The Council of State Governments promotes state solutions regionally and nationally.

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

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

The Council of State Governments: Preparing States for Tomorrow, Today.

Council Officers

Vice Chair: Sen. John Hottinger, Minn.

President: Gov. Parris N. Glendening, Md.  
President-Elect: Gov. Mike Huckabee, Ark.  
Vice President: Vacant

Council Offices

Headquarters:  
Daniel M. Sprague, Executive Director  
2760 Research Park Drive  
P.O. Box 11910  
Lexington, KY 40578-1910  
Phone: (859) 244-8000  
Fax: (859) 244-8001  
E-mail: info@csg.org  
Internet: www.csg.org

Eastern:  
Alan V. Sokolow, Director  
P.O. Box 20811  
New York, NY 10009  
Phone: (212) 912-0128  
FAX: (212) 949-8859  
E-mail: csge@csg.org

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

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

Western:  
Kent Briggs, Director  
1107 9th Street, Suite 650  
Sacramento, CA 95814  
Phone: (916) 553-4423  
FAX: (916) 466-5760  
E-mail: csgw@csg.org

Washington, D.C.:  
Jim Brown, General Counsel and Director  
Hall of the States  
444 N. Capitol Street, NW, Suite 401  
Washington, D.C. 20001  
Phone: (202) 624-5460  
FAX: (202) 624-5452  
E-mail: csg-dc@csg.org
Foreword

The Council of State Governments (CSG) is pleased to bring you the printed version of the 2003 Suggested State Legislation, the 62nd volume in a valued series of compilations of draft legislation on topics of current interest and importance to the states. The drafts found in this volume represent many hours of work by The Council’s Committee on Suggested State Legislation and CSG staff.

The entries in the book were selected from hundreds of submissions, and most are based on existing state statutes. Neither The Council nor the Committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these proposals are presented.

August 2002
Lexington, Kentucky

Daniel M. Sprague
Executive Director
The Council of State Governments

Suggested State Legislation 2003, Volume 62

Staff Acknowledgments

*William K. Voit, Senior Project Director
*Lead staff on this project

Additional CSG Staff
Nancy J. Vickers, Associate Editor
Contents

CSG Committee on Suggested State Legislation 2002 ................................................................. 7
Introduction ............................................................................................................................... 11
Suggested State Legislation Style .......................................................................................... 13
Sample Act ............................................................................................................................. 14

Suggested Legislation

Anti-Terrorism .......................................................................................................................... 15
Appointment of Presidential Electors .................................................................................... 18
Biometric Technology .......................................................................................................... 20
Center for Nursing ................................................................................................................. 24
Comprehensive Planning/Growth Management Statement .................................................. 26
Construction Defect Claims .................................................................................................. 27
Cyber Court ........................................................................................................................... 35
Dark Fiber ............................................................................................................................... 40
Diabetes Notation on Death Certificates .............................................................................. 43
Elder Death Review Teams .................................................................................................. 46
Electric Personal Assistive Mobility Devices ....................................................................... 49
Electronic Transmission of Sexually Explicit Advertisement Material ............................... 51
Fair Credit Extension Uniformity ......................................................................................... 54
Financial Literacy ................................................................................................................. 59
Genetic Testing, Genetic Information .................................................................................. 60
Gubernatorial Inauguration Finance Disclosure .................................................................. 67
Health Insurance Grievance Review .................................................................................... 69
Hearing Aid Loan Bank Program ......................................................................................... 78
Juror Gratuities ..................................................................................................................... 81
Labor Organizations: Legal Fees and Court Costs ............................................................. 82
Livestock Diseases ............................................................................................................... 84
Mercury .................................................................................................................................. 90
Military Honors Funeral ........................................................................................................ 93
Personal Information: Disposal ............................................................................................ 95
Pilot Program for Unassisted Voting by the Blind ................................................................. 97
Political Cyberfraud ............................................................................................................... 99
Prescription Drug Cost Management .................................................................................. 101
Price Gouging After Disasters ............................................................................................ 104
Privacy: Video Providers ....................................................................................................... 106
Public Elementary and Secondary Student Fee Authorization .......................................... 108
Regional Water Banks Note ............................................................................................... 111
Relief from Legal Determination of Paternity .................................................................. 114
Reporting Traffic Infractions of Diplomats ........................................................................ 115
Road-to-Independence, Transitioning from Foster Care .................................................... 117
Self-Directed In-Home Care ............................................................................................... 123
Service Contracts and Consumer Products Guaranty ....................................................... 129
Spread the Word Program ................................................................................................. 135
State Reports to Legislature: Alternative Formats ............................................................. 136
Statewide Sexual Assault Nurse Examiner Program ........................................................ 137
Tax Stamps: Cigarettes ........................................................................................................ 143
Telemarketers: Consent to Charge an Account .................................................................. 146
Unauthorized Transfers of Accounts of Prescription Drug Customers ............................ 148
Uniform Athlete Agents Act .......................................................................................................................... 150
Uniform Computer Information Transactions Statement .................................................................................... 157
Utilization of Unused Prescriptions .................................................................................................................. 175
Voluntary Statewide Child Identification Program .......................................................................................... 177
World Language Institute .................................................................................................................................. 178
Federal Mandates for State Action ................................................................................................................... 181

Cumulative Index, 1983-2003 .......................................................................................................................... 184
CSG Committee on Suggested State Legislation 2002

2002 Co-Chairs
Senator Pam Redfield, Nebraska
Representative Joe Toomy, Louisiana

2002 Vice-Chair
Virgil Puskarich, Executive Director, Local Government Commission, Pennsylvania

Alabama
Jerry L. Bassett, Director, Legislative Reference Service
Penny Davis, Associate Director, Alabama Law Institute
Representative Albert Hall

Arizona
Representative Carolyn Allen

Arkansas
Bill Lancaster, Senate Chief of Staff
Tim Massanelli, Parliamentarian

Colorado
Senator Pat Pascoe

Connecticut
Sharon Brais, Assistant Director, Legislative Commissioner’s Office

Delaware
Senator Patricia Blevins
Margaret Moore Dean, Assistant to the Speaker
Representative Donna Stone
Representative Pamela Thornburg

Georgia
Lamar Holland, Assistant Director, Special Projects,
State Finance & Investment Commission

Idaho
Senator Bart Davis

Illinois
William Henning, Executive Director, National Conference of Commissioners on Uniform State Laws
John M. McCabe, Legislative Director/Legal Counsel
National Conference of Commissioners on Uniform State Laws

Indiana
Senator Ron Alting
Senator David Ford
Tim Jeffers, Chief of Staff, Office of the Speaker
Philip Sachtleben, Executive Director, Legislative Services Agency

Iowa
Representative Danny Carroll
Representative Steve Richardson

Kansas
Representative Rocky Nichols
Senator Lana Oleen
Kentucky
Representative J.R. Gray
Joyce Honaker, Committee Staff Administrator, Legislative Research Commission
Representative Thomas Robert Kerr
Senator Katie Stine

Louisiana
Diane Burkhart, Deputy Administrator, Senate
Carole M. Mosely, House Legislative Services
Representative Joe Toomy

Maine
Tarren Bragdon, Special Assistant, Office of Senate President Pro Tem
Representative Albion D. Goodwin
Ryan Low, Chief of Staff, Office of the Speaker
William MacDonald, Legislative Aide, Senate Democratic Office

Michigan
Chris Hackbarth, Deputy Legislative Director, Office of the Speaker
Jennifer Spike-DeBano, Legislative Director, Speaker of the House

Minnesota
Senator Don Betzold
Tom Hanson, Legislative Director to the Speaker
Representative Tony Kielkucki
Heather Rein, Leadership Assistant, Senate
Representative Loren Solberg

Mississippi
Representative Bobby Moak
Ed Perry, Clerk of the House
Caryn Quilter, Attorney, Senate
Senator Robert “Rob” Smith
Representative Percy Watson

Missouri
B. Darrell Jackson, Director, House Research Office
Representative Denny Merideth
Donald Prost, Director, Research & Statute Revision, Committee on Legislative Research

Nebraska
Patrick J. O’Donnell, Clerk of the Legislature
Senator Pam Redfield

Nevada
Assemblywoman Merle Berman
Assemblyman Mark Manendo
Kim Morgan, Chief Deputy, Legislative Counsel

New Hampshire
Amy Ireland Bourgault, Chief of Staff, State House
Representative Keith Herman

New Jersey
Senator Robert J. Martin

New Mexico
Representative Nick L. Salazar
North Carolina  
Gerry F. Cohen, Director, Legislative Bill Drafting Division, Legislative Services Commission  
Representative David Redwine  
Terrence Sullivan, Director of Research, Legislative Services Commission

North Dakota  
Representative Kim Koppelman  
Senator Tim Mathern

Ohio  
Representative Stephen Buehrer  
Senator Tom Roberts

Oklahoma  
Scott Emerson, Chief Counsel, House of Representatives

Oregon  
Senator John Minnis  
Karen Smith, Director of Legislation, Office of the Senate President

Pennsylvania  
Joseph W. Murphy, Chief Counsel, House Republican Caucus  
Virgil Puskarich, Executive Director, Local Government Commission  
Representative Chris Ross

Rhode Island  
Representative Thomas Slater

South Carolina  
John Hazzard, Chief of Staff & Counsel, Senate Judiciary Committee  
Senator Thomas L. Moore

South Dakota  
Thomas Magedanz, Legislative Research Council

Texas  
Gina Martin, Chief of Staff, Office of Senator Mike Moncrief

Utah  
Representative Ron Bigelow

Virginia  
Delegate Jim Dillard  
Senator Frederick M. Quayle  
E.M. Miller, Jr., Director, Division of Legislative Services

West Virginia  
Delegate Jerry L. Mezzatesta  
Senator William Wooton
Former CSG Chairs and Presidents
(Ex Officio Voting Members)

Senator Manny Aragon, Past CSG Chair, New Mexico
Representative John Connors, Past CSG Chair, Iowa
Senator Hugh Farley, Past CSG Chair, New York
Governor Michael Leavitt, Past CSG President, Utah
Senator John Marchi, Senate Vice President Pro Tem, Past CSG Chair, New York
Senator Kenneth McClintock, Past CSG Chair, Puerto Rico
Speaker Thomas Murphy, Past CSG Chair, Georgia
Governor Dirk Kempthorne, Past CSG President, Idaho
Governor George Pataki, Past CSG President, New York
Governor Paul Patton, Past CSG President, Kentucky
Governor Pedro Rossello, Past CSG President, Puerto Rico
Jeff Wells, Deputy Executive Director, Colorado Department of Labor and Employment, Past CSG Chair, Colorado
Assemblyman Robert C. Wertz, Past CSG Chair, New York
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 62 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 2003 version of Suggested State Legislation represents changes in the program’s operation. These changes were made to adapt the program to CSG’s mission to identify trends in state government and to take advantage of the Internet and related technology. Additional changes will be made as determined by CSG Executive Management and the committee leadership.

Traditionally, SSL volumes were the culmination of a yearlong process in which legislation was received and reviewed by members of the SSL Committee in a series of meetings. Traditionally, the volumes were produced at the end of the SSL Cycle. More recently, the SSL volumes were released concurrently online through CSG’s STARS database. However, even under this system, in some cases, the items that the committee voted to include in a volume had to be held for as long as 11 months before they could be distributed to the states.

Beginning with the 2003 SSL Cycle, the SSL Committee will produce future SSL volumes electronically in segments, one segment after every committee meeting. Each segment will be published online through the STARS database approximately one month after a meeting. The electronic parts will be combined into a book that CSG will continue to publish at the end of the SSL Cycle, at least for the immediate future.

The SSL Committee considers legislation submitted by state officials and staff, CSG Associates and CSG staff. It also will consider 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.

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 SSL 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. Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed from their submitted format.

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.

Readers should keep in mind that neither The Council of State Governments nor the SSL Committee are in the position of advocating the enactment of items that are presented in SSL Volumes. 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.

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.

Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed from their submitted format.
“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 State 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.]
Anti-Terrorism

This Act requires the state department of health to monitor dangerous communicable diseases and outbreaks of diseases known or suspected to be used as weapons and to develop capabilities and procedures to identify unknown bacterial substances that may be weapons. The Act directs the state emergency medical services commission to provide training and certification standards for the administration of antidotes, vaccines, and antibiotics in situations related to a terrorist or military attack.

The legislation limits the liability of paramedics, advanced emergency medical technicians, and emergency medical technicians who are acting in response to a terrorist attack.

Finally, it imposes penalties for manufacturing, placing and detonating weapons of mass destruction with the intent to carry out terrorism.

Submitted as:
Indiana
SB 180

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Anti-Terrorism Act.”

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

“Advanced life support” means care that is given:

(a) (1) at the scene of:
(A) an accident;
(B) an act of terrorism, if the governor has declared a disaster emergency under [insert citation] in response to the act of terrorism; or
(C) an illness;
(2) during transport; or
(3) at a hospital; by a paramedic or an advanced emergency medical technician and that is more advanced than the care usually provided by an emergency medical technician.

(b) “Advanced Life Support” may include any of the following:

(1) Defibrillation.
(2) Endotracheal intubation.
(3) Parenteral injections of appropriate medications.
(4) Electrocardiogram interpretation.
(5) Emergency management of trauma and illness.

“Deadly Weapon,” as defined in [insert citation] is expanded to include the following phrase “a biological disease, virus, or organism that is capable of causing serious bodily injury.”

“Department” means the [state department of health].

“Terrorism” means the unlawful use of force or violence or the unlawful threat of force or violence to intimidate or coerce a government or all or part of the civilian population.

“Weapon of mass destruction” means any chemical device, biological device or organism, or radiological device that is capable of being used for terrorism.

Section 3. [Monitoring Incidents.]

(a) The [department] shall adopt procedures to gather, monitor, and tabulate case reports of incidents involving dangerous communicable diseases or unnatural outbreaks of diseases known or suspected to be
used as weapons. The [department] shall specifically engage in medical surveillance, tabulation, and reporting of confirmed or suspected cases set forth by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services and the United States Public Health Service of the United States Department of Health and Human Services.

(b) The [department] shall notify the:

1. [state emergency management agency];
2. [state police]; and
3. county health department and local law enforcement agency having jurisdiction of each unnatural outbreak or reported case described in subsection (a); as soon as possible after the [insert department] receives a report under subsection (a). Notification under this subsection must be made not more than [twenty-four (24)] hours after receiving a report.

Section 4. [Procedures.]

The [department] shall develop capabilities and procedures to perform preliminary analysis and identification in as close to a real-time basis as is scientifically possible of unknown bacterial substances that have been or may be employed as a weapon. The [department] shall implement the developed capacity and procedures immediately after the [department] achieves a Level B capability as determined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services and the United States Public Health Service of the United States Department of Health and Human Services.

Section 5. [Standards.]

The [emergency medical services commission] shall establish training and certification standards for the administration of antidotes, vaccines, and antibiotics to prepare for or respond to a terrorist or military attack for people who provide emergency medical services and who are not licensed or regulated under [insert citation].

Section 6. [Immunity from Liability.]

(a) This section does not apply to an act or omission that was a result of gross negligence or willful or intentional misconduct.

(b) An act or omission of a paramedic, an advanced emergency medical technician, an emergency medical technician, or a person with equivalent certification from another state that is performed or made while providing advanced life support or basic life support to a patient or trauma victim does not impose liability upon the paramedic, the advanced emergency medical technician, the emergency medical technician, the person with equivalent certification from another state, a hospital, a provider organization, a governmental entity, or an employee or other staff of a hospital, provider organization, or governmental entity if the advanced life support or basic life support is provided in good faith:

1. in connection with a disaster emergency declared by the governor under [insert citation] in response to an act that the governor in good faith believes to be an act of terrorism as defined in Section 2 of this Act; and

2. in accordance with the rules adopted by the [emergency medical services commission] or the disaster emergency declaration of the governor.

Section 7. [Unlawful or Unauthorized Practice of Medicine or Osteopathic Medicine.]

The unlawful or unauthorized practice of medicine or osteopathic medicine, does not apply to a paramedic as defined in [insert citation], an advanced emergency medical technician as defined in [insert citation], an emergency medical technician as defined in [insert citation], or a person with equivalent certification from another state who renders advanced life support as defined in [insert citation] or basic life support as defined in [insert citation]:

1. during a disaster emergency declared by the [governor] under [insert citation] in response to an act that the [governor] in good faith believes to be an act of terrorism as defined in Section 2 of this Act; and
(2) in accordance with the rules adopted by the [emergency medical services commission] or a disaster emergency declaration of the [governor].

Section 8. [Weapons of Mass Destruction: Penalties.]
(a) A person who knowingly or intentionally:
   (1) manufactures;
   (2) places;
   (3) disseminates; or
   (4) detonates;
   a weapon of mass destruction with the intent to carry out terrorism commits a [Class B felony]. However, the offense is a [Class A felony] if the conduct results in serious bodily injury or death of any person.
(b) A person who knowingly or intentionally:
   (1) manufactures;
   (2) places;
   (3) disseminates; or
   (4) detonates;
   a weapon of mass destruction with the intent to damage, destroy, sicken, or kill crops or livestock of another person without the consent of the other person commits agricultural terrorism, a [Class C felony].

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

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

Section 11. [Effective Date.] [Insert effective date.]
Appointment of Presidential Electors

This SSL draft is based on North Carolina law. It provides for the selection of presidential electors by the General Assembly if the election results have not been proclaimed by the sixth day before electors are to meet, and by the governor if electors have not been selected by the day before electors are to meet.

It references these federal provisions:

3 U.S.C. § 2: Failure to Make Choice on Prescribed Day:

Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.

3 U.S.C. § 5: Determination of Controversy as to Appointment of Electors:

If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 U.S.C. § 7: Meeting and Vote of Electors:

The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.

Submitted as:
North Carolina
Chapter 289 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Appointment of Presidential Electors by General Assembly in Certain Circumstances, by the Governor in Certain other Circumstances.] As permitted by 3 U.S.C. § 2, whenever the appointment of any Presidential Elector has not been proclaimed under [insert citation] before noon on the date for settling controversies specified by 3 U.S.C. § 5, and upon the call of an extra session pursuant to the [state constitution] for the purposes of this section, the [General Assembly] may fill the position of any Presidential Electors whose election is not yet proclaimed.

Section 3. [Appointment by Governor if no Appointment by the Day Before Electors’ Meeting Day.] If the appointment of any Presidential Elector has not been proclaimed under [insert citation] before noon on the
date for settling controversies specified by 3 U.S.C. § 5, nor appointed by the [General Assembly] by noon on
the day before the day set for the meeting of Presidential Electors by 3 U.S.C. § 7, then the [Governor] shall
appoint that Elector.

Section 4. [Standard for Decision by General Assembly and Governor.] In exercising their authority
under subsections (2) and (3) of this section, the [General Assembly] and the [Governor] shall designate
Electors in accord with their best judgment of the will of the electorate. The decisions of the [General
Assembly] or [Governor] under subsections (2) and (3) of this Act are not subject to judicial review, except to
ensure that applicable statutory and constitutional procedures were followed. The judgment itself of what was
the will of the electorate is not subject to judicial review.

Section 5. [Proclamation Before Electors’ Meeting Day Controls.] If the proclamation of any
Presidential Elector under [insert citation] is made any time before noon on the day set for the meeting of
Presidential Electors by 3 U.S.C. § 7, then that proclamation shall control over an appointment made by the
[General Assembly] or the [Governor]. This section does not preclude litigation otherwise provided by law to
challenge the validity of the proclamation or the procedures that resulted in that proclamation.

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

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

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

Balancing the use of technology to help ensure public safety with the need to protect personal privacy is a concern to all governments, especially since September 11, 2001. Technology to create biometric identifiers and perform facial imaging is at the forefront of the debate. The Biometric Consortium defines biometrics as “automated methods of recognizing a person based on a physiological or behavioral characteristic. Among the features measured are; face, fingerprints, hand geometry, handwriting, iris, retinal, vein, and voice.” California, Connecticut, Georgia, Nebraska, Texas and Virginia are reported to be among the first states that considered legislation on biometrics. Connecticut and Texas are among the first to enact such legislation.

California

Under existing law in California, every application for an original or renewal of a driver’s license or identification card is required to contain, among other things, a legible print of the thumb or finger of the applicant. California Senate Bill 661 (introduced in 2001) would require the state department of motor vehicles to create a biometric identifier from an applicant’s thumbprint or fingerprint and perform a process of authentication in order to ensure that each individual is issued only one driver’s license or identification card. It defines biometric as “a unique digital code created from a thumb point or fingerprint.” The bill imposes various duties on the department with regards to adopting and implementing procedures for restricting access to the biometric information that is collected, maintaining records of requests for access, and posting notices regarding these procedures. It authorizes the department to produce the biometric information pursuant to a court ordered subpoena or summons to and to transmit such biometric information to third parties under certain conditions. The bill also imposes various duties upon such third parties to restrict access to biometric identifiers.

Connecticut


(a) For purposes of this section, "biometric identifier system" means a system which allows for the recognition of an individual through retinal scanning, finger-imaging, hand geometry or facial recognition. The Commissioner of Social Services and the Commissioner of Motor Vehicles shall examine available biometric identifier systems and to the greatest extent possible, select a system which is compatible with the systems of surrounding states. The Commissioner of Social Services may enter into a memorandum of understanding with the Commissioner of Motor Vehicles for the Department of Motor Vehicles to provide the hardware, software, equipment maintenance, technical training and other resources deemed necessary by the commissioner to establish said system.

(b) At the conclusion or cancellation of the contract entered into pursuant to the memorandum of understanding in subsection (a) of this section, the Commissioner of Social Services may extend the contract for not more than one year, provided, no later than one year after such conclusion or cancellation, the commissioner shall issue a request for proposals for providing the hardware, software, equipment maintenance, technical training and other resources deemed necessary by the commissioner to maintain or improve said system. The subsequent contract for providing the resources for said system shall be awarded pursuant to section 4a-59 and shall begin no later than one year after such conclusion or cancellation.

(c) Said system shall be utilized for office use only in the following programs:

(1) general assistance;
(2) temporary family assistance; and
(3) any other program to be determined at the discretion of the Commissioner of Social Services.

(d) A recipient of a program utilizing said system pursuant to subsection (b) of this section shall participate in said system or be subject to disqualification from such program. The commissioner shall have the authority to exempt a recipient from participation in said system.

(e) The implementation of said system shall begin on or before January 1, 1996. The schedule of such implementation shall be determined by the Commissioner of Social Services.

(f) Biometric identifier information obtained pursuant to subsection (d) of this section shall be the proprietary information of the Department of Social Services and shall not be released or made available to any agency or organization and shall not be used for any purpose other than identification or fraud prevention in this or any other state, except that such information may be made available to the office of the Chief State's Attorney if necessary for the prosecution of fraud discovered pursuant to the biometric identifier system established in subsection (a) of this section or in accordance with section 17b-90. The penalty for a violation of this subsection shall be up to a five-thousand-dollar fine or five years' imprisonment or both and the cost of prosecution.

(g) The Commissioner of Social Services shall report to the joint standing committee of the General Assembly having cognizance of matters relating to human services, in accordance with the provisions of section 11-4a, on or before January 1, 1997, and annually thereafter, the following information:

(1) the number of recipients participating in said system;
(2) the number of recipients whose benefits have been discontinued due to their failure to participate in said system;
(3) the cost of implementation and operation of said system;
(4) the amount of savings attributed to the establishment and operation of said system; and
(5) the compatibility of said system with biometric systems being utilized in surrounding states.

Nebraska

Nebraska LB924 of 2002 would authorize the state department of motor vehicles to use a biometric identifier, such as a fingerprint, retinal scan, facial mapping, iris imaging, etc., in conjunction with a new digital driver's license scheduled for implementation in 2004.

Pennsylvania

Pennsylvania HB 2416 of 2002 would direct the state department of motor vehicles to establish an identification system and database based on the print of the thumb or finger of an applicant, or some other biometric identification. Under the system, the print shall be cross-referenced with all other fingerprints or other biometric identification data in the database in order to authenticate the print and to ensure that each individual is issued only one driver's license and that an individual is not fraudulently obtaining a driver's license in another individual's name.

Virginia

Virginia SB 62 of 2002 would require the use of thumbprints or other biometric identifiers (as determined by the department of motor vehicles commissioner) in connection with driver's licenses, commercial driver's licenses, and special identification cards. These provisions would only apply to driver's licenses, commercial driver's licenses, special identification cards, and applications issued or submitted on or after January 1, 2003.

Virginia HB 454 of 2002 would create a procedure by which a locality or a law-enforcement agency must apply for an order from a court prior to employing facial recognition technology. In this bill, “facial recognition technology” means any technology or software system that identifies humans by using a
biometric system to identify and analyze a person's facial characteristics and is employed for the purpose of matching a facial image captured by cameras placed in any public place, other than in a state or local correctional facility, with an image stored in a database.

Suggested Legislation

The draft in this SSL Volume is based on Texas HB 678, which became law in 2001. This draft protects the confidentiality of biometric information of an individual by prohibiting the sale, lease, or disclosure of the information. The Act prohibits a person from capturing a biometric identifier of an individual for a commercial purpose without informed consent. This legislation also prohibits a person or governmental body from selling, leasing, or disclosing a biometric identifier unless the individual consents, the disclosure completes a financial transaction requested or authorized by the individual, the disclosure is required or permitted by a federal or state statute, or the disclosure is made for law enforcement purposes. A person or governmental body that stores or transmits biometric identifiers must use reasonable care to keep such information from being disclosed.

Submitted as:
Texas HB 678 (enrolled version)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Collecting and Using Biometric Identifiers.”

Section 2. [Permitted and Prohibited Uses of Biometric Identifiers.]
(a) In this section, “biometric identifier” means a retina scan or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
(b) A person may not capture a biometric identifier of an individual for a commercial purpose unless the person:
   (1) informs the individual before capturing the biometric identifier; and
   (2) receives the individual's consent to capture the biometric identifier.
(c) A person who possesses a biometric identifier of an individual:
   (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
      (i) the individual consents to the disclosure;
      (ii) the disclosure completes a financial transaction requested or authorized by the individual;
      (iii) the disclosure is required or permitted by a federal statute or by another state statute; or
      (iv) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
   (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the person stores, transmits, and protects the person's other confidential information.
(d) A person who violates this section is subject to a civil penalty of not more than [twenty-five thousand (25,000)] dollars for each violation. The [attorney general] may institute an action to recover the civil penalty.
(e) A governmental body that possesses a biometric identifier of an individual:
   (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
(i) the individual consents to the disclosure;
(ii) the disclosure is required or permitted by a federal statute or by another state statute; or
(iv) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Section 4. [Exemptions.] A biometric identifier in the possession of a governmental body is exempt from disclosure under [insert citation].

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

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

Section 7. [Effective Date.] [Insert effective date.]
Center for Nursing

This Act establishes a Center for Nursing to monitor the supply and demand for nursing in the state and to form policies to address recruiting and retaining nurses to work in the state.

Submitted as:
Florida
Sections 97, 98, and 99 of CS for SB 1558 (enrolled version)
Status: CS for SB 1558 was 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 Center for Nursing.”

Section 2. [Legislative Findings.] The Legislature finds that a Center for Nursing will repay the state's investment by providing an ongoing strategy for the allocation of the state's resources directed towards nursing. The primary goals for the Center shall be to:

(1) Develop a strategic statewide plan for nursing manpower in this State by:
(a) Establishing and maintaining a database on nursing supply and demand in the State, to include current supply and demand, and future projections; and
(b) Selecting from the plan priorities to be addressed.

(2) Convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:
(a) Review and comment on data analysis prepared for the Center;
(b) Recommend systemic changes, including strategies for implementation of recommended changes; and
(c) Evaluate and report the results of these efforts to the [Legislature] and others.

(3) Enhance and promote recognition, reward, and renewal activities for nurses in the State by:
(a) Promoting nursing excellence programs such as magnet recognition by the American Nurses Credentialing Center;
(b) Proposing and creating additional reward, recognition, and renewal activities for nurses; and
(c) Promoting media and positive image-building efforts for nursing.

Section 3. [Center for Nursing; Board of Directors.]
(1) The Center for Nursing shall be governed by a policy-setting board of directors. The Board shall consist of [sixteen (16)] members, with a simple majority of the Board being nurses representative of various practice areas. Other members shall include representatives of other health care professions, business and industry, health care providers, and consumers. The members of the Board shall be appointed by the [Governor] as follows:
(a) [Four (4)] members recommended by the [President of the Senate], at least [one (1)] of whom shall be a registered nurse recommended by the [state Organization of Nurse Executives and at least [one (1)] other representative of the hospital industry recommended by the [state Hospital Association];
(b) [Four (4)] members recommended by the [Speaker of the House of Representatives], at least [one (1)] of whom shall be a registered nurse recommended by the [state Nurses Association] and at least [one (1)] other representative of the long-term care industry;
(c) [Four (4)] members recommended by the [Governor], [two (2)] of whom shall be registered nurses; and
(d) [Four (4)] nurse educators recommended by the [state Board of Education], [one (1)] of whom shall be a [dean of a College of Nursing at a state university], [one (1)] other shall be a [director of a nursing program in a state community college].

(2) The initial terms of the members shall be as follows:

(a) Of the members appointed pursuant to paragraph (1)(a), [two (2)] shall be appointed for terms expiring [June 30, 2005], [one (1)] for a term expiring [June 30, 2004], and [one (1)] for a term expiring [June 30, 2003].

(b) Of the members appointed pursuant to paragraph (1)(b), [one (1)] shall be appointed for a term expiring [June 30, 2005], [two (2)] for terms expiring [June 30, 2004], and [one (1)] for a term expiring [June 20, 2003].

(c) Of the members appointed pursuant to paragraph (1)(c), [one (1)] shall be appointed for a term expiring [June 30, 2005], [one (1)] for a term expiring [June 30, 2004], and [two (2)] for terms expiring [June 30, 2003].

(d) Of the members appointed pursuant to paragraph (1)(d), the terms of [two (2)] members recommended by the [state Board of Education] shall expire [June 30, 2005]; the term of the member who is a [dean of a College of Nursing at a state university] shall expire [June 30, 2004]; and the term of the member who is a [director of a state community college nursing program] shall expire [June 30, 2003]. After the initial appointments expire, the terms of all the members shall be for [three (3)] years, with no member serving more than [two (2)] consecutive terms.

(3) The Board shall have the following powers and duties:

(a) To employ an Executive Director.

(b) To determine operational policy.

(c) To elect a Chair and officers, to serve [2-year] terms. The Chair and officers may not succeed themselves.

(d) To establish committees of the Board as needed.

(e) To appoint a multidisciplinary advisory council for input and advice on policy matters.

(f) To implement the major functions of the center as established in the goals set out in this Act.

(g) To seek and accept non-state funds for sustaining the center and carrying out center policy.

(4) The members of the Board are entitled to receive per diem and allowances prescribed by law for state boards and commissions.

Section 4. [Center for Nursing: State Budget Support.] The [Legislature] finds that it is imperative that the State protect its investment and progress made in nursing efforts to date. The [Legislature] finds that the state Center for Nursing is the appropriate means to do so. The Center shall have state budget support for its operations so that it may have adequate resources for the tasks the [Legislature] has set out in this Act.

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

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

Section 7. [Effective Date.] [Insert effective date.]
Comprehensive Planning/Growth Management Statement

According to the Florida governor’s office, Florida is one of the fastest growing states in the country. Managing that growth will be key to maintaining the quality of life that people seek when moving there. In May 2002, Florida enacted SB 1906 to increase cooperation among local governments, school boards, developers and other agencies on community growth and planning, and addresses school facility coordination and capacity issues. The new legislation requires county and city governments, as well as school boards to join into “inter-local agreements” to plan for future growth. These agreements will allow for a more coordinated and active approach to school planning. They will maximize local opportunities to address school needs, provide for better sharing of information about school renovations and closures, and share school, county or city facilities. Through these agreements, local agencies will also work together to better address population projections and local emergency officials will also be better able to identify additional emergency shelter space within schools.

A Florida legislative staff report indicates that this Act also makes available to owners, developers, and applicants the same methods available to third parties to appeal and challenge the consistency of a development order with a local comprehensive plan. The bill allows local governments to establish a special master process to address quasi-judicial proceedings associated with development order challenges. If a local government establishes such a process, the bill provides that the sole method by which an aggrieved and adversely affected party may challenge any decision of a local government granting or denying an application for a development order, which materially alters the use or density or intensity of use on a particular piece of property, on the basis that it is not consistent with the comprehensive plan is by a petition for certiorari filed in circuit court no later than 30 days following rendition of a development order or other written decision of the local government, or when all local administrative appeals are exhausted, whichever occurs later.

If a local government enacts a special master process, third parties would lose their right to a “trial de novo.” Instead, third parties, as well as owners, developers, and development order applicants’ right to appeal would be by certiorari review. If a local government does not establish a special master process consistent with the requirements of the bill, then all aggrieved or adversely affected parties, including third parties and owners, developers, and applicants for development orders, would have the same right to maintain an action for declaratory, injunctive or other relief against any local government to challenge any decision of local government granting or denying an application for, or to prevent such local government from taking any action on, a development order which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan.

The Council of State Governments
Construction Defect Claims

Contractors are required to carry liability insurance. They are facing increased costs for their insurance in part because insurers are concerned about the increased cost of construction defect litigation. This Act establishes an opportunity for a cure before an action on a construction defect is filed.

Under the Act, a claimant filing a construction defect suit must provide written notice to the construction professional 45 days before the suit is filed. The construction professional must respond within 21 days of the notice and may offer to remedy the defect, compromise by payment, or dispute the claim. If a suit is filed, the claimant must, within 30 days of commencement, list the construction defects alleged and the construction professional responsible for each defect. Newly discovered defects may be added to an existing lawsuit if the builder is given notice and 21 days to respond. The serving of notices required by the Act tolls any applicable statute of limitations or repose until 60 days after the end of the period of notice and opportunity for cure provided.

A condominium or homeowners’ association filing a construction defect suit must notify all unit owners of the action and the expected expenses and fees accompanying it.

Submitted as:
Washington
Chapter 323, Laws of 2002
Status: enacted into law in 2002.

Suggested Legislation

Title, enacting clause, etc.)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Section 1. [Short Title.] This Act may be cited as “An Act to Address Construction Defect Claims.”

Section 2. [Legislative Findings.] The [legislature] finds, declares, and determines that limited changes in the law are necessary and appropriate concerning actions claiming damages, indemnity, or contribution in connection with alleged construction defects. It is the intent of the [legislature] that this Act apply to these types of civil actions while preserving adequate rights and remedies for property owners who bring and maintain such actions.

Section 3. [Definitions.] Unless the context clearly requires otherwise, the definitions in this section apply throughout this Act.

(1) “Action” means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. “Action” does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) “Association” means an association, master association, or subassociation as defined and provided for in [insert citation].

(3) “Claimant” means a homeowner or association who asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) “Construction professional” means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector, including, but not limited to, a dealer as defined in [insert citation] and a declarant as defined in [insert citation], performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(5) “Homeowner” means:
(a) Any person, company, firm, partnership, corporation, or association who contracts with a
construction professional for the construction, sale, or construction and sale of a residence; and
(b) an “association” as defined in this section. “Homeowner” includes, but is not limited to, a
subsequent purchaser of a residence from any homeowner.

(6) “Residence” means a single-family house, duplex, triplex, quadraplex, or a unit in a multiunit
residential structure in which each individual unit is transferred to the owner under a condominium or
cooperative system, and shall include common elements as defined in [insert citation] and common areas as
defined in [insert citation].

(7) “Serve” or “service” means personal service or delivery by certified mail to the last known
address of the addressee.

(8) “Substantial remodel” means a remodel of a residence, for which the total cost exceeds one-half of
the assessed value of the residence for property tax purposes at the time the contract for the remodel work was
made.

Section 4. [Notice of Actions/Claims about Construction Defects.]

(1) In every construction defect action brought against a construction professional, the claimant shall,
no later than [forty-five days (45)] before filing an action, serve written notice of claim on the construction
professional. The notice of claim shall state that the claimant asserts a construction defect claim against the
construction professional and shall describe the claim in reasonable detail sufficient to determine the general
nature of the defect.

