SUGGESTED STATE LEGISLATION

2002 Volume 61

Developed by the Committee on Suggested State Legislation

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- 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,
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Foreword

The Council of State Governments (CSG) is pleased to bring you this volume of *Suggested State Legislation*, the 61st 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.

December 2001
Lexington, Kentucky

Daniel M. Sprague
Executive Director
The Council of State Governments

Suggested State Legislation 2002, Volume 61

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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 61 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 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 61st 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 61. At the SSL annual meeting in November 2001 in New Orleans, Louisiana, 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.

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, The Council of State Governments, 2760 Research Park Drive, 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. *Suggested State Legislation* drafts generally follow the same style. However, 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. 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 also is necessary in draft legislation to indicate a state alternative to the name of an agency, the number of members on a committee, punishment for an offense, etc. In these cases brackets are used instead of parentheses.
“Sample Act”
Criminal Rehabilitation Research

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

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

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

Submitted as:
State:
Act/Bill Number
Status:

Suggested Legislation

(Title, enacting clause, etc.)

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

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

1. “Commission” means the [rehabilitation research commission].
2. “Commissioner” means a member of the [rehabilitation research commission].
3. “Offender” means a person adjudicated delinquent or convicted of a criminal offense under the laws and ordinances of the state and its political subdivisions.

Section 3. [Rehabilitation Research Commission.]

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

***

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

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

Section … [Effective Date.] [Insert effective date.]
Access to Data Used in Promulgating Regulations

This Act amends the State Administrative Procedure Act to ensure that citizens have the right to the underlying data used by state regulatory agencies when the agencies seek to change rules, regulations or guidelines. The Act requires the agencies to make this information available for inspection within thirty days of a request. It requires each agency to appoint a data access officer and specify the procedures for releasing such information.

Submitted as:
New York
Chapter 229 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 to Ensure Access to Data Used in Promulgating Regulations.”

Section 2. [Definitions.] As used in this Act, “Data” means written information or material, including, but not limited to, statistics or measurements used as the basis for reasoning, calculations or conclusions in a study.

Section 3. [Access to Studies and Data.]

(1) An agency, upon request, shall, within [thirty (30)] days, make available for inspection and copying any scientific or statistical study, report or analysis, including any such study, report or analysis prepared by a person or entity pursuant to a contract with the agency or funded in whole or in part through a grant from the agency that is used as the basis of a proposed rule and any supporting data; provided, however, that the agency shall provide for inspection only of any such study, report or analysis due to copyright restrictions.

(2) An agency that contracts with a person or entity for the performance of a study or awards a grant for such purpose shall require as a condition or term of such contract or grant that the person or entity shall provide to the agency the study, any data supporting the study, and identity of the principal person or people who performed such study for disclosure in accordance with the provisions of this Act and [insert citation].

(4) An agency shall give the name, public office address and telephone number of an agency representative, who is knowledgeable about the proposed rule, from whom the complete text of such rule and any scientific or statistical study, report and analysis that served as the basis for the rule and any supporting data, the regulatory impact statement, the regulatory flexibility analysis, and the rural area flexibility analysis may be obtained; from whom information about any public hearing may be obtained; and to whom written data, views and arguments may be submitted.

Section 4. [Statement of Needs and Benefits.] An agency shall prepare a statement setting forth the purpose of, necessity for, and benefits derived from the rule, a citation for and summary, not to exceed [five hundred (500)] words, of each scientific or statistical study, report or analysis that served as the basis for the rule, an explanation of how it was used to determine the necessity for and benefits derived from the rule, and the name of the person that produced each study, report or analysis;

Section 5. [Severability.] [Insert severability clause.]
Section 6. [Repealer.] [Insert repealer clause.]
Section 7. [Effective Date.] [Insert effective date.]
Assisted Living Communities

This Act:

• Requires certification of assisted living communities by the state of aging services;
• Defines “activities of daily living,” “assistance with self-administration of medication,” “assisted living community,” “client,” “danger,” “health services,” “instrumental activities of daily living,” “living unit,” and “mobile non-ambulatory;”
• Establishes physical requirements of the community and required services;
• Permits clients to contract or arrange for additional services to be provided by people outside the assisted living community, if permitted by the community’s policies;
• Requires an assisted living community to inform clients regarding policies relating to contracting or arranging for additional services upon entering into a lease agreement;
• Requires communities to help residents find appropriate living arrangements upon a move-out notice and to share information on alternative living arrangements provided by the state office of aging services;
• Prohibits any business from operating or marketing its services as an assisted living community without having a current application for certification on file or receiving certification;
• Requires the office of aging services to determine the feasibility of recognizing accreditation by other organizations in lieu of certification;
• Requires the state cabinet for health services to promulgate an administrative regulation to establish procedures related to applying for, reviewing, approving, denying, or revoking certification, as well as to the conduct of hearings upon appeals;
• Requires an initial and annual certification review with an on-site visit;
• Requires personnel that conduct certification reviews to have the skills, training, experience, and ongoing education to perform certification reviews;
• Authorizes the cabinet to assess a certification review fee of twenty dollars per living unit that in the aggregate is no less than three hundred dollars and no more than one thousand six hundred dollars;
• Requires the office of aging services to submit a yearly breakdown of fees assessed and costs incurred for conducting reviews;
• Authorizes the office to request any additional information or conduct additional on-site visits;
• Requires the office of aging services to report any alleged or actual cases of health services being delivered by the staff of an assisted living community;
• Requires staff to report abuse, neglect, or exploitation;
• Identifies client criteria;
• Establishes the content required in the lease agreement and disclosure;
• Requires grievance policies to address confidentiality of complaints and the process for resolving grievances;
• Requires an assisted living community to provide consumer education materials to the public or refer the request for information to the office of aging services;
• Establishes staffing requirements;
• Establishes orientation and in-service education requirements for employees;
• Exempts assisted living communities open or under construction on or before the effective date of this Act from the requirement that each living unit be at least two hundred square feet and have a bathtub or shower;
• Establishes penalties for operating or marketing as an assisted living community without having a current application on file or being certified;
• Exempts religious orders from certification requirements;
• Prohibits businesses that do not provide assistance with activities of daily living or assistance with self-administration of medications from certification;
• Requires the office to provide written correspondence to any lender, upon request, to denote whether the architectural drawings and lease agreement conditionally met certification requirements; permits the office to charge a fee of no more than two hundred fifty dollars for the written correspondence to the lender, and
• Requires a criminal record check for initial employment in an assisted living facility.

Submitted as:
Kentucky
HB 148
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 Assisted Living Communities.”

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

(1) “Activities of daily living” means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;
(2) “Assistance with self-administration of medication” means:
   (a) Reminding the client to take medications;
   (b) Reading the medication’s label;
   (c) Confirming that medication is being taken by the client for whom it is prescribed;
   (d) Opening the dosage packaging or medication container, but not removing or handling the actual medication;
   (e) Storing the medication in a manner that is accessible to the client; and
   (f) Making available the means of communicating with the client’s physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device.
(3) “Assisted living community” means a series of living units on the same site, operated as [one] business entity, and certified under Section 5 of this Act to provide services for [five (5)] or more adult people not related within the third degree of consanguinity to the owner or manager;
(4) “Client” means an adult person who has entered into a lease agreement with an assisted living community;
(5) “Crime” means a conviction of or a plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside this state is a crime if the offense would have been a felony in this state if committed in this state.
(6) “Danger” means physical harm or threat of physical harm to one’s self or others;
(7) “Direct service” means personal or group interaction between the employee and the nursing facility resident or the senior citizen;
(8) “Health services” has the same meaning as in [insert citation];
(9) “Instrumental activities of daily living” means activities to support independent living including, but not limited to, housekeeping, shopping, laundry, chores, transportation, and clerical assistance;
(10) “Living unit” means a portion of an assisted living community occupied as the living quarters...
of a client under a lease agreement;

11. “Mobile nonambulatory” means unable to walk without assistance, but able to move from
place to place with the use of a device including, but not limited to, a walker, crutches, or wheelchair;
12. “Nursing pool” means any person, firm, corporation, partnership, or association engaged for
hire in the business of providing or procuring temporary employment in nursing facilities for medical
personnel including, but not limited to, nurses, nursing assistants, nurses’ aides, and orderlies;
13. “Office” means the [office of aging services]; and
14. “Senior citizen” means a person [sixty (60)] years of age or older.

Section 3. [Assisted Living Units.]

(1) Each living unit in an assisted living community shall:
(a) Be at least [two hundred (200)] square feet for single occupancy, or for double
occupancy if the room is shared with a spouse or another individual by mutual agreement;
(b) Include at least [one (1)] unfurnished room with a lockable door, private bathroom
with a tub or shower, provisions for emergency response, window to the outdoors, and a telephone jack;
(c) Have an individual thermostat control if the assisted living community has more than
[twenty (20)] units; and
(d) Have temperatures that are not under a client’s direct control at a minimum of
[seventy-one (71)] degrees Fahrenheit in winter conditions and a maximum of [eighty-one (81) degrees]
Fahrenheit in summer conditions if the assisted living community has [twenty (20)] or fewer units.
(2) Each client shall be provided access to central dining, a laundry facility, and a central living
room.
(3) Each assisted living community shall comply with applicable building and life safety codes.

Section 4. [Assisted Living Communities – Services.]

(1) The assisted living community shall provide each client with the following services according
to the lease agreement:
(a) Assistance with activities of daily living and instrumental activities of daily living;
(b) [Three (3)] meals and snacks made available each day;
(c) Scheduled daily social activities that address the general preferences of clients; and
(d) Assistance with self-administration of medication.
(2) Clients of an assisted living community may arrange for additional services under direct
contract or arrangement with an outside agent, professional, provider, or other individual designated by the
client if permitted by the policies of the assisted living community.
(3) Upon entering into a lease agreement, an assisted living community shall inform the client in
writing about policies relating to the contracting or arranging for additional services.
(4) Each assisted living community shall assist each client upon a move-out notice to find
appropriate living arrangements. Each assisted living community shall share information provided from
the [office] regarding options for alternative living arrangements at the time a move-out notice is given to
the client.

Section 5. [Certification Review Process For Assisted Living Communities.]

(1) The [cabinet for health services] shall establish by the promulgation of administrative
regulation under [insert citation], an initial and annual certification review process for assisted living
communities that shall include an on-site visit. This administrative regulation shall establish procedures
related to applying for, reviewing, and approving, denying, or revoking certification, as well as the
conduct of hearings upon appeals as governed under [insert citation].
(2) No assisted living community shall operate unless its owner or manager has:
(a) Filed a current application for the assisted living community to be certified by the
[office]; or
(b) Received certification of the assisted living community from the [office].
The Council of State Governments

(3) No business shall market its services as an assisted living community unless its owner or manager has:

(a) Filed a current application for the assisted living community to be certified by the [office]; or

(b) Received certification of the assisted living community from the [office].

(4) The [office] shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the [office].

(5) Individuals designated by the [office] to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.

(6) Upon conducting a certification review, the [office] shall assess an assisted living community certification fee in the amount of [twenty (20)] dollars per living unit that in the aggregate for each assisted living community is no less than [three hundred (300)] dollars and no more than [one thousand six hundred (1,600)] dollars. The [office] shall submit to the [legislative research commission], by [June 30] of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.

(7) Notwithstanding any provision of law to the contrary, the [office] may request any additional information from an assisted living community or conduct additional on-site visits to ensure compliance with the provisions of Sections 1 to 16 of this Act.

Section 6. [Reporting and Record Keeping.]

(1) The [office] shall report to the [division of licensing and regulation] any alleged or actual cases of health services being delivered by the staff of an assisted living community.

(2) An assisted living community shall have written policies on reporting and record keeping of alleged or actual cases of abuse, neglect, or exploitation of an adult.

(3) Any assisted living community staff member who has reasonable cause to suspect that a client has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation.

Section 7. [Client Criteria.]

A client shall meet the following criteria:

(1) Be ambulatory or mobile nonambulatory, unless due to a temporary health condition for which health services are being provided in accordance with subsections (2) and (3) of Section 4 of this Act; and

(2) Not be a danger.

Section 8. [Lease Agreements.]

A lease agreement, in no smaller type than twelve (12) point font, shall be executed by the client and the assisted living community and shall include:

(1) Client data, for the purpose of providing service, to include:

(a) A functional needs assessment pertaining to the client’s ability to perform activities of daily living and instrumental activities of daily living;

(b) Emergency contact person’s name;

(c) Name of responsible party or legal guardian, if applicable;

(d) Attending physician’s name;

(e) Information regarding personal preferences and social factors;

(f) Advance directive under [insert citation], if desired by the client; and

(g) Optional information helpful to identify services that meet the client’s needs.

(2) Assisted living community’s policy regarding termination of the lease agreement;

(3) Terms of occupancy;

(4) General services and fee structure;

(5) Information regarding specific services provided, description of the living unit, and associated fees;

(6) Provisions for modifying client services and fees;

(7) Minimum [thirty (30)] day notice provision for a change in the community’s fee structure;
(8) Minimum [thirty (30)] day move-out notice provision for client nonpayment, subject to applicable landlord or tenant laws;

(9) Provisions for assisting any client that has received a move-out notice to find appropriate living arrangements prior to the actual move-out date;

(10) Refund and cancellation policies;

(11) Description of any special programming, staffing, or training if an assisted living community is marketed as providing special programming, staffing, or training on behalf of clients with particular needs or conditions;

(12) Other community rights, policies, practices, and procedures;

(13) Other client rights and responsibilities, including compliance with subsections (2) and (3) of Section 4 of this Act; and

(14) Grievance policies that minimally address issues related to confidentiality of complaints and the process for resolving grievances between the client and the assisted living community.

Section 9. [Consumer Information.]

(1) An assisted living community shall provide any interested person with a:

(a) Consumer publication, as approved by the [office], that contains a thorough description of state laws and regulations governing assisted living communities;

(b) Standard consumer checklist provided by the [office]; and

(c) Description of any special programming, staffing, or training if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions.

(2) An assisted living community may refer a request for information required in subsection (1)(a) of this Section to the [office].

Section 10. [Staffing Requirements: Assisted Living Communities.]

(1) Staffing in an assisted living community shall be sufficient in number and qualification to meet the [twenty-four (24)] hour scheduled and unscheduled needs of its clients and the services provided.

(2) [One (1)] awake staff member shall be on site at all times.

(3) An assisted living community shall have a designated manager who is at least [twenty-one (21)] years of age, has at least a high school diploma or a General Educational Development diploma, and has demonstrated management or administrative ability to maintain the daily operations.

(4) No employee who has an active communicable disease reportable to the [department for public health] shall be permitted to work in an assisted living community if the employee is a danger to the clients or other employees.

Section 11. [Staff Orientation and In-Service Education.]

Assisted living community staff and management shall receive orientation and in-service education on the following topics as applicable to the employee’s assigned duties:

(1) Client rights;

(2) Community policies;

(3) Adult first aid;

(4) Cardiopulmonary resuscitation;

(5) Adult abuse and neglect;

(6) Alzheimer’s disease and other types of dementia;

(7) Emergency procedures;

(8) Aging process;

(9) Assistance with activities of daily living and instrumental activities of daily living;

(10) Particular needs or conditions if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions; and

(11) Assistance with self-administration of medication.
Section 12. [Exemptions.]
(1) Any assisted living community that was open or under construction on or before the effective
date of this Act shall be exempt from the requirement that each living unit have a bathtub or shower.
(2) Any assisted living community that was open or under construction on or before the effective
date of this Act shall have a minimum of [one (1)] bathtub or shower for each [five (5)] clients.
(3) Any assisted living community that was open or under construction on or before the effective
date of this Act shall be exempt from the requirement that each living unit shall be at least [two hundred
(200)] square feet for single occupancy, or for double occupancy if the room is shared with a spouse or
another individual by mutual agreement.

Section 13. [Applications and Certification: Penalties for Not Complying.]
(1) Any assisted living community that provides services without filing a current application with
the [office] or receiving certification by the [office] may be fined up to [five hundred (500)] dollars per
day.
(2) Any business that markets its services as an assisted living community without filing a current
application with the [office] or receiving certification by the [office] may be fined up to [five hundred
(500)] dollars per day.

Section 14. [Religious Orders.] Religious orders providing assistance with activities of daily
living, instrumental activities of daily living, and self-administration of medication to vowed members
residing in the order’s retirement housing shall not be required to comply with the provisions of Sections 1
to 16 of this Act.

Section 15. [Certification: Exceptions.] Any business, not licensed or certified in another capacity,
that complies with some provisions of Sections 1 to 16 of this Act but does not provide assistance with any
activities of daily living or assistance with self-administration of medication shall not be eligible for
certification as an assisted living community under Sections 1 to 16 of this Act.

Section 16. [Architectural Drawings and Lease Agreements: Correspondence Noting Compliance
with this Act.] If a person or business seeks financing for an assisted living community project, the [office]
shall provide written correspondence to the lender, upon request, to denote whether the architectural
drawings and lease agreement conditionally comply with the provisions of Sections 1 to 16 of this Act.
The [office] may charge a fee of no more than [two hundred fifty (250)] dollars or the written
correspondence to the lender.

Section 17. [Prohibiting Using Convicted Felons as Employees.] (1) No long-term care facility as defined by [insert citation] or nursing pool providing staff to a
nursing facility, or assisted living community shall knowingly employ a person in a position which
involves providing direct services to a resident or client if that person has been convicted of a felony
offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a
sexual crime.
(2) A nursing facility or nursing pool providing staff to a nursing facility, or assisted living
community may employ people convicted of or pleading guilty to an offense classified as a misdemeanor
if the crime is not related to abuse, neglect, or exploitation of an adult.
(3) Each long-term care facility as defined by [insert citation], or nursing pool providing staff to a
nursing facility, or assisted living community shall request all conviction information from the [justice
cabinet] for any applicant for employment.
(4) The long-term care facility or nursing pool providing staff to a nursing facility, or assisted
living community may temporarily employ an applicant pending the receipt of the conviction information.
Section 18. [Employment Application Forms: Specifications]

(1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the [department for mental health and mental retardation services] of the [cabinet for health services], to the applicant for initial employment in an assisted living community, nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the [department for social services] or the [office of aging services] of the [cabinet for families and children] and which involves providing direct services to senior citizens shall conspicuously state the following:

“For this type of employment, state law requires a criminal record check as a condition of employment.”

(2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the [justice cabinet]. The [justice cabinet] may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed [five (5)] dollars per application.

Section 19. [Severability.] [Insert severability clause.]

Section 20. [Repealer.] [Insert repealer clause.]

Section 21. [Effective Date.] [Insert effective date.]
Autopsies and Sensitive Records: Confidentiality

This Act provides exemptions from the state public records law for publishing photographs and video and audio recordings of an autopsy. Generally, it prohibits the custodian of a photograph or video or audio recording of an autopsy from permitting any person to view or duplicate a photograph or video or audio, except pursuant to court order and under the direct supervision of the custodian.

Submitted as:
Florida
HB 1083 (enrolled version)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Exempt Photographs, Video and Audio Recording of an Autopsy from Public Records Laws.”

Section 2. [Legislative Findings.]
The [Legislature] finds that it is a public necessity that photographs and video and audio recordings of an autopsy be made confidential and exempt from the requirements of [insert citation].

The [Legislature] finds that photographs or video or audio recordings of an autopsy depict or describe the deceased in graphic and often disturbing fashion. Such photographs or video or audio recordings may depict or describe the deceased nude, bruised, bloodied, broken, with bullet or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings of an autopsy are highly sensitive depictions or descriptions of the deceased which, if heard, viewed, copied or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased.

The [Legislature] notes that the existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of autopsy photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury.

The [Legislature] further notes that there continue to be other types of available information, such as the autopsy report, which are less intrusive and injurious to the immediate family members of the deceased and which continue to provide for public oversight.

The [Legislature] further finds that the exemption provided in this Act should be given retroactive application because it is remedial in nature.

Section 3. [Photographs, Video and Audio Recordings of An Autopsy: Confidentiality.]

(1) A photograph or video or audio recording of an autopsy in the custody of a medical examiner is confidential and exempt from the requirements of [insert citation], except that a surviving spouse may view and copy a photograph or video or listen to or copy an audio recording of the deceased spouse’s autopsy. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records. A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video or may listen to or copy an audio recording of an autopsy, and unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt. The custodian of the record, or his or her designee, may not permit any
other person to view or copy such photograph or video recording or listen to or copy an audio recording without a court order. For the purposes of this section, the term “medical examiner” means any district medical examiner, associate medical examiner, or substitute medical examiner acting pursuant to [insert citation], as well as any employee, deputy, or agent of a medical examiner or any other person who may obtain possession of a photograph or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties.

(2) (a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy or to listen to or copy an audio recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court shall consider whether such disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family’s right to privacy and whether such disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to or other handling of a photograph or video or audio recording of an autopsy must be under the direct supervision of the custodian of the record or his or her designee.

(b) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be given to the deceased’s parents, and if the deceased has no living parent, then to the adult children of the deceased.

(3) (a) Any custodian of a photograph or video or audio recording of an autopsy who willfully and knowingly violates this section commits a [felony of the third degree], punishable as provided in [insert citation].

(b) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a [felony of the third degree], punishable as provided in [insert citation].

(c) A criminal or administrative proceeding is exempt from this section, but unless otherwise exempted, is subject to all other provisions of [insert citation], provided however that this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of an autopsy, crime-scene, or similar photograph or video or audio recordings in the manner prescribed herein.

(4) This exemption shall be given retroactive application.

(5) The exemption in this section is subject to [insert citation], and shall stand repealed on [October 2, 2006], unless reviewed and saved from repeal through reenactment by the [Legislature].

Section 4. This Act shall take effect upon becoming a law, and shall apply to all photographs or video or audio recordings of an autopsy, regardless of whether the autopsy was performed before or after the effective date of the Act.

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

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

Section 7. [Effective Date.] [Insert effective date.]
Building Inspections: Professional Engineers

This Act provides that, if a governing authority of a county or municipality cannot provide inspection services within two business days of receiving a valid written request for inspection, then any person, firm, or corporation engaged in a construction project which requires inspection can opt to retain, at its own expense, a professional engineer to provide the required inspection.

Submitted as:
Georgia
HB 151 (as passed House and Senate)
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Professional Engineer Building Inspection Act.”

Section 2. [Inspections by Professional Engineers.]

(1) If a governing authority of a county or municipality cannot provide inspection services within [two (2)] business days of receiving a valid written request for inspection, then, in lieu of inspection by inspectors or other personnel employed by such governing authority, any person, firm, or corporation engaged in a construction project which requires inspection shall have the option of retaining, at its own expense, a professional engineer who holds a certificate of registration issued under [insert citation], and who is not an employee of or otherwise affiliated with or financially interested in such person, firm, or corporation, to provide the required inspection.

(2) Any inspection conducted by a registered professional engineer shall be no less extensive than an inspection conducted by a county or municipal inspector.

(3) The person, firm, or corporation retaining a registered professional engineer to conduct an inspection shall be required to pay to the county or municipality which requires the inspection the same permit fees and charges which would have been required had the inspection been conducted by a county or municipal inspector.

(4) The registered professional engineer shall be empowered to perform any inspection required by the governing authority of any county or municipality, including, but not limited to, inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections necessary or required for the issuance of a certificate of occupancy by the governing authority of any county or municipality, provided that the inspection is within the scope of such engineer’s branch of engineering expertise.

(5) The registered professional engineer shall submit a copy of his or her inspection report to the county or municipality.

(6) Upon submission by the registered professional engineer of a copy of his or her inspection report to the local governing authority, said local governing authority shall be required to accept the inspection of the registered professional engineer without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the registered professional engineer, within [two (2)] business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the registered professional engineer with a written description of the deficiencies and specific code requirements that have not been adequately addressed.

(7) A local governing authority may provide for the prequalification of registered professional
engineers who may perform inspections pursuant to this Act. No ordinance implementing prequalification shall become effective until notice of the governing authority’s intent to require prequalification and the specific requirements for prequalification have been advertised in the newspaper in which the sheriff’s advertisements for that locality are published. The ordinance implementing prequalification shall provide for evaluation of the qualifications of a registered professional engineer on the basis of the engineer’s expertise with respect to the objectives of the inspection, as demonstrated by the engineer’s experience, education, and training.

(8) Nothing in this Act shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.”

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

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

Section 5. [Effective Date.] [Insert effective date.]
Clean Energy Incentives

This Act exempts clothes washers, dishwashers, room air conditioners, and refrigerators that meet or exceed applicable federal Energy Star efficiency guidelines; and energy efficient heating and cooling equipment and fuel cell electric generating equipment, from the state sales and use tax. The draft allows a motor vehicle excise tax credit for qualified electric vehicles and hybrid vehicles and a credit against the state income tax for specified solar energy property and for electricity produced from qualified energy resources.

The state energy administration, in consultation with manufacturers, retailers, and public interest groups, is required to develop voluntary labeling and public information materials to identify products eligible for the tax incentive provided for by the Act.

Submitted as:
Maryland
HB 20 (enrolled version)
Status: enacted as chapter 296 of 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] The Act may be cited as “The Clean Energy Incentive Act.”

Section 2. [State Sales and Use Tax: Exemptions for Certain Appliances.]
(a) The state sales and use tax does not apply to the sale of the following electric appliances that meet or exceed the applicable Energy Star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy:
(1) A clothes washer purchased on or after [July 1, 2000], but before [July 1, 2003];
(2) A room air conditioner purchased on or after [January 1, 2001], but before [July 1, 2004]; or
(3) A standard size refrigerator purchased on or after [July 1, 2001], but before [July 1, 2004].
(b) The state sales and use tax does not apply to the sale, on or before [July 1, 2004], of:
(1) A fuel cell that:
   (i) generates electricity and heat using an electrochemical process;
   (ii) has an electricity-only generation efficiency greater than thirty-five (35) percent; and
   (iii) has a generating capacity of at least two (2) kilowatts;
(2) A natural gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling;
(3) An electric heat pump hot water heater that yields an energy factor of at least 1.7;
(4) An electric heat pump that has a heating system performance factor of at least 7.5 and a cooling seasonal energy efficiency ratio of at least 13.5;
(5) A central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; or
(6) An advanced natural gas water heater that has an energy factor of at least 0.65.

Section 3. [Definitions: Qualified Electric Vehicles, Qualified Hybrid Vehicles.] As used in this Act:
(1) “Automobile” means a 4-wheeled vehicle propelled by fuel that is manufactured
primarily for use on public streets, roads, and highways, other than for use exclusively on a rail or rails, and is rated at not more than [eight thousand five hundred (8,500)] pounds Unloaded Gross Vehicle Weight.

(2) “Excise tax” means the tax imposed under [insert citation].

(3) “Maximum available power” means the maximum value of the sum of the heat engine and electric drive system power or other non-heat energy conversion devices available for a driver’s command for maximum acceleration at vehicle speeds under [seventy-five (75)] miles per hour.

(4) “Qualified electric vehicle” has the meaning stated in Section 30 of the Internal Revenue Code.

(5) “Qualified hybrid vehicle” means an automobile that meets all applicable regulatory requirements; meets the current vehicle exhaust standard set under the national low-emission vehicle program for gasoline-powered passenger cars; and can draw propulsion energy from both of the following on-board sources of stored energy:

1. gasoline or diesel fuel; and
2. a rechargeable energy storage system.

Section 4. [Tax Credit: Qualified Electric Vehicles, Qualified Hybrid Vehicles.]

(a) (1) Except as provided in subsection (d) of this Section, a credit is allowed against the excise tax imposed for a qualified electric vehicle or a qualified hybrid vehicle.

(2) Subject to the limitations under subsections (b) and (c) of this Section, the credit allowed under this Section equals [one hundred (100)] percent of the excise tax imposed for a vehicle.

(3) The credit allowed under this Section does not apply to a vehicle titled on or after [July 1, 2004].

(b) For a qualified electric vehicle, the credit allowed under this Section may not exceed [two thousand (2000)] dollars.

(c) (1) For a qualified hybrid vehicle that has a rechargeable energy storage system that provides at least [five (5)] percent of the vehicle’s maximum available power, subject to paragraph (2) of this subsection, the credit allowed under this Section may not exceed:

(i) [two hundred fifty (250)] dollars if the vehicle’s rechargeable energy storage system provides at least [five (5)] percent but less than [ten (10)] percent of the maximum available power;

(ii) [five hundred (500)] dollars if the vehicle’s rechargeable energy storage system provides at least [ten (10)] percent but less than [twenty (20)] percent of the maximum available power;

(iii) [seven hundred fifty (750)] dollars if the vehicle’s rechargeable energy storage system that provides at least [twenty (20)] but less than [thirty (30)] percent of the maximum available power;

(iv) [one thousand (1,000)] dollars if the vehicle’s rechargeable energy storage system that provides at least [thirty (30)] percent of the maximum available power.

(2) If a qualified hybrid vehicle actively employs a regenerative braking system that supplies to the rechargeable energy storage system at least [twenty (20)] percent of the energy available from braking in a typical 60 miles per hour to 0 miles per hour braking event, the maximum credit amount determined under paragraph (1) of this subsection shall be increased by:

(i) [one hundred twenty-five (125)] dollars if the vehicle's regenerative braking system supplies to the rechargeable energy storage system at least [twenty (20)] percent but less than [forty (40)] percent of the energy available from braking in a typical 60 miles per hour to 0 miles per hour braking event;

(ii) [two hundred fifty (250)] dollars if the vehicle's regenerative braking system supplies to the rechargeable energy storage system at least [forty (40)] percent but less than [sixty (60)] percent of the energy available from braking in a typical 60 miles per hour to 0 miles per hour braking event;
event; or 

(iii) [five hundred (500)] dollars if the vehicle’s regenerative braking system supplies to the rechargeable energy storage system at least [sixty (60)] percent of the energy available from braking in a typical 60 miles per hour to 0 miles per hour braking event.

(d) A credit may not be claimed under this Section for a vehicle unless the vehicle is registered in the state or for a qualified electric vehicle unless the owner has already met any state or federal laws or regulations governing clean-fuel vehicle or electric vehicle purchases applicable during the calendar year in which the vehicle is titled.

(e) (1) The [motor vehicle administration] and the [state energy administration] jointly shall adopt regulations to administer the credit under this Section.

(2) The regulations adopted under this Section shall specify the testing and calculation procedures to be used to determine whether a vehicle meets the qualifications for a credit under this Section.

(f) On or after [October 1] of each year, the [motor vehicle administration] shall certify to the [comptroller] the total amount of credits allowed under this Section against the excise tax for the preceding fiscal year.

Section 5. [Definitions: Photovoltaic Property, Solar Energy Property, and Solar Water Heated Property.] As used in this Act:

(1) “Photovoltaic property” means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the [state energy administration].

(2) “Solar energy property” means equipment that uses solar energy to generate electricity, heat or cool a structure or provide hot water for use in a structure, or to provide solar process heat. “Solar energy property” does not include a swimming pool, hot tub, or any other energy storage medium that has a function other than storage.

(3) “Solar water heating property” means solar energy property that when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure; and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the [state energy administration].


(a) An individual or a corporation may claim a credit against the state income tax for a taxable year as provided in this Section for the costs of solar water heating property or photovoltaic property placed in service during the taxable year.

(b) (1) Subject to the limitations under paragraph (2) of this subsection, the credit allowed under this Section includes [fifteen (15)] percent of the total installed cost of photovoltaic property or solar water heating property.

(2) The credit allowed under this subsection may not exceed [two thousand (2000)] dollars for each system for photovoltaic property; and [one thousand (1000)] for each system for solar water heating property.

(c) (1) The total amount of the credit allowed under this Section for any taxable year may not exceed the state income tax for that taxable year, calculated before application of the credits under this Section, but after application of the other credits allowable under this subtitle.

(2) The unused amount of the credit for any taxable year may not be carried over to any other taxable year.

(d) Except as otherwise provided in this title, for purposes of determining the state taxable income, the basis of property with respect to which the credit under this Section is allowed shall be its basis for federal income tax purposes.
(e) The credit under this Section may not be claimed for property placed in service before [July 1, 2000] or after [December 31, 2004].

Section 7. [Definitions: Qualified Energy Resources, Qualified State Facility.] As used in this Act:

(a) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, “Qualified Energy Resources” has the meaning stated in Section 45 of the Internal Revenue Code.

(ii) “Qualified Energy Resources” includes any solid, nonhazardous, cellulosic waste material that is segregated from other waste materials and is derived from:

1. Any of the following forest-related resources, not including old-growth timber:
   - a. Mill residues;
   - b. Pre-commercial thinnings;
   - c. Slash; or
   - d. Brush;

2. Waste pallets, crates, and dunnage and landscape or right-of-way trimmings, not including unsegregated municipal solid waste and post-consumer waste paper; or

3. Agricultural sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

(iii) “Qualified Energy Resources” includes methane gas resulting from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant.

(ii) “Qualified State Facility” means a facility located in the state that primarily uses Qualified Energy Resources to produce electricity and is originally placed in service on or after [January 1, 2001], but before [January 1, 2005], or produces electricity from a Qualified Energy Resource that is co-fired with coal and initially begins co-firing a Qualified Energy Resource on or after [January 1, 2001] but before [January 1, 2005], regardless of when the original facility was placed in service.

(ii) “Qualified State Facility” does not include a qualified facility that claims a tax credit under Section 45 of the Internal Revenue Code that is originally placed in service before [January 1, 2002], or if Section 45 of the Internal Revenue Code is amended to extend the applicability of the credit under that Section, that is originally placed in service during the time period specified in Section 45 of the Internal Revenue Code for eligibility for the credit under that Section.

Section 8. [Tax Credit: Qualified Energy Resources, Qualified State Facility.]

(a) (1) Except as provided in paragraph (2) of this subsection, an individual or corporation may claim a credit against the state income tax for a taxable year in an amount equal to [eighty-five (85)] cents for each kilowatt hour of electricity:

(i) produced by the individual or corporation from qualified energy resources at a “Qualified State Facility” during the [10-year] period beginning on the date the facility was originally placed in service; or in the case of a facility that produces electricity from a qualified energy resource that is co-fired with coal, the date of the initial co-firing; and

(ii) sold by the individual or corporation to a person other than a related person, within the meaning of Section 45 of the Internal Revenue Code, during the taxable year.

(2) If the electricity is produced from a Qualified Energy Resource that is co-fired at a facility that produces electricity from coal, the credit is [five (5)] cents for each kilowatt hour of electricity produced from the qualified energy resource instead of [eighty-five (85)] cents.

(b) If the credit allowed under this Section exceeds the state income tax, any unused credit may be carried forward and applied for succeeding taxable years until the earlier of (1) the full amount of the credit is used; or the expiration of the 10th taxable year after the taxable year in which the credit arose.

