processing functions for this state, as the [insurance commissioner] may determine to be appropriate. The [insurance commissioner] is authorized to enter into agreements with other states and the international commission to treat and consider information submitted to them as submitted to this state for purpose of complying with this Act. As part of any such agreement, the [insurance commissioner] may agree to reimburse any other state for expenses or costs incurred and such reimbursement shall be recovered by the [insurance commissioner] as an expense of operating the [insurance commissioner] and [Holocaust survivor assistance office] under subsections (4) and (5) of this section, and to accept reimbursement from any other state for services with regard to residents of such other state.

(8) A finding by the [insurance commissioner] that a claim subject to the provisions of this section should be paid shall be regarded by any court as highly persuasive evidence that such claim should be paid.

Section 8. [Penalties.] Any insurer that knowingly files information required by this Act that is false shall be liable for a civil penalty not to exceed [ten thousand (10,000)] dollars for each violation.

Section 9. [Suspension of Certificate of Authority for Failure to Comply with Chapter.] The [insurance commissioner] is authorized to suspend the certificate of authority to conduct insurance business in this state of any insurer that fails to comply with the requirements of this Act by or after [one hundred twenty (120)] days after the effective date of this Act, until the time that the insurer complies with this Act. Such suspension shall not affect or relieve the insurer from its obligations to service its existing insureds, and shall not permit the insurer to terminate its existing insureds, except pursuant to the terms of the insurance contract, but shall prohibit the insurer from writing new business in this state until the suspension is lifted by the [insurance commissioner].

Section 10. [Cooperation With International Commission.] The [insurance commissioner] may suspend the application of this Act to any insurer that is participating in the international commission process in good faith and is working through the international commission to resolve all outstanding claims with offers.
Holocaust Victims' Insurance Relief

of fair settlements in a reasonable time frame. If, however, the international commission fails to establish a
mechanism to accomplish identification, adjudication, and payment of insurance policy claims of Holocaust
survivors or victims within a reasonable time, then all provisions of this Act shall come into effect as to any
such insurer. For purposes of this section, a reasonable time shall mean by [January 1, 2000], or such later date
as the [insurance commissioner] may establish by rule.

Section 11. [Private Rights Of Action Preserved Venue.] Any Holocaust survivor, or heir or beneficiary
of a Holocaust survivor or victim, who resides in this state and has a claim against an insurer arising out of an
insurance policy or policies purchased or in effect in Europe before 1945 from that insurer may bring a legal
action against that insurer to recover on that claim in the [superior court] of the county in which any plaintiff
resides, which court shall be vested with jurisdiction over that action.

Section 12. [Extension Of Statute Of Limitations.] Any action brought by a Holocaust survivor or the
heir or beneficiary of a Holocaust survivor or victim, seeking proceeds of the insurance policies issued or in
effect before 1945 shall not be dismissed for failure to comply with the applicable statute of limitations, pro-
vided the action is commenced on or before [December 31, 2010].

Section 13. [Adoption of Rules.] The [insurance commissioner] may adopt rules to implement this Act.

Section 14. [Report To Legislature.] The [insurance commissioner] shall report to the [Legislature]
[one (1)] year from the effective date of this Act and annually thereafter on the implementation of this law and
resolution of Holocaust claims.

Section 15. [Severability.] [Insert severability clause.]

Section 16. [Repealer.] [Insert repealer clause.]

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

This Act allows registered nurses, in addition to physicians and employees of local health departments, to immunize children and provide certificates or documentary proof of such immunizations.

Submitted as:
Virginia
Chapter 476, Public Laws of 2000
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Immunizations.”

Section 2. [Immunization Requirements.]
(A) No student shall be admitted by a school unless at the time of admission the student or his parent or guardian submits documentary proof of immunization to the admitting official of the school or unless the student is exempted from immunization pursuant to subsection C. If a student does not have documentary proof of immunization, the school shall notify the student or his parent or guardian: (i) that it has no documentary proof of immunization for the student; (ii) that it may not admit the student without proof unless the student is exempted pursuant to subsection C; (iii) that the student may be immunized and receive certification by a licensed physician, registered nurse or an employee of a local health department; and (iv) how to contact the local health department to learn where and when it performs these services. Neither this state nor any school or admitting official shall be liable in damages to any person for complying with this section. Any physician, registered nurse or local health department employee performing immunizations shall provide to any person who has been immunized or to his parent or guardian, upon request, documentary proof of immunizations conforming with the requirements of this section.

(B) Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within [ninety (90)] days. The immunization record of each student admitted conditionally shall be reviewed periodically until the required immunizations have been received. Any student admitted conditionally and who fails to comply with his schedule for completion of the required immunizations shall be excluded from school until his immunizations are resumed.

(C) No certificate of immunization shall be required for the admission to school of any student if (i) the student or his parent or guardian submits an affidavit to the admitting official stating that the administration of immunizing agents conflicts with the student’s religious tenets or practices; or (ii) the school has written certification from a licensed physician or a local health department that one or more of the required immunizations may be detrimental to the student’s health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

(D) The admitting official of a school shall exclude from the school any student for whom he does not have documentary proof of immunization or notice of exemption pursuant to subsection C.

(E) Every school shall record each student’s immunizations on the school immunization record. The school immunization record shall be a standardized form provided by the [state department of health], which shall be a part of the mandatory permanent student record. Such record shall be open to inspection by officials of the [state department of health] and the local health departments. The school immunization record shall be transferred by the school whenever the school transfers any student’s permanent academic or scholastic records.
Within [thirty (30)] calendar days after the beginning of each school year or entrance of a student, each admitting official shall file a report with the local health department. The report shall be filed on forms prepared by the [state department of health] and shall state the number of students admitted to school with documentary proof of immunization, the number of students who have been admitted with a medical or religious exemption and the number of students who have been conditionally admitted.

(F) The requirement for mumps immunization as provided in [insert citation] shall not apply to any child admitted for the first time to any grade level, kindergarten through grade twelve, of a school prior to [August 1, 1981]. The requirement for Haemophilus Influenzae Type b immunization as provided in [insert citation] shall not apply to any child admitted to any grade level, kindergarten through grade twelve.

(G) The [state board of health] shall promulgate rules and regulations for the implementation of this section in conformance with rules and regulations of the [state board of health] promulgated under [insert citation] and in cooperation with the [state board of education].

Section 3. [Tuberculosis Certificate.]

As a condition to employment, every public school employee, including without limitation teachers, cafeteria workers, janitors and bus drivers, shall submit a certificate signed by a licensed physician, or by a registered nurse licensed pursuant to [insert citation], stating that such employee appears free of communicable tuberculosis. Such certificate shall be based on recorded results of such skin tests, X-rays and other examinations, singly or in combination, as are deemed necessary by a licensed physician that have been performed within the [twelve (12)] months' period immediately preceding submission of the certificate. After consulting with the local health director, any school board may require the submission of such certificates annually, or at such intervals as it deems appropriate, as a condition to continued employment.

Section 4. [Immunization of Children Against Certain Diseases; Authority to Share Immunization Records.]

(A) The parent, guardian or person standing in loco parentis of each child within this state shall cause such child to be immunized by vaccine against diphtheria, tetanus, whooping cough and poliomyelitis before such child attains the age of [one (1)] year, against Haemophilus influenzae type b before he attains the age of [thirty (30)] months, and against measles (rubeola), German measles (rubella) and mumps before such child attains the age of [two (2)] years. All children born on or after [January 1, 1994], shall be required to receive immunization against hepatitis B before their [first] birthday. All children shall also be required to receive a second dose of measles (rubeola) vaccine in accordance with the regulations of the [board]. The [board's] regulations shall require that all children receive a second dose of measles (rubeola) vaccine prior to first entering kindergarten or first grade and that all children who have not yet received a second dose of measles (rubeola) vaccine receive such second dose prior to entering the sixth grade. All children born on or after [January 1, 1997], shall be required to receive immunization against varicella zoster (chicken pox), not earlier than the age of [twelve (12)] months. Children who have evidence of immunity as demonstrated by laboratory confirmation of immunity or a reliable medical history of disease are exempt from such requirement. After [July 1, 2001], all children who have not yet received immunization against hepatitis B shall receive such immunization prior to entering sixth grade. The parent, guardian or person standing in loco parentis may have such child immunized by a physician or registered nurse or may present the child to the appropriate local health department, which shall administer the required vaccines without charge.

(B) A physician, registered nurse or local health department administering a vaccine required by this section shall provide to the person who presents the child for immunizations a certificate which shall state the diseases for which the child has been immunized, the numbers of doses given, the dates when administered and any further immunizations indicated.

(C) The vaccines required by this section shall meet the standards prescribed in, and be administered in accordance with, regulations of the [board].

(D) The provisions of this section shall not apply if: (i) The parent or guardian of the child objects thereto on the grounds that the administration of immunizing agents conflicts with his religious tenets or
practices, unless an emergency or epidemic of disease has been declared by the [board], or (ii) The parent or guardian presents a statement from a physician licensed to practice medicine in this state which states that the physical condition of the child is such that the administration of one or more of the required immunizing agents would be detrimental to the health of the child.

(E) For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, licensed institutional health care provider, local or district health department, and the [department of health] may share immunization and child locator information, including, but not limited to, the month, day, and year of each administered immunization; the child's name, address, telephone number, birth date, and social security number; and the parents' names. The immunization information; the child's name, address, telephone number, birth date, and social security number; and the parents' names shall be confidential and shall only be shared for the purposes set out in this subsection.

Section 5. [Severability.] [Insert severability clause.]

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

Section 7. [Effective Date.] [Insert effective date.]
Internet Privacy Policy

This Act directs public bodies in the state that have an Internet Web site to develop an Internet privacy policy and an Internet privacy policy statement by December 1, 2000. The policy must be consistent with the requirements of the state Privacy Protection Act and tailored to reflect the individual public body's information practices. The statement, which explains the policy, must be posted on the public body's Web site in a conspicuous manner by January 1, 2001.

Submitted as:
Virginia
Chapter 405, Acts of Assembly 2000 Session
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title.] This Act may be cited as ["An Act Concerning Internet Privacy"].

2. Section 2. [Administration of Systems including Personal Information; Internet Privacy Policy.]
   A. Any agency maintaining an information system that includes personal information shall:
      1. Collect, maintain, use and disseminate only that personal information permitted or required by
         law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;
      2. Collect information to the greatest extent feasible from the data subject directly;
      3. Establish categories for maintaining personal information to operate in conjunction with con-
         fidentiality requirements and access controls;
      4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as
         necessary to assure fairness in determinations relating to a data subject;
      5. Make no dissemination to another system without:
         (i) specifying requirements for security and usage including limitations on access thereto, and
         (ii) receiving reasonable assurances that those requirements and limitations will be observed,
         provided this subdivision shall not apply to a dissemination made by an agency to an agency in another state,
         district or territory of the United States where the personal information is requested by the agency of such
         other state, district or territory in connection with the application of the data subject therein for a service,
         privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy
         representatives of the United States Armed Forces in accordance with [insert citation];
      6. Maintain a list of all people or organizations having regular access to personal information in
         the information system;
      7. Maintain for a period of [three (3)] years or until such time as the personal information is
         purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to
         any personal information in a system, including the identity of any person or organization not having regular
         access authority but excluding access by the personnel of the agency wherein data is put to service for the
         purpose for which it is obtained;
      8. Take affirmative action to establish rules of conduct and inform each person involved in the
         design, development, operation, or maintenance of the system, or the collection or use of any personal infor-
         mation contained therein, about all the requirements of this Act, the rules and procedures, including penalties
         for noncompliance, of the agency designed to assure compliance with such requirements;
      9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to
         its security;
10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects which is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance.

B. By [December 1, 2000], every public body, as defined in [insert citation], that has an Internet Web site associated with that public body shall develop an Internet privacy policy and an Internet privacy policy statement that explains the policy to the public. The policy shall be consistent with the requirements of this Act. By [January 1, 2001], the statement shall be made available on the public body's Web site in a conspicuous manner. The [secretary of technology] or his designee shall provide guidelines for developing the policy and the statement, and each public body shall tailor the policy and the statement to reflect the information practices of the individual public body. At minimum, the policy and the statement shall address:

(i) what information, including personally identifiable information, will be collected, if any;

(ii) whether any information will be automatically collected simply by accessing the Web site and, if so, what information;

(iii) whether the Web site automatically places a computer file, commonly referred to as a "cookie," on the Internet user's computer and, if so, for what purpose; and

(iv) how the collected information is being used or will be used.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Lifeline/Link Up Services

This Act directs the state department of human resources to compile a list or people who are eligible to receive lifeline or link up telecommunications services. The department must forward the list to telecommunications service providers in the state. The providers must notify the listed parties in their service area that they are eligible for these services. It directs the service providers to start these services automatically after notifying someone of their eligibility unless the recipient opts not to get the services. In addition, the Act provides limited liability to enhanced 911 service providers.

This Act defines “lifeline” and “link up” according to federal guidelines that existed on January 1, 1999. Those regulations read as follows:

Code of Federal Regulations (CFR) Title 47, Volume 3, Part 54.401(a), revised as of October 1, 1998:

“Lifeline” defined:
(a) As used in this subpart, Lifeline means a retail local service offering:
(1) That is available only to qualifying low-income consumers;
(2) For which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in Sec. 54.403; and
(3) That includes the services or functionalities enumerated in Sec. 54.101 (a)(1) through (a)(9).
The carriers shall offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive toll limitation, that service shall become part of that consumer’s Lifeline service.
(b) Eligible telecommunications carriers may not disconnect Lifeline service for non-payment of toll charges.
(1) State commissions may grant a waiver of this requirement if the local exchange carrier can demonstrate that:
   (i) It would incur substantial costs in complying with this requirement;
   (ii) It offers toll limitation to its qualifying low-income consumers without charge; and
   (iii) Telephone subscribership among low-income consumers in the carrier’s service area is greater than or equal to the national subscribership rate for low-income consumers. For purposes of this paragraph, a low-income consumer is one with an income below the poverty level for a family of four residing in the state for which the carrier seeks the waiver. The carrier may reapply for the waiver.
(2) A carrier may file a petition for review of the state commission’s decision with the Commission within 30 days of that decision. If a state commission has not acted on a petition for a waiver of this requirement within 30 days of its filing, the carrier may file that petition with the Commission on the 31st day after that initial filing.
(c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.
(d) The state commission shall file or require the carrier to file information with the Administrator demonstrating that the carrier’s Lifeline plan meets the criteria set forth in this subpart and stating the number of qualifying low-income consumers and the amount of state assistance. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier’s Lifeline plan satisfies the criteria set out in this subpart.

CFR (Code of Federal Regulations] Title 47, Volume 3, Part 54.411(a), revised as of October 1, 1998:

“Link Up program” defined:
(a) For purposes of this subpart, the term “Link Up” shall describe the following assistance program for qualifying low-income consumers, which an eligible telecommunications carrier shall offer as part of its obligation set forth in Sections 54.101(a)(9) and 54.101(b):
(1) A reduction in the carrier’s customary charge for commencing telecommunications service for a single telecommunications connection at a consumer’s principal place of residence. The reduction shall be half of the customary charge or $30.00, whichever is less; and
(2) A deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges of up to $200.00 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements.

(b) A qualifying low-income consumer may choose one or both of the programs set forth in paragraph (a) of this section.

(c) A carrier's Link Up program shall allow a consumer to receive the benefit of the Link Up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was provided previously.

Submitted as:
Nevada
SB 487 (enrolled version)
Status: enacted into law as Chapter 120, Laws of 1999.

Comment: SB 487 uses CFR definitions as of January 1, 1999. CFRs are typically revised every October, hence the October 1998 definitions that are used in the abstract to this item were the most recent ones in effect on January 1, 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Lifeline/Link Up Services Act.”

Section 2. [Definitions.] As used in this Act:
“Commission” means the [public utilities commission] of this state.
“Department” means the [state department of human resources].
“Eligible customer” means a customer who is eligible to receive lifeline or link up services.
“Eligible provider” means a provider of telecommunication services that has been designated as an eligible telecommunications carrier by the [commission] to receive universal service support pursuant to 47 U.S.C. § 214, as that section existed on January 1, 1999.
“Lifeline” has the meaning ascribed to it in 47 C.F.R. § 54.401(a), as that section existed on January 1, 1999.
“Link up” has the meaning ascribed to it in 47 C.F.R. § 54.411(a), as that section existed on January 1, 1999.

Section 3. [List of Eligible Customers.] 1. The [department] shall provide to each eligible provider a list of eligible customers, as determined by criteria adopted by the [public utilities commission] of this state or the Federal Communications Commission, as appropriate, who are located within the service area of the eligible provider. The list must include:
(a) The name and address of each eligible customer; and
(b) If applicable, the telephone number of each eligible customer.
2. Every [six (6)] months, the [department] shall provide to each eligible provider an updated list of the eligible customers in this state.
3. The [department] may adopt such regulations as are necessary to coordinate the acquisition and provision of the information required to be provided pursuant to this section.

Section 4. [Notification.] 1. An eligible provider, within [seven (7)] days after determining that a person located in its service area is an eligible customer, shall notify the eligible customer that he will receive lifeline or link up services, or both,
unless he specifically declines to receive the services. The notification must include:
(a) Information about the lifeline and link up services, including, without limitation, the date on
which the services will begin and any options or responsibilities that the eligible customer may have related to
the receipt of those services;
(b) A self-addressed, postage paid response card which the eligible customer must return to the
eligible provider to decline the services; and
(c) A statement that the eligible provider will automatically provide lifeline or link up services, or
both, to the eligible customer unless the eligible customer declines the services by timely returning to the
eligible provider the response card included with the notification.
2. To decline lifeline or link up services, an eligible customer must return the response card included in
the notification provided pursuant to subsection 1 to the eligible provider not later than [ten (10)] days before
the date on which the services are scheduled to begin.
3. An eligible provider shall begin billing an eligible customer for lifeline or link up services, or both,
not later than [sixty (60)] days after the date on which the eligible provider receives the list of eligible customers
from the [department] which includes the eligible customer, if the eligible customer has not declined the services.
4. An eligible provider shall continue providing lifeline services to an eligible customer for as long as he
continues to receive telecommunication services from the eligible provider until the customer or the depart-
ment notifies the eligible provider that the customer is no longer eligible for the program. The eligible provider
shall discontinue providing lifeline services to an eligible customer if the eligible customer notifies the eligible
provider in writing that he wishes to discontinue receiving those services.