(2) Within [twenty-one (21)] days after service of the notice of claim, the construction professional
shall serve a written response on the claimant by registered mail or personal service. The written response
shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the
inspection within a specified time frame. The proposal shall include the statement that the construction
professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the
claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection. A
construction professional’s offer under this subsection (2)(b) to compromise and settle a homeowner’s claim
may include, but is not limited to, an express offer to purchase the claimant’s residence that is the subject of
the claim, and to pay the claimant’s reasonable relocation costs; or

(c) State that the construction professional disputes the claim and will neither remedy the
construction defect nor compromise and settle the claim.

(3) (a) If the construction professional disputes the claim or does not respond to the claimant’s
notice of claim within the time stated in subsection (2) of this section, the claimant may bring an action
against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the
construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of
the claimant’s rejection on the construction professional. After service of the rejection, the claimant may
bring an action against the construction professional for the construction defect claim in the notice of claim.
If the construction professional has not received from the claimant, within [thirty (30)] days after
the claimant’s receipt of the construction professional’s response, either an acceptance or rejection of the
inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate
the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action
against the construction professional for the construction defect claim described in the notice of claim.

(4) (a) If the claimant elects to allow the construction professional to inspect in accordance with
the construction professional’s proposal pursuant to subsection (2)(a) of this section, the claimant shall
provide the construction professional and its contractors or other agents reasonable access to the claimant's
residence during normal working hours to inspect the premises and the claimed defect.

(b) Within [fourteen (14)] days following completion of the inspection, the construction
professional shall serve on the claimant:
(i) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

(iii) A written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of (b) of this subsection, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to (b)(i) or (ii) of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant’s rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within [thirty (30)] days after the claimant’s receipt of the construction professional’s response, either an acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of this subsection, then at anytime thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than [thirty (30)] days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant’s residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including, but not limited to, repair of additional defects.

(6) Any action commenced by a claimant prior to compliance with the requirements of this section shall be subject to dismissal without prejudice, and may not be recommenced until the claimant has complied with the requirements of this section.

(7) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.

(8) Prior to commencing any action alleging a construction defect, or after the dismissal of any action without prejudice pursuant to subsection (6) of this section, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim, and must otherwise comply with the requirements of this section for the additional claims. The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the construction professional of the defect and allowing for response under subsection (2) of this section.

Section 5. [List of Known Construction Defects.]

(1) In every action brought against a construction professional, the claimant, including a construction professional asserting a claim against another construction professional, shall file with the court and serve on the defendant a list of known construction defects in accordance with this section.
(2) The list of known construction defects shall contain a description of the construction that the claimant alleges to be defective. The list of known construction defects shall be filed with the court and served on the defendant within [thirty (30)] days after the commencement of the action or within such longer period as the court in its discretion may allow.

(3) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

(4) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(5) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against such subcontractor or supplier shall serve on the subcontractor or supplier the list of construction defects in accordance with this section within [thirty (30)] days after service of the complaint against the subcontractor or supplier or within such period as the court in its discretion may allow.

Section 6. [Actions by the Board of Directors.]

(1) (a) In the event the [board of directors], as defined under [insert citation], and pursuant to [insert citation] institutes an action asserting defects in the construction of [two or more residences, common elements, or common areas, this section shall apply. For purposes of this section, “action” has the same meaning as set forth in section 3 of this Act.

(b) The [board of directors] shall substantially comply with the provisions of this section.

(2) (a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the [board of directors] shall mail or deliver written notice of the commencement or anticipated commencement of such action to each homeowner at the last known address described in the association’s records.

(b) The notice required by (a) of this subsection shall state a general description of the following:

(i) The nature of the action and the relief sought; and
(ii) The expenses and fees that the [board of directors] anticipates will be incurred in prosecuting the action.

(3) Nothing in this section may be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the [board of directors] to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

Section 7. [Notice from Construction Professional.]

(1) The construction professional shall provide notice to each homeowner upon entering into a contract for sale, construction, or substantial remodel of a residence, of the construction professional’s right to offer to cure construction defects before a homeowner may commence litigation against the construction professional. Such notice shall be conspicuous and may be included as part of the underlying contract signed by the homeowner. In the sale of a condominium unit, the requirement for delivery of such notice shall be deemed satisfied if contained in a public offering statement delivered in accordance with [insert citation.]

(2) The notice required by this subsection shall be in substantially the following form:

[INSERT CITATION] CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGED ARE DEFECTIVE AND PROVIDE YOUR SELLER OR BUILDER THE
OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT
OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE
STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW
THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

(3) This Act shall not preclude or bar any action if notice is not given to the homeowner as required
by this section.

Section 8. [Contracts.] Nothing in this Act shall be construed to hinder or otherwise affect the
employment, agency, or contractual relationship between and among homeowners and construction
professionals during the process of construction or remodeling and does not preclude the termination of those
relationships as allowed under current law. Nothing in this Act shall negate or otherwise restrict a
construction professional’s right to access or inspection provided by law, covenant, easement, or contract.

Section 9. [Tolling the Statutes of Limitations.] If a written notice of claim is served under section 4
of this Act within the time prescribed for the filing of an action under this Act, the statutes of limitations for
construction-related claims are tolled until [sixty (60)] days after the period of time during which the filing of
an action is barred under section 4 of this Act.

Section 10. [Claims or Causes of Action, Statutes of Limitations.] All claims or causes of action as set
forth in this Act, and the applicable statute of limitation shall begin to run only during the period within [six
(6) years after substantial completion of construction, or during the period within [six (6)] years after the
termination of the services enumerated in [insert citation]. The phrase “substantial completion of
construction” shall mean the state of completion reached when an improvement upon real property may be
used or occupied for its intended use. Any cause of action which has not accrued within [six (6)] years after
such substantial completion of construction, or within [six (6)] years after such termination of services,
whichever is later, shall be barred: Provided, that this limitation shall not be asserted as a defense by any
owner, tenant or other person in possession and control of the improvement at the time such cause of action
accrues. The limitations prescribed in this section apply to all claims or causes of action as set forth in [insert
citation] brought in the name or for the benefit of the state which are made or commenced after [June 11,
1986].

If a written notice is filed under section 4 of this Act within the time prescribed for the filing of an
action under this Act, the period of time during which the filing of an action is barred under section 4 of this
Act plus [sixty (60)] days shall not be a part of the period limited for the commencement of an action, nor for
the application of this section.

Section 11. [Condominiums: Public Offerings.] (1) A public offering statement shall contain the following information:

(a) The name and address of the condominium;
(b) The name and address of the declarant;
(c) The name and address of the management company, if any;
(d) The relationship of the management company to the declarant, if any;
(e) A list of up to the five most recent condominium projects completed by the declarant or an
affiliate of the declarant within the past [five (5)] years, including the names of the condominiums, their
addresses, and the number of existing units in each. For the purpose of this section, a condominium is
“completed” when any one unit therein has been rented or sold;
(f) The nature of the interest being offered for sale;
(g) A brief description of the permitted uses and use restrictions pertaining to the units and
the common elements;
(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;

(i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;

(j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;

(k) A list of the limited common elements assigned to the units being offered for sale;

(l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

(m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by [insert citation];

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to [insert citation];

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

   (aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

   (bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners’ association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

   (cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

   (dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;
(ee) A notice which describes a purchaser’s right to cancel the purchase agreement or extend the closing under [insert citation], including applicable time frames and procedures;

(ff) Any reports or statements required by [insert citation]. [Insert citation] shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in [insert citation];

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant’s agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the [Housing for Older Persons Act of 1995, P.L. 104-76, as enacted on December 28, 1995]; and

(ll) A notice that is substantially in the form required by section 7 of this Act.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within [ninety (90)] days if assessments have been collected for [ninety (90)] days or more. If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section.

Section 12. [Judicial Proceedings.]

(1) A judicial proceeding for breach of any obligations arising under [insert citation] must be commenced within [four (4)] years after the cause of action accrues: Provided, that the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to [one (1)] year after termination of the period of declarant control, if any, under [insert citation]. Such period may not be reduced by either oral or written agreement.

(2) Subject to subsection (3) of this section, a cause of action or breach of warranty of quality, regardless of the purchaser’s lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and
(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under section 4 of this Act within the time prescribed for the filing of an action under this Act, the statutes of limitation in this Act and any applicable statutes of repose for construction-related claims are tolled until [sixty (60)] days after the period of time during which the filing of an action is barred under section 4 of this Act.
Cyber Court

This Act creates and regulates an Internet “cyber court” to conduct electronic hearings and proceedings in order to accommodate parties located outside the state in commercial litigation involving more than $25,000. The stated purpose of the cyber court is “to allow disputes between business and commercial entities to be resolved with the speed and efficiency required by the information age economy.”

The cyber court will be located in one or more counties as determined by the state supreme court, and will sit in facilities designed to allow all hearings and proceedings to be conducted by means of electronic communications, including, but not limited to, video and audio conferencing and Internet conferencing. Whenever it is technologically feasible, all of the cyber court's proceedings will be broadcast on the Internet. The cyber court’s staff and support services will be maintained at the seat of government, and hold session and schedule hearings or other proceedings to accommodate parties or witnesses who were located outside the state.

The state supreme court will assign judges to the cyber court for terms lasting at least three years. The total number of judges assigned to the cyber court will have to reasonably reflect the caseload of the cyber court. In selecting judges for assignment to the cyber court, the supreme court will have to consider a judge's experience in presiding over commercial litigation and their experience and interest in the application of technology to the administration of justice. The state judicial institute will provide appropriate training for judges who are assigned to the cyber court.

The cyber court will have concurrent jurisdiction over business and commercial litigation actions in which the amount in controversy exceeded $25,000. An action can be filed in the cyber court by filing a complaint with the clerk of the cyber court, but a defendant could remove the action to circuit court under certain circumstances. The supreme court will adopt special rules for the cyber court regarding practice and procedures, the form and manner of pleadings, and the manner of service of process in the cyber court.

All matters heard in the cyber court will be heard by means of electronic communications, including, but not limited to, video and audio conferencing and Internet conferencing among the judge and court personnel, parties, witnesses, and other persons necessary to the proceedings.

An action in the cyber court will be heard by the judge without a jury, and unless a party removed an action filed in the cyber court to the circuit court, all parties to an action in the cyber court will be considered to have waived the right to trial by jury and to have waived the right to move for a change of venue. The court could grant a new trial upon the same terms and under the same conditions and for the same reasons as prevail in the case of a circuit court in a case heard by a judge without a jury.

The cyber court will have the same power as the circuit court to subpoena witnesses and require the production of books, papers, records, documents, electronic documents, and any other evidence, and to punish for contempt. The judge and clerk of the cyber court can administer oaths and affirmations and take acknowledgements of instruments by electronic means. An oath or affirmation taken from a person located outside of the state will be considered to be an oath or affirmation authorized by state law.

An appeal from the cyber court will be to a special panel of the court of appeals, as prescribed by the state supreme court, and the time within which an appeal as of right could be taken will be governed by supreme court rules. The clerk of the cyber court will have to immediately furnish the parties to every action with an electronic notice of entry of any final order or judgment.

The Act directs the supreme court to provide for alternative dispute resolution for matters before the court and creates a legislative oversight committee to monitor the development of the cyber court.

Submitted as:
Michigan
Public Act 262 of 2001
Suggested State Legislation

(Title, enacting clause, etc.)

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

Section 2. [Cyber Court Creation and Purpose.]
(1) The cyber court is created and is a court of record.
(2) The purpose of the cyber court is to do all of the following:
   (a) Establish judicial structures that will help to strengthen and revitalize the economy of this state.
   (b) Allow disputes between business and commercial entities to be resolved with the expertise, technology, and efficiency required by the information age economy.
   (c) Assist the judiciary in responding to the rapid expansion of information technology in this state.
   (d) Establish a technology-rich system to serve the needs of a judicial system operating in a global economy.
   (e) Maintain the integrity of the judicial system while applying new technologies to judicial proceedings.
   (f) Supplement other state programs designed to make the state attractive to technology-driven companies.
   (g) Permit alternative dispute resolution mechanisms to benefit from the technology changes.
   (h) Establish virtual courtroom facilities, and allow the conducting of court proceedings electronically and the electronic filing of documents.
(3) The cyber court shall be located in [one (1)] or more counties as determined by the supreme court. The cyber court shall sit in facilities designed to allow all hearings and proceedings to be conducted by means of electronic communications, including, but not limited to, video and audio conferencing and Internet conferencing.
(4) The cyber court shall hold session and shall schedule hearings or other proceedings to accommodate parties or witnesses who are located outside of this state. A cyber court facility is open to the public to the same extent as a circuit court facility. When technologically feasible, and at the discretion of the judge, pursuant to the court rules, all proceedings of the cyber court shall be broadcast on the Internet.
(5) The cyber court shall maintain its staff and support services at the seat of government.
(6) The cyber court shall be funded from annual appropriations to the supreme court.

Section 3. [Assigning Judges to Cyber Court.]
(1) The state [supreme court] shall assign to the cyber court persons who have been elected to and served as judges in this state and who have requested to be considered for that assignment. In making assignments to the cyber court, the [supreme court] shall consider a person's experience in presiding over commercial litigation and his or her experience and interest in the application of technology to the administration of justice. The [supreme court] shall endeavor to reflect the ethnic and racial diversity of the state population and the statewide judicial bench when making the assignments under this subsection.
(2) The total number of judges assigned to the cyber court shall reasonably reflect the caseload of the cyber court.
(3) The duration of a judge’s assignment to the cyber court shall be at least [three (3)] years.
(4) The [supreme court] shall appoint the clerk of the cyber court.
(5) The [state judicial institute] shall provide appropriate training for judges who are assigned as judges of the cyber court.

Section 4. [Jurisdiction.]
(1) The cyber court has concurrent jurisdiction over business and commercial actions in which the amount in controversy exceeds $25,000.00.

(2) For purposes of this section, “business and commercial actions” means disputes arising between business owners, associates, or competitors or between a business entity and its customers. Business and commercial actions include, but are not limited to, the following types of disputes:

   (a) Those involving information technology, software, or website development, maintenance, or hosting.
   (b) Those involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.
   (c) Those arising out of contractual agreements or other business dealings, including licensing, trade secret, noncompete, nonsolicitation, and confidentiality agreements.
   (d) Those arising out of commercial transactions, including commercial bank transactions.
   (e) Those arising out of business or commercial insurance policies.
   (f) Those involving commercial real property other than landlord/tenant disputes.

(3) Notwithstanding subsection (2), business and commercial actions expressly exclude the following types of disputes:

   (a) Tort actions, including, but not limited to, personal injury, wrongful death, or medical malpractice matters.
   (b) Landlord/tenant matters.
   (c) Employee/employer disputes.
   (d) Administrative agency, tax, zoning, and other appeals.
   (e) Criminal matters.
   (f) Proceedings to enforce judgments of any type.

Section 5. [Practices and Procedures.]

   (1) An action may be filed in the cyber court by filing a complaint with the clerk of the cyber court.
   (2) Practice and procedure in the cyber court, the form and manner of pleadings, and the manner of service of process shall be in accordance with special rules for the cyber court adopted by the state [supreme court].

Section 6. [Filing Fees.] Before a civil action is filed in the cyber court, the party bringing the action shall pay a filing fee in the amount of [two hundred (200)] dollars. Each month the clerk of the cyber court shall deposit with the [state treasurer] all fees collected, securing and filing a receipt for all the fees deposited.

Section 7. [Removal to Circuit Court.]

   (1) A defendant in an action filed in the cyber court may remove the action to the [state circuit court] not later than [fourteen (14)] days after the deadline for filing an answer to the complaint. If the action is removed to the [circuit court], the action shall be heard in the [circuit court] in a county in which venue would be proper.

   (2) If the defendant removes the action to the [circuit court] as provided in subsection (1), the clerk of the cyber court shall forward to the [circuit court], as a filing fee, a portion of the filing fee paid at the commencement of the action in the cyber court that is equal to the filing fee otherwise required in the [circuit court].

Section 8. [Right to Jury Trial.] Unless a party removes an action filed in the cyber court to the [circuit court] pursuant to Section 7 of this Act, all parties to an action in the cyber court shall be considered to have waived the right to trial by jury.

Section 9. [Electronic Communications.] All matters heard in the cyber court shall be heard by means of electronic communications, including, but not limited to, video and audio conferencing and internet
Section 10. [Powers, Oaths.] The cyber court has the same power to subpoena witnesses and require the production of books, papers, records, documents, electronic documents, and any other evidence and to punish for contempt as the [circuit court] has. The judge and clerk of the cyber court may administer oaths and affirmations and take acknowledgments of instruments by electronic means. An oath or affirmation taken from a person located outside of this state and pursuant to the laws of the jurisdiction in which the person is located shall be considered to be an oath or affirmation authorized by the laws of this state.

Section 11. [Jury.] An action in the cyber court shall be heard by the judge without a jury. The court may grant a new trial upon the same terms and under the same conditions and for the same reasons as prevail in the case of the circuit court of this state, in a case heard by a judge without a jury.

Section 12. [Appeals.]
(1) An appeal from the cyber court shall be to the [state court of appeals], as prescribed by [state supreme court] rules.

(2) The clerk of the cyber court shall immediately furnish the parties to every action with an electronic notice of entry of any final order or judgment. The time within which an appeal as of right may be taken shall be governed by [supreme court] rules.

Section 13. [Alternative Dispute Resolution.] The [state court] shall provide by rule for an alternative dispute resolution for matters before the cyber court.

Section 14. [Reports.] Not later than [insert date], the [state court administrator] shall submit a written report to the [legislature] on the operation of the cyber court. The report shall include the [state court administrator's] recommendations, if any, for expanding the jurisdiction of the cyber court over other matters.

Section 15. [Rules.] The [state supreme court] shall adopt rules to implement this Act.

Section 16. [Legislative Oversight Committee on the Cyber Court.]
(1) A legislative oversight committee on the cyber court is created. The committee shall consist of [three (3)] members of the [house of representatives] appointed by the [speaker of the house of representatives], [one (1)] of whom shall not be a member of the majority party, and [three (3)] members of the [senate] appointed by the [majority leader of the senate], [one (1)] of whom shall not be a member of the majority party. Members shall be appointed or removed in the same manner as members of standing committees are appointed or removed in each house. Vacancies shall be filled in the same manner as original appointments. Members of the committee may be reimbursed for expenses incurred in the administration of their duties.

(2) Annually the committee shall elect from its membership a chairperson and alternate chairperson, who shall be from different houses, with the first chairperson being from the [house of representatives]. The position of chairperson shall alternate between the [senate] and the [house of representatives].

(3) The business that the committee performs shall be conducted at a public meeting of the committee held in compliance with the state open meetings act, [insert citation]. Public notice of the time, date, and place of the meeting shall be given in the manner required by that Act.

(4) Special meetings of the committee shall be held on call of the chairperson or a majority of the committee. The committee shall prescribe rules for its own procedure. A majority of the committee constitutes a quorum. Any recommendation of the committee requires the concurrence of a majority of its membership. As used in this subsection, "majority" means at least [two (2)] of the [three (3)] members appointed by the [speaker of the house] and at least [two (2)] of the [three (3)] members appointed by the [majority leader of the senate].
(5) The committee shall do all of the following for the period beginning [insert date] and ending insert date:
   (a) Monitor the development of the cyber court.
   (b) Consider and respond to court rules proposed or adopted by the [supreme court] under Section 15 of this Act.
   (c) In cooperation with the [state court administrative office], determine if further legislation is needed to facilitate the implementation of the cyber court or to expand the jurisdiction of the cyber court.
(6) The committee shall report, in writing, to the chairpersons of the standing committees of the senate and the house of representatives having jurisdiction over legislation pertaining to the judiciary, on the topics listed in subsection (5)(a) to (c), and may accompany the report with proposed bills to implement its recommendations.

Section 17. [Severability.] [Insert severability clause.]
Section 18. [Repealer.] [Insert repealer clause.]
Section 19. [Effective Date.] [Insert effective date.]
Dark Fiber

This Act authorizes and directs how political subdivisions or agencies of the state may own, sell or lease dark fiber. Dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

The Act creates an Internet Enhancement Fund to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state.

Submitted as:
Nebraska
LB 827

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Dark Fiber Act.”

Section 2. [Definitions.] For purposes of this Act, dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

Section 3. [Dark Fiber: Owning, Selling or Leasing by Political Subdivisions.]
(1) Any agency or political subdivision of the state may:
   (a) Own dark fiber;
   (b) Sell dark fiber pursuant to section 3 of this Act; and
   (c) Lease dark fiber pursuant to section 3 of this Act.

(2) No agency or political subdivision of the state shall provide telecommunications services for a fee, except as authorized in [insert citation], or be issued a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier. Any agency or political subdivision that sells or leases its dark fiber pursuant to this Act shall not be deemed to be providing telecommunications services for a fee.

(3) Any agency or political subdivision of the state may sell its dark fiber by any method, including auction, sealed bid, or public sale, which it deems to be most advantageous to the public. The sales agreement may require that the agency or political subdivision be solely responsible for the maintenance of the dark fiber and that the buyer is responsible, on a pro rata basis, for any such maintenance costs.

(4) Any agency or political subdivision of the state may lease its dark fiber if:
   (a) The lessee is a certificated telecommunications common carrier or a permitted telecommunications contract carrier pursuant to [insert citation], or an Internet service provider;
   (b) The lease price and profit distribution is approved by the [Public Service Commission] as follows:
      (i) The [commission] shall not approve any lease price that is less than the market rate for leasing such fiber as determined by the [commission]. The market rate is the price associated with similar unbundled network elements that may be available from the incumbent local exchange carrier or the price of any other private entity leasing dark fiber optic facilities serving the same or similar territory where the leased equipment is located. Before entering into a lease, each agency or political subdivision shall file a request with the [commission] for a competitive price comparison to determine the market rate. When conducting a competitive price comparison, the [commission] in its discretion shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary;
(ii) The [commission] shall not approve any lease price which is agreed upon by the agency or political subdivision and the lessee unless the lease requires that the agency or political subdivision be solely responsible for the maintenance of its dark fiber and that the lessee be responsible, on a pro rata basis, for any such maintenance costs; and

(iii) The [commission] shall not approve any lease unless [fifty (50)] percent of the profit earned by the agency or political subdivision under the lease is remitted to the [Internet Enhancement Fund]. Profit earned by the agency or political subdivision is the lease price less the cost of infrastructure overbuilding. Before entering into a lease, each agency or political subdivision shall file a request with the [commission] to determine the cost of overbuilding its fiber optic infrastructure. For purposes of this subdivision, cost of infrastructure overbuilding means the cost of each leased optic fiber, including the cost, on a pro rata basis, associated with the agency’s or political subdivision’s installation of such fiber;

(5) Any interconnection agreement subject to [insert citation] is approved by the [commission]; and

(6) The lessee makes every reasonable effort to activate the maximum amount of the leased fiber as is possible, within [one (1)] year after entering into the lease, unless good cause is shown.

Section 4. [Internet Enhancement Fund]

The [Internet Enhancement Fund] is created. The [fund] shall be used to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state. It is the intent of the [Legislature] that [two hundred fifty thousand (250,000)] dollars shall be appropriated to the [fund] to be used for startup costs and seed money for [date]. The [Public Service Commission] may receive gifts, contributions, property, and equipment from public and private sources for purposes of the [fund]. The [fund] shall consist of money appropriated by the [Legislature] and gifts, grants, or bequests from any source, including federal, state, public, and private sources. Money in the [fund] shall be distributed by the [commission] pursuant to section 6 of this Act. Any money in the [fund] available for investment shall be invested by the [state investment officer] pursuant to [insert citation].

Section 5. [Internet Enhancement Fund Application Process.]

(1) The [Public Service Commission] shall establish an application process through which any county or municipality in the state may apply for financial assistance from the [Internet Enhancement Fund]. The process shall allow the county or municipality to obtain a service provider for broadband or other advanced telecommunications services in an exchange or other area defined by the county or municipality where such telecommunications services are to be delivered at rates of service agreed upon between the service provider and county or municipality. The application shall state the projected cost, identify the service provider, describe the process for selection of the service provider, list terms and considerations of any agreement between the applicant and the service provider, and include other information as required by the [commission].

(2) The [commission] shall not provide assistance unless the service provider is an eligible service provider of telecommunications, video, the commission and the applicant can provide matching funds of at least [twenty-five (25)] percent of the total projected cost.

(3) The [commission] shall establish a system to prioritize applications. Highest priority shall be given to applicants based on high-cost factors, including population scarcity and location remoteness. Other factors, including financial need, may be considered by the commission as deemed necessary.

(4) Funds for financial assistance to counties and municipalities may be distributed by the [commission] on and after [date]. Funds committed for future use are deemed to be used in the year committed.

Section 6. [Other Entities and Dark Fibers Sales and Leasing.]

(1) Excepting the provisions of [insert citation], any city or village owning or operating electric generation or transmission facilities as defined in [insert citation] may sell or lease its dark fiber pursuant to sections 2 to 5 of this Act.
(2) Excepting the provisions of [insert citation], a public power district as defined by [insert citation], may sell or lease its dark fiber pursuant to sections 2 to 5 of this Act.

(3) Excepting the provisions of [insert citation], a corporation as defined by [insert citation], shall have power to sell or lease its dark fiber pursuant to sections 2 to 5 of this Act.

(4) Excepting the provisions of [insert citation], a joint authority as defined by [insert citation] shall have all the rights and powers to sell or lease its dark fiber pursuant to sections 2 to 5 of this Act.

Section 7. [Violations.] An original action or appeal concerning a violation of any provision of sections 2 to 5 of this Act by an agency or political subdivision of the state shall follow the procedures set forth in [insert citation].

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

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

Section 10. [Effective Date.] [Insert effective date.]
Diabetes Notation on Death Certificates

This Act requires death certificates to include questions as to whether the deceased had diabetes, and if diabetes was an underlying cause or contributing condition to death. The purpose is to allow the state department of health to better understand and more accurately report on the prevalence of diabetes and its impact in the state.

Submitted as:
Kentucky
SB 113 (as introduced)
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating To Death Certificates.”

Section 2. [Certificates of Death, Provisional Certificates of Death.]
(1) A certificate of death or a provisional certificate of death for each death which occurs in this State shall be filed with the [insert agency] or as otherwise directed by the [state registrar] prior to final disposition, and it shall be registered if it has been completed and filed in accordance with this section. The funeral director, or person acting as such, who first takes custody of a dead body shall be responsible for filing the certificate of death. The funeral director, or person acting as such shall obtain the required personal and statistical particulars from the person best qualified to supply them over the signature and address of the informant. The funeral director, or person acting as such, shall within [five (5)] days of the death, present the certificate to the attending physician, if any, or to the health officer or coroner as directed by the [state registrar], for the medical certificate of the cause of death and other particulars necessary to complete the record as required by this Act.

(a) It shall be unlawful for an institution to release a dead human body until the funeral director, or person acting as such, has completed and filed with the local registrar or person in charge of the institution, a provisional certificate of death. If death occurs outside an institution, the provisional certificate shall be filed with the local registrar by the funeral director, or person acting as such, prior to final disposition of the dead body. A copy of the provisional certificate of death signed by the person with whom it was filed, shall constitute authority for the possession, transportation, and, except for cremation, final disposition of the body.

(b) All persons having in their possession a completed provisional certificate of death shall file the certificate at not more than weekly intervals with the local registrar.

(c) If the place of death is unknown but the dead body is found in this State, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation subject to amendment upon completion of any postmortem examination required to be performed.

(d) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be registered in this State, and the place where it is first removed shall be considered the place of death. If a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in the State, the death shall be registered in this State, but the certificate shall show the actual place of death insofar as can be determined.

(2) If any certificate of death is incomplete or unsatisfactory, the [state registrar] shall call attention to the defects in the certificate and require the person responsible for the entry to complete or correct it. The
[state registrar] may also require additional information about the circumstances and medical conditions surrounding a death in order to properly code and classify the underlying cause.

(3) The medical certification shall be completed, signed, and returned to the funeral director within [five (5)] working days after presentation to the physician, dentist, or chiropractor in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by [insert citation]. In such cases, the coroner shall complete and sign the certificate within [five (5)] days after receiving results of the inquiry as required by [insert citation]. In the absence of the physician, dentist, or chiropractor, or with such person's approval, the certificate may be completed and signed by his associate physician, dentist, or chiropractor, or the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, or a physician employed by the local health department, if the individual has access to the medical history of the case and death is due to natural causes.

(4) If death occurs more than [thirty-six (36)] hours after the decedent was last treated or attended by a physician, dentist, or chiropractor, the case shall be referred to the coroner for investigation to determine and certify the cause of death. In the event that a coroner is not available to sign the certificate and there is no duly appointed deputy, the county judge/executive shall appoint a competent person to investigate the death and certify to its cause.

(5) (a) The physician, dentist, chiropractor, or coroner who certifies to the cause of death shall return the certificate to the funeral director, or person acting as such, who, in turn, shall file the certificate directly with the [office of vital statistics]. Any certified copies of the record requested at the time of filing shall be issued in not more than [two (2)] working days.

(b) In the case of a death in which diabetes was an immediate, underlying, or contributing cause of or condition leading to death, the physician, dentist, chiropractor, or coroner who certifies to the cause of death shall check “yes” for each of the following questions on the death certificate:

1. “Did the deceased have diabetes?”
2. “Was diabetes an immediate, underlying, or contributing cause of or condition leading to death?”

(6) The [office of vital statistics] shall provide self-addressed, color-coded envelopes for the funeral homes in this State.

(7) [Three (3)] free verification-of-death statements shall be provided to the funeral director by the [office of vital statistics] for every death in this State.

(8) The body of any person whose death occurs in this State shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, until a provisional certificate of death has been filed with the local registrar of the registration district in which the death occurs. If the death occurred from a disease declared by the [cabinet for health services] to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under conditions prescribed by the [cabinet for health services] and the local health department. The [cabinet for health services] shall identify by regulation those communicable diseases which require blood and body fluid precautions. If a person who has been diagnosed as being infected with a communicable disease for which blood and body fluid precautions are required, dies within a health facility as defined in [insert citation], the facility shall notify any embalmer or funeral director to whom the body will be transported of the need for such precautions. The notice shall be provided by including the statement "Blood and Body Fluid Precautions" on the provisional report-of-death form as prescribed by the [cabinet for health services]. Lack of this notice shall not relieve any embalmer or funeral director from taking universal blood and body fluid precautions as are recommended by the United States Department of Health and Human Services, Centers for Disease Control for Morticians' Services. No embalmer or funeral director shall charge more for embalming the remains of a person with a communicable disease which requires blood and body fluid precautions than the price for embalming services listed on the price list funeral providers are required to maintain and provide to consumers pursuant to [insert citation].

(9) A burial-transit permit for the final disposition issued under the law of another state which accompanies a dead body or fetus brought into this state shall be the authority for final disposition of the body or fetus in the state and may be accepted in lieu of a certificate of death. There shall be noted on the face of
the record made for return to the local registrar that the body was shipped to this state for interment and the
actual place of death.

(10) Nothing in this section shall be construed to delay, beyond a reasonable time, the interment or
other disposition of a body unless the services of the coroner or the health officer are required or the
[department for public health] deems it necessary for the protection of the public health. If compliance with
this section would result in unreasonable delay in the disposition of the body the funeral director, or person
acting as such, shall file with the local registrar or deputy registrar prior to interment a provisional certificate
of death which shall contain the name, date, and place of death of the deceased, the name of the medical
certifier, and an agreement to furnish within [ten (10)] days a complete and satisfactory certificate of death.

(11) No sexton or other person in charge of any place in which interment or other disposition of dead
bodies is made shall inter or allow interment or other disposition of a dead body or fetus unless it is
accompanied by a copy of the provisional certificate of death. The sexton, or if there is no sexton, the funeral
director, or person acting as such, shall enter on the provisional certificate over his signature, the date, place,
and manner of final disposition and file the certificate within [five (5)] days with the local registrar.

(12) Authorization for disinterment, transportation, and refinement or other disposition shall be
required prior to disinterment of any human remains. The authorization shall be issued by the [state registrar]
upon proper application. The provisions of this subsection shall apply to all manners of disposition except
cremation and without regard for the time and place of death. The provisions of [insert citation] shall not
apply to remains removed for scientific study and the advancement of knowledge.

(13) After a death certificate has been on file for [five (5)] years, it may not be changed in any manner
except upon order of a court. Prior to that time, requests for corrections, amendments, or additions shall be
accompanied by prima facie evidence which supports the requested change.

Section 3. [Certificate of Death Form Developed or Distributed by (Insert Agency).]

(1) Any certificate of death form developed or distributed by the [cabinet for health services] shall
contain the following questions:

(a) “Did the deceased have diabetes?” and
(b) “Was diabetes an immediate, underlying, or contributing cause of or condition leading to
death?”

(2) If the person completing the certificate of death fails to answer the questions identified in
subsection (1) of this section, the [state registrar] shall call attention to the defects in the certificate and
require the person responsible for the entry to complete or correct it.

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

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

Section 6. [Effective Date.] [Insert effective date.]
Elder Death Review Teams

This Act authorizes counties to establish an interagency elder death review team to help local agencies identify and review suspicious elder deaths and to facilitate communications among people who perform autopsies and people involved in the investigation or reporting of elder abuse or neglect. It specifies that county elder death review teams shall be comprised of certain public and private entities and the procedures for the sharing or disclosure of information by elder death review teams.

Submitted as:
California
Chapter 301 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Elder Death Review Teams Act.”

Section 2. [Legislative Findings.] The Legislature finds and declares the following:

(a) Interagency child death teams have been used successfully to ensure that the incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases where a child has died.

(b) Interagency domestic violence review teams have been used successfully to ensure that incidents of domestic violence and abuse are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for prevention and intervention initiatives to reduce the incidence of domestic violence.

(c) There is a need to ensure that incidents of elder abuse or neglect are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for prevention and intervention initiatives to reduce the incidence of elder abuse and neglect.

Section 3. [Definitions.] As used in this Act, unless the context requires otherwise:

(a) “Elder” means any person who is [sixty-five (65)] years old or older.

(b) (1) “Abuse” means any of the conduct described in [insert citation].

(2) Abuse does not include the use of any reasonable and necessary force that may result in an injury used by a peace officer acting within the course of his or her employment as a peace officer.

Section 4. [Elder Death Review Teams Established.]

(a) Each county may establish an interagency elder death team to assist local agencies in identifying and reviewing suspicious elder deaths and facilitating communication among people who perform autopsies and the various people and agencies involved in elder abuse or neglect cases.

(b) Each county may develop a protocol that may be used as a guideline by people performing autopsies on elder adults to assist coroners and other people who perform autopsies in the identification of elder abuse, in the determination of whether elder abuse or neglect contributed to death or whether elder abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for elder abuse or neglect, including the designation of the cause and mode of death.

Section 5. [Composition of Elder Death Review Teams.] County elder death review teams may be comprised of, but not limited to, the following:

(a) Experts in the field of forensic pathology.
(b) Medical personnel with expertise in elder abuse and neglect.
(c) Coroners and medical examiners.
(d) District attorneys and city attorneys.
(e) County or local staff including, but not limited to:
   (1) Adult protective services staff.
   (2) Public administrator, guardian, and conservator staff.
   (3) County health department staff who deal with elder health issues.
   (4) County counsel.
(f) County and state law enforcement personnel.
(g) Local long-term care ombudsman.
(h) Community care licensing staff and investigators.
(i) Geriatric mental health experts.
(j) Criminologists.
(k) Representatives of local agencies that are involved with oversight of adult protective services and reporting elder abuse or neglect.
   (l) Local professional associations of people described in subdivisions (a) to (k), inclusive.

Section 6. [Documentation Confidentiality.]
(a) An oral or written communication or a document shared within or produced by an elder death review team related to an elder death review is confidential and not subject to disclosure or discoverable by another third party.
(b) An oral or written communication or a document provided by a third party to an elder death review team, or between a third party and an elder death review team, is confidential and not subject to disclosure or discoverable by a third party.
(c) Notwithstanding subdivisions (a) and (b), recommendations of an elder death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the elder death review team.