Section 9. [Voluntary Labeling and Public Information for Clean Energy Tax Credits.]
The [state energy administration], in consultation with manufacturers, retailers, and public
interests groups, shall develop voluntary labeling and public information materials to identify products eligible for the tax incentives provided under this Act.

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

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

Section 12. [Effective Date.] [Insert effective date.]
Confidentiality of Elector Records Statement

Wisconsin Act 49 of 1999 permits certain electors to vote or register to vote confidentially. To be eligible for a confidential listing:

- An elector must have been granted a protective order by a court that is currently in effect restraining another person from having or causing contact with the elector for reasons relating to domestic abuse;
- The elector must reside in an organized shelter for people whose personal security is or may be threatened by other people with whom the residents have had contact; or
- The elector must present the affidavit of a sheriff or chief of a police department verifying that a person has been charged with or convicted of an offense relating to domestic abuse in which the elector was a victim and reasonably continues to be threatened by that person.

Under the Act, an “offense relating to domestic abuse” includes sexual assault, battery, stalking, harassment or sexual exploitation. A confidential listing expires:

- When a protective order expires;
- When an individual ceases to be a resident of a shelter;
- When the sheriff or chief of a police department who signed an affidavit notifies a municipal clerk that a judgment in a domestic abuse case has been vacated or that a domestic abuse charge has been dropped; or
- Upon expiration of the two-year period following creation of the listing, whichever first occurs.

A listing may be renewed in the same manner as provided for creation of an original listing.

Under the Act, a municipal clerk must still provide access to a confidential name and address to a law enforcement officer for official purposes, including:

- To a state or local governmental officer pursuant to a specific law that necessitates obtaining the name or address;
- Pursuant to a court order citing a reason that access to a name or address should be provided;
- To a clerk of circuit court for purposes of jury selection; or
- At the request of the protected elector for the purpose of permitting the elector to qualify as a signer on certain petitions.

The Act directs municipal clerks to issue to each elector who is entitled to a confidential listing an identification card containing a unique number issued by the elections board, which may be presented to election inspectors (poll workers) in lieu of providing a name and address. Alternatively, it permits an elector where registration is required to give their name and identification card number in lieu of an address.

The Act provides that polling place observers may not view the name or address of any elector who is entitled to be listed on a poll or registration list confidentially. However, the inspectors must disclose to any observer, upon request, the existence of any confidential list of electors, the number of electors whose names appear on the list and the number of electors who have voted at any point in the proceedings. It prohibits election officials and other people who are provided confidential information relating to the names and addresses of electors from disclosing that information to other people who are not authorized to obtain that information.

It prohibits an individual from providing false information to a municipal clerk for the purpose of obtaining a confidential listing on a poll or registration list. Violators are guilty of a misdemeanor and are subject to a fine of not more than $1,000 or imprisonment for not more than six months, or both, for each offense.
Deferred Deposit Loans

This Act creates a “Deferred Deposit Loan Act” which imposes statutory regulations on deferred deposit lenders, also known as “payday lenders.” Under the Act, the following regulations would apply to deferred deposit loans:

- Loans could be made for no more than 40 days;
- Loans could be made for no more than $500;
- Lenders could impose a finance charge;
- A loan could be renewed no more than 3 times;
- Borrowers could rescind a deferred deposit loan by 5 p.m. the next business day;
- Loans could be made with business instruments, money orders, or cash, but no additional finance charges could be applied to a business instrument; and
- All deferred deposit loans would require a written agreement signed by the lender and the borrower.

The written agreement must include the names of the parties involved, the amount of the loan, a statement of the finance charges, the date by which the loan is to be repaid, and other items required to be disclosed under the federal Consumer Credit Protection Act. The bill also requires lenders to notify borrowers in large-type writing of the short-term nature of deferred deposit loans, the fact that renewing a loan will require additional finance charges, the $500 limit on such loans, and the ability of borrowers to rescind a loan by 5 p.m. the next business day.

The Act allows a civil action to be filed to collect the value if the loan obligations are not met. A lender and a consumer could contract for a returned instrument charge not to exceed $25 plus attorney fees and court costs, unless the attorney fees exceed the value of the loan. Criminal charges for returned instruments would be prohibited unless the consumer closes the account prior to the agreed upon date of negotiation. A lender would be required to place a written notice on the loan instrument in order to assign or sell the loan.

The law clarifies that provisions of the “Uniform Consumer Credit Code” would generally also apply to a deferred deposit lender, unless they conflict with the Deferred Deposit Loan Act.

Submitted as:
Colorado
Chapter 128 of 2000
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Act.] This Act may be cited as the “Deferred Deposit Loan Act.”

Section 2. [Definitions.] As used in this Act:
(1) “Administrator” means the administrator of the “Uniform Consumer Credit Code.”
(2) “Consumer” means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.
(3) “Deferred Deposit Loan” means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:
   (a) accepts a dated instrument from the consumer;
   (b) agrees to hold the instrument for a period of time prior to negotiation or deposit of the instrument; and
(c) pays to the consumer, credits to the consumer’s account, or pays to another person on the consumer’s behalf the amount of the instrument, less finance charges permitted by Section 5 of this Act.

(4) “Instrument” means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this Act.

(5) “Lender” means any person who offers or makes a deferred deposit loan, who arranges a deferred deposit loan for a third party, or who acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Act or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party.

(a) lender includes, but is not limited to, a supervised financial organization as defined in Section 22 of this Act.

(b) notwithstanding that a bank, saving and loan association, credit union, or supervised lender may be exempted by federal law from this Act’s interest rate, finance charges, and licensure provisions, all other applicable provisions of this Act apply to both a deferred deposit loan and a deferred deposit lender.

(6) “Loan Amount” means the amount financed as defined in regulation Z of the federal “Truth In Lending Act,” 12 C.F.R. 226.18 (b), as amended, or as supplemented by [insert citation].

Section 3. [Written Agreement Requirements.] Each deferred deposit loan transaction and renewal shall be documented by a written agreement signed by both the lender and consumer. The written agreement shall contain the name of the consumer, the transaction date, the amount of the instrument, the annual percentage rate charged, and a statement of the total amount of finance charges charged, expressed both as a dollar amount and an annual percentage rate. In addition, the written agreement shall include all disclosures required by [insert citation]. The written agreement shall set a date, not more than [forty (40)] days after the loan transaction date, upon which the instrument may be deposited or negotiated.

Section 4. [Notice to Consumers.] A lender shall provide the following notice in a prominent place on each loan agreement in at least 10 point type:

“A deferred deposit loan is not intended to meet long-term financial needs. A deferred deposit loan should be used only to meet short-term cash needs. Renewing the deferred deposit loan rather than paying the debt in full will require additional finance charges.”

Section 5. [Authorized Finance Charge.] A lender may charge a finance charge for each deferred deposit loan that may not exceed [twenty (20)] percent of the first [three hundred (300)] dollars loaned plus [seven and one-half (7.5)] percent of any amount loaned in excess of [three hundred (300)] dollars. Such charge shall be deemed fully earned as of the date of the transaction. The lender shall charge only those charges authorized in this Act in connection with a deferred deposit loan.

Section 6. [Maximum Loan Amount - Right To Rescind.] (1) A lender shall not lend an amount greater than [five hundred (500)] dollars nor shall the amount financed exceed [five hundred (500)] dollars at any time to a consumer. No instrument held as a result of a deferred deposit loan shall exceed [five hundred seventy-five (575)] dollars.

(2) A consumer shall have the right to rescind the deferred deposit loan on or before [5 p.m.] the next business day following the loan transaction.

Section 7. [Multiple Outstanding Transactions Notice.] A lender shall provide the following notice in a prominent place on each deferred deposit loan agreement in at least 10 point type:
“State law prohibits deferred deposit loans exceeding five hundred dollars ($500) total debt from a deferred deposit lender. Exceeding this amount may create financial hardships for you and your family. You have the right to rescind this transaction by 5 p.m. the next business day following this transaction.”

Section 8. [Renewal.]

1. A deferred deposit loan shall not be renewed more than once. After such renewal, the consumer shall pay the debt in cash or its equivalent. If the consumer does not pay the debt, then the lender may deposit the consumer’s instrument.

2. Upon renewal of a deferred deposit loan, the lender may assess additional finance charges not to exceed [twenty (20)] percent of the first [three hundred (300)] dollars loaned plus [seven and one-half (7.5)] percent or any amount loaned in excess of [three hundred (300)] dollars. If the deferred deposit loan is renewed prior to the maturity date, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term.

3. A transaction is completed when the lender presents the instrument for payment or the consumer redeems the instrument by paying the full amount of the instrument to the holder. Once the consumer has completed the deferred deposit transaction, the consumer may enter into a new deferred deposit agreement with the lender.

4. Nothing in this Section prohibits a lender from refinancing a deferred deposit loan as a supervised loan subject to the provisions of this Act.

Section 9. [Form of Loan Proceeds.] A lender may pay the proceeds from a deferred deposit loan to the consumer in the form of a business instrument, money order, or cash. The consumer shall not be charged an additional finance charge or fee for cashing the lender’s business instrument.

Section 10. [Endorsement of Instrument.] A lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

Section 11. [Redemption of Instrument.] Prior to the lender negotiating or presenting the instrument, the consumer shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the consumer pays the full amount of the instrument to the lender.

Section 12. [Authorized Dishonored Instrument Charge.] If an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a payor financial institution due to insufficient funds, a closed account, or a stop-payment order, the lender shall have the right to exercise all civil means authorized by law to collect the face value of the instrument; except that the provisions and remedies of [insert citation], are not applicable to any deferred deposit loan. In addition, the lender may contract for and collect a returned instrument charge, not to exceed [twenty-five (25)] dollars, plus court costs and reasonable attorney fees as awarded by a court and incurred as a result of the default. However, such attorney fees shall not exceed the loan amount. The lender shall not collect any other fees as a result of default. A returned instrument charge shall not be allowed if the loan proceeds instrument is dishonored by the financial institution or the consumer places a stop-payment order due to forgery or theft.

Section 13. [Posting of Charges.] Any lender offering a deferred deposit loan shall post at any place of business where deferred deposit loans are made a notice of the charges imposed for such deferred deposit loans.

Section 14. [Notice on Assignment or Sale of Instruments.] Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least 10 point type to read:
“This is a deferred deposit loan instrument.”

Section 15. [Records and Annual Reports.] A lender shall maintain records and file an annual report in accordance with [insert citation].

Section 16. [License Requirement.] In accordance with [insert citation], no person shall engage in the business of deferred deposit loans without having first obtained a supervised lender’s license pursuant to [insert citation]. A separate license shall be required for each location where such business is conducted.

Section 17. [Examination and investigation.] A lender may be examined and investigated in accordance with [insert citation].

Section 18. [Denial of License - Discipline.]

(1) The administrator may deny a license or discipline a lender in accordance with [insert citation].

(2) (a) If the administrator finds that a lender has violated this Act, the administrator shall notify the lender of such violations and the actions the lender must take to cure the violations. The administrator shall allow the lender [thirty (30)] days to cure the violations before taking disciplinary action in accordance with subsection (1) of this Section. If the administrator determines that such lender has performed such actions contained in such notice, the lender shall not be liable for the violations that have been cured.

(b) This subsection (2) shall not apply if the lender knowingly violated this Act.

Section 19. [Applicability of Other Provisions of this Article.] The provisions of this Act apply to a lender unless such provisions are inconsistent with other provisions of state law.

Section 20. [Criminal Culpability.] A consumer shall not be subject to any criminal penalty for entering into a deferred deposit loan agreement. A consumer shall not be subject to any criminal penalty in the event the instrument is dishonored, unless the consumer's account on which the instrument was written was closed before the agreed upon date of negotiation, subject to the provisions of [insert citation].

Section 21. [Unfair or Deceptive Practices.] No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred deposit loan.

Section 22. [Other, General Definitions.] In addition to definitions appearing in subsequent sections of state law, in this code:

“Supervised financial organization” means a person, other than an insurance company or other organization primarily engaged in an insurance business,

(a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account, and

(b) Subject to supervision by an official or agency of any state or of the United States.

Section 23. [Severability.] [Insert severability clause.]

Section 24. [Repealer.] [Insert repealer clause.]

Section 25. [Effective Date.] [Insert effective date.]
Domestic Abuse Death Review Team

This Act creates a special team as a separate agency of state government to prepare an annual report for the governor, supreme court, attorney general, and the general assembly concerning:

- The causes and manner of domestic abuse deaths, including an analysis of factual information obtained through review of domestic death certificates and domestic abuse death data, including patient records and other pertinent confidential and public information concerning domestic abuse deaths; and
- The contributing factors of domestic abuse deaths.

The special team must:

- Make recommendations regarding the prevention of future domestic abuse deaths, including actions to be taken by communities, based on an analysis of these contributing factors;
- Advise and consult the agencies represented on the team and other state agencies regarding program and regulatory changes that may prevent domestic abuse deaths; and
- Develop protocols for domestic abuse death investigations and team review.

Submitted as:
Iowa
Chapter 1136 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 the Establishment of A Domestic Abuse Death Review Team.”

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

1. “Department” means the state [department of public health.]
2. “Director” means the [director of public health.]
3. “Domestic Abuse Death” means a homicide or suicide that involves or is a result of an assault as defined in [insert citation] and to which any of the following circumstances apply to the parties involved:
   a. The alleged or convicted perpetrator is related to the decedent as spouse, separated spouse, or former spouse.
   b. The alleged or convicted perpetrator resided with the decedent at the time of the assault that resulted in the homicide or suicide.
   c. The alleged or convicted perpetrator and the decedent resided together in the past but did not reside together at the time of the assault that resulted in the homicide or suicide.
   d. The alleged or convicted perpetrator and decedent are parents of the same minor child, whether they were married or lived together at any time.
   e. The alleged or convicted perpetrator was in an ongoing personal relationship with the decedent.
   f. The alleged or convicted perpetrator was arrested for or convicted of stalking or harassing the decedent, or an order or court-approved agreement was entered against the perpetrator to restrict contact by the perpetrator with the decedent.
   g. The decedent was related by blood or affinity to an individual who lived in the same household with or was in the workplace or proximity of the decedent, and that individual was threatened with assault by the perpetrator.

4. “Team” means the domestic abuse death review team established in Section 3 of this Act.
Section 3. [Domestic Abuse Death Review Team Membership.]

1. A domestic abuse death review team is established as an independent agency of state government.

2. The [department] shall provide staffing and administrative support to the team.

3. The team shall include the following members:
   a. The [state medical examiner] or the [state medical examiner’s designee].
   b. A licensed physician who is knowledgeable concerning domestic abuse injuries and deaths, including suicides.
   c. A licensed mental health professional who is knowledgeable concerning domestic abuse.
   d. A representative or designee of the [state coalition against domestic violence].
   e. A certified or licensed professional who is knowledgeable concerning substance abuse.
   f. A law enforcement official who is knowledgeable concerning domestic abuse.
   g. A law enforcement investigator experienced in domestic abuse investigation.
   h. An attorney experienced in prosecuting domestic abuse cases.
   i. A judicial officer appointed by the [chief justice of the supreme court].
   j. A [clerk of the district court] appointed by the [chief justice of the supreme court].
   k. An employee or subcontractor of the [department of corrections] who is a trained batterers’ education program facilitator.
   l. An attorney licensed in this state who provides criminal defense assistance or child custody representation, and who has experience in dissolution of marriage proceedings.
   m. Both a female and a male victim of domestic abuse.
   n. A family member of a decedent whose death resulted from domestic abuse.

4. The following people shall each designate a liaison to assist the team in fulfilling the team’s duties:
   a. The [attorney general].
   b. The [director of the department of corrections].
   c. The [director of public health].
   d. The [director of human services].
   e. The [commissioner of public safety].
   f. The [administrator of the bureau of vital records] of the [department of public health].
   g. The [director of the department of education].
   h. The [state court administrator].
   i. The [director of the department of human rights].

5. a. The [director of public health], in consultation with the [attorney general], shall appoint review team members who are not designated by another appointing authority.
   b. A membership vacancy shall be filled in the same manner as the original appointment.
   c. The membership of the review team is subject to the provisions of [insert citation], relating to political affiliation and gender balance.
   d. A member of the team may be reappointed to serve additional terms on the team, subject to the [insert citation].

6. Membership terms shall be [three (3)] year staggered terms.

7. Members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties.

8. Team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a team member or agent provided that the team members or agents acted reasonably and in good faith and without malice in carrying out their official duties in their official capacity. A complainant bears the burden of proof in establishing malice or unreasonableness or lack of good faith in an action brought against team members involving the performance of their duties and powers.
Section 4. [Domestic Abuse Death Review Team Powers and Duties.]

1. The review team shall perform the following duties:
   a. Prepare an annual report for the [governor], [supreme court], [attorney general], and the [general assembly] concerning the following subjects:
      (1) The causes and manner of domestic abuse deaths, including an analysis of factual information obtained through review of domestic death certificates and domestic abuse death data, including patient records and other pertinent confidential and public information concerning domestic abuse deaths.
      (2) The contributing factors of domestic abuse deaths.
      (3) Recommendations regarding the prevention of future domestic abuse deaths, including actions to be taken by communities, based on an analysis of these contributing factors.
   b. Advise and consult the agencies represented on the team and other state agencies regarding program and regulatory changes that may prevent domestic abuse deaths.
   c. Develop protocols for domestic abuse death investigations and team review.

2. In performing duties pursuant to subsection 1, the review team shall review the relationship between the decedent victim and the alleged perpetrator from the point where the abuse allegedly began, until the domestic abuse death occurred, and shall review all relevant documents pertaining to the relationship between the parties, including but not limited to protective orders and dissolution, custody, and support agreements and related court records, in order to ascertain whether a correlation exists between certain events in the relationship and any escalation of abuse, and whether patterns can be established regarding such events in relation to domestic abuse deaths in general. The review team shall consider such conclusions in making recommendations pursuant to this Act.

3. The team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by a majority of the team.

4. The team shall annually elect a chairperson and other officers as deemed necessary by the team.

5. The team may establish committees or panels to whom the team may assign some or all of the team’s responsibilities.

6. Members of the team who are currently practicing attorneys or current employees of the judicial branch of state government shall not participate in the following:
   a. An investigation by the team that involves a case in which the team member is presently involved in the member’s professional capacity.
   b. Development of protocols by the team for domestic abuse death investigations and team review.
   c. Development of regulatory changes related to domestic abuse deaths.

Section 5. [Confidentiality of Domestic Abuse Death Records.]

1. A person in possession or control of medical, investigative, or other information pertaining to a domestic abuse death and related incidents and events preceding the domestic abuse death, shall allow for the inspection and review of written or photographic information related to the death, whether the information is confidential or public in nature, by the [department] upon the request of the [department] and the team, to be used only in the administration and for the official duties of the team. Information and records produced under this Section that are confidential under the law of this state or under federal law, or because of any legally recognized privilege, and information or records received from the confidential records, remain confidential under this Section.

2. A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this Section.

3. A person who releases or discloses confidential data, records, or any other type of information in violation of this Section is guilty of a serious misdemeanor.

Section 6. [Rulemaking.] The [department] shall adopt rules relating to the administration of the
domestic abuse death review teams that are created by this Act.

Section 7. [Initial Terms.] Notwithstanding any contrary provision of Section 3, as enacted by this Act, the [director of public health] shall designate initial terms of team members as follows: approximately [one-third] of the total number of members of the state domestic abuse review team, [two (2)] of those members first listed Section 3, subsection 3, as enacted by this Act, shall initially serve terms of [three (3)] years; approximately [one-third] of the total number of members of those members next listed shall initially serve terms of [two (2)] years; and approximately [one-third] of the total number of members of those members finally listed shall serve terms of [one (1)] year.

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

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

Section 10. [Effective Date.] [Insert effective date.]
Early Mathematics Placement Testing

This Act creates a program and process to enable high school students to compare their level of knowledge in mathematics to state postsecondary standards. The program will be Web-based and available to all state residents. Under the Act, the program must:

- Develop and adopt appropriate tests;
- Permit testing at school or home;
- Transmit electronically test scores and diagnostic information to participating schools; and
- Provide specified information to students about colleges.

Submitted as:
Kentucky
Enrolled Substitute HB 178
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 Early Mathematics Placement Testing.”

Section 2. [Definitions.] As used in this Act:
(1) “Program” means the Early Mathematics Testing Program; and
(2) “Participating Colleges or Universities” means all public postsecondary education institutions in this state and any private college or university in this state that chooses to participate in the Early Mathematics Testing Program.

Section 3. [Purpose.]
(1) The Early Mathematics Testing Program is created to lower the number of high school graduates in this state who require remediation in mathematics upon enrollment in postsecondary education institutions by providing information to primarily high school sophomores and juniors statewide regarding their level of mathematics knowledge in relation to standards required for community and technical colleges and university level mathematics courses early enough for students to address deficiencies while still in high school.

(2) The testing program shall be a computer Web-site-based program that incorporates a variety of diagnostic mathematics tests to identify knowledge and skills needed for postsecondary education courses.

(3) The testing program shall be developed and conducted by a public university. The [council on postsecondary education], with the advice of the [department of education], shall develop a process to solicit, review, and select a proposal for the development and implementation of the computer Web-site-based testing program. The [council] shall approve the location of the program at a public university no later than [insert date]. The university shall be the fiscal agent for the testing program and shall receive the funds appropriated by the [general assembly].

(4) The program shall be available to all interested public and private high school students in this state in grades [ten (10)] and [eleven (11)]. Student participation in the program shall be voluntary, and program test scores shall not be:
   (a) Placed on a student’s high school transcript; or
   (b) Used by postsecondary education institutions in the admissions process.

(5) The computer Web site testing program shall be available to all residents of this state for evaluation of an individual’s mathematics knowledge and skills.
(6) The program shall encourage the active participation of all public and private high schools in this state.

(7) The computer Web site testing program shall:

(a) Develop or adopt appropriate tests to determine the level of mathematics knowledge of high school students in relation to the standards of placement tests given at the community and technical colleges and undergraduate public universities. In the development or adoption of the tests, consideration shall be given to the program of studies and the minimum requirements for high school graduation established in [insert citation] and the alignment of these standards with postsecondary course standards;

(b) Develop a structure to permit each participating student the opportunity to take the computer-based test at school in the presence of school personnel or at the student’s home in the presence of his or her parents or guardian;

(c) Score the completed tests and provide the test scores and diagnostic information on a student’s knowledge and skills electronically to the student and the high school upon completion of the test in the form of electronic mail or printable files or screens.

(d) Provide the following information for up to [three (3)] participating postsecondary education institutions specified by the student as a possible college choice:

1. The student’s test score;

2. A list of mathematics courses required for the student’s intended major at a postsecondary education institution;

3. A list of any remedial courses the student might be required to take based on the student’s current level of mathematics knowledge as demonstrated on the test;

4. The estimated cost of the remedial courses the student might be required to take; and

5. The high school courses and the specific mathematical concepts or functions a student should consider studying in order to address any deficiencies;

(e) Encourage the chair of the mathematics department or the academic dean at each of the participating postsecondary education institutions specified by the student as a possible college choice to send a personalized letter to the student that:

1. Encourages the student to take additional high school mathematics courses to address deficiencies in mathematics knowledge; or

2. Congratulates the student who does well on the test for his or her achievement and encourages continued study in mathematics; and

(f) Develop and implement a strategy to raise awareness and encourage participation in the program, targeting high school students, parents, high school faculty and administrators, mathematics departments or faculty at postsecondary education institutions, and the general public.

(8) The state [department of education] shall provide assistance as necessary to the Early Mathematics Testing Program to implement the provisions of this Act.

(9) The public university that conducts the testing program shall submit an annual report to the [state board of education] and the [state council on postsecondary education] regarding its activities, and the effects of the program on levels of remediation required by participating students.
Extreme Sport Areas: Tort Claims Limitation

States and localities have been providing recreation areas for children and teens since the advent of swings and parks. As government entities, they also have enjoyed a degree of immunity from liability for the injuries to people who use the recreation areas. However, riskier forms of recreation such as skateboarding and other “extreme” sports are causing governments to examine their liability for public facilities that are designed for riskier types of recreation. Iowa and Indiana are two examples.

Iowa Code Title XV, Chapter 670.4 reads in part:

The liability imposed (by section 670.2) shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability...

14. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public facility designed for purposes of skateboarding or in-line skating that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction.

15. Any claim based upon or arising out of an act or omission of an officer or employee of the municipality or the municipality’s governing body by a person skateboarding or in-line skating on public property when the person knew or reasonably should have known that the skateboarding or in-line skating created a substantial risk of injury to the person and was voluntarily in the place of risk. The exemption from liability contained in this subsection shall only apply to claims for injuries or damage resulting from the risks inherent in the activities of skateboarding or in-line skating...

The remedy against the municipality (provided by section 670.2) shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer, employee or agent whose act or omission gave rise to the claim, or the officer’s, employee’s, or agent’s estate. This section does not expand any existing cause of action or create any new cause of action against a municipality.

This SSL draft is based on Indiana legislation. It provides that governmental entities that operate extreme sports areas have limited tort claims immunity for damages at an extreme sports areas if:

• A set of rules governing the use of the facilities are clearly posted at each entrance to the extreme sports areas; and
• A warning concerning the hazards and dangers associated with the use of the facilities is clearly posted at each entrance to the extreme sports areas.

The legislation also provides that governmental entities that operate extreme sports areas are required to maintain the areas in a reasonably safe condition.

Submitted as:
Indiana
SB 141 (enrolled version)

Suggested Legislation

(Title, enacting clause, etc.)
Entities that Build or Operate Extreme Sport Areas.”

Section 2. [Definitions.] As used in this Act:
“Extreme Sport Area,” means an indoor or outdoor ramp, course, or area specifically designated
for the exclusive recreational or sporting use of [one (1)] or more types of extreme sport equipment. The
term does not include property used at any time as a public sidewalk, footpath, vehicle parking lot,
multiple use trail, multiple use greenway, or other public way.
“Extreme sport equipment,” means any of the following non-motorized devices:
(1) Skateboards.
(2) Roller skates.
(3) Inline skates.
(4) Freestyle bicycles.
(5) Mountain bicycles.
(6) An apparatus that is:
   (i) wheeled;
   (ii) recreational or sporting in nature;
   (iii) powered solely by the physical efforts of the user; and
   (iv) generally known, as the term is used in the [insert citation], as an apparatus
used for extreme sport.
“Governmental entity,” means the state or a political subdivision of the state.
“Operator,” means a person or an entity, other than a governmental entity or an employee of a
governmental entity, that owns, manages, controls, directs, or has operational responsibility for a roller
skating rink.

Section 3. [Liability: Governmental Entities and Employees for Extreme Sports Areas.]
(a) A governmental entity or an employee acting within the scope of the employee’s employment
is not liable if a loss results from the following:
   (1) The temporary condition of a public thoroughfare or extreme sport area that results
from weather.
   (2) The design, construction, control, operation, or normal condition of an extreme sport
area, if all entrances to the extreme sport area are marked with:
      (i) a set of rules governing the use of the extreme sport area;
      (ii) a warning concerning the hazards and dangers associated with the use of the
extreme sport area; and
      (iii) a statement that the extreme sport area may be used only by people operating
extreme sport equipment.
(b) This Act shall not be construed to relieve a governmental entity from liability for the
continuing duty to maintain extreme sports areas in a reasonably safe condition.

Section 4. [Applicability: Cause of Action] This Act applies to a cause of action involving an
extreme sport area that accrues after the effective date of this Act, regardless of when the extreme sport
area was developed.

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

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

Section 7. [Effective Date.] [Insert effective date.]
Forensic Testing: Post Conviction

Fairness and credibility are critical to America’s criminal justice system. Tennessee and California took steps in 2000 to ensure both by enacting laws concerning Deoxyribonucleic Acid (DNA) testing for certain convicts.

Tennessee Chapter 731 of 2000 directs that a defendant convicted of the offense of first degree murder and sentenced to death may make a motion before the trial court that entered the judgment of conviction in such defendant’s case for the performance of fingerprint or forensic DNA analysis, on evidence that was secured in relation to the trial which resulted in such defendant’s conviction, but which was not subject to the testing which is now requested because the technology for the testing was not available at the time of the trial or the results of DNA analysis were not admissible in evidence at the time of the trial. Reasonable notice of the motion must be served upon the state.

The defendant must present a prima-facie case that:

• Identity was the issue in the trial which resulted in the defendant’s conviction; and
• The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

This SSL draft is based on California law. It grants to a defendant who was convicted of a felony and currently serving a term of imprisonment, the right to make a written motion under specified conditions for the performance of forensic DNA testing. The draft requires that the motion include an explanation of why the applicant’s identity was or should have been a significant issue in the case, how the requested DNA testing would raise a reasonable probability that the verdict or sentence would have been more favorable if the DNA testing had been available at the trial resulting in the judgment of conviction, and a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought. The motion also must include the results of any previous DNA tests and the court is required to order the party in possession of those results to provide access to the reports, data and notes prepared in connection with the DNA tests to all parties.

The Act directs that the cost of DNA testing will be borne by either the state or by the applicant if, in the interests of justice, the applicant is not indigent and possesses the ability to pay.

It requires, except as otherwise specified, the appropriate governmental entity to preserve any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case.

Submitted as:
California
SB 1342 (enrolled version)
Status: enacted as Chapter 821, Statutes of 2000.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as an “Act to Address Post Conviction Forensic
2 Testing.”

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3 Section 2. [Motion to Perform Deoxyribonucleic Acid (DNA) Testing.]

(a) A person who was convicted of a felony and is currently serving a term of imprisonment may

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make a written motion before the trial court that entered the judgment of conviction in their case, for

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performance of forensic deoxyribonucleic acid (DNA) testing.

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(1) The motion shall be verified by the convicted person under penalty of perjury and shall

1 do all of the following:

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(A) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

(B) Explain in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person’s verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.

(2) Notice of the motion shall be served on the [attorney general], the [district attorney] in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, shall be filed within [sixty (60)] days of the date on which the [attorney general] and the [district attorney] are served with the motion, unless a continuance is granted.

(3) If any DNA or other biological evidence testing was conducted previously by either the prosecution or defense, the results of that testing shall be revealed in the motion for testing, if known. If evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, the court shall order the prosecution or defense to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA testing.

(b) The court, in its discretion, may order a hearing on the motion. The motion shall be heard by the judge who conducted the trial unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

(c) The court shall appoint counsel for the convicted person who brings a motion under this section if that person is indigent.

(d) The court shall grant the motion for DNA testing if it determines all of the following have been established:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing that is requested in the motion.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person’s identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence.

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person’s verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial.

(6) The evidence sought to be tested meets either of the following conditions:

(A) It was not tested previously.

(B) It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

(8) The motion is not made solely for the purpose of delay.

(e) If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used. The testing shall be conducted by a laboratory mutually agreed upon by the [district attorney] in a non-capital case, or the [attorney general] in a capital case, and the person filing the motion. If the parties cannot agree, the court’s order shall designate the laboratory to conduct the testing and shall consider designating a laboratory accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).
(f) The result of any testing ordered under this section shall be fully disclosed to the person filing the motion, the [district attorney], and the [attorney general]. If requested by any party, the court shall order production of the underlying laboratory data and notes.

(g) (1) The cost of DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any additional testing to be conducted by the [district attorney] or [attorney general] shall not be borne by the convicted person.

(2) In order to pay the state’s share of any testing costs, the laboratory designated in subdivision (e) shall present its bill for services to the [superior court] for approval and payment. It is the intent of the [Legislature] to appropriate funds for this purpose in the [Budget Act].

(h) An order granting or denying a motion for DNA testing under this section shall not be appealable, and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the [district attorney], or the [attorney general]. Any such petition shall be filed within [twenty (20)] days after the court’s order granting or denying the motion for DNA testing. In a non-capital case, the petition for writ of mandate or prohibition shall be filed in the [court of appeals]. In a capital case, the petition shall be filed in the state [supreme court]. The [court of appeals] or state [supreme court] shall expedite its review of a petition for writ of mandate or prohibition filed under this subdivision.

(i) DNA testing ordered by the court pursuant to this Section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, a DNA laboratory shall be required to give priority to the DNA testing ordered pursuant to this section over the laboratory’s other pending casework.

(j) DNA profile information from biological samples taken from a convicted person pursuant to a motion for post conviction DNA testing is exempt from any law requiring disclosure of information to the public.

(k) The provisions of this Section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Section 3. [Retaining Biological Material Secured in Connection with a Criminal Case.]

(a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:

(1) The governmental entity notifies all of the following people of the provisions of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the [district attorney] in the county of conviction, and the [attorney general].

(2) The notifying entity does not receive, within [ninety (90)] days of sending the notification, any of the following:

(A) A motion filed pursuant to Section 2, however, upon filing of that application, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.

(B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within [one hundred eighty (180)] days a motion for DNA testing pursuant to Section 2 that is followed within [one hundred eighty (180)] days by a motion for DNA testing pursuant to Section 2, unless a request for an extension is requested by the convicted person and...
agreed to by the governmental entity in possession of the evidence.

(C) A declaration of innocence under penalty of perjury that has been filed with the court within [one hundred eighty (180)] days of the judgment of conviction or [insert date], whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 2.

(3) No other provision of law requires that biological evidence be preserved or retained.

(c) This Section shall remain in effect only until [insert date], and on that date is repealed unless a later enacted statute that is enacted before [insert date], deletes or extends that date.

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

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

Section 6. [Effective Date.] [Insert effective date.]
Government Web Site Operators: Required Notice

This Act requires governmental entities that provide an Internet Web site to provide notice of the entities’ information practices and prohibits collecting personally identifiable information unless the Web site operator complies with certain provisions.

Submitted as:
Montana
HB 281 (enrolled version)
Status: enacted into law as Chapter 219 of 2001.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Requiring Government Web Site Operators to Provide Notice for Collecting Certain Types of Information About the Users of Their Sites.”

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

(1) “Collect” means the gathering of personally identifiable information about a user of an Internet service, online service, or Web site by or on behalf of the provider or operator of that service or Web site by any means, direct or indirect, active or passive, including:

   (a) an online request for the information by the provider or operator, regardless of how the information is transmitted to the provider or operator;
   (b) the use of an online service to gather the information; or
   (c) tracking or use of any identifying code linked to a user of a service or Web site, including the use of cookies.

(2) “Governmental entity” means the state and political subdivisions of the state.

(3) “Government Web site operator” or “operator” means a governmental entity that operates a Web site located on the Internet or an online service and that collects or maintains personal information from or about the users of or visitors to the Web site or online service or on whose behalf information is collected or maintained.