Section 5. [Reduction in Telephone Rates: Methodology.]
1. The reduction in the telephone rates provided by lifeline or link up services must be based on the
methods for determining reductions which are adopted by the [commission] by regulation. The [commission]
may provide different methods for determining reductions to allow for differences between eligible providers.
The methods may include, without limitation:
(a) Basing the reduction on the tariff filed by the eligible provider with the [commission]; or
(b) Establishing a formula pursuant to which the amount of the reduction may be determined.
2. The reduction in such telephone rates applies only to:
(a) Residential flat rate basic local exchange service;
(b) Residential local exchange access service;
(c) Residential local calling area service; and
(d) Residential service connection charges.
3. The reduced rate for residential local exchange access service, when combined with the reduced rate
for residential local calling area service, must not exceed the comparable reduced rate for residential flat rate
basic local exchange service.
4. If the amount of the reduction in rates provided by an eligible provider to an eligible customer for
lifeline services is greater than the amount which the eligible provider receives as universal service support
pursuant to 47 U.S.C. § 254, the eligible provider is entitled to reimbursement from the fund established by the
[commission] pursuant to [insert citation] for the difference between the amount of the reduction and the
amount received as universal service support pursuant to 47 U.S.C. § 254.

Section 6. [Telephone Company Liability.]
1. A telephone company, person providing wireless or commercial mobile radio service, public safety
answering point, or manufacturer supplying equipment to a telephone company or public safety answering
point, or any agent thereof, is not liable to any person who uses an enhanced 911 service for:
(a) The release of the telephone number and street address of the telephone used to place the 911
telephone call, including telephone numbers which are not published, if the release was made in good faith;
(b) The failure of any equipment or procedure in connection with the provision of an enhanced
911 service; or
(c) Any act, or the omission of any act, committed in good faith, while providing, or while in training to provide, services through a public safety answering point.

2. As used in this section:
   (a) “Enhanced 911 service” means a service consisting of telephone network features and public safety answering points provided for persons using the public telephone system to reach the appropriate public service answering point by dialing the digits 9-1-1, by using selective routing, if required, based on the location from which the call originated, and providing at the public safety answering point automatic number identification and automatic location identification.
   (b) “Public safety answering point” means a facility, operated 24 hours a day, 7 days a week, that is responsible for receiving 911 telephone calls and directly dispatching emergency response services, or transferring or relaying 911 telephone calls to other public safety agencies. A public safety answering point is the first point of reception by a public safety agency of 911 telephone calls and serves the jurisdiction in which it is located and other participating jurisdictions.

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

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

Section 9. [Effective Date.] [Insert effective date.]
National Crime Prevention and Privacy Compact

Historically, the Federal Bureau of Investigation (FBI) has been the primary source for national criminal history searches and interstate exchanges of criminal histories among law enforcement agencies. State and local law enforcement agencies have also maintained databases of criminal histories that are specific to their state or locality. In addition to this dual, federal-state system, the demand for criminal histories has increased, particularly for noncriminal justice uses (e.g., as part of background checks on people who seek employment in child-related vocations). Accordingly, the U.S. Department of Justice reports that the National Crime Prevention and Privacy Compact will decentralize and improve the efficient exchange of criminal histories among the states and the federal government for noncriminal justice uses.

The National Crime Prevention and Privacy Compact establishes formal procedures and governance structures for use of the Interstate Identification Index (III) for noncriminal justice purposes. The decentralized III is an index-pointer system for the interstate and federal-state exchange of criminal history records. It ties the computerized files of the FBI and the states into a national system. When III is fully implemented, only a state-level offender’s first-arrest information will be sent to the FBI to establish his or her name in the index. All subsequent criminal history information will be maintained at state repositories. An agency seeking someone’s criminal history will electronically contact the FBI, which will direct the inquiring party to the appropriate state or federal database.

According to the Bureau of Justice, when this process occurs, the compact provides a uniform procedure for releasing information that meets the needs of the requesting entities while protecting the rights of individuals and recognizing the philosophy of each state regarding use of its records.

Congressional approval of the compact was embodied in the Crime Identification and Technology Act (CITA) of 1998. The President signed CITA into law on October 9, 1998. Montana ratified the compact on April 8, 1999. The compact became effective April 28, 1999 when Georgia ratified it. Nevada ratified the compact on May 14, 1999. Florida adopted it in June 1999, and the FBI reports that as of May 2000, Colorado and Iowa have enacted it as well.

The draft in this volume is based on Montana’s law.

Submitted as:
Montana
HB 106
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Adopting and Implementing The National Crime Prevention and Privacy Compact.”

Section 2. [Legislative Findings.]
Whereas, it is in the interest of the state to facilitate the dissemination of criminal history records from other states for use in this state as authorized by state law; and
Whereas, the National Crime Prevention and Privacy Compact creates a legal framework for the cooperative exchange of criminal history records for noncriminal justice purposes; and
Whereas, the compact provides for the organization of an electronic information-sharing system among the federal government and the states to exchange criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment; and
Whereas, under the compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and party states for authorized purposes; and

Whereas, the FBI shall manage the federal data facilities that provide a significant part of the infrastructure for the system; and

Whereas, entering into the compact would facilitate the interstate and federal-state exchange of criminal history information to streamline the processing of background checks for noncriminal justice purposes; and

Whereas, release and use of information obtained through the system for noncriminal justice purposes would be governed by the laws of the receiving state; and

Whereas, entering into the compact will provide a mechanism for establishing and enforcing uniform standards for record accuracy and for the confidentiality and privacy interests of record subjects.

Section 3. [Compact Adopted.] The National Crime Prevention and Privacy Compact is enacted into law and entered into with all jurisdictions legally joining in the compact in the form substantially as set forth in this section.

Article I. Definitions

As used in this compact, the following definitions apply:

(1) “Attorney general” means the attorney general of the United States.

(2) “Compact officer” means:

(a) with respect to the federal government, an official so designated by the director of the FBI; and

(b) with respect to a party state, the chief administrator of the state’s criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) “Council” means the compact council established under Article VI.

(4) “Criminal history record repository” means the state agency designated by the governor or other appropriate executive official or the legislature of a state to perform centralized record keeping functions for criminal history records and services in the state.

(5) (a) “Criminal history records” means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release.

(b) The term does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system.

(6) “Criminal justice” includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) (a) “Criminal justice agency” means:

(i) courts; and

(ii) a governmental agency or any subunit of an agency that performs the administration of criminal justice pursuant to a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice.

(b) The term includes federal and state inspector general offices.

(8) “Criminal justice services” means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) “Direct access” means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(10) “Executive order” means an order of the president of the United States or the chief executive
officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(11) “FBI” means the Federal Bureau of Investigation.

(12)(a) “III system” means the interstate identification index system, which is the cooperative federal-state system for the exchange of criminal history records.

(b) The term includes the national identification index, the national fingerprint file, and to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

(13) “National fingerprint file” means a database of fingerprints or of other uniquely personal identifying information that relates to an arrested or charged individual and that is maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(14) “National identification index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III system.

(15) “National indices” means the national identification index and the national fingerprint file.

(16) “Noncriminal justice purposes” means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(17) “Nonparty state” means a state that has not ratified this compact.

(18) “Party state” means a state that has ratified this compact.

(19) “Positive identification” means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of subjects’ names or other nonunique identification characteristics or numbers, or combinations thereof, does not constitute positive identification.

(20) “Sealed record information” means:

(a) with respect to adults, that portion of a record that is:

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

(b) with respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(21) “State” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article II. Purposes

The purposes of this compact are to:

(1) provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the national identification index and the national fingerprint file by each party state and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(3) require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(4) provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and

The purposes of this compact are to:

(1) provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the national identification index and the national fingerprint file by each party state and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(3) require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(4) provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and
National Crime Prevention and Privacy Compact

(5) require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

Article III. Responsibilities of Compact Parties

(1) The director of the FBI shall:
   (a) appoint an FBI compact officer who shall:
      (i) administer this compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(3);
      (ii) ensure that compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the Department of Justice and the federal agencies and other agencies and organizations referred to in subsection (1)(a)(i) of this Article III; and
      (iii) regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;
   (b) provide to federal agencies and to state criminal history record repositories criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including:
      (i) information from nonparty states; and
      (ii) information from party states that is available from the FBI through the III system, but is not available from the party state through the III system;
   (c) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV and ensure that the exchange of the records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and
   (d) modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(2) Each party state shall:
   (a) appoint a compact officer who shall:
      (i) administer this compact within that state;
      (ii) ensure that compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and
      (iii) regulate the in-state use of records received by means of the III system from the FBI or from other party states;
   (b) establish and maintain a criminal history record repository, which shall provide:
      (i) information and records for the national identification index and the national fingerprint file; and
      (ii) the state's III system-indexed criminal history records for noncriminal justice purposes described in Article IV;
   (c) participate in the national fingerprint file; and
   (d) provide and maintain telecommunications links and related equipment necessary to support the criminal justice services set forth in this compact.

(3) In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(4) (a) Use of the III system for noncriminal justice purposes authorized in this compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes.
   (b) Administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.
Article IV. Authorized Record Disclosures

(1) To the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), the FBI shall provide on request criminal history records, excluding sealed record information, to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general to ensure that the state statute explicitly authorizes national indices checks.

(2) The FBI, to the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), and state criminal history record repositories shall provide criminal history records, excluding sealed record information, to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general to ensure that the state statute explicitly authorizes national indices checks.

(3) Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures, consistent with this compact and with rules, procedures, and standards established by the council under Article VI, which procedures shall protect the accuracy and privacy of the records and shall:

(a) ensure that records obtained under this compact are used only by authorized officials for authorized purposes;
(b) require that subsequent record checks are requested to obtain current information whenever a new need arises; and
(c) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate “no record” response is communicated to the requesting official.

Article V. Record Request Procedures

(1) Subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(2) Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state’s criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI.

(3) Each request for criminal history record checks utilizing the national indices made under federal authority must be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which the request originated. Direct access to the national identification index by entities other than the FBI and state criminal history records repositories may not be permitted for noncriminal justice purposes.

(4) A state criminal history record repository or the FBI:

(a) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and
(b) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(5) (a) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, must be forwarded to the FBI for a search of the national indices.

(b) If, with respect to a request forwarded by a state criminal history record repository under subsection (5)(a), the FBI positively identifies the subject as having a III system-indexed record or records:

(i) the FBI shall so advise the state criminal history record repository; and
(ii) the state criminal history record repository is entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

Article VI. Establishment of Compact Council

(1) (a) There is established a council to be known as the compact council, which has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes.

(b) The council shall:

(i) continue in existence as long as this compact remains in effect;

(ii) be located, for administrative purposes, within the FBI; and

(iii) be organized and hold its first meeting as soon as practicable after the effective date of this compact.

(2) The council must be composed of 15 members, each of whom must be appointed by the attorney general, as follows:

(a) nine members, each of whom shall serve a 2-year term, who must be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states must be eligible to serve on an interim basis;

(b) two at-large members, nominated by the director of the FBI, each of whom shall serve a 3-year term, of whom:

(i) one must be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

(ii) one must be a representative of the noncriminal justice agencies of the federal government;

(c) two at-large members, nominated by the chairman of the council once the chairman is elected pursuant to subsection (3) of this Article VI, each of whom shall serve a 3-year term, of whom:

(i) one must be a representative of state or local criminal justice agencies; and

(ii) one must be a representative of state or local noncriminal justice agencies;

(d) one member who shall serve a 3-year term and who shall simultaneously be a member of the FBI’s advisory policy board on criminal justice information services, nominated by the membership of that policy board;

(e) one member, nominated by the director of the FBI, who shall serve a 3-year term and who must be an employee of the FBI.

(3) (a) From its membership, the council shall elect a chairman and a vice chairman of the council.

Both the chairman and vice chairman of the council:

(i) must be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chairman may be an at-large member; and

(ii) shall serve 2-year terms and may be re-elected to only one additional 2-year term.

(b) The vice chairman of the council shall serve as the chairman of the council in the absence of the chairman.

(4) (a) The council shall meet at least once each year at the call of the chairman. Each meeting of the council must be open to the public. The council shall provide prior public notice in the Federal Register of each meeting of the council, including the matters to be addressed at the meeting.

(b) A majority of the council or any committee of the council shall constitute a quorum of the council or of a committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(5) The council shall make available for public inspection and copying at the council office within the FBI and shall publish in the Federal Register any rules, procedures, or standards established by the council.

(6) The council may request from the FBI reports, studies, statistics, or other information or materials that the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide assistance or information upon a request.
(7) The chairman may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

Article VII. Ratification of Compact

This compact takes effect upon being entered into by two or more states as between those states and the federal government. When additional states subsequently enter into this compact, it becomes effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact has the full force and effect of law within the ratifying jurisdictions. The form of ratification must be in accordance with the laws of the executing state.

Article VIII. Miscellaneous Provisions

(1) Administration of this compact may not interfere with the management and control of the director of the FBI over the FBI’s collection and dissemination of criminal history records and the advisory function of the FBI’s advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(2) Nothing in this compact may require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(3) Nothing in this compact may diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under Article VI(1), regarding the use and dissemination of criminal history records and information.

Article IX. Renunciation

(1) This compact shall bind each party state until renounced by the party state.

(2) Any renunciation of this compact by a party state must:
   (a) be effected in the same manner by which the party state ratified this compact; and
   (b) become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

Article X. Severability

The provisions of this compact must be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or to the Constitution of the United States or if the applicability of any phrase, clause, sentence, or provision of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of the compact to any government, agency, person, or circumstance may not be affected by the severability. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact must remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

Article XI. Adjudication of Disputes

(1) The council:
   (a) has initial authority to make determinations with respect to any dispute regarding:
       (i) interpretation of this compact;
       (ii) any rule or standard established by the council pursuant to Article VI; and
(iii) any dispute or controversy between any parties to this compact; and
(b) shall hold a hearing concerning any dispute described in subsection (1)(a) at a regularly sched-
uled meeting of the council and only render a decision based upon a majority vote of the members of the
council. The decision must be published pursuant to the requirements of Article VI(5).

(2) The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, to
maintain system policy and standards, to protect the accuracy and privacy of records, and to prevent abuses
until the council holds a hearing on the matters.

(3) The FBI or a party state may appeal any decision of the council to the attorney general and after that
appeal may file suit in the appropriate district court of the United States that has original jurisdiction of all
cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state
court must be removed to the appropriate district court of the United States in the manner provided by section
1446 of Title 28, United States Code, or other statutory authority.

Section 4. [Appointment of Compact Officer.] The [attorney general] shall appoint a compact officer for
the purpose of complying with Article III (2)(a) of the National Crime Prevention and Privacy Compact.
New Economy Technology Scholarship

This Act provides scholarships for people who enter into the fields of science or technology. It is intended to create a sustained pool of highly trained technology workers in order to improve the state's ability to attract and retain businesses.

The legislation consists of a SciTech Scholarship for students who are enrolled in an approved educational institution and pursuing a Bachelor’s Degree in science or technology. The SciTech Scholarship provides for a $3,000 maximum scholarship per year for three years. An additional year may be granted if the student is enrolled in a five-year degree program.

A “GI Bill for the New Economy Scholarship” is for students who are enrolled in an approved educational institution and pursuing an Associate’s Degree or certificate in science or technology. The GI Bill scholarship provides for a $1,000 maximum scholarship per year for two years. An additional year may be granted if the student is enrolled in a three-year Associate’s Degree or certification program.

Under the Act, each scholarship participant must complete an internship or work experience program in science, technology or related field with an employer located in the state prior to receiving their degree or certificate. The goal is to have 5,000 companies providing internship opportunities.

At the completion of their degree or certificate the scholarship recipient must commence employment in the state within one year for a period of one year for each academic year for which a scholarship was received.

Submitted as:
Pennsylvania
Act of 1999, No. 22
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as “The New Economy Technology Scholarship Act”.

2 Section 2. [Purpose.] The purpose of this Act is to provide an incentive to students in this state to pursue higher education and training in science and technology fields, which are essential to economic development in this state. Further, the Act is intended to create a sustained pool of highly trained technology workers which will improve this state's ability to attract and retain business.

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

4 “Agency” means the [state higher education assistance agency].

5 “Approved course of study” means a program or curriculum offered by a postsecondary educational institution that provides instruction in science, technology and related fields and has been approved by the [department of education] in consultation with the state [human resources council].

6 “Approved educational institution” means a postsecondary educational institution located in this state that is authorized to provide approved courses of study and grant degrees and has been approved by the [state higher education assistance agency] as an institution in which students may enroll to participate in the [New Economy Technology Scholarship Program].

7 “Department” means the [state department of education].

8 “Incumbent worker” means a person who has been a resident of this state for [one (1)] year and who has been employed full time in this state for a period of [one (1)] year while pursuing an associate degree or its equivalent.

“Student” means an individual domiciled in this state who attends or is about to attend a secondary school or postsecondary educational institution located in this state.

“Work requirement” means postgraduate, full-time employment with an employer located in this state in an occupation related to an approved course of study required under section 4. The term does not include a paid student internship, a paid fellowship, volunteer service or employment before graduation.

Section 4. [New Economy Technology Scholarship Program.]
(a) Establishment of program. There is hereby established the [New Economy Technology Scholarship Program] within the [agency], to consist of the [SciTech Scholarship] and the [GI Bill for the New Economy].
(b) Issuance of grants. The [agency] may provide scholarship grants to an eligible student who is a resident of this state upon confirmation from an approved educational institution that the student is enrolled in an approved course of study. Scholarship grants shall only be for the amount set forth in sections 5(a) and 6(a) and shall only be used for tuition and mandatory fees.
(c) The [department], in cooperation with the [state human resources investment council], shall establish a list of approved courses of study for the program.
(d) Other funding. Prior to making a grant under this Act, the [agency] shall first apply Federal Pell Grant and state grants available to tuition and mandatory fees related to an undergraduate program prior to determining the amount of the scholarship grant.
(e) Eligibility. To receive a scholarship grant under this section, a student shall meet all of the following requirements:

(1) Graduation from a high school in this state, or earned general educational development (GED) diploma or the equivalent thereof.

(2) Maintenance of domicile in this state during the term of the scholarship grants.

(3) Compliance with any conditions placed on the scholarship grant by the [agency] or by the [department] in consultation with the [state human resources investment council].

(4) Maintenance of a grade point average of 3.0 or higher, on a scale of 4.0, or its equivalent, beginning with the first semester of the freshman year and through the term of the scholarship or in the last year of high school if the student is applying under section 5 or 6.

(5) Enter into a written agreement with the [agency] to:

(i) Satisfy all degree, diploma or certificate requirements and other requirements under this Act.

(ii) Commence employment in this state within [one (1)] year after completion of an approved undergraduate degree or certificate program for a period of [one (1)] year for each academic year the student received a scholarship grant under this Act unless the [agency] determines that there are extenuating circumstances.

(iii) Reimburse the state all amounts received under this Act and interest thereon, as determined by the [agency], if the student fails to comply with subparagraphs (i) and (ii).

(f) Application. A student shall apply to the [agency] for a scholarship grant as prescribed by the [agency], to include the provision of all information and documentation required by the [agency]. The application of a student under [eighteen (18)] years old shall include the signature of a parent or guardian. The application shall include a verified statement of grade point average from the appropriate educational institution.