Section 7. [Information Sharing.]
(a) Each organization represented on an elder death review team may share with other members of the team information in its possession concerning the decedent who is the subject of the review or any person who was in contact with the decedent and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential. The intent of this subdivision is to permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other provision of law.
(b) (1) Written and oral information may be disclosed to an elder death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (3) may rely on the request in determining whether information may be disclosed to the team.
   (2) No individual or agency that has information governed by this subdivision shall be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.
   (3) The following information may be disclosed pursuant to this subdivision:
      (A) Notwithstanding [insert citation], medical information.
      (B) Notwithstanding [insert citation], mental health information.
      (C) Notwithstanding [insert citation], information from elder abuse reports and investigations, except the identity of people who have made reports, which shall not be disclosed.
      (D) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in [insert citation].
(E) Notwithstanding [insert citation], information pertaining to reports by health practitioners of people suffering from physical injuries inflicted by means of a firearm or of people suffering physical injury where the injury is a result of assaultive or abusive conduct.

(F) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to [insert citation], as well as the information on which these reports are based.

(G) Notwithstanding [insert citation], records relating to in-home supportive services, unless disclosure is prohibited by federal law.

(c) Written and oral information may be disclosed under this section notwithstanding [insert citation], the lawyer-client privilege protected by [insert citation], the physician-patient privilege protected by [insert citation], and the psychotherapist-patient privilege protected by [insert citation].

(d) Information gathered by the elder death review team and any recommendations made by the team shall be used by the county to develop education, prevention, and if necessary, prosecution strategies that will lead to improved coordination of services for families and the elder population.

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

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

Section 10. [Effective Date.] [Insert effective date.]
Electric Personal Assistive Mobility Devices

This Act establishes operating requirements and restrictions for electric personal assistive mobility devices, as defined in the language of the Act. It also establishes an electric personal assistive mobility devices oversight committee to study the integration of electric personal assistive mobility devices with pedestrian traffic. The devices that are referenced in this Act are commonly known as “Segway” devices.

Submitted as:
New Hampshire
Chapter 4 of 2002
Status: enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.]

Section 2. [Electric Personal Assistive Mobility Devices: Purpose.]
(A) This Act responds to a major innovation in personal travel for the citizens of the state. The “electric personal assistive mobility device” employs advances in technology and energy efficiency to fully and safely integrate the user with pedestrian transportation, while enabling people to travel farther and carry more without use of traditional vehicles, thereby promoting gains in productivity, minimizing environmental impact, and facilitating better use of public ways.

(B) Comprehensive legislation regulating use of the “electric personal assistive mobility device” is required, in light of its unique and innovative capabilities, to foster its successful introduction and integration with other forms of transportation.

Section 3. [Definition: Electric Personal Assistive Mobility Devices.]
“Electric personal assistive mobility device” or “EPAMD” means a self-balancing, [two (2)] non-tandem-wheeled device designed to transport only one person, solely powered by an electric propulsion system, with a maximum speed of less than [twenty (20)] miles per hour.

Section 4. [Applicable Law.] An EPAMD shall not be considered a “vehicle” within the meaning of the law of this state.

Section 5. [Equipment.] An EPAMD shall be equipped with front, rear, and side reflectors; a system that when employed will enable the operator to bring the device to a controlled stop; and, if the EPAMD is operated between [one half (1/2)] hour after sunset and [one half (1/2)] hour before sunrise, a lamp emitting a white light which, while the EPAMD is in motion, sufficiently illuminates the area in front of the operator.

Section 6. [Operation Permitted on Sidewalks and Roadways.] An operator of an EPAMD shall have the rights and duties of pedestrians prescribed in [insert citation].

Section 7. [Special Rules for Operation.]
(A) A person operating an EPAMD on a sidewalk or roadway, shall exercise due care to avoid colliding with, and shall yield the right-of-way to, persons traveling on foot.

(B) No EPAMD shall be operated at a speed greater than [fifteen (15)] miles per hour.

Section 8. [Parking.]
(A) An EPAMD may be parked on a sidewalk unless prohibited or restricted by an official traffic control device.

(B) An EPAMD shall not be parked on a roadway in such a manner as to prevent the movement of a legally parked motor vehicle.

(C) In all other respects, any person operating an EPAMD shall conform with provisions of law regulating the parking of vehicles.

(D) All violations of parking restrictions shall be deemed the responsibility of the owner of the EPAMD. The owner shall be presumed to be in control of the EPAMD at the time of the parking violation, and no evidence of actual control or culpability need be proved as an element of the offense.

Section 9. [Hazardous Materials.] No person shall carry or transport on an EPAMD hazardous materials.

Section 10. [Additional Regulations.] A city or town shall have the authority to regulate the operation of EPAMDs within its limits. The provisions of Sections 5, 6, and 7 of this Act shall not supersede the provisions of any local ordinance.

Section 11. [Violations.] Any person who violates any provision of this Act shall be guilty of a violation.

Section 12. [Electric Personal Assistive Mobility Devices Oversight Committee.] There is established the electric personal assistive mobility device oversight committee consisting of the following members:

(I) [Three (3)] members of the [Senate], appointed by the [President of the Senate].

(II) [Three (3)] members of the [House of Representatives], appointed by the [Speaker of the House of Representatives].

(III) The [commissioner of safety], or designee.

(IV) One municipal official, appointed by the [President of the Senate].

(V) One municipal official, appointed by the [Speaker of the House of Representatives].

(B) The oversight committee shall study the integration of electric personal assistive mobility devices with pedestrian traffic in the state, including such rules of operation as may be appropriate, and any other issues relating thereto.

(C) The members of the oversight committee shall elect a chairperson from among the members. [Five (5)] members of the committee shall constitute a quorum.

(D) The oversight committee shall submit a report on or before [November 1, 2002] to the [Senate President], the [Speaker of the House of Representatives], the [Senate Clerk], the [House Clerk], the [Governor], and the state library. The duties of the oversight committee shall terminate upon submission of the report.

Section 13. [Severability.] [Insert severability clause.]

Section 14. [Repealer.] [Insert repealer clause.]

Section 15. [Effective Date.] [Insert effective date.]
Electronic Transmission of Sexually Explicit Advertisement Material

This Act requires that an unsolicited advertisement containing sexually explicit material transmitted via an electronic communication have a warning label “ADV-ADULT” at the beginning of the subject line of the advertisement in order for parents to protect children from sexually explicit material. Any person who transmits an unsolicited advertisement containing sexually explicit speech without the warning label is guilty of a misdemeanor of the first degree for the first offense and a felony for subsequent violations.

Submitted as:
Pennsylvania
P.L. 130, No. 25 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 Concerning Electronic Transmission of Sexually Explicit Advertisement Material.”

Section 2. [Legislative Findings.] The [General Assembly] finds and declares as follows:
(1) The Internet is an increasingly valuable medium for communication and the dissemination and collection of information.
(2) Children use the Internet for entertainment, education and commerce.
(3) Many children have access to electronic mail accounts through their parents’ accounts, shared accounts or their own personal accounts.
(4) Increasingly advertisers use the Internet to market explicit sexual materials to millions of users of the Internet.
(5) One of the frequently used vehicles for the marketing of explicit sexual materials via the Internet is unsolicited electronic mail messages.
(6) These unsolicited explicit sexual advertisements are sent to computers in households allowing children to view or have access to pornographic materials.
(7) Although there are an increasing number of Internet filtering software titles that parents can use to block access to obscene World Wide Web sites, these filtering software titles are ineffective against explicit sexual material that is sent via electronic mail.
(8) There is no universal method of identifying electronic mail messages that market explicit sexual materials.
(9) Despite the best efforts of parents to protect their children from explicit sexual material via electronic mail messages, they are unable to do so because there is no method by which they can separate and filter out inappropriate messages from appropriate messages.
(10) The State has a compelling interest in protecting children from explicit sexual material.
(11) In doing so, government must enact a narrowly tailored remedy to avoid interfering with the growth or accessibility of this important medium and with the rights of adult users of the Internet under the First Amendment to the Constitution of the United States and [insert citation].
(12) This Act empowers parents to decide what type of messages are inappropriate for their children and effectively block those messages from their children’s electronic mail accounts.
(13) This Act does not restrict or prevent the sending of unsolicited explicit sexual electronic advertisements to any and all prospective recipients as long as an appropriate warning accompanies such advertisements.

Section 3: [Obscene and Other Sexual Materials and Performances.]
(1) No person, knowing the obscene character of the materials or performances involved, shall:
(a) display or cause or permit the display of any explicit sexual materials as defined in subsection (c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;
(b) sell, lend, distribute, transmit, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, transmit, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, transmit, exhibit or give away or show any obscene materials to any person [eighteen (18)] years of age or older, or knowingly advertise any obscene materials in any manner;
(c) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;
(d) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had;
(e) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity;
(f) hire or employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection;
(g) knowingly take or deliver in any manner any obscene material into a state correctional institution, county prison, regional prison facility or any other type of correctional facility;
(h) possess any obscene material while such person is an inmate of any state correctional institution, county prison, regional prison facility or any other type of correctional facility; or
(i) knowingly permit any obscene material to enter any state correctional institution, county prison, regional prison facility or any other type of correctional facility if such person is a prison guard or other employee of any correctional facility described in this paragraph.

Section 4. [Dissemination of Explicit Sexual Material via an Electronic Communication.]
(1) No person, knowing the content of the advertisement to be explicit sexual materials as defined in this section shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication as defined in [insert citation] to one or more persons within this State that contains explicit sexual materials as defined in this section without including in the advertisement the term “ADV-ADULT” at the beginning of the subject line of the advertisement.
(2) As used in this section:
For the purpose of applying the “contemporary community standards,” “Community” means the State.
“Knowing” means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the defendant.
“Material” means any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, videotape or motion picture.
“Nude” means showing the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

“Obscene” means any material or performance, if:

(a) the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;

(b) the subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this section; and

c) the subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

“Performance” means any play, dance or other live exhibition performed before an audience.

“Sadomasochistic abuse” means, in a sexual context, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or in a bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

“Sexual conduct” means patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality; and patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

“Subject line” means the area of an electronic communication that contains a summary description of the content of the message.

“Transportation facility” means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including aircraft, watercraft, railroad cars and buses, and air, boat, railroad, and bus terminals and stations.

Section 5. [Criminal Prosecution.] Any person who violates this Act is guilty of a [misdemeanor of the first degree]. Violation of the Act is a [felony of the third degree] if the offender has previously been convicted of a violation of the Act or if the material was sold, distributed, prepared or published for the purpose of resale.

Section 6. [Penalty for Attempt to Evade Prosecution.] Any person who violates this Act and attempts to avoid prosecution by knowingly including false or misleading information in the return address portion of the electronic communications such that the recipient would be unable to send a reply message to the original, authentic sender shall, in addition to any other penalty imposed, upon conviction, be sentenced to pay a fine of not less than [one hundred (100)] dollars nor more than [five hundred (500)] dollars per message or to imprisonment for not more than [ninety (90)] days, or both, for a first offense and a fine of not less than [five hundred (500)] dollars nor more than [one thousand (1,000)] dollars or to imprisonment for not more than [one (1)] year or both, for a second or subsequent offense.

Section 7. [Concurrent Jurisdiction to Prosecute.] The [attorney general] shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under this Act and may refer to the [district attorney], with the [district attorney’s] consent, any violation or alleged violation of this Act which may come to the [attorney general’s] attention.

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

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

Section 10. [Effective Date.] [Insert effective date.]
Fair Credit Extension Uniformity

This Act provides for the regulation of debt collection practices in a manner that conforms more closely with federal debt collection law. This Act defines unfair or deceptive acts with regard to the collection of debt. The Act incorporates the federal Fair Debt Collection Practices Act (FDCPA) into state law. While the federal law only applies to debt collection agencies, the state law applies to creditors as well.

Generally, this Act provides that:

• Creditors must meet delineated requirements when communicating with a third person while attempting to determine the location of the consumer;
• Unless there is prior consent of the consumer or court permission, creditors may not communicate with a consumer, as set forth in this Act;
• Creditors may not communicate in connection with the collection of a debt with any one other than the consumer, his attorney, a debt collector, or a consumer reporting agency;
• A creditor may not harass, oppress or abuse any person in connection with the collection of a debt;
• A creditor may not use false, deceptive or misleading representation as a means to collect a debt;
• The creditor may not use unfair or unconscionable means to collect or attempt to collect a debt, and
• Violations constitute unfair trade practices.

Submitted as:
Pennsylvania
P.L. 23, No. 7 of 2000
Status: enacted into law in 2000.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act shall be known and may be cited as “The Fair Credit Extension Uniformity Act.”

2 Section 2. [Scope of Act.] This Act establishes what shall be considered unfair methods of competition and unfair or deceptive acts or practices with regard to the collection of debts.

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

4 “Communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

5 “Consumer” means a natural person residing in this state who owes or is alleged to owe a debt or one who has incurred or is alleged to have incurred liability for the debt within this state, including, but not limited to, a comaker, guarantor, surety or parent if the consumer is under [eighteen (18)] years old. The term includes the consumer’s guardian, executor or administrator.

6 “Creditor” means a person, including agents, servants or employees conducting business under the name of a creditor and within this state, to whom a debt is owed or alleged to be owed.

7 “Debt” means an actual or alleged past due obligation, claim, demand, note or other similar liability of a consumer to pay money, arising out of a single account as a result of a purchase, lease or loan of goods, services or real or personal property for personal, family or household purposes or as a result of a loan of money or extension of credit which is obtained primarily for personal, family or household purposes, provided, however, that money which is owed or alleged to be owed as a result of a loan secured by a
purchase money mortgage on real estate shall not be included within the definition of debt. The term also
includes any amount owed as a tax to any political subdivision of this state. Tax includes an assessment, any
interest, penalty, fee or other amount permitted by law to be collected. Debt does not include any such amount
owed to the United States or the state.

“Debt Collector” means:

(1) A person not a creditor conducting business within this state, acting on behalf of a
creditor, engaging or aiding directly or indirectly in collecting a debt owed or alleged to be owed a creditor or
assignee of a creditor.

(2) The term does not include:

(i) Any officer or employee of a creditor while, in the name of the creditor, collecting
debs for such creditor.

(ii) A person while attempting to collect a debt on behalf of a creditor, both of whom
are related by common ownership or affiliated by corporate control, if the person acting as a debt collector
does so only for creditors to whom it is so related or affiliated and if the principal business of the person is not
the collection of debts.

(iii) A person while collecting or attempting to collect any debt owed or due or
asserted to be owed or due to another to the extent such activity:

(A) is incidental to a bona fide fiduciary obligation or a bona fide escrow
arrangement;

(B) concerns a debt which was originated by such person;

(C) concerns a debt which was not in default at the time it was obtained by
such person; or

(D) concerns a debt obtained by such person as a secured party in a
commercial credit transaction involving the creditor.

Persons included within this subparagraph shall be considered creditors and not debt collectors for purposes
of this Act.

(iv) A person while serving or attempting to serve legal process on another person in
connection with the judicial enforcement of a debt.

(v) A person who is an elected or appointed official of any political subdivision of
this state, who collects or attempts to collect a tax or assessment owed to the political subdivision which
employs the person, while that person is acting within the scope of his elected or appointed position or
employment.

(3) The term does include:

(i) A creditor who, in the process of collecting his or her own debt, uses a name other
than his or her own which would indicate that a third person is collecting or attempting to collect the debt.

(ii) An attorney, whenever such attorney attempts to collect a debt, as herein defined, except in connection with the filing or service of pleadings or discovery or the prosecution of a lawsuit to reduce a debt to judgment.

(iii) A person who sells or offers to sell forms represented to be a collection system,
device or scheme that is intended or designed to collect debts.

(iv) A person, other than an elected or appointed official of any political subdivision
of this state, who collects or attempts to collect a tax or assessment owed to any political subdivision of this
state.

“Location Information” means a consumer’s plans of abode and his telephone number at such place
or his place of employment.

“State” means any state, territory or possession of the United States, the District of Columbia, the
Commonwealth of Puerto Rico or any political subdivision of any of the above.

Section 4. [Unfair or Deceptive Acts or Practices.]
(a) By debt collectors -- It shall constitute an unfair or deceptive debt collection act or practice under this Act if a debt collector violates any of the provisions of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.).

(b) By creditors -- With respect to debt collection activities of creditors in this state, it shall constitute an unfair or deceptive debt collection act or practice under this Act if a creditor violates any of the following provisions:

(1) Any creditor communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:
   (i) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
   (ii) not state that such consumer owes any debt;
   (iii) not communicate with any such person more than once unless requested to do so by such person or unless the creditor reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
   (iv) not communicate by postcard;
   (v) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or telegram that indicates that the communication relates to the collection of a debt, and
   (vi) after the creditor knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of or can readily ascertain such attorney’s name and address, not communicate with any person other than that attorney unless the attorney fails to respond within a reasonable period of time to communication from the creditor.

(2) Without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction, a creditor may not communicate with a consumer in connection with the collection of any debt:
   (i) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a creditor shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer’s location;
   (ii) if the creditor knows the consumer is represented by an attorney with respect to such debt and has knowledge of or can readily ascertain such attorney’s name and address unless the attorney fails to respond within a reasonable period of time to a communication from the creditor or unless the attorney consents to direct communication with the consumer; or
   (iii) at the consumer’s place of employment if the creditor knows or has reason to know that the consumer’s employer prohibits the consumer from receiving such communication.

(3) Except as provided in paragraph (1), without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a post-judgment judicial remedy, a creditor may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency it otherwise permitted by law, a debt collector, the attorney of the debt collector or the attorney of the creditor.

(4) A creditor may not engage in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection or a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:
   (i) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.
   (ii) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
   (iii) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to people who meet the requirements of section 161a(f) or 1681b (a) (3) of the Fair Credit Reporting Act (Public Law 91-508, 15 U.S.C. § 1601 et seq.).
(iv) The advertisement for sale of any debt to coerce payment of the debt.

(v) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number.

(vi) Accept as provided in paragraph (l), the placement of telephone calls without meaningful disclosure of the caller’s identity.

(5) A creditor may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

(i) The false representation or implication that the creditor is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform or facsimile thereof.

(ii) The false representation of the character, amount or legal status of any debt.

(iii) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(iv) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, attachment or sale of any property of any person unless such action is lawful and the creditor intends to take such action.

(v) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(vi) The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to lose any claim or defense to payment of the debt or become subject to any practice prohibited by this Act.

(vii) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(viii) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a debt is disputed.

(ix) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, office or agency of the United States or any state or which creates a false impression as to its source, authorization or approval.

(x) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(xi) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(xii) The false representation or implication that documents are legal process.

(xiii) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(6) A creditor may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

(i) The collection of any amount, including any interest, fee, charge or expense incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(ii) The acceptance by a creditor from any person of a check or other payment instrument postdated by more than [five (5)] days unless such person will be notified in writing of creditor’s intent to deposit such check or instrument nor more than [ten (1)] nor less than [three (3)] business days prior to such deposit.

(iii) The solicitation by a creditor of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(iv) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
(v) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(vi) Taking or threatening to take any non-judicial action to effect dispossessio or disablement of property if:

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossessio or disablement.

(vii) Communicating with a consumer regarding a debt by postcard.

(viii) Using any language or symbol, other than the creditor’s address, on any envelope when communicating with a consumer by use of the mails or by telegram, provided that a creditor may use its business name.

(c) For the purpose of subsection (b)(2) and (3) the term “consumer” includes the consumer’s spouse, parent (if the consumer is a minor) guardian, executor or administrator.

Section 5. [Enforcement and Penalties.]

(a) Unfair trade practices -- If a debt collector or creditor engages in an unfair or deceptive debt collection act or practice under this Act, it shall constitute a violation of [insert citation].

(b) Jurisdiction -- An action to enforce any liability created by this Act may be brought in any court of competent jurisdiction in this state within [two (2)] years from the date on which the violation occurs.


(d) Defenses -- A debt collector or creditor may not be held liable in any action for a violation of this Act if the debt collector or creditor shows by a preponderance of the evidence that the violation was both not intentional and:

(1) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, or

(2) Resulted from good faith reliance upon incorrect information offered by any person other than an agent, servant or employee of the debt collector or creditor.

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

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

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

This Act directs the state department of education to develop and make available to schools one or more model programs to teach personal financial management skills to students in grades K through 12.

Submitted as:
Michigan:
Act 111 of 2002
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish Model Programs for Youth Financial Education.”

Section 2. [Model Programs for Youth Financial Education: Establishment.]
(1) Not later than [July 1, 2002], the [department of education] shall develop or adopt, and shall make available to schools, [one (1)] or more model programs for youth financial education. A program under this section shall be designed to incorporate financial education throughout the curriculum for grades K to 12 and shall be based on the concept of achieving financial literacy through the teaching of personal financial management skills and the basic principles involved with earning, spending, saving, borrowing, and investing.

(2) Each school district, local act school district, and public school academy is encouraged to adopt and implement the model financial education programs developed under subsection (1) [one (1)] or more similar financial education programs.

(3) To the extent that federal funds are available for these purposes, the [department] shall use those funds for grants to public schools and other measures to encourage implementation of financial education programs.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Genetic Testing, Genetic Information

This Act:
- Defines genetic test and genetic information;
- Prohibits insurance companies and employers from requiring genetic testing;
- Prohibits insurance companies from denying coverage based on genetic testing;
- Prohibits employers from refusing to hire, discharge, or otherwise discriminate based on genetic information that is unrelated to the ability to perform the duties of a particular job or position;
- Provides for certification of labs doing genetic testing for diagnosis or treatment or forensic purposes, and
- Addresses standards for retaining genetic material.

Submitted as:
Nebraska
LB 432

Suggested State Legislation

(Title, enacting clause, etc.)

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

Section 2. [Criteria for Ordering Genetic Testing and Informed Consent.]

(1) A physician or an individual to whom the physician has delegated authority to perform a selected act, task, or function shall not order a presymptomatic or predictive genetic test without first obtaining the written informed consent of the patient to be tested. Written informed consent consists of a signed writing executed by the patient or the legally authorized representative of the patient that confirms that the physician or individual acting under the delegated authority of the physician has explained, and the patient or his or her legally authorized representative understands:

(a) The nature and purpose of the presymptomatic or predictive genetic test;
(b) The effectiveness and limitations of the presymptomatic or predictive genetic test;
(c) The implications of taking the presymptomatic or predictive genetic test, including the medical risks and benefits;
(d) The future uses of the sample taken to conduct the presymptomatic or predictive genetic test and the genetic information obtained from the presymptomatic or predictive genetic test;
(e) The meaning of the presymptomatic or predictive genetic test results and the procedure for providing notice of the results to the patient; and
(f) Who will have access to the sample taken to conduct the presymptomatic or predictive genetic test and the genetic information obtained from the presymptomatic or predictive genetic test, and the patient's right to confidential treatment of the sample and the genetic information.

(2) The [department of health and human services] shall develop and distribute a model informed consent form for purposes of this section. The [department] shall include in the model form all of the information required under subsection (1) of this section. The [department] shall distribute the model form and all revisions to the form to physicians and other individuals subject to this section upon request and at no charge. The [department] shall review the model form at least annually for [five (5)] years after the first model form is distributed and shall revise the model form if necessary to make the form reflect the latest developments in medical genetics. The [department] may also develop and distribute a pamphlet that provides further explanation of the information included in the model form.
(3) If a patient or his or her legally authorized representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the physician or individual acting under the delegated authority of the physician shall give the patient a copy of the signed informed consent form and shall include the original signed informed consent form in the patient's medical record.

(4) If a patient or his or her legally authorized representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the patient is barred from subsequently bringing a civil action for damages against the physician, or an individual to whom the physician delegated authority to perform a selected act, task, or function, who ordered the presymptomatic or predictive genetic test, based upon failure to obtain informed consent for the presymptomatic or predictive genetic test.

(5) A physician’s duty to inform a patient under this section does not require disclosure of information beyond what a reasonably well-qualified physician licensed in this state would know. A person acting under the delegated authority of a physician shall understand and be qualified to provide the information required by subsection (1) of this section.

(6) For purposes of this section:
(a) Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test;
(b) Genetic test means the analysis of human DNA, RNA, and chromosomes and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis, including a chemical analysis of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome. Genetic test does not include a procedure performed as a component of biomedical research that is conducted pursuant to federal common rule under 21 C.F.R. parts 50 and 56 and 45 C.F.R. part 46, as such regulations existed on the effective date of this Act;
(c) Predictive genetic test means a genetic test performed for the purpose of predicting the future probability that the patient will develop a genetically related disease or disability; and
(d) Presymptomatic genetic test means a genetic test performed before the onset of clinical symptoms or indications of disease.

Section 3. [Hospital, Medical and Surgical Expense-Incurred Policies.]
(1) Any hospital, medical, or surgical expense-incurred policy or certificate delivered, issued for delivery, or renewed in this state and
(b) any self-funded employee benefit plan to the extent not preempted by federal law shall not require a covered person or his or her dependent or an asymptomatic applicant for coverage or his or her asymptomatic dependent to undergo any genetic test before issuing, renewing, or continuing the policy or certificate in this state.

(2) This section does not prohibit requiring an applicant for coverage to answer questions concerning family history.

(3) For purposes of this section:
(a) Clinical purposes includes:
(i) Predicting the risk of diseases;
(ii) Identifying carriers for single-gene disorders;
(iii) Establishing prenatal and clinical diagnosis or prognosis;
(iv) Prenatal, newborn, and other carrier screening, as well as testing in high-risk families;
(v) Testing for metabolites if undertaken with high probability that an excess or deficiency of the metabolite indicates or suggests the presence of heritable mutations in single genes; and
(vi) Other testing if the intended purpose is diagnosis of a presymptomatic genetic condition; and
Genetic test means the analysis of human DNA, RNA, and chromosomes and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis, including a chemical analysis, of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.

Section 4. [Employment.]
(1) For purposes of this section:
(a) Employee does not include an individual employed in the domestic service of any person;
(b) Employer means a person who has one or more employees;
(c) Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test; and
(d) Genetic test means the analysis of human DNA, RNA, and chromosomes and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis, including a chemical analysis, of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.

(2) Except as otherwise required by federal law, an employer shall not:
(a) Fail or refuse to hire, recruit, or promote an employee or applicant for employment because of genetic information that is unrelated to the ability to perform the duties of a particular job or position;
(b) Discharge or otherwise discriminate against an employee or applicant with respect to compensation or the terms, conditions, or privileges of employment because of genetic information that is unrelated to the ability to perform the duties of a particular job or position;
(c) Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive an employee or applicant of employment opportunities or otherwise adversely affects the status of an employee or applicant because of genetic information that is unrelated to the ability to perform the duties of a particular job or position; or
(d) Require an employee or applicant for employment to submit to a genetic test or to provide genetic information as a condition of employment or promotion.

(3) Subsection (2) of this section does not prohibit an employee from voluntarily providing to an employer genetic information that is related to the employee's health or safety in the workspace. Subsection (2) of this section does not prohibit an employer from using genetic information received from an employee under this subsection to protect the employee's health or safety.

(4) This section shall not apply to the employment of an individual by his or her parent, spouse, or child.

Section 5. [Laboratories Performing Genetic Testing for Clinical Diagnosis and Treatment: Accreditation.]
All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

Section 6. [Laboratories Performing Genetic Testing on Behalf of the State or a Political Subdivision: Accreditation.]
Section 7. [Forensic Medical Examination.]

(1) The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the law enforcement agency of a political subdivision if such law enforcement agency is the primary investigating law enforcement agency investigating the reported sexual assault.

(2) Except as provided under Section 13 of this Act, all forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Section 8. [Collection, Submission, Identification, Analysis, Storage, and Disposition of DNA Samples and DNA Records under the DNA Detection of Sexual and Violent Offenders Act.]

(1) The [state patrol] shall prescribe procedures to be used in the collection, submission, identification, analysis, storage, and disposition of DNA samples and DNA records under the [insert citation]. These procedures shall include quality assurance guidelines for laboratories which submit DNA records to the state [DNA database] and shall require that all laboratories be accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center. The state [DNA database] shall be compatible with the procedures specified by the Federal Bureau of Investigation, including the use of comparable test procedures, laboratory equipment, supplies, and computer software. The DNA records shall be securely stored in the state [DNA database] and retained in a manner consistent with the procedures established by the Federal Bureau of Investigation.

(2) The [state patrol] may contract with the [state university medical center] to establish the state [DNA sample bank] at the medical center and for DNA typing tests. The state [DNA sample bank] shall serve as the repository of DNA samples collected under the Act. The [state university medical center] in contracting under the Act is subject to the same restrictions and requirements of the Act, insofar as applicable, as the [state patrol], as well as any additional restrictions imposed by the [patrol].

(3) The DNA samples and DNA records shall only be used by the [state patrol] to create a separate population database comprised of DNA records obtained under the Act after all personal identification is removed. The patrol may share or disseminate the population database with other law enforcement agencies or forensic DNA laboratories which assist the patrol with statistical data bases. The population database may be made available to and searched by other agencies participating in the [Combined DNA Index System].

(4) Except for records and samples expunged under section [insert citation], the [state patrol] shall permanently retain DNA samples and records of an individual obtained under section [insert citation]. Any other DNA samples and records related to forensic casework, other than those used for research or quality control, shall not be permanently retained but shall be retained only as long as needed for a criminal investigation or criminal prosecution.

(5) If the [state patrol] determines after analysis that a forensic sample has been submitted by an individual who has been eliminated as a suspect in a crime, the patrol or the law enforcement agency which submitted the sample shall destroy the DNA sample and record in the presence of a witness. After destruction, the patrol or law enforcement agency shall make and keep a written record of the destruction, signed by the individual who witnessed the destruction. After the patrol or the law enforcement agency destroys the DNA sample and record, it shall notify the individual if he or she is not a minor or the parent or legal guardian of a...
minor by certified sample and record under this section shall not be considered the offense of tampering with
physical evidence under [insert citation].

Section 9. [Limiting Authority of Peace Officers Concerning DNA Testing.] Except as provided in
Section 8 of this Act, the [insert citation] shall not limit or abrogate limits or abrogates any existing authority
of peace officers to take, maintain, store, and utilize DNA samples for law enforcement purposes.

Section 10. [Paternity Proceedings.]

(1) In any proceeding to establish paternity, the court may, on its own motion, or shall, on a timely
request of a party, after notice and hearing, require the child, the mother, and the alleged father to submit to
genetic testing to be performed on blood or any other appropriate tissue genetic testing material. Failure to
comply with such requirement for genetic testing shall constitute contempt and may be dealt with in the same
manner as other contempts. If genetic testing is required, the court shall direct that inherited characteristics be
determined by appropriate testing procedures and shall appoint an expert in genetic testing and qualified as an
examiner of genetic markers to analyze and interpret the results and to report to the court. The court shall
determine the number of experts required.

(2) In any proceeding to establish paternity, the [director of health and human services], county
attorneys, and authorized attorneys have the authority to require the child, the mother, and the alleged father
to submit to genetic testing to be performed on blood or any other appropriate tissue genetic testing material.
All genetic testing shall be performed by a laboratory accredited by the College of American Pathologists or
any other national accrediting body or public agency which has requirements that are substantially equivalent
to or more comprehensive than those of the college.

(3) Except as authorized under this section and [insert citation], a person shall not disclose
information obtained from genetic paternity testing that is done pursuant to such sections.

(4) If an alleged father who is tested as part of an action under such sections is found to be the child's
father, the testing laboratory shall retain the genetic testing material of the alleged father, mother, and child
for no longer than the period of years prescribed by the national standards under which the laboratory is
accredited. If a man is found not to be the child’s father, the testing laboratory shall destroy the man’s genetic
testing material in the presence of a witness after such material is used in the paternity action. The witness
may be an individual who is a party to the destruction of the genetic testing material. After the man’s genetic
testing material is destroyed, the testing laboratory shall make and keep a written record of the destruction and
have the individual who witnessed the destruction sign the record. The testing laboratory shall also expunge
its records regarding the genetic paternity testing performed on the genetic testing material in accordance with
the national standards under which the laboratory is accredited. The testing laboratory shall retain the genetic
testing material of the mother and child for no longer than the period of years prescribed by the national
standards under which the laboratory is accredited. After a testing laboratory destroys an individual's genetic
testing material as provided in this subsection, it shall notify the adult individual, or the parent or legal
 guardian of a minor individual, by certified mail that the genetic testing material was destroyed.

(5) A testing laboratory is required to protect the confidentiality of genetic testing material, except as
required for a paternity determination. The court and its officers shall not use or disclose genetic testing
material for a purpose other than the paternity determination.

(6) A person shall not buy, sell, transfer, or offer genetic testing material obtained under this section
and [insert citation].

(7) A testing laboratory shall annually have an independent audit verifying the contracting
laboratory's compliance with this section. The audit shall not disclose the names of, or otherwise identify, the
test subjects required to submit to testing during the previous year. The testing laboratory shall forward the
audit to the [department].

(8) Any person convicted of violating this section shall be guilty of a [Class IV misdemeanor] for the
first offense and a [Class III misdemeanor] for the second or subsequent offense.

(9) For purposes of this section and [insert citation], an expert in genetic testing means a person who
has formal doctoral training or post doctoral training in human genetics.
Section 11. [Screening Infants for Metabolic Diseases.]

(1) All infants born in this state shall be screened for phenylketonuria, primary hypothyroidism, biotinidase deficiency, and such other metabolic diseases as the [department of health and human services] may from time to time specify. Confirmatory tests shall be performed in the event that a presumptive positive result on the screening test is obtained.

(2) The attending physician shall collect or cause to be collected the prescribed blood specimen or specimens and shall submit or cause to be submitted the same to a laboratory for the performance of such tests within the period prescribed by the [department]. In the event a birth is not attended by a physician, the person registering the birth shall cause such tests to be performed within the period prescribed by the [department]. The laboratory shall within the period prescribed by the [department] perform such tests as are prescribed by the [department] on the specimen or specimens submitted and report the results of these tests to the physician, if any, and the hospital. The laboratory shall report to the [department] the results of such tests that are presumptive positive or confirmed positive within the period and in the manner prescribed by the [department].

(3) The hospital shall record the collection of specimens for tests for metabolic diseases and the reporting of the results of such tests or the absence of such report. The hospital shall report the results of such tests to the [department] within the period and in the manner prescribed by the [department].

(4) The [department] shall do all of the following in regard to the blood specimens taken for purposes of conducting the tests required under subsection (1) of this section:

(a) Develop a schedule for the retention and disposal of the blood specimens used for the tests after the tests are completed. The schedule shall meet the following requirements:

(i) Be consistent with nationally recognized standards for laboratory accreditation and federal law;

(ii) Require that the disposal be conducted in the presence of a witness. For purposes of this subdivision, the witness may be an individual involved in the disposal or any other individual; and

(iii) Require that a written record of the disposal be made and kept and that the witness sign the record; and

(b) With the written consent of the parent or legal guardian of the infant, allow the blood specimens to be used for medical research during the retention period as long as the medical research is conducted in a manner that preserves the confidentiality of the test subjects and is consistent to protect human subjects from research risks under subpart A of part 46 of 45 C.F.R., as such regulations existed on the effective date of this Act.

(5) The [department] shall prepare written materials explaining the requirements of this section. The [department] shall include the following information in the pamphlet:

(a) The nature and purpose of the testing program required under this section, including, but not limited to, a brief description of each condition or disorder listed in subsection (1) of this section;

(b) The purpose and value of the infant’s parent, guardian, or person in loco parentis retaining a blood specimen obtained under subsection (6) of this section in a safe place;

(c) The department’s schedule for retaining and disposing of blood specimens developed under subdivision (4)(a) of this section; and

(d) That the blood specimens taken for purposes of conducting the tests required under subsection (1) of this section may be used for medical research pursuant to subdivision (4)(b) of this section.

(6) In addition to the requirements of subsection (1) of this section, the attending physician or person registering the birth may offer to draw an additional blood specimen from the infant. If such an offer is made, it shall be made to the infant’s parent, guardian, or person in loco parentis at the time the blood specimens are drawn for purposes of subsection (1) of this section. If the infant’s parent, guardian, or person in loco parentis accepts the offer of an additional blood specimen, the blood specimen shall be preserved in a manner that does not require special storage conditions or techniques, including, but not limited to, lamination. The attending physician or person making the offer shall explain to the parent, guardian, or person in loco parentis at the time the offer is made that the additional blood specimen can be used for future identification purposes.
and should be kept in a safe place. The attending physician or person making the offer may charge a fee that
is not more than the actual cost of obtaining and preserving the additional blood specimen.