(4) “Internet” means, collectively, the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that use the transmission control protocol/internet protocol or any predecessor or successor protocols to communicate information of all kinds by wire or radio.

(5) “Online” means any activity regulated by this Act that is affected by active or passive use of an Internet connection, regardless of the medium by or through which the connection is established.

(6) “Personally identifiable information” means individually identifiable information about an individual collected online, including:

   (a) a first and last name;
   (b) a residence or other physical address, including a street name and name of a city or town;
   (c) an e-mail address;
   (d) a telephone number;
   (e) a social security number; or
   (f) unique identifying information that an internet service provider or a government website operator collects and combines with any information described in subsections (6)(a) through (6)(e).

(7) “Political subdivision” means any county, city, municipal corporation, school district, or other
political subdivision or public corporation.

(8) "State" means the state or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

Section 3. [Collection of Personally Identifiable Information: Requirements.]

(1) A government Web site operator may not collect personally identifiable information online from a Web site user unless the operator complies with the provisions of this section.

(2) A government Web site operator shall ensure that the Web site:

(a) identifies who operates the Web site;

(b) provides the address and telephone number at which the operator may be contacted as well as an electronic means for contacting the operator; and

(c) generally describes the operator’s information practices, including policies to protect the privacy of the user and the steps taken to protect the security of the collected information.

(3) In addition to the requirements of subsection (2), if the personally identifiable information may be used for a purpose other than the express purpose of the Web site or may be given or sold to a third party, except as required by law, then the operator shall ensure that the Web site includes:

(a) a clear and conspicuous notice to the user that the information collected could be used for other than the purposes of the Web site;

(b) a general description of the types of third parties that may obtain the information; and

(c) a clear, conspicuous, and easily understood online procedure requiring an affirmative expression of the user’s permission before the information is collected.

Section 4. [No Change of Privacy Right or Public Right to Know.] This Act is not intended to expand or restrict the individual right of privacy or the public right to know or to change the rights and obligations of people, state agencies, or local governments that are otherwise provided by law.

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

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

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

This Act requires any dealer who prepares, distributes, sells or exposes for sale any food represented to be halal, to disclose the basis upon which that representation is made. This disclosure must be accomplished by the dealer through the posting of information as required by the state director of the division of consumer affairs on a sign of a type and size specified by the director, and posted in a conspicuous place upon the premises at which the food is sold or exposed for sale as required by the director. The Act makes it an unlawful practice under the state Consumer Fraud Act to violate these disclosure requirements.

“Dealer” means any establishment that advertises, represents or holds itself out as selling, preparing or maintaining food as halal. It includes, but is not limited to, manufacturers, slaughterhouses, wholesalers, stores, restaurants, hotels, catering facilities, butcher shops, summer camps, bakeries, delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers and food plan companies. These establishments also may sell, prepare or maintain food not represented as halal.

The Act provides that any person subject to its disclosure provisions shall not be deemed to have committed an unlawful practice if it can be shown by a preponderance of the evidence that the person relied in good faith upon the representations of a slaughterhouse, manufacturer, processor, packer or distributor of any food represented to be halal. It also provides that possession by a dealer of any food not in conformance with its disclosure is presumptive evidence that the person is in possession of that food with the intent to sell.

In addition, the Act stipulates that any dealer who prepares, distributes, sells or exposes for sale any food represented to be halal shall comply with all requirements of the director, including, but not limited to, record-keeping, labeling and filing regulations.

Submitted as:
New Jersey
Chapter 60, Laws of 2000
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 to Prevent Consumer Fraud in the
2 Preparation, Distribution and Sale of Food Represented as Halal.”

3 Section 2. [Definitions.] As used in this Act:
4 “Dealer” means any establishment that advertises, represents or holds itself out as selling,
5 preparing or maintaining food as halal, including, but not limited to, manufacturers, slaughterhouses,
6 wholesalers, stores, restaurants, hotels, catering facilities, butcher shops, summer camps, bakeries,
7 delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers and food plan companies.
8 These establishments may also sell, prepare or maintain food not represented as halal.
9 “Director” means the [director of the division of consumer affairs] in the [department of law and
10 public safety] or the director’s designee.
11 “Food” means a food, food product, food ingredient, dietary supplement or beverage.
12
13 Section 3. [Posting Information by Dealer Representing Food to be Halal.]
14 a. Any dealer who prepares, distributes, sells or exposes for sale any food represented to be halal,
15 shall disclose the basis upon which that representation is made by posting the information required by the
16 [director], pursuant to regulations adopted pursuant to the authority provided in [insert citation], on a sign
of a type and size specified by the [director] in a conspicuous place upon the premises at which the food is sold or exposed for sale as required by the [director].

b. It shall be an unlawful practice for any person to violate the requirements of subsection a. of this section.

Section 4. [Reliance on Representation, Good Faith, Defense.] Any person subject to the requirements of Section 3 of this Act shall not have committed an unlawful practice if it can be shown by a preponderance of the evidence that the person relied in good faith upon the representations of a slaughterhouse, manufacturer, processor, packer or distributor of any food represented to be halal.

Section 5. [Possession of Food Implies Intent to Sell.] Possession by a dealer of any food not in conformance with the disclosure required by Section 3 of this Act with respect to that food is presumptive evidence that the person is in possession of that food with the intent to sell.

Section 6. [Compliance Required by Dealer in Regard to Food Represented as Halal.] Any dealer who prepares, distributes, sells or exposes for sale any food represented to be halal shall comply with all requirements of the [director], including, but not limited to, recordkeeping, labeling and filing, pursuant to regulations adopted pursuant to [insert citation].

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

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

Section 9. [Effective Date.] [Insert effective date.]
Hydrogen Research and Development

This Act establishes a program to promote hydrogen as an energy resource.

Submitted as:
Hawaii
SB 1435 SD 1
Status: enacted into law as Act 283 in 2001.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish a Private-Public Partnership to Promote and Support Hydrogen as an Energy Resource.”

Section 2. [Legislative Findings.] Scientists have recognized hydrogen as a potential source of fuel for many years. Currently, hydrogen is used in industrial processes, rocket fuel, and spacecraft propulsion. With further research and development, hydrogen could competitively serve as an alternative source of energy for fueling vehicles and generating electricity.

Recognizing the potential of hydrogen fuel, the United States Department of Energy and the private sector have for several years funded hydrogen research and development programs. The federal government alone allocates an average of $18,000,000 annually for hydrogen research and development. Currently, the market capitalization of fuel cell companies that rely on hydrogen as its fuel source is in excess of $10,000,000,000.

The [Legislature] finds that this state represents an excellent site to attract government and industry investment in hydrogen. Major advantages include:

1. The availability of indigenous renewable resources, including geothermal energy;
2. The excellent research capabilities at the [state university];
3. This state’s location for trade opportunities;
4. This state’s high transportation fuel costs; and
5. Significant progress in hydrogen research and development in this state.

In addition, the [Legislature] recognizes that large-scale hydrogen use for transportation can be competitive this decade that fleet and military transportation have the largest potential for hydrogen and fuel cell use.

On the national level, advancements are taking place to develop technologies that will utilize hydrogen as a fuel source. Major companies are investing in the development of fuel cells for both stationary and mobile power. Automakers are projecting the commercial availability of fuel cell powered vehicles that could be fueled by hydrogen within this decade. Significant amounts of investments are being made to develop fuel cells and other distributed generation technologies.

With its traditional high fuel costs and a wealth of renewable energy resources, this state could attract these advanced technology development companies for research and development, testing, and deployment. These factors can lead to the development of a hydrogen-based economy where this state produces more of its own environmentally clean fuels, thus reducing its dependence on fossil fuels, and resulting in job growth, reduced pollution, and a more robust state economy.

Therefore, the [Legislature] finds that the state should do more to continue efforts to enhance hydrogen use in it.

Section 3. [Hydrogen Public/Private Partnership: Establishment]

(a) There is established within the [department of business, economic development, and tourism],
for administrative purposes only, the Hydrogen Public/Private Partnership to support and promote hydrogen use in this state. The [state university] shall provide assistance to the [department].

(b) The [department] shall invite the participation of, and representatives from, the following entities to the partnership:

(1) The state, including the [state university] and any of its entities, as appropriate;
(2) The counties;
(3) The federal government, including the military;
(4) The utilities;
(5) The private sector; and
(6) The environmental community.

(c) The [department], with the assistance of the Partnership, shall:

(1) Sponsor a stakeholder workshop with interested parties to review and critique the state’s hydrogen plan;
(2) Evaluate and adopt policy options to promote industry investment in hydrogen infrastructure;
(3) Initiate pilot projects to install multi-megawatt electrolyzers to produce hydrogen from indigenous resources in the state;
(4) Conduct a comprehensive evaluation and market study for the production of hydrogen;
(5) Conduct engineering assessments of biomass or wind energy pathways for hydrogen;
(6) Initiate pilot projects that include distribution of hydrogen produced in the state;
(7) Initiate discussion of tax incentives for investors; and
(8) Conduct assessments of potential cost benefits to consumers and recommend ways to educate consumers about the benefits of hydrogen fuel.

(d) The [department] shall submit annual reports regarding the partnership to the [Legislature] no later than [twenty (20)] days prior to the convening of each regular session. The reports shall include summaries of accomplishments, including expenditures, research projects funded, and external funding received.

Section 4. [Appropriations.] There is appropriated out of the general revenues of this state the sum of [insert amount] or so much thereof as may be necessary for fiscal year [insert date] to support hydrogen research and development efforts; provided that funds shall be made available under this Act on the basis of [one (1)] dollar of general revenues for every [insert amount] dollars from the federal government or the private sector. The sum appropriated shall be expended by the [department of business, economic development, and tourism] for the purposes of this Act.

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

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

Section 7. [Effective Date.] [Insert effective date.]
Internet Voting Note

It seems that the more that people use the Internet the more uses they find for it. Voting is an example. The 2000 Presidential elections dramatized the need for a reliable system that ensures that people can get to the polls and records their votes, and also provides an efficient way to check the tally. To some, Internet voting offers a way to achieve these objectives. To others, Internet voting raises concerns about privacy and the ability of some voters to either access such a system or know how to use it.

The Center for the Study of Technology and Society’s Special Focus on Internet Voting reports that:

In the blizzard of criticism that followed the Florida election incident, many analysts and critics argued that Internet voting could have prevented many of the election problems. However, they often confused Net voting (which is still not ready for wide deployment) with general electronic voting -- which would have solved the problems without the risks posed by Net voting.

The Problem

Should voting over the Internet be permitted? How would it work? How might it affect our democracy?

Background

As other aspects of politics move online, including campaigning, fundraising and news reporting, speculation has increased that elections might be moved online, too. Minor elections, such as votes for positions in clubs and student governments, have been held online for years, but the first official Internet elections for state and national governments were not held until 2000. In the past few years, a number of companies specializing in Internet elections have begun offering their services to election boards. Recognizing that governments will pay significant amounts of money for help operating Internet elections, these companies strongly support online voting.

How Does Internet Voting Work?

The term “Internet voting” is used loosely to describe very different things. For instance, many informal votes are conducted by e-mail or in online polls. But because the stakes are higher in government elections, the requirements for security are far more stringent.

Here are the basic types of Internet voting that would be sufficiently secure for government elections.

Electronic voting at traditional polling sites. This form of voting does not actually use the Internet at all, but it is a key first step in the transition to Net voting: simply replace voting machines and paper ballots with computers. Election officials would still be present at voting sites to prevent voter fraud. The key benefit of this type of voting would be an end to the paper ballot problems that plagued the Florida elections in 2000. Although the technology would cost money, voting districts would also save money by not printing paper ballots. Just under 10 percent of Americans already use this type of voting.

Internet voting at traditional polling sites. Once sufficient security systems are in place, the computers described above could be connected to the Internet. This would speed the tabulation and reporting of votes. Election officials would remain at the voting sites. Some supporters of Internet voting say this type of balloting undermines a key benefit of the Internet voting -- the
ability to vote from anywhere.

*Internet voting from any location.* This is usually what people think of when they hear the term “Internet voting” -- voters could cast ballots from anywhere, including their own home. Because no election officials would be present, this type of voting would require a new way to ensure each voter’s identity. This type of Internet voting would probably be used in addition to voting at traditional polling sites.

**Major Internet Votes Held To Date**

The first major Internet votes were conducted in 2000.

*Alaska Republicans.* The Republican Party of Alaska held a straw poll in January 2000 for the position of U.S. president. This vote was a non-binding poll and not a true election, and only a few dozen participants cast ballots online, but it was the first Internet vote to catch the attention of the national press. (This vote was managed by VoteHere.net.)

*Arizona Democrats.* This was the first official Internet election for a national office in U.S. history. The Arizona Democratic Party conducted its presidential primary online over a four-day period in March 2000. A total of 39,942 voters cast ballots over the Internet, and only one tenth of those Internet votes were cast from traditional polling sites. A major lawsuit almost prevented this primary election from being conducted online. (This vote was managed by Votation.com, a company now owned by Election.com.)

*Washington State Republicans.* The Washington State Republican Party used the Internet to select delegates in one county convention on April 8 and then again at their state convention on June 16. They chose to vote over the Internet to speed up the process of counting ballots. (This vote was managed by iPolitics.com.)

*ICANN.* The body that regulates the Internet, the Internet Corporation for Assigned Names and Numbers, held a global Internet vote (with 34,035 valid votes cast) for its new board members in the summer and autumn of 2000. (This vote was managed by Election.com.)

**Arguments For Internet Voting**

Many supporters of Internet voting see it as a natural, or even inevitable, result of the spread of information technology. Among the main supporters of Internet voting are the companies which plan to sell their expertise in online voting to election officials. Here are some of the major arguments in favor of Internet voting:

- The convenience of Internet voting might encourage more people to vote, which proponents consider healthy for democracy.
- The Internet could make voting easier for the elderly, the disabled and people in remote locations at home (like snowbound parts of Alaska) or abroad (like military personnel at sea).
- Election results would be calculated quickly and efficiently, with less chance of human error.
- Ballot security and fraud are important issues, but there will probably be technical solutions for them soon, and besides, offline voting has always been prone to those problems anyway.
Arguments Against Internet Voting

Opponents of Internet voting believe it threatens democracy. A number of nonprofit organizations are opposed to Internet voting, most notably the Voting Integrity Project. Here are some of the main arguments against Internet voting:

- Because only about half of all Americans have Internet access at home (as of mid-2000), voting online would unfairly favor those with access to the Internet.
- Democracy should not be made more convenient for those too lazy to make an effort to vote.
- Also, by lowering the threshold of effort required to cast a ballot, Internet voting might encourage the participation of ill-informed people who would otherwise not vote.
- The Internet is a fundamentally anonymous medium; as of today, there is no way to authenticate every voter’s identity online. Internet ballots might be cast by people who are unregistered or even ineligible to vote.
- The Internet is an unsafe medium to depend upon for something like voting; there is a risk that malicious hackers might alter ballots, snoop on citizens’ votes or crash voting Web sites, effectively disenfranchising voters.
- Officials monitor traditional polling places to make sure no one bullies voters and to protect the secrecy of each ballot. If Internet voting is allowed outside of traditional polling sites, it could result in harassment of voters and violations of their privacy.

What Happens Next?

For now, the long-term implications of Internet voting for our democracy are unclear. Until security measures can be put in place to prevent fraud, it is unlikely that Internet voting will be widely accepted.

However, experiments in online voting will probably continue for several years as officials at all levels of government familiarize themselves with the important issues involved. States and counties that choose to permit Internet voting will most likely hire private contractors to manage their elections. Also, those states and counties will probably face lawsuits challenging the legality of Internet voting. As experimentation continues, election officials may grow more confident in and more willing to adopt Net voting.

The Center for the Study of Technology and Society, Inc. is a nonprofit think tank in Washington, D.C. (www.tecsoc.org). Through original research and in-depth analysis, the Center examines the interaction of technological change and society. The Center strives to emphasize and clarify the point that advances in technology are neither inherently good nor inherently evil -- but that every new technology has the potential to cause problems, and the capacity to solve problems.

California Internet Voting Task Force

California Secretary of State Bill Jones convened an Internet Voting Task Force to study the feasibility of using the Internet to conduct elections in California. The Task Force’s January 2000 report declares:

There are at least two stances one could take toward Internet voting (i-voting): *comprehensive* and *incremental*. A comprehensive approach would involve rethinking all parts of the elections process from an online perspective, with an eye toward fielding a unified system for online (a) voter registration and district assignment, (b) voter pamphlets and sample ballots, (c)
candidate-, initiative-, referendum and recall petition signing, (d) ballot production, (e) voting, (f) canvass, and (g) perhaps even registration as a candidate for office. It might include administering electoral systems at the state level to achieve economies of scale, rather than at the county level, as is traditional. And it might be accompanied by recommendations for other reforms in the electoral process.

An incremental approach, on the other hand, starts with the current electoral system and introduces Internet voting in stages, extending its reach as experience is gained and technology improves. It proposes minimal changes to the California Elections Code, and attempts to minimize the costs for the new infrastructure, new training for officials, and public education that would be required. An incremental approach retains the current county administration of elections, so that i-voting might be adopted at different times and in different forms to suit each county’s needs. If early county experiences with i-voting are successful, cost effective, and supported by the public, the early systems can be improved and extended to more comprehensive ones later.

This task force has come down firmly on the side of an incremental approach to i-voting. Because large-scale i-voting in public elections has not been tried as of this writing, and because fair elections, and elections perceived to be fair, are so vital to government, it seems prudent that we adopt a conservative stance, modeling the requirements for any Internet-based voting system as closely as possible on the current systems that both the public and election officials understand and trust. Wherever possible we propose that Internet-based voting processes be analogous to those used with paper ballots, e.g. for preventing most forms of double voting; for dealing with the rare double votes that do happen (usually unintentionally); for keeping records to prepare for election challenges; and for preventing election agency personnel from violating voter privacy or tampering with votes. Internet voting should be an evolutionary, not a revolutionary change in the voting process.

Of course, there are some issues unique to electronic voting with no analog in current paper-based balloting systems, such as communication failures, potential overloading of voting infrastructure, potential denial of service attacks on voting servers and clients, and potential malicious code attacks on vote clients. We will make detailed recommendations on these issues.

Strawman Architecture for I-Voting System

Figure 1 represents a possible general architecture for the infrastructure of an Internet voting system. It is presented for illustrative purposes only, to give us vocabulary for talking about i-voting in the rest of the document; it is not a recommendation or expectation that this architecture be strictly followed.
Figure 1: Possible i-voting infrastructure
On the left are vote client machines, i.e. the computers used by voters to cast their ballots. These will generally be small machines (initially PCs of some kind) located in public places such as schools or libraries, or, eventually, in voters’ homes or workplaces, etc.

Each client will be connected to an Internet Service Provider (ISP). The ISP’s will be connected to other networks that are in turn connected to the ISP’s used by the Vote Server Data Center. The complex of ISP’s along with the regional and national network service providers they connect to is the Internet. Ballots and related information will travel between the vote clients and the vote servers through the Internet.

We expect (but do not require) that the infrastructure for receiving and counting votes will be divided into two parts, at least logically if not physically. The Vote Server Data Center (VSDC) may be run by the county itself or, perhaps because of the technical skill required to run it, by a vendor under contract with the county. The job of the VSDC is to do the following:

- Collect the encrypted electronic ballots from voters submitting them over the Internet;
- Store the electronic ballots securely, so that it is essentially impossible to lose any;
- Give voters quick feedback that their ballot was accepted;
- Transmit the ballots to the county premises for canvassing at some later convenient time.

The VSDC, as we envision it, only handles encrypted ballots, and must have no access to any cryptographic keys that could be used to check, read, forge, or modify any ballots. Hence, voter privacy and ballot integrity cannot be compromised at the VSDC without detection. The most vital requirement then remaining is that the VSDC not lose any ballots.

From the VSDC, the ballots, still encrypted, are sent to the county office. This transfer can take place in the background, or just after the close of Internet voting, since high speed is not required.

Canvass of the Internet ballots can be done at the county election offices in a way that is analogous to the handling of paper absentee ballots. Although procedures vary from county to county, in the case of absentee ballots it generally involves checking the signature on the ballot envelope against the signature on file for the voter in the registration records, and checking the database of voters who have already voted. If for some reason a vote has already been recorded for that voter, then the absentee ballot is saved, but not counted; but if not, then a notation is made in the database that he or she has now voted, and the ballot is removed and separated from the envelope. The ballot is put in a pile with other ballots for counting, and the envelope is saved for cross-checking and audit. Once the ballot is separated from the envelope, it is never again possible to match a ballot with the voter who cast it.

In the case of Internet ballots, a similar procedure is necessary to verify that the ballot came from a registered voter from whom no other ballot has been received. The ballot must somehow be tied beyond any reasonable doubt to the voter’s registration form, but different i-voting systems will accomplish the linkage differently. It may involve checking the voter’s digital signature, or comparing a digitized biometric of some kind to a stored biometric key, etc. Once the ballot’s legitimacy has been verified, it should be decrypted and separated computationally from the voter’s identity so that they cannot be put back.

Once the ballots are separated from the voter identification information, they are ready for counting. Except that it is accomplished by software, this process is little different from counting of other types of ballots.

Classification of I-Voting Systems

This task force has identified four distinct types of Internet voting systems that we believe will work in California. They can be placed in a sequence of increasing complexity leading from
relatively simple systems providing modest new services to the electorate with few security concerns, all the way to very sophisticated systems providing unprecedented new convenience to voters, but with more complex security issues to be overcome. These four types of systems are:

- Internet voting at voter’s precinct polling place;
- Internet voting at any polling place in the county;
- Remote Internet voting at county-controlled computers or kiosks; and
- Remote Internet voting from home, office, or any Internet-connected computer.

While the space of i-voting systems can be sliced in other ways, this classification has the virtue of suggesting a long-term implementation strategy as well: the simpler systems can be implemented first, and the more complex ones can later be built upon the foundations of the earlier, simpler ones when the technology is ready. In the next four sections we describe these types of i-voting systems in a little more detail.

(a) Internet voting at voter’s precinct polling place

The simplest i-voting system is basically a computer set up at precinct polls on election day as an alternative voting device to whatever system is traditionally employed by the county. Voters would enter the polls on election day and identify themselves as usual to poll workers; then they would choose to vote using either the traditional system is employed in the county, or one of the Internet voting terminals. (Eventually some counties may eliminate the traditional voting methods, but that would be very unwise in the first few election cycles because of the possibility of problems with or failures of the Internet systems.)

Such a system provides only modest service to voters, because they have to come to the precinct polls to take advantage of it. It’s main benefit is to speed the vote canvass, since the votes are transmitted directly to the county instead of being held in the machine for transmission after the close of the polls. It will likely also have great value as a first step in the construction of more complex systems.

(b) Internet voting at any polling place in the county

In this type of system the county sets up voting computers at places that might be convenient for voters around the region such as shopping centers, schools, town centers, and locations near large employers. County A might even be locate polling places in a neighboring County B if that would be convenient for voters registered in County A. These new sites would be in addition to the traditional precinct polls. Like precinct polls the new sites would be manned by election officials or poll workers, but unlike precinct polls, any voter in the county could vote at any of these sites. Furthermore, the sites might be available for voting in advance of election day as well as on election day, perhaps for several weeks, i.e. as long as the absentee balloting window is open.

Voters would identify themselves to poll workers at these sites exactly as they would at a precinct poll site, but the poll workers would have their own computers with Internet access to the county database of registered voters so they could verify eligibility, determine which ballot style the voter should get, and record that the voter has voted. The poll worker would then give the voter a code of some kind to take to the i-voting computer, both to authenticate the voter to the i-voting computer and to retrieve the proper ballot type.

(c) Remote Internet voting at county-controlled computers or kiosks

This type of system is quite similar to (b) above, except that the voting sites need not be
manned by official poll workers. Instead, the i-voting machines at the new polling places, perhaps enclosed in kiosks, would be tended by people with lower-level skills whose responsibility would be only to prevent tampering with the machines, prevent electioneering, prevent voter coercion, and to call for help if any problem develops.

For these systems to be secure, voters would have to have previously requested Internet voting authorization from the county, on a paper form with a live signature, much as voters may now request an absentee ballot. The county would return to the voter a code to be used at the time of voting, both to authenticate the voter and to enable retrieval of the proper ballot type. Presumably this code would be similar to that given to the voter by a poll worker in systems of type (b). Then, in order to vote, voters would simply walk up to an i-voting machine, authenticate themselves using the code provided by the county (without talking to any poll worker), make their choices, and transmit the ballot.

After voters get used to them, systems of this type should be lower in cost in the long run than those of type (b), because they do not require fully-trained poll workers to supervise them. They should therefore be of greater service to voters because presumably more voting sites could be fielded.

(d) Remote Internet voting from home, office, or any Internet-connected computer

Systems of this type allow voters to vote from essentially any Internet-connected computer (with appropriate software) anywhere, including from PCs at the voter’s home, workplace, school or college, hotel, or even possibly from a voter’s handheld Internet appliance, etc. As with systems of type (c), voters will be required to request authorization for this type of voting in advance, so they can be given credentials (of some kind) by the county for use at the time of voting. In some systems it might be necessary for voters to be issued voting software as well and may also include provisions for the voters to provide the county with a personal identification number (P.I.N.) to be used for voting purposes.

These systems would provide by far the greatest convenience to voters, who could, in effect, vote any time, anywhere. But these systems also involve much more difficult security problems since the election agencies will not have full end-to-end control of the infrastructure for voting.

County-Controlled I-Voting Computers

For county-controlled i-voting computers, used in systems (a), (b), and (c) above, the most difficult security issues, malicious code and remote control/monitoring software, can be effectively avoided by running a “clean” copy of a stripped-down, minimal operating system and voting application. The software should come directly from a certified source on read-only media, and no software modules or functionality should be included beyond the minimum necessary for i-voting. No remote control or monitoring software should be loaded, nor any software for email, chat, audio (except perhaps in service to blind or illiterate voters), video, file transfer, printing, general web browsing, or other network services extraneous to voting. There should be no software for sharing files or devices over the network, and except for booting the operating system and launching the voting application, it should be possible to do without a file system at all!

Unnecessary software that cannot be practically removed for some reason should be turned off or otherwise disabled. Since many of these features tend to be built into the operating systems or browsers of today, it may take some effort, and possibly the cooperation of software vendors, to procure a software base suitably stripped-down for voting. The details should be examined carefully at the time a system is presented for certification.

The most serious remaining issue is tampering. County-controlled machines might in some situations be in service for up to several weeks prior to election day, might be physically
handled by hundreds of voters per day, and might be unused during nights or weekends. A vendor of voting systems intended for use in a public place should provide the specific software configuration intended for that environment, and specific security and maintenance procedures to make sure the machines remain secure. Furthermore, the systems themselves should always be monitored by someone whose job it is to prevent tampering. Other anti-tampering precautions should be considered as well, such as:

- Configuring the software so that it requires a password to boot;
- Disabling access to the “desktop” so that under no circumstances can the voter can do anything other than vote from the machine;
- Configuring the unit, e.g., with cabinetry, so that the voter has physical access only to the screen (and perhaps to a keyboard and/or pointing device if it is not a touch-screen), leaving all other parts inaccessible, especially devices such as floppy drives, CD drives, and any others from which a tamperer might be able to reboot or install software; and
- Configuring the machine so that it has no modem, network Interface, wireless communication devices, etc. other than the one needed to connect to the Internet.

Voting from Home, the Workplace or other Institutional Computers

The most serious problem in home environments is the possibility that the home PC might be “infected” with a malicious program designed specifically to interfere with voting. Home PCs are generally not professionally managed, and most home users are either not aware of security hazards that might affect voting, or may not know how to use the security tools available. As a result, their computers are frequently vulnerable to all kinds of malicious code attack.

The only way that home voting can be made safe is to have the voter deliberately secure his or her computer just before voting. There are a number of ways to accomplish this with current technology, but all of them require some inconvenience to the voter and some development complexity on the part of the i-voting vendor.

In the home setting, there is also some risk of loss of voting privacy, since one person might be able to spy on the voting of another. However, we believe that voters at home computers might be presumed to trust other people in the same household. While people might be able to spy over each other’s shoulders during voting, or monitor one computer from another on the same home network during voting, people can also spy on others filling out an absentee ballot, or steal each others’ absentee ballots. Voters must take some responsibility for guarding the privacy their own vote, and the household seems a reasonable boundary within which to expect them to take that responsibility.

In an institutional setting, where the network and the computers are owned and managed by someone other than the voter, it is usually the case that the computers must have a full complement of operating system and networking software for their primary mission. Although they are often just as vulnerable to malicious code attacks as home machines, a “clean system” approach, with an explicit step of securing the platform before voting, may not work well in a workplace environment because rebooting from a clean operating system would likely make the machine unavailable for its primary business purpose.

In addition, workplace voting introduces a new major concern about vote privacy. Institutional computers are often maintained, managed, and controlled by professional staff, rather than the primary user. They are likely to have remote control or monitoring software in place, which leads to the possibility of one employee surreptitiously monitoring (electronically) another’s voting.

Vendors who expect their i-voting systems to be used in the workplace must go to some lengths to ensure that voter privacy is not compromised. Furthermore, voters in general should be educated about the fact that computers located in places where the security environment is totally
unknown, or not trusted, are probably too risky to be used for i-voting. This would include other people’s homes, institutions, cybercafes, etc.

Institutions often have their internal networks separated from the Internet at large by a firewall that strongly restricts the kinds of traffic that can flow in and out. Yet another complication that vendors will have to deal with if they expect people to vote from workplace computers is to design their voting system to be compatible with the firewall configurations routinely in use.

Our discussion so far has tacitly assumed that the voting platform is a PC of some kind (including the Apple Macintosh). But new Internet-capable devices are beginning to appear, e.g., hand held electronic organizers, cell phones, “wearable computers,” and perhaps “network computers” (NCs). These devices all have substantially different operating systems, screen sizes, and “browser” software than today’s PC platform does. It is not likely that an Internet voting system that works from the PC platform will also work from all of these other platforms, at least without substantial adaptation. One risk in the design of Internet voting systems today is that the era of approximate uniformity in the technology base used for interacting with the Internet that is caused by the near ubiquity of the “Wintel” architecture will some day break down, and there will be no clear choices of platform from which to support voting. Vendors and counties should pay attention to this possibility before investing heavily; it is one of the risks caused by the speed of technical change.

Steps in Internet voting:

Internet voting, as we envision it, proceeds in the following sequence of steps, as viewed from the perspective of a voter. Different i-voting systems that satisfy our overall requirements may vary from this in detail, but will generally resemble the following outline:

**Voting Preliminaries:**

*Registration:* The potential voter must register to vote. Except in a few special cases the signature on the request must be a live ink signature, and is the primary authenticator used to verify the right to vote, request an absentee ballot or Internet balloting authorization, or sign a petition.

*Request for Internet Balloting:* Prior to voting the voter may request Internet balloting, on a form similar to the request for an absentee ballot. The request may be delivered to an election official in person or sent by mail, and must include a live ink signature to match against the voter registration record. Hence, a request cannot be accepted by email. A voter should not be able to request both an absentee ballot and i-voting and then choose later which to use.

*Authorization:* The county responds to the request, sending the voter, probably by U.S. mail, information about how to authenticate himself/herself and vote online. The information sent and the procedure to be used by the voter will differ with different Internet balloting systems. The voter is marked as having requested Internet balloting, so that if the voter shows up at the polls to vote, he or she will be given a provisional ballot rather than a standard ballot as a guard against double voting.

*Securing the Voting Platform:* If the voter is voting at a county-controlled site, or from a secure special purpose device, then there is nothing to do in this step. But if the voter is voting from his or her own computer, or one belonging to a third party, then some steps may need to be taken to secure the computer against malicious code or against third parties monitoring the voting process. Precisely what must be done depends on the design of the specific i-voting system.
Authentication and Ballot Request: During the time window for i-voting, a registered voter with authorization for Internet balloting can vote by Internet. When the voter wishes to cast an Internet ballot, he visits the Internet balloting web page for the proper county and authenticates himself to that server according to the procedures given in step 3 and requests a ballot in the language of his choice. The precise mechanics will differ from one voting system to another. County-controlled voting computers will likely be configured to do nothing but run the voting application and connect to the county voting site, whereas at a home or workplace PC one might have to deliberately run a browser or voting application and connect to the voting server before authenticating oneself.

Ballot Delivery: The server will send back to the voter an image of the appropriate ballot for his or her precinct in the language requested.

Voting: The voter marks the ballot with the keyboard and mouse (or touch-screen, if equipped).

Transmission of Ballot: When the voter is finished making choices, he or she clicks a button to send the ballot (and then confirms it again). The ballot is encrypted and sent to the vote server. All unencrypted record of the ballot is then erased from the voter’s computer.

Acceptance and Feedback: The vote server accepts the vote and sends feedback to the voter acknowledging that the vote has been accepted.

Processing the Ballot:

Validation and Anonymization: The vote is validated as being from a legitimate voter who has not yet voted, separated permanently from the identification of the voter, and stored for counting.

Verification: The voter is finished, but may return later to the county web site to check that his or her vote has not only been accepted (i.e. stored), but also authenticated (i.e. validated as a legitimate vote), and will thus be entered into the canvass (i.e. counted). However, the voter cannot, under any circumstances, retrieve a record of how he or she voted, or change his or her vote once the ballot is cast.

Canvass: The votes are counted.

Audit, Recount, Contest: The votes, the separated identifications of the voters, along with other information, are retained for later audit or recount, or for evidence in case the election is contested.

Internet Voting Compared to Absentee Ballots

This task force has been consciously guided by experience with absentee balloting in the design of requirements for i-voting. In many ways Internet votes, as we conceive them, can be thought of as the electronic equivalent of paper absentee ballots. Both allow ballots to be cast remotely, in principle from anywhere in the world, and at any time convenient to the voter within a time window in advance of election day. With the current California voter registration process,
there are inevitably similar procedures for requesting absentee ballots and i-voting authorization, similar mechanisms for prevention or detection of double voting, similar concerns about lost ballots or lost authorizations for i-voting, and analogous mechanisms for protecting ballot secrecy.

But similar as they are, there are some important differences between the two. One is that i-voting systems can give immediate feedback to the voter that his or her ballot was received and accepted; with absentee ballots sent through the mail there is no automatic indication to the voter that it arrived, or arrived on time. There are also ways of spoiling ballots, or over-voting with an absentee ballot, that have no analog with electronic ballots. But the most important difference is that there are security issues arising in i-voting that have no analog in the absentee ballot system.

Much of this document will be devoted to discussion of these security issues.