(g) Work requirement. The work requirement under subsection (e) (5) (ii) shall begin after the receipt of a bachelor’s or associate’s degree or other appropriate certificate from an approved educational institution.

(h) Termination. If a student terminates enrollment in the approved educational institution during the academic year or prior to completion of the approved course of study, the approved education institution shall notify the [agency] in writing and shall return all unused portions of the scholarship grant. Returned amounts shall be used to fund other scholarship grants under this Act.

(i) Transfer. A scholarship under this Act is only transferable to another educational institution if approved by the [agency].

(j) Limitation. Grants awarded under the program shall be limited to funds appropriated for that purpose. First priority for awarding grants shall be given to renewal applicants. Thereafter, grants shall be awarded on a first-come, first-served basis.
Section 5. [SciTech Scholarships.]
(a) Amount of grants. The [agency] shall award a SciTech Scholarship in the amount of [three thousand (3,000)] dollars per academic year or a lesser amount following application of Federal and State grants under section 4 (d) to a student enrolled full time in an approved educational institution pursuing a bachelor’s degree. The student shall take at least [twelve (12)] semester hours, or its equivalent, in an approved course of study.
(b) Term of grant. A grant shall be awarded beginning no earlier than the [second] academic year of enrollment in an approved educational institution. The grant shall be for a maximum of [three (3)] academic years or for up to [four (4)] academic years if the student is enrolled in an approved course of study that according to the [agency] requires [five (5)] academic years to complete. In order to qualify for renewals beyond [three (3)] years, the student must be in compliance with the requirements of section 4(e) and the [agency] must determine that the student is making satisfactory progress toward completing a degree.
(c) Internship. A student who accepts a grant under this section shall complete a college-approved or university-approved internship or work experience in a science, technology or related field with an employer located in this [state] prior to receiving a bachelor’s degree. The student shall comply with any conditions placed upon the internship by the [agency] or by the [department] in consultation with the [state human resources investment council]. Proof of completion of the internship or work experience requirements must be submitted to the [agency] prior to graduation unless otherwise authorized by the [agency].

Section 6. [GI Bill for the New Economy.]
(a) Amounts of grants. The [agency] shall award a GI Bill for the New Economy scholarship in the amount of [one thousand (1,000)] dollars per academic year or a lesser amount following application of Federal or State grants under section 4(d) to a student enrolled full time in an approved educational institution pursuing an associate’s degree or in a private licensed school that has an academic program approved by the [agency]. A student who is enrolled part time and is an incumbent worker pursuing an associate’s degree or other specialized program approved by the [agency] is eligible for a grant of [twenty (20)] percent of tuition and mandatory fees.
(b) Term of grant. The grant shall be for a maximum of [two (2)] academic years or for up to [three (3)] academic years if the student is enrolled in an approved course of study that according to the [agency] requires [three (3)] academic years to complete. In order to qualify for a grant [three (3)] times, the student must be in compliance with section 4 (d), and the institution must determine that the student is making satisfactory progress toward completing an associate’s degree or the requirements of the certificate program.
(c) Exception. The [agency] may waive the [one (1)] year employment requirement for an incumbent worker for extenuating circumstances related to the student’s employment within the last year.

Section 7. [Eligibility.]
(a) Minors. A person under [eighteen (18)] years old who otherwise qualifies for a scholarship grant under section 4 shall not be disqualified based upon age.
(b) Ineligibility. The [agency] may deny a scholarship grant to a student who is convicted under [insert citation].
(c) Fraud. Any person who knowingly or intentionally procures, obtains or aids another to procure or obtain a grant under this Act through fraudulent means shall be disqualified from participation in the program and shall be liable to the [agency] for an amount equal to [three (3)] times the amount obtained.

Section 8. [Administration.]
(a) Verification. The [agency] shall monitor and verify a student’s fulfillment of all internship and work requirements under this Act.
(b) Enforcement. The [agency] shall enforce repayment of all scholarship grants for a student who does not comply with the provisions of this Act, to include use of all lawful collection procedures and the use of private collection agencies.
(c) Tax. Scholarship grants received by a student from the program shall not be considered taxable income as defined under [insert citation].

(d) Financial assistance. Scholarship grants received by a student from the program shall not be considered financial assistance or appropriations to the approved educational institution.

(e) Customized job training. No funds under this Act shall be granted to a person enrolled in a customized job training partnership program or continuing education course from a postsecondary educational institution for which an employer is providing over [fifty (50)] percent of the financial support, directly or indirectly, and for which the student is not being charged tuition or fees.

(f) Appeals. The provisions of this Act shall be subject to [insert citation] relating to student financial aid.

(g) Regulations— The [agency] shall adopt regulations and procedures necessary to carry out the purposes of this Act.

Section 9. [Annual Report.]

(a) Development of report. The [agency] shall publish a report by [insert date], and every year thereafter. The report shall include information regarding the operation of the program, to include:

(1) Total students receiving scholarship grants in both the [SciTech Scholarship] and the [GI Bill for the New Economy] programs.

(2) Total number of students who withdraw from the program or internship or work requirements.

(3) The number of full-time and part-time students receiving scholarship grants attending [four-year educational institutions, community colleges, independent [two (2)]-year colleges, private licensed schools and certificate programs reported by institution and category of institution.

(b) Submission. The annual report shall be submitted to the [governor], the [department] and the [chairmen] and [minority chairmen] of the [Appropriations] and [Education] committees of the [Senate] and the [House of Representatives].

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

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

Section 12. [Effective Date.] [Insert effective date.]
One-Stop Internet Permitting System and Expedited Permitting Program

This Act is based on Florida law. It directs the state department of management services to create a system on the Internet that provides people and businesses with a central source of permit information from state and local agencies. Counties that are certified as using certain permitting best management practices can be designated as Quick Permitting Counties by the state, and thus become eligible for grants of up to $50,000 to connect to the statewide Internet system.

Submitted as:
Florida
Chapter 99-244
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “One-Stop Internet Permitting System and Expedited Permitting Program Act.”

Section 2. [Legislative Intent.] It is the intent of the Legislature to create a functional statewide one-stop permitting system in order to make permitting in this state more user-friendly without diminishing environmental, public health, or safety standards. In addition, the Legislature intends to encourage local governments to expedite and streamline permitting, to adopt best management practices, and to integrate the local permitting process with the statewide one-stop permitting process.

Section 3. [One-Stop Permitting System.]
(1) By January 1, 2000, the department of management services must establish and implement an Internet site for the One-Stop Permitting System. The One-Stop Permitting System Internet site shall provide people and businesses with information concerning development permits, guidance on what development permits are needed for particular projects; permit requirements; and who may be contacted for more information concerning a particular development permit for a specific location. The department shall design and construct the Internet site and may competitively procure and contract for services to develop the site. In designing and constructing the Internet site, the department must solicit input from potential users of the site.

(2) The department shall develop the One-Stop Permitting System Internet site to allow an applicant to complete and submit application forms for development permits to agencies and counties. The Internet site must be capable of allowing an applicant to submit payment for permit fees and must provide payment options. After initially establishing the Internet site, the department shall implement, in the most timely manner possible, the capabilities described in this subsection. The department also shall develop a protocol for adding to the One-Stop Permitting System additional state agencies and counties that agree to participate. The department may competitively procure and contract for services to develop such capabilities.

(3) As used in this section, the term “development permit” includes any state, regional, or local permits or approvals necessary for the physical location or expansion of a business, including, but not limited to:
(a) Wetland or environmental resource permits.
(b) Surface-water management permits.
(c) Stormwater permits.
(d) Site-plan approvals.
Section 3. [One-Stop Permitting System Grant Program]. There is created within the department of management services the [One-Stop Permitting System Grant Program]. The purpose of the grant program is to encourage counties to coordinate and integrate the development of the county's permitting process with the
The Council of State Governments

One-Stop Internet Permitting System and Expedited Permitting Program

Section 5. [Quick Permitting County Designation Program.]
(1) There is established within the [department of management services] the [Quick Permitting County Designation Program]. To be designated as a [Quick Permitting County], the chair of the board of county commissioners of the applying county must certify to the [department of management services] that the county meets the criteria specified in subsection (3).
(2) As used in this section, the term “development permitting” includes permits and approvals necessary for the physical location of a business, including, but not limited to:
(a) Wetland or environmental resource permits.
(b) Surface-water management permits.
(c) Stormwater permits.
(d) Site-plan approvals.
(e) Zoning and comprehensive plan amendments.
(f) Building permits.
(g) Transportation concurrency approvals.
(h) Wastewater permits.
(3) In order to qualify for a [Quick Permitting County] designation, a county must certify to the [department] that the county has implemented the following best-management practices:
(a) The establishment of a single point of contact for a business seeking assistance in obtaining a permit;
(b) The selection of high-priority projects for accelerated permit review;
(c) The use of documented pre-application meetings following standard procedures;
(d) The maintenance of an inventory of sites suitable for high-priority projects;
(e) The development of a list of consultants who conduct business in the county;
(f) The evaluation and elimination of duplicative approval and permitting requirements within the county;
(g) The commitment to participate, through the entry of an interlocal agreement for individual projects, in the expedited permit process set forth in section 7 of this Act;
(h) The development of a timetable for processing development permits and approvals; and
(i) The use of interagency coordination to facilitate permit processing.

Section 6. [Information Concerning the One-Stop Permitting System.] The [office of tourism, trade, and economic development] shall develop literature that explains the [One-Stop Permitting System] and identifies those counties that have been designated as Quick Permitting Counties. The literature must be updated at least [once] each year. To the maximum extent feasible, state agencies shall distribute such literature and inform the public of the [One-Stop Permitting System] and the Quick Permitting Counties.

Section 7. [Expedited Permitting; Comprehensive Plan Amendments.]
(1) It is the intent of the [Legislature] to encourage and facilitate the location and expansion of those types of economic development projects which offer job creation and high wages, strengthen and diversify the
state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment. It is also the intent of the Legislature to provide for an expedited permitting and comprehensive plan amendment process for such projects.

(2) As used in this section, the term:

(a) "Duly noticed" means publication in a newspaper of general circulation in the municipality or county with jurisdiction. The notice shall appear on at least [two (2)] separate days, [one (1)] of which shall be at least [seven (7)] days before the meeting. The notice shall state the date, time, and place of the meeting scheduled to discuss or enact a memorandum of agreement as described in this Act, and the places within the municipality or county where such proposed memorandum of agreement may be inspected by the public. The notice must be [one-eighth of a page] in size and must be published in a portion of the paper other than the legal notices section. The notice also shall advise that interested parties may appear at the meeting and be heard with respect to the memorandum of agreement.

(b) "Jobs" mean permanent, full-time equivalent positions not including construction jobs.

(c) "Office" means the [office of tourism, trade, and economic development].

(d) "Permit applications" mean state permits and licenses, and at the option of a participating local government, local development permits or orders.

(3) (a) The governor, through the [office], shall direct the creation of regional permit action teams, for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

(i) Businesses creating at least [one hundred (100)] jobs, or

(ii) Businesses creating at least [fifty (50)] jobs if the project is located in an enterprise zone, or in a county having a population of less than [seventy-five thousand (75,000)] or in a county having a population of less than [one hundred thousand (100,000)] which is contiguous to a county having a population of less than [seventy-five thousand (75,000)], as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county, or

(b) On a case-by-case basis and at the request of a county or municipal government, the [office] may certify as eligible for expedited review a project not meeting the minimum job creation thresholds but creating a minimum of [ten (10)] jobs. The recommendation from the governing body of the county or municipality in which the project may be located is required in order for the [office] to certify that any project is eligible for expedited review. When considering projects that do not meet the minimum job creation thresholds but that are recommended by the governing body in which the project may be located, the [office] shall consider economic impact factors that include, but are not limited to:

(i) The proposed wage and skill levels relative to those existing in the area in which the project may be located;

(ii) The project's potential to diversify and strengthen the area's economy;

(iii) The amount of capital investment; and

(iv) The number of jobs that will be made available for people served by the [WAGES] Program.

(c) At the request of a county or municipal government, the [office] or a [Quick Permitting County] may certify projects located in counties where the ratio of new jobs per [WAGES] client, as determined by the [workforce development board] of this state, is less than [one (1)] or otherwise critical, as eligible for the expedited permitting process. Such projects must meet the numerical job creation criteria of subsection (3), but the jobs created by the project do not have to be high-wage jobs that diversify the state's economy.

(4) The [office] may delegate to a [Quick Permitting County] the responsibility for convening regional permit teams and, in consultation with the [office], for certifying as eligible for expedited review projects that meet the criteria of subsection (3) and that are consistent with the economic goals of the county. In order to receive such a delegation, the [Quick Permitting County] must hold the public hearing required under subsection (9) and agree to execute a memorandum of agreement for each qualified project.

(5) The regional teams shall be established through the execution of memoranda of agreement between the [office] and the respective heads of the following departments and governmental units:
One-Stop Internet Permitting System and Expedited Permitting Program

(a) [environmental protection],
(b) [community affairs],
(c) [transportation and its district offices],
(d) [agriculture and consumer services],
(e) [game and fresh water fish commission],
(f) appropriate regional planning councils,
(g) appropriate water management districts, and
(h) voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(6) In order to facilitate local government’s option to participate in this expedited review process, the [office] shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(7) The local government shall hold a duly noticed public hearing to execute a memorandum of agreement for each qualified project. The memorandum of agreement that a local government signs shall include a provision identifying necessary local government procedures and time limits that will be modified to allow for the local government decision on the project within [ninety (90)] days. The memorandum of agreement applies to projects, on a case-by-case basis, that qualify for special review and approval as specified in this section. The memorandum of agreement must make it clear that this expedited permitting and review process does not modify, qualify, or otherwise alter existing local government nonprocedural standards for permit applications, unless expressly authorized by law.

(8) At the option of the participating local government, appeals of its final approval for a project may be pursuant to the summary hearing provisions of [insert citation], pursuant to subsection (15) of this Section, or pursuant to other appellate processes available to the local government. The local government’s decision to enter into a summary hearing must be made as provided in [insert citation] or in the memorandum of agreement.

(9) Each memorandum of agreement shall include a process for final agency action on permit applications and local comprehensive plan amendment approvals within [ninety (90)] days after receipt of a completed application, unless the applicant agrees to a longer time period or the [office] determines that unforeseen or uncontrollable circumstances preclude final agency action within the [ninety (90)] day timeframe. Permit applications governed by federally delegated or approved permitting programs whose requirements would prohibit or be inconsistent with the [ninety (90)] day timeframe are exempt from this provision, but must be processed by the agency with federally delegated or approved program responsibility as expeditiously as possible.

(10) The [office] shall inform the [Legislature] by [October 1] of each year, which agencies have not entered into or implemented an agreement, and identify any barriers to achieving success of the program.

(11) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are party to the memorandum of agreement. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately by the parties to the memorandum of agreement to be combined into [one (1)] proceeding or held jointly and at [one (1)] location. Such waivers or modifications shall not be available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(12) The memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements;
(b) Identification of the individual or people within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency;

(c) A mandatory pre-application review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within [fourteen (14)] days after the [office]'s determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed [forty-five (45)] days from the [office]'s determination that the project is eligible for expedited review;

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies;

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within [ninety (90)] days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected parties from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph; and

(f) Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

(13) The applicant, the regional permit-action team, and participating local governments may agree to incorporate into a single document the permits, licenses, and approvals that are obtained through the expedited permit process. This consolidated permit is subject to the summary hearing provisions set forth in subsection (17).

(14) Notwithstanding any other provisions of law:

(a) Local comprehensive plan amendments for projects qualified under this section are exempt from the twice-a-year limits provision in [insert citation]; and

(b) Projects qualified under this section are not subject to interstate highway level of service standards adopted by the [department of transportation] for concurrency purposes. The memorandum of agreement must include a process by which the applicant will be assessed a fair share of the cost of mitigating the project's significant traffic impacts. The agreement must also specify whether the significant traffic impacts on the interstate system will be mitigated through the implementation of a project or payment of funds to the [department of transportation]. Where funds are paid, the [department of transportation] must include in the [five (5)] year work program transportation projects or project phases, in an amount equal to the funds received, to mitigate the traffic impacts associated with the proposed project.

(15) Challenges to state agency action in the expedited permitting process for projects processed under this section are subject to the summary hearing provisions of [insert citation], except that the [administrative law judge]'s decision shall be in the form of recommended order and shall not constitute the final action of the state agency. In those proceedings where the action of only [one (1)] agency of the state is challenged, the agency of the state shall issue the final order within [ten (10)] working days of receipt of the [administrative law judge]'s recommended order. In those proceedings where the actions of more than [one (1)] agency of the state are challenged, the [governor] shall issue the final order within [ten (10)] working days of receipt of the [administrative law judge]'s recommended order. The participating agencies of the state may opt at the preliminary hearing conference to allow the [administrative law judge]'s decision to constitute the final agency action. If a participating local government agrees to participate in the summary hearing provisions for purposes of review of local government comprehensive plan amendments, [insert citation] apply.

(16) This expedited permitting process shall not modify, qualify, or otherwise alter existing agency nonprocedural standards for permit applications or local comprehensive plan amendments, unless expressly authorized by law. If it is determined that the applicant is not eligible to use this process, the applicant may
apply for permitting of the project through the normal permitting processes.

(17) The [office] shall be responsible for certifying a business as eligible for undergoing expedited review under this section. A county or municipal government may recommend to the [office of tourism, trade, and economic development] that a project meeting the minimum job creation threshold undergo expedited review.

(18) The [office], working with the agencies participating in the memoranda of agreement, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments for counties having a population of less than [seventy-five thousand (75,000)] residents, or counties having fewer than [one hundred thousand (100,000)] residents which are contiguous to counties having fewer than [seventy-five thousand (75,000)] residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for pre-clearance review of specified types of land uses and other activities requiring permits.

(19) The following projects are ineligible for review under this part:

(a) A project funded and operated by a local government, as defined in [insert citation], and located within that government's jurisdiction.

(b) A project, the primary purpose of which is to:

(i) Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

(ii) Produce electrical power, unless the production of electricity is incidental and not the primary function of the project.

(iii) Extract natural resources.

(iv) Produce oil.

(v) Construct, maintain, or operate an oil, petroleum, natural gas, or sewage pipeline.

Section 8. [Administrative Costs.] The sum of [one hundred thousand (100,000)] dollars is appropriated from the [General Revenue Fund] to the [department of management services] to fund the administrative costs to establish and implement an Internet site for the [One-Stop Permitting System].

Section 9. [Revenue Offset.] Effective [insert date], the sum of [three million (3,000,000)] dollars is appropriated from nonrecurring general revenue to the [Executive Branch Administered Funds] to be used to offset the potential decline in revenues as a result of the expedited [One-Stop Permitting System]. The funds shall be held in reserve by the [executive office of the governor] until the principals of the [revenue estimating conference] have determined the amount of loss of permit fees associated with applications submitted pursuant to the one-stop permitting process.