(7) The person responsible for causing the tests to be performed under subsection (2) of this section
shall inform the parent or legal guardian of the infant of the tests and of the results of the tests and provide,
upon any request for further information, at least a copy of the written materials prepared under subsection (5)
of this section.

(8) Dietary and therapeutic management of the infant with phenylketonuria, primary hypothyroidism,
biotinidase deficiency, or such other metabolic diseases as the department may from time to time specify shall
be the responsibility of the child's parent, guardian, or custodian with the aid of a physician selected by such
person.

Section 12. [Laboratory Testing and Services: Agreements.]
The [department of health and human services regulation and licensure] may enter into agreements,
not exceeding one year in duration, with any other governmental agency relative to the provision of certain
laboratory tests and services to the agency. Such services shall be provided as stipulated in the agreement and
for such fee, either lump sum or by the item, as is mutually agreed upon and as complies with the provisions
of [insert citation]. All laboratories performing human genetic testing for clinical diagnosis and treatment
purposes shall be accredited by the College of American Pathologists or by any other national accrediting
body or public agency which has requirements that are substantially equivalent to or more comprehensive
than those of the college.

Section 13. [Criminalistics Laboratory.]
A criminalistics laboratory is hereby established within the [state patrol], under the direction of the
[superintendent of law enforcement and public safety]. The laboratory shall perform services necessary for the
recognition and proper preservation, identification, and scientific analysis of evidence materials pertaining to
the investigation of crimes. By [insert date], the laboratory shall have met the requirements for accreditation
by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National
Forensic Science Technology Center and have applied for accreditation.

Section 14. [Forensic Medical Examination: Payment.]
(1) The full out-of-pocket cost or expense that may be charged to a sexual assault victim in
connection with a forensic medical examination shall be paid for by the [state patrol] if the patrol is the
primary investigating law enforcement agency investigating the reported sexual assault.

(2) Except as provided under Section 13 of this Act, all forensic DNA tests shall be performed by a
laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory
Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting
body or public agency which has requirements that are substantially equivalent to or more comprehensive
than those of the society or center.

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

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

Section 17. [Effective Date.] [Insert effective date.]
Gubernatorial Inauguration Finance Disclosure

This Act directs that not later than thirty days after being elected to the office of governor, the governor-elect shall establish a Gubernatorial Inauguration Expense Fund that shall be used to finance any event held for the purpose of celebrating the governor’s inauguration. The Act defines the amount of contributions that people can make to the fund. It directs the governor-elect to file with the registry of election finance a statement of all contributions received and all expenditures made by or on behalf of the Gubernatorial Inauguration Expense Fund.

Submitted as:
Tennessee
CH 458 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Gubernatorial Inauguration Finance Disclosure Act.”

Section 2. [Definitions.] As used in this part, unless the context otherwise requires:

(a) “Contribution” means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, payment, gift, pledge or subscription, of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of defraying any expenses of a governor or governor-elect’s inauguration or the celebration of a governor or governor-elect’s inauguration;

(b) “Multicandidate political campaign committee” means a political campaign committee to support or oppose [two (2)] or more candidates for public office or [two (2)] or more measures;

(c) “Person” means an individual, limited liability company, partnership, limited liability partnership, committee, association, labor organization or any other organization or group of people, but does not mean a corporation or the executive officers or other representatives of a corporation.

Section 3. [Gubernatorial Inauguration Expense Fund.] Not later than [thirty (30)] days after being elected to the office of governor, the governor-elect shall establish a [Gubernatorial Inauguration Expense Fund] that shall be used to finance any event held for the purpose of celebrating the governor’s inauguration. Such [fund] is subject to the contribution limits and reporting requirements provided in this part. The provisions of parts 1 and 3 of this Act shall not apply to contributions made pursuant to this part.

Section 4. [Contributions to Gubernatorial Inauguration.]

(a) No person shall make contributions for the gubernatorial inauguration that, in the aggregate, exceed [two thousand five hundred (2,500)] dollars.

(b) No multicandidate political campaign committee shall make contributions for the gubernatorial inauguration that, in the aggregate, exceed [seven thousand five hundred (7,500)] dollars.

(c) No corporation or executive officers or other representatives of any corporation doing business within this state shall make contributions for the gubernatorial inauguration that, in the aggregate, exceed [seven thousand five hundred (7,500)] dollars.

(d) The governor-elect may transfer funds from the governor-elect’s campaign fund to the inauguration fund.
Section 5. [Filings.]

(a) The governor-elect shall file with the registry of election finance a statement of all contributions received and all expenditures made by or on behalf of the gubernatorial inauguration fund.

(b) A statement filed under this section shall consist of either:

(1) A statement that neither the contributions received nor the expenditures made during the period for which the statement is submitted exceeded [one thousand (1,000)] dollars; or

(2) A statement setting forth:

(A) Under contributions, a list of all the contributions received, as follows:

(i) The statement shall list the full name and complete address of each person, multicandidate political campaign committee, or corporation who contributed a total amount of more than [five hundred (500)] dollars during the period for which the statement is submitted, and the amount contributed by that person, multicandidate political campaign committee, or corporation. The statement shall include the date of the receipt of each contribution; and

(ii) The statement shall list as a single item the total amount of contributions of [five hundred (500)] dollars or less; and

(B) Under expenditures, a list of all expenditures made as follows:

(i) The statement shall list the full name and address of each person to whom a total amount of more than [five hundred (500)] dollars was paid during the period for which the statement is submitted, the total amount paid to that person, and the purpose thereof; and

(ii) The statement shall list the total amount of expenditures of [five hundred (500)] dollars or less each, by category, without showing the exact amount of or vouching for each such expenditure.

(c) The financial disclosure statement for contributions made up until [thirty (30)] days before any inauguration event shall be filed no later than [ten (10)] days before the governor’s inauguration. The financial disclosure statement for all other contributions shall be filed no later than [thirty (30)] days after the governor’s inauguration.

Section 6. [Funds from First Inauguration.]

(a) The governor may hold over funds from the governor’s first inauguration to be used in a second inauguration if the governor is re-elected. If the governor is either in a second term, chooses not to run for re-election or is not re-elected, the governor has [ninety (90) days] to donate any funds remaining in the gubernatorial inauguration fund to a 501(c)(3) non-profit organization. The governor may request from the registry of election finance an extension of an additional [sixty (60)] days to donate such remaining funds.

(b) Once the funds have been donated as provided in subsection (a), a financial disclosure statement shall be filed with the registry of election finance disclosing who received such funds and the amount of such donation.

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

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

Section 9. [Effective Date.] [Insert effective date.]
Health Insurance Grievance Review

This Act requires a utilization review agent to, under certain circumstances, supply a provider of record upon request and an enrollee with notice of the enrollee's right to appeal and a written description of the appeals procedure at the time an adverse utilization review determination is made. It specifies that the exclusive right to review of a utilization review determination for an individual covered under an accident and sickness insurance policy or a health maintenance organization contract is through the accident and sickness insurer’s or health maintenance organization’s internal and external grievance procedures. It requires an accident and sickness insurer to establish and maintain an internal grievance procedure and an external grievance review procedure. It provides for expedited and standard reviews. It establishes requirements for independent review organizations to be certified by the state department of insurance and requires accident and sickness insurers to report certain information regarding grievances to the commissioner of the state department of insurance.

Submitted as:
Indiana
SB 365 (enrolled version)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This Act may be cited as “An Act Concerning Insurance Grievance Procedures and Utilization Review.”

Section 2. [Requirements When an Adverse Utilization Review is Made.]
(a) A utilization review agent shall make available to an enrollee, and to a provider of record upon request, at the time an adverse utilization review determination is made:
   (1) a written description of the appeals procedure by which an enrollee or a provider of record may appeal the utilization review determination by the utilization review agent; and
   (2) in the case of an enrollee covered under an accident and sickness policy or a health maintenance organization contract described in subsection (d), notice that the enrollee has the right to appeal the utilization review determination under Section 3 of this Act or [insert citation] and the toll free telephone number that the enrollee may call to request a review of the determination or obtain further information about the right to appeal.
(b) The appeals procedure provided by a utilization review agent must meet the following requirements:
   (1) On appeal, the determination not to certify an admission, a service, or a procedure as necessary or appropriate must be made by a health care provider licensed in the same discipline as the provider of record.
   (2) The determination of the appeal of a utilization review determination not to certify an admission, service, or procedure must be completed within [forty-eight (48)] days after:
      (i) the appeal is filed; and
      (ii) all information necessary to complete the appeal is received.
(c) A utilization review agent shall provide an expedited appeals process for emergency or life threatening situations. The determination of an expedited appeal under the process required by this subsection shall be made by a physician and completed within [forty-eight (48)] hours after:
   (1) the appeal is initiated; and
(2) all information necessary to complete the appeal is received by the utilization review agent. 

(d) If an enrollee is covered under an accident and sickness insurance policy as defined in Section 3 or a contract issued by a health maintenance organization as defined in [insert citation], the enrollee’s exclusive right to appeal a utilization review determination is provided under Section 3 or [insert citation], respectively.

(e) A utilization review agent shall make available upon request a written description of the appeals procedure that an enrollee or provider of record may use to obtain a review of a utilization review determination by the utilization review agent.

Section 3. [Internal Grievance Procedures.]

(1) As used in this section:

(a) “Accident and sickness insurance policy” means an insurance policy that provides [one (1)] or more of the kinds of insurance described in [insert citation].

(b) The term does not include the following:

(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.

(II) Coverage issued as a supplement to liability insurance.

(III) Automobile medical payment insurance.

(IV) A specified disease policy issued as an individual policy.

(V) A limited benefit health insurance policy issued as an individual policy.

(VI) A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than [six (6)] months.

(VII) A policy that provides a stipulated daily, weekly, or monthly payment to an insured during hospital confinement without regard to the actual expense of the confinement.

(VIII) Worker’s compensation or similar insurance.

(c) “Commissioner” refers to the [commissioner of the department of insurance].

(d) “Covered individual” means an individual who is covered under an accident and sickness insurance policy.

(e) “Department” refers to the [department of insurance].

(f) “External Grievance” means the independent review under of a grievance filed under Section 4 of this Act of a grievance filed under this section.

(g) “Grievance” means any dissatisfaction expressed by or on behalf of a covered individual regarding:

(1) a determination that a proposed service is not appropriate or medically necessary;

(II) a determination that a proposed service is experimental or investigational;

(III) the availability of participating providers;

(IV) the handling or payment of claims for health care services; or

(V) matters pertaining to the contractual relationship between:

(A) a covered individual and an insurer; or

(B) a group policyholder and an insurer; and for which the covered individual has a reasonable expectation that action will be taken to resolve or reconsider the matter that is the subject of dissatisfaction.

(h) “Grievance Procedure” means a written procedure established and maintained by an insurer for filing, investigating, and resolving grievances and appeals.

(i) “Insured” means:

(1) an individual whose employment status or other status except family dependency is the basis for coverage under a group accident and sickness insurance policy; or

(II) in the case of an individual accident and sickness insurance policy, the individual in whose name the policy is issued.
(j) “Insurer” means any person who delivers or issues for delivery an accident and sickness insurance policy or certificate in this State.

(2) An insurer shall establish and maintain a grievance procedure that complies with the requirements of this section for the resolution of grievances initiated by a covered individual. The [commissioner] may examine the grievance procedure of any insurer. An insurer shall maintain all grievance records received by the insurer after the most recent examination of the insurer’s grievance procedure by the [commissioner].

(3)  (a) An insurer shall provide timely, adequate, and appropriate notice to each insured of:

(I) the grievance procedure required under this section;

(II) the external grievance procedure required under Section 4 of this Act;

(III) information on how to file:

(A) a grievance under this section; and

(B) a request for an external grievance review under Section 4 of this Act;

and

(IV) A toll free telephone number through which a covered individual may contact the insurer at no cost to the covered individual to obtain information and to file grievances.

(b) An insurer shall prominently display on all notices to covered individuals the toll free telephone number and the address at which a grievance or request for external grievance review may be filed.

(4)  (a) A covered individual may file a grievance orally or in writing.

(b) An insurer shall make available to covered individuals a toll free telephone number through which a grievance may be filed. The toll free telephone number must:

(I) be staffed by a qualified representative of the insurer;

(II) be available for at least [forty (40)] hours per week during normal business hours; and

(III) accept grievances in the languages of the major population groups served by the insurer.

(c) A grievance is considered to be filed on the first date it is received, either by telephone or in writing.

(5)  (a) An insurer shall establish procedures to assist covered individuals in filing grievances.

(b) A covered individual may designate a representative to file a grievance for the covered individual and to represent the covered individual in a grievance under this section.

(6)  (a) An insurer shall establish written policies and procedures for the timely resolution of grievances filed under this Act. The policies and procedures must include the following:

(I) an acknowledgment of the grievance, orally or in writing, to the covered individual within [five (5)] business days after receipt of the grievance.

(II) documentation of the substance of the grievance and any actions taken.

(III) an investigation of the substance of the grievance, including any aspects involving clinical care.

(IV) notification to the covered individual of the disposition of the grievance and the right to appeal.

(V) standards for timeliness in:

(A) responding to grievances; and

(B) providing notice to covered individuals of:

(i) the disposition of the grievance; and

(ii) the right to appeal; that accommodate the clinical urgency of the situation.

(b) An insurer shall appoint at least [one (1)] individual to resolve a grievance.

(c) A grievance must be resolved as expeditiously as possible, but not more than [twenty (20)] business days after receiving all information reasonably necessary to complete the review. If an insurer is unable to make a decision regarding the grievance within the [twenty (20)] day period due to circumstances beyond the insurer’s control, the insurer shall:
(I) Notify, before the [twentieth] business day, the covered individual in writing of the reason for the delay; and

(II) Issue a written decision regarding the grievance within an additional [ten (10)]
business days.

(d) An insurer shall notify a covered individual in writing of the resolution of a grievance within [five (5)] business days after completing an investigation. The grievance resolution notice must include the following:

(I) The decision reached by the insurer.

(II) The reasons, policies, and procedures that are the basis of the decision.

(III) Notice of the covered individual's right to appeal the decision.

(IV) The department, address, and telephone number through which a covered individual may contact a qualified representative to obtain additional information about the decision or the right to appeal.

(7) (a) An insurer shall establish written policies and procedures for the timely resolution of appeals of grievance decisions. The procedures for registering and responding to oral and written appeals of grievance decisions must include the following:

(I) Written or oral acknowledgment of the appeal not more than [five (5)] business days after the appeal is filed.

(II) Documentation of the substance of the appeal and the actions taken.

(III) Investigation of the substance of the appeal, including any aspects of clinical care involved.

(IV) Notification to the covered individual:

(A) of the disposition of an appeal; and

(B) that the covered individual may have the right to further remedies allowed by law.

(V) Standards for timeliness in:

(A) responding to an appeal; and

(B) providing notice to covered individuals of:

(i) the disposition of an appeal; and

(ii) the right to initiate an external grievance review under Section 4 of this Act; that accommodate the clinical urgency of the situation.

(b) In the case of an appeal of a grievance decision described in this section, an insurer shall appoint a panel of [one (1)] or more qualified people to resolve an appeal. The panel must include [one (1)] or more people who:

(I) have knowledge of the medical condition, procedure, or treatment at issue;

(II) are licensed in the same profession and have a similar specialty as the provider who proposed or delivered the health care procedure, treatment, or service;

(III) are not involved in the matter giving rise to the appeal or in the initial investigation of the grievance; and

(IV) do not have a direct business relationship with the covered individual or the health care provider who previously recommended the health care procedure, treatment, or service giving rise to the grievance.

(c) An appeal of a grievance decision must be resolved as expeditiously as possible reflecting the clinical urgency of the situation. However, an appeal must be resolved not later than [forty-five (45)] days after the appeal is filed.

(d) An insurer shall allow a covered individual the opportunity to:

(I) appear in person before; or

(II) if unable to appear in person, otherwise appropriately communicate with; the panel appointed under subsection (b).
(e) An insurer shall notify a covered individual in writing of the resolution of an appeal of a grievance decision within [five (5)] business days after completing the investigation. The appeal resolution notice must include the following:

(I) The decision reached by the insurer.

(II) The reasons, policies, and procedures that are the basis of the decision.

(III) Notice of the covered individual’s right to further remedies allowed by law, including the right to external grievance review by an independent review organization under Section 4 of this Act.

(IV) The department, address, and telephone number through which a covered individual may contact a qualified representative to obtain more information about the decision or the right to an external grievance review.

(8) An insurer may not take action against a provider solely on the basis that the provider represents a covered individual in a grievance filed under this section.

(9) (a) An insurer shall each year file with the [commissioner] a description of the grievance procedure of the insurer established under this section, including:

(I) the total number of grievances handled through the procedure during the preceding calendar year;

(II) a compilation of the causes underlying those grievances; and

(III) a summary of the final disposition of those grievances.

(b) The information required by subsection (a) must be filed with the [commissioner] on or before [March 1] of each year. The [commissioner] shall:

(I) make the information required to be filed under this section available to the public; and

(II) prepare an annual compilation of the data required under subsection (a) that allows for comparative analysis.

(c) The [commissioner] may require any additional reports as are necessary and appropriate for the [commissioner] to carry out the [commissioner’s] duties under this section.

(10) The [department] may adopt rules under [insert citation] to implement this section.

Section 4. [External Review of Grievances.]

(1) As used in this section:

(a) “Accident and Sickness Insurance Policy” has the meaning set forth in Section 3 of this Act.

(b) “Appeal” means the procedure described in Section 3 of this Act.

(c) “Commissioner” refers to the [commissioner of the department of insurance].

(d) “Covered individual” has the meaning set forth in Section 3 of this Act.

(e) “Department” refers to the [department of insurance].

(f) “External grievance” means the independent review under this chapter of a grievance filed under Section 3 of this Act.

(g) “Grievance” has the meaning set forth in Section 3 of this Act.

(h) “Grievance procedure” has the meaning set forth in Section 3 of this Act.

(i) “Health care provider” means a person:

(I) that provides physician services as defined in [insert citation]; or

(II) who is licensed under [insert citation].

(j) “Insured” has the meaning set forth in Section 3 of this Act.

(k) “Insurer” has the meaning set forth in Section 3 of this Act.

(2) An insurer shall establish and maintain an external grievance procedure for the resolution of external grievances regarding:

(I) an adverse determination of appropriateness;

(II) an adverse determination of medical necessity; or
(III) a determination that a proposed service is experimental or investigational; made by an insurer or an agent of an insurer regarding a service proposed by the treating health care provider.

(3) (a) An external grievance procedure established under this section must:

(I) allow a covered individual or a covered individual's representative to file a written request with the insurer for an external grievance review of the insurer's appeal resolution under Section 3 of this Act not more than [forty-five (45)] days after the covered individual is notified of the resolution; and

(II) provide for:

(A) an expedited external grievance review for a grievance related to an illness, disease, condition, injury, or a disability if the time frame for a standard review would seriously jeopardize the covered individual’s:

(i) life or health; or

(ii) ability to reach and maintain maximum function; or

(B) a standard external grievance review for a grievance not described in clause (A). A covered individual may file not more than [one (1)] external grievance of an insurer’s appeal resolution under this section.

(b) Subject to the requirements of subsection (d), when a request is filed under subsection (a), the insurer shall:

(I) select a different independent review organization for each external grievance filed under this section from the list of independent review organizations that are certified by the [department] under this section; and

(II) rotate the choice of an independent review organization among all certified independent review organizations before repeating a selection.

(c) The independent review organization chosen under subsection (b) shall assign a medical review professional who is board certified in the applicable specialty for resolution of an external grievance.

(d) The independent review organization and the medical review professional conducting the external review under this section may not have a material professional, familial, financial, or other affiliation with any of the following:

(I) The insurer.

(II) Any officer, director, or management employee of the insurer.

(III) The health care provider or the health care provider’s medical group that is proposing the service.

(IV) The facility at which the service would be provided.

(V) The development or manufacture of the principal drug, device, procedure, or other therapy that is proposed by the treating health care provider.

(VI) The covered individual requesting the external grievance review.

(e) A covered individual may be required to pay not more than [twenty-five (25)] dollars of the costs associated with the services of an independent review organization under this section. All additional costs must be paid by the insurer.

(4) (a) A covered individual who files an external grievance under this section shall:

(I) not be subject to retaliation for exercising the covered individual’s right to an external grievance under this section;

(II) be permitted to utilize the assistance of other individuals, including health care providers, attorneys, friends, and family members throughout the review process;

(III) be permitted to submit additional information relating to the proposed service throughout the review process; and

(IV) cooperate with the independent review organization by:

(i) providing any requested medical information; or

(ii) authorizing the release of necessary medical information.

(b) An insurer shall cooperate with an independent review organization selected under this section by promptly providing any information requested by the independent review organization.
(5) (a) An independent review organization shall:
   (I) for an expedited external grievance filed under this section within [three (3)]
   business days after the external grievance is filed; or
   (II) for a standard appeal filed under this section, within [fifteen (15)] business days
   after the appeal is filed; make a determination to uphold or reverse the insurer’s appeal resolution under
   Section 3 of this Act based on information gathered from the covered individual or the covered individual’s
   designee, the insurer, and the treating health care provider, and any additional information that the
   independent review organization considers necessary and appropriate.

   (b) When making the determination under this section, the independent review organization
   shall apply:
   (I) standards of decision making that are based on objective clinical evidence; and
   (II) the terms of the covered individual’s accident and sickness insurance policy.

   (c) The independent review organization shall notify the insurer and the covered individual of
   the determination made under this section:
   (I) for an expedited external grievance filed under this section, within [twenty-four
   (24)] hours after making the determination; and
   (II) for a standard external grievance filed under this section, within [seventy-two
   (72)] hours after making the determination.

(6) A determination made under this section is binding on the insurer.

(7) (a) If, at any time during an external review performed under this section, the covered
individual submits information to the insurer that is relevant to the insurer’s resolution under Section 3 of this
Act and was not considered by the insurer under Section 3 of this Act.
   (I) the insurer may reconsider the resolution under Section 3 of this Act; and
   (II) if the insurer chooses to reconsider, the independent review organization shall
   cease the external review process until the reconsideration under subsection (b) is completed.

   (b) If the insurer reconsiders under subsection (a)(I), an insurer to which information is
   submitted under subsection (a) shall reconsider the resolution under Section 3 of this Act based on the
   information and notify the covered individual of the insurer’s decision:
   (I) within [seventy-two (72)] hours after the information is submitted for a
   reconsideration related to an illness, disease, condition, injury, or disability that would seriously jeopardize
   the covered individual's:
   (i) life or health; or
   (ii) ability to reach and maintain maximum function; or
   (II) within [fifteen (15)] days after the information is submitted for a reconsideration
   not described in subdivision (1).

   (c) If a decision reached under subsection (b) is adverse to the covered individual, the covered
   individual may request that the independent review organization resume the external review under this
   section.

   (d) If an insurer to which information is submitted under subsection (a) chooses not to
   reconsider the insurer’s resolution under Section 3 of this Act, the insurer shall forward the submitted
   information to the independent review organization within [two (2)] business days after the insurer’s receipt
   of the information.

(8) This section does not add to or otherwise change the terms of coverage included in a policy,
certificate, or contract under which a covered individual receives health care benefits under [insert citation].

(9) (a) The [department] shall establish and maintain a process for annual certification of
independent review organizations.

   (b) The [department] shall certify a number of independent review organizations determined
by the department to be sufficient to fulfill the purposes of this section.

   (c) An independent review organization must meet the following minimum requirements for
certification by the [department]:
(I) Medical review professionals assigned by the independent review organization to perform external grievance reviews under this section:
   (A) must be board certified in the specialty in which a covered individual's proposed service would be provided;
   (B) must be knowledgeable about a proposed service through actual clinical experience;
   (C) must hold an unlimited license to practice in a state of the United States; and
   (D) must not have any history of disciplinary actions or sanctions, including:
      (i) loss of staff privileges; or
      (ii) restriction on participation; taken or pending by any hospital, government, or regulatory body.

(II) The independent review organization must have a quality assurance mechanism to ensure the:
   (A) timeliness and quality of reviews;
   (B) qualifications and independence of medical review professionals;
   (C) confidentiality of medical records and other review materials; and
   (D) satisfaction of covered individuals with the procedures utilized by the independent review organization, including the use of covered individual satisfaction surveys.

(III) The independent review organization must file with the [department] the following information on or before [March 1] of each year:
   (A) The number and percentage of determinations made in favor of covered individuals.
   (B) The number and percentage of determinations made in favor of insurers.
   (C) The average time to process a determination.
   (D) Any other information required by the [department].

The information required under this subdivision must be specified for each insurer for which the independent review organization performed reviews during the reporting year.

(IV) Any additional requirements established by the [department].

(d) The [department] may not certify an independent review organization that is [one (1)] of the following:
   (I) A professional or trade association of health care providers or a subsidiary or an affiliate of a professional or trade association of health care providers.
   (II) An insurer, health maintenance organization, or health plan association, or a subsidiary or an affiliate of an insurer, health maintenance organization, or health plan association.

(e) The [department] may suspend or revoke an independent review organization’s certification if the [department] finds that the independent review organization is not in substantial compliance with the certification requirements under this section.

(f) The [department] shall make available to insurers a list of all certified independent review organizations.

(g) The [department] shall make the information provided to the [department] under subsection (c) (III) available to the public in a format that does not identify individual covered individuals.

(10) Except as provided in this section, documents and other information created or received by the independent review organization or the medical review professional in connection with an external grievance review under this section:
   (a) are not public records;
   (b) may not be disclosed under [insert citation]; and
   (c) must be treated in accordance with confidentiality requirements of state and federal law.

(11) An insurer shall each year file with the [commissioner] a description of the grievance procedure of the insurer established under this section, including:
(I) the total number of external grievances handled through the procedure during the
preceding calendar year;
(II) a compilation of the causes underlying those grievances; and
(III) a summary of the final disposition of those grievances; for each independent
review organization used by the insurer during the reporting year.

(b) The information required by subsection (a) must be filed with the [commissioner] on or
before [March 1] of each year. The [commissioner] shall:
(I) make the information required to be filed under this section available to the
public; and
(II) prepare an annual compilation of the data required under subsection (a) that
allows for comparative analysis.

(c) The [commissioner] may require any additional reports as are necessary and appropriate
for the [commissioner] to carry out the [commissioner's] duties under this article.

(12) (a) An independent review organization is immune from civil liability for actions taken in
good faith in connection with an external review under this section.
(b) The work product or determination, or both, of an independent review organization under
this chapter are admissible in a judicial or administrative proceeding. However, the work product or
determination, or both, do not, without other supporting evidence, satisfy a party's burden of proof or
persuasion concerning any material issue of fact or law.

(13) If a covered individual has the right to an external review of a grievance under Medicare, the
covered individual may not request an external review of the same grievance under this section.

(14) The [department] may adopt rules under [insert citation] to implement this section.

(15) (a) The information required under sections 3.9 and 4.11 of this Act must be filed beginning

(b) This section expires [June 30, 2005].

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

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

Section 7. [Effective Date.] [Insert effective date.]
Hearing Aid Loan Bank Program

This Act establishes a Hearing Aid Loan Bank Program within the state department of education to ensure that children under three years old will be able to hear properly during the critical period of language learning. The program’s director, who must be a licensed audiologist, must provide and maintain a pool of hearing aids as well as equipment to test and repair the hearing aids. Upon receipt of a prescription from a licensed audiologist, the director must lend hearing aids to the parent or guardian of an eligible hearing-impaired child for up to six months. Under specified conditions, a loan period may be extended by three months. The parent or guardian of a child receiving a hearing aid through the program is responsible for the hearing aid and must sign a written agreement that states the terms and conditions of the loan. The director must ensure that the child’s audiologist instructs the parent or guardian in the proper care and usage of the hearing aid. The state superintendent of schools must report annually to the governor and the General Assembly on the implementation of the program. The governor must include funding for the program in the annual state budget, and the state board of education must adopt regulations to implement the program.

Submitted as:
Maryland
HB 282 (enrolled version)
Status: enacted into law as Chapter 368 of 2001.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act To Establish A Hearing Aid Loan Bank Program.”

Section 2. [Definitions.] As used in this Act:
(A) “Department” means the [State Department of Education].
(B) “Director” means the director of the Hearing Aid Loan Bank Program.
(C) “Eligible child” means a child who:
(1) is a resident of the state;
(2) is identified by a licensed audiologist as having a hearing loss;
(3) has no immediate access to a hearing aid; and
(4) is under the age of [three (3)] years.
(D) “Licensed audiologist” means an individual who is licensed to practice audiology under [insert citation].
(E) “Loan bank” means the hearing aid loan bank.
(F) “Program” means the Hearing Aid Loan Bank Program.
(G) “Superintendent” means the [Superintendent of the State Department of Education].

Section 3. [Hearing Aid Loan Bank Program Established.]
(A) A Hearing Aid Loan Bank Program is established in the [department].
(B) The program is established for the purpose of lending hearing aids on a temporary basis to a parent or legal guardian of an eligible child to ensure that children under the age of [three (3)] years will have maximum auditory input during the critical period of language learning.

Section 4. [Administration.]
(A) The program shall be administered by a [director] recommended by the [state superintendent] and approved by the [state board].

(B) The [director] shall:

1. be a licensed audiologist; and
2. serve at the pleasure of the [state superintendent] and the [state board].

(C) The [director] may employ qualified staff as provided for in the state budget.

(D) The [director] shall establish a hearing aid loan bank.

(E) The [director] shall provide and maintain:

1. a pool of hearing aids in the loan bank to lend to a parent or legal guardian of an eligible child;
2. testing and programming equipment for hearing aids in the loan bank; and
3. supplies for repair and reconditioning of hearing aids in the loan bank.

Section 5. [Hearing Aids: Procedures, Loans.]

(A) The [director] shall lend a suitable hearing aid to a parent or legal guardian of an eligible child upon receipt of:

1. a prescription from a licensed audiologist; and
2. any documents required by the [director] to prove that the child is an eligible child.

(B) (1) except as provided in paragraph (2) of this subsection, the loan period shall be for not more than [six (6)] months.

(2) The [director] may extend the original loan period for additional [three (3)]-month periods if, prior to each extension, the director determines that:

   i. the child does not have immediate access to another hearing aid under Medicaid, the state children’s health program, or private health insurance;
   ii. the child’s parent or legal guardian currently does not have the financial means to obtain immediate access to another hearing aid; and
   iii. the child’s parent or legal guardian is making reasonable efforts to obtain access to another hearing aid.

(C) A parent or legal guardian who borrows a hearing aid for an eligible child shall:

1. be the custodian of the hearing aid;
2. return the hearing aid immediately to the loan bank upon the expiration of the loan period or receipt of a suitable permanent hearing aid, whichever occurs first;
3. be responsible for the proper care and use of the hearing aid;
4. be responsible for any damage to or loss of the hearing aid; and
5. sign a written agreement provided by the [state superintendent] that states the term and conditions of the loan.

(D) The [director] shall ensure that the eligible child’s licensed audiologist instructs the parent or legal guardian about the proper care and use of a hearing aid provided under the program.

Section 6. [Funding.] The [governor] shall include in the annual Budget Bill an appropriation that is sufficient to cover the estimated cost of the program.

Section 7. [Regulations.] The [state board] shall adopt regulations to implement the provisions of this Act, including regulations that:

1. For the purpose of implementing Section 5 (A) of this Act, identify the types of documents that the [director] may require a parent or legal guardian to submit to prove that a child is an eligible child; and

2. For the purpose of implementing Section 5 (B) of this Act, establish factors that the [director] shall consider when evaluating whether a parent or legal guardian:
   i. has the financial means to obtain immediate access to another hearing aid; or
   ii. is making reasonable efforts to obtain immediate access to another hearing aid.
Section 8. [Reports.]
(A) Beginning in [insert date], no later than [December 31] of each year, the [state superintendent] shall submit an annual report to the [governor] and, subject to [insert date], the [General Assembly] regarding the implementation of this Act.
(B) The annual report shall include the following information:
   (1) the number and ages of children who received hearing aids through the loan program that year;
   (2) the number of children who received hearing aids through the loan program that year and subsequently received hearing aids through medicaid, the [state’s children’s health program], or private insurance;
   (3) the length of each original loan;
   (4) the number of times that each original loan was extended and the length of each extension;
   (5) the number of times that hearing aids were not properly returned to the loan bank; and
   (6) any other information that the [state superintendent] believes is relevant to evaluating the costs and benefits of the program.

Section 9. [Severability.] [Insert severability clause.]
Section 10. [Repealer.] [Insert repealer clause.]
Section 11. [Effective Date.] [Insert effective date.]
Juror Gratuities

This draft is based on a New York law that was enacted after a court case wherein the defendant gave or allegedly gave the jurors in his or her case a gratuity. This Act establishes the Class A Misdemeanor offense of providing a juror with a gratuity.

Submitted as:
New York
Chapter 42 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit Juror Gratuities.”

Section 2. [Providing a Juror with a Gratuity.]

(A) A person is guilty of providing a juror with a gratuity when he or she, having been a party in a concluded civil or criminal action or proceeding or having been a person with regard to whom a grand jury has taken action pursuant to [insert citation] (or acting on behalf of such a party or such a person), directly or indirectly confers, offers to confer or agrees to confer upon a person whom he or she knows has served as a juror in such action or proceeding or on such grand jury any benefit with intent to reward such person for such service.

(B) Providing a juror with a gratuity is a [Class A Misdemeanor].

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

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

Section 5. [Effective Date.] [Insert effective date.]
Labor Organizations: Legal Fees and Court Costs

This Act changes state collective bargaining provisions. It directs that in no event shall a contract between an employer and an exclusive collective bargaining agent act as a bar for more than three years to any other party seeking to represent employees. It addresses collective bargaining elections. It also directs that employees may choose their own representative in any grievance or legal action, and such right of representation regardless of whether or not an exclusive collective-bargaining agent has been certified. However, if an employee who is not a member of a labor organization chooses to have legal representation from a labor organization in any grievance or legal action, then the employee must reimburse the labor organization for their pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in the grievance or legal action.

Submitted as:
Nebraska
LB 29
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as may be cited as “An Act Relating to Collective Bargaining Elections, Agents and Legal Fees.”

Section 2. [Collective Bargaining Elections, Agents and Legal Fees.]

(1) The [state labor commission (commission)] shall determine questions of representation for purposes of collective bargaining for and on behalf of employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for employees, except that in no event shall a contract between an employer and an exclusive collective-bargaining agent act as a bar for more than [three (3)] years to any other party seeking to represent employees, nor shall any contract bar for more than [three (3)] years a petition by employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the [State Employees Collective Bargaining Act], the [commission] shall certify the exclusive collective-bargaining agent for employees affected by the [Industrial Relations Act] following an election by secret ballot, which election shall be conducted according to rules and regulations established by the [commission].

(2) The election shall be conducted by one member of the [commission] who shall be designated to act in such capacity by the presiding judge of the [commission], or the [commission] may appoint the clerk of the district court of the county in which the principal office of the employer is located to conduct the election in accordance with the rules and regulations established by the [commission]. Except as provided in the [State Employees Collective Bargaining Act], the [commission] shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the [commission] shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate.

(3) Except as provided in the [State Employees Collective Bargaining Act], the [commission] shall not order an election until it has determined that at least [thirty (30)] percent of the employees in an appropriate unit have requested in writing that the [commission] hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire
that an election be conducted. Such request of an employee shall not become a matter of public record. No
election shall be ordered in one unit more than [once] a year.

(4) Except as provided in the [State Employees Collective Bargaining Act], the [commission] shall
only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote
for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate
unit with respect to wages, hours, and conditions of employment, except that such right of exclusive
recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor
organization, from bringing matters to the attention of his or her superior or other appropriate officials.

(5) Any employee may choose his or her own representative in any grievance or legal action
regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who
is not a member of the labor organization chooses to have legal representation from the labor organization in
any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata
share of the actual legal fees and court costs incurred by the labor organization in representing the employee
in such grievance or legal action.