Elections conducted at the county level

In the United States almost all public elections, whether municipal, county, state, federal, or other (e.g. school or utility districts), and whether primary, general, or special, are conducted by county governments. On major election days there are thus 58 parallel elections in California, with the counties reporting the results of state- and federal-level contests to the Secretary of State’s office in Sacramento, and the results of other contests to the appropriate officials in those jurisdictions.

Each county, based on its history and needs, makes its own choice of voting systems from among those certified by the Secretary of State. Most counties in California today use a punch-card system. A large number of others use one of two mark-sense card systems. In the past, various counties have used mechanical voting machines. And recently several systems for voting at a computer-controlled touch screen and keyboard have been certified for use in California and are now being used by several counties. All counties in California permit absentee ballots as well. Internet voting systems would, from one point of view, be just another voting system.

It is tempting to recommend a system of i-voting to be administered at the state level, since there are substantial communication and computational economies of scale that could theoretically be achieved at that level. But barring major changes in the Election Code, Internet ballot types will have to be assembled and edited in the same way as paper ballot types (with sometimes hundreds of distinct types in up to six languages in one county). And Internet votes will still have to be aggregated with paper votes in contests at all jurisdictional levels. Currently the counties are set up to handle these complications, so it would greatly increase the logistical complexity of elections if i-voting were conducted at any level other than counties when the rest of the system is still county-based.

There is a strong security advantage as well to conducting Internet voting at the county level. If a uniform statewide system of i-voting were adopted and widely used, then certain security attacks, such as malicious code attacks against voters’ computers, or denial-of-service attacks against vote servers, could be much more effective, possibly swinging the results of statewide elections or electoral votes in a presidential election. Such a circumstance may be much more tempting to someone with a motive to interfere with an election. However, if i-voting is adopted at the county level, and different counties adopt different systems, or variations on the same system, and some counties do not adopt it at all, then a potential attacker has a much more difficult problem. Any single attack scheme is likely to work only in one county, or a few counties with nearly identical systems, with a corresponding reduction in payoff to the attacker. County-level attacks may not be worth the risk of jail to an attacker, whereas a state election conceivably might. Diversity in i-voting systems around a state, like genetic diversity in a biological system, tends to protect against large scale attacks against the system as a whole.

We therefore assume that any i-voting systems will also be administered at the county level. Each county should have the authority to choose, based on local circumstances, from among the set of i-voting systems certified by the Secretary of State. Some counties will adopt i-voting
systems earlier than others; some may reject i-voting entirely; and conceivably some might adopt more than one i-voting system for any of a number of reasons, e.g. to give voters a choice, or because a more streamlined system is appropriate for some local or special elections.

Readers can get a copy of the complete task force report at http://www.ss.ca.gov/executive/ivote.

Between 2000 and 2001, Internet voting-related bills were introduced in California, Connecticut, Florida, Hawaii, Illinois, Pennsylvania, Michigan, Montana, New York, Vermont and Virginia. Excepting Pennsylvania, most form commissions to study the issue. And most, although technically viable at the time they were considered for SSL, will die in committee. Pennsylvania’s is the most comprehensive.

**California**

AB 2519 of 2000 establishes an Internet Voting Pilot Program. The program would be under the direction of the secretary of state, and would test the viability, accuracy, security, integrity, efficacy, and public acceptance of use of an Internet voting system as a supplementary method of voting in local elections held in whole or in part within a participating county.

This bill requires the pilot program to allow voters to engage in Internet voting using a computer at any one of various county-controlled polling places within the participating county. It requires the secretary of state to select not more than three participating counties in accordance with criteria developed by the secretary of state. The bill provides that participation by a county in the pilot program would be voluntary and subject to approval by the county’s board of supervisors.

The bill requires the secretary of state to certify the Internet voting system for use by a county participating in the pilot program. It authorizes this Internet voting system to be used in a regularly scheduled or special county, municipal or district primary or general election held on or before July 1, 2003.

The bill provides that a local election that includes a candidate for any federal or state office or a state measure on the ballot is not eligible for inclusion in the program.

It requires each participating county to evaluate its participation and experience with the Internet voting system and report thereon to the secretary of state on or before October 1, 2003. It would require the secretary of state to summarize the county reports, evaluate the Internet voting system, and report thereon to the Legislature on or before January 1, 2004.

California AB 2519 passed the Legislature, but was vetoed by the governor in 2000.

**Connecticut**

Raised Bill 5122 of 2001 establishes a task force to study issues raised by the incorporation of online and Internet technologies in the voting process. This bill died in committee.

**Florida**

Chapter 164 of 2000 creates a state technology office within the department of management services and provides for a study and recommendations concerning online voting.

**Hawaii**

Three resolutions were introduced in 2001 asking the legislative reference bureau to conduct a study on the feasibility of voting via the Internet, SR57, SCR78, HR128 and HCR136.
Illinois

HB 0590 creates an Internet Voting Commission to study and implement a system of voting via the Internet at elections in 2004 and thereafter. This bill was pending in the House Rules Committee as of June 11, 2001.

Michigan

SB 250 directs the secretary of state, beginning January 1, 2002 and through December 31, 2005, to establish a pilot project to test Internet voting in at least six but not more than eight jurisdictions. The secretary of state must name an even number of pilot jurisdictions that vary in size of population. One-half must be jurisdictions in which a majority of the voters who cast ballots for president in the 2000 general election voted for the Republican party candidate and the other half must be jurisdictions in which the majority of such voters voted for the Democratic party candidate. The secretary of state must implement Internet voting in a pilot jurisdiction in an election at which a single question is on the ballot. The secretary of state must prescribe the procedures for a secure means for Internet voting. This bill was pending in committee as of June 11, 2001.

Montana

Chapter 80 of 1999 allows absentee voter registration and voting by facsimile and electronically through the Internet for overseas electors in the United States service, while recognizing that state and local election officials have the responsibility to maintain the accuracy, integrity, and secrecy of the election process and the individual election ballot.

New York

AB 242 of 2001 provides for the state board of elections to undertake a study of the feasibility for voting by mail, telephone and/or the internet and authorizes a pilot program for such voting during the study. This bill was in committee as of June 12, 2001.

Pennsylvania

HB 145 authorizes and establishes procedures to enable voting via the Internet. Specifically, the bill:

- Directs the secretary of state to establish all standards, adopt all rules and regulations, and take all steps necessary to implement Internet elections.
- Directs the secretary to authorize and direct Internet voting for registering or recording and computing the vote at all elections and primaries held at polling places in counties;
- Directs county board of elections to purchase, lease or otherwise procure for each election district of such county, the components of an Internet voting machine of a kind approved by the secretary, and the board to thereafter notify the secretary, in writing, that they have done so.

Under this bill, in order for Internet voting to be implemented, the system must:

1. Provide for the secure identification and authentication of any information transmitted on the system, including, but not limited to, personal information required to be provided by qualified electors.
2. Provide for the secure identification and authentication of all elections officials and electoral jurisdictions, their servers, and all other related electronic equipment being used by the elections officials and electoral jurisdictions supervising and responsible for voting.
3. Protect the privacy, integrity and anonymity of each qualified elector’s ballot.
4. Prevent the casting of multiple ballots in any one election cycle by any qualified elector.
5. Provide protection against tampering, fraudulent use, illegal manipulation or other abuse by
voters, elections officials or any other individual or group.

(6) Legibly convey all information mandated by law to be included in the ballot for each qualified elector, including lists of all candidates for office and all ballot measures qualified to appear on the ballot, in any set or randomly generated order mandated by law.

(7) Provide the means by which qualified electors may cast write-in votes for candidates whose names do not appear on the ballot.

(8) Provide uninterrupted, reliable availability during the voting period established by law.

(9) Be readily accessible and easy to use for all qualified electors.

(10) Be usable by qualified electors with disabilities, consistent with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327 § 12101).

(11) Be capable of being upgraded as technology improves.

(12) Be capable of archiving votes, allowing recounts and of being audited as to contents, results and process at a sufficient level to guarantee the integrity of the system and the public’s confidence in its integrity.

(13) Be capable of transmitting encrypted information over a secure network.

(14) Be capable of establishing an Internet Web site that securely receives ballots, provides ballots to qualified electors that reflect the elections in their electoral jurisdictions and is maximally resistant to being interrupted or shut down by denial of service, computer virus or other attacks.

(15) Be capable of tabulating ballots cast to its Internet Web site.

(16) Be capable of providing qualified electors with receipts showing that their votes have been received without alteration, validated as coming from a qualified elector who has not yet cast a ballot and stored for counting.

The legislation directs the secretary of state to:

(1) Approve a sufficient number of Internet voting systems ensure adequate bidding opportunities.

(2) Approve that Internet voting is fit to implement.

The bill directs that the following procedures will be applicable for the conduct of the election at the election district:

(1) At least one hour before the time set for the opening of the polls at each election, a county board shall deliver to each election district a sealed copy of a clean operating system contained on suitable write-once media approved and provided by the secretary for use in starting the Internet voting machines.

(2) The members of the district election board shall arrive at the polling place at least one-half hour before the opening of the polls. Prior to the commencement of the election, the district election board shall inspect the district components of the Internet voting system to see that they are in proper working order and shall break the seal of the operating system and insert it into the Internet voting machine and start the machine.

(3) A qualified elector who wishes to utilize the Internet voting machine procedure shall be permitted to vote at any polling place within the elector’s county of residence.

(4) A qualified elector shall retire to one of the voting booths in which the Internet voting machines are located.

(5) The elector shall visit the Internet balloting Web page for his county and authenticate himself to that server by entering any personal information required for authentication and request a ballot.

(6) The server shall send an image of the appropriate ballot back to the elector.

(7) The elector shall mark the ballot with the keyboard, mouse or touch screen if the machine is so equipped.

(8) When the elector is finished making his choices, he shall click a button on the screen to send the ballot. A screen will then be displayed that shows all of the elector’s choices for verification. When the elector confirms the selections, the ballot is encrypted and sent to the central vote server. If the elector does not confirm the selections, the ballot is reset and he has the option of remarking the ballot.

(9) When the vote server receives the ballot, it will verify that it has been sent from a qualified elector who has not yet voted and has not been altered in any form during transmission.

(10) Once the vote has been verified, the server will send feedback to the voter acknowledging
that the vote has been accepted.

(11) The server then separates the vote from the identification of the elector and stores the vote for counting.

(12) After the polls close for the day, the county elections officials, one being from each party, shall enter their separate decryption keys so that the ballots can be decrypted and canvassed.

The bill directs that any election officer or other person who unlawfully tampers with or injure or attempt to injure any component of an Internet voting system to be used at any primary or election, or who shall prevent or attempt to prevent the correct operation and communication of such a system, or any unauthorized person who shall make or have in his possession a decryption key to an Internet voting system to be used or being used in any primary or election, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty thousand dollars ($50,000) and not to exceed one hundred thousand dollars ($100,000), or to undergo an imprisonment of not less than ten years, but not more than twenty years, or both, at the discretion of the court.

Pennsylvania HB 145 was pending in a House committee as of June 11, 2001.

Vermont

HB 109 of 2001 directs the secretary of state to establish a pilot project for the general election of November 2002 for evaluating the efficiency, security, and accuracy of conducting general elections, wherein the submission of all ballots for local, state, and national offices are submitted to the secretary via the Internet. This project shall:

1. provide a Web site wherein all voters from a certain geographic area, as determined by the secretary, may cast ballots for their elected officials from their own personal computers;
2. provide every polling place, in a certain geographic area, as determined by the secretary, with the equipment to allow voters to cast ballots via the internet;
3. ensure that every officer participating in the election and every voter who casts ballots via the internet adheres to the certain provisions of state law.

This bill was left in committee for the 2001 session. It will be carried over to the 2002 session.

Virginia

Chapter 793 of 2001 requires that beginning in November 1999, the state board of elections shall implement a system that enables eligible people to request and receive an absentee ballot application electronically through the global information system known as the Internet. Electronic ballot applications must be in a form approved by the state board of elections.

California Institute of Technology and Massachusetts Institute of Technology

On a related issue, on December 15, 2000, the California Institute of Technology and the Massachusetts Institute of Technology announced a collaborative project to develop new voting technology in order “to prevent a recurrence of the problems that threatened the 2000 presidential election.” Their report assesses the magnitude of the problems, their root causes, and how technology can reduce them. The report calls for a new architecture for voting technology that is tailored to the communication and computing technologies that have revolutionized our society. They also see a new system of continual innovation that can be supported by the federal government.

Their data show that between 4 and 6 million votes were lost in the 2000 election. Their analysis of the reliability of existing voting technologies and election systems shows that the U.S. can substantially reduce the number of lost votes by immediately taking the following steps:

- Upgrade voting technologies. Replace punch cards and lever machines with optical scanners. They estimate 1.5 million of these lost votes could be recovered with this step.
- Improve voter registration systems. They recommend improved database management,
installing technological links to registration databases from polling places, and use of provisional ballots. They estimate this could save another 3 million lost votes. Aggressive LISC of provisional ballots alone might substantially reduce the number of votes lost due to registration problems.

In the long term, the voting equipment industry will develop new technologies. Their report includes the following recommendations to ensure that the best available technologies are developed by this industry:

- New architecture for voting technology. This architecture will allow greater security of electronic voting. It will allow for rapid improvement and deployment of riser interfaces—that is, better ballots. It is a framework within which they explode several myths about electronic voting.
- Significant investment by the federal government in research and development of voting equipment technologies and meaningful human testing of machines.
- The federal government should establish an independent agency to oversee testing and to collect and distribute information on the performance and cost of equipment.

Readers can get a copy of the Cal Tech report at http://vote.caltech.edu/Reports/index.html.
Kids Now – Early Childhood Initiative Statement

Kentucky HB 706, which became law in 2000, is a comprehensive Act that:
• Establishes an Early Childhood Development Authority in the office of the governor to manage expenditures of an Early Childhood Development Fund;
• Requires the authority to develop a state plan for funding priorities and programs;
• Creates Community Early Childhood Councils for service areas designated by the authority;
• Requires the councils to be established by local child-care resource and referral agencies and family resource centers;
• Creates an Early Childhood Business Council and an Early Childhood Professional Development Council;
• Requires a vision examination by the state board of education for all students upon admission to public schools;
• Amends state law to replace the definitions of “high-risk infant” and “hearing risk certificate” with “auditory screening report” and “infant at high risk of hearing loss;”
• Adds auditory screening indicating a hearing loss as an indicator of hearing risk;
• Requires the state Commission for Children with Special Health Care Needs to conduct hearing evaluations, contact parents, make referrals to the state early intervention system point of entry, and forward reports of evaluations;
• Requires hospitals to provide an auditory screening for all infants and forward an auditory screening report to parents, the attending physician and the commission for children with special needs;
• Establishes a Health Access Nurturing Development Services (HANDS) Program as a voluntary statewide home visitation program;
• Establishes a scholarship program for child-care workers to obtain early childhood credentials;
• Establishes a program of monetary incentives and merit awards for child-care programs;
• Establishes a voluntary quality-based graduated child-care rating system;
• Expands the Healthy Start In Child Care Program;
• Establishes technical assistance positions dedicated to child care;
• Requires the state inspector general to issue a statement of deficiency and time frame for corrections for child day-care center violations;
• Permits child-care centers to appeal adverse license or penalty actions;
• Prohibits employment of violent offenders and people found to have abused or neglected a child in day-care centers;
• Adds minimum requirements for directors of child day-care centers;
• Adds minimum requirements for family child-care certification;
• Requires a target license surveyor ratio of 1 to 50 child-care facilities;
• Requires training for license surveyors;
• Requires improved monitoring of unregulated providers receiving child-care subsidies;
• Establishes penalties for child-care subsidy violations;
• Prohibits child-care providers to be or employ people who are convicted of sex crimes or violent crimes, or people who have been found to have abused or neglected a child; and
• Adds penalties for child-care providers or employers.
Kinship Foster Care

This Act directs that when a child has been removed from their home and is in the care, custody, or guardianship of the state social services department, the department must attempt to identify a relative who would be appropriate for placement of the child. If the department determines that it is in the best interest of a child that the child be placed with a relative for foster care, or if a relative advises the department that the relative is interested in providing placement for a child requiring foster care, and the relative is not already licensed to provide foster care, the department shall inform the relative of the procedures for being licensed as a kinship foster parent, assist the foster parent with the licensing process, and inform the relative of availability of payments and other services to kinship foster parents. If the relative is licensed by the department to provide kinship foster care services, in accordance with rules and regulations adopted by the department regarding kinship foster care, and a placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether in money or in services.

Six states have similar laws: Alabama, Arkansas, California, Louisiana, Oklahoma and Tennessee.

Submitted as:
South Carolina
Act 219 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 to Establish a Kinship Foster Care Program.”

Section 2. [Definitions.]
(A) As used in this section, unless the context otherwise requires:
(1) “Department” means the [department of social services]; and
(2) “Foster parent” means any person with whom a child in the care, custody, or guardianship of the [department] is placed for temporary or long-term care.

(B) There is established a Kinship Foster Care Program in the state [department of social services].

(C) When a child has been removed from his home and is in the care, custody, or guardianship of the [department], the [department] shall attempt to identify a relative who would be appropriate for placement of the child in accordance with the preliminary investigation requirements of [insert citation]. If the [department] determines that it is in the best interest of a child requiring out-of-home placement that the child be placed with a relative for foster care, or if a relative advises the [department] that the relative is interested in providing placement for a child requiring foster care, and the relative is not already licensed to provide foster care, the [department] shall inform the relative of the procedures for being licensed as a kinship foster parent, assist the foster parent with the licensing process, and inform the relative of availability of payments and other services to kinship foster parents. If the relative is licensed by the [department] to provide kinship foster care services, in accordance with rules and regulations adopted by the [department] regarding kinship foster care, and a placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether in money or in services.

(D) The [department] shall establish, in accordance with this section and the rules and regulations promulgated hereunder, eligibility standards for becoming a kinship foster parent.

(1) Relatives within the first, second, or third degree to the parent or stepparent of a child
who may be related through blood, marriage, or adoption may be eligible for licensing as a kinship foster parent.

(2) The kinship foster parent must be [twenty-one (21)] years of age or older, except that if the spouse or partner of the relative is [twenty-one (21)] years of age or older and living in the home, and the relative is between [eighteen (18)] and [twenty-one (21)] years of age, the [department] may waive the age requirement.

(3) A person may become a kinship foster parent only upon the completion of a full kinship foster care licensing study performed in accordance with rules and regulations promulgated pursuant to this section. Residents of the household who are age [eighteen (18)] years of age or older must undergo the state and federal fingerprint review procedures as provided for in [insert citation]. The [department] shall apply the screening criteria in to the results of the fingerprint reviews and the licensing study.

(b) The [department] shall maintain the confidentiality of the results of fingerprint reviews as provided for in state and federal regulations.

(4) The [department] shall determine, after a thorough review of information obtained in the kinship foster care licensing process, whether the person is able to care effectively for the foster child.

(E) (1) The [department] shall involve the kinship foster parents in development of the child’s permanent plan pursuant to [insert citation] and other plans for services to the child and the kinship foster home. The [department] shall give notice of proceedings and information to the kinship foster parent as provided for in [insert citation] for other foster parents. If planning for the child includes the use of child daycare, the [department] shall pay for childcare arrangements, according to established criteria for payment of these services for foster children. If the permanent plan for the child involves requesting the court to grant custody or guardianship of the child to the kinship foster parent, the [department] must ensure that it has informed the kinship foster parent about adoption, including services and financial benefits that might be available.

(2) The kinship foster parent shall cooperate with any activities specified in the case plan for the foster child, such as counseling, therapy or court sessions, or visits with the foster child’s parents or other family members. Kinship foster parents and placements made in kinship foster care homes are subject to the requirements of [insert citation].

Section 3. [Foster Parent Fingerprinting Requirements; Temporary Licenses.]

(A) A person applying for licensure as a foster parent and a person [eighteen (18)] years of age or older, residing in a home in which a person has applied to be licensed as a foster parent, must undergo a state fingerprint review to be conducted by the [state law enforcement division] to determine any state criminal history and a fingerprinting review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The [department of social services] may issue a temporary license to a person after the favorable completion of the [state law enforcement division] fingerprint review if each person subject to the fingerprinting requirements affirms in writing on a form provided by the [department] that they have not been convicted of any crime provided for in [insert citation]. The temporary license shall be valid until such time as the Federal Bureau of Investigation results are received by the department, and a permanent license is issued or denied, unless the department terminates the temporary license earlier.”

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

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

Section 6. [Effective Date.] [Insert effective date.]
Liability of Donated Labor

This Act establishes criteria for public entities to follow when seeking volunteers on community improvement projects and for determining a contractor’s industrial insurance liability when labor is donated for such a project.

Submitted as:
Washington
Chapter 138, Laws of 2001

Suggested Legislation

(Act, enacting clause, etc.)

Section 1. [Short Act.] This Act may be cited as “An Act Limiting the Liability for Donated Labor on Community Projects.”

Section 2. [Legislative Findings.]

The legislature finds that government and business partnerships on projects for community improvement can assist communities to preserve historic property and create opportunities for volunteer service. The legislature also recognizes that uncertainty about risks and obligations may deter employers who would otherwise be willing to donate materials and equipment to a community project. The purpose of this Act is to encourage participation by establishing clear criteria for determining industrial insurance obligations with respect to donated labor on certain community projects.

Section 3. [Public Entities – Community Improvement Projects.]

(1) Whenever a public entity engages in any work, or lets a contract, in which workers are employed for wages, this Act shall be applicable thereto. The employer’s payments into the accident fund shall be made from the treasury of the public entity. If the work is being done by contract, the payroll of the contractor and the subcontractor shall be the basis of computation and, in the case of contract work consuming less than [one (1)] year in performance, the required payment into the accident fund shall be based upon the total payroll. The contractor and any subcontractor shall be subject to the provisions of this Act, and the state for its general fund, the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his or her proportionate amount of the payment.

(2) (a) A public entity may seek partnerships with volunteer groups and businesses to engage in community improvement projects to benefit the public entity. In administering a project, the public entity must:

(i) Provide prospective donors and participants written notice of the risks and responsibilities to be assumed by the public entity and the donors or participants. A volunteer donating labor on the project must, before beginning work, document in writing that he or she has received the notice and that he or she is donating labor as a result of his or her own free choice; and

(ii) Pay premiums and assessments required under this Act to secure medical aid benefits under [insert citation] for volunteers donating labor on the project.

(b) A contractor or employer donating equipment or materials for use on a community improvement project shall not, for the purposes of in this Act, be considered the employer of an individual donating labor unless the contractor or employer pays the individual wages for working on the project or makes working on the project a condition of employment. This subsection applies regardless of whether:

(i) The contractor or employer informs the individual about the community
improvement project or encourages the individual to donate labor on the project;

(ii) The individual uses equipment or materials on the project that are donated by the contractor or the individual’s employer; or

(iii) The individual is granted maintenance or reimbursement for actual expenses necessarily incurred in performing labor for the project.

(3) Whenever and so long as, by state law, city charter, or municipal ordinance, provision is made for employees or peace officers injured in the course of employment, such employees shall not be enacted to the benefits of this Act and shall not be included in the payroll of the municipality under this Act: Provided, that whenever any state law, city charter, or municipal ordinance only provides for payment to the employee of the difference between his or her actual wages and that received under this Act such employees shall be entitled to the benefits of this Act and may be included in the payroll of the municipality.

(4) The definitions in this subsection apply throughout this section, unless the context clearly requires otherwise.

(a) “Community improvement project” means a project sponsored by a public entity that uses donated labor, materials, or equipment and includes, but is not limited to, projects to repair, restore, or preserve historic property.

(b) “Historic property” means real property owned by a public entity including, but not limited to, barns, schools, military structures, and cemeteries.

(c) “Public entity” means the state, county, any municipal corporation, or other taxing district.

Section 4. [Volunteer: Definitions.]

(1) Volunteers shall be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under [insert citation].

(2) A “volunteer” shall mean a person who performs any assigned or authorized duties for the state or any agency thereof, except emergency services workers as described by [insert citation], brought about by one’s own free choice, receives no wages, and is registered and accepted as a volunteer by the state or any agency thereof, prior to the occurrence of the injury or the contraction of an occupational disease, for the purpose of engaging in authorized volunteer service: Provided, that such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing their assigned or authorized duties.

(3) Any and all premiums or assessments due under this Act on account of such volunteer service shall be the obligation of and be paid by the state or any agency thereof which has registered and accepted the services of volunteers.

(4) Except as provided in Section 3 of this Act, volunteers may be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under [insert citation] at the option of any city, county, town, special district, municipal corporation, or political subdivision of any type, or any private nonprofit charitable organization, when any such unit of local government or any such nonprofit organization has given notice of covering all of its volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

(5) A “volunteer” shall mean a person who performs any assigned or authorized duties for any such unit of local government, or any such organization, except emergency services workers as described by [insert citation], fire fighters covered by [insert citation], brought about by one’s own free choice, receives no wages, and is registered and accepted as a volunteer by any such unit of local government, or any such organization which has given such notice, for the purpose of engaging in authorized volunteer services: provided, that such person shall be deemed to be a volunteer although they may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing their assigned or authorized duties: provided, further, that juveniles performing community services under [insert citation] may not be granted coverage as volunteers under this section.

(6) Any and all premiums or assessments due under this Act on account of such volunteer service
for any such unit of local government, or any such organization shall be the obligation of and be paid by
such organization which has registered and accepted the services of volunteers and exercised its option to
secure the medical aid benefits under [insert citation].

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

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

Section 7. [Effective Date.] [Insert effective date.]
Misrepresenting A Business Name or Location In a Telephone Directory or Directory Assistance Database

This Act makes it unlawful for a person to misrepresent the geographic location of a supplier or a service or product by listing a fictitious business name or an assumed business name in a local telephone directory or directory assistance database.

Submitted as:
Iowa
HF 2148
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Prohibiting The Use of a Telephone Listing That Misrepresents the Name and Location of a Business.”

Section 2. [Unlawful Practice: Misrepresenting Business Name or Location in a Telephone Listing.]
(1) It is an unlawful practice for a person to misrepresent the geographic location of a supplier or a service or product by listing a fictitious business name or an assumed business name in a local telephone directory or directory assistance database if all of the following apply:
   (a) The name purportedly represents the geographic location of the supplier.
   (b) The listing does not identify the address, including the city and state, of the supplier.
   (c) Calls made to a local telephone number are routinely forwarded to or otherwise transferred to a business location that is outside the local calling area covered by the local telephone directory or directory assistance database.

(2) A telephone company, provider of directory assistance, publisher of a local telephone directory, or officer, employee, or agent of such company, provider, or publisher shall not be liable in a civil action under this section for publishing in any directory or directory assistance database the listing of a fictitious or assumed business name of a person in violation of subparagraph (1) unless the telephone company, directory assistance provider, directory publisher, or officer, employee, or agent of the company, provider, or publisher is the person committing such violation.

(3) For purposes of this paragraph:
   (a) “Local telephone directory” means a telephone classified advertising directory or the business section of a telephone directory that is distributed free of charge to some or all telephone subscribers in a local area directory.
   (b) “Local telephone number” means a telephone number that has a three-number prefix used by the provider of telephone service for telephone customers physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800, 888, or 900 exchange numbers listed in the telephone directory.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Nursing Facilities: Electronic Monitoring

Putting a family member in a nursing home can be upsetting – ask anyone who has done it. Ensuring that a family member receives good care while in the home can also be a concern. Enabling the family to electronically monitor their loved one in the home has been proposed as a way to help accomplish the latter.

In 2001, legislation was introduced in nine states to address electronic monitoring of nursing home patients by their relatives or legal guardian: Florida, Louisiana, Maryland, Massachusetts, North Carolina, New Jersey, Ohio, Pennsylvania and Texas. Only Florida and Texas enacted laws, but the others are worth mentioning as the issue in likely to recur in other state capitals in 2002 and beyond.

Florida enacted a provision in 2001 in an omnibus long-term care reform Act (SB 1202) that requires the state agency for health care administration and the state office of the attorney general to study the use of electronic monitoring devices in nursing homes.

Louisiana’s House adopted HSR 26 which requests the House Health and Welfare Committee to study the use of electronic monitoring devices to allow a nursing home resident or the resident’s legal representative to monitor the resident. HB 457, which permits a nursing home resident or the resident’s legal representative to monitor the resident through the use of electronic monitoring devices, was scheduled for a hearing in January 2002.

Maryland HB 433 requires nursing homes to permit a resident or a resident’s legal representative to monitor the resident with video cameras or other electronic monitoring devices. It requires the homes to provide power sources and mounting space to set up electronic monitoring devices. It prohibits the homes from refusing to admit an individual or removing a resident from the related institution because of a request to install an electronic monitoring device. The bill establishes penalties for violators and requires that tapes created from electronic monitoring be admissible in criminal and civil actions brought in state courts. This bill did not pass the Legislature in 2001. It was referred for interim study in 2001. It must be reintroduced in the next Legislature to remain viable. Maryland legislative staff said this legislation will not likely be introduced again in Maryland until after 2003. That will be after a report is due on a pilot program that was started in 2001 to set up monitors in three nursing homes that volunteered for the pilot.

New Jersey SB 2231 directs that a nursing home shall permit a resident to be monitored or the resident’s legal representative to monitor the resident in the resident’s room through the use of an electronic monitoring device in accordance with the provisions of the Act. A nursing home shall inform a resident and the resident’s legal representative of the resident’s right to electronic monitoring. New Jersey SB 2231 was in committee as of July 27, 2001.

North Carolina HB 996 permits residents of nursing homes or adult care homes, and their families to monitor the resident through the use of video cameras or other electronic monitoring devices at the expense of the resident; requires nursing homes and adult care homes to provide a power source and mounting space for electronic monitoring devices; prohibits nursing homes and adult care homes from refusing to admit residents because of a request to install electronic monitoring devices; and requires that tapes from monitoring devices be admissible in criminal and civil actions subject to the rules of evidence. HB 996 died in committee.

Ohio law currently specifies rights of a resident of a home, including the right to a safe and clean living environment, the right to make personal decisions, and the right to be free from abuse. “Home” includes facilities licensed by the Director of Health as nursing homes or residential care facilities; skilled nursing facilities certified under Medicare or Medicaid; and county homes. A resident who believes that the resident’s rights have been violated may file a grievance with the home’s grievance committee. Any other person may file a report with the Ohio Department of Health. If the grievance committee determines that a violation exists, the violation must be corrected within ten days. If the violation is not corrected, the grievance committee must refer the violation to the Department of Health. The Department of Health must investigate grievances or refer them to the attorney general for investigation. It also must investigate any reports it receives from people who are not residents of homes. Under certain circumstances the
Department may hold adjudicative hearings. If a home is found to have violated a resident’s rights, it may be ordered to correct the violation and fined. The home may appeal the Department’s order to a court of common pleas. The Department must refer any criminal matters to the county prosecuting attorney.

Ohio HB 216 extends residents’ rights to include the right, on request, to the use of electronic monitoring devices in a resident’s room. To exercise this right, a resident or resident’s sponsor must pay the costs of the devices and installation; arrange the device so as to protect the privacy of others to the extent reasonably possible; and have a notice of electronic monitoring posted on the resident’s room door. Under the bill, “electronic monitoring device” means video surveillance cameras, audio devices, video telephones, Internet video surveillance devices, or any other device designed to capture the audio recordings or visual images of its surroundings.

Under Ohio’s bill, a home must allow a resident to use an electronic monitoring device and provide reasonable physical accommodations for the device, including a secure place to mount the device and access to a power source. A home may not refuse to admit an individual as a resident and may not discharge a resident due to a request to use an electronic monitoring device. The home’s administrator may require requests for installation of electronic monitoring devices to be made in writing. If a home fails to honor a resident’s right to use electronic monitoring devices, the resident has the same recourse as provided in current law when other resident’s rights are violated: the resident may file a grievance with the home’s grievance committee, which is required to refer it to the Department of Health if a violation is found and is not corrected. Ohio HB 216 was in committee as of August 24, 2001.

This SSL draft is based on Texas SB 177, an Act that permits audio or video monitoring of a resident’s room in a nursing home facility and provides the parameters for both the resident and the nursing home to follow in relation to monitoring.

Submitted as:
Texas
SB 177 (enrolled version)

**Suggested Legislation**

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as “An Act Relating to Electronic Monitoring Devices in the Rooms of Residents of Convalescent or Nursing Homes or Related Institutions.”

2

3 Section 2. [Definitions.] As used in this Act:

4 (a) “Authorized electronic monitoring” means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

5 (b) “Electronic monitoring device:”

6 (1) includes:

7 (A) video surveillance cameras installed in the room of a resident; and

8 (B) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room; and

9 (2) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

10 Section 3. [Criminal and Civil Liability.]

11 (a) It is a defense to prosecution under [insert citation], or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of
an institution.  

(b) This Act does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this Act; or  
(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this Act; or  
(B) the fact that authorized electronic monitoring is required to be conducted with notice to people who enter a resident’s room.  

c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this Act concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by [insert citation]; or  
(2) a communication as defined [insert citation].  

Section 4. [Covert Use of Electronic Monitoring Device; Liability of Department or Institution.]  

(a) For purposes of this Act, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(1) the placement and use of the device is not open and obvious; and  
(2) the institution and the [department] are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.  

(b) The [department] and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.  

Section 5. [Required Form on Admission.] The [department] by rule shall prescribe a form that must be completed and signed on a resident’s admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;  
(2) that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;  
(3) that a resident or the resident’s guardian or legal representative is entitled to conduct authorized electronic monitoring under this Act, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the state [department of human services];  
(4) the basic procedures that must be followed to request authorized electronic monitoring;  
(5) the manner in which this Act affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and  
(6) any other information regarding covert or authorized electronic monitoring that the [department] considers advisable to include on the form.  


(a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this Act, notwithstanding the terms of any durable power of attorney or similar instrument.  

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this Act.  

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially
declared to lack the required capacity, only the legal representative of the resident may request electronic
monitoring under this Act. The [department] by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for
residents, and other interested people to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident’s legal representative for purposes of this Act,
including:

(A) people who may be considered the legal representative under the terms of an
instrument executed by the resident when the resident had capacity; and

(B) people who may become the legal representative for the limited purpose of
this Act under a procedure prescribed by the [department].

Section 7. [Authorized Electronic Monitoring: Form of Request; Consent of Other Residents in
Room.]

(a) A resident or the guardian or legal representative of a resident who wishes to conduct
authorized electronic monitoring must make the request to the institution on a form prescribed by the
[department].