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

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

Section 12. [Effective Date.] [Insert effective date.]
Parenting Plans

This Act is based on Minnesota law. It allows parents or a court to replace traditional custody and visitation orders with a parenting plan that deals with decision-making and the time each parent spends with the child. Under this Act, “parenting time” means the time a parent spends with a child regardless of the custodial designation regarding the child.

Submitted as:
Minnesota
Chapter 444, Minnesota Session Laws 2000
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Parenting Plans Act.”

Section 2. [Creating Parenting Plans.]
(a) Upon the request of both parents, a parenting plan must be created in lieu of an order for child custody and parenting time as defined in [insert citation], unless a court makes detailed findings that the proposed plan is not in the best interests of the child.
(b) If both parents agree to the use of a parenting plan but are unable to agree on all terms, a court may create a parenting plan. If a court is considering a parenting plan, it may require each parent to submit a proposed parenting plan at any time before entry of the final judgment and decree. If parents seek a court's assistance in deciding the schedule for each parent's time with the child or designation of decision-making responsibilities regarding the child, a court may order an evaluation and should consider the appointment of a guardian ad litem. Parenting plans, whether entered on a court's own motion, following a contested hearing, or reviewed by a court pursuant to a stipulation, must be based on the best interests factors under [insert citation], as applicable.
(c) If both parents do not agree to a parenting plan, a court may create one on its own motion, except that a court must not do so if it finds that a parent has committed domestic abuse against a parent or child who is a party to, or subject of, the matter before a court. If a court creates a parenting plan on its own motion, it must not use alternative terminology unless the terminology is agreed to by the parties.
(d) If an existing order does not contain a parenting plan, the parents must not be required to create a parenting plan as part of a modification order under [insert citation].
(e) A parenting plan must not be required during an action under [insert citation].
(f) If the parents do not agree to a parenting plan and a court does not create one on its own motion, orders for custody and parenting time must be entered under [insert citation] as applicable.

Section 3. [Parenting Plans: Elements.]
(a) A parenting plan must include the following:
(1) a schedule of the time each parent spends with the child;
(2) a designation of decision-making responsibilities regarding the child; and
(3) a method of dispute resolution.
(b) A parenting plan may include other issues and matters the parents agree to regarding the child.
(c) Parents voluntarily agreeing to parenting plans may substitute other terms for physical and legal custody, including designations of joint or sole custody, provided that the terms used in the substitution are defined in the parenting plan.
Parenting Plans

Section 4. [Allocation of Certain Expenses.]
(a) Parents creating a parenting plan are subject to the requirements of the child support guidelines under [insert citation].
(b) Parents may include in the parenting plan an allocation of expenses for the child. The allocation is an enforceable contract between the parents.

Section 5. [Parenting Plans: Dispute Resolution Process.]
(a) Dispute resolution processes other than the judicial process may not be required in the preparation of a parenting plan if a parent is alleged to have committed domestic abuse toward a parent or child who is a party to, or subject of, the matter before a court. In these cases, a court shall consider the appointment of a guardian ad litem and a parenting plan evaluator.
(b) A court may not require a parenting plan that provides for joint legal custody or use of dispute resolution processes, other than the judicial process, if a court finds that either parent has engaged in the following toward a parent or child who is a party to, or subject of, the matter before a court:
   (1) acts of domestic abuse, including physical harm, bodily injury, and infliction of fear of physical harm, assault, terroristic threats, or criminal sexual conduct;
   (2) physical, sexual, or a pattern of emotional abuse of a child; or
   (3) willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions.

Section 6. [Modification of Parenting Plans.]
(a) Parents may modify the schedule of the time each parent spends with the child or the decision-making provisions of a parenting plan by agreement. To be enforceable, modifications must be confirmed by court order. A motion to modify decision-making provisions or the time each parent spends with the child may be made only within the time limits provided by [insert citation].
(b) The parties may agree, but a court must not require them, to apply the best interests standard under [insert citation], as applicable, for deciding a motion for modification that would change the child's primary residence, provided that: both parties were represented by counsel when the parenting plan was approved; or a court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications.
(c) If the parties do not agree to apply the best interests standard, [insert citation] applies.
(d) If modification would serve the best interests of the child, a court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child's primary residence. Except as provide under [insert citation], a court may not restrict parenting time unless it finds that:
   (1) the parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development; or
   (2) the noncustodial parent has chronically and unreasonably failed to comply with court-ordered parenting time.
(b) If the custodial parent makes specific allegations that parenting time places the custodial parent or child in danger of harm, a court shall hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time. A court may require a third party, including the local social services agency, to supervise the parenting time or may restrict a parent's parenting time if necessary to protect the custodial parent or child from harm. In addition, if there is an existing order for protection governing the parties, a court shall consider the use of an independent, neutral exchange location for parenting time.

Section 7. [Custody Designation.] A final judgment and decree that includes a parenting plan using alternate terms to designate decision-making responsibilities or allocation of residential time between the parents must designate whether the parents have joint legal custody or joint physical custody or which parent has sole legal custody or sole physical custody, or both. This designation is solely for enforcement of the final
judgment and decree where this designation is required for that enforcement and has no effect under the laws of this state, any other state, or another country that do not require this designation.

Section 8. [Moving the Child to Another State.] Parents may agree, but a court must not require, that in a parenting plan, the factors under [insert citation], as applicable, will govern a decision concerning removal of a child's residence from this state, provided that both parents were represented by counsel when the parenting plan was approved; or a court found the parents were fully informed, the agreement was voluntary, and the parents were aware of its implications.

Section 9. [Modification and Replacing Certain Orders.]
(a) Upon request of both parties a court must modify an order entered under [insert citation] before the effective date of this Act by entering a parenting plan that complies with section 3 of this Act, unless the court makes detailed findings that entering a parenting plan is not in the best interests of the child. If only one party makes the request, a court may modify the order by entering a parenting plan that complies with section [insert citation]. The court must apply the standards in [insert citation] when considering a motion to enter a parenting plan that would change the child's primary residence. The court must apply the standards in [insert citation] when considering a motion to enter a parenting plan that would:
   (1) change decision-making responsibilities of the parents; or
   (2) change the time each parent spends with the child, but not change the child's primary residence.

(b) Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan may be made earlier than [one (1)] year after the date of the entry of a decree of dissolution or legal separation containing a provision dealing with custody, except in accordance with paragraph (d).

(c) If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within [two (2)] years after disposition of the prior motion on its merits, except in accordance with paragraph (d).

(d) The time limitations prescribed in paragraphs (b) and (c) shall not prohibit a motion to modify a custody order or parenting plan if a court finds that there is persistent and willful denial or interference with parenting time, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

(e) If a court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order or a parenting plan provision which specifies the child's primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards, a court shall retain the custody arrangement or the parenting plan provision specifying the child's primary residence that was established by the prior order unless:
   (1) the court finds that a change in the custody arrangement or primary residence is in the best interests of the child and the parties previously agreed, in a writing approved by a court, to apply the best interests standard in [insert citation], as applicable; and, with respect to agreements approved by the court on or after the effective date of this clause,
   (2) both parties were represented by counsel when the agreement was approved or the court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications;
   (3) both parties agree to the modification;
   (4) the child has been integrated into the family of the petitioner with the consent of the other party; or
   (5) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.
Parenting Plans

(f) In addition, a court may modify a custody order or parenting plan under [insert citation]. In deciding whether to modify a prior joint custody order, a court shall apply the standards set forth in paragraph (e) unless:

(1) the parties agree in writing to the application of a different standard, or
(2) the party seeking the modification is asking a court for permission to move the residence of the child to another state.

(g) If a custodial parent has been granted sole physical custody of a minor and the child subsequently lives with the noncustodial parent, and temporary sole physical custody has been approved by a court or by a court-appointed referee, a court may suspend the noncustodial parent’s child support obligation pending the final custody determination. A court’s order denying the suspension of child support must include a written explanation of the reasons why continuation of the child support obligation would be in the best interests of the child.

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

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

Section 12. [Effective Date.] [Insert effective date.]
Prohibiting Felons from Owning Body Armor

This Act makes it a felony for a person convicted of a violent felony, to own, possess, or use body armor without permission from the local police chief or county sheriff. It allows exceptions when a petitioner’s employment, livelihood, or safety depends on the ability to possess and use body armor.

Submitted as:
California
Chapter 297, 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 to Prohibit Felons from Owning Body Armor.”

Section 2. [Violent Felonies.]
(a) Any person who has been convicted of a violent felony as referenced in subdivision (e) of this section, and who purchases, owns, or possesses body armor, as defined by [insert citation] of this state, except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment in a state prison for [sixteen (16)] months, or [two (2)] or [three (3)] years.
(b) Any person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, may file a petition with the chief of police or county sheriff of the jurisdiction in which he or she seeks to possess and use the body armor for an exception to this prohibition. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as he or she deems appropriate, based on the following:
   (1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.
   (2) A finding that the petitioner has a reasonable need for such protection under the circumstances. In making its decision, the chief of police or sheriff shall consider the petitioner’s continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the [Legislature] that law enforcement officials exercise broad discretion in fashioning appropriate relief under this Act in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed.
(c) The chief of police or sheriff shall require, as a condition of granting an exception under subdivision (b), that the petitioner agree to maintain on his or her person a certified copy of the law enforcement official’s permission to possess and use body armor, including any conditions or limitations.
(d) Law enforcement officials who enforce the prohibition specified in subdivision (a) against a person who has been granted relief pursuant to subdivision (b), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.
(e) For purposes of this Act, “violent felony” refers to the specific crimes listed in [insert citation], and to crimes defined under the applicable laws of the United States or any other state, government, or country that are reasonably equivalent to the crimes listed in [insert citation].

Section 3. [Severability.] [Insert severability clause.]
Prohibiting Felons from Owning Body Armor

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

Section 5. [Effective Date.] [Insert effective date.]
Racial Profiling and Traffic Stop Statistics

Police officers around the country are being accused of unfairly targeting minorities for traffic violations, a practice called “racial profiling.” Connecticut and North Carolina are two of the first states to examine the issue. The drafts listed below highlight efforts in both.

The first draft is based on Connecticut Public Act 99-198. It defines racial profiling and prohibits state and local law enforcement agencies from engaging in racial profiling. The Act directs state and local law enforcement agencies to adopt written policies to prohibit their officers from stopping or detaining people because of their race or ethnicity. It also requires state and local law enforcement agencies to compile statistics on the racial and ethnic composition of the people who are stopped for traffic violations and to annually report those statistics to the chief state attorney.

The second draft is based on North Carolina Session Law 26 of 1999. It directs the state attorney general's office to collect, correlate and maintain information on the number of drivers stopped for routine traffic enforcement by state police, the race and ethnicity of the stopped drivers and the reasons why they were stopped. The law requires the state attorney general's office to make a scientific study of the collected information and to report the results to the governor and general assembly.

This Act directs also the attorney general's office to collect other information about the age and racial composition of people as they move through the state's criminal justice system. This includes crimes committed, arrests, sentencing, prison population composition and probation and parole.

Suggested Legislation

Draft 1 (based on Connecticut Public Act 99-198)

(Title, enacting clause, etc.)

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

Section 2. [Racial Profiling: Definitions].

(a) For the purposes of this Act, “racial profiling” means the detention, interdiction or other disparate treatment of an individual solely on the basis of the racial or ethnic status of such individual.

(b) No member of the [division of state police] within the [department of public safety], a municipal police department or any other law enforcement agency shall engage in racial profiling. The detention of an individual based on any noncriminal factor or combination of noncriminal factors is inconsistent with this policy.

(c) The race or ethnicity of an individual shall not be the sole factor in determining the existence of probable cause to place in custody or arrest an individual or in constituting a reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a motor vehicle.

Section 3. [Written Policies.]

(a) Not later than [insert date], each municipal police department and the [department of public safety] shall adopt a written policy that prohibits the stopping, detention or search of any person when such action is solely motivated by considerations of race, color, ethnicity, age, gender or sexual orientation, and the action would constitute a violation of the civil rights of the person.

(b) Commencing on [insert date], each municipal police department and the [department of public safety] shall, using the form developed and promulgated pursuant to this section, record and retain the following information:

(1) The number of people stopped for traffic violations;

(2) characteristics of race, color, ethnicity, gender and age of such people, provided the identification of such characteristics shall be based on the observation and perception of the police officer responsible for reporting the stop and the information shall not be required to be provided by the person stopped;
Racial Profiling and Traffic Stop Statistics

(3) the nature of the alleged traffic violation that resulted in the stop;
(4) whether a warning or citation was issued, an arrest made or a search conducted as a result of
the stop; and
(5) any additional information that such municipal police department or the [department of pub-
lic safety], as the case may be, deems appropriate.

(c) Each municipal police department and the [department of public safety] shall provide to the [chief
state's attorney]:
(1) a copy of each complaint received, and
(2) written notification of the review and disposition of such complaint.
(d) Any police officer who in good faith records traffic stop information pursuant to the requirements
of this section shall not be held civilly liable for the act of recording such information unless the officer's
conduct was unreasonable or reckless.
(e) If a municipal police department or the [department of public safety] fails to comply with the
provisions of this section, the [chief state's attorney] may recommend and the [secretary of the office of policy
and management] may order an appropriate penalty in the form of the withholding of state funds from such
department or the [department of public safety].
(f) On or before [insert date], and annually thereafter, each municipal police department and the [de-
partment of public safety] shall provide to the [chief state's attorney], in such form as the [chief state's attorney]
shall prescribe, a summary report of the recorded information.
(g) The [chief state's attorney] shall, within the limits of existing appropriations, provide for a review of
the prevalence and disposition of the traffic stops and complaints as reported pursuant to this Act. Not later
than [January 1, 2002], the [chief state's attorney] shall report to the [governor] and [general assembly] the
results of such review, including any recommendations.

(h) The provisions of subsections (f) and (g) of this section shall be in effect from the effective date of
this Act until [January 1, 2002].

Section 4. [Forms.] Not later than [insert date], the [chief state's attorney], in conjunction with the
[commissioner of public safety], the [attorney general], the [chief court administrator], the [police officer
standards and training council], the [police chiefs association] and the [coalition of police and correctional
officers], shall develop and promulgate:
(1) a form, in both printed and electronic format, to be used by police officers when making a
traffic stop to record personal identifying information about the operator of the motor vehicle that is stopped,
the location of the stop, the reason for the stop and other information that is required to be recorded pursuant
to subsection (b) of section 3 of this Act; and
(2) a form, in both printed and electronic format, to be used to report complaints pursuant to
section 2 of this Act by people who believe they have been subjected to a motor vehicle stop by a police officer
solely on the basis of their race, color, ethnicity, age, gender or sexual orientation.

Section 5. [Severability.] [Insert severability clause.]

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

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

Suggested Legislation

Draft 2 (based on North Carolina Session Law 26 of 1999)

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be entitled “An Act to Require The Division of Criminal Statistics
to Collect and Maintain Statistics on Traffic Law Enforcement.”

80 - The Council of State Governments
Section 2. [Division of Criminal Statistics.]
The [attorney general] shall set up in the [department of justice] a [division] to be designated as the [division of criminal statistics]. There shall be assigned to this [division] by the [attorney general] duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in this state.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the state. This information may include, but is not limited to motor vehicle registration, drivers’ licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration, drugs, drug users and parole and probation histories. In performing this function, the [division] may arrange to use information available in other agencies and units of state, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(3) To collect, correlate, and maintain the following information regarding traffic law enforcement by state law enforcement officers:

(a) The number of drivers stopped for routine traffic enforcement by state law enforcement officers and whether or not a citation or warning was issued;

(b) Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender;

(c) The alleged traffic violation that led to the stop;

(d) Whether a search was instituted as a result of the stop;

(e) Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched;

(f) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion;

(g) Whether any contraband was found and the type and amount of any such contraband;

(h) Whether any written citation or any oral or written warning was issued as a result of the stop;

(i) Whether an arrest was made as a result of either the stop or the search;

(j) Whether any property was seized, with a description of that property;

(k) Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers;

(l) Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason;

(m) Whether any injuries resulted from the stop; and

(n) Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation. The information required by this subdivision need not be collected in connection with impaired driving checks or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this state and with the state and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in subdivisions (d) through (n) of this section.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the [governor] and the [General
Racial Profiling and Traffic Stop Statistics

128 Assembly] with the information so collected biennially, or more often if required by the [governor].
129 (4) To perform all the duties heretofore imposed by law upon the [attorney general] with respect to
130 criminal statistics.
131 (5) To perform such other duties as may be from time to time prescribed by the [attorney general].
132 (6) To promulgate rules and regulations for the administration of this Act.
133
134 Section 3. This act shall not be construed to obligate the [General Assembly] to make any appropriation
135 to implement the provisions of this Act. Each department and agency to which this Act applies shall implement
136 the provisions of this Act from funds otherwise appropriated to that department or agency.
137
138 Section 4. [Severability.] [Insert severability clause.]
139
140 Section 5. [Repealer.] [Insert repealer clause.]
141
142 Section 6. [Effective Date.] [Insert effective date.]
Safe Needles for Health Care Workers

This Act requires health care facilities to use safety needles and devices to help minimize needle stick injuries to health care workers. It directs the commissioner of the state department of health and senior services (DHHS) to develop evaluation criteria that will be used in selecting specific needles and other sharp devices to be used by health care facilities. Such devices include those that are approved by the federal Food and Drug Administration and are commercially available for distribution. If a safety needle is not available for a specific patient use, another needle or sharp device may be used until a product with the safety features is available.

Health care facilities must establish procedures to enable health care professionals to request waivers to use a needle that is not a safety needle, and must record and report all needle stick injuries to DHHS.

Submitted as:
New Jersey
Public Law 311

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning the Use of Needles and Other Sharp Devices in Health Care Facilities.”

Section 2. [Legislative Findings.] The Legislature finds and declares that:
(a) The use of conventional needles results in increased risk of HIV infection and hepatitis B and C to health care workers;
(b) Each year, from 150 to 200 health care workers die and many suffer chronic and debilitating diseases due to needle stick injuries;
(c) Equipment exists to prevent most injuries that result from needle stick injuries but overall concern with cutting health care costs has impeded the widespread use of advanced, safer technology; and
(d) Newer, safer needle technology should be adopted in health care facilities.

Section 3. [Definitions.] As used in this Act:
“Commissioner” means the commissioner of health and senior services.
“Department” means the department of health and senior services.
“Needle stick injury” means the parenteral introduction into the body of a health care worker of blood or other potentially infectious material by a needle or other sharp device during the worker’s performance of health care duties in a health care facility.