(6) The certification of an exclusive collective-bargaining agent shall not preclude any employer from
consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting
employees so long as such contracts do not assume the character of formal negotiations in regard to wages,
hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement
which may be in effect.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Livestock Diseases

This Act expands the authority of the state department of agriculture to implement preventative measures to guard against the introduction of new livestock diseases. Specifically, it:

- Authorizes new disease surveillance authorities,
- Grants the department the authority to establish a voluntary herd health registry program and to certify herds kept in accordance with disease best management practices, and
- Directs the department to develop an emergency disease response plan in order to coordinate and mobilize resources to contain new dangerous diseases that might be introduced.

It makes other minor changes with respect to disposing dead livestock and transporting diseased animals.

Submitted as:
Nebraska
LB 438

Suggested Legislation

(Title, enacting clause, etc.)

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

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

1. “Accredited veterinarian” means a veterinarian approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. Part 161, as such regulation existed on the effective date of this Act;
2. “Animal” means all vertebrate members of the animal kingdom except humans or uncaptured wild animals;
3. “Bureau of Animal Industry” means the [Bureau of Animal Industry of the Department of Agriculture of the State] and includes the [State Veterinarian], [deputy state veterinarian, veterinary field officers, livestock inspectors, investigators], and other employees of the bureau;
4. “Dangerous disease” means a disease transmissible to and among livestock which has the potential for rapid spread, serious economic impact or serious threat to livestock health, and is of major importance in the trade of livestock and livestock products;
5. “Department” means the [Department of Agriculture of the State];
6. “Director” means the [Director of Agriculture of the State] or his or her designee;
7. “Domesticated cervine animal” means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area;
8. “Exposed” means being part of a herd which contains or has contained an animal infected with a disease agent which affects livestock or having had a reasonable opportunity to come in contact with an infective disease agent which affects livestock;
9. “Herd” means any group of livestock maintained on common ground for any purpose or [two (2)] or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to health status;
10. “Livestock” means cattle, swine, sheep, horses, mules, goats, domesticated cervine animals, ratite birds, and poultry;
(11) “Poultry” means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese;

(12) “Program disease” means a livestock disease for which specific legislation exists for disease control or eradication;

(13) “Quarantine” means restriction of movement imposed by the [department] on an animal, group of animals, or herd of animals because of infection with, or exposure to, a disease agent which affects livestock and use of equipment, facilities, land, buildings, and enclosures which are used or have been used by animals infected with, or suspected of being infected with, a disease agent which affects livestock;

(14) “Ratite bird” means any ostrich, emu, rhea, kiwi, or cassowary;

(15) “Sale” means a sale, lease, loan, trade, or gift;

(16) “Surveillance” means the collection and testing of livestock blood, tissue, hair, body fluids, discharges, excrements, or other samples done in a herd or randomly selected livestock to determine the presence or incidence of disease in the state or area of the state; and

(17) “Veterinarian” means an individual who is a graduate of an accredited college of veterinary medicine.

Section 3. [Department of Agriculture: Responsibilities.]

(1) The [Department of Agriculture] shall be vested with the power and charged with the duties of protecting the health of livestock in this state and determining and employing the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, infectious, contagious, or otherwise transmissible diseases among livestock and such diseases transmissible from other animals to livestock. To that end, the [department] may place in quarantine any county or part of any county, any private premises, or any private or public stockyards and may quarantine any animal infected with such disease or which has been or is suspected of having been exposed to infection therefrom, may kill any animal so infected, and may regulate or prohibit the arrival into and departure from and movement within the state of any animal infected with such disease or exposed or suspected of having been exposed to the cause, infection, or contagion therefrom. At the cost of the owner, the [department] may detain any animal found in violation of any [departmental] or statutory regulation or prohibition.

(2) The [department] may adopt, promulgate, and enforce such rules and regulations as may be necessary for the supervision and control of manufactured and refined food for animals to prevent deleterious substances being present in human foods of animal origin and the manufacture, importation, sale, and storage of any biological material including semen, remedy, or curative agent for use on or in any animal that may be capable of causing or spreading disease, and as far as practicable such rules and regulations approved by the United States Department of Agriculture shall be adopted. All of the powers and duties of the [department] with reference to the protection of the health of livestock shall be exercised by and through the [Bureau of Animal Industry].

Section 4. [Animal Disease Control.]

(1) The [Legislature] finds and declares that animal disease control is essential to the livestock industry and the health of the economy of this state. In carrying out its powers and duties, the [department] shall evaluate activities resulting from the following subdivisions to determine their relevance to protecting the health of livestock and review its available resources. When [department] funds and personnel are available and such activities are determined by the [department] to be relevant, feasible, and consistent with [insert citation], the [department]:

(A) Shall develop a statewide livestock emergency response system capable of coordinating and executing a rapid response to the incursion, or potential incursion, of a dangerous livestock disease episode which poses a threat to the health of the state’s livestock and could cause a serious economic impact on the state;

(B) Shall conduct surveillance to monitor program disease control and eradication programs;

(C) Shall conduct surveillance to detect and monitor nonprogram diseases which are, or have the potential of, causing a serious health threat to livestock. The [department] shall determine and employ the
most efficient and practical means to conduct surveillance for livestock diseases at such places as in livestock
herds, at slaughter establishments, at livestock concentration points, and at other places where livestock are
assembled. When the diseases are nonprogram diseases, surveillance shall be done when in concurrence with
the owner of the premises where the surveillance is to be conducted, except that if the [State Veterinarian]
determines, in consultation and agreement with the respective livestock health committee described in
subdivision (D) of this section, that the diseases may pose a serious threat to the livestock industry, the [State
Veterinarian] may order surveillance to be conducted at any place where livestock are assembled. If an
agreement between the [State Veterinarian] and the respective livestock health committee cannot be reached,
the final decision shall be made by the [director];

(D) Shall encourage involvement from livestock producers by forming livestock health
committees to provide ways for producers to assist the [department] in developing policy regarding livestock
disease issues. Membership of such committees shall be selected by the respective livestock groups.
Additional appointments may be made by the [director]. The purpose of the committees is to advise and
recommend, to the [department], when a disease or diseases should be monitored by surveillance and what
diseases should be considered for proposed legislation for a disease control eradication program;

(F) Shall provide voluntary livestock certification programs as provided in section 11 of this
Act.

(G) Shall cooperate and contract with people or local, state, and national organizations, public
or private, and enter into agreements with other state or federal agencies to allow such agencies’ personnel to
work in this state and to allow the [department]’s personnel to work in other states or with federal agencies
under a cooperative work program; and

(H) Shall encourage the use of private accredited veterinarians whenever feasible in carrying
out the provisions of this Act.

Section 5. [Enforcement.]

(1) The [department] and all inspectors and people appointed and authorized to assist in the work of
such the [department] shall enforce the provisions of this Act as designated.

(2) The [department] and any officer, agent, employee, or appointee of the [department] shall have
the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon,
including any premises where the carcass or carcasses of dead livestock may be found or where a facility for
the disposal or storage of dead livestock is located, for the purpose of making any and all inspections,
examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to
declare, carry out, and enforce any and all quarantines.

(3) The [department], in consultation with the [Department of Environmental Quality] and the
[Department of Health and Human Services Regulation and Licensure], may adopt and promulgate rules and
regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) The [department] shall further adopt and promulgate such rules and regulations as are necessary to
promptly and efficiently enforce and effectuate the general purpose and provisions of such sections.

Section 6. [Veterinary Inspectors.] Any veterinary inspector or agent of the United States Department
of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially
assigned by the United States Department of Agriculture for service in this state may be officially authorized
by the [department] to perform and exercise such powers and duties as may be prescribed by the [department]
and when so authorized shall have and exercise all rights and powers vested by sections of this Act in agents
and representatives in the regular employ of the [department].

Section 7. [Law Enforcement Agencies.] The [department] or any officer, agent, employee, or
appointee thereof shall have power to may call upon any sheriff, deputy sheriff, or other police officer to
execute the orders of the [department], and the officer shall obey the orders of the [department]. The officers
performing such duties shall receive compensation therefore as is prescribed by law for like services and shall
be paid therefore by the county. Any officer may arrest and take before the county judge of the county any
person found violating any of the provisions of this Act, and such officer shall immediately notify the county
attorney of such arrest. The county attorney shall prosecute the person so offending according to law.

Section 8. [Duty to Report Livestock Diseases.]

(1) It is the duty of any person who discovers, suspects, or has reason to believe that any animal
belonging to him or her or which he or she has in his or her possession or custody or which, belonging to
another, may come under his or her observation is affected with any dangerous, infectious, contagious, or
otherwise transmissible disease which affects livestock to immediately report such fact, belief, or suspicion to
the [department] or to any agent, employee, or appointee thereof.

(2) The [department] shall work together with livestock health committees, livestock groups,
diagnostic laboratories, practicing veterinarians, producers, and others who may be affected, to adopt and
promulgate rules and regulations to effectuate a workable livestock disease reporting system according to the
provisions of this section. The rules and regulations shall establish who shall report diseases, what diseases
shall be reported, how such diseases shall be reported, to whom diseases shall be reported, the method by
which diseases shall be reported, and the frequency of reports required. For disease reporting purposes, the
[department] shall categorize livestock diseases according to relative economic or health risk factors and may
provide different reporting measures for the various categories.

Section 9. [Disposing of Diseased Animal Carcasses.]

(1) Except as set out in subsection (2) subsections (2) and (3) of this section, it is the duty of the
owner or custodian of any dead animal to cause such animal, within [thirty-six (36)] hours after receiving
knowledge of the death of such animal, to be buried at least [four (4)] feet below the surface of the ground or
to be completely burned on the premises where such animal dies unless the animal is disposed of to a duly
licensed rendering establishment in this state. Such animal shall not be moved or transported from the
premises where such animal has died except by the authorized agents and employees of the rendering
establishment to which such carcass is disposed.

(2) Livestock carcasses up to [six hundred (600)] pounds may be incorporated into a composting
facility on the premises where the livestock died and shall remain in such compost facility until completely
composted before spreading on land. Any person incorporating livestock carcasses into a composting facility
shall follow the operating procedures as set forth in the *Journal of the American Veterinary Medical
Association*, Volume 210, No. 8. Not less than one copy of such journal, or portion thereof, shall be filed for
use and examination by the public in the offices of the [Clerk of the Legislature] and the [Secretary of State].
The [department] shall regulate the composting of livestock carcasses and shall adopt and promulgate rules
and regulations governing the same, by [insert date], which rules and regulations may incorporate or may
modify the operating procedures set forth in this subsection.

(3) An animal carcass or carcass part may be transported by the owner or the owner’s agent to a
veterinary clinic or veterinary diagnostic laboratory for purposes of performing diagnostic procedures.

(4) Carcasses disposed of in compliance with this section or section 15 of this Act are exempt from
the requirements for disposal of solid waste under [insert citation].

Section 10. [Shipping Diseased Animals.] Except as otherwise provided in this section, no person shall
ship, trail, drive, or otherwise move, permit to be moved, or permit to be driven from one county in the state
to any other county in the state, from one part of a county to another, or to any other state any animal which is
affected or suspected of being affected with any dangerous, infectious, contagious, or otherwise transmissible
disease without first having obtained a permit from the [department]. An animal may be transported by the
owner or the owner’s agent to and from a veterinary clinic or veterinary diagnostic laboratory for purposes of
performing diagnostic procedures, examinations, treatments, or tests without obtaining such permit.

Section 11. [Voluntary Livestock Certification Programs.]

(1) The [department] shall provide voluntary livestock certification programs when requested by a
livestock health committee and others when deemed by the [department] to be beneficial and appropriate for
The livestock industry. The [department] shall work together with the appropriate livestock producers or
groups and the state university to establish procedures for the certification of participating herds. The
[department] may maintain, through the [Bureau of Animal Industry], a livestock certification registry for
each livestock certification program that provides information regarding the voluntary certification program
and may include the names of participating livestock producers who have a herd or flock enrolled in the
voluntary livestock certification program.

(2) A livestock producer may request certification by completing an application for herd certification
on a form provided by the [department]. The livestock producers who choose to participate in a voluntary
livestock certification program shall pay the primary costs of the program, including all on-farm testing costs.
The [department] may use funds appropriated by the [Legislature], when available, to offset the costs of
disease research and laboratory testing when done in conjunction with a voluntary livestock certification
program.

(3) A livestock producer who is listed in a livestock certification registry may provide registry and
certification information regarding the livestock herd when selling livestock from the herd.

(4) The [department] shall remove the name of a livestock producer from a livestock certification
registry if the livestock producer has issued false records or statements or has made misleading claims to the
[department] with regard to livestock certification when such records, statements, or claims cause, or could
cause, the department to incorrectly include the name of a livestock producer in the certification registry.
Before removal, the [department] shall notify the livestock producer in writing of the [department]'s intention
and the reasons for the intended removal from the registry. The notice shall inform the applicant of his or her
right to request an administrative hearing before the director regarding his or her removal from the registry. A
request for hearing shall be in writing and shall be filed with the department within [thirty (30)] days after the
service of the notice is made. If a request for hearing is filed within the [thirty (30)]-day period, at least
[twenty (20)] days before the hearing the [director] shall notify the livestock producer of the time, date, and
place of the hearing. Such proceeding may be appealed as a contested case under [insert citation].

(5) A livestock producer whose name is removed from a livestock certification registry for the first
time shall not be eligible to reapply for [twelve (12)] months from the date of removal. A livestock producer
whose name is removed from a registry a subsequent time shall not be eligible to reapply for [thirty-six (36)]
months from the date of removal.

(6) The [department] and its representatives shall not be held liable for unintentional loss or damage
which occurs during certification testing, surveillance and monitoring, disease reporting, or disease research
and laboratory testing, or because of certification or lack thereof in a voluntary livestock certification
program.

Section 12. [Confidentiality.] Information collected or published by the [department] pursuant to this
Act shall not disclose the identity of individual livestock producers, except for:

(1) Information published in a livestock certification registry; and

(2) Information collected for the purpose of a voluntary livestock certification program that may be
disclosed by the [State Veterinarian] when, in his or her judgment, failure to disclose the name of a livestock
producer or producers could result in the spread of a dangerous, contagious, infectious, or otherwise
transmissible disease to and among livestock.

Section 13. [Procedures.]
The [department] may establish procedures to implement this Act.

Section 14. [Penalties.]

(1) It shall be unlawful for any person to violate any rule or regulation prescribed and promulgated by
the [department] pursuant to authority granted by this Act, and any person so offending shall be guilty of a
[Class II Misdemeanor].

(3) The penal provisions of this section shall not be exclusive, but the [district courts] of this state, in
the exercise of their equity jurisdiction, shall have power may, by injunction, to compel the observance of,
and by that remedy enforce, the provisions of this Act and the rules and regulations established and
promulgated by the [department].

Section 15. [Research and Demonstration Facilities.]
(1) Livestock carcases may be disposed of in a research or demonstration facility for innovative
livestock disposal methods registered with the [department], except that a research or demonstration facility
of liquefaction shall not be registered under this section and liquefaction shall not be permitted as a method of
livestock disposal. The registration of a facility under this section shall contain a description of the facility,
the location and proposed duration of the research or demonstration, and a description of the method of
disposal to be utilized. The [department] may register up to [five (5)] such research or demonstration facilities
conducted in conjunction with private livestock operations which meet all of the following conditions:
(A) The project is designed and conducted by one or more research faculty of the [state
university];
(B) The project does not duplicate other research or demonstration projects;
(C) The project sponsors submit annual reports on the project and a final report at the
conclusion of the project;
(D) The project employs adequate safeguards against disease transmission or environmental
contamination; and
(E) The project meets any other conditions deemed prudent by the [director].
(2) It is the intent of the [Legislature] that the [department] register at least [one (1)] research or
demonstration facility for innovative livestock disposal methods which shall be located upon the premises of
each class of livestock waste control facility defined in [insert citation]. Before registering such facility, the
[department] shall first consult with the [Department of Environmental Quality] and the [Department of
Health and Human Services Regulation and Licensure]. The [department] may revoke the registration of the
facility at any time if the [director] has reason to believe that the facility no longer meets the conditions for
registration.
(3) Only the carcasses of livestock that have died upon the livestock operation premises where a
research or demonstration facility for innovative livestock disposal methods is located may be disposed of at
such facility. Carcasses from other livestock operations shall not be transported to such facility for disposal.
(4) A facility registered under this section is exempt from the requirements for disposal of solid waste
under [insert citation].

Section 16. [Severability.] [Insert severability clause.]

Section 17. [Repealer.] [Insert repealer clause.]

Section 18. [Effective Date.] [Insert effective date.]
Mercury

This Act requires manufacturers of thermostats that contain mercury to make available a program for the collection of such thermostats to be managed as a universal waste and provide incentives for and sufficient information to purchasers of thermostats to ensure that the mercury contained in the thermostats does not become part of the solid waste stream. It directs that such manufacturers are not liable for improper disposal of thermostats containing mercury by consumers if the manufacturer complies with the law.

The legislation directs the director of the state department of consumer and business services to prohibit the installation of thermostats that contain mercury in commercial and residential buildings. However, the director may not prohibit the installation of thermostats that contain mercury on industrial equipment used for safety controls.

The Act directs the director of the state department of consumer and business services to establish a uniform notification and process for disposal and delivery of mercury thermostats by people who install heating, ventilation or air conditioning systems.

It also directs that a person may not crush a motor vehicle without first attempting to remove mercury light switches that are mounted on the hood or trunk of the vehicle.

Submitted as:
Oregon
HB 3007 (enrolled version)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. \[Short Title.\] This Act may be cited as a “Mercury Abatement Act.”

Section 2. \[Legislative Findings.\] The \[Legislative Assembly\] finds that mercury is a potent neurotoxin that can cause long-lasting health problems.

Section 3. \[Mercury-Containing Thermostats.\]

(1) As used in this section, “thermostat” means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(2) In order to reduce the amount of mercury entering the environment from the solid waste stream:

(a) A manufacturer of thermostats that contain mercury:

(i) Shall make available a program for the collection of such thermostats to be managed as a universal waste.

(ii) Shall provide incentives for and sufficient information to purchasers of thermostats to ensure that the mercury contained in the thermostats does not become part of the solid waste stream.

(iii) Is not liable for improper disposal of thermostats containing mercury by consumers if the manufacturer complies with this paragraph.

(3) The \[Director of the Department of Consumer and Business Services\] shall, by rule:

(a) Prohibit the installation of thermostats that contain mercury in commercial and residential buildings. The \[director\] may not, under rules developed pursuant to this paragraph, prohibit the installation of thermostats that contain mercury on industrial equipment used for safety controls.

(b) Establish a uniform notification and process for disposal and delivery of mercury thermostats by people installing heating, ventilation or air conditioning systems. People installing heating,
ventilation or air conditioning systems shall dispose of mercury thermostats according to the process established pursuant to this paragraph.

(4) The [Construction Contractors Board] shall provide an annual notice to each contractor licensed under [insert citation] that informs contractors of the rules developed by the [Director of the Department of Consumer and Business Services] pursuant to this section.

Section 4. [Motor Vehicle Mercury Light Switches.]

(1) The [Department of Environmental Quality] shall coordinate and work with local agencies to provide technical assistance to businesses involved in the crushing of motor vehicles concerning the safe removal and proper disposal of mercury light switches from motor vehicles.

(2) The [Department of Environmental Quality] shall coordinate with and encourage entities such as associations representing motor vehicle repair shops to offer to the public the replacement and recycling of motor vehicle mercury light switches. The [Department of Environmental Quality] shall make available to the public information concerning services to replace and recycle motor vehicle mercury light switches.

(3) A person may not crush a motor vehicle without first attempting to remove mercury light switches that are mounted on the hood or trunk of the vehicle. The mercury light switches removed from motor vehicles under this paragraph are subject to the universal waste management standards adopted by the [Environmental Quality Commission].

(4) A person commits the offense of providing a vehicle with a mercury light switch if the person sells or offers for sale in this state a vehicle manufactured after [insert date], that contains a mercury light switch mounted on the hood or trunk.

Section 5. [Novelty Items Containing Mercury.]

(1) A person may not sell or offer for sale a novelty item that contains encapsulated liquid mercury.

(2) Upon notification to the [Department of Environmental Quality] by any person that a novelty item for sale in the state contains encapsulated liquid mercury, the [department] shall notify people identified as selling the novelty item of the prohibition on the sale of such items.

(3) The [Department of Environmental Quality] may impose a penalty as provided in [insert citation] if a person continues to sell a novelty item that contains encapsulated liquid mercury after notification of the prohibition on the sale of such items.

(4) Any person who violates this section or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur a civil penalty not to exceed [ten thousand (10,000)] dollars a day for each day of the violation.

Section 6. [Unlawful Practices.]

(1) A person engages in an unlawful practice when in the course of the person’s business, vocation or occupation the person does any of the following:

(a) Manufactures mercury fever thermometers.

(b) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(c) Prescribed by a person licensed under [insert citation]; and

(d) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(e) Sells a mercury thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater.

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

Section 8. [Repealer.] [Insert repealer clause.]
Section 9. [Effective Date.] [Insert effective date.]
Military Honors Funeral

At least three states have acted to ensure that veterans receive an honor guard burial: Missouri, Illinois, and Wisconsin.

Missouri RSMO 41.958.1. directs that when requested by the commander of any recognized veterans’ organization, military commander or by any friend or relative of a deceased person or the director of a funeral home for any deceased person who served in the armed forces of the United States during a time of war or is otherwise entitled to military honors at the person’s burial, internment or memorial service, the Adjutant General shall, subject to appropriation, order the appropriate requested uniformed honor detail to attend and render the appropriate services or request and coordinate the appropriate detail with a recognized veterans’ organization. Subject to appropriation, the Adjutant General shall ensure that appropriate service records are collected authorizing the honor detail, shall ensure that the honor detail meets the appropriate military requirements for uniform and conduct, shall ensure that if a recognized veterans’ organization renders the services, the organization is compensated for services through the Missouri National Guard Trust Fund, shall provide assistance in training honor details for recognized veterans’ organizations, and shall serve as the coordinator for military funerals and such details when requested. The amount paid veterans’ organizations shall be determined by the Adjutant General. The amount authorized by this section shall be paid from funds appropriated from the Missouri National Guard Trust Fund.

Wisconsin Act 136 of 1999 directs that the state Adjutant General may activate members of the National Guard for the purpose of serving on an honors detail of a military honors funeral for a deceased veteran. The Department of Veterans Affairs shall administer a program to coordinate the provision of military honors funerals to deceased veterans by local units of member organizations of the council on veterans programs and by members of the Wisconsin National Guard activated under s. 21.11 (3). From the appropriation under s. 20.485 (2) (q), the department shall reimburse a local unit of a member organization of the council on veterans programs for the costs of providing a military funeral for a deceased veteran. The reimbursement may not exceed $50 for each military honors funeral.

This SSL draft is based on Illinois law. It establishes a Military Funeral Honors Program to ensure, subject to the appropriation of adequate funds, an appropriate final tribute to deceased veterans and governors in the absence of federal military funeral honors or funeral honors provided by veteran organizations. The rendering of military funeral honors is the ceremonial paying of respects and final demonstration of gratitude to those who, in times of war and peace, have faithfully defended freedom.

Submitted as:
Illinois
Public Act 92-0076

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish a Military Funeral Honors Program.”

Section 2. [Purpose.] This Act establishes the Military Funeral Honors Program to ensure, subject to the appropriation of adequate funds, an appropriate final tribute to deceased veterans and governors in the absence of federal military funeral honors or funeral honors provided by veteran organizations. This Act establishes procedures that ensure this tribute on behalf of a grateful citizenry to honor deceased veterans in recognition of their service to this state and to the United States of America. The rendering of military funeral
honors is the ceremonial paying of respects and final demonstration of gratitude to those who, in times of war and peace, have faithfully defended freedom.

Section 3. [Administration.] The [Adjutant General], as [Director of the Department of Military Affairs], shall administer the Military Funeral Honors Program.

Section 4. [State Funeral Honors.] The funeral honors entitlement established by this Act may be provided to an eligible veteran only if a request for military funeral honors has been made on behalf of the deceased veteran to federal authorities and military funeral honors are not to be provided by federal authorities, regardless of the reason. Governors are entitled to funeral honors without a federal request.

Section 5. [Eligibility.] Only veterans and governors are eligible for military funeral honors under this Act. In this Act, “veteran” means a resident who is a veteran as defined in subsection (h) of Section 1491 of Title 10 of the United States Code. Governors are eligible for military funeral honors because of their service as Commander-in-Chief of the military forces of this state.

Section 6. [Waiver Authority.]
(a) With approval of the [Governor], the [Adjutant General] may waive the requirement established in Section 4 of this Act if the [Adjutant General] determines in writing that it is in the best interests of the state to do so.
(b) Waiver authority under this Section may be delegated only to the [Assistant Adjutant General for Army] or the [Assistant Adjutant General for the Air National Guard].

Section 7. [Policy.]
(a) A member of the Army National Guard or the Air National Guard may be ordered to funeral honors duty in accordance with this Act. That member shall receive an allowance of [fifty (50)] dollars for any day on which a minimum of [two (2)] hours of funeral honors duty is performed. Members of the National Guard ordered to funeral honors duty in accordance with this Act are considered to be in the active service of the state for all purposes except for pay, and the provisions of [insert citation] apply if a member of the National Guard is injured or disabled in the course of those duties.
(b) The Adjutant General may provide support for other authorized providers who volunteer to participate in a funeral honors detail conducted on behalf of the [Governor]. This support is limited to transportation, reimbursement for transportation, expenses, materials, and training.

Section 8. [Rules.] The [Adjutant General], as [Director of the Department of Military Affairs], must adopt appropriate rules to implement this program.

Section 9. [Availability of Funds.] Nothing in this Act establishes any entitlement to military funeral honors if the [Adjutant General] determines that state National Guard personnel are not available to perform those honors or if adequate appropriated funds are not available to fund this program.

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

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

Section 12. [Effective Date.] [Insert effective date.]
Personal Information: Disposal

This Act requires certain entities to take reasonable steps to destroy the records of personal information in their custody when the entities decide to no longer retain such records. It prescribes penalties for failing to do this.

Submitted as:
Washington
Chapter 90, Laws of 2002
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to the Disposal of Personal Information by Certain Commercial, Governmental or Other Entities.”

Section 2. [Legislative Findings.] The Legislature finds that the careless disposal of personal information by commercial, governmental, or other entities poses a significant threat of identity theft, thus risking a person’s privacy, financial security, and other interests. The alarming increase in identity theft crimes and other problems associated with the improper disposal of personal information can be traced, in part, to disposal policies and methods that make it easy for unscrupulous people to obtain and use that information to the detriment of the public. Accordingly, the Legislature declares that all organizations and individuals have a continuing obligation to ensure the security and confidentiality of personal information during the process of disposing of that information.

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

(1) “Entity” includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group, engaged in a trade, occupation, enterprise, governmental function, or similar activity in this state, however organized and whether organized to operate at a profit.

(2) “Destroy personal information” means shredding, erasing, or otherwise modifying personal information in records to make the personal information unreadable or undecipherable through any reasonable means.

(3) “Individual” means a natural person, except that if the individual is under a legal disability, “individual” includes a parent or duly appointed legal representative.

(4) “Personal financial” and “health information” mean information that is identifiable to an individual and that is commonly used for financial or health care purposes, including account numbers, access codes or passwords, information gathered for account security purposes, credit card numbers, information held for the purpose of account access or transaction initiation, or information that relates to medical history or status.

(5) “Personal identification number issued by a government entity” means a tax identification number, social security number, driver's license or permit number, state identification card number issued by the department of licensing, or any other number or code issued by a government entity for the purpose of personal identification that is protected and is not available to the public under any circumstances.

(6) “Record” includes any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. “Record” does not include publicly available directories containing
information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

Section 4. [Liability for Failing to Destroy Personal Information.]

(1) An entity must take all reasonable steps to destroy, or arrange for the destruction of, personal financial and health information and personal identification numbers issued by government entities in an individual’s records within its custody or control when the entity is disposing of records that it will no longer retain.

(2) An entity is not liable under this section for records it has relinquished to the custody and control of the individual to whom the records pertain.

(3) This subsection does not apply to the disposal of records by a transfer of the records, not otherwise prohibited by law, to another entity, including a transfer to archive or otherwise preserve public records as required by law.

(4) An individual injured by the failure of an entity to comply with subsection (1) of this section may bring a civil action in a court of competent jurisdiction. The court may:

(a) If the failure to comply is due to negligence, award a penalty of [two hundred (200)] dollars or actual damages, whichever is greater, and costs and reasonable attorneys’ fees; and

(b) If the failure to comply is willful, award a penalty of [six hundred (600)] dollars or damages equal to [three (3)] times actual damages, whichever is greater, and costs and reasonable attorneys’ fees. However, treble damages may not exceed [ten thousand (10,000)] dollars.

(5) An individual having reason to believe that he or she may be injured by an act or failure to act that does not comply with subsection (1) of this section may apply to a court of competent jurisdiction to enjoin the act or failure to act. The court may grant an injunction with terms and conditions as the court may deem equitable.

(6) The [attorney general] may bring a civil action in the name of the state for damages, injunctive relief, or both, against an entity that fails to comply with subsection (1) of this section. The court may award damages that are the same as those awarded to individual plaintiffs under subsection (4) of this section.

(7) The rights and remedies provided under this section are in addition to any other rights or remedies provided by law.

Section 5. [Complying with Federal Guidelines.] Any bank, financial institution, health care organization, or other entity that is subject to the federal regulations under the interagency guidelines establishing standards for safeguarding customer information (12 C.F.R. 208 Appendix D-2, 12 C.F.R. 364 Appendix B, 12 C.F.R. 30 Appendix B, 12 C.F.R. 570 Appendix B); the guidelines for safeguarding member information (12 C.F.R. 748 Appendix A); and the standards for privacy of individually identifiable health information (45 C.F.R. 160 and 164), and which is in compliance with these federal guidelines, is in compliance with the requirements of this Act.

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

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

Section 8. [Effective Date.] [Insert effective date.]
Pilot Program for Unassisted Voting by the Blind

This Act enables the state Board of Elections to establish a pilot program to help blind or visually impaired people vote without assistance, beginning with the 2002 general election. The program will review the use of equipment such as audio recordings, voice-activated technology, or vocal recognition technology to record the votes of blind or visually impaired people. County boards of elections must apply to participate in the program.

Submitted as:
Kentucky
SB 128
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to a Pilot Program for Unassisted Voting by The Blind.”

Section 2. [Definitions.] As used in this Act:
1. “Blind or Visually Impaired Individual” means an individual who:
   (a) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees;
   (b) Has a medically indicated expectation of visual deterioration;
   (c) Has a medically diagnosed limitation in visual functioning that restricts the individual’s ability to read and write standard print at levels expected of individuals of comparable ability;
   (d) Has been certified as requiring permanent assistance to vote under [insert citation] for reason of blindness; or
   (e) Qualifies to receive assistance to vote under [insert citation] for reason of blindness.
2. “Pilot Program” means a program in a county containing a consolidated local government or containing a city of the first class for unassisted voting by blind or visually impaired individuals.

Section 3. [Pilot Program for Unassisted Voting by The Blind.]
1. A county board of elections in a county containing a consolidated local government or containing a city of the first class may establish a pilot program. As part of this pilot program, the [State Board of Elections] shall approve the use of voting equipment under [insert citation] that is designed to permit blind and visually impaired individuals to vote without assistance, for use beginning in the 2002 general election. No county board of elections in a county containing a consolidated local government or containing a city of the first class shall be required to operate a pilot program.
2. The [State Board of Elections], if it approves the voting equipment under [insert citation], may approve the use of voting equipment designed to permit blind and visually impaired individuals to vote without assistance in as many locations within a county containing a consolidated local government or containing a city of the first class as are designated by the county board of elections.
3. A county board of elections in a county containing a consolidated local government or containing a city of the first class shall provide a report to the [State Board of Elections] after every primary or general election regarding the number of blind or visually impaired individuals that have utilized the voting equipment during the pilot program.
(4) Notwithstanding the provisions of [insert citation], or any other statute to the contrary, a blind or visually impaired voter residing in a county containing a consolidated local government or containing a city of the first class that is operating a pilot program shall be permitted to vote at a location outside the precinct of his or her registration by voting at a location within the county of his or her registration on a voting machine designed to permit blind or visually impaired individuals to vote without assistance, which may include voting at the county clerk’s office, or other place designated by the county board of elections, and approved by the [State Board of Elections].

(5) Notwithstanding the provisions of [insert citation], a blind or visually impaired individual residing in a county containing a consolidated local government or containing a city of the first class that is operating a pilot program shall be permitted to vote in the location within the county of his or her registration as provided under subsection (6) of this section, on a voting machine designed to permit blind or visually impaired individuals to vote without assistance, at any time during which absentee voting is conducted in the clerk’s office or other place designated by the county board of elections during normal business hours on at least any of the [twelve (12)] working days before the election, and the county board of elections may permit the voting to be conducted on a voting machine for a period longer than the [twelve (12)] working days before the election prescribed above. An application for those blind or visually impaired individuals wishing to vote on a voting machine approved for use by blind or visually impaired individuals shall be prescribed by the [State Board of Elections] and shall include the individual’s sworn statement that the individual is blind or visually impaired.

(6) Notwithstanding the requirements of [insert citation], or any other statute to the contrary, the [State Board of Elections] may certify, as a part of the pilot project of a county containing a consolidated local government or containing a city of the first class, voting equipment which utilizes audio recordings, voice-activated technology, or vocal recognition technology to record a vote, and may require such accommodations as would permit a blind or visually impaired voter to cast a vote in secret.

(7) Notwithstanding the provisions of [insert citation], a blind or visually impaired voter residing in a county containing a consolidated local government or containing a city of the first class that is operating a pilot project may cast his or her vote alone and without assistance on a voting machine approved for use by blind or visually impaired individuals. However, the blind or visually impaired voter shall be instructed by the officers of election, with the aid of the instruction cards and the model, in the use of the machine, if the voter so requests.

(8) Nothing in this section shall impair the right of any qualified voter under [insert citation] to receive assistance and vote according to the procedures specified in that section.

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

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

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

This Act makes it unlawful for a person, with intent to mislead, deceive, or defraud, to commit an act of political cyberfraud. This Act defines political “cyberfraud” as an act concerning a political Web site that is committed with intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site. Violations are punishable by a fine not to exceed $1,000 for each day the violation occurs and courts can order the transfer of a domain name as part of any awarded relief. This Act does not apply to a domain name registrar, registry, or registration authority.

Submitted as:
California
Chapter 927 of 2001

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Political Cyberfraud Abatement Act.”

Section 2. [Legislative Findings.] The [Legislature] finds that:
(a) The World Wide Web is a unique arena for the free and open exchange of ideas.
(b) Political cybersquatting stifles that open exchange, thus undermining the essential element of our democracy.
(c) Political cybersquatting involves the cynical and deceitful practice of co-opting the Web site domain name, or address, of a competitor in order to keep the public away from the competitor’s Web site.
(e) Political cybersquatting has the effect of denying a voter access, or interfering with a voter’s access, to information that will allow the person to make a knowledgeable electoral decision. It is the equivalent of stealing campaign literature out of a voter’s mailbox because it prevents a voter from accessing or being aware of particular electoral information.
(f) Political cybersquatting violates principles of free speech by denying unfettered access to the free and open exchange of ideas. Therefore, it is the intent of the [Legislature] to protect that free and open exchange of ideas at the heart of our electoral system by prohibiting the act of political cybersquatting.

Section 3. [Definitions.] As used in this Act:
(a) “Political cyberfraud” means a knowing and willful act concerning a political Web site that is committed with the intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site. Political cyberfraud includes, but is not limited to, any of the following acts:
(1) Intentionally diverting or redirecting access to a political Web site to another person’s Web site by the use of a similar domain name, meta-tags, or other electronic measures.
(2) Intentionally preventing or denying exit from a political Web site by the use of frames, hyperlinks, mouse-trapping, pop-up screens, or other electronic measures.
(3) Registering a domain name that is similar to another domain name for a political Web site with intent to cause confusion.
(4) Intentionally preventing the use of a domain name for a political Web site by registering and holding the domain name or by reselling it to another with the intent of preventing its use.
(b) It is unlawful for a person, with intent to mislead, deceive, or defraud, to commit an act of political cyberfraud.