(b) The form prescribed by the [department] must require the resident or the resident’s guardian or
legal representative to:

(1) release the institution from any civil liability for a violation of the resident’s privacy
rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera,
whether the camera will always be unobstructed or whether the camera should be obstructed in specified
circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this
purpose by the [department], if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been
judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 6 (c) of this Act may request electronic
monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign
the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the [department] under Subsection (b)(3) must condition the consent of
another resident in the room on the other resident also releasing the institution from any civil liability for a
violation of the person’s privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera,
condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or
prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another
resident is moved into the room who has not yet consented to the electronic monitoring, authorized
electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The [department] may include other information that the [department] considers to be
appropriate on either of the forms that the [department] is required to prescribe under this Section.

(h) The [department] may adopt rules prescribing the place or places that a form signed under this
section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this Section have
been completed and returned to the institution; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a
condition of the consent given by or on behalf of another resident in the room.

Section 8. [Authorized Electronic Monitoring: General Provisions.]

(a) An institution shall permit a resident or the resident’s guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident’s guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident’s room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this Act is not compulsory and may be conducted only at the request of the resident or the resident’s guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

   (1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and
   (2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident’s guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident’s guardian or legal representative is responsible for:

   (1) all costs associated with installation of equipment; and
   (2) maintaining the equipment.

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The [department] may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident’s guardian or legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Section 9. [Reporting Abuse and Neglect.]

(a) For purposes of the duty to report abuse or neglect under [insert citation] and the criminal penalty for the failure to report abuse or neglect under [insert citation], a person who is conducting electronic monitoring on behalf of a resident under this Act is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this Act gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under [insert citation] and of the criminal penalty for the failure to report abuse or neglect under [insert citation].

(c) A person is required to report abuse based on the person’s viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person’s viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.
Section 10. [Use of Tape or Recording by Agency or Court.]
(a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this Act may be admitted into evidence in a civil or criminal court action or administrative proceeding.
(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:
   (1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;
   (2) the contents of the tape or recording have not been edited or artificially enhanced; and
   (3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.
(c) A person who sends more than one tape or recording to the [department] shall identify for the [department] each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The [department] may adopt rules encouraging people who send a tape or recording to the [department] to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Section 11. [Notice at Entrance to Institution.] Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The [department] by rule shall prescribe the format and the precise content of the notice.

Section 12. [Enforcement.]
(a) The [department] may impose appropriate sanctions under this Act on an administrator of an institution who knowingly:
   (1) refuses to permit a resident or the resident’s guardian or legal representative to conduct authorized electronic monitoring;
   (2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;
   (3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or
   (4) violates another provision of this Act.
(b) The [department] may assess an administrative penalty under [insert citation] against an institution that:
   (1) refuses to permit a resident or the resident’s guardian or legal representative to conduct authorized electronic monitoring;
   (2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;
   (3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or
   (4) violates another provision of this Act.

Section 13. [Criminal Offense.]
(a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident’s room in accordance with this Act or a tape or recording made...
by the device commits an offense. An offense under this Section is a [Class B misdemeanor].

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the 
effective consent of the resident on whose behalf the electronic monitoring device was installed or the 
resident’s guardian or legal representative.

Section 14. [Statement of Resident Rights.] The [department’s] Statement of Resident Rights as 
adopted under [insert citation] shall include language to address the resident’s right to place in the 
resident’s room an electronic monitoring device that is owned and operated by the resident or provided by 
the resident’s guardian or legal representative.

Section 15. [Monitoring] The [committee] shall monitor the implementation of this Act and study 
the impact of that law on the [department], institutions, and residents.

Section 16. [Forms.] 
The [department of human services] shall devise a procedure under which current residents of 
convalescent and nursing homes and related institutions, or, when appropriate, another person on a 
resident’s behalf, are encouraged to sign the form that is required to be signed on admission under Section 
5 of this Act.

Section 17. [Severability.] [Insert severability clause.]

Section 18. [Repealer.] [Insert repealer clause.]

Section 19. [Effective Date.] [Insert effective date.]
Prepaid Calling Cards Rate Disclosure

This Act requires companies selling prepaid calling cards to disclose clearly and conspicuously the terms and services that are obtained by purchasing the cards.

Submitted as:
Connecticut
Public Act No. 00-71
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Requiring Disclosure of Rate Information on Prepaid Calling Cards.”

Section 2. [Definitions.] As used in this Act,
“Prepaid calling card company” means a company that provides a prepaid calling service to the public using its own network or resold services.
“Prepaid calling service” means a prepaid telecommunications service that allows an end user to originate a call using an access number and authorization code.
“Telecommunications service” means telecommunications service, as defined in [insert citation].

Section 3. [Surcharges and Fees: Disclosure.] Each prepaid calling card company that sells or offers for sale prepaid calling cards shall, at the time of sale, disclose clearly and conspicuously:
(1) Any surcharges or fees, including monthly fees, per call access fees and surcharges for the first minute or unit of use that may be applicable to the use of the prepaid calling card;
(2) Any rounding of time used by the consumer and the formula of computation of such rounding of time;
(3) Any application or other fees charged to the consumer;
(4) Any restrictions on use of the prepaid calling card; and
(5) A toll-free consumer assistance telephone number.

Section 4. [Regulations.] The [commissioner of consumer protection] may adopt regulations in accordance with the provisions of [insert citation], prescribing additional information that a prepaid calling card company shall provide to consumers at the time of purchase.

Section 5. [Violations.] A violation of this Act shall be deemed an unfair or deceptive practice under [insert citation].

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

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

Section 8. [Effective Date.] [Insert effective date.]
Preservation and Retention of DNA in Felony Cases

This Act establishes a procedure for the storage, preservation and retention of human biological evidence in felony cases and a procedure for convicted felons to petition the court that entered the conviction to apply for a new scientific investigation of human biological evidence. The following elements must be met for the court to order the testing:

1. The evidence was not known or available at the time the conviction became final or not previously tested because the testing procedure was not available at the time;
2. The chain of custody establishes that the evidence has not been altered, tampered with, or substituted;
3. The testing is materially relevant, non-cumulative, and necessary and may prove the convicted person's actual innocence;
4. The testing requested involves a scientific method; and
5. The convicted person did not unreasonably delay the filing of the petition after the evidence or the test for the evidence became available. The petition also must state the reasons the evidence was not known or tested by the time the conviction became final and the reasons that the newly discovered or untested evidence may prove the actual innocence of the person convicted.

The Act also establishes a procedure for the issuance of a writ of actual innocence for persons convicted of a felony upon a plea of not guilty or for any person sentenced to death or convicted of a Class 1 or 2 felony or a felony for which the maximum penalty is life imprisonment. The petition is to be filed with the state Supreme Court and must allege:

1. That the petitioner’s conviction qualifies;
2. That the petitioner is actually innocent of the crime for which they were convicted;
3. An exact description of the human biological evidence and the scientific testing supporting the allegation of innocence;
4. That the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction became final, or if known, was not subject to the scientific testing for the reasons set forth in the petition;
5. The date the test results became known to the petitioner or any attorney of record;
6. That the petitioner or their attorney of record has filed the petition within 60 days of obtaining the test results;
7. That the petitioner is currently incarcerated;
8. The reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt; and
9. For any conviction which became final in the circuit court after June 30, 1996, that the evidence was not available for testing under state law. If the state Supreme Court determines that a resolution of the case requires further development of the facts, it may order the court to conduct a hearing to certify findings of fact on certain issues. After considering the petition and the state's response, the previous records of the case, the record of any hearing on newly tested evidence and any findings certified from the lower court, the state Supreme Court may dismiss the petition or vacate or modify the conviction.

Submitted as:
Virginia
Act 874 of 2001
Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Address Storing, Preserving and Retaining Human Biological Evidence in Felony Cases.”

Section 2. [Storage, Preservation and Retention of Human Biological Evidence in Felony Cases.]

A. Notwithstanding any provision of law or rule of court, upon motion of a person convicted of a felony but not sentenced to death or his attorney of record to the [circuit court] that entered the judgment for the offense, the [circuit court] shall order the storage, preservation, and retention of any human biological evidence or representative samples collected or obtained in the case for a period of up to [fifteen (15)] years from the time of conviction, unless the [circuit court] determines, in its discretion, that the evidence should be retained for a longer period of time. Upon the filing of such a motion, the defendant may request a hearing for the limited purpose of identifying the human biological evidence or representative samples that are to be stored in accordance with the provisions of this section. Upon the granting of the motion, the [circuit court] shall order the [clerk of the circuit court] to transfer all such evidence to the [division or forensic science]. The [division or forensic science] shall store, preserve and retain such evidence. If the evidence is not within the custody of the [clerk] at the time the order is entered, the [court] shall order the governmental entity having custody of the evidence to transfer such evidence to the [division or forensic science]. Upon the entry of an order under this subsection, the [court] may upon motion or upon good cause shown, with notice to the convicted person, his attorney of record and the [state’s attorney], modify the original storage order, as it relates to time of storage of the evidence or samples, for a period of time greater than or less than that specified in the original order.

B. In the case of a person sentenced to death, the [court] that entered the judgment shall, in all cases, order any human biological evidence or representative samples to be transferred by the governmental entity having custody to the [division or forensic science]. The [division or forensic science] shall store, preserve, and retain such evidence until the judgment is executed. If the person sentenced to death has his sentence reduced, then such evidence shall be transferred from the [division] to the original investigating law enforcement agency for storage as provided in this section.

C. Pursuant to standards and guidelines established by the [division or forensic science], the order shall state the method of custody, transfer and return of any evidence to insure and protect the state’s interest in the integrity of the evidence. Pursuant to standards and guidelines established by the [division or forensic science], the [division or forensic science], local law enforcement agency or other custodian of the evidence shall take all necessary steps to preserve, store, and retain the evidence and its chain of custody for the period of time specified.

D. In any proceeding under this section, the [court], upon a finding that the physical evidence is of such a nature, size or quantity that storage, preservation or retention of all of the evidence is impractical, may order the storage of only representative samples of the evidence. The [division of forensic science] shall take representative samples, cuttings or swabbings and retain them. The remaining evidence shall be handled according to [insert citation] or as otherwise provided for by state law.

E. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this section shall create any cause of action for damages against the state, or any of its political subdivisions or officers, employees or agents of the state or its political subdivisions.

Section 3. [Motion by a Convicted Felon for Scientific Analysis of Newly Discovered or Previously Untested Scientific Evidence; Procedure.]

A. Notwithstanding any other provision of law or rule of court, any person convicted of a felony may, by motion to the [circuit court] that entered the original conviction, apply for a new scientific investigation of any human biological evidence related to the case that resulted in the felony conviction if:
(1) The evidence was not known or available at the time the conviction became final in the [circuit court] or the evidence was not previously subjected to testing because the testing procedure was not available at the [division or forensic science] at the time the conviction became final in the [circuit court];

(2) The evidence is subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way;

(3) The testing is materially relevant, non-cumulative, and necessary and may prove the convicted person’s actual innocence;

(4) The testing requested involves a scientific method employed by the [division or forensic science]; and

(5) The convicted person has not unreasonably delayed the filing of the petition after the evidence or the test for the evidence became available at the [division or forensic science].

B. The petitioner shall assert categorically and with specificity, under oath, the facts to support the items enumerated in subsection A and:

(1) The crime for which the person was convicted;

(2) The reason or reasons the evidence was not known or tested by the time the conviction became final in the [circuit court]; and

(3) The reason or reasons that the newly discovered or untested evidence may prove the actual innocence of the person convicted. Such motion shall contain all relevant allegations and facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions.

C. The petitioner shall serve a copy of such motion upon the [state’s attorney]. The state shall file its response to the motion within [thirty (30) days] of the receipt of service. The [court] shall, no sooner than [thirty (30)] and no later than [ninety (90)] days after such motion is filed, hear the motion. Motions made by a petitioner under a sentence of death shall be given priority on the docket.

D. The [court] shall, after a hearing on the motion, set forth its findings specifically as to each of the items enumerated in subsections A and B and either:

(1) Dismiss the motion for failure to comply with the requirements of this section;

(2) Dismiss the motion for failure to state a claim upon which relief can be granted; or

(3) Order that the testing be done by the [division or forensic science] based on a finding of clear and convincing evidence that the requirements of subsection A have been met.

E. The [court] shall order the tests to be performed by the [division or forensic science] and prescribe in its order, pursuant to standards and guidelines established by the [division], the method of custody, transfer, and return of evidence submitted for scientific investigation sufficient to insure and protect the state’s interest in the integrity of the evidence. The results of any such testing shall be furnished simultaneously to the [court], the petitioner and his attorney of record and the [state’s attorney]. The [division or forensic science] shall give testing priority to cases in which a sentence of death has been imposed. The results of any tests performed and any hearings held pursuant to this section shall become a part of the record.

F. Nothing in this section shall constitute grounds to delay setting an execution date pursuant to [insert citation] or to grant a stay of execution that has been set pursuant to [insert citation].

G. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus proceeding or any other appeal. Nothing in this section shall create any cause of action for damages against the state or any of its political subdivisions or any officers, employees or agents of the state or its political subdivisions.

H. In any petition filed pursuant to this Act, the defendant is entitled to representation by counsel subject to the provisions of [insert citation].

Section 4. [Issuance of Writ of Actual Innocence.] Notwithstanding any other provision of law or rule of court, upon a petition of a person incarcerated who was convicted of a felony upon a plea of not guilty, or for any person, regardless of the plea, sentenced to death, or convicted of a [Class 1 felony],
Section 5. [Contents and Form of the Petition Based on Previously Unknown or Untested Human Biological Evidence of Actual Innocence.]

A. The petitioner shall allege categorically and with specificity, under oath, the following:

(1) The crime for which the petitioner was convicted, and that such conviction was upon a plea of not guilty or that the person is under a sentence of death or convicted of (1) a [Class 1 felony], (2) a [Class 2 felony], or any felony for which the maximum penalty is imprisonment for life;

(2) That the petitioner is actually innocent of the crime for which he was convicted;

(3) An exact description of the human biological evidence and the scientific testing supporting the allegation of innocence;

(4) That the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction became final in the [circuit court], or if known, the reason that the evidence was not subject to the scientific testing set forth in the petition;

(5) The date the test results under Section 3 of this Act became known to the petitioner or any attorney of record;

(6) That the petitioner or his attorney of record has filed the petition within [sixty (60)] days of obtaining the test results under Section 3 of this Act;

(7) That the petitioner is currently incarcerated;

(8) The reason or reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt, and

(9) For any conviction that became final in the [circuit court] after [June 30, 1996], that the evidence was not available for testing under [insert citation]. The [supreme court] may issue a stay of execution pending proceedings under the petition. Nothing in this Act shall constitute grounds to delay setting an execution date pursuant to [insert citation] or to grant a stay of execution that has been set pursuant to [insert citation].

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions. A copy of any test results shall be filed with the petition. The petition shall be filed on a form provided by the [supreme court]. If the petitioner fails to submit a completed form, the [court] may dismiss the petition or return the petition to the prisoner pending the completion of such form. The petitioner shall be responsible for all statements contained in the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in [insert citation].

C. The [supreme court] shall not accept the petition unless it is accompanied by a duly executed return of service verifying that a copy of the petition and all attachments has been served on the [state’s attorney] of the jurisdiction where the conviction occurred and the [attorney general]. The [attorney general] shall have [thirty (30)] days after receipt of the record in which to file a response to the petition. The response may contain a proffer of any evidence pertaining to the guilt of the defendant that is not included in the record of the case, including evidence that was suppressed at trial.

D. The [supreme court] may, when the case has been before a trial or appellate court, inspect the record of any trial or appellate court action, and the [court] may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the [court] the whole record or any part of any record.

E. In any petition filed pursuant to this Act, the defendant is entitled to representation by counsel subject to [insert citation].
Section 6. [Determination by the Supreme Court for Findings of Fact by the Circuit Court.] If the [supreme court] determines from the petition, from any hearing on the petition, from a review of the records of the case, including the record of any hearing on a motion to test evidence pursuant to [insert citation], or from any response from the [attorney general] that a resolution of the case requires further development of the facts under this Act, the court may order the [circuit court] to conduct a hearing within [ninety (90)] days after the order has been issued to certify findings of fact with respect to such issues as the [supreme court] shall direct. The record and certified findings of fact of the [circuit court] shall be filed in the [supreme court] within [thirty (30)] days after the hearing is concluded. The petitioner or his attorney of record, the [state’s attorney] and the [attorney general] shall be served a copy of the order stating the specific purpose and evidence for which the hearing has been ordered.

Section 7. [Relief Under Writ.] Upon consideration of the petition, the response by the state, previous records of the case, the record of any hearing held under this Act and the record of any hearings pursuant to Section 6 of this Act, the [court] shall either dismiss the petition for failure to state a claim or assert grounds upon which relief shall be granted; or upon a hearing the [court] shall dismiss the petition for failure to establish allegations sufficient to justify the issuance of the writ, or only upon a finding of clear and convincing evidence that the petitioner has proven all of the allegations contained in clauses (5) through (9) of subsection A of Section 5 of this Act, and upon a finding that no rational trier of fact could have found proof of guilt beyond a reasonable doubt, grant the writ, and vacate the conviction, or in the event that the [court] finds that no rational trier of fact could have found sufficient evidence beyond a reasonable doubt as to one or more elements of the offense for which the petitioner was convicted, but the [court] finds that there remains in the original trial record evidence sufficient to find the petitioner guilty beyond a reasonable doubt of a lesser included offense, the [court] shall modify the conviction accordingly and remand the case to the [circuit court] for resentencing. The burden of proof in a proceeding brought pursuant to this Act shall be upon the convicted person seeking relief.

Section 8. [Claims of Relief.] An action under this Act or the performance of any attorney representing the petitioner under this Act shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this Act shall create any cause of action for damages against the state or any of its political subdivisions or any officers, employees or agents of the state or its political subdivisions.

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

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

Section 11. [Effective Date.] [Insert effective date.]
Prison Nursery Programs

This Act:

• Permits the state department of rehabilitation and correction to establish in one or more of the department’s institutions for women a prison nursery program under which eligible inmates and children born to them while in the custody of the department reside together in the institution;
• Establishes eligibility criteria of inmates for participation in the prison nursery program;
• Establishes participation duties for each inmate selected by the department to participate in the prison nursery program;
• Requires program participants to assign to the department any rights they have to child or spousal support;
• Establishes reasons for which an inmate’s participation in the program may be terminated by the department, and
• Requires the managing officer in each institution in which the prison nursery program is established to create and maintain a prison nursery program fund to pay expenses associated with the program and an individual nursery account for each participating inmate to help pay for the support of the inmate and child under the program.

Submitted as:
Ohio
Am. Sub. H. B. No. 661
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 Authorize Prison Nursery Programs.”

Section 2. [Prison Nursery Programs: Authorization.] The [department of rehabilitation and correction] may establish in one or more of the institutions for women operated by the [department] a prison nursery program under which eligible inmates and children born to them while in the custody of the [department] may reside together in the institution.

Section 3. [Prison Nursery Programs: Eligibility.] An inmate is eligible to participate in the prison nursery program if she is pregnant at the time she is delivered into the custody of the [department of rehabilitation and correction], gives birth on or after the date the program is implemented, is subject to a sentence of imprisonment of not more than [eighteen (18)] months, and she and the child meet any other criteria established by the [department.]

Section 4. [Prison Nursery Programs: Requirements to Participate.] To participate in the prison nursery program, each eligible inmate selected by the [department] shall do all the following:

(A) Agree in writing to do all the following:

(1) Comply with any program, educational, counseling, and other requirements established for the program by the [department of rehabilitation and correction];
(2) If eligible, have the child participate in the Medicaid program or a health insurance program;
(3) Accept the normal risks of childrearing, and
(4) Abide by any court decisions regarding the allocation of parental rights and
responsibilities with respect to the child.

(B) Assign to the [department] any rights to support from any other person, excluding support assigned pursuant to [insert citation] and medical support assigned pursuant to [insert citation].

(C) Specify with whom the child is to be placed in the event the inmate’s participation in the program is terminated for a reason other than release from imprisonment.

Section 5. [Terminating Participation in Prison Nursery Programs]. An inmate’s participation in the prison nursery program may be terminated by the [department of rehabilitation and correction] if one of the following occurs:

(A) The inmate fails to comply with the agreement entered into under division (a) of Section 4 of this Act.

(B) The inmate’s child becomes seriously ill, cannot meet medical criteria established by the [department of rehabilitation and correction] for the program, or otherwise cannot safely participate in the program.

(C) An action is brought to designate a person other than the inmate as the child’s residential parent and legal custodian.

(D) An action is brought pursuant to [insert citation] to grant custody of the child to a person other than the inmate.

(E) An order is issued pursuant to [insert citation] granting shared parenting of the child.

(F) An order of disposition regarding the child is issued pursuant to [insert citation] granting temporary, permanent, or legal custody of the child to a person, other than the inmate, or to a public children services agency or private child-placing agency.

(G) The inmate is released from imprisonment.

Section 6. [Prison Nursery Programs: Child Support.]

(I) For purposes of this section, “public assistance” has the same meaning as in [insert citation].

(II) The rights to support assigned by an inmate pursuant to Section 4 of this Act shall constitute an obligation of the person who is responsible for providing the support to the [department of rehabilitation and correction] for the support provided the inmate and child pursuant to the prison nursery program. The [division of child support] in the [department of job and family services] shall collect support payments made pursuant to the assignment and forward them to the [department of rehabilitation and correction].

(III) The [department of rehabilitation and correction] may receive the following:

(A) Money that is assigned or donated on behalf of, and public assistance provided to, a specific inmate or child participating in the prison nursery program, and

(B) Money assigned or donated to establish and maintain the prison nursery program.

(IV) The amounts described in division (III)(A) of this section shall be placed in the individual nursery account created and maintained under Section 7 of this Act for the inmate and child for whom the money was received. The money described in division (III)(B) of this section shall be deposited in the appropriate prison nursery program fund.

Section 7. [Prison Nursery Program Fund.] The [managing officer] of each institution in which a prison nursery program is established pursuant to this Act shall do the following:

(A) Create and maintain a Prison Nursery Program Fund to pay expenses associated with the prison nursery program, and

(B) Create and maintain an individual nursery account for each inmate participating in the prison nursery program at the institution to help pay for the support provided to the inmate and child pursuant to the program.

Section 8. [Prison Nursery Programs: Licensing and Regulation.] Notwithstanding any other provision of state law, neither the prison nursery program nor the [department of rehabilitation and
correction], with respect to the program, is subject to any regulation, licensing, or oversight by the
[department of job and family services] unless the departments agree to voluntary regulation, licensing, or
oversight by the [department of job and family services].

Section 9. [Prison Nursery Programs: Rules.] If the [department of rehabilitation and correction]
establishes the prison nursery program, it shall adopt rules that establish the requirements necessary and
appropriate to the establishment, implementation, and operation of the program. The [department] shall
adopt the rules prior to implementing the program.

Section 10. As used in Sections 4 and 6 of this Act, “support” has the same meaning as in [insert
citation].

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

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

Section 13. [Effective Date.] [Insert effective date.]
Professional Preparation of School Personnel Note

Nationwide, states are acting to recruit, retain and train teachers to improve the overall quality of education. Idaho, Iowa and Kentucky are three examples.

Idaho

Idaho Senate Bill 1372, which became law in 2000, provides for training and support for teachers during their first three years of employment with a school district. These include mentoring, peer assistance and professional development. This law also gives greater latitude to school boards to renew or not renew the contracts of teachers during their first three years of employment.

The law establishes a tiered employment process for teachers who are in their first three years of teaching. During the first year, teachers are employed on a limited, one-year contract. Districts can choose not to renew such contracts without explanation. However, when a district chooses not to re-employ teachers with two or three years experience, the district must provide an explanation to the teacher and a probationary period to correct performance problems, respectively.

Iowa

Iowa enacted SF 476 in 2001. That Act creates a student achievement and teacher quality program that acknowledges that outstanding teachers are a key component in student success. The program’s goals are to enhance student achievement and to redesign compensation strategies and teachers’ professional development. Such compensation strategies are designed to attract and retain high performing teachers, and to reward teachers for improving their skills and knowledge in a manner that translates into attendance centers for improvement in student achievement.

The program will consist of the following four major elements:

• Mentoring and induction programs that provide support for beginning teachers;
• Career paths with compensation levels that strengthen Iowa’s ability to recruit and retain teachers;
• Professional development designed to directly support best teaching practices, and
• Team-based variable pay that provides additional compensation when student performance improves.

The Act creates a beginning teacher mentoring and induction program created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts, increase the retention of promising beginning teachers, and promote the personal and professional well-being of classroom teachers. It requires that prior to the completion of the 2001-2002 school year, a school district shall, at a minimum, provide an approved beginning teacher mentoring and induction program for all classroom teachers who are beginning teachers.

The beginning teacher mentoring and induction plan shall, at a minimum, provide for a two-year sequence of induction program content and activities to support the Iowa teaching standards and beginning teacher professional and personal needs; mentor training that includes, at a minimum, skills of classroom demonstration and coaching, and district expectations for beginning teacher competence on Iowa teaching standards; placement of mentors and beginning teachers; the process for dissolving mentor and beginning teacher partnerships; district organizational support for released time for mentors and beginning teachers to plan, provide demonstration of classroom practices, observe teaching, and provide feedback; structure for mentor selection and assignment of mentors to beginning teachers; a district facilitator; and program evaluation.

Upon completion of the program, the beginning teacher shall be comprehensively evaluated to determine if the teacher meets expectations to move to the career level. The school district shall recommend a beginning teacher who has successfully completed the program for an educational license.

A school district may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to
successfully complete the mentoring and induction program by the end of the third year of eligibility. A teacher granted a third year of eligibility shall develop a teacher’s mentoring and induction program plan in accordance with this chapter and shall undergo a comprehensive evaluation at the end of the third year. The board of educational examiners shall grant a one-year extension of the beginning teacher’s provisional license upon notification by the school district that the teacher will participate in a third year of the school district’s program.

The Act directs that effective July 1, 2001, the following career path levels are established and shall be implemented:

BEGINNING TEACHER
A beginning teacher is a teacher who meets the following requirements:
(a) Has successfully completed an approved practitioner preparation program;
(b) Holds a provisional teacher license issued by the board of educational examiners, and
(c) Participates in the beginning teacher mentoring and induction program.

The Act directs that participating school districts shall increase the district’s minimum salary for a first-year beginning teacher by at least one thousand five hundred dollars per year above the minimum salary paid to a first-year beginning teacher in the previous year unless the minimum salary for a first-year beginning teacher exceeds twenty-eight thousand dollars.

CAREER TEACHER
A career teacher is a teacher who meets the following requirements:
(a) Has successfully completed the beginning teacher mentoring and induction program and has successfully completed a comprehensive evaluation;
(b) Is reviewed by the school district as demonstrating the competencies of a career teacher.
(c) Holds a valid license issued by the board of educational examiners, and
(d) Participates in teacher career development and demonstrates continuous improvement in teaching.

The Act directs participating districts to provide a two thousand dollar difference between the average beginning teacher salary and the minimum career teacher salary, unless the school district has a minimum career teacher salary that exceeds thirty thousand dollars.

CAREER II TEACHER
A career II teacher is a teacher who meets the requirements of a career teacher established by the school district that employs the teacher, and is evaluated by the school district as demonstrating the competencies of a career II teacher. The teacher shall have successfully completed a comprehensive evaluation in order to be classified as a career II teacher.

The Act directs that participating districts shall establish a minimum salary for a career II teacher that is at least five thousand dollars greater than the minimum career teacher salary.

ADVANCED TEACHER
An advanced teacher is a teacher who meets the following requirements:
(a) Receives the recommendation of the review panel that the teacher possesses superior teaching skills and that the teacher should be classified as an advanced teacher;
(b) Holds a valid license from the board of educational examiners;
(c) Participates in teacher career development as outlined in the Act and demonstrates continuous improvement in teaching, and
(d) Possesses the skills and qualifications to assume leadership roles.

The Act directs that participating districts shall establish a minimum salary for an advanced teacher that is at least thirteen thousand five hundred dollars greater than the minimum career teacher salary. It directs that a teacher shall be promoted one level at a time and a teacher promoted to the next
career level shall remain at that level for at least one year before requesting promotion to the next career level. If a comprehensive evaluation for a teacher is conducted in the fifth year of the teacher’s status at the career level, and indicates that the teacher’s practice no longer meets the standards for that level, a comprehensive evaluation shall be conducted in the next following school year. If the comprehensive evaluation establishes that the teacher’s practice fails to meet the standards for that level, the teacher shall be ineligible for any additional pay increase other than a cost of living increase.

The Act directs that generally, teacher performance shall be reviewed annually for purposes of assisting the teacher in making continuous improvement. The annual review shall be conducted by a certified evaluator who shall be selected by an administrator after consultation with the teacher. School districts are encouraged to make available time for and to utilize peer review and peer coaching techniques when conducting the annual review. The annual review need not be conducted if the teacher has been comprehensively reviewed during the same school year. The review shall include classroom observation of the teacher and should include supporting documentation from other supervisors, parents, and students.

In addition, a teacher shall be comprehensively evaluated at least once every five years. Comprehensive evaluations shall be conducted by an administrator or the administrator’s designee. The evaluation shall include, at minimum, classroom observation of the teacher, the teacher’s progress and implementation of the teacher’s individual career development plan; should include supporting documentation from other supervisors, teachers, parents, and students; and may include video portfolios as evidence of teaching practices. A teacher may be comprehensively evaluated for purposes of performance review or recommendation for licensure, and shall be comprehensively evaluated for advancement in the career path.

The Act requires the state department of education to coordinate a statewide network of career development for Iowa teachers. A participating school district or career development provider that offers a career development program shall demonstrate that the program contains the following:

(a) Support that meets the career development needs of individual teachers and is aligned with the Iowa teaching standards;
(b) Research-based instructional strategies aligned with the school district’s student achievement needs and the long-range improvement goals established by the district;
(c) Instructional improvement components including student achievement data, analysis, theory, classroom demonstration and practice, technology integration, observation, reflection, and peer coaching, and
(d) An evaluation component that documents the improvement in instructional practice and the effect on student learning.

It directs the department to identify models of career development practices that produce evidence of the link between teacher training and improved student learning. A participating school district shall incorporate a district career development plan into the district’s comprehensive school improvement plan submitted to the department.

The district career development plan shall include a description of the means by which the school district will provide access to all teachers in the district to career development programs or offerings. The plan shall align all career development with the school district’s long-range student learning goals and Iowa teaching standards. The plan shall indicate the school district’s approved career development provider or providers.

In cooperation with the teacher’s supervisor, the teacher employed by a participating school district shall develop an individual teacher career development plan. The individual plan shall be based, at minimum, on the needs of the teacher, the Iowa teaching standards, and the student achievement goals of the attendance center and the school district as outlined in the comprehensive school improvement plan. The individual plan shall be reviewed by the teacher and the teacher’s supervisor at the teacher’s annual review, and shall be modified as necessary to reflect the individual teacher’s needs and the individual’s progress in the plan.

The Act establishes a pilot program to give Iowa school districts with one or more participating attendance centers the opportunity to explore and demonstrate successful methods to implement team-
based variable pay. It directs state department of education to develop and administer the pilot program. Each school district approved by the department to participate in the pilot program shall administer valid and reliable standardized assessments at the beginning and end of the school year to demonstrate growth in student achievement.

All licensed practitioners employed at a participating attendance center that has demonstrated improvement in student achievement shall share in a cash award. However, the school district is encouraged to extend cash awards to other staff employed at the attendance center. The principal, with the participation of a team of licensed practitioners appointed by the principal, at each participating attendance center within a school district shall annually submit district attendance center student performance goals to the school board for approval. The attendance center goals must be aligned with the school improvement goals for the district. The district shall determine the designation of an attendance center. The attendance center student performance goals may differ from attendance center to attendance center and may contain goals and indicators in addition to the comprehensive school improvement plan. An attendance center shall demonstrate student achievement through the use of multiple measures that are valid and reliable.

Each participating district shall create its own design for a team-based pay plan linked to the district’s comprehensive school improvement plan. The plan must include attendance center student performance goals, student performance levels, multiple indicators to determine progress toward attendance center goals, and a system for providing financial rewards. The team-based pay plan shall be approved by the local board.

Each district team-based pay plan shall be reviewed by the department. The department shall include a review of the locally established goals, targeted levels of improvement, assessment strategies, and financial reward system.

Kentucky

Kentucky SB 77, which became law in 2000:

- Creates a Teachers’ Professional Growth Fund to provide money to teachers for tuition reimbursements and stipends for approved university and college courses and professional development activities;
- Requires that the growth fund be focused on middle school teachers for the next four years and the next two years on mathematics;
- Creates a Center for Middle School Academic Achievement to improve middle school teachers’ knowledge and instructional practices in the core disciplines of mathematics, language arts science, and social studies;
- Emphasizes the evaluation and professional growth of teachers;
- Requires a statewide recruitment plan for the teaching profession;
- Requires the identification of out-of-field teaching;
- Adds a conforming section on ranking of teachers;
- Establishes criteria on the use of the postsecondary education trust finds that are designated for teacher preparation;
- Authorizes tuition-free classes for supervising teachers;
- Permits a classroom teacher or administrator to be provided additional compensation for serving as a teaching mentor or professional development leader in the core discipline;
- Requires the establishment of an electronic bulletin board by the state department of education about professional development opportunities;
- Adds clarifying language relating to professional development and requires the establishment of teacher academies in subject areas;
- Requires the department of education provide to available training to teachers in human resource management;
- Requires changing the length of time to complete training for members and requires training
of council mentors when a principal vacancy occurs;
  • Requires that professional development days relate to teacher or administrator individual
growth plans, content area or assignment or school improvement plan, and
  • Permits the state education professional standards board to approve a university inquest for an
alternative preparation program for teachers or administrators that combines college post-baccalaureate
coursework and internship requirements.
Public Cord Blood Tissue Bank

This Act establishes a statewide consortium to be known as the Public Cord Blood Tissue Bank. The Public Cord Blood Tissue Bank is established as a nonprofit legal entity to collect, screen for infectious and genetic diseases, perform tissue typing, cryopreserve, and store umbilical-cord blood as a resource to the public. Selected state universities will jointly form the collaborative consortium, and work with community resources such as regional blood banks, hospitals and other health care providers to develop local and regional coalitions for the purposes set forth in the Act. The consortium participants must align their outreach programs and activities to all geographic areas of the state, covering the entire state. The consortium is encouraged to conduct outreach and research for Hispanics, African-Americans, Native Americans and other ethnic and racial minorities.

Submitted as:
Florida
Chapter 305, Section 1 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 to Establish a Public Cord Blood Tissue Bank.”

Section 2. [Public Cord Blood Tissue Bank.]