Section 4. [Integrated Safety Features Required on Needles, Etc.]
(a) No later than [twelve (12)] months after the date of enactment of this Act, the [commissioner] shall require that a health care facility licensed pursuant to [insert citation] use only needles and other sharp devices with integrated safety features, which needles and other sharp devices have been cleared or approved for marketing by the federal Food and Drug Administration and are commercially available for distribution.
(b) By a date established by the [commissioner] by regulation, but no later than [thirty-six (36)] months after the date of enactment of this Act, the requirements of subsection (a) of this section shall also apply to pre-filled syringes, as that term is defined by the [commissioner] by regulation pursuant to this Act.
(c) No later than [six (6)] months after the date of enactment of this Act, the [commissioner] shall
Section 5. [Responsibilities of Health Care Facilities]. A health care facility shall:

(a) Establish an [evaluation committee] in which at least [one-half (1/2)] of the members are direct-care health care workers who shall select needles and other sharp devices from each class of needle or other sharp device for which the [commissioner] has developed evaluation criteria pursuant to subsection (c) of section 4 of this Act;

(b) Provide for education and training, as appropriate, in the use of designated needles and other sharp devices;

(c) Develop a mechanism to continually review and evaluate newly introduced needles and other sharp devices available in the marketplace for use in a health care facility;

(d) Establish a waiver procedure for health care professionals wherein a health care professional practicing at the health care facility may request the [evaluation committee] to grant the professional a waiver from the requirements of subsection (a) or (b) of section 4 of this Act for a specific product that will be used for a specific medical procedure that shall be performed on a specific class of patients. The [evaluation committee] shall grant a waiver if it determines that use of a needle or other sharp device with integrated safety features potentially may have a negative impact on patient safety or the success of a specific medical procedure.

A health care professional may use a needle or other sharp device without integrated safety features in an emergency situation, without obtaining a waiver from the [evaluation committee], if the professional determines that use of a needle or other sharp device with integrated safety features potentially may have a negative impact on patient safety or the success of a specific medical procedure, and the professional notifies the [evaluation committee], in writing, within [five (5)] days of the date the needle or other sharp device was used of the reasons why that needle or other sharp device was necessary.

The use of a needle or other sharp device that does not meet the requirements of subsection (a) or (b) of section 4 of this Act shall be permitted under this Act if it is used in accordance with the requirements of this subsection;

(e) Record needle stick injuries in a Sharps Injury Log or an OSHA 200 Log, and shall include in the log a description of the injury, including the type and brand name of the needle or other sharp device involved in the injury; and

(f) Report to the [department] [quarterly], in a form and manner prescribed by the [department]:

(1) all entries of an injury in a Sharps Injury Log or an OSHA 200 Log; and

(2) all waivers granted to health care professionals and the reasons therefor, and all emergency uses by health care professionals of needles and other sharp devices without integrated safety features and the reasons therefor, pursuant to subsection (d) of this section.

Section 6. [Review of Health Care Facilities Reports, Recommendations.] The [department] shall review the reports submitted by health care facilities pursuant to section 5 of this Act on a [quarterly] basis and shall make recommendations to the respective health care facility for reducing the incidence of needle stick injury, when appropriate.
Section 7. [Annual Report To Legislature.] The [commissioner] shall report [annually] to the [Senate] and [General Assembly Health Committees] on the implementation of this Act. The report shall include the number of needle stick injuries, the type and brand names of the needles or other sharp devices involved in the injuries, the number of waivers that were granted and the number of emergency uses of needles or other sharp devices without integrated safety features. The report shall include such recommendations for legislative action as the [commissioner] deems appropriate to ensure that the purposes of this Act are realized.

Section 8. [Rules, Regulations.] The [commissioner], pursuant to [insert citation], shall adopt rules and regulations to effectuate the purposes of this Act.

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

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

Section 11. [Effective Date.] [Insert effective date.]
Sale of Forfeited Firearms

This Act provides options for disposing firearms, ammunition, and firearm accessories that have been forfeited to law enforcement agencies. These include selling the forfeited items to federally licensed firearms dealers, keeping them for official law enforcement purposes, or destroying them.

Submitted as:
Minnesota
Chapter 148, 1999 Regular session
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 Address Disposing Forfeited Firearms.”

Section 2. [Disposition.]
(a) Subject to paragraph (b), if a court finds under [insert citation], that property is subject to forfeiture, it shall order the appropriate agency to do one of the following:
(1) unless a different disposition is provided under clause (3) or (4), either destroy firearms, ammunition, and firearm accessories that the agency decides not to use for law enforcement purposes under clause (8), or sell them to federally licensed firearms dealers, as defined in [insert citation], and distribute the proceeds as defined in [insert citation];
(2) sell property that is not required to be destroyed by law and is not harmful to the public and distribute the proceeds as defined in [insert citation];
(3) sell antique firearms, as defined in [insert citation], to the public and distribute the proceeds as defined in [insert citation];
(4) destroy or use for law enforcement purposes semiautomatic military-style assault weapons, as defined in [insert citation];
(5) take custody of the property and remove it for disposition in accordance with [insert citation];
(6) forward the property to the federal drug enforcement administration;
(7) disburse money as provided in [insert citation]; or
(8) keep property other than money for official use by the agency and the prosecuting agency.
(b) Notwithstanding paragraph (a), the [sheriff] of [insert county] may not sell firearms, ammunition, or firearms accessories if the policy is disapproved by the applicable county board.

Section 3. [Disposition of Administratively Forfeited Property.] If property is forfeited administratively under [insert citation] and no demand for judicial determination is made, the appropriate agency may dispose of the property in any of the ways listed in section 2 of this Act.

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

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

Section 6. [Effective Date.] [Insert effective date.]
Sales Tax Relief for Purchasing Personal Computers

This Act establishes a state sales tax “holiday” for purchasing personal computers. Under this Act, people would not have to pay the state sales taxes for purchasing personal computers during certain times of the year, which would generally coincide with back-to-school shopping. The language of this draft is excerpted from a revenue bill that Pennsylvania enacted in 2000. Pennsylvania is reported to be the first state to enact such a provision for purchasing personal computers.

South Carolina also enacted a sales tax holiday in 2000 that included personal computers and computer-related products (House Bill No. 4775, Act No. 387). South Carolina’s sales tax holiday, while shorter in duration (three days), is broader in its coverage of technology products. As implemented by South Carolina’s revenue department, the first annual sales tax holiday covered computers, computer software, hardware and software service contracts, personal digital assistants, printers, printer supplies, and calculators.

Submitted as:
Pennsylvania
Section 3 (58) of Senate Bill No. 2, Session of 2000.
Status: enacted into law in 2000.

Suggested Legislation

Section 1. [Short Title.] This Act may be entitled as an “An Act to Provide Sales Tax Relief for Purchasing Personal Computers.”

Section 2. [Exclusions from Tax.] The tax imposed by [insert citation] shall not be imposed on the sale at retail or use of a personal computer to an individual purchaser during the exclusion period for non-business use, but not including computer leasing, rental, repair or alteration. For purposes of this Act, the phrase “exclusion period” means the period of time from [August 6, 2000], to and including, [August 13, 2000], and from [February 18, 2001], to and including, [February 25, 2001]. For purposes of this Act, the phrase “personal computer” means a laptop, desktop, or tower computer system, including all computer hardware and software sold together in the same sale at retail, where the computer system includes, at a minimum, a central processing unit, random access memory, a storage drive, a display monitor and a keyboard, except that the term shall not include minicomputers, mainframe computers, network servers, local area network hubs, routers and cabling, hardware word processors, personal digital assistants, graphical calculators, hand-held computers, game consoles, Internet TV devices, network operating systems, multiple-user licensed software and hardware, separate sales at retail or use of internal or external components and separate sales of add-on components. For purposes of this Act, “purchaser” means an individual who pays the purchase price and takes delivery during the exclusion period or who places an order and pays the purchase price, even if delivery takes place after the exclusion period.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Senior Citizens Prescription Drug Program Note

Outpatient prescription drugs, which are not covered by Medicare, represent a substantial out-of-pocket expense for many elderly people. This is cited as a shortcoming of the Medicare program, the federal health insurance program for older and disabled Americans.

At least twenty-one states are reported to have considered legislation to help senior citizens afford prescription drugs. This note highlights California, Delaware, Florida, Nevada, New Jersey, New York and Pennsylvania.

California

In California, state law provided for the Medi-Cal program, administered by the state department of health services, under which qualified low-income people are provided with health care services, including prescription benefits. Under existing law, the department paid participating pharmacists a discounted price for drugs on the Medi-Cal drug formulary. Existing law separately regulated the operation of pharmacies.

California Chapter 946 of 1999 authorizes payment of a price not to exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount to cover electronic-transmission charges by Medicare beneficiaries, upon showing their Medicare card and prescription, as a condition of a pharmacy's participation in the Medi-Cal program.

The law also requires the state department of health services to conduct a study of the adequacy of Medi-Cal pharmacy reimbursement rates, including the cost of providing prescription drugs and services.

Delaware

Delaware Substitute for Senate Bill 6, enacted into law in 1999, provides payment assistance for prescription drugs to Delaware's low-income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state or private sources.

To be eligible, a person must be a U.S. citizen or lawfully admitted alien, 65 years old or older or disabled by criteria established by Title II of the Social Security Act, be a resident of Delaware; be ineligible for Medicaid and the Nemours Pharmaceutical Assistance Program; have no other prescription drug benefits or coverage; and have an annual income of less than 200 percent of the federal poverty level. (The federal poverty level is computed each year. As of 3/8/99 it was $8,240 annual income for one person and $11,060 annual income for a husband and wife.)

At present, Medicaid and the Nemours Health Clinic Pharmaceutical Assistance Program assist Delaware's senior citizens with drug prescriptions' costs where annual income is less than $12,500 if single and less than $17,125 if married. This program introduces a third tier of assistance by subsidizing prescription drug costs for senior citizens whose annual income is between $12,500 and $16,480, and for married senior citizens whose combined income is between $17,125 and $22,120, and for disabled citizens with income between $8,240 and $16,480 for a single and $11,060 and $22,120 for a couple.

Payment assistance is limited to $2,500 per eligible person per fiscal year and copayment amounts will be required. A pharmacist may not dispense drugs under this program until the copayment has been made. Services covered are generic and brand name FDA-approved and other legal prescription drugs, as well as cost-effective over-the-counter drugs prescribed by a physician. Necessary diabetic supplies not covered by Medicare also will be covered.

The Department of Health and Social Services will administer the program and will promulgate and adopt rules and regulations consistent with this Act.

Florida

Florida Chapter 2000-254 creates a catastrophic pharmaceutical expense assistance program for people over 65 who have an income at or below 250 percent of the federal poverty level and who have out-of-pocket prescription expenses that exceed or are projected to exceed 10 percent of their incomes. The program is not an
entitlement and is to be administered by the agency for health care administration (AHCA) in consultation with the department of elderly affairs (DOEA). The law requires that, to the extent possible, administration of the program (including eligibility determination, claim processing, and reporting) use existing administrative mechanisms such as the Medicaid fiscal agent and area agencies on aging.

The Act requires AHCA to make payments for prescription drugs on behalf of eligible people, and AHCA and DOEA must develop a single-page application for the catastrophic pharmaceutical expense program. In addition, AHCA is required to establish eligibility requirements, limits on participation, benefit limitations, a requirement for generic-drug substitution and other program parameters comparable to Medicaid for the program. AHCA must also report annually to the Legislature on the operation of the program.

Florida's law requires that, as a condition of participation in the Medicaid program and the catastrophic pharmaceutical expense program, a pharmacy must agree that the charge to any Medicare beneficiary who presents a Medicare card be no greater than the Medicaid rate for ingredients and dispensing fees, plus 2.5 percent of the Medicaid ingredient payment.

The Act finds that physicians and other health care professionals have a fiduciary responsibility to act in the best interests of their patients and requires the board of medicine, the board of osteopathic medicine, the board of podiatric medicine and the board of dentistry to adopt guidelines to discourage health care practitioners under their jurisdictions from accepting gifts, payments, subsidies or other financial inducements from pharmaceutical manufacturers which may undermine the practitioners' independent judgment. Complimentary samples of drugs are not included as gifts, payments, subsidies or financial inducements. The law mandates that each of these boards require the practitioners under their jurisdiction to disclose gifts, subsidies payments and other financial inducements from manufacturers which conflict with the practitioners duty of loyalty to his or her patients.

Florida's law provides an appropriation to the agency for health care administration to provide Medicaid services for people whose incomes are between 90 and 100 percent of the federal poverty level, to implement the catastrophic pharmaceutical expense assistance program, and to develop a computerized system to allow participating pharmacies to determine the maximum allowable charge for prescription drugs sold to Medicare beneficiaries.

Nevada

Nevada Chapter 538 of 1999 creates a fund for a healthy Nevada, which will be used in part to provide for subsidies to senior citizens for pharmaceutical services. Money for the fund will come from the proceeds of the state's tobacco-settlement agreement.

New Jersey

New Jersey established a Pharmaceutical Assistance to the Aged & Disabled (PAAD) program in 1975 (currently cited as New Jersey Ch. 30:4D-20). People are eligible for New Jersey's PAAD program if:

• they are a New Jersey resident;
• their income is less than $18,587 if they are single, or less than $22,791 if they are married; and
• they are at least 65 years of age, or at least 18 years of age and receiving Social Security disability benefits.

New Jersey's PAAD program helps eligible New Jersey residents pay for prescription drugs, insulin, insulin needles, certain diabetic testing materials and syringes and needles for injectable medicines used for the treatment of multiple sclerosis. Only drugs approved by the Food and Drug Administration are covered. Drugs purchased outside New Jersey are not covered, nor is any pharmaceutical product whose manufacturer has not agreed to provide rebates to the state of New Jersey.

With a PAAD card, beneficiaries pay the pharmacist only $5 for each covered prescription.

People who have health insurance or retirement benefits that provide prescription coverage equal to or better than PAAD, or are receiving Medicaid, are not eligible. However, they are eligible if their health insurance or retirement plan offers limited or partial coverage.
New Jersey has established a list of generic drugs which must be dispensed whenever a brand name drug has been prescribed. Prescribing physicians must write “Brand Medically Necessary” on the prescription to require the dispensing of some brand-name drugs when a generic is available. Generic drugs are less costly substitutes with the same active ingredients as drugs sold under a brand name. If a doctor prescribes the brand name and permits substitution, but a patient prefers a specific brand-name medication, PAAD participants may pay the difference between the listed generic drug and brand name, plus the $5 payment.

Effective November 1, 1998, new legislation requires the initial prescription to be limited to a 34-day supply and subsequent refills to be dispensed at up to a 34-day supply or 100 doses whichever is greater. This adjustment will prevent the waste of medication, if the initial prescription is not appropriate for the beneficiary, and will allow those people who are on maintenance drugs to receive up to 100 unit doses for subsequent refills.

New Jersey also established an enhanced Drug Utilization Review (DUR) component for the PAAD program to safeguard against harmful drug/drug interactions, doses that are too small to too large, over-extended drug therapy or drug duplication.

New York

New York’s Elderly Pharmaceutical Insurance Coverage (EPIC) Program is a New York state-sponsored prescription plan for senior citizens who need help paying for their prescriptions. Almost 100,000 seniors already belong and are saving over half the cost of their medicines.

New York state residents can join EPIC if they are 65 or older, and have an annual income of $18,500 or less if single, or $24,400 or less if married. Seniors who receive Medicaid benefits or have other prescription coverage that is better than EPIC are not eligible for EPIC benefits.

Beginning January 1, 2001, the income eligibility limits will increase. Single seniors with annual incomes up to $35,000 and married seniors with combined annual incomes up to $50,000 will be eligible. The new program includes a lower cost fee plan for those with incomes up to $20,000 (single) or $26,000 (married) and a deductible plan for seniors with incomes between $20,000 and $35,000 (single) or between $26,000 and $50,000 (married). In addition, the copayments will be reduced so that seniors can save even more at the pharmacy.

EPIC is a cost-sharing program. Depending on their annual income, seniors may join EPIC by enrolling in the Fee Plan or the Deductible Plan.

Seniors with low and moderate incomes are eligible for the Fee Plan; the cost to join this plan is based on annual income. Seniors may pay their annual fee in quarterly installments.

There is no fee to join the Deductible Plan which is only available to seniors with moderate incomes. Those enrolled pay full price for their prescriptions until they meet an annual deductible which also is based on income. There is no need to send in receipts; EPIC keeps track of how much deductible enrollees have spent. After the deductible is met, these enrollees save more than half of their prescription costs for the rest of the year.

At the drugstore, those enrolled in the Fee Plan and those enrolled in the Deductible Plan who have met their annual deductible show their EPIC cards, and make a payment between $3 and $23 for each prescription, depending upon the total cost of the prescription.

Almost all prescription medicines are covered, as well as insulin, and insulin syringes and needles. Both brand name and less expensive generic drugs are included. Enrollees can buy up to 100 tablets, or a 30-day supply at a time.

New York reportedly established its program in 1987.

Pennsylvania

Pennsylvania’s Pharmaceutical Assistance Contract for the Elderly (PACE) program and PACENET (network) help income eligible Pennsylvania residents over the age of 65 with the cost of their prescription medications.

PACE assists elderly people with lower annual incomes. PACE pays for all but a portion of the cost of each medication prescribed by a doctor. Enrolled PACE cardholders are responsible for paying a copayment at
the time they get their prescription from their pharmacist. Copayment is $6 per prescription medication. Cardholders must be residents of Pennsylvania at least 90 days prior to application. Gross income for the previous year must be less than $14,000 for single people and less than $17,200 for married applicants. Income from all sources, both taxable and non-taxable, must be reported.

PACENET assists eligible, elderly people with higher annual incomes. Enrolled PACENET cardholders must first satisfy an annual $500 deductible before PACENET begins paying for their medications. The deductible represents the cardholder’s first $500, annually (based on eligibility year), in out-of-pocket expenses for prescription medications. The PACENET cardholder must also pay a copayment for each prescription received after the deductible is satisfied. Once $500 is reached, the cardholder is responsible only for a copayment for every prescription he or she receives. PACENET copayments are $8 for generic drugs and $15 for brands. Cardholders must be a resident of Pennsylvania at least 90 days prior to application. Gross income for the previous year must be less than $16,000 for single people and less than $19,200 for married applicants.

PACE and PACENET cover most medications which require a prescription in Pennsylvania, as well as insulin, insulin syringes and insulin needles.

All prescriptions dispensed by a pharmacist and paid for by PACE are subject to PACE Mandatory Substitution Regulations. PACE/PACENET require the pharmacist to substitute a generic prescription medication when the U.S. Food and Drug Administration indicates a generic exists and is rated “A” in equivalence to the brand-name medication that a PACE cardholder was prescribed by their doctor. The cardholder can choose not to accept the generic, but will be liable to pay the copayment and 70 percent of the average wholesale cost of the brand-name drug their doctor prescribed. The copayment of $8 or $15 must also be paid in these circumstances. PACE/PACENET will pay the remaining 30 percent.