Section 4. [Applicablility to Domain Name, Registrar, Registry or Registration Authority.] This Act does not apply to a domain name registrar, registry, or registration authority.

Section 5. [Violations.] A violation of this Act is punishable by a fine not to exceed [one thousand (1,000)] dollars for each day the violation occurs. A court may order the transfer of a domain name as part of the relief awarded.

Section 6. [Jurisdiction.] Jurisdiction for actions brought pursuant to this Act shall be in accordance with [insert citation].

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

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

Section 9. [Effective Date.] [Insert effective date.]
Prescription Drug Cost Management

This Act enables the state public employees insurance agency to create a multistate buying pool with all state agencies and institutions, governments of other states and jurisdictions to buy prescription drugs, and to form regional or multistate purchasing alliances. It also allows for fair prescription drug pricing policies and providing discount prices or rebate programs for seniors and the uninsured.

Submitted as:
West Virginia
SB 127 (enrolled version)

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Prescription Drug Cost Management Act.”

Section 2. [Legislative Findings.] The Legislature finds that the rapidly rising cost of prescription drugs places an undue financial burden on the state and the payors and consumers of prescription drugs. The purpose of this legislation is to authorize the director of the public employees insurance agency to act on behalf of specified agencies, programs and political subdivisions to manage the steady increase in prescription drug costs, thus benefiting the citizens and fiscal strength of this state.

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

(1) “Audit” means a systematic examination and collection of sufficient, competent evidential matter needed for an auditor to attest to the fairness of management’s assertions in the financial statements and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations, conducted by an independent certified public accountant in accordance with the applicable statement on standards, provided that the report shall include an incurred-but-not-reported calculation, where available.

(2) “Director” means the director of the public employees insurance agency.

(3) “Finance board” means the public employees insurance agency finance board.

(4) “Pharmacy benefit manager” means an entity that procures prescription drugs at a negotiated rate under a contract and which may serve as a third party prescription drug benefit administrator.

(5) “Prescription drug purchasing agreement” means a written agreement to pool all parties’ prescription drug buying power in order to negotiate the best possible prices and which delegates authority to negotiate on behalf of the parties to the director.

(6) “Prescription drugs” mean substances recognized as drugs in the official “United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or National Formulary,” or any supplement thereto, dispensed pursuant to a prescription issued by an authorized health care practitioner, for use in the diagnosis, cure, mitigation, treatment or prevention of disease in a human, as well as prescription drug delivery systems, testing kits and related supplies.

Section 4. [Finance Board Responsibilities for Review and Approval of Certain Contracts.] The finance board is responsible for reviewing any proposed contract authorized by this Act before it is executed by the [director of the public employees insurance agency]. If the [board] determines that the proposed contract meets the requirements of this Act and would assist in effectively managing the costs for the programs involved and would not result in jeopardizing state funds or funds due the state, it shall approve the contract and authorize the [director of the public employees insurance agency] to execute the contract.
Section 5. [Authorization to Execute Prescription Drug Purchasing Agreements.]
(a) The [director] may execute, subject to the provisions of subsections (b), (c) and (d) of this section and as permitted by applicable federal law, prescription drug purchasing agreements with:
(1) All departments, agencies, authorities, institutions, programs, quasi-public corporations and political subdivisions of this state, including, but not limited to, [the children’s health insurance program, the division of corrections, the division of juvenile services, the regional jail and correctional facility authority, the workers’ compensation fund, state colleges and universities, public hospitals, state or local institutions such as nursing homes, veterans’ homes, the division of rehabilitation, public health departments and the bureau of medical services], provided that any contract or agreement executed with or on behalf of the [bureau of medical services] shall contain all necessary provisions to comply with the provisions of Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., dealing with pharmacy services offered to recipients under the medical assistance plan of this state;
(2) Governments of other states and jurisdictions and their individual departments, agencies, authorities, institutions, programs, quasipublic corporations and political subdivisions;
(3) Regional or multistate purchasing alliances or consortia, formed for the purpose of pooling the combined purchasing power of the individual members in order to increase bargaining power; and
(4) Arrangements with entities in the private sector, including self-funded benefit plans, toward combined purchasing of health care services, health care management services, pharmacy benefits management services or pharmaceutical products, provided, that no private entity may be compelled to participate in the prescription drug purchasing pool, and provided, however, that the [director] may not execute a contract with a private entity without further enactment of the [Legislature] specifically authorizing the agreement.
(b) The [finance board] shall approve each agreement before it is executed by the [director] and the [director] may not execute any agreement not approved by the [finance board].
(c) The [finance board] may not approve and the [director] may not execute any agreement that does not effectively and efficiently manage rising drug costs on behalf of the parties to the agreement.
(d) The [finance board] may not approve and the [director] may not execute any agreement that grants the state’s credit for the purchase of prescription drugs by any entity other than this state.

Section 6. [Authorization to Amend Existing Contracts.] The [director] may renegotiate and amend existing prescription drug contracts to which the [public employees insurance agency] is a party for the purpose of managing rising drug costs.

Section 7. [Authorization to Execute Pharmacy Benefit Management Contract.] The [director] may negotiate and execute pharmacy benefit management contracts for the purpose of managing rising drug costs for this state and all parties which have executed prescription drug purchasing agreements with the [director].

Section 8. [Exemption from Purchasing Division Requirements.] The provisions of [insert citation] do not apply to the agreements and contracts executed under this [Act], except that the contracts and agreements shall be approved as to form and conformity with applicable law by the attorney general.

Section 9. [Audit Required; Reports.]
(a) The [director] shall cause to be conducted an audit of any funds expended pursuant to any prescription drug purchasing agreement or pharmacy benefit management contract executed under the provisions of this Act for each fiscal year that the prescription drug purchasing agreement or pharmacy benefit management contract is in effect. The [director] shall submit the audit to the joint committee on government and finance upon completion, but in no event later than the [thirty-first day of December] after the end of the fiscal year subject to audit.
(b) The [director] shall provide written notice to the [joint committee on government and finance] before executing a prescription drug purchasing agreement or a pharmacy benefit management contract or amending an existing prescription drug contract.

Section 10. [Innovative Strategies.]
(a) The [director] may explore innovative strategies by which this state may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the state’s citizens, including:

1. Enacting fair prescription drug pricing policies;
2. Providing for discount prices or rebate programs for seniors and people without prescription drug insurance;
3. Coordinating programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices;
4. Requiring prescription drug manufacturers to disclose to the state expenditures for advertising, marketing and promotion, as well as for provider incentives and research and development efforts;
5. Establishing counter-detailing programs aimed at educating health care practitioners authorized to prescribe prescription drugs about the relative costs and benefits of various prescription drugs, with an emphasis on generic substitution for brand name drugs when available and appropriate; prescribing older, less costly drugs instead of newer, more expensive drugs, when appropriate; and prescribing lower dosages of prescription drugs, when available and appropriate;
6. Establishing disease state management programs aimed at enhancing the effectiveness of treating certain diseases identified as prevalent among this state’s population with prescription drugs;
7. Studying the feasibility and appropriateness of executing prescription drug purchasing agreements with large private sector purchasers of prescription drugs and including those private entities in pharmacy benefit management contracts;
8. Studying the feasibility and appropriateness of authorizing the establishment of voluntary private buying clubs, cooperatives or purchasing alliances comprised of small businesses and or individuals for the purpose of purchasing prescription drugs at optimal prices; and
9. Other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all citizens of this state.

(b) The [director] shall report to the [joint committee on government and finance] on a semi-annual basis regarding activities and recommendations relating to the mandates of this section.

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

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

Section 13. [Effective Date.] [Insert effective date.]
Price Gouging After Disasters

This Act prohibits sellers from excessively raising prices on their merchandise during emergencies and natural disasters.

Submitted as:
New Jersey
Chapter 297 of 2002
Status: enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prevent Price Gouging after Disasters.”

Section 2. [Legislative Findings.] The [Legislature] finds and declares that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for certain merchandise. While the pricing of merchandise is generally best left to the marketplace under ordinary conditions, when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified price increases in the sale of certain merchandise be prohibited. It is the intention of the [Legislature] to prohibit excessive and unjustified price increases in the sale of certain merchandise during declared states of emergency in this state.

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

“Excessive price increase” means a price that is excessive as compared to the price at which the consumer good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency. A price shall be deemed excessive if:

(1) The price exceeds by more than [ten (10)] percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of emergency;

(2) In those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price represents an increase of more than [ten (10)] percent in the amount of markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of emergency.

“State of emergency” means a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the [Governor], or for which a state of emergency has been declared by a [municipal emergency management coordinator].

Section 4. [Unlawful Practice to Sell Merchandise at Excessive Price During Emergency.] It shall be an unlawful practice for any person to sell or offer to sell during a state of emergency or within [thirty (30)] days of the termination of a state of emergency, in the area for which the state of emergency has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of persons or their property for a price that constitutes an excessive price increase.

Section 5. [Severability.] [Insert severability clause.]
Section 6. [Repealer.] [Insert repealer clause.]

Section 7. [Effective Date.] [Insert effective date.]
Privacy: Video Providers

Prior state law prohibited a person who owns, controls, operates, or manages a cable television corporation or leases channels on a cable system from using electronic devices to observe, listen to, record, or monitor events or conversations inside a subscriber’s residence, workplace, or place of business without the subscriber’s written consent. Prior state law also prohibited that person from providing any other person with individually identifiable information regarding any subscriber. This Act makes those provisions applicable to a person who owns, controls, operates, or manages a satellite television corporation or leases channels on a satellite system.

Submitted as:
California
Chapter 731 of 2001

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Protect the Privacy of Cable and Satellite Television/Video Subscribers.”

Section 2. [Prohibitions: Satellite and Cable Television Corporations.]
(a) No person who owns, controls, operates, or manages a satellite or cable television corporation, or who leases channels on a satellite or cable system shall:

(1) Use any electronic device to record, transmit, or observe any events or listen to, record, or monitor any conversations which take place inside a subscriber's residence, workplace, or place of business, without obtaining the express written consent of the subscriber. A satellite or cable television corporation may conduct electronic sweeps of subscriber households to monitor for signal quality.

(2) Provide any person with any individually identifiable information regarding any of its subscribers, including, but not limited to, the subscriber's television viewing habits, shopping choices, interests, opinions, energy uses, medical information, banking data or information, or any other personal or private information, without the subscriber's express written consent.

(b) Individual subscriber viewing responses or other individually identifiable information derived from subscribers may be retained and used by a satellite or cable television corporation only to the extent reasonably necessary for billing purposes and internal business practices, and to monitor for unauthorized reception of services. A satellite or cable television corporation may compile, maintain, and distribute a list containing the names and addresses of its subscribers if the list contains no other individually identifiable information and if subscribers are afforded the right to elect not to be included on such a list. However, a satellite or cable television corporation shall maintain adequate safeguards to ensure the physical security and confidentiality of any such subscriber information.

(c) A satellite or cable television corporation shall not make individual subscriber information available to government agencies in the absence of legal compulsion, including, but not limited to, a court order or subpoena. If requests for such information are made, a satellite or cable television corporation shall promptly notify the subscriber of the nature of the request and what government agency has requested the information prior to responding unless otherwise prohibited from doing so by law. Nothing in this section shall be construed to prevent local franchising authorities from obtaining information necessary to monitor franchise compliance pursuant to franchise or license agreements. This information shall be provided so as to omit individually identifiable subscriber information whenever possible. Information obtained by local
franchising authorities shall be used solely for monitoring franchise compliance and shall not be subject to the state public records Act under [insert citation].

(d) Any individually identifiable subscriber information gathered by a satellite or cable television corporation shall be made available for subscriber examination within [thirty (30)] days of receiving a request by a subscriber to examine such information on the premises of the corporation. Upon a reasonable showing by the subscriber that the information is inaccurate, a satellite or cable television corporation shall correct such information.

(e) Upon a subscriber's application for satellite or cable television service, including, but not limited to, interactive service, a satellite or cable television corporation shall provide the applicant with a separate notice in an appropriate form explaining the subscriber's right to privacy protection afforded by this section.

(f) As used in this section:

(1) “Cable television corporation” shall have the same meaning as that term is given by [insert citation].

(2) “Individually identifiable information” means any information identifying an individual or his or her use of any service provided or retrieve by a satellite or cable system other than the mere fact that such individual is a satellite or cable television subscriber. "Individually identifiable information" shall not include anonymous, aggregate, or any other information that does not identify an individual subscriber of a video provider service.

(3) “Person” includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government, or subdivision thereof, whether federal, state, or local.

(4) “Interactive service” means any service offered by a satellite or cable television corporation involving the collection, reception, aggregation, storage, or use of electronic information transmitted from a subscriber to any other receiving point under the control of the satellite or cable television corporation, or vice versa.

(g) Nothing in this section shall be construed to limit the ability of a satellite or cable television corporation to market satellite or cable television or ancillary services to its subscribers.

(h) Any person receiving subscriber information from a satellite or cable television corporation shall be subject to the provisions of this section.

(i) Any aggrieved person may commence a civil action for damages for invasion of privacy against any satellite or cable television corporation, service provider, or person that leases a channel or channels on a satellite or cable television system that violates the provisions of this section.

(j) Any person who violates the provisions of this section is guilty of a misdemeanor punishable by a fine not exceeding [three thousand dollars ($3,000)], or by imprisonment in the county jail not exceeding [one (1)] year, or by both such fine and imprisonment.

(k) The penalties and remedies provided by subdivisions (i) and (j) are cumulative, and shall not be construed as restricting any penalty or remedy, provisional or otherwise, provided by law for the benefit of any person, and no judgment under this section shall preclude any person from obtaining additional relief based upon the same facts.

(l) The provisions of this section are intended to set forth minimum state standards for protecting the privacy of subscribers to cable television services and are not intended to preempt more restrictive local standards.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Public Elementary and Secondary Student Fee Authorization

This draft SSL is based on a Nebraska law that was created to clarify the authority and requirements of school districts to fulfill a state constitutional mandate to provide for the free instruction in the common schools of that state of all persons between the ages of five and twenty-one years.

This Act authorizes school districts and educational service units to require fees or specialized equipment or attire for the following purposes:

- Extracurricular activities;
- Admission fees and transportation charges for participants and spectators of extracurricular activities outside of the regular school day if attendance does not count toward graduation or grade advancement;
- Postsecondary education costs;
- Transportation pursuant to current sections authorizing transportation charges;
- Reproduction costs for student files or records pursuant to existing provisions;
- Reimbursement for school district property lost or damaged by the student;
- Before-and-after-school or prekindergarten services pursuant to existing provisions;
- Summer school, and
- Breakfast and lunch programs.

Extracurricular activities means student activities or organizations which are generally conducted outside of the regular school day, which do not count toward graduation or grade advancement, and in which participation is not otherwise required. Postsecondary education costs mean tuition, transportation, books, and other fees associated with postsecondary education except in the case of courses where students receive both high school and postsecondary education credits or if the course is being taken as part of an accelerated or differentiated curriculum program, the course shall be offered without charge for tuition, transportation, books, or other fees, but postsecondary education costs may include tuition and other fees associated with obtaining credit from the postsecondary education institution. Regular school day means the hours of the school day that the school district counts toward the minimum school term requirements.

Students could be required to furnish personal or consumable items, such as pencils, paper, pens, erasers, and notebooks. The Act does not preclude the operation of a school store for the purchase of food, soft drinks, and such personal or consumable items. Students may also be required to furnish and wear clothing meeting general written guidelines for specified courses and activities during both the regular school day and outside of the regular school day if the written guidelines are reasonably related to the course or activity.

Submitted as:
Nebraska:
LB 1172
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Public Elementary and Secondary Student Fee Authorization Act.”

Section 2. [Definitions.] As used in this Act:
Extracurricular activities means student activities or organizations which are supervised or administered by the school district, which do not count toward graduation or advancement between grades, and in which participation is not otherwise required by the school district;

(2) Governing body means a school board of any class of school district or an educational service unit board; and

(3) Postsecondary education costs means tuition and other fees associated with obtaining credit from a postsecondary educational institution. For a course in which students receive both high school and postsecondary education credit or a course being taken as part of an approved accelerated or differentiated curriculum program pursuant to [insert citation], the course shall be offered without charge for tuition, transportation, books, or other fees, except tuition and other fees associated with obtaining credits from a postsecondary educational institution.

Section 3. [Student Fees, Funds, Equipment and Attire.]

Except as provided in section 9 of this Act, a governing body may require and collect fees or other funds from or on behalf of students or require students to provide specialized equipment or specialized attire for any of the following purposes:

(1) Participation in extracurricular activities;
(2) Admission fees and transportation charges for spectators attending extracurricular activities;
(3) Postsecondary education costs;
(4) Transportation pursuant to [insert citation];
(5) Copies of student files or records pursuant to [insert citation];
(6) Reimbursement to the school district or educational service unit for school district or educational service unit property lost or damaged by the student;
(7) Before-and-after-school or prekindergarten services offered pursuant to [insert citation];
(8) Summer school or night school; and
(9) Breakfast and lunch programs.

Section 4. [Minor Personal or Consumable Items for Specified Courses and Activities.] A governing body may require students to furnish minor personal or consumable items for specified courses and activities, including, but not limited to, pencils, paper, pens, erasers, and notebooks.

Section 5. [Nonspecialized Attire.] A governing body may require students to furnish and wear nonspecialized attire meeting general written guidelines for specified courses and activities if the written guidelines are reasonably related to the course or activity.

Section 6. [Course Projects.] Except as provided in section 9 of this Act, a governing body may require students to furnish materials for course projects meeting written guidelines if upon completion, the project becomes the property of the student and the written guidelines are reasonably related to the course.

Section 7. [Musical Instruments.] A governing body may require students to furnish musical instruments for participation in optional music courses that are not extracurricular activities if the governing body provides for the use of a musical instrument without charge for any student who qualifies for free or reduced-price lunches under United States Department of Agriculture child nutrition programs. Participation in a free-lunch program or reduced-price lunch program is not required to qualify for free or reduced-price lunches for purposes of this section. This section does not require a governing body to provide for the use of a particular type of musical instrument for any student. For music courses that are extracurricular activities, a governing body may require fees or require students to provide specialized equipment, such as musical instruments, or specialized attire consistent with this Act.

Section 8. [Precluding a School Store.] This Act does not preclude operation of a school store in which students may purchase food, beverages, and personal or consumable items.
Section 9. [Waivers.] Each governing body shall establish a policy waiving the fees and providing the items otherwise required to be provided by students pursuant to subdivisions (1) and (2) of section 3 of this Act and pursuant to section 6 of this Act for students who qualify for free or reduced-price lunches under United States Department of Agriculture child nutrition programs. Participation in a free-lunch program or reduced-price lunch program is not required to qualify for free or reduced-price lunches for purposes of this section. Each governing body may establish a policy for waiving fees or providing items otherwise required to be provided by students in other circumstances.

Section 10. [Public Hearings on Student Fees.] On or before [August 1], of each year, each school board shall hold a public hearing at a regular or special meeting of the board on a proposed student fee policy, following a review of the amount of money collected from students pursuant to, and the use of waivers provided in, the student fee policy for the prior school year. The student fee policy shall be adopted by a majority vote of the school board and shall be published in the student handbook. The board shall provide a copy of the student handbook to every student at no cost to the student. The student fee policy shall include specific details regarding:

1. The general written guidelines for any clothing required for specified courses and activities;
2. Any personal or consumable items a student will be required to furnish for specified courses and activities;
3. Any materials required for course projects;
4. Any specialized equipment or attire that a student will be required to provide for any extracurricular activity;
5. Any fees required from a student for participation in any extracurricular activity;
6. Any fees required for postsecondary education costs;
7. Any fees required for transportation costs pursuant to [insert citation];
8. Any fees required for copies of student files or records pursuant to [insert citation];
9. Any fees required for participation in before-and-after-school or prekindergarten services offered pursuant to [insert citation];
10. Any fees required for participation in summer school or night school;
11. Any fees for breakfast and lunch programs; and
12. The waiver policy pursuant to section 9 of this Act.

Section 11. [Student Fee Fund.] Each school board shall establish a student fee fund. For purposes of this section, student fee fund means a separate school district fund not funded by tax revenue, into which all money collected from students pursuant to subdivisions (1), (3), and (8) of section 3 of this Act shall be deposited and from which money shall be expended for the purposes for which it was collected from students.

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

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

Section 14. [Effective Date.] [Insert effective date.]
Regional Water Banks Note

Storing and allocating water continues to be an issue in the West, particularly during drought conditions. At least three states have enacted laws to establish water banks to facilitate storing and allocating water: Arizona, Colorado and Kansas.

**Arizona**

Chapter 308 of 1996 established a Water Banking Authority to:

- Coordinate the storage of water and distribution and extinguishment of long-term storage credits;
- Coordinate the purchase, delivery and storage of Colorado River water;
- Coordinate and confer with state agencies, municipal corporations, special districts, authorities, other political subdivisions, private entities, Indian communities and the United States on matters within their jurisdiction relating to water;
- Determine, on an annual basis, the quantity of Colorado River water to be stored by the authority and where that storage will occur;
- Account for, hold and distribute or extinguish long-term water storage credits;
- Make and execute all contracts, including intergovernmental agreements concerning water;
- Obtain for storage Colorado River water delivered through the Central Arizona project;
- Store Colorado River water at permitted storage facilities;
- Distribute long-term storage credits earned by the authority to make water available to municipal and industrial users of Colorado River water in the state;
- Store Colorado River water in Arizona on behalf of appropriately authorized agencies in California and Nevada;
- Cause a decrease in Arizona diversions from the Colorado River, ensuring that Arizona will use less than its full entitlement to Colorado River water in years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by the authority; and
- Distribute long-term storage credits earned by the authority on behalf of agencies in California and Nevada to Colorado River water users in Arizona to use in place of Colorado River water that would have otherwise been used by those Arizona users.

**Colorado**

Chapter 284 of 2001 directs the state engineer to promulgate rules to establish and administer a water-banking pilot program intended to simplify and improve the approval of water leases, loans, and exchanges of stored water within the Arkansas River basin, reduce the costs associated with such transactions, and increase the availability of water-related information. It requires the state engineer to report to the governor and the general assembly, on or before November 1, 2005, regarding the effectiveness of the program. It provides for judicial review of the rules. It allows local governments, irrigation districts, ditch companies, and conservancy districts to use heritage-planning grants to develop plans regarding water banking.

**Kansas**

Kansas enacted its Water Banking Act as Chapter 160 of 2001. According to a Supplemental Note by Kansas legislative staff, under the Act, a “water bank” means a private, non-profit corporation that leases water from water rights that have been deposited in the bank and provides safe deposit accounts. A water bank may be a groundwater bank or a surface water bank or both. Water banks may provide services to facilitate the sale or lease of water rights and would be prohibited from owning, buying, or selling water rights.
Before a water bank is authorized to operate in the state, the bank’s charter must be approved by the Chief Engineer of the Division of Water Resources. One of the features of the provisions relating to the charter of a water bank is that the operations of the bank will result in a savings of 10 percent or more in the total amount of groundwater consumed for a representative past period pursuant to water rights deposited in the bank, excluding groundwater located in certain intensive groundwater use control areas. In addition, before water rights or portions of water rights can be accepted for deposit or deposited in a safe deposit account, the bank, with the assistance of the Division of Water Resources, must determine the water right to be bankable according to provisions of the law. Another aspect of the law requires that the charter ensure that the total amount of groundwater leased each year from each hydrologic unit does not exceed 90 percent of the historic average annual amount collectively diverted pursuant to all deposited water rights or portions of water rights from the unit for a representative past period. Water banks will be chartered for a period of not more than seven years at which time the bank will be subject to a review by an evaluation team described below. The governing body of a water bank will have at least five members who are reasonably representative of public and private interests in water within the bank boundary.

Prior to July 1, 2002, there will be one groundwater bank chartered. After July 1, 2002, there could be another bank chartered that would have surface water as a component of the bank charter.

Water banks can contract with holders of water rights for deposit in the bank of all or a portion of any water right from a hydrologic unit within the bank boundary. A “bank boundary” means the geographic area where a water bank operates and conducts the function of a water bank and may encompass more than one hydrologic unit. A “hydrologic unit” means a defined area where water rights authorizing diversion of water from a source of supply may be deposited and water from the same source of supply may be leased, in accordance with the provisions of the law, without causing impairment of existing water rights or a significantly different hydrological effect to other users of water from the same source or hydraulically connected sources of supply. Water rights must be deposited for a period of not more than five years; be subject to terms and conditions provided by contract; and be subject to terms and conditions imposed by the Chief Engineer.

When a water right, or a portion of a water right, has been deposited in the bank, water from that water right may be leased for use if it will be used within the bank boundary and in the same hydrologic unit from which the water right authorizing diversion of the water is deposited. Leased water is subject to all provisions of the state Water Appropriations Act, including all requirements relating to term permits. A water bank’s decision of whether or not to lease water cannot be based on the proposed use of the water.

With respect to safe-deposit accounts in water banks, a holder of a water right may place unused water from the right for future withdrawal. The law limits the water to be deposited in the savings account to water that was unused in the immediate past calendar year. Only water from one water right can be placed in a safe-deposit account and water from a water right cannot be placed in more than one safe-deposit account, except that water from linked water rights may be placed in a single safe-deposit account. The law requires that each calendar year that the water remains in a safe-deposit account, the amount of water held in the account will decrease by a percentage established by the charter of the bank but in no case less than 10 percent annually of all amounts deposited. It allows depositors of water in water safe-deposit accounts to withdraw water subject to the provisions of the state’s Water Appropriation Act, including but not limited to all requirements relating to term permits and other conditions outlined in the law.

On or before February 10 of each year, a water bank must submit to the Chief Engineer a report containing various information. The information to be contained in the report would be used to determine whether the conservation requirements of the law are being reached. The Chief Engineer may require owners of water rights deposited in a water bank, owners of water rights that have placed water in safe-deposit accounts, and persons leasing water from a water bank to file water-use reports at a date earlier than March of each year.

The law authorizes the Director of the state Geological Survey (SGS) to convene a team to evaluate the operation of a water bank not later than five years after the establishment of a water bank. The staff of the state SGS can provide staff assistance to the evaluation team. The team must submit a report of its evaluation and recommendation to the Governor, the state Water Office, the state Water Authority, the Secretary of
Agriculture, the Chief Engineer, the Senate Committee on Natural Resources, and the House Environment Committee.

Unless otherwise provided by law, the Chief Engineer may extend the charter of a water bank for an additional period not to exceed seven years or permit the bank charter to lapse under the terms recommended by the evaluation team. The law grants the Chief Engineer the authority to suspend the use of water for failure to comply with the provisions of the bill subject to notice and hearing in accordance with the provisions of the state Administrative Procedure Act.
Relief from Legal Determination of Paternity

This Act allows a person to file a petition for relief from any legal determination of paternity. A court may set aside a determination of paternity if a scientifically reliable genetic test establishes the exclusion of the individual named as father in the legal determination. The court may order any appropriate relief, including setting aside an obligation to pay child support. Relief from paternity will not be granted if the individual named as father:

- Acknowledged paternity knowing he was not the father;
- Adopted the child, or
- Knew that the child was conceived through artificial insemination.

Submitted as:
Virginia
Chapter 814 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Provide Relief from Legal Determination of Paternity.”

Section 2. [Relief from Legal Determination of Paternity.]

(1) A person may file a petition for relief and, except as provided herein, the court may set aside a final judgment, court order, administrative order, obligation to pay child support or any legal determination of paternity if a scientifically reliable genetic test performed in accordance with this Act establishes the exclusion of the person named as a father in the legal determination. The court shall appoint a guardian ad litem to represent the interest of the child. The petitioner shall pay the costs of such test. A court that sets aside a determination of paternity in accordance with this section shall order completion of a new birth record and may order any other appropriate relief, including setting aside an obligation to pay child support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for relief from a determination of paternity, but only from the date that notice of the petition was served on the nonfiling party.

(2) A court shall not grant relief from determination of paternity if the individual named as father acknowledged paternity knowing he was not the father, adopted the child, or knew that the child was conceived through artificial insemination.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Reporting Traffic Infractions of Diplomats

This Act:
• Requires law enforcement officers to record the name, address, vehicle license number, operator license number, and certain other information whenever a driver who displays a driver’s license issued by the U.S. Department of State or who otherwise claims immunities or privileges under present federal law is stopped for a traffic violation or is involved in a motor vehicle accident;
• Requires law enforcement officers to forward such information to the state Department of Public Safety and Corrections (DPS&C) within seven calendar days after a traffic stop. However, if the driver is involved in an accident, the law enforcement officer shall forward such information, with a copy of the written accident report, to the DPS&C within 48 hours after completing the accident investigation;
• Requires the DPS&C to receive all such information and forward it to the Bureau of Diplomatic Security, Office of Foreign Missions, of the U.S. Department of State within seven calendar days following receipt of such information, and
• Prohibits these provisions from being construed to prohibit or limit the application of any motor vehicle or criminal law to an individual who has or claims immunities or privileges under present federal law.

Submitted as:
Louisiana
Act 37 of 2001 (Regular Session)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Address Reporting Traffic Infractions of Diplomats.”

Section 2. [Reports; Diplomatic Immunities and Privileges; U.S. Department of State; Deadlines.]
(A) Whenever any driver who displays a driver’s license issued by the United States Department of State or who otherwise claims immunities or privileges under Title 22, Chapter 6 of the United States Code, is stopped by a law enforcement officer who has probable cause to believe that the driver has committed a violation of any provision [insert citation] or when any such driver has been involved in a motor vehicle accident, the law enforcement officer shall record the driver’s name, address, motor vehicle license number, operator license number, and all other relevant information contained on the driver’s license or identification card issued by the United States Department of State. If the driver has been stopped, the officer shall forward such information, with a copy of the traffic citation, if applicable, to the state [department of public safety and corrections] within [seven (7)] calendar days after the traffic stop. If the driver is involved in a motor vehicle accident, the law enforcement officer shall forward such information with a copy of the written report of the accident investigation to the [department of public safety and corrections] within [forty-eight (48)] hours after completion of the accident investigation.

(B) The [department of public safety and corrections] shall receive all information, including copies of citations and accident reports, required under the provisions of this Section and shall forward such information and copies of reports and citations to the Bureau of Diplomatic Security, Office of Foreign Missions, of the United States Department of State within [seven (7)] calendar days following receipt of such information.

(C) The provisions of this Section shall not be construed to prohibit or limit the application of any criminal law or motor vehicle regulation to an individual who has or claims immunities or privileges under Title 22, Chapter 6 of the United States Code.
Section 3. [Severability.] [Insert severability clause.]

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

Section 5. [Effective Date.] [Insert effective date.]
Road-to-Independence, Transitioning from Foster Care

This Act directs the state child services department to establish a program to help people in foster care become self-sufficient when they are old enough to leave foster care. The program will service adolescents who are in foster care but are approaching the age at which they will leave it, as well as young adults who have recently left foster care and are living on their own.

Submitted as:
Florida
HB 245
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Road-to-Independence Act.”

Section 2. [Care of Children.] The [department] shall conduct, supervise, and administer a program for dependent children and their families. The services of the program are to be directed toward the transition to self-sufficiency for older children who continue to be in foster care as adolescents.

Section 2. [Independent Living Transition Services.]

(1) System of Services. --

(a) The [Department of Children and Family Services] or its agents shall administer a system of independent living transition services to enable older children in foster care and young adults who exit foster care at age [eighteen (18)] to make the transition to self-sufficiency as adults.

(b) The goals of independent living transition services are to assist older children in foster care and young adults who were formerly in foster care to obtain life skills and education for independent living and employment, to have a quality of life appropriate for their age, and to assume personal responsibility for becoming self-sufficient adults.

(c) State funds for foster care or federal funds shall be used to establish a continuum of services for eligible children in foster care and eligible young adults who were formerly in foster care which accomplish the goals for the independent living transition services and provide the service components for services for foster children, as provided in subsection (3), and services for young adults who were formerly in foster care, as provided in subsection (5).

(d) For children in foster care, independent living transition services are not an alternative to adoption. Independent living transition services may occur concurrently with continued efforts to locate and achieve placement in adoptive families for older children in foster care.

(2) Eligibility. --

(a) The [department] shall serve children who are [thirteen (13)] to [eighteen (18)] years of age and who are in foster care through the program component of services for foster children provided in subsection (3). Children to be served must meet the eligibility requirements set forth for specific services as provided in this section and through department rule.

(b) The [department] shall serve young adults who are [eighteen (18)] to [twenty-three (23)] years of age and who were in foster care when they turned [eighteen (18)] years of age through the program component of services for young adults who were formerly in foster care in subsection (5). Children to be served must meet the eligibility requirements set forth for specific services in this section and through [department] rule.
(3) Program Component of Services for Foster Children. -- The [department] shall provide the following transition to independence services to children in foster care who meet prescribed conditions and are determined eligible by the [department]. The service categories available to children in foster care which facilitate successful transition into adulthood are:

(a) Pre-independent-living services. --

1. Pre-independent-living services include, but are not limited to, life skills training, educational field trips, and conferences. The specific services to be provided to a child shall be determined using a pre-independent-living assessment.

2. A child [thirteen (13)] to [fifteen (15)] years of age who is in foster care is eligible for such services.

(b) Life skills services. --

1. Life skills services may include, but are not limited to, independent living skills training, educational support, employment training, and counseling. The specific services to be provided to a child shall be determined using an independent life skills assessment.

2. A child [fifteen (15)] to [eighteen (18)] years of age who is in foster care is eligible for such services.

(c) Subsidized independent living services. --

1. Subsidized independent living services are living arrangements that allow the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under [insert citation].

2. A child [sixteen (16)] to [eighteen (18)] years of age is eligible for such services if he or she:

   (i) Is adjudicated dependent under [insert citation]; has been placed in licensed out-of-home care for at least [six (6)] months prior to entering subsidized independent living; and has a permanency goal of adoption, independent living, or long-term licensed care; and
   (ii) Is able to demonstrate independent living skills, as determined by the [department], using established procedures and assessments.

3. Independent living arrangements established for a child must be part of an overall plan leading to the total independence of the child from the [department’s] supervision. The plan must include, but need not be limited to, a description of the skills of the child and a plan for learning additional identified skills; the behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities, as appropriate; a plan for future educational, vocational, and training skills; present financial and budgeting capabilities and a plan for improving resources and ability; a description of the proposed residence; documentation that the child understands the specific consequences of his or her conduct in the independent living program; documentation of proposed services to be provided by the [department] and other agencies, including the type of service and the nature and frequency of contact; and a plan for maintaining or developing relationships with the family, other adults, friends, and the community, as appropriate.

4. Subsidy payments in an amount established by the [department] may be made directly to a child under the direct supervision of a caseworker or other responsible adult approved by the [department].

(4) Participation In Life Skills Activities. -- In order to assist older children in foster care, ages [thirteen (13)] to [eighteen (18)] years of age, with the transition to independent living as adults, the program must provide them with opportunities to participate in and learn from life skills activities in their foster families and communities which are reasonable and appropriate for their age. Such activities may include, but are not limited to, managing money earned from a job, taking driver’s education, and participating in after-school or extracurricular activities. To support these opportunities for participation in age-appropriate life skills activities, the [department] may:

(a) Develop, with children in the program and their foster parents, a list of age-appropriate activities and responsibilities to be presented to all children involved in independent living transition services and their foster parents.
(b) Provide training for staff and foster parents which addresses issues of older children in foster care and the transition to adulthood, including supporting education and employment and providing opportunities to participate in appropriate daily activities.

(c) Develop procedures to maximize the authority of foster parents to approve participation in age-appropriate activities of children in their care.

(d) Provide opportunities for older children in foster care to interact with mentors.

(e) Develop and implement procedures for older children to directly access and manage the personal allowance they receive from the [department] in order to learn responsibility and participate in age-appropriate life skills activities to the extent feasible.