(1) There is established a statewide consortium to be known as the Public Cord Blood Tissue Bank. The Public Cord Blood Tissue Bank is established as a nonprofit legal entity to collect, screen for infectious and genetic diseases, perform tissue typing, cryopreserve, and store umbilical cord blood as a resource to the public. The [state university] and [clinic/hospital] shall jointly form the collaborative consortium, each working with community resources such as regional blood banks, hospitals, and other health care providers to develop local and regional coalitions for the purposes set forth in this Act. The consortium participants shall align their outreach programs and activities to all geographic areas of the state, covering the entire state. The consortium is encouraged to conduct outreach and research for Hispanics, African Americans, Native Americans, and other ethnic and racial minorities.

(2) The [agency for health care administration] and the [department of health] shall encourage health care providers, including, but not limited to, hospitals, birthing facilities, county health departments, physicians, midwives, and nurses, to disseminate information about the Public Cord Blood Tissue Bank.

(3) Nothing in this section creates a requirement of any health care or services program that is directly affiliated with a bona fide religious denomination that includes as an integral part of its beliefs and practices the tenet that blood transfer is contrary to the moral principles the denomination considers to be an essential part of its beliefs.

(4) Any health care facility or health care provider receiving financial remuneration for the collection of umbilical cord blood shall provide written disclosure of this information to any woman postpartum or parent of a newborn from whom the umbilical cord blood is collected prior to the harvesting of the umbilical cord blood.

(5) A woman admitted to a hospital or birthing facility for obstetrical services may be offered the opportunity to donate umbilical cord blood to the Public Cord Blood Tissue Bank. A woman may not be required to make such a donation.

(6) The consortium may charge reasonable rates and fees to recipients of cord blood tissue bank products.
In order to fund the provisions of this section the consortium participants, the [agency for health care administration], and the [department of health] shall seek private or federal funds to initiate program actions for [insert fiscal year].

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

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

Section 4. [Effective Date.] [Insert effective date.]
Regulating Ballast Waste Water Discharges

This Act finds that nonindigenous species have the potential to cause economic and environmental damage to the state and that current efforts to stop the introduction of nonindigenous species from shipping vessels do not adequately reduce the risk of new introductions into state waters.

The Act generally prohibits ships from discharging ballast waters into state waters after July 1, 2002 unless the ships have conducted an open sea exchange of ballast water 50 or more nautical miles offshore or they originally obtained their ballast water from state waters. It requires ship owners or operators to report ballast water management information to the state department of natural resources.

Submitted as:
Washington
Chapter 108 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 to Regulate Discharging Ballast Waste Water.”

Section 2. [Legislative Findings.] The [Legislature] finds that some nonindigenous species have the potential to cause economic and environmental damage to the state and that current efforts to stop the introduction of nonindigenous species from shipping vessels do not adequately reduce the risk of new introductions into state waters.

The [Legislature] recognizes the international ramifications and the rapidly changing dimensions of this issue, and the difficulty that any one state has in either legally or practically managing this issue. Recognizing the possible limits of state jurisdiction over international issues, the state declares its support for the international maritime organization and United States Coast Guard efforts, and the state intends to complement, to the extent its powers allow it, the United States Coast Guard’s ballast water management program.

Section 3. [Definitions.] The definitions in this section apply throughout this Act unless the context clearly requires otherwise.

(1) “Ballast tank” means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(2) “Ballast water” means any water and matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(3) “Empty/refill exchange” means to pump out, until the tank is empty or as close to empty as the master or operator determines is safe, the ballast water taken on in ports, estuarine, or territorial waters, and then refilling the tank with open sea waters.

(4) “Exchange” means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States Coast Guard.

(5) “Flow through exchange” means to flush out ballast water by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(6) “Nonindigenous species” means any species or other viable biological material that enters an ecosystem beyond its natural range.
(7) “Open sea exchange” means an exchange that occurs [fifty (50)] or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this Act.

(8) “Recognized marine trade association” means those trade associations in the state that promote improved ballast water management practices by educating their members on the provisions of this Act, participating in regional ballast water coordination, assisting the [department] in the collection of ballast water exchange forms, and the monitoring of ballast water.

(9) “Sediments” means any matter settled out of ballast water within a vessel.

(10) “Untreated ballast water” includes exchanged or unexchanged ballast water that has not undergone treatment.

(11) “Vessel” means a self-propelled ship in commerce of three hundred gross tons or more.

(12) “Voyage” means any transit by a vessel destined for any port in this state.

(13) “Waters of the state” means any surface waters, including internal waters contiguous to state shorelines within the boundaries of the state.

Section 4. [Applications.]

(1) This Act applies to all vessels carrying ballast water into the waters of the state from a voyage, except:

(a) A vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of Sec. 1103 of the National Invasive Species Act of 1996, or any vessel of the armed forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to the Uniform National Discharge Standards for vessels of the armed forces under 33 U.S.C. Sec. 1322(n);

(b) A vessel:

(i) that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments do not mix with ballast water or sediments from areas other than open sea waters; or

(ii) that does not discharge ballast water in state waters;

(c) A vessel traversing the internal waters of this state and not entering or departing a United States port, or a vessel in innocent passage, which is a vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States; and

(d) A crude oil tanker that does not exchange or discharge ballast water into the waters of the state.

(2) This Act does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal, or international laws or regulations. Ballast water containing oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(3) The master or operator in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers. Nothing in this Act relieves the master or operator in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.

Section 5. [Discharging Ballast Water: Authorization.] The owner or operator in charge of any vessel covered by this Act is required to ensure that the vessel under their ownership or control does not discharge ballast water into the waters of the state except as authorized by this section.

(1) Discharge into waters of the state is authorized if the vessel has conducted an open sea exchange of ballast water. A vessel is exempt from this requirement if the vessel’s master reasonably determines that such a ballast water exchange operation will threaten the safety of the vessel or the vessel’s crew, or is not feasible due to vessel design limitations or equipment failure. If a vessel relies on this exemption, then it may discharge ballast water into waters of the state, subject to any requirements of treatment under subsection (2) of this section and subject to section 6 of this Act.

(2) After [insert date], discharge of ballast water into waters of the state is authorized only if there
has been an open sea exchange or if the vessel has treated its ballast water to meet standards set by the [department]. When weather or extraordinary circumstances make access to treatment unsafe to the vessel or crew, the master of a vessel may delay compliance with any treatment required under this subsection until it is safe to complete the treatment.

(3) The requirements of this section do not apply to a vessel discharging ballast water or sediments that originated solely within the waters of this state.

(4) Open sea exchange is an exchange that occurs [fifty (50)] or more nautical miles offshore. If the United States Coast Guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this Act.

Section 6. [Reporting and Sampling Requirements.] The owner or operator in charge of any vessel covered by this Act is required to ensure that the vessel under their ownership or control complies with the reporting and sampling requirements of this section.

(1) Vessels covered by this Act must report ballast water management information to the [department] using ballast water management forms that are acceptable to the United States Coast Guard. The frequency, manner, and form of such reporting shall be established by the [department] by rule. Any vessel may rely on a recognized marine trade association to collect and forward this information to the [department].

(2) In order to monitor the effectiveness of national and international efforts to prevent the introduction of nonindigenous species, all vessels covered by this Act must submit nonindigenous species ballast water monitoring data. The monitoring, sampling, testing protocols, and methods of identifying nonindigenous species in ballast water shall be determined by the [department] by rule. A vessel covered by this Act may contract with a recognized marine trade association to randomly sample vessels within that association’s membership, and provide data to the [department].

(3) Vessels that do not belong to a recognized marine trade association must submit individual ballast tank sample data to the [department] for each voyage.

(4) All data submitted to the [department] under subsection (2) of this section shall be consistent with sampling and testing protocols as adopted by the [department] by rule.

(5) The [department] shall adopt rules to implement this section. The rules and recommendations shall be developed in consultation with advisors from regulated industries and the potentially affected parties, including but not limited to shipping interests, ports, shellfish growers, fisheries, environmental interests, interested citizens who have knowledge of the issues, and appropriate governmental representatives including the United States Coast Guard.

(a) The [department] shall set standards for the discharge of treated ballast water into the waters of the state. The rules are intended to ensure that the discharge of treated ballast water poses minimal risk of introducing nonindigenous species. In developing this standard, the [department] shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards shall be compatible with standards set by the United States Coast Guard and shall be developed in consultation with federal and state agencies to ensure consistency with the Federal Clean Water Act, 33 U.S.C. Sec. 1251-1387.

(b) The [department] shall adopt ballast water sampling and testing protocols for monitoring the biological components of ballast water that may be discharged into the waters of the state under this Act. Monitoring data is intended to assist the [department] in evaluating the risk of new, nonindigenous species introductions from the discharge of ballast water, and to evaluate the accuracy of ballast water exchange practices. The sampling and testing protocols must consist of cost-effective, scientifically verifiable methods that, to the extent practical and without compromising the purposes of this Act, utilize easily measured indices, such as salinity, or check for species that indicate the potential presence of nonindigenous species or pathogenic species. The [department] shall specify appropriate quality assurance and quality control for the sampling and testing protocols.

Section 7. [Pilot Project.] The shipping vessel industry, the public ports, and the [department]
shall promote the creation of a pilot project to establish a private sector ballast water treatment operation that is capable of servicing vessels at all state ports. Federal and state agencies and private industries shall be invited to participate. The project will develop equipment or methods to treat ballast water and establish operational methods that do not increase the cost of ballast water treatment at smaller ports. The [Legislature] intends that the cost of treatment required by this Act is substantially equivalent among large and small ports in this state.

Section 8. [Reporting Requirements.] The [Legislature] recognizes that international and national laws relating to this Act are changing and that state law must adapt accordingly. The [department] shall submit to the [Legislature], and make available to the public, a report that summarizes the results of this Act and makes recommendations for improvement to this Act on or before [insert date], and a second report on or before [insert date] The [first] report shall describe how the costs of treatment required as of [insert date], will be substantially equivalent among ports where treatment is required. The [department] shall strive to fund the provisions of this Act through existing resources, cooperative agreements with the maritime industry, and federal funding sources.

Section 9. [Penalties.]

(1) Except as limited by subsection (2) or (3) of this section, the [director] or the director’s designee may impose a civil penalty or warning for a violation of the requirements of this Act on the owner or operator in charge of a vessel who fails to comply with the requirements imposed under sections 5 and 6 of this Act. The penalty shall not exceed [five thousand (5,000)] dollars for each violation. In determining the amount of a civil penalty, the [department] shall consider if the violation was intentional, negligent, or without any fault, and shall consider the quality and nature of risks created by the violation. The owner or operator subject to such a penalty may contest the determination by requesting an adjudicative proceeding within [twenty (20)] days. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. If the [department] prevails using any judicial process to collect a penalty under this section, the [department] shall also be awarded its costs and reasonable attorneys’ fees.

(2) The civil penalty for a violation of reporting requirements of section 6 of this Act shall not exceed [five hundred (500)] dollars per violation.

(3) Any owner or operator who knowingly, and with intent to deceive, falsifies a ballast water management report form is liable for a civil penalty in an amount not to exceed [five thousand (5,000)] dollars per violation, in addition to any criminal liability that may attach to the filing of false documents.

(4) The [department], in cooperation with the United States Coast Guard, may enforce the requirements of this Act.

Section 10. [Legislative Review.] By [insert date], the [natural resources committees] of the [Legislature] must review this Act and its implementation and make recommendations if needed to the [Legislature].

Section 11. [Studies, Proposals and Recommendations.] The departments of [fish and wildlife] and [ecology] shall invite representatives from the United States Department of Defense to discuss ways of improving ballast water management in this state. The [departments], in cooperation with the United States Coast Guard shall seek input from other coastal states in conducting the study and in formulating recommendations. The [departments] shall provide the most appropriate forum to stimulate dialogue which can result in specific policies and action protocols. The [departments] shall make recommendations concerning proposals for laws and rules that will guarantee the same level of public and private compliance to protect the marine environment. The [Legislature] wishes to ensure that vessels exempted from this Act by section 4(1)(a) of this Act are taking adequate precautions to prevent the introduction of nonindigenous species into the waters of the state. The [departments] of [fish and wildlife] and [ecology] shall submit a report to the [Legislature] by [insert date], summarizing the results of these discussions.
Section 12. [Severability.] [Insert severability clause.]

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

Section 14. [Effective Date.] [Insert effective date.]
Restricting School Use of Student Social Security Numbers

Increasing concerns about the privacy of personal data has prompted Congress to consider legislation to address the misuse of Social Security numbers (SSNs), and one state, New York, to pass a law restricting their use by schools.

Federal Law

According to the Privacy Rights Clearinghouse, a nonprofit consumer information and advocacy program:

Schools that receive federal funding must comply with the Family Educational Rights and Privacy Act in order to retain their funding (FERPA, also known as the “Buckley Amendment,” enacted in 1974, 20 U.S.C. 1232g). One of FERPA’s provisions requires written consent for the release of educational records or personally identifiable information, with some exceptions. The courts have stated that Social Security numbers fall within this provision.

FERPA applies to state colleges, universities and technical schools that receive federal funding. An argument can be made that if such a school displays students’ SSNs on identification cards or distributes class rosters or grades listings containing SSNs, it would be a release of personally identifiable information, violating FERPA. However, many schools and universities have not interpreted the law this way and continue to use SSNs as a student identifier. Social Security numbers may be obtained by colleges and universities for students who have university jobs and/or receive federal financial aid (FERPA text can be found at www.cpsr.org/cpsr/privacy/ssn/ferpa.buckley.html).

Public schools, colleges and universities that ask for an SSN fall within the provisions of another federal law, the Privacy Act of 1974. That Act requires such schools to provide a disclosure statement telling students how the Social Security number is used.

This SSL draft is based on New York law. This draft prohibits the use by public or private schools and colleges of student Social Security numbers as student identification numbers or for any student identification purposes.

Submitted as:
New York
Chapter 214 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 Prohibiting the Use of Social Security Numbers as Student Identification Numbers.”

Section 2. [Use of Student Social Security Numbers Restricted.] No public or private elementary or secondary school or college as defined in [insert citation] shall display any student’s social security number to identify such student for posting or public listing of grades, on class rosters or other lists provided to teachers, on student identification cards, in student directories or similar listings, or, unless specifically authorized or required by law, for any public identification purpose.
Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Rural Health Access Pilot Program

This Act establishes a Rural Health Access Pilot Program as a bridge connecting and assisting government, communities and citizens to build a more comprehensive and responsible health care system, which seeks to expand access and education with regard to health services for economically disadvantaged, uninsured, working adults.

Submitted as:
Arkansas
Public Act 549 of 2001
Status: enacted into law in 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish a Rural Health Access Pilot Program.”

Section 2. [Legislative Findings.]
(a) The [General Assembly] finds that:
   (1) The state ranks [insert number] among the states for having the least healthy population;
   (2) A major contributing factor to the state’s health ranking is its high percentage of uninsured people;
   (3) There is a significant gap in the state’s health care “safety net,” especially with regard to working adults with low incomes; and
   (4) New relationships are needed between state government, local communities, public and private service agencies and uninsured people in this state so that health care services for the uninsured will be more accessible, more affordable and more effective.

   (b) Therefore, there is established the Rural Health Access Pilot Program as a bridge connecting and assisting government, communities and citizens to build a more comprehensive and responsible health care system, which seeks to expand access and education with regard to health services for economically disadvantaged, uninsured, working adults.

Section 3. [Definitions.] As used in this Act:
(1) “Local,” and words of similar import, means of, based in, located in, or primarily relating to the rural community to be served by the rural health access pilot program initiated by a rural health cooperative;
(2) “Medically underserved” means a designation made by the U. S. Health Resources and Services Administration in accordance with the following factors:
   (A) The percent of the population living below the federal poverty line;
   (B) The percent of the population that is [sixty-five (65)] years of age or older;
   (C) The infant mortality rate; and
   (D) The ratio of primary care physicians to the population;
(3) “Rural Community” means an unlimited number of geographically contiguous political subdivisions that are considered medically underserved and in which the total population does not exceed [sixty thousand (60,000)] people;
(4) “Rural Health Network” means a system organized by a rural health cooperative and at least [three (3)] separately-owned local health care providers or other entities that provide or support the
delivery of health care services when such system is established and maintained as part of a rural health access pilot program and for the purpose of expanding access to health care in a rural community, coordinating the delivery of health care in a rural community or improving the quality of health care in a rural community; and

(3) “Rural Health Cooperative” means a non-profit corporation organized under the laws of this state that undertakes to establish, maintain, and operate a rural health access pilot program through a rural health network, or combination of networks, whereby hospital, medical, health education, and other health care services may be furnished by or through provider members of the rural health network to such of the uninsured residents of that rural community as become members of the rural health access pilot program under contracts which entitle each member to such services.

Section 4. [Rural Health Care Access Cooperatives: Administration].

(a) A rural health access cooperative shall administer its program in a manner that:

(1) Defines the population that may receive subsidized services provided through the program by limiting program eligibility to adults between the ages of [eighteen (18)] and [sixty-five (65)] who:

(A) Are residents of the rural community being served by the rural health access pilot program;

(B) Are without health care coverage;

(C) Are not eligible for Medicare, Medicaid, Veterans Benefits, or other similar government programs;

(D) Have an income not exceeding [two hundred percent (200%)] of the federal poverty guidelines for the state; and

(E) Meet certain medical underwriting requirements established by the board of directors of the rural health cooperative;

(2) Defines the population that may receive unsubsidized services provided through the program by limiting program eligibility to adults between the ages of [eighteen (18)] and [sixty-five (65)] and their dependent children who:

(A) Are residents of the rural community being served by the rural health access pilot program;

(B) Are without health care coverage;

(C) Are not eligible for Medicare, Medicaid, [ARKids First], Veterans Benefits, or other similar government programs;

(D) Have an income not exceeding [three hundred (300)] percent of the federal poverty guidelines for the state or are a full-time employee of the rural health cooperative; and

(E) Meet certain medical underwriting requirements established by the board of directors of the rural health cooperative;

(3) Provides as a condition of eligibility for the automatic assignment to the rural health cooperative of medical payment due the client member of the rural health access program;

(4) Defines the services to be covered under the rural health access program; and

(5) Establishes co-payments for services received by client members of the rural health access program.

(b) A rural health cooperative shall limit the total number of client members in a rural health access pilot program to a maximum of [three thousand (3,000)] eligible adults and eligible dependent children.

(c) To promote the most efficient use of resources, rural health cooperatives shall emphasize in client member and provider member agreements disease prevention, early diagnosis and treatment of medical problems, and community care alternatives for people who would otherwise be at risk to be institutionalized.

Section 5. [Rural Health Cooperatives: Participation with Area Health Education Center
Programs.] Rural health cooperatives shall actively participate with [Area Health Education Center] programs, whenever feasible, in developing and implementing recruitment, training, and retention programs directed at positively influencing the supply and distribution of health care professionals serving in or receiving training in rural health network areas.

Section 6. [Rural Health Cooperatives: Board of Directors.]
(a) The board of directors of a rural health cooperative shall include representatives of:
   (1) Administrators of hospitals that have contracted with the rural health cooperative as provider members to render hospital services to client members of the rural health access program;
   (2) Physicians who have contracted with the rural health cooperative as provider members to render medical services to client members of the rural health access program;
   (3) Non-physician and non-hospital based health care providers or educators who have contracted with the rural health cooperative as provider members to render health services, health education and other similar services to client members of the rural health access program; and
   (4) The rural community, exclusive of provider representatives.
(b) A rural health cooperative shall maintain an active advisory committee that includes representatives of client members of the rural health access pilot program.

Section 7. [Rural Health Cooperatives: Donations.] A rural health cooperative shall have power to make donations for the public welfare or for charitable, scientific, or educational purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendment thereto.

Section 8. [Reporting Requirements.]
(a) In order to demonstrate viability and effectiveness, a rural health cooperative shall collect data and report to the [Legislature].
(b) Data shall include:
   (1) The results of client member surveys;
   (2) The results of provider member surveys;
   (3) The results of community need assessment surveys; and
   (4) Such other data as may be relevant to the rural health access program.
(c) The report shall include recommendations with regard to criteria and priorities for improvement and expansion of the rural health access program.

Section 9. [Prohibitions.] No rural health cooperative shall be deemed to be engaged in the corporate practice of medicine.

Section 10. [Liability.] No liability on the part of, and no cause of action of any nature shall arise against any member of the board of directors of a rural health cooperative or against an employee or agent of a rural health cooperative for any lawful action taken by them in the performance of their administrative powers and duties under this Act.

Section 11. [Regulations.]
(a) Rural health cooperatives shall not be considered or regulated as any type of entity governed by [insert citation]. None of the programs offered by a rural health cooperative shall be subject to regulation under [insert citation].
(b) Any entity subject to regulation [insert citation] that contracts with a rural health cooperative to provide or to arrange for the provision of secondary or tertiary services to client members of a rural health access pilot program shall not be required to comply with any provision of [insert citation] that mandates the provision of certain benefits or mandates the provision of a certain level of benefits, or both, with regard to the client members of a rural health access pilot program.
Section 12. [Severability.][Insert severability clause.]

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

Section 14. [Effective Date.][Insert effective date.]
Rural Internet Access Authority

This Act creates an authority to:

• Develop and recommend to the governor, the General Assembly, and the state rural redevelopment authority a plan to provide rural counties with high-speed broadband Internet access;
• Propose funding that may be needed for incentives for the private sector to make necessary investments to achieve the authority’s goals and objectives;
• Ensure that local dial-up Internet access is provided from every telephone exchange;
• Ensure that high-speed Internet access is available to every citizen, and at prices in rural counties that are comparable to prices in urban areas;
• Establish two model telework centers;
• Promote significant increases in ownership of computers, related Web devices, and Internet subscriptions throughout the state;
• Provide accurate, current, and complete information through the Internet to citizens about the availability of present telecommunications and Internet services with periodic updates on the future deployment of new telecommunications and Internet services;
• Promote development of government Internet applications to make citizen interactions with government agencies and services easier and more convenient and facilitate the delivery of more comprehensive programs, including training, education, and health care;
• Ensure that open technology approaches are employed to encourage all potential providers to participate in the implementation of high-speed Internet access with no technology bias, and
• Coordinate activities, conduct and sponsor research, and recommend and advocate actions, including regulatory and legislative actions to achieve its goals and objectives.

Submitted as:
North Carolina
Session Law 2000-149
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 Create a Rural Internet Access Authority and Direct a Study and Report on the Information Technology Infrastructure and Technology Needs of the State.”

Section 2. [Legislative Findings.] The [Legislature] finds as follows:
(a) Access to computers and the Internet, along with the ability to effectively use these technologies, are becoming increasingly important for full participation in America’s economic, political, and social life.
(b) Affordable, high-speed Internet access is a key competitive factor for economic development and quality of life in the New Economy of the global marketplace.
(c) In the digital age, universal connectivity at affordable prices is a necessity for business transactions, education and training, health care, government services, and the democratic process.
(d) Unequal access to computer technology and Internet connectivity by income, educational level and/or geography could deepen and reinforce the divisions that exist in our society.
(e) The intent of the Rural Internet Access Authority is to close this digital divide for the citizens of this state.
Section 3. [Definitions.] As used in this Act:
(a) “Authority” means the Rural Internet Access Authority.
(b) “Commission” means the governing body of the Authority.
(c) “High-Speed Broadband Internet Access” means Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers.
(d) “Regional Partnership” means as defined in [insert citation].
(e) “Rural County” means a county with a density of fewer than 200 people per square mile based on the 1990 United States decennial census.

Section 4. [Creation of Authority and Commission.]
(a) The Rural Internet Access Authority is created within the [department of commerce] and, notwithstanding any other provision of law, is subject to the direction and supervision of the [secretary of commerce] only with respect to the management functions of coordinating and reporting. These functions of the [secretary of commerce] are ministerial and shall be performed only pursuant to the direction and policy of the [commission]. The purpose of the Authority is to manage, oversee, and monitor efforts to provide rural counties with high-speed broadband Internet access.
(b) The Authority shall also serve as the central rural Internet access policy planning body of the state and shall communicate and coordinate with state, regional, and local agencies and private entities in order to implement a coordinated rural Internet access policy.
(c) The Authority is governed by a [commission] that consists of [twenty one (21)] members, [six (6)] members appointed by the [governor], [six (6)] members appointed by the [Senate] upon the recommendation of the [speaker of the house of representatives], [six (6)] members appointed by the [House] upon the recommendation of the [president pro tempore of the senate], and the following [three (3)] ex officio, voting members: the [state’s chief information officer], the [chair of the state rural economic development center], and the [secretary of commerce].
(d) It is the intent of the [Legislature] that the appointing authorities, in making appointments, shall appoint members who represent the geographic, gender, and racial diversity of the state, members who represent rural counties, members who represent regional partnerships, and members who represent the communications industry, which may include local telephone exchange companies, rural telephone cooperatives, Internet service providers, commercial wireless communications carriers, and other communications businesses.
(e) As the holder of an office, each member of the [commission] must take the oath required by [insert citation] before assuming the duties of a [commission] member.
(f) Except as provided in subsection (h) of this section, all terms of office shall commence on August 1 of the year the appointment is made. The appointing officers shall designate [one-half] of their appointees to serve [one (1)] year terms; members may serve up to [four (4)] consecutive [one (1)] year terms. The appointing officers shall designate their remaining appointees to serve [three (3)] year terms; members may serve up to [two (2)] consecutive [three (3)] year terms.
(g) The [governor] shall designate [one (1)] of the members appointed by the [governor] as the chair of the [commission]. The [governor] shall convene the first meeting of the [commission].
(h) All members of the [commission] shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the [governor] shall be filled by the [governor] for the remainder of the unexpired term. A vacancy in an appointment made by the [Legislature] shall be filled in accordance with [insert citation]. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.
(i) The [governor] may remove any member of the [commission] for misfeasance, malfeasance, or nonfeasance. The [governor] or the person who appointed a member may remove the member for using improper influence.
(j) No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable
to the members of the [commission] or officers or other private people. The members of the commission
shall receive no salary for their services but may receive per diem and allowances in accordance with
[insert citation].

(k) The [insert agency] shall provide administrative and professional staff support for the
Authority under contract.

(l) Members of the Authority shall comply with the provisions of [insert citation] prohibiting
conflicts of interest. In addition, if any member, officer, or employee of the Authority is interested either
directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or
corporation, not including units of local government, interested directly or indirectly, in any contract with
the Authority, the member, officer, or employee must disclose the interest to the [commission], which
must set forth the disclosure in the minutes of the [commission]. The member, officer, or employee
having an interest may not participate on behalf of the Authority in the authorization of any contract.

Section 5. [Powers, Duties, and Goals of the Authority.]
(a) The Authority shall have the following powers:

(1) To employ, contract with, direct, and supervise all personnel and consultants.

(2) To apply for, accept, and utilize grants, contributions, and appropriations in order to
carry out its duties and goals as defined in this Section.

(3) To enter into contracts and to provide support and assistance to local governments,
nonprofit entities, and regional partnerships, in carrying out its duties and goals under this Section.

(4) To review and recommend changes in all laws, rules, programs, and policies of this
state or any agency or subdivision thereof to further the goals of rural Internet access.

(b) The Authority shall have the following duties:

(1) To develop and recommend to the [governor], the [Legislature], and the [state rural
redevelopment authority] a plan to provide rural counties with high-speed broadband Internet access.

(2) To propose funding that may be needed from the state and from other appropriate
sources for incentives for the private sector to make necessary investments to achieve the Authority’s
goals and objectives.

(3) To set specific targets and milestones to achieve the goals and objectives set out in
subsection (c) of this Section.

(c) The goals and objectives of the Authority are:

(1) Local dial-up Internet access provided from every telephone exchange within [one (1)]
year.

(2) High-speed Internet access available to every citizen in the state within [three (3)]
years, at prices in rural counties that are comparable to prices in urban areas of this state.

(3) [Two (2)] model Telework Centers in either [enterprise tier one] or [enterprise tier
two] areas established by [insert date]. To the extent practicable, the Centers should be established in
existing facilities.

(4) Significant increases in ownership of computers, related Web devices, and Internet
subscriptions promoted throughout this state.

(5) Accurate, current, and complete information provided through the Internet to citizens
about the availability of present telecommunications and Internet services with periodic updates on the
future deployment of new telecommunications and Internet services.

(6) Development of government Internet applications promoted to make citizen
interactions with government agencies and services easier and more convenient and to facilitate the
delivery of more comprehensive programs, including training, education, and health care.

(7) Open technology approaches employed to encourage all potential providers to
participate in the implementation of high-speed Internet access with no technology bias.

(8) To coordinate activities, conduct and sponsor research, and recommend and advocate
actions, including regulatory and legislative actions to achieve its goals and objectives.

(d) The Authority does not have the power of eminent domain or the power to levy any tax.
(e) The Authority must submit quarterly reports to the [governor] and the [Legislature]. The reports must summarize the Authority’s activities during the quarter and contain any information about the Authority’s activities that is requested by the [governor], the [Legislature], or the [commission].

Section 6. [Information Technology Infrastructure: Study and Report.]

The Rural Internet Access Authority, shall, with the assistance of [insert agency], study the information technology infrastructure and information technology needs of each county within its particular region. Each study shall include an inventory of existing information technology infrastructure, an inventory of information technology needs, an analysis of how the information technology needs affect industrial and business recruitment, and recommendations that address the information technology needs of each region. Regional partnerships may contract with the [insert agency] as needed to undertake these studies. No later than [insert date], each regional partnership shall report the results of its study, including any legislative proposals, to the [Legislature].

Section 7. This Act does not obligate the [Legislature] to appropriate funds.

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

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

Section 10. [Effective Date.] [Insert effective date.]
Search Warrants: Application by Video Conference

This Act enables judges to conduct applications for the issuance of search warrants by video conference and to sign the warrants electronically.

Submitted as:
Georgia
HB 292
Status: enacted into law in 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning Issuing Search Warrants by Video Conference.”

Section 2. [Authorization to Issue Search Warrants by Video Conference.]
(a) A judge of any court in this state authorized to issue search warrants pursuant to [insert citation] may, as an alternative to other laws relating to the issuance of search warrants, conduct such applications for the issuance of search warrants by video conference.
(b) Search warrant applications heard by video conference shall be conducted in a manner to ensure that the judge conducting the hearing has visual and audible contact with all affiants and witnesses giving testimony.
(c) The affiant participating in a search warrant application by video conference shall sign the affidavit for a search warrant and any related documents by any reasonable means which identifies the affiant, including, but not limited to, his or her typewritten name, signature affixed by electronic stylus, or any other reasonable means which identifies the person signing the affidavit and any related documents.
The judge participating in a search warrant application by video conference shall sign the affidavit for a search warrant, the search warrant, and any related documents by any reasonable means which identifies the judge, including, but not limited to, his or her typewritten name, signature affixed by electronic stylus, or any other reasonable means which identifies the judicial officer signing the affidavit and warrant and any related documents. Such applications shall be deemed to be written within the meaning of [insert citation]. Such authorization shall be deemed to comply with the issuance requirements provided for in [insert citation].
(d) A judge hearing matters pursuant to this section shall administer an oath to any person testifying by means of a video conference.
(e) A video recording of the application hearing and any documents submitted in conjunction with the application shall be maintained as part of the record.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Senior Living Program

This Act establishes a Senior Living Program to help low- and moderate-income seniors obtain services that permit them to stay in their homes instead of moving to a nursing home. The Act creates a Senior Living Trust Fund, provides for the development and provision of Senior Living Program information and electronic access to that information, a caregiver support and education program, and a senior living insurance policy and incentives study.

Submitted as:
Iowa
SF 2193
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This Act may be cited as the “Senior Living Program Act.”

Section 2. [Legislative Findings: Goal.]
1. The legislature finds that:
   a. The preservation, improvement, and coordination of the health care infrastructure of this state is critical to the health and safety of its citizens.
   b. An increasing number of seniors and people with disabilities in the state require long-term care services provided outside of a medical institution.
   c. A full array of long-term care services is necessary to provide cost-effective and appropriate services to the varied population of health care consumers.
   d. The supported development of long-term care alternatives, including assisted-living facility services, adult day care, and home and community-based services, is critical in areas of the state where such alternatives otherwise are not likely to be developed.
   e. Cost containment in the delivery of health care is necessary to improve services and access for all citizens of this state.
   f. Grants are necessary to cover the expenditures related to the development of alternative health care services. Development of these alternatives will improve access to and delivery of long-term care services to underserved people or in underserved areas, which will in turn contain or reduce the cost and improve the quality of health care services.
   g. A continuing source of funding is necessary to enhance the state's ability to meet the rising demand of seniors with low and moderate incomes in obtaining an appropriate variety of long-term care services.

2. The goal of this program is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and non-institutionally provided services, and contributes to the quality of the lives of the citizens of this state.

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

1. “Affordable” means rates for payment of services which do not exceed the rates established for providers of medical and health services under the [Medical Assistance Program] with eligibility for an individual equal to the eligibility for medical assistance pursuant to [insert citation]. In relation to services provided by a provider of services under a home and community-based waiver, “affordable” means that the total monthly cost of the home and community-based waiver services provided do not exceed the cost for that level of care as established by rule by the [department of human services], in consultation with the
2. “Assisted living” means assisted living as defined in section 14 of this Act.

3. “Case mix reimbursement” means a reimbursement methodology that recognizes the acuity and need level of the residents of a nursing facility.

4. “Long-term care alternatives” means those services specified under the medical assistance program as home and community-based waiver services for elder people or adults with disabilities, elder group homes certified under [insert citation], [assisted-living programs] certified under [insert citation], and the PACE program.

5. “Long-term care provider” means a provider of services through long-term care alternatives.

6. “Long-term care service development” means any of the following:
   a. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate development of long-term care alternatives, excluding the development of assisted-living programs or elder group home alternatives.
   b. New construction for long-term care alternatives, excluding new construction of assisted-living programs or elder group homes, if the [senior living coordinating unit] determines that new construction is more cost-effective than the conversion of existing space.

7. “Nursing facility” means a licensed nursing facility as defined in [insert citation] or a licensed hospital as defined in [insert citation], a distinct part of which provides long-term care nursing facility beds.

8. “Nursing facility conversion” means any of the following:
   a. The remodeling of nursing facility space existing on [insert date], and certified for medical assistance nursing facility reimbursement and, if necessary, the construction of additional space required to accommodate an assisted-living program.
   b. New construction of an assisted-living program if existing nursing facility beds are no longer licensed and the [senior living coordinating unit] determines that new construction is more cost-effective than the conversion of existing space.

9. “PACE program” means a program of all-inclusive care for the elderly established pursuant to 42 U.S.C. § 1396(u)(4) that provides delivery of comprehensive health and social services to seniors by integrating acute and long-term care services, and that is operated by a public, private, nonprofit, or proprietary entity. “Pre-PACE program” means a PACE program in the initial start-up phase that provides the same scope of services as a PACE program.