Exceptions to the mandatory generic substitution requirement may be granted but must be requested from PACE by a doctor.

Pennsylvania reportedly established PACE in 1984 (currently cited as 72 PS § 3761-501 to 709). PACENET was added by Public Law 741, No. 134 of 1996.
Standby Adoption

This Act is excerpted from an Illinois law that amends the state adoption act. The draft language in this Act enables terminally ill parents to consent to custody and termination of their parental rights to become effective upon the occurrence of a future event, which is either the death of the terminally ill parent or the request of the parent for the entry of a final judgment of adoption.

Terminally ill parent means a person whose medical prognosis is an incurable and irreversible condition which will lead to death.

Submitted as:
Illinois
Act 91-0572
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Definitions.] As used in this Act:
(A) “Child” means a person under legal age subject to adoption under this Act.
(B) “Related child” means a child subject to adoption where either or both of the adopting parents stands in any of the following relationships to the child by blood or marriage: parent, grand-parent, brother, sister, step-parent, step-grandparent, step-brother, step-sister, uncle, aunt, great-uncle, great-aunt, or cousin of first degree. A child whose parent has executed a final irrevocable consent to adoption or a final irrevocable surrender for purposes of adoption, or whose parent has had his or her parental rights terminated, is not a related child to that person, unless the consent is determined to be void or is void pursuant to [insert citation].
(C) “Agency” means a public child welfare agency or a licensed child welfare agency.
(D) “Parent” means the father or mother of a legitimate or illegitimate child. A person who has executed a final and irrevocable consent to adoption or a final and irrevocable surrender for purposes of adoption, or whose parental rights have been terminated by a court, is not a parent of the child who was the subject of the consent or surrender, unless the consent is void pursuant to [insert citation].
(E) A person is available for adoption when the person is:
(i) a child who has been surrendered for adoption to an agency and to whose adoption the agency has thereafter consented;
(ii) a child to whose adoption a person authorized by law, other than his parents, has consented, or to whose adoption no consent is required pursuant to [insert citation];
(iii) a child who is in the custody of persons who intend to adopt him through placement made by his parents;
(iv) a child for whom a parent has signed a specific consent pursuant to [insert citation]; or
(v) an adult who meets the conditions set forth in [insert citation].
(F) “Standby adoption” means an adoption in which a terminally ill parent consents to custody and termination of parental rights to become effective upon the occurrence of a future event, which is either the death of the terminally ill parent or the request of the parent for the entry of a final judgment of adoption.
(G) “Terminally ill parent” means a person who has a medical prognosis by a physician licensed to practice medicine in all of its branches that the person has an incurable and irreversible condition which will lead to death.
(H) The singular includes the plural and the plural includes the singular and “male” includes the “female,” as the context of this Act requires.
Section 3. [Petition.]

(A) A proceeding to adopt a child, other than a related child, shall be commenced by the filing of a petition within [thirty (30)] days after such child has become available for adoption, provided that such petition may be filed at a later date by leave of court upon a showing that the failure to file such petition within such [thirty (30)] day period was not due to the petitioners' culpable negligence or their willful disregard of the provisions of this section. A petition to adopt an adult or a related child may be filed at any time. A petition for adoption may include more than [one (1)] person sought to be adopted.

(B) A petition for standby adoption shall conform to the requirements under this section with respect to petition contents, verification, and filing. The petition for standby adoption also shall state the facts concerning the consent of the child's parent to the standby adoption. A petition for standby adoption shall include the information in paragraph C of this section if the petitioner seeks to adopt a child other than a related child. A petition for standby adoption shall include the information in paragraph D of this section if the petitioner seeks to adopt a related child or adult.

(C) A petition to adopt a child other than a related child shall state:

(i) The full names of the petitioners and, if minors, their respective ages;

(ii) The place of residence of the petitioners and the length of residence of each in this state immediately preceding the filing of the petition;

(iii) When the petitioners acquired, or intend to acquire, custody of the child, and the name and address of the persons or agency from whom the child was or will be received;

(iv) The name, the place and date of birth if known, and the sex of the child sought to be adopted;

(v) The relationship, if any, of the child to each petitioner;

(vi) The names, if known, and the place of residence, if known, of the parents; and whether such parents are minors, or otherwise under any legal disability. The names and addresses of the parents shall be omitted and they shall not be made parties defendant to the petition if:

(I) the rights of the parents have been terminated by a court of competent jurisdiction, or

(II) if the child has been surrendered to an agency, or

(III) if the parent or parents have been served with the notice provided in [insert citation] and said parent or parents have filed a disclaimer of paternity as therein provided or have failed to file such declaration of paternity or a request for notice;

(vii) If it is alleged that the child has no living parent, then the name of the guardian, if any, of such child and the court which appointed such guardian;

(viii) If it is alleged that the child has no living parent and that no guardian of such child is known to petitioners, then the name of a near relative, if known, shall be set forth, or an allegation that no near relative is known and on due inquiry cannot be ascertained by petitioners;

(ix) The name to be given the child or adult;

(x) That the person or agency, having authority to consent, has consented, or has indicated willingness to consent, to the adoption of the child by the petitioners, or that the person having authority to consent is an unfit person and the ground therefor, or that no consent is required.

(xi) Whatever orders, judgments or decrees have heretofore been entered by any court affecting adoption or custody of the child, or the adoptive, custodial or parental rights of either petitioner, including the prior denial of any petition for adoption pertaining to such child, or to the petitioners, or either of them.

(D) A petition to adopt a related child shall include the information specified in sub-paragraphs (i), (ii), (iv), (v), (vi), (ix) and (x) of paragraph C and a petition to adopt an adult shall contain the information required by sub-paragraphs (i), (ii) and (ix) of paragraph C in addition to the name, place, date of birth and sex of such adult.

(E) The petition shall be verified by the petitioners.

(F) Upon the filing of the petition, the petitioners shall furnish the clerk of the court in which the petition is pending such information not contained in such petition as shall be necessary to enable the clerk of such court to complete a certificate of adoption as hereinafter provided.

Section 4. [Investigation.]

(A) Within [ten (10)] days after the filing of a petition for the adoption or standby adoption of a child
Standby Adoption

other than a related child, the court shall appoint a child welfare agency approved by the [department of
children and family services] or a probation officer of the court, to investigate accurately, fully and promptly,
the allegations contained in the petition; the character, reputation, health and general standing in the commu-
nity of the petitioners; the religious faith of the petitioners and, if ascertainable, of the child sought to be
adopted; and whether the petitioners are proper persons to adopt the child and whether the child is a proper
subject of adoption. The investigation required under this section shall include a criminal background check
with a review of fingerprints by state and federal authorities. The criminal background check required by this
section shall include a listing of when, where and by whom the criminal background check was prepared. The
criminal background check required by this section shall not be more than [two (2)] years old. Neither a [clerk
of the circuit court] nor a judge may require that a criminal background check or fingerprint review be filed
with, or at the same time as, an initial petition for adoption.

(B) The court shall determine whether the costs of the investigation shall be charged to the petitioners.
The information obtained as a result of such investigation shall be presented to the court in a written report.
The results of the criminal background check required under subsection (A) shall be provided to the court for
its review. The court may, in its discretion, weigh the significance of the results of the criminal background
check against the entirety of the background of the petitioners. The court, in its discretion, may accept the
report of the investigation previously made by a licensed child welfare agency, if made within [one (1)] year
prior to the entry of the judgment. Such report shall be treated as confidential and withheld from inspection
unless findings adverse to the petitioners or to the child sought to be adopted are contained therein, and in that
event the court shall inform the petitioners of the relevant portions pertaining to the adverse findings. In no
event shall any facts set forth in the report be considered at the hearing of the proceeding, unless established by
competent evidence. The report shall be filed with the record of the proceeding. If the file relating to the
proceeding is not impounded, the report shall be impounded by the clerk of the court and shall be made
available for inspection only upon order of the court.

(C) Such investigation shall not be made when the petition seeks to adopt a related child or an adult
unless the court, in its discretion, shall so order. In such an event the court may appoint a person deemed
competent by the court.

Section 5. [Process.]

(A) All persons named in the petition for adoption or standby adoption, other than the petitioners and
any party who has previously either denied being a parent pursuant to [insert citation] or whose rights have
been terminated pursuant to [insert citation], but including the person sought to be adopted, shall be made
parties defendant by name, and if the name or names of any such persons are alleged in the petition to be
unknown such persons shall be made parties defendant under the name and style of “All whom it may concern.”

(B) In all such actions petitioner or his attorney shall file, at the office of the clerk of the court in which
the action is pending, an affidavit showing that the defendant resides or has gone out of this state, or on due
inquiry cannot be found, or is concealed within this state, so that process cannot be served upon him, and
stating the place of residence of the defendant, if known, or that upon diligent inquiry his place of residence
cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county
in which the action is pending.

(C) If there is no newspaper published in that county, then the publication shall be in a newspaper
published in an adjoining county in this state, having a circulation in the county in which such action is
pending. In the event there is service on any of the parties by publication, the publication shall contain notice
of pendency of the action, the name of the person to be adopted and the name of the parties to be served by
publication, and the date on or after which default may be entered against such parties. Neither the name of
petitioners nor the name of any party who has either surrendered said child, has given their consent to the
adoption of the child, or whose parental rights have been terminated by a court of competent jurisdiction shall
be included in the notice of publication.

(D) The clerk also shall, within [ten (10)] days of the first publication of the notice, send a copy thereof
by mail, addressed to each defendant whose place of residence is stated in such affidavit. The certificate of the
clerk that he sent the copies pursuant to this section is evidence that he has done so. Except as provided in this
section pertaining to service by publication, all parties defendant shall be notified of the proceedings in the
same manner as is now or may hereafter be required in other civil cases or proceedings. Any party defendant
who is of age of [fourteen (14)] years or upward may waive service of process by entering an appearance in
writing. The form to be used for publication shall be substantially as follows:

   ADOPTION NOTICE

    STATE OF ____________________________
    County of _____________________________
    SS. [Circuit Court] of ____________________________

  In the matter of the Petition for the Adoption of ____________________________, a (male or female child).

  Adoption No. ____________________________

  To ______________________________________(whom it may concern or the named parent)

  Take notice that a petition was filed in the Circuit Court of ____________________________, for the
  adoption of a child named ____________________________________.

  Now, therefore, unless you _________________________________________, and all whom it may concern,
  file your answer to the Petition in the action or otherwise file your appearance therein, in the said Circuit
  Court of ____________________________, on or before the ___________ day of ____________, a default
  may be entered against you at any time after that day and a judgment entered in accordance with the prayer
  of said Petition.

  Dated __________________, State, _____________________________ Clerk.

   (Name and address of Attorney for Petitioners) __________________________________________________
   _______________________________________________________________________________________

   (E) The sole purpose of notice under this section shall be to enable the person receiving notice to
   appear in the adoption proceedings to present evidence to the court relevant to the best interests of the child.

Section 6. [Consent to Standby Adoptions.] Consent may be given to a standby adoption by a terminally
ill parent to become effective when the terminally ill parent of the child dies or that parent requests that the
final judgment of adoption be entered.

Section 7. [Standby Adoption: Forms of Consent and Execution and Acknowledgment Thereof.]
   (A) The parent of a child may execute a consent to standby adoption by a specified person or persons.
   The form of consent required for the standby adoption of a born child effective at a future date when the
terminally ill parent of the child dies or requests that a final judgment of adoption be entered shall be substan-
tially as follows:

   FINAL AND IRREVOCABLE CONSENT TO STANDBY ADOPTION

   I, ____________________________, (relationship, e.g., mother or father) of ____________________________,
a (male or female) child, state:

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That the child was born on _____________________ at ____________________

That I reside at _______________________________, County of ________________________, and State of _____________________________

That I am of the age of ___________ years.

That I hereby enter my appearance in this proceeding and waive service of summons on me in this action only.

That I do hereby consent and agree to the standby adoption of the child, and that I have not previously executed a consent or surrender with respect to the child.

That (I am terminally ill) (the child’s other parent is terminally ill).

That I wish to and understand that by signing this consent I do irrevocably and permanently give up all custody and other parental rights I have to the child, effective upon (my death) (the child’s other parent’s death) or upon (my) (the terminally ill parent’s) request for the entry of a final judgment for adoption if _________________________________________(specified person or persons) adopt my child.

That I understand that until (I die) (the child’s other parent dies), I retain all legal rights and obligations concerning the child, but at that time, I irrevocably give all custody and other parental rights to _________________________________________(specified person or persons).

That I understand my child will be adopted by _________________________________________(specified person or persons) only and that I cannot, under any circumstances, after signing this document, change my mind and revoke or cancel this consent or obtain or recover custody or any other rights over my child if _________________________________________(specified person or persons) adopt my child.

That I understand that this consent to standby adoption is valid only if the petition for standby adoption is filed and that if _________________________________________(specified person or persons), for any reason, cannot or will not file a petition for standby adoption or if his, her, or their petition for standby adoption is denied, then this consent is void. I have the right to notice of any other proceeding that could affect my parental rights.

That I have read and understand the above and I am signing it as my free and voluntary act.

Dated _______________________________ (insert date).

(B) If under [insert citation], the consent of more than [one (1)] person is required, then each such person shall execute a separate consent. A separate consent shall be executed for each child.

(C) If the parent consents to a standby adoption by [two (2)] specified persons, then the form shall contain [two (2)] additional paragraphs in substantially the following form:

If _________________________________________ (specified persons) obtain a judgment of dissolution of marriage before the judgment for adoption is entered, then _________________________________________(specified person) shall adopt my child.

I understand that I cannot change my mind and revoke this consent or obtain or recover custody of my child if (specified persons) obtain a judgment of dissolution of marriage and _________________________.

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(specified person) adopts my child. I understand that I cannot change my mind and revoke this consent if
(specified persons) obtain a judgment of dissolution of marriage before the adoption is final. I understand that this consent to adoption has no effect on who will get custody of
my child if (specified persons) obtain a judgment of dissolution of marriage after the adoption is final. I understand that if either (specified persons) dies before the petition to adopt my child is granted, then the surviving person may adopt my child. I understand that I cannot change my mind and revoke this consent or obtain or recover custody of my child if the surviving person adopts my child.

(D) A consent to standby adoption by specified persons on this form shall have no effect on a court’s determination of custody or visitation under the state “Marriage and Dissolution of Marriage Act” if the marriage of the specified persons is dissolved before the adoption is final.

(E) The form of the Certificate of Acknowledgement for a Final and Irrevocable Consent for Standby Adoption shall be substantially as follows:

CERTIFICATE OF ACKNOWLEDGEMENT FOR A FINAL AND IRREVOCABLE CONSENT FOR STANDBY ADOPTION

STATE OF _____________________________

SS. COUNTY OF ____________________________

I, ______________________________________________________ (name of Judge or other person)

__________________________________________ (official title, name, and address), certify that _________________________, personally known to me to be the same person whose name is subscribed to the foregoing Final and Irrevocable Consent to Standby Adoption, appeared before me this day in person and acknowledged that (she) (he) signed and delivered the consent as (her) (his) free and voluntary act, for the specified purpose.

I have fully explained that this consent to adoption is valid only if the petition to adopt is filed, and that if the specified person or persons, for any reason, cannot or will not adopt the child or if the adoption petition is denied, then this consent will be void. I have fully explained that if the specified person or persons adopt the child, by signing this consent (she) (he) is irrevocably and permanently relinquishing all parental rights to the child, and (she) (he) has stated that such is (her) (his) intention and desire.

Dated ______________________________

Signature ___________________________

(F) If a consent to standby adoption is executed in this form, the consent shall be valid only if the specified person or persons adopt the child. The consent shall be void if:

(i) the specified person or persons do not file a petition for standby adoption of the child; or

(ii) a court denies the standby adoption petition.

The parent shall not need to take further action to revoke the consent if the standby adoption by the specified person or persons does not occur, notwithstanding [insert citation].

Section 8. [Interim Order.] In standby adoption cases, as soon as practicable after the filing of a petition for adoption, the court shall hold a hearing for the following purposes:

(i) The court shall appoint a licensed attorney other than the [state's attorney] acting in his or her official capacity as guardian ad litem to represent a child sought to be adopted. The guardian ad litem shall have
power to consent to the adoption of the child, if consent is required.

(ii) The court shall appoint a guardian ad litem for all named minors or defendants who are persons under legal disability, if any.

(iii) The court lacks jurisdiction to proceed on the petition for standby adoption if the child has a living parent, adoptive parent, or adjudicated parent whose rights have not been terminated and whose whereabouts are known, unless the parent consents to the standby adoption or, after receiving notice of the hearing on the standby adoption petition, fails to object to the appointment of a standby adoptive parent at the hearing on the petition.

(iv) The court shall investigate as needed for the welfare of the child and shall determine whether the petitioner or petitioners shall be permitted to adopt.

Section 9. [Order for Standby Adoption.]

(A) If it is proved to the satisfaction of the court, after such investigation as the court deems necessary, that the child's parent consents to or fails to object to the standby adoption and adoption by the petitioner will be for the welfare of the child, the court may enter an order for standby adoption. However, the consenting terminally ill parent's parental rights may not be terminated until consent becomes effective.

(B) The order for standby adoption shall be final as to all findings and shall be followed in the judgment of adoption unless the court finds by clear and convincing evidence that it is no longer in the best interest of the child for the adoption to be finalized.

(C) Once the standby adoptive parent receives knowledge of the death of the terminally ill parent, or the terminally ill parent requests that a final judgment for adoption be entered, the standby adoptive parent shall have [sixty (60)] days to apply for a judgment for adoption.

Section 10. [Judgment.] A standby adoption judgment may be entered upon notice of the death of the terminally ill parent or upon the terminally ill parent's request that a final judgment for adoption be entered. The notice must be provided to the court within [sixty (60)] days after the standby adoptive parent's receipt of knowledge of death of the terminally ill parent or the terminally ill parent's request that a final judgment for adoption be entered. If the court finds that adoption is for the welfare of the child and that there is a valid consent, including consent for standby adoption, which is still in effect, or that no consent is required under [insert citation] of the Act, a judgment for adoption shall be entered unless the court finds by clear and convincing evidence that it is no longer in the best interest of the child for the adoption to be finalized.

Section 11. [Severability.] [Insert severability clause.]

Section 12. [Repealer.] [Insert repealer clause.]

Section 13. [Effective Date.] [Insert effective date.]
Streamlined Sales Tax System for the 21st Century Model

This draft is based on a model “Streamlined Sales and Use Tax System for the 21st Century” as initially proposed by the National Conference of State Legislatures (NCSL), the National Governors’ Association (NGA), and other major state and local organizations in December 1999. It authorizes the appropriate state authority to participate in discussions with other states to develop the specifics of a voluntary, streamlined, multistate system for sales and use tax collection and administration. The form of introduction of this language may vary according to state legislative rules and procedures. Authorization may be accomplished by legislation, resolution or other means.