(5) Program Component of Services for Young Adults Formerly in Foster Care. -- Based on the availability of funds, the [department] shall provide or arrange for the following services to young adults formerly in foster care who meet the prescribed conditions and are determined eligible by the [department]. The categories of services available to assist a young adult formerly in foster care to achieve independence are:

(a) Aftercare support services. --

1. Aftercare support services include, but are not limited to, referrals to resources in the community for:

   (i) Mentoring and tutoring.
   (ii) Mental health services and substance abuse counseling.
   (iii) Life skills classes, including credit management and preventive health activities.
   (iv) Parenting classes.
   (v) Job skills training.

The specific services to be provided under this subparagraph shall be determined by an aftercare services assessment. Temporary assistance may be provided to prevent homelessness within the limitations defined by the [department].

2. A young adult [eighteen (18)] to [twenty-three (23)] years of age who leaves foster care at [eighteen (18)] years of age but who requests services prior to reaching [twenty-three (23)] years of age is eligible for such services.

(b) Road-to-Independence Scholarship Program. --

1. The Road-to-Independence Scholarship Program is intended to help eligible students who are former foster children in this state to receive the educational and vocational training needed to achieve independence. The amount of the award shall equal the earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job, after considering other grants and scholarships that are in excess of the educational institutions’ fees and costs, and contingent upon available funds. Students eligible for the Road-to-Independence Scholarship Program may also be eligible for educational fee waivers for workforce development postsecondary programs, community colleges, and universities, pursuant to [insert citation].

2. A young adult [eighteen (18)] to [twenty-one (21)] years of age is eligible for the initial award, and a young adult under [twenty-three (23)] years of age is eligible for renewal awards, if he or she:

   (i) Is a dependent child, pursuant to [insert citation], and is living in licensed foster care or in subsidized independent living at the time of his or her [18th] birthday;
   (ii) Has spent at least [six (6)] months living in foster care before reaching his or her [18th] birthday;
   (iii) Is a resident of this state as defined in [insert citation]; and
   (iv) Meets one of the following qualifications:

   (A) Has earned a standard high school diploma or its equivalent as described in [insert citation], and has been admitted for full-time enrollment in an eligible postsecondary education institution as defined in [insert citation];
(B) Is enrolled full time in an accredited high school, is within [two (2)] years of graduation, and has maintained a grade point average of at least 2.0 on a scale of 4.0 for the [two (2)] semesters preceding the date of his or her [18th] birthday; or

(C) Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent, is making satisfactory progress in that program as certified by the program, and is within [two (2)] years of graduation.

3. (i) The [department] must advertise the availability of the program and must ensure that the children and young adults leaving foster care, foster parents, or family services counselors are informed of the availability of the program and the application procedures.

(ii) A young adult must apply for the initial award during the [six (6)] months immediately preceding his or her [18th] birthday. A young adult who fails to make an initial application, but who otherwise meets the criteria for an initial award, may make one application for the initial award if such application is made before the young adult’s [21st] birthday.

(iii) If funding for the program is available, the [department] shall issue awards from the scholarship program for each young adult who meets all the requirements of the program.

(iv) An award shall be issued at the time the eligible student reaches [eighteen (18)] years of age.

(v) If the award recipient transfers from one eligible institution to another and continues to meet eligibility requirements, the award must be transferred with the recipient.

(vi) Scholarship funds awarded to any eligible young adult under this program are in addition to any other services provided to the young adult by the [department] through its independent living transition services.

(vii) The [department] shall provide information concerning young adults receiving the Road-to-Independence Scholarship to the [Department of Education] for inclusion in the student financial assistance database, as provided in [insert citation].

(viii) Scholarship funds shall be terminated when the young adult has attained a bachelor of arts or bachelor of science degree, or equivalent undergraduate degree, or reaches [twenty-three (23)] years of age, whichever occurs earlier.

(ix) The [department] shall evaluate and renew each award annually during the [90-day] period before the young adult’s birthday. In order to be eligible for a renewal award for the subsequent year, the young adult must:

(I) Complete at least [twelve (12)] semester hours or the equivalent in the last academic year in which the young adult earned a scholarship, except for a young adult who meets the requirements of [insert citation].

(II) Maintain the cumulative grade point average required by the scholarship program, except that, if the young adult’s grades are insufficient to renew the scholarship at any time during the eligibility period, the young adult may restore eligibility by improving the grade point average to the required level.

(x) Scholarship funds may be terminated during the interim between an award and the evaluation for a renewal award if the [department] determines that the award recipient is no longer enrolled in an educational institution as defined in sub-subparagraph 2.(iv), or is no longer a state resident. The [department] shall notify a student who is terminated and inform the student of his or her right to appeal.

(xi) An award recipient who does not qualify for a renewal award or who chooses not to renew the award may subsequently apply for reinstatement. An application for reinstatement must be made before the young adult reaches [twenty-three (23)] years of age and a student may not apply for reinstatement more than once. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria and the criteria for award renewal for the scholarship program.

4. A young adult receiving continued services of the foster care program under former [insert citation] must transfer to the scholarship program by [July 1, 2003].

(c) Transitional Support Services. --
1. In addition to any services provided through after care support or the Road to Independence scholarship, a young adult formerly in foster care, may receive other appropriate short-term services, which may include financial, housing, counseling, employment, education and other services, if the young adult demonstrates that the services are critical to the young adult’s own efforts to achieve self-sufficiency and to develop a personal support system.

2. A young adult formerly in foster care is eligible to apply for transitional support services if he or she is [eighteen (18)] to [twenty-three (23)] years of age, was a dependent child pursuant to [insert citation], was living in licensed foster care or in subsidized independent living at the time of his or her [18th] birthday, and had spent at least [six (6)] months living in foster care before that date.

3. If at any time the services are no longer critical to the young adult’s own efforts to achieve self-sufficiency and to develop a personal support system, they shall be terminated.

(d) Payment of aftercare, scholarship or transitional support funds shall be made directly to the recipient unless the recipient requests that the payments or a portion of the payments be made directly to a licensed foster family or group care provider with whom the recipient was residing at the time of attaining the 18th birthday and with whom the recipient desires to continue to reside. If a young adult and the former foster parent agree that the young adult shall continue to live in the foster home while receiving aftercare, scholarship or transitional support funds, the caregiver shall establish written expectations for the young adult’s behavior and responsibilities. The young adult who continues with a foster family shall not be included as a child in calculating any licensing restriction on the number of children in the foster home.

(e) Appeals process. --

1. The [Department of Children and Family Services] shall adopt by rule a procedure by which a young adult may appeal an eligibility determination or the [department’s] failure to provide aftercare, scholarship or transitional support services if such funds are available. The procedure developed by the [department] must be readily available to young adults and must provide for an appeal to the [Secretary of Children and Family Services]. The decision of the [secretary] constitutes final agency action and is reviewable by the court as provided in [insert citation].

(6) Accountability. -- The [department] shall develop outcome measures for the program and other performance measures.

(7) Independent Living Services Integration Workgroup. -- The [Secretary of Children and Family Services] shall establish the independent living services integration workgroup, which, at a minimum, shall include representatives from the [Department of Children and Family Services], the [Agency for Workforce Innovation], the [Department of Education], the [Agency for Health Care Administration], the [State Youth Advisory Board], and foster parents. The workgroup shall assess barriers to the effective and efficient integration of services and support across systems for the transition of older children in foster care to independent living. The workgroup shall recommend methods to overcome these barriers and shall ensure that the state plan for federal funding for the independent living transition services includes these recommendations. The workgroup shall report to appropriate legislative committees of the [Senate and the House of Representatives] by [insert date]. Specific issues and recommendations to be addressed by the workgroup include:

(a) Enacting the Medicaid provision of the federal Foster Care Independence Act of 1999, Pub. L. No. 106-169, which allows young adults formerly in foster care to receive medical coverage up to [twenty-one (21)] years of age.

(b) Extending the age of Medicaid coverage from [twenty-one (21)] to [twenty-three (23)] years of age for young adults formerly in foster care in order to enable such youth to complete a postsecondary education degree.

(c) Encouraging the [regional workforce boards] to provide priority employment and support for eligible foster care participants receiving independent living transition services.

(d) Facilitating transfers between schools when changes in foster care placements occur.

(e) Identifying mechanisms to increase the legal authority of foster parents and staff of the [department] or its agent to provide for the age-appropriate care of older children in foster care, including
enrolling a child in school, signing for a practice driver’s license for the child, cosigning loans and insurance for the child, signing for the child’s medical treatment, and authorizing other similar activities as appropriate.

(f) Transferring the allowance of spending money that is provided by the [department] each month directly to an older child in the program through an electronic benefit transfer program. The purpose of the transfer is to allow these children to access and manage the allowance they receive in order to learn responsibility and participate in age-appropriate life skills activities.

(g) Identifying other barriers to normalcy for a child in foster care.

Section 3. [Rulemaking.] The [department] shall adopt by rule procedures to administer this Act, including provision for the proportional reduction of scholarship awards when adequate funds are not available for all applicants. The [department] shall engage in appropriate planning to prevent, to the extent possible, a reduction in scholarship awards after issuance.

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

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

Section 6. [Effective Date.] [Insert effective date.]
Self-Directed In-Home Care

This Act provides that someone in need of self-directed in-home care who is a recipient approved to receive certain Medicaid waiver services, or a participant in the state Community and Home Options to Institutional Care for the Elderly And Disabled (CHOICE) program, may employ registered personal services attendants to provide attendant care services. It exempts from these provisions home health agencies, hospice programs, and health care professionals who practice within the scope of their license. It allows a personal services attendant to perform certain self-directed in-home services and medical activities that, in the opinion of the attending physician, meet certain conditions and for which the attendant has received training or instruction on how to properly perform the medical activity from a licensed health professional.

The Act requires an individual in need of in-home care and the individual’s case manager to develop an authorized care plan. It provides that procedures must be adopted to receive and adjudicate certain complaints against personal services attendants.

The law also establishes a Governor’s Commission on Caregivers to study issues regarding the availability and quality of caregivers in long-term care health settings. It requires the commission to submit a report to the governor and legislative council.

Submitted as:
Indiana
SB 215 (enrolled version)

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Self-Directed In-Home Care Act.”

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

“Ancillary Services” means services ancillary to the basic services provided to an individual in need of self-directed in-home care who needs at least [one (1)] of the basic services as defined in this Section. The term includes the following:

(1) Homemaker type services, including shopping, laundry, cleaning, and seasonal chores.
(2) Companion type services, including transportation, letter writing, mail reading, and escort services.
(3) Assistance with cognitive tasks, including managing finances, planning activities, and making decisions.

“Attendant Care Services” means those basic and ancillary services, which the individual chooses to direct and supervise a personal services attendant to perform, that enable an individual in need of self-directed in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

“Basic Services” means a function that could be performed by the individual in need of self-directed in-home care if the individual were not physically disabled. The term includes the following:

(1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.
(2) Assistance with routine bodily functions, including:
    (A) health-related services;
    (B) bathing and personal hygiene;
    (C) dressing and grooming; and
    (D) feeding, including preparation and cleanup.
“Commission” refers to the [Governor's Commission on Caregivers] established by Section 12 of this Act.

“Health Facility” has the meaning as defined under [insert citation].

“Health-Related Services” means those medical activities that:

1. In the opinion of the attending physician, could be performed by the individual if the individual were physically capable, and if the medical activity can be safely performed in the home; and
2. The person who performs the medical activity has received training or instruction from a licensed health professional, within the professional's scope of practice, in how to properly perform the medical activity for the individual in need of self-directed services.

“Individual In Need of Self-Directed In-Home Care” means a disabled individual, or person responsible for making health related decisions for the disabled individual, who:

1. Is approved to receive Medicaid waiver services under 42 U.S.C. 1396n(c), or is a participant in the state [Community and Home Options to Institutional Care Program] for the elderly and disabled under [insert citation];
2. Is in need of attendant care services because of impairment;
3. Requires assistance to complete functions of daily living, self-care, and mobility, including those functions included in attendant care services;
4. Chooses to self-direct a paid personal services attendant to perform attendant care services; and
5. Assumes the responsibility to initiate self-directed in-home care and exercise judgment regarding the manner in which those services are delivered, including the decision to employ, train, and dismiss a personal services attendant.

“Long Term Care Caregivers” means certified nurse aides, licensed practical nurses, and registered nurses employed in health facilities, home health care, and other community based settings as defined under [insert citations].

“Personal Services Attendant” means an individual who is registered to provide attendant care services under this Act and who has entered a contract with an individual and acts under the individual's direction to provide attendant care services that could be performed by the individual if the individual were physically capable.

“Self-Directed In-Home Health Care” means the process by which an individual, who is prevented by a disability from performing basic and ancillary services that the individual would perform if not disabled, chooses to direct and supervise a paid personal services attendant to perform those services in order for the individual to live in the individual's home and community rather than an institution.

Section 3. [Responsibility for Hiring, Recruiting, Training, Payment for Self-Directed In-Home Care.]

(a) Except as provided in subsection (b), an individual in need of self-directed in-home care is responsible for recruiting, hiring, training, paying, certifying any employment related documents, dismissing, and supervising in the individual’s home during service hours a personal services attendant who provides attendant care services for the individual.

(b) If an individual in need of self-directed in-home care is:

1. Less than twenty-one (21) years of age; or
2. Unable to direct in-home care because of a brain injury or mental deficiency; the individual’s parent, spouse, legal guardian, or a person possessing a valid power of attorney may make employment, care, and training decisions and certify any employment-related documents on behalf of the individual.

(c) An individual in need of self-directed in-home care or an individual under subsection (b) and the individual’s case manager shall develop an authorized care plan. The authorized care plan must include a list of weekly services or tasks that must be performed to comply with the authorized care plan.

Section 4. [Employing Personal Services Attendants for Self-Directed In-Home Care.]
(a) A personal services attendant who is hired by the individual in need of self-directed in-home care is an employee of the individual in need of self-directed in-home care.

(b) The [division] is not liable for any actions of a personal services attendant or an individual in need of self-directed in-home care.

(c) A personal services attendant and an individual in need of self-directed in-home care are each liable for any negligent or wrongful act or omission in which the person personally participates.

Section 5. [Contracting for Self-Directed In-Home Care.] The individual in need of self-directed in-home care and the personal services attendant must each sign a contract, in a form approved by the [insert agency], that includes, at a minimum, the following provisions:

1. The responsibilities of the personal services attendant.
2. The frequency the personal services attendant will provide attendant care services.
3. The duration of the contract.
4. The hourly wage of the personal services attendant. The wage may not be less than the federal minimum wage or more than the rate that the recipient is eligible to receive under a Medicaid home- and community-based services waiver or the [Community and Home Options to Institutional Care for the Elderly and Disabled Program for Attendant Care Services].

5. Reasons and notice agreements for early termination of the contract.

Section 6. [Registration.]

(a) An individual who desires to provide attendant care services must register with the [insert agency] or with an organization designated by the [insert agency].

(b) The [insert agency] shall register an individual who provides the following:

1. A personal resume containing information concerning the individual’s qualifications, work experience, and any credentials the individual may hold. The individual must certify that the information contained in the resume is true and accurate.
2. The individual’s limited criminal history check from the state [central repository for criminal history information] under [insert citation] or another source allowed by law.
3. If applicable, the individual’s state [nurse aide registry] report from the state [department of health]. This subdivision does not require an individual to be a nurse aide.
4. [Three (3)] letters of reference.
5. A registration fee. The [insert agency] shall establish the amount of the registration fee, not to exceed [thirty (30)] dollars.
6. Proof that the individual is at least [eighteen (18)] years old.
7. Any other information required by the [insert agency].

(c) A registration is valid for [one (1)] year. A personal services attendant may renew the personal services attendant’s registration by updating any information in the file that has changed and by paying the fee required under subsection (a)(5). The limited criminal history check and report required under subsection (a)(2) and (a)(3) must be updated every [two (2)] years.

(c) The [insert agency] shall maintain a file for each personal services attendant that contains:

1. Comments related to the provision of attendant care services submitted by an individual in need of self-directed in-home care who has employed the personal services attendant; and
2. The items described in subsection (a)(1) through (a)(4).

(d) Upon request, the [insert agency] shall provide to an individual in need of self-directed in-home care the following:

1. Without charge, a list of personal services attendants who are registered with the [insert agency] and available within the requested geographic area.
2. A copy of the information of a specified personal services attendant who is on file with the [insert agency] under subsection
3. The [insert agency] may charge a fee for shipping, handling, and copying expenses, not to exceed [five (5)] dollars per file.
Section 7. [Compensation for Self-Directed In-Home Care.]
(a) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an individual in need of self-directed in-home care services unless the individual is registered under Section 6 of this Act.
(b) An individual who is a legally responsible relative of an individual in need of self-directed in-home care, including a parent of minor individual and a spouse, is excluded from providing attendant care services for compensation under this Act.

Section 8. [Rules and Medicaid Waiver.]
(a) The [insert agency] shall apply for any federal waivers necessary to implement this Act.
(b) The [insert agency] shall amend the state [Home and Community Based Services] waiver program under the state Medicaid plan to provide for the payment for attendant care services provided by a personal services attendant for an individual in need of self-directed in-home care under this Act, including any related record keeping and employment expenses. However, the [insert agency] may not implement the provisions of this Act for Medicaid waiver recipients until:
   (1) Any necessary waiver is approved; and
   (2) The [insert agency] has filed an affidavit with the [governor] attesting that the appropriate federal waiver applied for under this Section is in effect. The [insert agency] shall file the affidavit not later than [five (5)] days after the [insert agency] is notified that the waiver is approved.
(c) If the [insert agency] receives a waiver under this Section from the United States Department of Health and Human Services, and the governor [receives] the affidavit filed under subsection (b), the [insert agency] shall implement the waiver not later than [sixty (60)] days after the [governor] receives the affidavit.

Section 9. [Self-Directed In-Home Care: Eligibility Under Medicaid; Payment, Record Keeping.]
(a) The [insert agency] shall not, to the extent permitted by federal law, consider as income money paid under this Act to or on behalf of an individual in need of self-directed in-home care to enable the individual to employ registered personal services attendants, for purposes of determining the individual’s income eligibility for services under this Act.
(b) The [insert agency] shall adopt rules concerning:
   (1) The method of payment to a personal services attendant who provides authorized services under this Act; and
   (2) Record keeping requirements for personal attendant services.
(c) The [insert agency] may adopt other rules under [insert citation] as necessary to implement this Act.

Section 10. [Demonstration Projects.] The [insert agency] may:
(1) Initiate demonstration projects to test new ways of providing attendant care services; and
(2) Research ways to best provide attendant care services in urban and rural areas.

Section 11. [Complaints Concerning Self-Directed In-Home Care.] The [insert agency] shall adopt rules under [insert citation] concerning the following:
(1) The receipt, review, and investigation of complaints concerning the neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care by a personal services attendant.
(2) Establish notice and administrative hearing procedures in accordance with [insert citation].
(3) Appeal procedures, including judicial review of administrative hearings.
(4) Procedures to place a personal services attendant who has been determined to have been guilty of neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care on the state nurse aide registry.
Section 12. [Governor’s Commission on Caregivers.]

(a) The [Governor’s Commission on Caregivers] is established.

(b) The commission consists of the following members:

1. The [governor] or the governor’s designee, who shall serve as the chairperson.
2. The [state health commissioner] or the commissioner’s designee.
3. The [president of the state board of nursing] or the president’s designee.
4. The [secretary of family and social services] or the secretary’s designee.
5. The [chairman of the commission for higher education] or the chairman’s designee.
6. The [state superintendent of public instruction] or the superintendent’s designee.
7. The [commissioner of the department of workforce development] or the commissioner’s designee.
8. The [director of the department of commerce] or the director’s designee.
9. The [commissioner of the department of labor] or the commissioner’s designee.
10. [One (1)] member appointed by the [governor] to represent each of the following organizations:
   (A) The state [association of homes and services for the aging].
   (B) The state [health care association].
   (C) The state [association for home and hospice care].
   (D) The state [nurses association].
   (E) The state [health and hospital association].
   (F) The state [home care task force].
   (G) The state [association of area agencies on aging].
   (H) [United Senior Action].
   (I) The state [university school of nursing]
   (J) [Ivy Tech State College].
11. [One (1)] member appointed by the governor to represent a private postsecondary educational institution that offers nursing degrees.

(c) The commission shall do the following:

1. Review data and information on the availability of and need for long-term care caregivers.
2. Evaluate barriers to increasing the supply of long-term care caregivers.
3. Evaluate the adequacy of existing training programs in the state for long-term caregivers.
4. Develop recommendations to increase the supply of long-term care caregivers, including the following:
   (A) Welfare to work programs.
   (B) Worker recruitment and incentive programs.
   (C) Immigration.
   (D) Linkages between training programs and the long term care and senior services industries.
   (E) Cross-training of nurse aides across the continuum of long term care services.
   (F) Potential roles for various state agencies and educational institutions represented on the commission.

(d) [Eleven (11)] members of the commission constitute a quorum.

(e) The affirmative votes of at least [eleven (11)] members of the commission are required for the commission to take any action, including the approval of a final report.

(f) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by [insert citation].

(g) The commission may contract with a private individual or organization to provide the staff support necessary for the operation of the commission, including conducting research and developing the report required under subsection (h).
(h) The commission shall submit a report to the [governor] and the [legislative council] not later than [insert date].

Section 13. [Non-Applicability.] This Act does not apply to:

(1) An individual who provides attendant care services and who is employed by and under the direct control of a home health agency as defined under [insert citation].

(2) An individual who provides attendant care services and who is employed by and under the direct control of a licensed hospice program under [insert citation].

(3) An individual who provides attendant care services and who is employed by and under the control of an employer that is not the individual who is receiving the services.

(4) A practitioner as defined under [insert citation], who is practicing under the scope of the practitioner’s license as defined under [insert citation].

Section 14. [Severability.] [Insert severability clause.]

Section 15. [Repealer.] [Insert repealer clause.]

Section 16. [Effective Date.] [Insert effective date.]
Service Contracts and Consumer Products Guaranty

This Act:

- Requires service contracts to be in writing and to include certain information and terms;
- Authorizes the cancellation of a service contract by a certain person under certain circumstances;
- Provides that certain service contracts are void under certain circumstances;
- Requires a provider of a service contract to pay or credit the account of a certain person who has canceled a service contract a certain amount under certain circumstances;
- Requires a provider of a service contract to fulfill obligations under the service contract at a certain time and for a certain duration;
- Provides that a service contract is extended automatically under certain circumstances;
- Requires a provider to provide a certain explanation of reasons for delay in fulfilling the terms of the service contract under certain circumstances;
- Provides that certain duties of a provider may not be imposed on the provider under certain circumstances;
- Authorizes the state Attorney General to obtain a certain court order prohibiting the provider from further violation of this Act under certain circumstances;
- Establishes that it is the policy of the state to encourage providers to establish certain informal dispute settlement procedures;
- Establishes that the provider is liable to the person guaranteed for wrongful breach of a service contract;
- Requires the provider to designate a representative.

Submitted as:
Maryland
Chapter 472 of 2002
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Service Contracts and Consumer Products Guaranty Act.”

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

(a) “Consumer product” means goods or services used for personal, family, or household purposes, the actual cash sales price of which to the person guaranteed was in excess of [ten (10)] dollars.
(b) “Guarantor” means a person who is engaged in the business of making consumer products available to consumers and who makes a guaranty.
(c) (1) “Guaranty” means any of the following which is made at the time of the sale of a consumer product by a guarantor to a person guaranteed and which is part of the basis of the bargain between them:
(i) A written affirmation of fact or written promise which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is defect-free or meets a specified level of performance; or

(ii) A written undertaking to refund, repair, replace, or take other remedial action with respect to the consumer product if it proves defective in material or workmanship or fails to meet a specified level of performance.

(2) “Guaranty” includes warranty.

(3) “Guaranty” does not include:

(i) A written statement or expression of general policy concerning customer satisfaction which is not subject to specified limitations; or

(ii) A service contract.

(d) “Mechanical breakdown insurance” means a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of property or indemnification for repair, replacement, or services, for the operational or structural failure of a product due to a defect in the materials or workmanship or due to normal wear and tear.

(e) “Person” includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) “Person guaranteed” means:

(1) The person who is the first buyer at retail of a consumer product which is the subject of a guaranty;

(2) A person who is entitled to enforce the obligations of a guaranty against the guarantor; or

(3) The person who is entitled to enforce the obligations of the provider under a service contract.

(g) “Provider” means a person or persons acting in concert who are contractually obligated under the terms of a service contract to provide services to the owner of a product covered by the service contract.

(h) “Reasonable and necessary maintenance” means those operations which the person guaranteed reasonably can be expected to perform or have performed and which are necessary to keep the product performing its intended function.

(i) “Replace” means:

(1) To replace a product or its component with a new and identical or equivalent product or component; or

(2) To refund the price of the product or its component less reasonable depreciation if:

   (i) Neither replacement nor repair is commercially practicable; or

   (ii) The person guaranteed is willing to accept the refund in place of the replacement or repair.

(j) (1) “Service contract” means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a product, or to indemnify for the repair, replacement, or maintenance, because of an operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances.

   (2) “Service contract” includes a contract or agreement for repair, replacement, or maintenance of a product for damage resulting from power surges and accidental damage from handling.

   (3) “Service contract” does not include:

   (i) A guaranty;

   (ii) A maintenance agreement that does not include a provision for the repair, replacement, or maintenance of a product because of an operational or structural failure due to a defect in materials, workmanship, or normal wear and tear;

   (iii) A warranty, service contract, or maintenance agreement offered by a public utility on its transmission devices to the extent it is regulated by the [public service commission];

   (iv) A mechanical repair contract under [insert citation]; or

   (v) Mechanical breakdown insurance.
(k) (1) “Services” means work, labor, or any other kind of activity furnished or agreed to be furnished to a person guaranteed.

(2) “Services” includes services for home improvement, repair of a motor vehicle and other consumer products, and the repair or installation of plumbing, heating, electrical, or mechanical devices.

(3) “Services” does not include the professional services of an accountant, architect, clergyman, engineer, lawyer, or medical or dental practitioner.

(l) (1) “Without charge” means that the guarantor cannot charge the person guaranteed for any costs which the guarantor or the guarantor's representative incurs in connection with the required repair or replacement of a consumer product.

(2) “Without charge” does not mean that the guarantor must compensate the person guaranteed for incidental expenses unless the expenses were incurred because the repair or replacement was not made within a reasonable time.

(m) “Wrongful breach of a guaranty” means the failure of a guarantor to perform the duties imposed by Section 5 (a), [and] (b), and (c) of this Act.

(n) “Wrongful breach of a service contract” means the failure of a provider to perform the duties imposed by Section 5 (a), (b), and (c) of this Act.

Section 3. [Application of this Act.] This Act shall be liberally construed and applied to promote its purposes and policies.

Section 4. [Requirements of Guarantors.]

(a) A guarantor shall deliver to the first person guaranteed the following written information:

(1) The duration of the guaranty period measured by time or, if practical, by some measure of usage such as mileage;

(2) Any reasonable and necessary maintenance required as a condition for the performance of the guaranty;

(3) A recital of the guarantor’s obligations to the person guaranteed during the guaranty period;

(4) The procedure which the person guaranteed should follow to obtain the repair or replacement of the malfunctioning or defective consumer product; and

(5) Any means established by the guarantor for quick informal settlement of any guaranty dispute.

(b) Each service contract shall be in writing and shall specify:

(1) The duration of the service contract measured by time or, if practical, by some measure of usage;

(2) Any reasonable and necessary maintenance required to be performed by the person guaranteed as a condition for the performance of the service contract;

(3) The purchase price and terms of the service contract, including a recital of the provider's obligations under the service contract;

(4) The merchandise and services to be provided;

(5) The procedures which the person guaranteed should follow to obtain the services under the service contract or to file a claim under the service contract;

(6) Limitations, exceptions, or inclusions, if any, under the service contract;

(7) The terms, restrictions, or conditions governing the cancellation of the service contract before the termination or expiration date of the service contract either by the provider or person guaranteed; and

(8) Any means established by the provider for quick informal settlement of a service contract dispute.

(c) Within a reasonable time after the person guaranteed and the provider enter into a service contract, the provider shall deliver a copy of the service contract to the person guaranteed.

(d) A service contract may be canceled by the person guaranteed:
(1) Within [twenty (20)] days after receipt of the service contract if mailed to the person guaranteed;
(2) Within [twenty (20)] days after the date of delivery of the service contract if delivered to the person guaranteed at the time of sale; or
(3) For a period of time not less than [twenty (20)] days as specified in the service contract.
(e) If a service contract is canceled under subsection (d) of this section and a claim has not been made under the service contract prior to its cancellation, the service contract is void and the provider shall refund to the person guaranteed the full consideration paid for the service contract.

(f) The right to void a service contract under subsection (e) of this section:
   (1) Is not transferable;
   (2) Applies only to the original person guaranteed under the service contract; and
   (3) Applies only if a claim has not been made under the service contract prior to cancellation of the service contract.

(g) (1) A provider shall pay or credit the account of a person guaranteed who has canceled a service contract under subsection (d) of this section the full consideration paid for the service contract within [forty-five (45)] days after the cancellation.
(2) A provider that does not pay or credit the account of the person guaranteed in accordance with paragraph (1) of this subsection shall pay to the person guaranteed an amount equal to [ten (10)] percent of the value of the consideration paid for the service contract for each month that the refund is not paid or credited.

Section 5. [Guarantor’s Guarantee.]

(a) (1) A guarantor shall fulfill the guarantor’s guaranty according to its terms:
   (i) Within a reasonable time; and
   (ii) For the stated period of the guaranty or, if no period is stated, for a reasonable period of time.
(2) A provider shall fulfill the obligations under the service contract according to its terms:
   (i) At or within the period stated in the service contract, or if no period is stated, within a reasonable time; and
   (ii) For the stated duration of the service contract.

(b) (1) (i) A guaranty is extended automatically when a guarantor fails to repair successfully a malfunctioning or defective product within the guaranty period.
   (ii) The guaranty does not terminate until the consumer product successfully performs its intended function for the remaining period of the guaranty plus a period equal to the time of repair.
(2) (i) A service contract is extended automatically when the provider fails to perform the services under the service contract.
   (ii) The service contract does not terminate until the services are provided in accordance with the terms of the service contract.

(c) If a guaranty fails to disclose the information required by Section 4 of this Act, the guarantor shall, without charge and within a reasonable period of time:
   (1) Repair a malfunctioning or defective consumer product; or
   (2) If repair is not commercially practicable or cannot be timely made, replace the malfunctioning or defective consumer product.

(d) (1) If a guarantor is unable to fulfill the terms of the guaranty within [ten (10)] days of the tender or delivery of a consumer product to the guarantor, the guarantor shall provide on request of the person guaranteed a brief written explanation of the reasons for the delay.
(2) If a provider is unable to fulfill the terms of the service contract within [ten (10)] days after the date on which the provider is required to perform obligations under the service contract, the provider shall provide on request of the person guaranteed a brief written explanation of the reasons for the delay.
(a) The duties prescribed in Section 5 of this Act may not be imposed on a guarantor if the guarantor shows that while the consumer product was in the possession of any person other than the guarantor, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance disclosed under Section 4 of this Act, caused the product to malfunction.

(b) The duties prescribed in Section 5 of this Act may not be imposed on a provider if the provider shows that while the product was in the possession of any person other than the provider, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance disclosed under Section 4 of this Act, caused the product to malfunction or caused the inability of the provider to provide any service under the service contract.

Section 7. [Violations.]

(a) If a guarantor or provider violates any provision of this Act, the Attorney General may obtain a court order prohibiting the guarantor or provider from further violations.

(b) At least seven (7) days before the filing of an action for the order, the Attorney General shall give appropriate notice to the guarantor or provider stating generally the relief sought.

(c) The court may issue an order or render a judgment necessary to:

(1) Prevent violations of this Act; and

(2) Restore to the person damaged any money or property acquired by means of any practice in violation of any provision of this Act.

Section 8. [State Policy.]

(a) It is the policy of the State to encourage:

(1) A guarantor voluntarily to establish procedures whereby a guaranty dispute is fairly and expeditiously settled through informal dispute settlement procedures; and

(2) A provider voluntarily to establish procedures whereby a service contract dispute is fairly and expeditiously settled through informal dispute settlement procedures.

(b) A guarantor or provider who establishes informal dispute settlement procedures may elect to settle guaranty disputes or service contract disputes, as the case may be, in cooperation with any private agency or the Consumer Protection Division of the Attorney General’s office.

(c) The guarantor or provider is liable to the person guaranteed for any wrongful breach of a guaranty or wrongful breach of a service contract, as the case may be, and is under a duty to:

(1) Perform as required under this Act; and

(2) Compensate the person guaranteed for all reasonable incidental expenses incurred as a result of the breach.

(d) If the guarantor or provider breaches any duties under this Act, the person guaranteed may file an action in any court of competent jurisdiction.

(1) Except as provided in paragraph (3) of this subsection, if the person guaranteed prevails in an action filed under this subsection, the court shall include in the amount of the judgment a sum equal to the aggregate amount of costs and expenses which have been reasonably incurred by the person guaranteed for or in connection with the action filed.

(2) These costs and expenses shall include attorney’s fees based on actual time expended, unless the court finds that an award of attorney’s fees would be inappropriate.

(3) The person guaranteed is not entitled to costs and expenses, if:

(i) The guarantor or provider affords the person guaranteed a reasonable opportunity to settle informally in accordance with subsection (a) of this section; and

(ii) The person guaranteed fails to so settle.

Section 9. [Service Contracts.]

(a) (1) In addition to making a guaranty, the guarantor may enter into a service contract at the time of the sale or at any other time with the person guaranteed.
(2) In addition to entering into a service contract, the provider may make a guaranty at the time of the sale or at any other time to the person guaranteed.

(b) (1) The guarantor or provider may designate a representative to perform the duties under this Act.

(2) However, this designation does not relieve the guarantor or provider of the duties to the person guaranteed.

Section 10. [Remedies.]

(a) Except for [insert citation], this Act provides the exclusive remedy by which a person guaranteed may recover damages for a breach of a service contract or may enforce a service contract.

(b) (1) Providers, administrators, and other persons marketing, selling, or offering to enter into service contracts that comply with the terms of this subtitle need not comply with any provision of the [insert citation].

(2) Guarantors, administrators, and other persons marketing, selling, or offering to issue guarantees that comply with the terms of this subtitle need not comply with any provision of the [insert citation].

(c) (1) In this subsection, “licensee” means a person who:

(i) Is licensed as a master plumber and meets the qualifications to engage in the business of providing plumbing services under [insert citation];

(ii) Provides heating, ventilation, air-conditioning, or refrigeration services in accordance with a master license or a master restricted license issued under [insert citation], or

(iii) Is a licensed contractor under [insert citation].

(2) A licensee is not subject to:

(i) This Act if the services provided or to be provided under the service contract are within the scope of the licensee’s license; or

(ii) Any provision of [insert citation] applicable to service contracts.

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

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

Section 13. [Effective Date.] [Insert effective date.]
Spread the Word Program

Massachusetts started the first Spread the Word Program in 1995 under the initiative of then-Lieutenant Governor Paul Cellucci. Under that program, donating schools would collect books from children and families who have extra books, and these books would be donated to recipient schools for distribution to children who have few books. Massachusetts’ program did not involve legislation. However, two states have enacted legislation since 1995 to establish programs like Massachusetts: Oregon (Chapter 271 of 2001) and New Jersey.

This SSL draft is based on New Jersey’s law. New Jersey’s program is targeted at elementary school children in grades kindergarten through five. A program established by this Act would be county-based and administered by the county superintendent of schools.