10. “People with disabilities” means individuals [eighteen (18)] years of age or older with disabilities as disability is defined in [insert citation].

11. “Senior” means elder as defined in [insert citation] and as defined under the PACE program pursuant to 42 U.S.C. § 1396(u)(4).

12. “Senior living coordinating unit” means the [senior living coordinating unit] created within the [department of elder affairs] pursuant to [insert citation], or its designee.

13. “Senior living program” means the Senior Living Program created in this Act to provide for long-term care alternatives, long-term care service development, and nursing facility conversion.

Section 4. [Senior Living Trust Fund.]

1. A Senior Living Trust Fund is created in the state treasury under the authority of the [department of human services]. Money received through intergovernmental agreements for the Senior Living Program and money received from sources, including grants, contributions, and participant payments, shall be deposited in the fund.

2. The [department of human services], upon receipt of federal revenue on or after [insert date], from public nursing facilities participating in the medical assistance program, shall deposit the federal revenue received in the trust fund, less a sum of [five thousand (5,000)] dollars as an administration fee per participating public nursing facility.

3. Money deposited in the trust fund shall be used only for the purposes of The Senior Living Program as specified in this Act.
4. The trust fund shall be operated in accordance with the guidelines of the Health Care Financing Administration of the United States Department of Health and Human Services. The trust fund shall be separate from the General Fund of the state and shall not be considered part of the General Fund of the state. The money in the trust fund shall not be considered revenue of the state, but rather shall be funds of the Senior Living Program. The money in the trust fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this Act. Interest or earnings on money deposited in the trust fund shall be credited to the trust fund.

5. The [department of human services] shall adopt rules to administer the trust fund and to establish procedures for participation by public nursing facilities in the intergovernmental transfer of funds to the Senior Living Trust Fund.

6. The [treasurer] of this state shall provide a quarterly report of trust fund activities and balances to the [senior living coordinating unit].

Section 5. [Allocations: Senior Living Trust Fund.]
1. Money deposited in the Senior Living Trust Fund created by this Act shall be used only as provided in appropriations from the trust fund to the [department of human services] and the [department of elder affairs], and for purposes, including the awarding of grants, as specified in this Act.
2. Money in the trust fund are allocated, subject to their appropriation by the [Legislature], as follows:
   a. To the [department of human services], a maximum of [insert amount] dollars for the fiscal period beginning [insert date], and ending on or before [insert date], to be used for the conversion of existing nursing facility space and development of long-term care alternatives.
   b. To the [department of elder affairs], an amount necessary, annually, for expenses incurred in implementation and administration of the long-term care alternatives programs and for delivery of long-term care services to seniors with low or moderate incomes.
   c. To the [department of human services], an amount necessary, annually, for all of the following:
      (1) Expenses incurred in implementation of the Senior Living Program.
      (2) Expenses incurred in administration of medical assistance home and community-based waivers and the PACE program due to implementation of the Senior Living Trust Fund.
      (3) Expenses incurred due to increased service delivery provided under medical assistance home and community-based waivers as a result of nursing facility conversions and long-term care service development, for the fiscal period beginning [insert date], and ending on or before [insert date].
      (4) Expenses incurred in program administration related to implementation of nursing facility case mix reimbursement under the medical assistance program.
   d. To the [department of human services], an amount necessary to provide funding for nursing facility provider reimbursements, using the percentile-based reimbursement system, and to provide funding for the transition to a case-mix reimbursement system. Funding shall be provided under this section for the percentile-based reimbursement system, until such time as the case-mix reimbursement system is fully implemented.
   e. To the [department of human services] an amount necessary, annually, for additional expenses incurred relative to implementation of the senior living program in assisting home and community-based waiver consumers with rent expenses pursuant to the state supplementary assistance program.
3. Any funds remaining after disbursement of money under subsection 2 shall be invested with the interest earned to be available in subsequent fiscal years for the purposes provided in subsection 2, paragraph “b”, and subsection 2, paragraph “c”, subparagraphs (1) and (2).

Section 6. [Nursing Facility Conversion and Long-Term Care Service Development Grants.]
1. The [department of human services], at the direction of the [senior living coordinating unit],
may use money appropriated to the [department] from the Senior Living Trust Fund to award grants to any of the following:

a. A licensed nursing facility that has been an approved provider under the medical assistance program for the [three (3)] year period prior to application for the grant. The grant awarded may be used to convert all or a portion of the licensed nursing facility to a certified assisted-living program and may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation following conversion associated with the nursing facility conversion.

b. A long-term care provider or a licensed nursing facility that has been an approved provider under the medical assistance program for the three-year period prior to application for the grant or a provider that will meet applicable medical assistance provider requirements as specified in subsection 2, paragraph “c” or “d.” The grant awarded may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation for long-term care service development.

2. A grant shall be awarded only to an applicant who meets all of the following criteria, as applicable to the type of grant:

a. The applicant is a long-term care provider or a nursing facility that is located in an area determined by the [senior living coordinating unit] to be underserved with respect to a particular long-term care alternative service, and that has demonstrated the ability or potential to provide quality long-term care alternative services.

b. The applicant is able to provide a minimum matching contribution of [twenty (20)] percent of the total cost of any conversion, remodeling, or construction.

c. The applicant is applying for a nursing facility conversion grant and is able to demonstrate all of the following:

(1) Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted-living program is projected to offer efficient and economical care to people who require long-term care services in the service area.

(2) Assisted-living services are otherwise not likely to be available in the area for people who are eligible for services under the medical assistance program.

(3) The resulting reduction in the availability of nursing facility services is not projected to cause undue hardship on those people who require nursing facility services for a period of at least [ten (10)] years.

(4) Public support following a community-based assessment.

(5) Conversion of the nursing facility is projected to result in a lower per client reimbursement cost to the grant applicant under the medical assistance program.

d. The applicant is applying for a long-term care service development grant and is able to demonstrate all of the following:

(1) Long-term care service development is projected to offer efficient and economical care to people who require long-term care services in the service area.

(2) The proposed long-term care alternative is otherwise not likely to be available in the area for people who are eligible for services under the medical assistance program.

(3) Public support following a community-based assessment.

e. The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate and maintain a minimum medical assistance client base participation rate of [forty (40)] percent, subject to the demand for participation by people who are eligible for medical assistance.

(2) Provide a service delivery package that is affordable for those people who are eligible for services under the medical assistance home and community-based services waiver program.

(3) Provide a refund to the Senior Living Trust Fund, on an amortized basis, in the amount of the grant, if the applicant or the applicant’s successor in interest ceases to operate an affordable long-term care alternative within the first [ten (10)] year period of operation following the awarding of the
grant or if the applicant or the applicant’s successor in interest fails to maintain a participation rate of [forty (40)] percent in accordance with subparagraph (1).

3. The [department of human services] shall adopt rules in consultation with the [senior living coordinating unit] to provide all of the following:

   a. An application process and eligibility criteria for the awarding of grants. The eligibility criteria shall include but are not limited to the applicant’s demonstration of an affordable service package, the applicant’s use of the funds for allowable costs, and the applicant’s ability to refund the funds if required under subsection 2, paragraph “e,” subparagraph (3). The primary eligibility criterion used shall be the applicant’s potential impact on the overall goal of moving toward a balanced, comprehensive, affordable, high quality, long-term care system.

   b. Criteria to be used in determining the amount of the grant awarded.

   c. Weighted criteria to be used in prioritizing the awarding of grants to individual grantees during a grant cycle. Greater weight shall be given to the applicant’s demonstration of potential reduction of nursing facility beds, the applicant’s ability to meet demonstrated community need, and the established history of the applicant in providing quality long-term care services.

   d. Policies and procedures for certification of the matching funds required of applicants under subsection 2, paragraph “b.”

   e. Other procedures the [department of human services] deems necessary for the proper administration of this section, including but not limited to the submission of progress reports on a bimonthly basis to the [senior living coordinating unit].

4. The [department of human services] shall adopt rules to ensure that a nursing facility that receives a nursing facility conversion grant allocates costs in an equitable manner.

5. In addition to the types of grants described in subsection 1, the [department of human services], at the direction of the [senior living coordinating unit], may also use money appropriated to the [department] from the Senior Living Trust Fund to award grants, of not more than [one hundred thousand (100,000)] dollars per grant, to licensed nursing facilities that are awarded nursing facility conversion grants and agree, as part of the nursing facility conversion, to also provide adult day care, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

6. The [department of human services] shall establish a calendar for receiving and evaluating applications and for awarding of grants.

7. a. The [department of human services] shall develop a cost report to be completed by a grantee which includes, but is not limited to, revenue, costs, loans undertaken by the grantee, fixed assets of the grantee, a balance sheet, and a profit and loss statement.

   b. Grantees shall submit, annually, completed cost reports to the [department of human services] regarding the project for a period of [ten (10)] years following the date of initial operation of the grantee’s long-term care alternative.

8. The [department of human services], in consultation with the [department of elder affairs], shall provide annual reports to the [governor] and the [Legislature] concerning grants awarded. The annual report shall include the total number of applicants and approved applicants, an overview of the various grants awarded, and detailed reports of the cost of each project funded by a grant and information submitted by the approved applicant.

9. For the purpose of this section, “underserved” means areas in which [four and four-tenths (4.4)] percent of the number of people who are [sixty-five (65)] years of age and older is not greater than the number of currently licensed nursing facility beds and certified assisted-living units. In addition, the [department], in determining if an area is underserved, may consider additional information gathered through the [department’s] own research or submitted by an applicant, including but not limited to any of the following:

   a. Availability of and access to long-term care alternatives relative to people who are eligible for medical assistance.

   b. The current number of seniors and people with disabilities and the projected number of these people.
c. The current number of seniors and people with disabilities requiring professional nursing care and the projected number of these people.

d. The current availability of long-term care alternatives and any known changes in the availability of such alternatives.

10. This section does not create an entitlement to any funds available for grants under this section, and the [department of human services] may only award grants to the extent funds are available and within its discretion, to the extent applications are approved.

11. In addition to any other remedies provided by law, the [department of human services] may recoup any grant funding previously awarded and disbursed to a grantee or the grantee’s successor in interest and may reduce the amount of any grant awarded, but not yet disbursed, to a grantee or the grantee’s successor in interest, by the amount of any refund owed by a grantee or the grantee’s successor in interest pursuant to subsection 2, paragraph “e,” subparagraph (3).

12. The [senior living coordinating unit] shall review projects that receive grants under this section to ensure that the goal to provide alternatives to nursing facility care is being met and that an adequate number of nursing facility services remain to meet the needs of the citizens of this state.

Section 7. [Home and Community-Based Services for Seniors.]

1. Beginning [insert date], the [department of elder affairs], in consultation with the [senior living coordinating unit], shall use funds appropriated from the Senior Living Trust Fund for activities related to the design, maintenance, or expansion of home and community-based services for seniors, including but not limited to adult day care, personal care, respite, homemaker, chore, and transportation services designed to promote the independence of and to delay the use of institutional care by seniors with low and moderate incomes. At any time that money is appropriated, the [department of elder affairs], in consultation with the senior living coordinating unit, shall disburse the funds to the area agencies on aging.

2. The [department of elder affairs] shall adopt rules, in consultation with the [senior living coordinating unit] and the [area agencies on aging] to provide all of the following:
   a. (1) The criteria and process for disbursement of funds, appropriated in accordance with subsection 1, to [area agencies on aging].
      (2) The criteria shall include, at a minimum, all of the following:
         (a) A distribution formula that triple weights all of the following:
            (i) People who are [seventy (75)] years of age and older.
            (ii) People who are aged [sixty (60)] and older who are members of a racial minority.
            (iii) People who are [sixty (60)] years of age and older who reside in rural areas as defined in the federal Older Americans Act.
            (iv) People who are [sixty (60)] years of age and older who have incomes at or below the poverty level as defined in the federal Older Americans Act.
         (b) A distribution formula that single weights people who are [sixty (60)] years of age and older who do not meet the criteria specified in subparagraph subdivision (a).
   b. The criteria for long-term care providers to receive funding as subcontractors of the area agencies on aging.
   c. Other procedures the [department of elder affairs] deems necessary for the proper administration of this section, including but not limited to the submission of progress reports, on a bimonthly basis, to the [senior living coordinating unit].

3. This section does not create an entitlement to any funds available for disbursement under this section and the [department of elder affairs] may only disburse money to the extent funds are available and, within its discretion, to the extent requests for funding are approved.

4. Long-term care providers that receive funding under this section shall submit annual reports to the appropriate [area agency on aging]. The [department of elder affairs] shall develop the report to be submitted, which shall include, but is not limited to, units of service provided, the number of service recipients, costs, and the number of units of service identified as necessitated but not provided.
5. The [department of elder affairs], in cooperation with the [department of human services], shall provide annual reports to the governor and the [Legislature] concerning the impact of money disbursed under this section on the availability of long-term care services in this state. The reports shall include the types of services funded, the outcome of those services, and the number of people receiving those services.

Section 8. [PACE Program.]

1. A person operating a PACE program shall have a PACE program agreement with the Health Care Financing Administration of the United States Department of Health and Human Services, shall enter a contract with the [department of human services] and shall comply with 42 U.S.C. § 1396(u)(4) and all regulations promulgated pursuant to that section.

2. Services provided under a PACE or pre-PACE program shall be provided on a capitated basis.

3. A pre-PACE program may contract with the [department of human services] to provide services to people who are eligible for medical assistance, on a capitated basis, for a limited scope of the PACE service package through a prepaid health plan agreement, with the remaining services reimbursed directly to the service providers by the medical assistance or federal Medicare programs.

4. PACE and pre-PACE programs are not subject to regulation under [insert citation].

5. A PACE or pre-PACE program shall, at the time of entering into the initial contract and of renewal of a contract with the [department of human services], demonstrate cash reserves in an amount established by rule of the [department] to cover expenses in the event of insolvency.

Section 9. [Senior Living Program Information: Electronic Access, Education and Advisory Council.]

1. The [department of elder affairs] and the [area agencies on aging], in consultation with the [senior living coordinating unit], shall create, on a county basis, a database directory of all health care and support services available to seniors. The [department of elder affairs] shall make the database electronically available to the public, and shall update the database on at least a monthly basis.

2. The [department of elder affairs] shall seek foundation funding to develop and provide an educational program for people who are aged [twenty-one (21)] and older which assists participants in planning for and financing health care services and other supports in their senior years.

3. The [department of human services] shall develop and distribute an informational packet to the public that explains, in layperson terms, the law, regulations, and rules under the medical assistance program relative to health care services options for seniors, including but not limited to those relating to transfer of assets, prepaid funeral expenses, and life insurance policies.

4. The [director of human services], the [director of the department of elder affairs], the [director of public health], the [director of the department of inspections and appeals], the [director of revenue and finance], and the [commissioner of insurance] shall constitute a [senior advisory council] to provide oversight in the development and operation of all informational aspects of the Senior Living Program under this section.

Section 10. [Caregiver Support: Access And Education Programs.]

The [department of human services] and the [department of elder affairs], in consultation with the [senior living coordinating unit], shall implement a caregiver support program to provide access to respite care and to provide education to caregivers in providing appropriate care to seniors and people with disabilities.

Section 11: [Future Repeal.] Section 6 of this Act is repealed on [June 30, 2005]. However, grants awarded and money appropriated for grants on or before [June 30, 2005], shall be disbursed to eligible applicants after that date if necessary.

Section 12. [Resident Assessment.] A nursing facility as defined in [insert citation] shall complete a resident assessment prior to initial admission of a resident and periodically during the resident’s stay in
the facility. The assessment shall be completed for each prospective resident and current resident
regardless of payor source. The nursing facility may use the same resident assessment tool required for
certification of the facility under the medical assistance and federal Medicare programs to comply with
this section.

Section 13. [Long-Term Care Senior Living Coordinating Unit.]
1. A long-term care senior living coordinating unit is created within the [department of elder
affairs]. The membership of the coordinating unit consists of:
   a. The [director of human services].
   b. The [director of the department of elder affairs].
   c. The [director of public health].
   d. The [director of the department of inspections and appeals].
   e. [Two (2)] members appointed by the [governor].
   f. [Four (4)] members of the [Legislature], as ex officio, nonvoting members.

2. The legislative members of the unit shall be appointed by the [majority leader of the Senate],
after consultation with the [president of the Senate] and the [minority leader of the Senate], and by the
[speaker of the House], after consultation with the [majority leader] and the [minority leader of the House
of Representatives].

3. Non-legislative members shall receive actual expenses incurred while serving in their official
capacity and may also be eligible to receive compensation as provided in [insert citation]. Legislative
members shall receive compensation pursuant to [insert citation].

4. The [long-term care senior living coordinating unit] shall:
   a. Develop, for legislative review, the mechanisms and procedures necessary to
      implement, utilizing current personnel, a case-managed system of long-term care based on a uniform
      comprehensive assessment tool.
   b. Develop common intake and release procedures for the purpose of determining
      eligibility at one point of intake and determining eligibility for programs administered by the [departments
      of human services, public health, and elder affairs], such as the medical assistance program, federal food
      stamp program, and homemaker-home health aide programs.
   c. Develop common definitions for long-term care services.
   d. Develop procedures for coordination at the local and state level among the providers of
      long-term care, including when possible co-campusing of services. The [director of the department of
      general services] shall give particular attention to this section when arranging for office space for these
      three departments.
   e. Prepare a long-range plan for the provision of long-term care services within the state.
   f. Propose rules and procedures for the development of a comprehensive long-term care
      and community-based services program.
   g. Submit a report of its activities to the [governor] and [Legislature] on [January 15] of
      each year.
   h. Provide direction and oversight for disbursement of money from the Senior Living
      Trust Fund created by this Act.
   i. Consult with the state universities and other institutions with expertise in the area of
      senior issues and long-term care.

Section 14. [Assisted Living Programs.] “Assisted living” means provision of housing with
services that may include but are not limited to health-related care, personal care, and assistance with
instrumental activities of daily living to [six (6)] or more tenants in a physical structure that provides a
homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-
direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality,
shared risk, and independence. “Assisted living” includes the provision of housing and assistance with
instrumental activities of daily living only if personal care or health-related care is also included.
Section 15. [Senior Living Insurance and Incentives Interim Study.] The [legislative council] is requested to authorize a [senior living insurance and incentives study committee] to review current long-term care insurance laws, current long-term care insurance options available in the state, the types of services covered under a long-term care insurance option, and incentives for the purchase of long-term care insurance including, but not limited to, tax credits. The [study committee] shall include input from consumers, consumer advocates, the insurance industry, and the health care industry. The [study committee] shall submit a report of findings and recommendations to the [governor] and the [Legislature] on or before [insert date].

Section 16. [Reimbursement Methodology Task Force.] The [department of human services] shall convene a [task force] consisting of the members of the [senior living coordinating unit], representatives of the nursing facility industry, consumers and consumer advocates to develop a case-mix reimbursement methodology. The methodology developed shall include a limited number of levels of reimbursement. The task force shall submit a report of the reimbursement methodology developed to the [governor] and the [Legislature] on or before [insert date]. The [department of human services] shall also include in the report a summary of the expenditures for nursing facility conversion and for long-term care service development.

Section 17. [Residential Care Facilities: Application of Program.] The [department of human services] shall review and shall make recommendations to the [Legislature] on or before [insert date], relating to the feasibility of applying the [Senior Living Program] and any changes in the reimbursement methodology to residential care facilities.

Section 18. [Maintenance of Fiscal Effort.] The fiscal effort, existing on [insert date], represented by appropriations made for long-term care services by the [Legislature], shall be maintained and a reduction shall not be made in such appropriations to the [department of human services] or the [department of elder affairs] for those services as a result of this Act.

Section 19. [Department of Elder Affairs Appropriation.] There is appropriated from the Senior Living Trust Fund created by this Act to the [department of elder affairs] for [fiscal year], the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For the development of a comprehensive senior living program, including program administration and costs associated with implementation, salaries, support, maintenance, miscellaneous purposes, and for not more than [seven (7)] full-time equivalent positions: [insert amount].

2. The [department of elder affairs] may adopt emergency rules to carry out the provisions of this section.

Section 20. [Department of Human Services Appropriation.]  
1. There is appropriated from the Senior Living Trust Fund created by this Act to the [department of human services] for [fiscal year], the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

   a. To provide grants to nursing facilities for conversion to assisted living programs or to provide long-term care alternatives and to provide grants to long-term care providers for development of long-term care alternatives: [insert amount].

   b. To supplement the medical assistance appropriation and to provide reimbursement for health care services and rent expenses to eligible people through the home and community-based services waiver and the state supplementary assistance program, including program administration and data system costs associated with implementation, salaries, support, maintenance, miscellaneous purposes, and for not more than [five (5)] full-time equivalent positions: [insert amount].

   c. To implement nursing facility provider reimbursement at the seventieth percentile and case-mix reimbursement methodology changes: [insert amount].

2. The [department] shall transfer these funds to supplement other appropriations to the
[department of human services] to carry out the purposes of this subsection. The total amount expended by the [department of human services] in [fiscal year] reimbursements under both the seventieth percentile and the case-mix reimbursement methodologies shall not exceed the amount appropriated in this subsection.

Section 21. [Emergency Rules.]
   1. The [department of human services] and the [department of elder affairs] may adopt emergency rules to implement this Act.
   2. If the [department of human services] or the [department of elder affairs] adopts emergency rules to implement this Act, the rules shall become effective immediately upon filing, unless a later effective date is specified in the rules. Any rules adopted in accordance with the provisions of this section shall also be published as notice of intended action as provided in [insert citation].

Section 22. [Retroactive Applicability.] The section in this Act that creates section 6 of this Act as it relates to receipt of federal funding, is retroactively applicable to [October 1, 1999].

Section 23. [Severability.] [Insert severability clause.]

Section 24. [Repealer.] [Insert repealer clause.]

Section 25. [Effective Date.] [Insert effective date.]
Telecommuting Incentives

Technology is changing how employees work and where they work. Telecommuting is an example. Connecticut, Florida, Oregon and Virginia are among the first states to enact legislation to permit public employees to telecommute.

Connecticut

Chapter 67, Sec. 5-248i of Connecticut’s State Personnel Act reads:

(a) The Commissioner of Administrative Services may develop and implement guidelines, in cooperation with interested employee organizations, as defined in subsection (d) of section 5-270, authorizing telecommuting and work-at-home programs for state employees where such arrangements are determined to be cost-effective.

(b) Any employee of a state agency may be authorized to participate in a telecommuting or work-at-home assignment with the approval of his appointing authority and with the approval of the Commissioner of Administrative Services. Approval of such assignment may be granted only where it is determined to be cost effective. Any assignment shall be on a temporary basis only, for a period not to exceed six months and may be extended as necessary.

(c) The Commissioner of Administrative Services shall report annually to the joint standing committee of the General Assembly having cognizance of matters relating to labor and public employees as to the extent of use by employees as provided pursuant to subsections (a) and (b) of this section.

Florida


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

(a) “Agency” means any official, officer, commission, board, authority, council, committee, or department of state government.

(b) “Department” means the Department of Management Services.

(c) “Telecommuting” means a work arrangement whereby selected state employees are allowed to perform the normal duties and responsibilities of their positions, through the use of computers or telecommunications, at home or another place apart from the employees’ usual place of work.

(2) The department shall:

(a) Establish and coordinate the state employee telecommuting program and administer this section.

(b) Appoint a statewide telecommuting coordinator to provide technical assistance to state agencies and to promote telecommuting in state government.

(c) Identify state employees who are participating in a telecommuting program and their job classifications through the state personnel payroll information subsystem created under s.110.116.

(3) By October 1, 1994, each state agency shall identify and maintain a current listing of the job classifications and positions that the agency considers appropriate for telecommuting. Agencies that adopt a state employee telecommuting program must:

(a) Give equal consideration to career service and exempt positions in their selection of employees to participate in the telecommuting program.

(b) Provide that an employee’s participation in a telecommuting program will not adversely affect eligibility for advancement or any other employment rights or benefits.

(c) Provide that participation by an employee in a telecommuting program is voluntary, and that the employee may elect to cease to participate in a telecommuting program at any time.

(d) Adopt provisions to allow for the termination of an employee’s participation in the program if the employee’s continued participation would not be in the best interests of the agency.
(e) Provide that an employee is not currently under a performance improvement plan in order to participate in the program.

(f) Ensure that employees participating in the program are subject to the same rules regarding attendance, leave, performance reviews, and separation action as are other employees.

(g) Establish the reasonable conditions that the agency plans to impose in order to ensure the appropriate use and maintenance of any equipment or items provided for use at a participating employee’s home or other place apart from the employee’s usual place of work, including the installation and maintenance of any telephone equipment and ongoing communications costs at the telecommuting site which is to be used for official use only.

(h) Prohibit state maintenance of an employee’s personal equipment used in telecommuting, including any liability for personal equipment and costs for personal utility expenses associated with telecommuting.

(i) Describe the security controls that the agency considers appropriate.

(j) Provide that employees are covered by workers’ compensation under chapter 440, when performing official duties at an alternate worksite, such as the home.

(k) Prohibit employees engaged in a telecommuting program from conducting face-to-face state business at the homesite.

4. Require a written agreement that specifies the terms and conditions of telecommuting, which includes verification by the employee that the home office provides work space that is free of safety and fire hazards, together with an agreement which holds the state harmless against any and all claims, excluding workers’ compensation claims, resulting from an employee working in the home office, and which must be signed and agreed to by the telecommuter and the supervisor.

Oregon

Oregon 283.550 Telecommuting; state policy; agencies to adopt written policies; biennial report reads:

(1) As used in this section:

(a) “State agency” means any state office, department, division, bureau, board and commission, whether in the executive, legislative or judicial branch.

(b) “Telecommute” means to work from the employee’s home or from an office near the employee’s home, rather than from the principal place of employment.

(2) It is the policy of the State of Oregon to encourage state agencies to allow employees to telecommute when there are opportunities for improved employee performance, reduced commuting miles or agency savings.

(3) Each state agency shall adopt a written policy that:

(a) Defines specific criteria and procedures for telecommuting;

(b) Is applied consistently throughout the agency; and

(c) Requires the agency, in exercising its discretion, to consider an employee request to telecommute in relation to the agency’s operating and customer needs.

(4) Each state agency that has an electronic bulletin board, home page or similar means of communication shall post the policy adopted under subsection (3) of this section on the bulletin board, home page or similar site.

(5) The Oregon Department of Administrative Services, in consultation with the Office of Energy, shall provide a biennial report to the Joint Committee on Technology, or a similar committee of the Legislative Assembly, containing at least the following:

(a) The number of employees telecommuting;

(b) The number of trips, miles and hours of travel time saved annually;

(c) A summary of efforts made by the state agency to promote and encourage telecommuting;

(d) An evaluation of the effectiveness of efforts to encourage employees to telecommute;
and

(e) Such other matters as may be requested by the committee.

This SSL draft is based on Virginia Chapter 405 of 2001. The draft requires the state secretary of technology to develop policies, standards, specifications and guidelines for information technology concerning telecommuting by the employees of public bodies. The state department of technology planning is directed to develop a comprehensive statewide plan for telecommuting by public employees, and the department of human resource management is directed to establish an incentive program for telecommuting. The head of each public body, in consultation with the department of technology planning, is directed to develop a telecommuting policy to maximize telecommuting without diminished employee work performance.

The state department of technology planning is also directed to:

- Advise and assist private sectors in developing employee telecommuting;
- Develop incentives for private sectors to utilize employee telecommuting, and
- Evaluate the status, effectiveness, and utilization of employee telecommuting, in both public and private sectors, and report its findings to the secretary of technology, who in turn is directed to annually report such findings to the Legislature.

Submitted as:
Virginia
Chapter 405 of 2001

**Suggested Legislation**

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish Telecommuting Policies for State and Local Governments.”

Section 2. [Telecommuting Policy.]
A. The [secretary], in cooperation with the [secretary of technology] and in consultation with the [council on technology services], shall establish a comprehensive statewide telecommuting policy under which eligible employees of state agencies, as determined by state agencies, may telecommute, and the [secretary] shall periodically update such policy as necessary.

B. The telecommuting policy described in subsection A shall include, but not be limited to, model guidelines, rules and procedures for telecommuting. Such policy may also include an incentive program, to be established and administered by the [department of human resources management] that may encourage state employees to telecommute and that may encourage the state agencies’ management personnel to promote telecommuting.

Section 3. [Agency Reporting Requirements.]

In accordance with the statewide telecommuting policy, to be developed by the [secretary of administration] pursuant to Section 2, the head of each state agency shall establish a telecommuting policy under which eligible employees of such agency may telecommute to the maximum extent possible without diminished employee performance or service delivery. The policy shall identify types of employees eligible for telecommuting and any benefits of telecommuting and shall be updated periodically as necessary. The head of each state agency shall annually report to the [secretary of administration] or their designee on the status and efficiency of telecommuting.
Section 4. [Advice and Assistance to Public and Private Sectors Regarding Telecommuting.]

A. The [secretary] shall advise and assist state agencies, and upon request of the localities, the [secretary] may advise and assist localities in planning, developing and administering programs, projects, plans, policies and other activities to promote telecommuting by employees of state agencies or localities.

B. The [secretary], upon request, may advise and assist private sector employers in the state in planning, developing and administering programs, projects, plans, policies and other activities for telecommuting by private sector employees and in developing incentives provided by the private sector to encourage private sector employers in the state to utilize employee telecommuting.

C. The [secretary] shall report annually to the [Legislature] on the status and efficiency of telecommuting in the state.

Section 5. [Telecommuting by Local Government Employees.]

Each local government is authorized and encouraged to establish and implement a telecommuting policy under which eligible employees of such local government may telecommute to the maximum extent possible without diminished employee performance or service delivery.

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

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

Section 8. [Effective Date.] [Insert effective date.]
Uniform Money Services Act

As the marketplace for financial services has become increasingly more diverse and competitive, consumers have been faced with an ever-expanding universe of businesses and industries offering currency exchange, money and wire transfers, and check cashing services. The purveyors of these services, however, are generally not subject to the same level of state and federal regulatory scrutiny as traditional state- and federally-chartered banks.

Broadly speaking, the Uniform Money Services Act, promulgated by the National Conference of Commissioners on Uniform State Laws (ULC) in 2000, provides that a person may not engage in specific regulated activities (money transmission, check cashing, and currency exchange) unless they hold a qualifying license or are an authorized delegate of a person holding a qualifying license. Licensing is set up as a three-tiered structure -- if a person is licensed to engage in money transfer services, he or she can also engage in check cashing and currency exchange without having to obtain a separate license for that purpose; if a person is licensed to engage in check cashing, he or she can also engage in currency exchange (but not money transfers); if a person is licensed to engage in currency exchange, he or she may only engage in currency exchange services.

In the case of money transmission services, the Act specifies the disclosures that must be made in an application for licensure, including information about the licensee (criminal convictions, prior related business history and operations in other states, and material litigation), information about proposed authorized delegates, sample payment instruments, banking information, and any other information reasonably required by the state regulator. Corporate and publicly traded entities are each subject to special, additional disclosures, and state regulators retain the express power to waive, or add to, the disclosure requirements under the Act. Money transfer applicants must satisfy certain security requirements (typically by providing bonds in specified amounts), must meet threshold net worth requirements, and are required to pay statutorily-defined license fees. While the Act suggests particular amounts for these purposes, enacting states may substitute fees and security requirements appropriate for each jurisdiction. Applicants must also retain security thresholds for 5 years past the date of transaction, and are subject to regular licensure review and renewal (with additional disclosures and fees).

The express disclosure requirements applicable to check cashing and currency exchange license applicants are generally less elaborate than those required of money transfer license applicants (for example, there is no express security requirement, nor a separate disclosure standard applicable to corporate and publicly-traded entities), but may be expanded by the regulator to include, but not exceed, the information required of money transfer licensees.

All three categories of licensee, and their authorized delegates, are subject to an annual examination by the regulating agency with 45 days notice. The regulating agency may also examine licensees and delegates without notice where there is reason to believe the licensee or delegate is engaging in an unsafe or unsound practice or has violated the Act or regulations adopted under the Act. If the regulation agency concludes that an on-site examination is necessary, the licensee shall pay the reasonable costs of that examination. Licensees are required under the Act to file material changes to information disclosed in an application with 15 business days (including any change in control), to file quarterly business update information (names of authorized delegates and responsible persons all locations in the state where business is conducted under the license), and to file a report within one business day concerning a bankruptcy, reorganization, or receivership petition, the cancellation or impairment of a bond or other security, the commencement of a proceeding to revoke or suspend its license in any jurisdiction, or a felony charge or conviction against any licensee or any executive officer, manager, director, or authorized delegate of a licensee. Licensees are required to maintain at all times investments with a market value greater than or equal to the aggregate amount of all outstanding payment instruments, stored value obligations, and transmitted money. The Act specifies a list of permissible investments for this purpose, and provides that these investments are held in trust for the benefit of purchasers and holders, even if commingled, in the event of bankruptcy or receivership of the licensee.
Regulating agencies are empowered under the Act to suspend and revoke licensees (and delegate designations), to issue cease and desist orders, to enter into consent orders, and to assess civil penalties. The Act makes it a felony to intentionally make a false statement, misrepresentation, or certification in connection with a record filed or maintained under the Act, and provides that it is either a misdemeanor or felony (depending on the amount of compensation earned) for any person to knowingly engage in these regulated activities without a license. The Act requires regulating agencies to comply with state administrative procedure acts, and provides for hearings.

It is important to note that while the Act is broadly inclusive, it does not apply with respect to state and federal governments or their instrumentalities, subdivisions, or contractors, to banks, securities broker-dealers, boards of trade, or providers of related payment, clearance, and settlement services, or to operators of payment and clearance systems between or among other excluded entities. In addition, the Act does not apply with respect to the payday loan business, nor does it apply with respect to other businesses or entities that may incidentally transport physical currency or instruments in the normal course of business.

Suggested Legislation (Presented without the ULC Prefatory Note and Comments)

ARTICLE 1
GENERAL PROVISIONS

Section 101. [Short Title.] This [Act] may be cited as the Uniform Money Services Act.

Section 102. [Definitions.] In this [Act]:

1. “Applicant” means a person that files an application for a license under this [Act].

2. “Authorized delegate” means a person a licensee designates to provide money services on behalf of the licensee.

3. “Bank” means an institution organized under federal or state law which:
   (A) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or
   (B) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than $100,000, and does not engage in the business of making commercial loans.