The NCSL reports that at least 15 states had enacted this model as of September 2000, and governors in 12 other states had issued executive orders endorsing or adopting it. It appears that the language of this draft is typically incorporated into bills that deal with the general taxing authority of a state (as in Florida, Kansas, Ohio and Oklahoma).

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Streamlined Sales Tax System for the 21st Century Act.”

Section 2. [Legislative Findings and Intent/Legislative Declaration.] The [Legislature, General Assembly, etc.] finds that:

(1) State and local tax systems should treat transactions in a competitively neutral manner.
(2) A simplified sales and use tax system that treats all transactions in a competitively neutral manner will strengthen and preserve the sales and use tax as vital state and local revenue sources and preserve state fiscal sovereignty.
(3) Remote sellers should not receive preferential tax treatment at the expense of local “main street” merchants, nor should such vendors be burdened with special, discriminatory or multiple taxes.
(4) The state should simplify sales and use taxes to reduce the administrative burden of collection.
(5) While states have the sovereign right to set their own tax policies, states working together have the opportunity to develop a more simple, uniform, and fair system of state sales and use taxation without federal government mandates or interference.

Section 3. [Legislative Authorization to Enter into Multistate Discussions.]
(1) The [department, secretary, tax commission, etc.] shall enter into discussions with states regarding development of a multistate, voluntary, streamlined system for sales and use tax collection and administration. These discussions shall focus on a system that would have the capability to determine whether the transaction is taxable or tax exempt, the appropriate tax rate applied to the transaction, and the total tax due on the transaction, and shall provide a method for collecting and remitting sales and use taxes to the state. Such system may provide compensation for the costs of collecting and remitting sales and use taxes. Discussions between the [department, secretary, tax commission, etc.] and other states may include, but are not limited to:
(a) the development of a “Joint Request for Information” from potential public and private parties governing the specifications for such system;
(b) the mechanism for compensating parties for the development and operation of such system;
(c) establishment of minimum statutory simplification measures necessary for state participation in such system;
(d) measures to preserve confidentiality of taxpayer information and privacy rights of consumers.
(2) Following these discussions, the [department, secretary, tax commission, etc.] may proceed to issue a Joint Request for Information.
Section 4. [Limited Test Authorization- Optional Provision for State Electing to Participate in Early Test of Simplified System.]

(1) The [department, secretary, tax commission, etc.] is authorized to participate in a sales tax pilot project with other states and selected businesses to test means for simplifying sales and use tax administration and may enter into joint agreements for that purpose.

(2) Agreements to participate in the test shall establish provisions for the administration, imposition and collection of sales and use taxes resulting in revenues paid that are the same as would be paid under existing law or [insert citation].

(3) Parties to the agreements are excused from complying with the provisions of [insert citation] to the extent a different procedure is required by the agreements, except for confidentiality of taxpayer information as detailed in section 5 of this Act.

(4) Agreements authorized under this section shall terminate no later than [December 31, 2001].

Section 5. [Confidentiality of Taxpayer Information.] Return information submitted to any party or parties acting for and on behalf of the state shall be treated as confidential taxpayer information. Disclosure of confidential taxpayer information necessary under sections 3 and 4 of this Act shall be pursuant to a written agreement between the [department, secretary, tax commission, etc.] and the party or parties. Such party or parties shall be bound by the same requirements of confidentiality as the [department, secretary, tax commission, etc.] under [insert citation].

Section 6. [Legislative Oversight.] There is hereby created a [legislative oversight committee]. The [department, secretary, tax commission, etc.] shall provide testimony and information as requested by the [committee]. The [department, secretary, tax commission, etc.] shall provide [quarterly] reports to the [governor], the [speaker of the house], [minority leader of the house], [senate presiding officer], and [senate minority leader], and to the members of the [legislative oversight committee] on the progress of multistate discussions.

Section 7. [Final Report to the Governor and the Legislature.] By March 1, 2001, the [department, secretary, tax commission, etc.] shall report to the [governor] and to the [speaker of the house], [minority leader of the house], [senate presiding officer], and [senate minority leader], and to the members of the [legislative oversight committee] on the status of multistate discussions and, if a proposed system has been agreed upon by participating states, shall also recommend whether the state should participate in such system.

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

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

Section 10. [Effective Date.] [Insert effective date.]
Teacher Shortage Note

Increasing student enrollments, increasing numbers of teacher retirements, and decreasing numbers of college graduates entering the teaching profession contribute to a shortage of qualified teachers throughout the country. In recent years, the states have attempted to counter the trend with a variety of measures, including alternative certification, stipends and scholarships. This note highlights efforts in California, Kentucky, Maryland, Mississippi, New York and North Carolina.

California

California created an emergency permitting program to help fill vacant teaching positions in the state. Each year, employers must file a Declaration of Need for Fully Qualified Educators with the state commission on teacher credentialing if the employer will need to hire people who don't have teaching credentials to fill teaching positions. Once the declaration is on file, the employer may apply for emergency permits for qualified candidates. Basic requirements to obtain an emergency certificate include:

1. a baccalaureate or higher degree from a regionally accredited college or university; and
2. passing the California Basic Educational Skills Test.

Employing agencies must provide orientation, guidance and assistance when an individual obtains an emergency teaching permit for the first time. Employing agencies may vary the nature, content and duration of the orientation to match the amount of training and experience previously completed by the emergency-permit teacher. Such criteria must include an overview of the following topics:

1. the curriculum that the emergency-permit holder is expected to teach;
2. effective techniques of classroom instruction at the emergency-permit holder's assigned level: preschool, elementary, middle, secondary or adult education; and
3. effective techniques of classroom management at the emergency-permit holder's assigned level: elementary or secondary.

Employing agencies must assign an experienced educator to guide and assist each holder of an emergency permit. The experienced educator must be a certified employee of the employing agency, or a certified retiree of a California school district or county office of education; and have completed at least three years of full-time classroom teaching experience.

Emergency permits are valid for one year.

Teaching or service authorized by an emergency permit is restricted to schools operated by the employing agency that requested the permit.

Kentucky

Kentucky's 1998 Alternative Teacher Certification Act (SB 265) establishes a program to certify people as teachers based upon their work or life experiences instead of completing a traditional teacher-preparation program. It outlines four options; including certification of a person with exceptional work experience, certification through a local district training program, certification of a professional from a postsecondary institution and certification of an adjunct instructor who has specific skills and training. Generally, qualified participants get a provisional teaching certificate that they must renew every year for up to three years. They get a regular teaching certificate if they continue to teach beyond three years. The 1999 Suggested State Legislation volume contains a draft that is based on Kentucky SB 265.

Maryland

Maryland is one of three states that are reported to have enacted laws to permit retired teachers to begin teaching again at full salaries while collecting their pension payments. North Carolina and Texas are the others.

Maryland SB 15 exempts retired teachers from an offset of their retirement allowance if they return to teach in public schools that are in counties where there are shortages of teachers or if they return to teach in a
subject area for which there is a shortage of teachers. The legislation requires county boards of education to notify the State Retirement Agency of any retired teachers who qualify. Maryland SB 15 became law in 1999.

Mississippi

Mississippi HB 609 established a “Critical Needs Teacher Scholarship Program” to award scholarships to college students who declare an intention to teach in areas of the state that have a shortage of qualified teachers. The bill became law in 1998.

Under this program, anyone who is enrolled in or accepted for enrollment at a baccalaureate degree-granting institution of higher learning whose teacher-education program is approved by the state board of education or at an accredited, nonprofit community or junior college in Mississippi, who expresses in writing an intention to teach in a geographical area of the state in which there exists a critical shortage of teachers, as designated by the state board of education, is eligible for a financial scholarship to be applied toward the costs of their college education. The annual amount of the award can be equal to the total cost for tuition, room and meals, books, materials and fees at the college or university in which the student is enrolled. Awards made to nonresidents of the state do not include any amount assessed by the college or university for out-of-state tuition.

Awards granted under the Critical Needs Teacher Scholarship Program are available to both full-time and part-time students. Students enrolling on a full-time basis may receive a maximum of four annual awards. The maximum number of awards that may be made to students attending school on a part-time basis, and the maximum time period for part-time students to complete the number of academic hours necessary to obtain a baccalaureate degree in education, is determined by rules and regulations jointly promulgated by the board of trustees of state institutions of higher learning and the state board of education. Critical Needs Teacher Scholarships can not be based upon an applicant’s eligibility for financial aid.

Generally, anyone who receives four annual awards must teach three years in an area where there is a teacher shortage. Anyone who receives fewer than four annual awards must teach one year in such areas. Anyone who fails to get certified as a teacher under the program is liable to the board of trustees of state institutions of higher learning for the sum of all Critical Needs Teacher Scholarship awards made to that person, plus interest accruing at the current Stafford Loan rate at the time the person abrogates his participation in the program. Anyone who fails to complete his teaching obligation is liable to the board for the sum of all scholarship awards made to that person less the corresponding amount of any awards for which service has been rendered, plus interest accruing at the current Stafford Loan rate at the time the person discontinues his service. The obligations made by the recipient of a Critical Needs Teacher Scholarship award can not be voided because of the age of the student at the time of receiving the scholarship.

The board of trustees of state institutions of higher learning and the state board of education jointly promulgate rules and regulations necessary to administer the Critical Needs Teacher Scholarship Program. However, the board of trustees of state institutions of higher learning is the administering agency of the program.

All funds received by the board of trustees of state institutions of higher learning from the repayment of scholarship awards by program participants are deposited in the Mississippi Critical Teacher Shortage Fund.

New York

New York’s Teachers of Tomorrow Teacher Recruitment and Retention Act (A 11005) became law in 2000. It contains the following provisions:

• Teachers of Tomorrow Awards: Annual awards of $3,400 per year will be provided to inexperienced teachers who agree to teach in designated shortage areas. These awards will be used to reduce outstanding student loan balances and defray other education costs.
• Stipends: To assist teachers with temporary licenses in achieving permanent certification, stipends of up to $2,000 per year will be provided to cover costs such as test preparation workshops and tuition for required coursework.
• “Summer in the City” Internship Program: This program is designed to encourage college students from around the State to gain classroom experience in New York City schools. Beginning in 2001-02, the
program will be expanded to the largest inner city school districts throughout the state.

- **Teacher Training:** State funding may be used to support specialized summer-training programs for new teachers who agree to teach in shortage areas and to assist these people in meeting education requirements necessary to attain permanent certification.
- **Master Teachers:** School districts also may use Teachers of Tomorrow funding to provide a $10,000 incentive for up to three years to highly skilled master teachers who agree to work in shortage areas.
- **Tuition Reimbursement Grants:** These grants, up to $2,100 per year for two years, are available to provisionally certified teachers who are seeking permanent certification and agree to serve in a teacher-shortage area.
- **Teacher Recruitment and Outreach Activities.**

**North Carolina**

North Carolina Session Law 1999-108 (HB 1167) declares that if a local board determines there is or anticipates there will be a shortage of qualified teachers with North Carolina certificates available to teach specified subjects or grade levels, then the local board may employ as teachers people who do not meet the state board’s requirements for initial or continuing state certification. The local board may employ an individual for up to one year under a provisional certificate.

Under the Act, local school boards may employ an individual for up to one year under a provisional certificate so long as:

1. Each individual has a postsecondary degree that is at least a bachelor’s degree;
2. Each individual has:
   1. An out-of-state certificate authorizing the individual to teach the grade or subject to be taught and at least one year of classroom teaching experience the board considers relevant to the grade or subject to be taught;
   2. At least one year of full-time classroom teaching experience as a professor, assistant professor, associate professor, instructor or visiting lecturer at a constituent institution of The University of North Carolina, a North Carolina community college, or other institution of higher education, provided the board considers the experience relevant to the grade or subject to be taught; or
   3. Three years of other experience provided the board determines that both the person’s experience and postsecondary education are relevant to the grade or subject to be taught.
3. Each individual is eligible for re-employment by his or her prior employer;
4. The board has developed a plan to determine the person’s competence as a teacher. The board plan shall include a review of the performance of students taught by the individual;
5. During the period of employment under this subsection, the board provides a mentor teacher if the individual does not have a year of classroom teaching experience; and
6. During the period of employment, the individual receives an annual evaluation and multiple observations.

**Texas**

In 1999, in an attempt to coax retired teachers to return to teaching, Texas amended its Teacher Retirement System Act to prohibit the retirement system from withholding a monthly benefit payment:

- if the retiree is employed in a Texas public educational institution on a full-time basis;
- if the work occurs in not more than six months of a school year that begins after the retiree’s date of retirement or in a classroom teacher on as much as a full-time basis;
- has retired without reduction for retirement at an early age, is certified to teach the subjects assigned,
- is teaching in an acute shortage area; and
- has been separated from service with all public schools for at least 12 months.
Terrorism Prevention

This Act makes it illegal to make, possess, use or threaten to use weapons of mass destruction against people, animals, property or the environment. The Act also makes it a crime to possess restricted biological agents, and requires police officers who encounter restricted biological agents to notify local health officials to determine the risk to public health from the agents.

Submitted as:
California
Chapter 563, Laws of 1999
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 Prevent Terrorism.”

Section 2. [Legislative Findings.] The Legislature hereby finds and declares that the threat of terrorism involving weapons of mass destruction, including, but not limited to, chemical, biological, nuclear, or radiological agents, is a significant public safety concern. The Legislature recognizes that terrorism involving weapons of mass destruction could result in an intentional disaster placing residents of this state in great peril. The Legislature finds it necessary to sanction the possession, manufacture, use, or threatened use of chemical, biological, nuclear, or radiological weapons, as well as the intentional use or threatened use of industrial or commercial chemicals as weapons against people or animals.

Section 3. [Definitions.]
(a) For the purposes of this Act, the following terms have the following meanings:
(1) “Weapon of mass destruction” includes chemical warfare agents, weaponized biological or biologic warfare agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon.
(2) “Chemical Warfare Agents” includes, but is not limited to, the following weaponized agents, or any analog of these agents:
(i) Nerve agents, including Tabun (GA), Sarin (GB), Soman (GD), GF, and VX.
(ii) Choking agents, including Phosgene (CG) and Diphosgene (DP).
(iii) Blood agents, including Hydrogen Cyanide (AC), Cyanogen Chloride (CK), and Arsine (SA).
(iv) Blister agents, including mustards (H, HD (sulfur mustard), HN-1, HN-2, HN-3 (nitrogen mustard)), arsenicals, such as Lewisite (L), urticants, such as CX; and incapacitating agents, such as BZ.
(3) “Weaponized biological or biologic warfare agents” include weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).
(4) “Nuclear or radiological agents” includes any improvised nuclear device (IND) which is any explosive device designed to cause a nuclear yield; any radiological dispersal device (RDD) which is any explosive device utilized to spread radioactive material; or a simple radiological dispersal device (SRDD) which is any act or container designed to release radiological material as a weapon without an explosion.
(5) “Vector” means a living organism or a molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology, that is capable of carrying a biological agent or toxin to a host.
(6) “Weaponization” is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition. “Weaponized agents” are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic, or mechanical means.
(b) The intentional release of a dangerous chemical or hazardous material generally utilized in an industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes those agents with the intent to cause harm and the use places persons or animals at risk of serious injury, illness, or death, or endangers the environment.

(c) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, or commercial purposes is not proscribed by this Act.

(d) No university, research institution, private company, individual, or hospital engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or pursuant to Part 72 (commencing with Section 72.1) of Subchapter E of Chapter 1 of Title 42 of the Code of Federal Regulations, or any successor provisions, shall be subject to this Act.

Section 4. [Penalties: Weapons of Mass Destruction.]

(a) Any person, without lawful authority, who possesses, develops, manufactures, produces, transfers, acquires, or retains any weapon of mass destruction, shall be guilty of a [felony] punishable in the state prison for [three (3)], [six (6)], or [nine (9)] years, provided that any person who has been previously convicted under [insert citation] shall be punished by imprisonment in the state prison for a period of [four (4)], [eight (8)], or [twelve (12)] years.

(b) (1) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread, disabling illness, or injury in human beings shall be punished by [life] in prison.

(2) Any person who uses a weapon of mass destruction in a form that may cause widespread damage to and disruption of the water or food supply shall be punished by imprisonment in the state prison for a term of [four (4)], [eight (8)], or [twelve (12)] years, and a fine of not more than [one hundred thousand (100,000)] dollars.

(3) Any person who maliciously uses against animals or crops a weapon of mass destruction in a form that may cause widespread and substantial diminution in the value of stock animals or crops shall be punished by a fine of not more than [one hundred thousand (100,000)] dollars, imprisonment in the state prison for [four (4)], [eight (8)], or [twelve (12)] years, or both.

(c) Any person who uses a weapon of mass destruction in a form that may cause widespread and significant damage to public natural resources, including coastal waterways and beaches, public parkland, surface waters, groundwater, and wildlife, shall be punished by imprisonment in the state prison for [three (3)], [four (4)], or [six (6)] years.

(d) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for the purposes specified in this section, shall be punished by imprisonment in a county jail for up to [one (1)] year or in the state prison for [three (3)], [six (6)], or [nine (9)] years, or by a fine of not more than [two hundred fifty thousand (250,000)] dollars, or by both that fine and imprisonment.

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

Section 5. [Penalties: Threatening to Use of Weapons of Mass Destruction.]

(a) Any person who knowingly threatens to use a weapon of mass destruction, 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 circumstances in which it is made, is so unequivocal, immediate, 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, which results in an isolation, quarantine, or decontamination effort, shall be punished by imprisonment in a county jail for up to [one (1)] year or in the state prison for [three (3)], [four (4)], or [six (6)] years, or by a fine of not more than [two hundred fifty thousand (250,000)] dollars, or by both that fine and imprisonment.
For the purposes of this section, “sustained fear” can be established by, but is not limited to, conduct such as evacuation of any building by any occupant, evacuation of any school by any employee or student, evacuation of any home by any resident or occupant, or any other action taken in direct response to the threat to use a weapon of mass destruction.

(c) The fact that the person who allegedly violated this section did not actually possess a biological agent, toxin, or chemical weapon does not constitute a defense to the crime specified in this section.

(d) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

Section 6. [Penalties: Possessing Restricted Biological Agents.]

(a) Any person or entity possessing any of the restricted biological agents enumerated in subdivision (b) shall be punished by a fine of not more than [two hundred fifty thousand dollars (250,000)], imprisonment in the state prison for [four (4)], [eight (8)], or [twelve (12)] years, or by both that fine and imprisonment.

(b) For the purposes of this section, “restricted biological agents” means the following:

(1) Viruses: Crimean-Congo hemorrhagic fever virus, Eastern equine encephalitis virus, ebola viruses, equine morbilli virus, lassa fever virus, marburg virus, Rift Valley fever virus, South African hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito), tick-borne encephalitis complex viruses, variola major virus (smallpox virus), Venezuelan equine encephalitis virus, viruses causing hantavirus pulmonary syndrome, yellow fever virus.

(2) Bacteria: bacillus anthracis (commonly known as anthrax), brucella abortus, brucella melitensis, brucella suis, burkholderia (pseudomonas) mallei, burkholderia (pseudomonas) pseudomallei, clostridium botulinum, francisella tularensis, yersinia pestis (commonly known as plague).

(3) Rickettsiae: coxiella burnetii, rickettsia prowazekii, rickettsia rickettsii.

(4) Fungi: coccidioides immitis.

(5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin, saxitoxin, shigatoxin, staphylococcal enterotoxins, tetrodotoxin, T-2 toxin.

(c) (1) This section shall not apply to any physician, veterinarian, pharmacist, or licensed medical practitioner authorized to dispense a prescription under [insert citation], or universities, research institutions, or pharmaceutical corporations, or any person possessing the agents pursuant to a lawful prescription issued by a person defined in [insert citation], if the person possesses vaccine strains of the viral agents Junin virus strain #1, Rift Valley fever virus strain MP-12, Venezuelan equine encephalitis virus strain TC-83 and yellow fever virus strain 17-D; any vaccine strain described in Section 78.1 of Subpart A of Part 78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions, and any toxin for medical use, inactivated for use as vaccines, or toxin preparation for biomedical research use at a median lethal dose for vertebrates of more than 100 ng/kg, as well as any national standard toxin required for biologic potency testing as described in Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions.

(2) For the purposes of this section, no person shall be deemed to be in possession of an agent if the person is naturally exposed to, or innocently infected or contaminated with, the agent.

(d) Any peace officer who encounters any of the restricted agents mentioned above shall immediately notify and consult with a local public health officer to ensure proper consideration of any public health risk.

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

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

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

Section 9. [Effective Date.] [Insert effective date.]
Unauthorized Charges On Utility Bills — Cramming

This Act requires public utilities that use third-party or “billing aggregators” to ensure that such agents do not fraudulently bill utility customers. It establishes procedures for removing disputed charges by such agents and restricts the ability of such agents to collect disputed charges.

Submitted as:
Utah
HB 43 (enrolled version)
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prevent Unauthorized Charges on Utility Bills — A Practice Known as Cramming.”

Section 2. [Definitions - Unauthorized Charge to Account - Penalties - Procedures for Verification - Authority of Commission].

(1) For purposes of this Act:
(a) “Agents” includes any person, firm, or corporation representing a public utility for purposes of billing for a service or merchandise from a third-party supplier.
(b) “Billing aggregator” means any person, corporation, partnership, or other entity which initiates charges, combines or aggregates charges from third-party suppliers of services or merchandise, creates bills for account holders and passes these bills to another aggregator or to a public utility for the billing of account holders.
(c) (i) “Public utility” means a company or utility providing:
(A) natural gas services;
(B) electrical services; or
(C) telecommunications services.
(ii) “Public utility” does not include a telecommunications corporation providing only mobile wireless service or Internet access.
(d) “Subscriber” means a corporation, person, or government, or a person acting legally on behalf of a corporation, person, or government who has authorized a charge from a third-party provider of service or merchandise.
(e) (i) “Third party” means any person, corporation, partnership, or other entity other than the account holder and the public utility, including aggregators and public utility or nonpublic utility providers of services and merchandise, and includes those entities billing for services or merchandise, and those verifying a subscriber’s authorization.
(ii) “Third party” does not include:
(A) an affiliated or subsidiary company of a public utility whose charges the commission determines by rule would be reasonably associated by a subscriber with the type of charges that would appear on that particular public utility's bill; or
(B) charges from a presubscribed local or long distance telecommunications corporation or its affiliated or subsidiary company for local or long distance telephone, data, or wireless services.

(2) This Act does not apply to:
(a) telecommunications services that are used, initiated, or requested by the customer, including dial-around services such as 10-10-XXX, 1-900 numbers, directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer;
(b) changes in telecommunications providers regulated by [insert citation]; or
(c) the provision of any charges for financing by an affiliated or subsidiary company of a public
utility in connection with the purchase of services or merchandise, provided that there is a written agreement
for the financing between the customer and the affiliated or subsidiary company.

(3) Pursuant to the provisions of the Act, a public utility may not charge an account holder for services
the holder never ordered nor knowingly authorized.

(4) Each public utility shall ensure that its account holders receive:
(a) identification of third-party provider of services or merchandise;
(b) upon subscriber request, toll-free numbers to enable a subscriber to contact the third party to
resolve disputes;
(c) a clear, concise description of services or merchandise being billed;
(d) highlight or identification of each service or merchandise different from prior billing cycle
services or merchandise;
(e) clear identification of the payment amount needed for each service or merchandise to ensure
that any public utility service will continue;
(f) prompt and courteous treatment of all disputed charges; and
(g) information about the provisions in subsections (5) and (6) of this section.

(5) Unless specifically instructed by the account holder, each public utility shall first apply all payments
received to the account holder's bill for the public utility's own tariffed utility services. Any remaining credit
shall then be allocated proportionally to other charges, unless otherwise specified by the account holder.

(6) No public utility may disconnect or threaten disconnection of any account holder's basic utility
service for failure to pay third-party charges.

(7) Accounts receivable purchased by a public utility from third parties are not to be treated as public
utility charges regardless of the service or product upon which the account receivable is based.

(8) (a) If an account holder informs the public utility that a third-party service or merchandise charge
is neither knowingly used nor authorized, or the charge in whole or part is disputed, the public utility shall:
   (i) immediately credit the account holder's account for the disputed amount and refer the
matter back to the third party for collection; or
   (ii) suspend the account holder's obligation of payment of the disputed amount until it is
determined whether the charge was either knowingly used or authorized.
   (b) The public utility may not request the account holder to contact the third party to resolve the
dispute prior to applying the credit.
   (c) The disputed charge shall be removed from the public utility's bill to the account holder no
later than two billing cycles following the billing cycle during which the complaint or dispute is registered
unless it is later determined that the charge was authorized and the account holder is required to pay such charge.
   (d) The public utility shall inform the account holder of this process and the holder's options
immediately upon the holder's first complaint or inquiry.
   (e) Except as provided in subsection (8)(c), once the charges have been removed from the account
holder's utility bill:
      (i) the third party may not use the utility bill to rebill the charges or further attempt to collect
the charge; and
      (ii) the public utility may not allow any further collection attempts by the third party to in-
volve the utility bill.

(9) (a) If requested by the account holder, each public utility shall provide the account holder with
toll-free numbers supplied by the provider of the service or merchandise, so the account holder may contact
the third-party supplier of the services or merchandise billed.
   (b) The public utility responsibility prescribed by subsection (9)(a) applies through all layers of
third parties, including utilities, service providers, merchandise providers, affiliate billing companies, or billing
aggregators, and the public utility shall perform due diligence to acquire that information from any provider
for whom it bills.
(10) A third-party provider of services or merchandise shall not request a public utility to bill its charges unless and until it:
   (a) has provided to the public utility valid toll-free numbers to enable a subscriber to contact the third-party to resolve any disputed charges;
   (b) has provided updated toll-free numbers to the public utility upon any change in the numbers; and
   (c) has received authorization from the subscriber for the service or merchandise through:
      (i) obtaining the subscriber’s written authorization;
      (ii) having the subscriber’s oral authorization verified by an independent verifier; or
      (iii) any means provided by rule of the commission.

(11) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.

(12) The written authorization for the service or merchandise shall be signed by the subscriber and shall contain a clear, conspicuous, and unequivocal request by the subscriber for the service or merchandise.

(13) The confirmation by a verifier shall, at a minimum:
   (a) confirm the subscriber’s identity with information unique to the customer, unless the customer refuses to provide identifying information, then that fact shall be noted;
   (b) confirm that the subscriber requests the service or merchandise be provided by the third party;
   and confirm that the subscriber has the authority to request the service or merchandise be provided by the third party.

(14) A verifier shall meet each of the following:
   (a) any criteria set for verifiers by the commission;
   (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:
      (i) by the public utility on whose bill the charge will appear, the third-party provider, or their agents that seek to provide the service or merchandise or by any corporation, firm, or person who directly owns or indirectly manages, controls, directs, or owns more than [five (5)] percent of the public utility or third-party provider; or
      (ii) by the marketing entity that seeks to market the third-party provider’s service; or merchandise or by any corporation, firm, or person who directly or indirectly manages, controls, or owns more than [five (5)] percent of the marketing entity;
   (c) operate from facilities physically separated from:
      (i) those facilities of the public utility on whose bill the charge will appear, the third party or its agents that seek to provide the service or merchandise to the subscriber; or
      (ii) those facilities of the marketing entity that seeks to market the third-party provider’s service or merchandise to the subscriber; and
   (d) not derive commissions or compensation based upon the number of authorizations verified.

(15) A verifier that obtains the subscriber’s oral verification regarding the change shall record that verification by obtaining the appropriate verification data.

(16)(a) The record verifying a subscriber’s request for a third party to provide services or merchandise shall be available to the subscriber upon request.
   (b) Information obtained from the subscriber through verification may not be used for any other purpose.
   (c) Any intentional unauthorized release of the information in subsection (16)(b) is grounds for penalties or other action by the commission or remedies provided by law to the aggrieved subscriber against the third-party provider, the verifier, their agents, or their employees who are responsible for the violation.

(17) The verification shall occur in the same language as that in which the request was solicited.

(18) Each public utility shall allow account holders to prohibit the public utility from billing for all or selected third parties for services or merchandise.

(19) Each public utility shall maintain monthly records of the number of complaints about unauthorized charges that appear on a public utility bill which shall be available to the [commission] upon request.

(20)(a) Proceedings for violations of this section may be commenced by request for agency action filed
Unauthorized Charges On Utility Bills — Cramming

with the [commission] by an account holder, a public utility, the [division of public utilities], or by the [commission] on its own motion.

(b) The remedies provided by this Act are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(21) Any public utility, its agents, or a third-party provider of goods or services who violates this section or rules adopted to implement this Act shall be subject to the provisions of [insert citation].

(22) The [division] shall have power to seek injunctive relief to stop repeated unauthorized violations of this Act by a public utility or a third-party provider of service or merchandise.

(23) The [commission] is granted authority to enforce provisions of this Act and implement rules to carry out the requirements of the Act.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Unit-Cost Agency Reporting

This Act requires state agencies' annual performance reports to include a summary of agency expenses by unit-cost for each agency output measure. It contains a provision to reduce an agency's budget if its performance report does not include the summary.

Submitted as:
Florida
CH 99-377
Status: enacted into law in 1999.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Unit-Cost Agency Reporting Act.”

Section 2. [State Agency Strategic Plans; Preparation, Form, and Review.]
(a) Each agency shall submit by [September 1] of each year an [annual] performance report to the [executive office of the governor], with copies to the [president of the senate], the [speaker of the house of representatives], and the [office of program policy analysis and government accountability]. The purpose of this report is to evaluate the attainment of the agency objectives in the agency strategic plan and the performance measures approved by the [Legislature] pursuant to [insert citation], and established in the [General Appropriations Act] or implementing legislation for the [General Appropriations Act].

(b) In addition, each state agency must include a one-page summary of all money that was spent or encumbered by the agency, or for which the agency was otherwise responsible, during the preceding fiscal year and an estimate of such money projected by the agency for the current fiscal year. All such expenditures and estimates of such expenditures must be divided by program and expressed in line items by unit costs for each output measure approved pursuant to [insert citation] for those agencies and programs operating under performance-based program budgeting and for major services and products for those agencies and programs operating under traditional line-item budgeting.

(c) Unit-cost totals must equal the total amount of money that was spent or projected to be spent by each agency and must include expenditures or projected expenditures of state funds by subordinate governmental entities and contractors, as applicable. Money that agencies receive but are not responsible for, such as reversions or pass-throughs to entities over which the agency has no authority or responsibility, shall be shown in separate line items and expressed in total amounts only.

(d) At the regular session immediately following the submission of the agency performance report, the [Legislature] shall reduce in the [General Appropriations Act] for the ensuing fiscal year, by an amount equal to at least [ten (10)] percent of the allocation for the fiscal year preceding the current fiscal year, the funding of each state agency that fails to submit the report required by this Act. All reports must be submitted in the form and manner prescribed by the instructions prepared pursuant to this Act.

Section 3. [Performance-Based Legislative Program Budget Requests to be Furnished by Agencies.]
(a) The [executive office of the governor] and the [legislative appropriations committees] shall jointly develop legislative program budget instructions from which each agency that has an approved program and the judicial branch, pursuant to [insert citation], shall prepare its legislative program budget request. The program budget instructions must be transmitted to each agency and to the judicial branch no later than [June 15] of each year. The budget instructions must also include instructions for agencies in submitting performance measures and standards as required by this Act. The budget instructions must also include instructions
Unit-Cost Agency Reporting

for agencies in submitting the assessment of performance measures and the unit-cost information required to be included in the agency annual performance report under this Act.

(b) The [executive office of the governor], in consultation with the [office of program policy analysis and government accountability], the [auditor general], the [department of banking and finance], and the legislative appropriations committees, shall develop instructions as to the calculation of the unit-cost information and the format and presentation of the summary required under this Act. For fiscal year [insert date], the [executive office of the governor] may provide interim instructions which allow for a phased-in implementation of unit-cost reporting by agencies.

(c) Full implementation of unit-cost reporting shall be effective with the submission of the [insert date] agency performance report. In the event that agreement cannot be reached between the [executive office of the governor] and the [legislative appropriations committees] regarding legislative program budget instructions, the issue shall be resolved by the [governor], the [president of the senate], and the [speaker of the house of representatives] by [insert date]. A report, with recommendations, on the necessity and feasibility of, and the costs associated with, enhancements to the state [accounting information resource system] required to support state agencies in providing the unit-cost information required to be reported under this Act.

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

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

Section 6. [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 is a classic example of an unfunded mandate, while a congressionally legislated moratorium or preventing 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.

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 (in 1996 dollars adjusted for inflation) or more in unfunded annual costs to the states is officially considered a mandate.

More recently, Congress enacted “The State Flexibility Clarification Act” (Public Law 106-141). This law amends the “Congressional Budget Act of 1974” to require congressional committee reports and CBO estimates to provide information about how states are expected to offset proposed reductions in federal funding that are contained in federal legislation affecting entitlement programs such as Medicaid, Temporary Assistance for Needy Families, and Food Stamps.

Two bills, The “Federalism Accountability Act of 1999” (S. 1214), and the “Federalism Act of 1999” (H.R. 2245), require Congress and the Administration to identify each section of a bill or regulation that would pre-empt state or local law and the reasons for such pre-emption. These bills were pending in the second session of the 106th Congress as of the summer of 2000.

The CBO claims 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. However, the trend in this Congress has been to pre-empt state and local government authority, rather than mandate action by state and local governments.

106th Congress – First Session

The first session of the 106th Congress began on January 6, 1999 and concluded on November 22, 1999. One hundred seventy public bills were enacted into law. The first session of the 106th Congress saw more mandates than previous years, however the number was somewhat distorted because Congress considered more versions of the same bills in the first session than in previous years.

According to CBO’s annual “Assessment of the Unfunded Mandates Reform Act on 1999,” 12 percent of the bills considered by Congress during the first session of the 106th Congress contained intergovernmental mandates that impacted state, local or tribal governments.

Four bills exceeded UMRA’s $50 million threshold:

- a bill that sets new requirements on the confidentiality of health records (an unnumbered Senate proposal);
- a bill prohibiting Internet gambling (S. 692);
- a bill to increase the minimum wage (H.R. 3081); and
- a bill to increase the minimum wage (S. 192).

None of these bills had been enacted into law as of the end of the first session of the 106th Congress.

Of the bills enacted in 1999, the following nine contain intergovernmental mandates but did not exceed UMRA’s threshold:

- Public Law 106-37, “The Y2K Act,” imposes strict guidelines on state courts for managing Year 2000 liability lawsuits and limits punitive damages that states can receive when they act as plaintiffs.
Federal Mandates for State Action Note

- Public Law 106-69, “The Department of Transportation and Related Agencies Act” (FY 2000), prohibits states from selling information about drivers to marketers without a driver’s express consent;
- Public Law 106-74, “The Department of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act” (FY 2000), pre-empts state housing regulations;
- Public Law 106-78, “Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act” (FY 2000) and the “Livestock Mandatory Reporting Act of 1999,” pre-empts any state or local law that is in addition to, or inconsistent with, any of this law’s requirements;
- Public Law 106-81, “The Wireless Communications and Public Safety Act of 1999” requires states to provide an equal standard of liability for users, providers, and dispatchers of wireless and wireline 911 services;
- Public Law 106-102, “The Gramm-Leach-Bliley Act,” pre-empts state banking, insurance and securities laws, and requires a majority of states to adopt uniform licensing requirements for insurance sales;
- Public Law 106-159, “The Motor Carrier Safety Improvement Act of 1999,” requires states to conform to specific procedures when issuing commercial driver’s licenses; and
- Public Law 106-170, “The Ticket to Work and Work Incentives Improvement Act of 1999,” pre-empts state privacy laws by deeming certain practices of the Social Security Administration as meeting state laws and increases excise taxes paid by state and local entities.

106th Congress - Second Session

The second session of the 106th Congress began on January 24, 2000, and was scheduled to continue through October 9, 2000. As of July 13, 2000, 76 public bills had been enacted into law. None contain intergovernmental mandates that exceed UMRA’s $50 million threshold.

Two bills would exceed the UMRA threshold if passed:
- “The Internet Nondiscrimination Act of 2000” (H.R. 3709), prohibits taxing Internet access; and
- “A Minimum Wage Proposal” (unnumbered in the house), requires public employers to pay higher wages. H.R. 3709 had passed the House and was under consideration in the Senate as of the summer of 2000.

The following bills under congressional consideration in this session pre-empt state authority with a “one size fits all” federal law:
- “The Internet Nondiscrimination Act of 2000,” H.R. 3125, pre-empts state liability laws and prohibits certain lottery activities;
- “The Mobile Telecommunications Sourcing Act,” H.R. 4391 and S. 1755, pre-empts state and local determination of what jurisdictions can tax mobile telecommunications services;
- “The Higher Education Technical Amendments of 2000,” H.R. 4504, pre-empts state secured transaction laws; and
- “The Manufactured Housing Improvement Act,” S. 1452, pre-empts state authority to set certain manufactured housing standards;

The Council of State Governments expects Congress to continue to address state-related issues such as Internet taxation, tax reform, electrical utility deregulation, and fiscal appropriations bills for the duration of the second session.
Cumulative Index, 1981-2001

The entries in this index cover topics from the 1981 Suggested State Legislation volume through this 2001 edition. This index uses extensive subject headings, subheadings and cross-references (see and see also entries). Generally, the entries are listed by subject, title, year published and page number. All individual entries under the subject headings are listed in chronological order. Depending upon the topic, items may be listed more than once.

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