4. “Check cashing” means receiving compensation for taking payment instruments or stored value, other than traveler’s checks, in exchange for money, payment instruments, or stored value delivered to the person delivering the payment instrument or stored value at the time and place of delivery without an agreement specifying when the person taking the payment instrument will present it for collection.

5. “Control” means:
   (A) ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;
   (B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or
   (C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

6. “Currency exchange” means receipt of revenues from the exchange of money of one government for money of another government.

7. “Executive officer” means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

8. “Licensee” means a person licensed under this [Act].

9. “Limited station” means private premises where a check casher is authorized to engage in check cashing solely for the employees of the particular employer or group of employers specified in the
check casher's license application.

(10) "Mobile location" means a vehicle or a movable facility where check cashing occurs.

(11) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(12) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(13) "Money services" means money transmission, check cashing, or currency exchange.

(14) "Money transmission" means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online or telecommunications services, or network access.

(15) "Outstanding," with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

(16) "Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(18) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(19) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State.

(20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Stored Value" means monetary value that is evidenced by an electronic record.

(22) "[Superintendent]" means the [state superintendent of banks or other senior state regulator].

(23) "Unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee’s assets, or otherwise materially prejudices the interests of its customers.

Section 103. [Exclusions.] This [Act] does not apply to:

(1) the United States or a department, agency, or instrumentality thereof;

(2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;

(3) a state, county, city, or any other governmental agency or governmental subdivision of a State;

(4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Corporation Act [12 U.S.C. Section 1861-1867 (Supp. V 1999)], or corporation organized under the Edge Act [12 U.S.C. Section 611-633 (1994 & Supp. V 1999)] under the laws of a State or the United States if it does not issue, sell, or provide payment instruments or stored value through an authorized delegate that is not such a person;

(5) electronic funds transfer of governmental benefits for a federal, state, [county,] or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a State or governmental subdivision, agency, or instrumentality thereof;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act [7 U.S.C. Section 1-25 (1994)] or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) a person that provides clearance or settlement services pursuant to a registration as a clearing
agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;
(9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers; or
(10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

ARTICLE II
MONEY TRANSMISSION LICENSES

Section 201. [License Required.]
(a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:
(1) is licensed under this [article]; or
(2) is an authorized delegate of a person licensed under this [article].
(b) A license under this [article] is not transferable or assignable.

Section 202. [Application for License.]
(a) In this section, “material litigation” means litigation that according to generally accepted accounting principles is significant to an applicant’s or a licensee’s financial health and would be required to be disclosed in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar records.
(b) A person applying for a license under this [article] shall do so in a form and in a medium prescribed by the [superintendent]. The application must state or contain:
(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;
(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the [10]-year period next preceding the submission of the application;
(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;
(4) a list of the applicant’s proposed authorized delegates and the locations in this State where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;
(5) a list of other States in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another State;
(6) information concerning [any bankruptcy or receivership proceedings affecting the licensee];
(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;
(8) the name and address of any bank through which the applicant’s payment instruments and stored value will be paid;
(9) a description of the source of money and credit to be used by the applicant to provide money services; and
(10) any other information the [superintendent] reasonably requires with respect to the applicant.
(c) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:
(1) the date of the applicant’s incorporation or formation and State or country of
incorporation or formation;

(2) if applicable, a certificate of good standing from the State or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the [10]-year period next preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant;

(5) a list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control of, the applicant has been involved in the [10]-year period next preceding the submission of the application;

(6) a copy of the applicant’s audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant’s unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;


(9) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation’s most recent report filed under Section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m (1994 & Supp. V 1999)]; or

(B) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation’s domicile outside the United States;

(10) if the applicant has a registered agent in this State, the name and address of the applicant’s registered agent in this State; and

(11) any other information the [superintendent] reasonably requires with respect to the applicant.

d) A nonrefundable application fee of [2,000] and a license fee of [2,000] must accompany an application for a license under this [article]. The license fee must be refunded if the application is denied.

e) The [superintendent] may waive one or more requirements of subsections (b) and (c) or permit an applicant to submit other information in lieu of the required information.

Section 203. [Security.]

(a) Except as otherwise provided in subsection (b),

(1) a surety bond, letter of credit, or other similar security acceptable to the [superintendent] in the amount of [50,000] plus [10,000] per location, not exceeding a total addition of [250,000], must accompany an application for a license.

(b) Security must be in a form satisfactory to the [superintendent] and payable to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

(c) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the [superintendent] may maintain an action on behalf of the claimant.

(d) A surety bond must cover claims for so long as the [superintendent] specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the [superintendent] may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee’s payment instruments or stored-value obligations outstanding in this State is reduced. The [superintendent] may permit a licensee to substitute another form of security.
acceptable to the [superintendent] for the security effective at the time the licensee ceases to provide
money services in this State.
(e) In lieu of the security prescribed in this section, an applicant for a license or a licensee may
provide security in a form prescribed by the [superintendent].
(f) The [superintendent] may increase the amount of security required to a maximum of
[$1,000,000] if the financial condition of a licensee so requires, as evidenced by reduction of net worth,
financial losses, or other relevant criteria.

Section 204. [Issuance of License.]
(a) When an application is filed under this [article], the [superintendent] shall investigate the
applicant's financial condition and responsibility, financial and business experience, character, and general
fitness. The [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of
which the applicant must pay. The [superintendent] shall issue a license to an applicant under this [article]
if the [superintendent] finds that all of the following conditions have been fulfilled:
(1) the applicant has complied with Sections 202 [.,] [and] 203[., and 206]; and
(2) the financial condition and responsibility, financial and business experience, compétence, character, and general fitness of the applicant; and the competence, experience, character, and
general fitness of the executive officers, managers, directors, and persons in control of, the applicant
indicate that it is in the interest of the public to permit the applicant to engage in money transmission;
(b) When an application for an original license under this [article] is complete, the
[superintendent] shall promptly notify the applicant in a record of the date on which the application was
determined to be complete and:
(1) the [superintendent] shall approve or deny the application within 120 days after that
date; or
(2) if the application is not approved or denied within 120 days after that date:
(A) the application is deemed approved; and
(B) the [superintendent] shall issue the license under this [article], to take effect as
of the first business day after expiration of the period.
(c) The [superintendent] may for good cause extend the application period.
(d) An applicant whose application is denied by the [superintendent] under this [article] may
appeal, within [30] days after receipt of the notice of the denial, from the denial and request a hearing.

Section 205. [Renewal of License.]
(a) A licensee under this [article] shall pay an annual renewal fee of [$2,000] no later than [30]
days before the anniversary of the issuance of the license or, if the last day is not a business day, on the
next business day.
(b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a form and
in a medium prescribed by the [superintendent]. The renewal report must state or contain:
(1) a copy of the licensee’s most recent audited annual financial statement or, if the
licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual
financial statement of the parent corporation or the licensee's most recent audited consolidated annual
financial statement;
(2) the number and monetary amount of payment instruments and stored-value sold by the
licensee in this State which have not been included in a renewal report, and the monetary amount of
payment instruments and stored value currently outstanding;
(3) a description of each material change in information submitted by the licensee in its
original license application which has not been reported to the [superintendent] on any required report;
(4) a list of the licensee’s permissible investments and a certification that the licensee
continues to maintain permissible investments according to the requirements set forth in Sections 701 and
702;
(5) proof that the licensee continues to maintain adequate security as required by Section
(6) a list of the locations in this State where the licensee or an authorized delegate of the
licensee engages in money transmission or provides other money services.]

(c) If a licensee does not [file a renewal report or] pay its renewal fee by the renewal date or any
extension of time granted by the [superintendent], the superintendent shall send the licensee a notice of
suspension. Unless the licensee [files the report and] pays the renewal fee before expiration of 10 days
after the notice is sent, the licensee's license is suspended 10 days after the [superintendent] sends the
notice of suspension. The suspension must be lifted if, within 20 days after its license is suspended, the
licensee:

(1) [files the report and] pays the renewal fee; and
(2) pays [$100] for each day after suspension that the [superintendent] did not receive [the
    renewal report and] the renewal fee.
(d) The [superintendent] for good cause may grant an extension of the renewal date.

[Section 206. [Net Worth.] A licensee under this [article] shall maintain a net worth of at least
[$25,000] determined in accordance with generally accepted accounting principles.]

ARTICLE 3
CHECK CASHING LICENSES

Section 301. [License Required.]
(a) A person may not engage in check cashing or advertise, solicit, or hold itself out as providing
check cashing for which the person receives at least $500 within a 30-day period unless the person:
(1) is licensed under this [article];
(2) is licensed for money transmission under [Article] 2;
(3) is licensed for currency exchange under [Article] 4; or
(4) is an authorized delegate of a person licensed under [Article] 2.

(b) A license under this [article] is not transferable or assignable.

Section 302. [Application for License.]
(a) A person applying for a license under this [article] shall do so in a form and in a medium
prescribed by the [superintendent]. The application must state or contain:
(1) the legal name and residential and business addresses of the applicant, if the applicant
    is an individual or, if the applicant is not an individual, the name of each partner, executive officer,
    manager, and director;
(2) the location of the principal office of the applicant;
(3) complete addresses of other locations in this State where the applicant proposes to
    engage in check cashing or currency exchange, including all limited stations and mobile locations;
(4) a description of the source of money and credit to be used by the applicant to engage in
    check cashing and currency exchange; and
(5) other information the [superintendent] reasonably requires with respect to the
    applicant, but not more than the [superintendent] may require under [Article] 2.

(b) A nonrefundable application fee of [$2,000] and a license fee of [$2,000] must accompany an
application for a license under this [article]. The license fee must be refunded if the application is denied.

Section 303. [Issuance of License.]
(a) When an application is filed under this [article], the [superintendent] shall investigate the
applicant’s financial condition and responsibility, financial and business experience, character, and general
fitness. The [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of
which the applicant must pay. The [superintendent] shall issue a license to an applicant under this [article]
if the [superintendent] finds that all of the following conditions have been fulfilled:
(1) the applicant has complied with Section 302; and
(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in check cashing.

(b) When an application for an original license under this [article] is complete, the [superintendent] shall issue the license under this [article], to take effect as of the first business day after expiration of the period.

(c) The [superintendent] may for good cause extend the application period.

(d) An applicant whose application is denied by the [superintendent] under this [article] may appeal, within [30] days after receipt of the notice of the denial, from the denial and request a hearing.

Section 304. [Renewal of License.]
(a) A licensee under this [article] shall pay a biennial renewal fee of [$2,000] no later than [30] days before each biennial anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

(b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the [superintendent]. The renewal report must state or contain:
(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the [superintendent] on any required report; and
(2) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in check cashing or currency exchange, including limited stations and mobile locations.

(c) If a licensee does not [file a renewal report or] pay its renewal fee by the renewal date or any extension of time granted by the [superintendent], the superintendent shall send the licensee a notice of suspension. Unless the licensee [files the report and] pays the renewal fee before expiration of 10 days after the notice is sent, the licensee’s license is suspended 10 days after the superintendent sends the notice of suspension.

(d) The [superintendent] for good cause may grant an extension of the renewal date. The suspension must be lifted if, within 20 days after its license is suspended, the licensee:
(1) [files the report and] pays the renewal fee; and
(2) pays [$100] for each day after suspension that the [superintendent] did not receive [the renewal report and] the renewal fee.

ARTICLE 4
CURRENCY EXCHANGE LICENSES

Section 401. [License Required.]
(a) A person may not engage in currency exchange or advertise, solicit, or hold itself out as providing currency exchange for which the person receives revenues equal or greater than [five percent] of total revenues unless the person:
(1) is licensed under this [article];
(2) is licensed for money transmission under [Article] 2;
(3) is licensed for check cashing under [Article] 3; or
(4) is an authorized delegate of a person licensed under [Article] 2.

(b) A license under this [article] is not transferable or assignable.

Section 402. [Application for License.]
(a) A person applying for a license under this [article] shall do so in a form and in a medium prescribed by the [superintendent]. The application must state or contain:
(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer,
Section 403. [Issuance of License.] 
(a) When an application under this [article], the [superintendent] shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The [superintendent] shall issue a license to an applicant under this [article] if the [superintendent] finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 402; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

(b) When an application for an original license under this [article] is complete, the [superintendent] shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the [superintendent] shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the [superintendent] shall issue the license under this [article], to take effect as of the first business day after expiration of the period.

(c) The [superintendent] may for good cause extend the application period.

(d) An applicant whose application is denied a license by the [superintendent] under this [article] may appeal, within [30] days after receipt of the notice of the denial, from the denial and request a hearing.

Section 404. [Renewal of License.] 
(a) A licensee under this [article] shall pay a biennial renewal fee of [$2,000] no later than [30] days before each biennial anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

(b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the [superintendent]. The renewal report must state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the [superintendent] on any required report; and

(2) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange or check cashing, including limited stations and mobile locations.

(c) If a licensee does not [file a renewal report and] pay its renewal fee by the renewal date or any extension of time granted by the [superintendent], the superintendent shall send the licensee a notice of suspension. Unless the licensee [files the report and] pays the renewal fee before expiration of 10 days after the notice is sent, the licensee’s license is suspended 10 days after the superintendent sends the notice of suspension.

(d) The [superintendent] for good cause may grant an extension of the renewal date.
ARTICLE 5
AUTHORIZED DELEGATES

Section 501. [Relationship Between Licensee and Authorized Delegate.]
(a) In this section, “remit” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.
(b) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this [Act]. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with this [Act].
(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.
(d) If a license is suspended or revoked or a licensee does not renew its license, the [superintendent] shall notify all authorized delegates of the licensee whose names are in a record filed with the [superintendent] of the suspension, revocation, or non-renewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.
(e) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under [Article] 2, 3, or 4. [An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.]

Section 502. [Unauthorized Activities.] A person may not provide money services on behalf of a person not licensed under this [Act]. A person that engages in that activity provides money services to the same extent as if the person were a licensee.

ARTICLE 6
EXAMINATIONS; REPORTS; RECORDS

Section 601. [Authority to Conduct Examinations.]
(a) The [superintendent] may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days’ notice in a record to the licensee.
(b) The [superintendent] may examine a licensee or its authorized delegate, at any time, without notice, if the [superintendent] has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this [Act] or a rule adopted or an order issued under this [Act].
(c) If the [superintendent] concludes that an on-site examination is necessary under subsection (a), the licensee shall pay the reasonable cost of the examination.
(d) Information obtained during an examination under this [Act] may be disclosed only as provided in Section 607.

Section 602. [Joint Examinations.]
(a) The [superintendent] may conduct an on-site examination of records listed in Section 605 in conjunction with representatives of other state agencies or agencies of another State or of the federal government. Instead of an examination, the [superintendent] may accept the examination report of an agency of this State or of another State or of the federal government or a report prepared by an independent licensed or certified public accountant.
(b) A joint examination or an acceptance of an examination report does not preclude the [superintendent] from conducting an examination as provided by law. A joint report or a report accepted
under this subsection is an official report of the [superintendent] for all purposes.

Section 603. [Reports.]

(a) A licensee shall file with the [superintendent] within [15] business days any material changes in information provided in a licensee’s application as prescribed by the [superintendent].

(b) A licensee shall file with the [superintendent] within 45 days after the end of each fiscal quarter a current list of all authorized delegates, responsible individuals, and locations in this State where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

(c) A licensee shall file a report with the [superintendent] within one business day after the licensee has reason to know of the occurrence any of the following events:
   (1) the filing of a petition by or against the licensee under the United States Bankruptcy Code [11 U.S.C. Section 101-110 (1994 & Supp. V. 1999)] for bankruptcy or reorganization;
   (2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;
   (3) the commencement of a proceeding to revoke or suspend its license in a State or country in which the licensee engages in business or is licensed;
   (4) the cancellation or other impairment of the licensee’s bond or other security;
   (5) a [charge or] conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony; or
   (6) a [charge or] conviction of an authorized delegate for a felony.

Section 604. [Change of Control.]

(a) A licensee shall:
   (1) give the [superintendent] notice in a record of a proposed change of control within [15] days after learning of the proposed change of control;
   (2) request approval of the acquisition; and
   (3) submit a nonrefundable fee of [$2,000] with the notice.

(b) After review of a request for approval under subsection (a), the [superintendent] may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The [superintendent] shall approve a request for change of control under subsection (a) if, after investigation, the [superintendent] determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

(d) When an application for a change of control under this [article] is complete, the [superintendent] shall notify the licensee in a record of the date on which the request was determined to be complete and:
   (1) the [superintendent] shall approve or deny the request within 120 days after that date;
   or
   (2) if the request is not approved or denied within 120 days after that date:
      (A) the request is deemed approved; and
      (B) the [superintendent] shall permit the change of control under this section, to take effect as of the first business day after expiration of the period.

(e) The [superintendent], by rule of order, may exempt a person from any of the requirements of subsection (a) (2) and (3) if it is in the public interest to do so.

(f) Subsection (a) does not apply to a public offering of securities.
(g) Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the [superintendent] as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the [superintendent] determines that the person would not be a person in control of a licensee, the [superintendent] shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (a) through (c).

Section 605. [Records.]
(a) A licensee shall maintain the following records for determining its compliance with this [Act] for at least [three] years:
   (1) a record of each payment instrument or stored-value obligation sold;
   (2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
   (3) bank statements and bank reconciliation records;
   (4) records of outstanding payment instruments and stored-value obligations;
   (5) records of each payment instrument and stored-value obligation paid within the [three]-year period;
   (6) a list of the last known names and addresses of all of the licensee’s authorized delegates; and
   (7) any other records the [superintendent] reasonably requires by rule.
(b) The items specified in subsection (a) may be maintained in any form of record.
(c) Records may be maintained outside this State if they are made accessible to the [superintendent] on [seven] business-days’ notice that is sent in a record.
(d) All records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the [superintendent] pursuant to Section 601.

Section 606. [Money Laundering Reports.]
(a) A licensee and an authorized delegate shall file with the [attorney general] all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 (1994), 31 C.F.R. Section. 103 (2000) and other federal and state laws pertaining to money laundering.
(b) The timely filing of a complete and accurate report required under subsection (a) with the appropriate federal agency is compliance with the requirements of subsection (a), unless the [superintendent] notifies the licensee that the [attorney general] has notified the [superintendent] that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the [attorney general].

Section 607. [Confidentiality.]
(a) Except as otherwise provided in subsection (b), all information or reports obtained by the [superintendent] from an applicant, licensee, or authorized delegate and all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the [superintendent], or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under [this State’s open records law].
(b) The [superintendent] may disclose information not otherwise subject to disclosure under subsection (a) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information; or the [superintendent] finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given previous notice by the [superintendent] of its intent to release the information.
(c) This section does not prohibit the [superintendent] from disclosing to the public a list of persons licensed under this [Act] or the aggregated financial data concerning those licensees.
ARTICLE 7
PERMISSIBLE INVESTMENTS

Section 701. [Maintenance of Permissible Investments.]
(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored value obligations issued or sold and money transmitted by the licensee or its authorized delegates.
(b) The [superintendent], with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The [superintendent] by rule may prescribe or by order allow other types of investments that the [superintendent] determines to have a safety substantially equivalent to other permissible investments.
(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee’s outstanding payment instruments and stored value obligations in the event of bankruptcy or receivership of the licensee.

Section 702. [Types of Permissible Investments.]
(a) Except to the extent otherwise limited by the [superintendent] pursuant to Section 701, the following investments are permissible under Section 701:

1. cash, a certificate of deposit, or senior debt obligation of an insured depositary institution, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section 1813 (1994 & Supp. V. 1999)];
2. banker’s acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank;
3. an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;
4. an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a State or a governmental subdivision, agency, or instrumentality thereof;
5. receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of receivables under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this paragraph in any one person aggregating more than 10 percent of the licensee’s total permissible investments; and
6. a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and whose portfolio is restricted by the management company’s investment policy to investments specified in paragraphs (1) through (4).
(b) The following investments are permissible under Section 701, but only to the extent specified:

1. an interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this paragraph in any one person aggregating more than 10 percent of the licensee’s total permissible investments;
2. a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and whose portfolio is restricted by the management company’s investment policy to shares of a person traded on a national securities exchange
or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed
20 percent of the total permissible investments of a licensee and the licensee does not at one time hold
investments in any one person aggregating more than 10 percent of the licensee’s total permissible
investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation
whose securities are traded on a national securities exchange if the aggregate of the amount of principal
and interest outstanding under demand-borrowing agreements under this paragraph does not exceed 20
percent of the total permissible investments of a licensee and the licensee does not at one time hold
principal and interest outstanding under demand-borrowing agreements under this paragraph with any one
person aggregating more than 10 percent of the licensee’s total permissible investments; and

(4) any other investment the [superintendent] designates, to the extent specified by the
[superintendent].

(c) The aggregate of investments under subsection (b) may not exceed 50 percent of the total
permissible investments of a licensee calculated in accordance with Section 701.

ARTICLE 8
ENFORCEMENT

Section 801. Suspension and Revocation [; Receivership.]

(a) The [superintendent] may suspend or revoke a license [place a licensee in receivership,] or
order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this [Act] or a rule adopted or an order issued under this [Act];

(2) the licensee does not cooperate with an examination or investigation by the
[superintendent];

(3) the licensee engages in fraud, intentional misrepresentation, or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money
laundering statute, or violates a rule adopted or an order issued under this [Act], as a result of the
licensee’s willful misconduct or willful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized
delegate, person in control of a licensee, or responsible person of the licensee or authorized delegate
indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations, or makes a general
assignment for the benefit of its creditors; or

(8) the licensee does not remove an authorized delegate after the [superintendent] issues
and serves upon the licensee a final order including a finding that the authorized delegate has violated this
[Act].

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the
[superintendent] may consider the size and condition of the licensee’s money transmission, the magnitude
of the loss, the gravity of the violation of this [Act], and the previous conduct of the person involved.

Section 802. [Suspension and Revocation of Authorized Delegates.]

(a) The [superintendent] may issue an order suspending or revoking the designation of an
authorized delegate, if the [superintendent] finds that:

(1) the authorized delegate violated this [Act] or a rule adopted or an order issued under
this [Act];

(2) the authorized delegate did not cooperate with an examination or investigation by the
[superintendent];

(3) the authorized delegate engaged in fraud, intentional misrepresentation, or gross
negligence;

(4) the authorized delegate is convicted of a violation of a state or federal anti-money
laundring statute;

(5) the competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) the authorized delegate is engaging in an unsafe or unsound practice.

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the [superintendent] may consider the size and condition of the authorized delegate’s provision of money services, the magnitude of the loss, the gravity of the violation of this [Act] or a rule adopted or order issued under this [Act], and the previous conduct of the authorized delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the [superintendent].

Section 803. [Orders to Cease and Desist.]

(a) If the [superintendent] determines that a violation of this [Act] or of a rule adopted or an order issued under this [Act] by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the [superintendent] may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

(b) The [superintendent] may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the [superintendent].

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Section 801 or 802.

(d) A licensee or an authorized delegate that is served with an order to cease and desist may petition the [appropriate court], for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to Section 801 or 802.

(e) An order to cease and desist expires unless the [superintendent] commences an administrative proceeding pursuant to Section 801 or 802 within [10] days after it is issued.

Section 804. [Consent Orders.] The [superintendent] may enter into a consent order at any time with a person to resolve a matter arising under this [Act] or a rule adopted or order issued under this [Act]. A consent order must be signed by the person to whom it is issued or by the person’s authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this [Act] or a rule adopted or an order issued under this [Act] has been violated.

Section 805. [Civil Penalties.] The [superintendent] may assess a civil penalty against a person that violates this [Act] or a rule adopted or an order issued under this [Act] in an amount not to exceed [$1,000] per day for each day the violation is outstanding, plus this State’s costs and expenses for the investigation and prosecution of the matter, including reasonable attorney’s fees.

Section 806. [Criminal Penalties.]

(a) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this [Act] or that intentionally makes a false entry or omits a material entry in such a record is guilty of a [reference to state classification] felony.

(b) A person that knowingly engages in an activity for which a license is required under this [Act] without being licensed under this [Act] and who receives more than [$500] in compensation within a 30-day period from this activity is guilty of a [reference to state classification] felony.

(c) A person that knowingly engages in an activity for which a license is required under this [Act]
without being licensed under this [Act] and who receives no more than [$500] in compensation within a 30-day period from this activity is guilty of a [reference to state classification] misdemeanor.

Section 807. [Unlicensed Persons.]
(a) If the [superintendent] has reason to believe that a person has violated or is violating Section 201, 301, or 401 the [superintendent] may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of Section 201, 301, or 401.
(b) In an emergency, the [superintendent] may petition the [appropriate court] for the issuance of a temporary restraining order exparte pursuant to the rules of civil procedure.
(c) An order to cease and desist becomes effective upon service of it upon the person.
(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Sections 901 and 902.
(e) A person that is served with an order to cease and desist for violating Section 201, 301, or 401 may petition the [appropriate court] for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to Sections 901 and 902.
(f) An order to cease and desist expires unless the [superintendent] commences an administrative proceeding within [10] days after it is issued.

ARTICLE 9
ADMINISTRATIVE PROCEDURES

Section 901. [Administrative Proceedings.] All administrative proceedings under this [Act] must be conducted in accordance with [the state administrative procedure act].

Section 902. [Hearings.] Except as otherwise provided in Sections 205(c), 304(c), 404(c), 803, and 807, the [superintendent] may not suspend or revoke a license, [place a licensee in receivership,] issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard. The [superintendent] shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

ARTICLE 10
MISCELLANEOUS PROVISIONS

Section 1001. [Uniformity of Application and Construction.] In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

Section 1002. [Severability Clause.] If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 1003. [Effective Date.] This [Act] takes effect ...........................................

Section 1004. [Repeals.] The following Acts and parts of Acts are repealed:
(1) ........................................
(2) ........................................
(3) ........................................

Section 1005. [Savings And Transitional Provisions.]
(a) A license issued under [name of existing money services licensing statutes repealed under Section 1004] that is in effect immediately before [effective date of this Act] remains in force as a license until [effective date of this Act] and shall remain in effect until the license expires. Thereafter, the licensee is deemed to have applied for and had received a license under this [Act] and must comply with the renewal requirements set forth in this [Act].

(b) This [Act] applies to the provision of money services on or after the effective date of this [Act]. This [Act] does not apply to money transmission provided by a licensee who was licensed to provide money transmission under [name of existing money transmission statutes repealed under Section 1004] and whose license remains in force under this section. This [Act] does not apply to check cashing provided by a licensee who was licensed to provide check cashing under [name of existing check cashing statutes repealed under Section 1004] and whose license remains in force under this section. This [Act] does not apply to currency exchange provided by a licensee who was licensed to provide currency exchange under [name of existing currency exchange statutes repealed under Section 1004] and whose license remains in force under this section.
Voyeurism, Aggravated Voyeurism

This Act amends state law to make using video and audio equipment for invasion of privacy purposes a crime of voyeurism.

Submitted as:
South Carolina
Act 363 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 to Address Voyeurism and Aggravated Voyeurism.”

Section 2. [Peeping Tom, Voyeurism and Aggravated Voyeurism.]

(A) It is unlawful for a person to be an eavesdropper or a Peeping Tom on or about the premises of another or to go upon the premises of another for the purpose of becoming an eavesdropper or a Peeping Tom. The term “Peeping Tom,” as used in this Act, is defined as a person who peeps through windows, doors, or other like places, on or about the premises of another, for the purpose of spying upon or invading the privacy of the people spied upon and any other conduct of a similar nature, that tends to invade the privacy of others. The term “Peeping Tom” also includes any person who employs the use of video or audio equipment for the purposes set forth in this Section. A person who violates the provisions of this Section is guilty of a misdemeanor and, upon conviction, must be fined not more than [five hundred (500)] dollars or imprisoned not more than [three (3)] years, or both.

(B) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying sexual desire of any person, he or she knowingly views, photographs, audio records, video records, or films another person, without that person’s knowledge and consent, while the person is in a place where he or she would have a reasonable expectation of privacy. A person who violates the provisions of this subsection:

(1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than [five hundred (500)] dollars or imprisoned not more than [three (3)] years, or both; or

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not less than [five hundred (500)] dollars or more than [five thousand (5000)] dollars or imprisoned not more than [five years (5)], or both.

(C) A person commits the crime of aggravated voyeurism if he or she knowingly sells or distributes any photograph, audio recording, video recording, or film of another person taken or made in violation of this section. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not less than [five hundred (500)] dollars, or more than [five thousand (5000)] dollars or imprisoned not more than [ten (10)] years, or both.

(D) As used in this section:

(1) “Place where a person would have a reasonable expectation of privacy” means:

(a) a place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed, filmed, or videotaped by another; or

(b) a place where one would reasonably expect to be safe from hostile intrusion or surveillance.

(2) “Surveillance” means secret observation of the activities of another person for the
purpose of spying upon and invading the privacy of the person.

(3) “View” means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(E) The provisions of subsection (A) do not apply to:

(1) viewing, photographing, videotaping, or filming by personnel of the [department of corrections] or of a county, municipal, or local jail or detention center or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the [department of corrections] or a county, municipal, or local jail or detention center or correctional facility;

(2) security surveillance for the purposes of decreasing or prosecuting theft, shoplifting, or other security surveillance measures in bona fide business establishments;

(3) any official law enforcement activities conducted pursuant to [insert citation];

(4) private detectives and investigators conducting surveillance in the ordinary course of business; or

(5) any bona fide news gathering activities.

(F) In addition to any other punishment prescribed by this Section or other provision of law, a person procuring photographs, audio recordings, video recordings, or films in violation of this section shall immediately forfeit all items. These items must be destroyed when no longer required for evidentiary purposes.

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

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

Section 5. [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 would be an example of preemption. Mandates and preemption 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 legislation in the 101st Congress.

Defining congressional mandates was supposedly made easier by the “Unfunded Mandates Reform Act of 1995 (UMRA).” Under UMRA, federal legislation that imposes $50 million or more in unfunded annual costs to the states is officially considered a mandate. This threshold has since been raised to $56 million to adjust for inflation. UMRA also defines a private sector mandate and 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 both types.

Federal Mandates – Recent History

According to the CBO’s “Activities Under the Unfunded Mandate Report 1996-2000,” although the percentage of legislative bills containing federal mandates has remained consistent over the last five years, the percentage of bills with mandates over the statutory threshold has declined from 1.5 percent in 1996 to 0.5 percent in 2000. Since 1996, Congress has enacted only two intergovernmental mandates that surpass the UMRA threshold, the law increasing the minimum wage in 1996 and the Food Stamp program in 1997. In addition, out of the 3,000 bills evaluated through mandate statements by CBO in that report, only twelve percent contained intergovernmental mandates and just fourteen percent contained private sector mandates. Finally, only nine percent (32 bills) of the intergovernmental bills reviewed by CBO reached UMRA’s $50 million threshold.

107th Congress-First Session

The first session of the 107th Congress began on January 3, 2000 and was expected to conclude before the Christmas holiday of 2001. At the time this note was written, 70 bills had been enacted into law. Because the CBO’s final report on mandates from this session was not available at the time this note was written, this note simply highlights a few key bills from the session that could affect the states and provides CBO cost estimates for some of those items.

“Aviation Security Act” (S. 1447)

S. 1447 authorizes increased federal responsibility for all aspects of aviation security, including the federal take-over of all passenger and baggage screening in the nation’s airports and the placement of federal marshals on commercial flights. It authorizes the Department of Justice and the Department of Transportation to hire 31,000 employees to provide day-to-day aviation security and requires the Department of Transportation to reimburse airports for some of the costs associated with complying with this new law. It requires local airport operators to use technology and equipment to detect biological and chemical weapons, requires airport operators to develop security awareness programs for airport employees and perform background checks for certain airport employees with access to “secure areas.”

Initial CBO estimates predict that the cost the to public sector from S. 1447 will not meet the $56 UMRA threshold, but it predicts the costs to the private sector could exceed the $113 million UMRA threshold.

On a different note, S. 1447 pre-empts state laws by exempting volunteers who provide emergency services on commercial flights from liability in an action brought in a state court. This bill became law in
Moratorium on Internet Taxes (H.R. 1552)

H.R. 1552 extends the moratorium on collecting taxes on Internet sales transactions for two more years, although it does allow states currently collecting taxes on Internet sales transactions to continue doing so. Based on information received from the Multistate Tax Commission and the Federation of Tax Administrators, the CBO also concluded that this bill will not affect state and local revenues currently being collected. But, a University of Tennessee report estimates that state and local revenue losses for e-commerce sales will be $13.3 billion for 2001 for states that are not currently taxing such transactions. This bill became law in November 2001.

“Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (USA Patriot Act of 2001) (H.R. 3162)

H.R. 3162 expands the powers of federal law enforcement and financial regulators, and increase penalties for acts of terrorism. The CBO estimates that H.R. 3162 will increase direct federal spending by $104 million in FY02. Spending for the prevention and prosecution of terrorists will total $50 million over the 2003-2006 timeframe and $20 million each year thereafter. The bill became law in October 2001.

While the CBO cost estimate for H.R. 3162 did not mention mandates on or pre-emption of state laws, at least one of two other bills (H.R. 2975 and S. 1510) that were folded into H.R. 3162 could contain both. For example, H.R. 2975 imposes intergovernmental and private sector mandates by increasing requirements for state courts and prohibiting certain people from handling specific biological agents.

“Economic Security and Assistance for American Workers Act” (H.R. 3090)

H.R. 3090 would reduce tax receipts by providing special temporary depreciation allowances, extend the period for carrying back net operating losses, extend the bonding authority and tax credit for New York City and other devastated areas, and provide tax relief for victims of the September 11th attack. In addition, H.R. 3090 would increase federal spending by providing a tax rebate to low-income tax filers that did not receive a rebate this summer, create new health insurance programs, expand Medicaid coverage and federal matching payments, and enhance unemployment insurance benefits.

The CBO estimates that while H.R. 3090 contains intergovernmental and private sector mandates, many of the mandates impose no costs on state, local, or tribal governments. Hence, the cost to comply should not exceed the UMRA threshold for the public sector, but the cost to the private sector might exceed the UMRA threshold. Two examples in the latter case include the bill’s Mental Health Parity provisions and COBRA continuation coverage provisions.

“Terrorism Risk Protection Act” (H.R. 3210)

H.R. 3210 would require an administrator appointed by the President to provide up to $100 million in financial assistance to commercial property and casualty insurers for losses for terrorist acts committed after the enactment of the bill and prior to January 1, 2003. The CBO estimates that while H.R. 3210 contains several intergovernmental and private sector mandates, the costs of complying with these mandates would not exceed the UMRA threshold for the public or private sector.
Cumulative Index, 1982-2002

The entries in this index cover topics from the 1982 Suggested State Legislation volume through this 2002 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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