Submitted as:
New Jersey
Chapter 292 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish A Spread the Word Program.”

a. There is established the Spread the Word Program in the [Department of Education]. The purpose of the program is to provide books to elementary school children in grades kindergarten through five. Under the program, donating schools shall collect books from children and families who have extra books at home, and these books shall be donated to recipient schools for distribution to children who have few books at home. The program shall be county-based and shall be administered by the county superintendent of schools.

b. Prior to the start of each school year, the [department] shall send to each elementary school in the state an informational brochure on the program. If the school is interested in participating in the program as a donating school, the principal shall contact the county superintendent of schools to receive further information on program participation.

c. A donating school shall conduct book drives. When the drive is finished, the school shall review the donated books to ensure that they are age-appropriate and in satisfactory condition. After the review, the school shall count, sort and pack the books and contact the county superintendent of schools to report the approximate number of books collected and the number of boxes needed to be transported. The county superintendent of schools shall arrange for the books to be transported from the donating school to an eligible recipient school. The state shall assume the costs of transporting the donated books to the recipient school.

d. The [State Board of Education] shall determine criteria for choosing recipient schools which shall be based, at least in part, on the number of low-income pupils attending the school. The county superintendent of schools shall contact schools within the county that meet the criteria and provide information regarding the program. An eligible school that is interested in receiving donated books under the program shall inform the county superintendent of schools.

e. The [Commissioner of Education] shall assign a person on a part-time basis to serve as the coordinator of the program.

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

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

Section 4. [Effective Date.] [Insert effective date.]
State Reports to Legislature: Alternative Formats

The Act enables state agencies that are required to report to the Legislature to do so via the Internet.

Submitted as:
Alabama
HB 48 (engrossed version)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Distributing Certain Documents to The Legislature.”

Section 2. [Alternative Methods of Distribution and Publication.]
(a) Any state agency, state department, or public entity required to supply paper copies of annual reports and other documents and materials to members of the [Legislature] shall develop and implement an alternative method of distribution and publication.
(b) The alternative method shall include each of the following components:
   1. Notice provided to each member of the [Legislature] after the effective date of this section and at the beginning of each subsequent legislative term that the state agency, state department, or public entity intends to display or post the report, document, or other material on the Internet. The notice shall include an explanation of how the information may be accessed and copied from the Internet.
   2. Display of the report, document, or material on the Internet for at least [ninety (90)] days.
   3. A written offer to each member of the [Legislature] after the effective date of this section and at the beginning of each subsequent legislative term of the opportunity to receive a paper copy of the material. If a member at the time the notice is received or any other time requests a paper copy of the material, the material shall be promptly provided.
(c) Each state agency, state department, or public entity may promulgate necessary rules and regulations to implement this section.

Section 3. [Conflicting Laws Repealed.] All laws or parts of laws which conflict with this Act are repealed.

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

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

Section 6. [Effective Date.] [Insert effective date.]
Statewide Sexual Assault Nurse Examiner Program

This Act directs the attorney general to establish a Statewide Sexual Assault Nurse Examiner program (SSANE) in the state department of law and public safety. The SSANE program would provide for a more timely and accurate collection of forensic evidence for use in prosecuting suspected rapists and ensure more compassionate treatment of sexual assault victims.

The law provides that the county prosecutor in each county shall appoint an employee of the prosecutor’s office who is a certified forensic sexual assault nurse examiner, or designate a certified forensic sexual assault nurse examiner who is an employee of a licensed health care facility or a county rape care program designated by the division on women in the state department of community affairs, to serve as a program coordinator to administer the SSANE program in the county. This requirement will be effective upon the implementation of the certification process for a forensic sexual assault nurse examiner that is established in the legislation.

The legislation provides that the program coordinator shall:
- Administer the county program in accordance with the protocols for the provision of services to victims of sexual assault developed by the attorney general;
- Perform or designate licensed physicians or certified forensic sexual assault nurse examiners to perform forensic sexual assault examinations;
- Develop and implement standardized guidelines for the performance of forensic sexual assault examinations;
- Develop and implement a standardized education and training program for members of the county Sexual Assault Response Team established in the substitute;
- Establish, in cooperation with licensed health care facilities, private waiting rooms and areas designated solely for forensic sexual assault examinations and the provision of rape care services in licensed health care facilities participating in the SSANE program;
- Develop, in cooperation with licensed health care facilities, protocols for the collection of forensic evidence;
- Provide appropriate services to the victims of sexual assault, including the opportunity to tend to personal hygiene needs, obtain fresh clothing and speak to a rape care advocate prior to or during a medical procedure or police investigation, as appropriate. The bill defines “rape care advocate” to mean a victim counselor who specializes in the provision of rape care services;
- Collaborate with law enforcement officials and the designated county rape care program; and
- Participate in regular meetings of the Sexual Assault Nurse Examiner Program Coordinating Council.

The law requires the state attorney general, in consultation with the state board of nursing, to establish a certification process for forensic sexual assault nurse examiners. An applicant for certification as a forensic sexual assault nurse examiner shall be a state licensed, registered professional nurse who has a minimum of two years’ nursing experience, certification verifying the completion of a forensic sexual assault nurse examiner training program approved by the attorney general, and the ability to demonstrate clinical competence in performing a forensic sexual assault examination. The attorney general shall certify an applicant who meets the requirements of the certification process as a certified forensic sexual assault nurse examiner and, in consultation with the state board of nursing, oversee the administration and development of a curriculum, instructor qualifications and regulations necessary to implement the certification process.

The Act establishes a Sexual Assault Response Team in the prosecutor’s office of each county. The response team would be comprised of a certified forensic sexual assault nurse examiner, a rape care advocate and a law enforcement official. The response team would respond to a report of sexual assault at the request of a victim and provide treatment, counseling, legal and forensic medical services. Each member of a response team is to complete an education and training program developed by the county SANE program.
coordinator. A county that does not establish a response team would be required to enter into a collaborative agreement with another county to share the services of that county’s response team.

The bill requires the attorney general to establish the Sexual Assault Nurse Examiner Program Coordinating Council comprised of the attorney general, the director of the division on women, the chief of the office of victim-witness advocacy, and the executive director of the New Jersey Coalition Against Sexual Assault, or their designees, one representative from the County Prosecutor’s Association and the state board of nursing, and the program coordinators from each county. The coordinating council would review the effectiveness of the services that the state provides to sexual assault victims and make recommendations to the attorney general for any needed changes in the provision of victim services.

The law directs the attorney general to establish a sexual assault unit within the department of law and public safety, which would be comprised of at least one deputy attorney general who is knowledgeable about sexual assault investigations and prosecutions, a sexual assault investigator, and a certified forensic sexual assault nurse examiner. The unit is to oversee the operation of the county sexual assault nurse examiner programs, and provide assistance to counties in the investigation and prosecution of sexual assaults. The unit would review all complaints received regarding a county’s investigation and prosecution of a sexual assault and shall provide recommendations to the attorney general regarding the county’s investigation and prosecution of the case. The unit also shall provide training to law enforcement officials and county prosecutors, on an ongoing basis, in the investigation and prosecution of sexual assault.

The attorney general is to oversee the SSANE program through the sexual assault unit and in consultation with the coordinating council.

The Act provides civil and criminal immunity to forensic sexual assault nurse examiners, licensed physicians and licensed health care facilities in which a forensic sexual assault examination is performed, when acting in response to a request from a law enforcement agency or a program coordinator to perform an examination pursuant to the provisions of the bill.

Submitted as:
New Jersey
Chapter 81 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Establishing a Statewide Sexual Assault Nurse Examiner Program.”

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

“Act of violence” means the commission or attempt to commit any of the offenses set forth in [insert citation.]

“Confidential communication” means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor’s treatment of the victim for any emotional or psychological condition resulting from an act of violence. It includes any advice, report or working paper given or made in the course of the consultation and all information received by the victim counselor in the course of that relationship.

“Victim” means a person who consults a counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by an act of violence.

“Victim counseling center” means any office, institution, or center offering assistance to victims and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.
“Victim counselor” means a person engaged in any office, institution or center defined as a victim counseling center by this Act, who has undergone [forty (40)] hours of training and is under the control of a direct services supervisor of the center and who has a primary function of rendering advice, counseling or assisting victims of acts of violence. “Victim counselor” includes a rape care advocate as defined in [insert citation.]

Section 3. [Legislative Findings.] The [Legislature] finds and declares that a Statewide Sexual Assault Nurse Examiner program would be successful in ensuring more timely and accurate collection of forensic evidence for use in prosecuting suspected rapists and in creating a compassionate way to treat sexual assault victims.

Section 4. [Statewide Sexual Assault Nurse Examiner Program.] (a) The [Attorney General] shall establish a Statewide Sexual Assault Nurse Examiner program in the [Department of Law and Public Safety]. Upon implementation of the certification process for a forensic sexual assault nurse examiner pursuant to section 6 of this Act, the county prosecutor in each county shall appoint or designate a certified forensic sexual assault nurse examiner to serve as program coordinator for the program in the county in accordance with the provisions of this section.

(b) The county prosecutor may appoint an employee of the prosecutor’s office who is a certified forensic sexual assault nurse examiner to serve as program coordinator to administer the program in that county.

(c) In a county where the county prosecutor does not appoint an employee of his office to serve as program coordinator, the county prosecutor shall designate a certified forensic sexual assault nurse examiner who is an employee of a licensed health care facility or a county rape care program that is designated by the [Division on Women] in the [Department of Community Affairs] to serve as the program coordinator. A person designated as a program coordinator pursuant to this subsection shall not be deemed an employee of the county prosecutor’s office.

Section 5. [Duties of Program Coordinator; “Rape Care Advocate” Defined.] (a) The [Program Coordinator] shall:

(1) Coordinate the county Sexual Assault Nurse Examiner program in accordance with standard protocols for the provision of information and services to victims of sexual assault developed by the Attorney General pursuant to [insert citation];

(2) Perform forensic sexual assault examinations on victims of sexual assault in accordance with the standards developed by the [Attorney General] and appropriate medical and nursing standards of care;

(3) Designate one or more licensed physicians or certified forensic sexual assault nurse examiners to perform forensic sexual assault examinations on victims of sexual assault in accordance with the standards developed by the Attorney General and appropriate medical and nursing standards of care;

(4) Develop and implement standardized guidelines for forensic sexual assault examinations performed by designated physicians or certified forensic sexual assault nurse examiners in the county;

(5) Develop and implement a standardized education and training program to provide instruction to members of the county Sexual Assault Response Team established pursuant to section 7 of this Act which shall include, but not be limited to, instruction in the following areas:

(i) the importance of a coordinated, multi-disciplinary response to a report of sexual assault;

(ii) the policies and procedures which govern the responsibilities of each team member;

(iii) the psychological effects of sexual assault and rape trauma syndrome on the victim and the victim’s family and friends;

(iv) the collection, handling and documentation of forensic evidence; and
(v) confidentiality issues associated with the treatment of a victim of sexual assault
and the investigation of a report of sexual assault;
(6) Establish, in cooperation with licensed health care facilities, private waiting rooms and
areas designated for forensic sexual assault examinations and the provision of rape care services in the
licensed health care facilities participating in the program;
(7) Develop, in cooperation with licensed health care facilities, protocols for the storage of
forensic evidence;
(8) Provide appropriate services to victims of sexual assault, including the opportunity to
tend to personal hygiene needs, obtain fresh clothing and speak with a rape care advocate prior to and during
any medical procedure or law enforcement investigation, unless the victim requires immediate medical
attention, as appropriate;
(9) Collaborate with law enforcement officials and the county rape care program to ensure
that the needs of victims of sexual assault are met in a compassionate manner; and
(10) Participate in regular meetings of the Sexual Assault Nurse Examiner Program
Coordinating Council established pursuant to section 8 of this Act.
(b) As used in this section and section 7 of this Act, “rape care advocate” means a victim counselor, as
defined pursuant to [insert citation], who specializes in the provision of rape care services.

Section 6. [Certification Process for Forensic Sexual Assault Nurse Examiners: Qualifications.]
(a) The [Attorney General] and the state Board of Nursing shall jointly establish a certification
process for a forensic sexual assault nurse examiner.
(1) An applicant for certification as a forensic sexual assault nurse examiner shall be a
registered professional nurse licensed in the state and in good standing with the state Board of Nursing, and
shall have the following qualifications:
   (i) A minimum of [two (2)] years of current nursing experience as defined by
regulation of the [Attorney General] pursuant to section 14 of this Act;
   (ii) Certification verifying the completion of a forensic sexual assault nurse
examiner training program that meets requirements established by the [Attorney General] and the state Board
of Nursing; and
   (iii) Demonstrates clinical competence in performing a forensic sexual
assault examination.
(b) The [Attorney General] and the state Board of Nursing shall certify an applicant who meets the
requirements of subsection a. of this section as a certified forensic sexual assault nurse examiner.

Section 7. [Sexual Assault Response Team in Each County.]
(a) The county prosecutor’s office in each county shall establish a Sexual Assault Response Team or
shall enter into a collaborative agreement with another county to share the services of that county’s response
team. The response team shall be comprised of: a certified forensic sexual assault nurse examiner, a rape care
advocate from the county program established, or designated by the [Division on Women] in the [Department
of Community Affairs], as provided under [insert citation], and a law enforcement official. The response team
shall:
   (1) respond to a report of sexual assault at the request of a victim of sexual assault pursuant to
guidelines established by the [Attorney General] pursuant to section 14 of this Act; and
   (2) provide treatment, counseling, legal and forensic medical services to a victim of sexual
assault in accordance with the standard protocols developed by the [Attorney General] pursuant to [insert
citation].
(b) Each member of the response team shall complete the standardized education and training
program developed by the program coordinator pursuant to subsection e. of section 5 of this Act.
(a) The [Attorney General] shall establish a [Sexual Assault Nurse Examiner Program Coordinating Council] comprised of: the [Attorney General], the [Director of the Division on Women], the [Chief of the Office of Victim-Witness Advocacy], the Executive Director of the State Coalition Against Sexual Assault, and the Executive Director of the state Board of Nursing or respective designees; a representative from the County Prosecutor’s Association; and the program coordinators appointed or designated pursuant to section 5 of this Act.

(b) The [Attorney General], through the sexual assault unit established pursuant to [insert citation], and in consultation with the coordinating council, shall oversee the Statewide Sexual Assault Nurse Examiner program and identify and obtain any state and federal funding available to supplement the funds appropriated to operate the program.

(c) The coordinating council shall review the effectiveness of the services provided by the state to victims of sexual assault and make recommendations to the [Attorney General] for any needed changes in the standards, regulations or state policy concerning the provision of victim services.

Section 9. [Sexual Assault Unit within Department of Law and Public Safety.] The [Attorney General] shall establish a sexual assault unit within the [Department of Law and Public Safety] which shall include a sexual assault investigator and a certified forensic sexual assault nurse examiner. The unit shall oversee the operation of the county sexual assault nurse examiner programs, and provide assistance to counties in the investigation and prosecution of sexual assaults. The unit shall review all complaints received regarding a county’s investigation and prosecution of a sexual assault and shall provide recommendations to the [Attorney General] regarding the county’s investigation and prosecution of the case. The unit also shall provide training to law enforcement officials and county prosecutors, on an ongoing basis, in the investigation and prosecution of sexual assault.

Section 10. [Immunity from Liability for Authorized Forensic Sexual Assault Examinations.]

(a.) A designated certified forensic sexual assault nurse examiner and a designated licensed physician shall be immune from civil and criminal liability in the performance of the nurse examiner’s or physician’s duties when acting in response to a request from a law enforcement agency or a program coordinator to perform a forensic sexual assault examination pursuant to the provisions of this Act, if the skills and care exercised by the forensic sexual assault nurse examiner or the licensed physician during the examination are those ordinarily exercised by others in the nursing and medical profession, respectively.

(b) A licensed health care facility in which a forensic sexual assault examination is performed pursuant to this Act shall be immune from civil and criminal liability in the performance of the examination when acting in response to a request from a law enforcement agency or a program coordinator if the care exercised by the licensed health care facility during the examination is that ordinarily exercised by a licensed health care facility.

Section 11. [Continuation of Existing Program.] Notwithstanding the provisions of this Act to the contrary, a county forensic sexual assault nurse examiner program in existence on the effective date of this Act may continue to operate in accordance with the standard protocols for the provision of information and services to victims of sexual assault developed by the [Attorney General] pursuant to [insert citation], until the implementation of the certification process for a forensic sexual assault nurse examiner pursuant to section 4 of this Act.

Section 12. [Additional Penalty for Sex Offense for Deposit in Sexual Assault Nurse Examiner Program Fund.]

(a) In addition to any fine, fee, assessment or penalty authorized under [insert citation], a person convicted of a sex offense, as defined in [insert citation], shall be assessed a penalty of [eight hundred (800)] dollars for each such offense.
(b) All penalties provided for in this section, collected as provided for the collection of fines and
restitutions in [insert citation], shall be forwarded to the [Department of the Treasury] to be deposited in the
“Statewide Sexual Assault Nurse Examiner Program Fund” established pursuant to section 13 of this Act.

Section 13. [Statewide Sexual Assault Nurse Examiner Program Fund.] There is hereby established the
“Statewide Sexual Assault Nurse Examiner Program Fund” as a nonlapsing, revolving [fund]. This [fund]
shall be administered by the [Attorney General], and all money deposited therein pursuant to section 12 of
this Act shall be used in accordance with guidelines established by the [Attorney General] for the operational
expenses of the sexual assault nurse examiner program in each county. This fund shall be used in coordination
with and in supplementation of any available federal funding under the “Victims of Crime Act of 1984,” 42
U.S.C. s.10601 et seq., or any other grant funding for this purpose.

Section 14. [Rules and Regulations.] The [Attorney General], pursuant to [insert citation], shall adopt
rules and regulations to effectuate the purposes of this Act. The [Attorney General] shall also establish
guidelines governing a county Sexual Assault Response Team’s response to a report of sexual assault
pursuant to the provisions of this Act.

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

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

Section 17. [Effective Date.] [Insert effective date.]
Tax Stamps: Cigarettes

This Act is based on Idaho Senate Bill 21, which became law in 2002. This Act prohibits stamping or paying taxes on cigarettes or roll-your-own tobacco products that are produced by manufacturers that are not participating in the Master Settlement Agreement.

On November 23, 1998 46 states, the District of Columbia and 6 territories reached the Master Settlement Agreement with the four Original Participating Manufacturers (OPMs). The OPMs represent the biggest tobacco companies in the industry. All together Philip Morris, RJ Reynolds, Brown & Williamson, and Lorillard constituted 99% of the cigarette market in 1997. Since 1998, 31 Subsequent Participating Manufacturers (SPMs), which are now subject to all of the terms of the agreement, have signed the MSA as well. The total estimated payout for the states was approximately $206 billion spread over the next 25 years.

In addition to OPMs and SPMs, there are those tobacco manufacturers that have not signed the MSA. These companies are known as non-participating manufacturers or NPMs. In order to hold these companies accountable, all 46 MSA states passed legislation (Exhibit T of the MSA) that forces NPMs to place money in privately established escrow accounts in each state. These accounts ensure that money is available in the event that a state sues an NPM. If states do not win a lawsuit against the NPM, those monies put into the escrow will be released back to the originating company after the 25-year payout plan has expired.

Each of the participating states and territories has been allocated a percentage of the MSA agreement based on the state’s population and the number of cigarette sold in their state. Each year, the payment is subject to a volume adjustment based on the number of cigarettes sold compared to the number of cigarettes sold in 1997.

In addition to the volume adjustment, the payment amount is also subject to an inflation adjustment using the consumer price index and an NPM adjustment. The NPM adjustment is calculated by multiplying the market share loss for the OPM from the previous year by 3 in those states that do not have the model statute in place to hold NPMs accountable or are not enforcing it. In other words a 2 percent loss of market share by the OPMs would result in a 6 percent reduction in the allocated payment to the settling states. Based on the MSA, a reduction in the total percentage of tobacco sales or a reduction in the market share held by the OPMs could reduce the amount given to the states.

Before the MSA was signed, OPMs manufactured an average 700 billion cigarettes a year, with a peak in 1996 of 754 billion. In addition, the overall consumption of cigarettes declined by 50 billion from 1997 to 2000. Since the MSA was signed, OPMs have begun to lose their dominance over the market. Their market share reduction, which can be attributed to many factors, has been just under 4% over the last three years.

The decline of the OPMs control in the tobacco market has enabled NPMs to garner greater control of the market share. OPMs have been forced to raise the price of their cigarettes to accommodate for the payments to the states, while NPMs that do not pay into escrow accounts have not. Therefore, NPMs have gained those consumers whose preferences are driven by finances.

Currently, states are actually receiving less money than previously forecasted. Reductions to the MSA payments are attributed to a reduction in cigarette sales by OPMs and SPMs, which was a desired result of the MSA, and an NPM adjustment based on the failure to enforce the model NPM statute provided in Exhibit T of the MSA. The MSA payments received by the states as of April 2001 were 10.7 percent below the originally estimated payments. Twelve percent of this reduction (approximately $200 million according to the Kentucky Legislative Research Council), or just over 1 percent of the total estimated payment is due to the NPM adjustment, while the rest can be attributed to the decline in volume shipped by the OPMs. Thus, the majority of the reduction in settlement payments is a direct reciprocation of the decline in smokers in the United States, as well as a drop in the volume of cigarettes sold. If the trend continues states will not receive all of the money once thought to be guaranteed based on the MSA.

If current trends continue, the states could suffer $14 billion in lost revenue over the next 9 years. According to a United States General Accounting Office report, states have received $1.6 billion less than originally projected under the Master Settlement Agreement (MSA). Based on MSA projections states are
expecting to receive nearly $70 billion from the tobacco industry through 2010, but latest estimates show a 20% reduction in these payments. The decrease is attributed to continuing decline in the consumption of cigarettes at a rate of 1.5% each year, and NPMs garnering a 8% greater share of the market each year. By gaining market share at their current pace the NPMs could cost the states $2.4 billion dollars. In an effort to stop NPMs from gaining market share, some states are proposing legislation that would levy an additional tax on the cigarettes sold by NPMs, e.g., South Dakota Senate Bill 21, 2002.

Submitted as:
South Dakota
SB 21 (enrolled version)
Status: enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit Tax Stamping or Payment of Taxes on Cigarettes or Roll-Your-Own Tobacco Products Produced by Certain Nonparticipating Manufacturers and to Provide for the Creation of a Directory for Compliant Nonparticipating Manufacturers.”

Section 2. [Conditions for Affixing a Cigarette Tax Stamp.] No distributor or wholesaler may, directly or indirectly, affix the [state] cigarette tax stamp or imprint to a package of cigarettes, or pay the [state] cigarette tax on roll-your-own tobacco product, manufactured or sold by a tobacco product manufacturer unless:

(1) The manufacturer is a participating manufacturer as that term is defined in [insert citation]; or

(2) The manufacturer is a nonparticipating manufacturer in compliance with [insert citation].

Section 3. [Directory of Complying Manufacturers.] The [secretary of revenue] shall annually, no later than [insert date], transmit to all licensed distributors and wholesalers, and post on the [department of revenue’s] website, a directory of nonparticipating tobacco product manufacturers determined by the [secretary] to be in compliance with [insert citation]. The [secretary of revenue] shall amend the directory on the [department of revenue’s] website, as necessary, to include any nonparticipating tobacco product manufacturer determined to be in compliance with [insert citation] after [insert date], or to remove any nonparticipating tobacco product manufacturer subsequently determined not to be in compliance with [insert citation]. The [secretary of revenue] may require distributors, wholesalers, and nonparticipating tobacco product manufacturers to submit such information as the [secretary] may determine is necessary to enable the [secretary] to determine whether a nonparticipating tobacco product manufacturer is in compliance with [insert citation].

Section 4. [Exclusions and Removals from Directory.] Any nonparticipating tobacco product manufacturer excluded or removed from the directory may request a contested case hearing before the [secretary]. A request for hearing shall be made within [sixty (60)] days of the exclusion or removal or the date the manufacturer determined it was in full compliance with this Act and [insert citation], and shall contain the evidence supporting the manufacturer’s compliance with [insert citation]. At the hearing, the [secretary] shall determine whether the nonparticipating tobacco product manufacturer is in compliance with [insert citation], and whether the manufacturer should be listed in the directory.

Section 5. [Violations.] Any stamped cigarettes or roll-your-own tobacco on which taxes have been paid in violation of this Act are contraband goods and may be legally seized, without a warrant, by the [secretary of revenue], [department] agents or employees, or by any law enforcement officer of this state if
directed by the [secretary] to do so. Any tobacco products seized and forfeited under this Section shall be
destroyed. The [department of revenue] may allow a credit for tax paid on contraband cigarettes and roll-
your-own product returned to the manufacturer or distributor from which they were purchased. An Act to
prohibit tax stamping or payment of taxes on cigarettes or roll-your-own tobacco products produced by
certain nonparticipating manufacturers and to provide for the creation of a directory for compliant
nonparticipating manufacturers.

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

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

Section 8. [Effective Date.] [Insert effective date.]
Telemarketers: Consent to Charge an Account

This Act amends state law to require written or verbal consent be obtained by a telemarketer who has previously obtained an account number before a charge can be made to the account.

Submitted as:
Idaho
HB 144

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relating to Telephone Solicitations to Require Consent to Charge a Consumer’s Account.”

Section 2. [Consent Required for Telemarketing Charges to Previously Obtained Accounts.]

(1) As used in this section:
(a) “Account” means a credit card, debit card, checking account, savings account, loan account, telephone service account, utility account or other similar account.
(b) “Account holder” means a consumer who owns an account, or a consumer who has authority to cause a charge or debit to an account.
(c) “Authorization” means an account holder providing express consent to a telemarketer or person acting on behalf of the telemarketer, to charge or cause to be charged the account holder’s account for the purchase of goods or services. Authorization is not effective until the account holder has been advised, clearly and conspicuously:
(i) That the telemarketer has the account holder’s account number;
(ii) That the telemarketer is going to charge the account holder’s account;
(iii) The specific account that will be charged;
(iv) The specific amount that the account holder’s account will be charged; and
(v) The name, address and telephone number of the person who will be charging the account holder’s account.
(d) “Charge” means a charge or debit, or an attempt to charge or debit, an account, if that account can be charged without the express written authorization of the account holder to each specific charge or debit. Charge does not include a charge or debit, or an attempt to charge or debit, a telephone service account for local or long distance telecommunications services. A charge can occur by electronic or any other means.
(e) “Goods” or “services” has the meaning given to them in [insert citation], except that for purposes of this section these terms are limited to goods or services which are normally used for personal, household or family purposes.
(f) “Previously obtained account number telemarketing call” means a telephone call in which the telemarketer attempts to obtain account holder authorization for a current or future charge without obtaining the account number from the account holder during the call; provided however, that “previously obtained account number telemarketing call” does not include the sale of securities through a telephone call, if the telemarketer is a licensed securities agent or broker in the state; provided further, that “previously obtained account number telemarketing call” does not include a telephone call initiated by an account holder during which the person receiving the telephone call attempts to sell, offer for sale, or otherwise induce the account holder to purchase goods or services. A “previously obtained account number telemarketing call” does not include a call to or from a current customer of the telemarketer to renew or extend, inquire about or...
add goods or services if the customer has previously provided account information for billing purposes to the
telemarketer and the telemarketer clearly and conspicuously discloses that such renewal or extension, or
additional goods or services, will be debited to the same account.

(g) “Telemarketer” means any person who regularly engages in previously obtained account
number telemarketing call.

(2) A telemarketer shall not charge or cause a charge to an account holder’s account as a result of a
previously obtained account number telemarketing call unless the telemarketer has first obtained authorization
from the account holder for the specific charge discussed during the call.

(3) An account holder’s authorization can be in writing or given verbally. If the telemarketer uses
written authorization, the telemarketer cannot charge the account holder’s account until the account holder’s
written authorization is received by the telemarketer. If the telemarketer uses verbal authorization, either the
authorization must be audio taped by the telemarketer and the telemarketer must advise the account holder
that his or her authorization is being recorded or the account holder must disclose the last [four (4)] digits of
the account holder’s account number if the telemarketer has reasonable procedures in effect to verify that such
digits as provided by the account holder match the last four digits of the account to be charged.
Authorizations must be kept and maintained for a period of [two (2)] years and must also be made available to
the account holder upon written request.

(4) (a) In the case where a telemarketer utilizes a voice response unit, whether inbound or
outbound, an account holder may give authorization by providing the last [four (4)] digits of the account
holder’s account number, an account number previously assigned to the account holder by the telemarketer,
or an alternate unique identifier which enables the telemarketer to verify or confirm the account holder’s
authorization; provided however, that the information set forth in subsection (1)(c) of this section must first
be clearly and conspicuously disclosed to the account holder.

(b) For purposes of this subsection, “voice response unit” means a device which allows a
user to provide or obtain information from a computer system using touch-tone input or speech input.
Unauthorized Transfers of Accounts of Prescription Drug Customers

This Act precludes unauthorized transfers of accounts of prescription drug customers and makes violations of the provision concerning unauthorized transfer of a covered person or subscriber's prescription an unfair method of competition and unfair or deceptive act or practice in the business of insurance.

Submitted as:
Colorado
Chapter 310 of 2001

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit Unauthorized Transfers of Accounts of Prescription Drug Customers.”

Section 2. [Definitions.] As used in this Act, “Pharmacy Benefit Management Firm” means any entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of any carrier that provides prescription drug benefits to residents of this state.

Section 3. [Access to Prescription Drugs.]

(A) No pharmacy benefit manager or carrier offering a managed care plan shall transfer or request that a pharmacy provider transfer the prescription or prescriptions of a covered person or subscriber, wholly or in part, to a different participating pharmacy provider than the provider selected by the covered person or subscriber unless one or more of the following conditions have been met:

(I) The participating pharmacy provider to whom the covered person or subscriber’s prescription is to be transferred or the carrier or pharmacy benefit manager has obtained a document, signed by the covered person or subscriber, that contains a clear, conspicuous, and unequivocal request by the covered person or subscriber for a change of provider;

(II) The participating pharmacy provider carrier or pharmacy benefit manager to whom the covered person or subscriber’s prescription is to be transferred has obtained the covered person or subscriber’s oral authorization for the transfer and is able to furnish proof of such authorization through verification by an independent third party or an electronic record; or

(III) The pharmacy provider's participation in the pharmacy network of the carrier or pharmacy benefit manager has changed and the pharmacy provider selected by the covered person or subscriber is no longer a participating provider in the network, provided that the covered person or subscriber has been notified of the proposed transfer of pharmaceutical care services and is given an opportunity to affirmatively select a participating pharmacy provider other than the proposed transferee.

(B) Nothing in this subsection shall require a carrier offering a managed care plan or a pharmacy benefit manager to pay for pharmaceutical benefits received from a nonparticipating provider.

Section 4. [Unfair Methods of Competition and Unfair or Deceptive Acts or Practices.] A violation of the provisions of this Act may be defined as an unfair method of competition and unfair or deceptive act or practice in the business of insurance in this state.
Section 5. [Applicability.] The provisions of this Act shall apply to all contracts for pricing and terms for the Administration of a prescription drug benefit negotiated, renegotiated, or renewed by insurers subject to [insert citation], on or after the effective date of this Act.

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

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

Section 8. [Effective Date.] [Insert effective date.]
Uniform Athlete Agents Act

This Act is based on Indiana’s version of the Uniform Athlete Agents Act, which was originally drafted by the National Conference of Commissioners on Uniform State Laws (ULC). The ULC released the final draft of its Act in November 2000.

This Act:

- Establishes registration requirements for an athlete agent,
- Authorizes the attorney general to regulate athlete agents,
- Establishes requirements for agency contracts between student athletes and athlete agents,
- Allows a student athlete to cancel an agency contract within 14 days after the contract is signed;
- Establishes various criminal and civil penalties for violation of the Act;
- Authorizes an action by an educational institution against an athlete agent or a former student athlete for damages caused by violation of the Act;
- Modifies the crime of failure to disclose recruitment to include failure to disclose an endorsement contract ten days before the contract is executed, and
- Provides that a consent to use a student athlete’s right of publicity is void if it is obtained under a void or voided agency contractor without required disclosures.

Submitted as:
Indiana
SB 171 (enrolled version)

Suggested Legislation

(Title, enacting clause, etc.)

Chapter 1. [Short Title and Definitions.]

Section 1. This Act may be cited as “The Uniform Athlete Agents Act.”

Section 2. [Definitions.] The following definitions apply throughout this Act:

(1) “Agency contract” means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract.

(2) “Applicant” means an individual who applies for a certificate of registration as an athlete agent under this Act.

(3) “Athlete agent” means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(4) “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(5) “Contact” means a communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract.

The Council of State Governments 150
(6) “Endorsement contract” means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance. The term includes the value of any part of the student athlete’s right of publicity as defined in [insert citation].

(7) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(8) “Person” means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a government, a governmental subdivision, an agency, or an instrumentality, a public corporation, or any other legal or commercial entity.

(9) “Professional sports services contract” means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(10) “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.

(11) “Registration” means registration as an athlete agent under this Act.

(12) “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.

(13) “Student athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

Chapter 2. [Athlete Agent Registration.]

Section 1.
(a) By acting as an athlete agent in [state], a nonresident individual appoints the attorney general as the individual’s agent for service of process in any civil action in [state] related to the individual’s acting as an athlete agent in [state].

(b) The [attorney general] may issue subpoenas for any material that is relevant to the administration of this Act.

Section 2.
(a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in [state] without holding a certificate of registration under section 4 or 6 of this chapter.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in [state] for all purposes except signing an agency contract, if:

(1) a student athlete or another person acting on behalf of the student athlete initiates contact with the individual; and

(2) within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in [state].

(c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

Section 3.
(a) An applicant for registration shall submit an application for registration to the attorney general in a form prescribed by the attorney general. An application filed under this section is a public record under [insert citation]. The application must be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and contain the following information:

(1) The name of the applicant and the address of the applicant’s principal place of business.
(2) The name of the applicant’s business or employer, if applicable.

(3) Any business or occupation engaged in by the applicant for the five (5) years immediately preceding the date of submission of the application.

(4) A description of the applicant’s:
   (A) formal training as an athlete agent;
   (B) practical experience as an athlete agent; and
   (C) educational background relating to the applicant’s activities as an athlete agent.

(5) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references.

(6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years immediately preceding the date of submission of the application.

(7) The names and addresses of all people who are:
   (A) with respect to the athlete agent’s business if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and
   (B) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater.

(8) Whether the applicant or any person named in subdivision (7) has been convicted of a crime that, if committed in [state], would be a crime involving moral turpitude or a felony, and identify the crime.

(9) Whether there has been any administrative or judicial determination that the applicant or any person named in subdivision (7) has made a false, misleading, deceptive, or fraudulent representation.

(10) A description of any instance in which the conduct of the applicant or any person named in subdivision (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.

(11) A description of any sanction, suspension, or disciplinary action taken against the applicant or any person named in subdivision (7) arising out of occupational or professional conduct.

(12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named in subdivision (7) as an athlete agent in any state.

(b) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate instead of submitting an application in the form prescribed under subsection (a). The attorney general shall accept the application and the certificate from the other state as an application for registration in [state] if the application to the other state:

   (1) was submitted in the other state within six (6) months immediately preceding the submission of the application in [state] and the applicant certifies that the information contained in the application is current;
   (2) contains information substantially similar to or more comprehensive than that required in an application submitted in [state]; and
   (3) was signed by the applicant under penalty of perjury.

Section 4.

(a) Except as otherwise provided in subsection (b), the attorney general shall issue a certificate of registration to an individual who complies with the requirements of section 3(a) of this chapter or whose application has been accepted under section 3(b) of this chapter.

(b) The attorney general may refuse to issue a certificate of registration if the attorney general determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant’s fitness to act as an athlete agent. In making the determination, the attorney general may consider whether any of the following apply to the applicant:

   (1) The applicant has been convicted of a crime that, if committed in [this state], would be a crime involving moral turpitude or a felony.
(2) The applicant made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.

(3) The applicant has engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.

(4) The applicant has engaged in conduct prohibited by section 12 of this chapter.

(5) The applicant has had a registration or a license as an athlete agent suspended, revoked, or denied or been refused renewal of a registration or a license as an athlete agent in any state.

(6) The applicant has engaged in conduct the consequences of which were that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution.

(7) The applicant has engaged in conduct that significantly adversely reflects on the applicant’s credibility, honesty, or integrity.

(c) In making a determination under subsection (b), the attorney general shall consider the following:

(1) How recently the conduct occurred.

(2) The nature of the conduct and the context in which it occurred.

(3) Any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the attorney general. An application filed under this subsection is a public record under [insert citation]. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required by section 3(a) of this chapter for an original registration.

(e) An individual who has submitted an application for renewal of a registration or a license in another state, instead of submitting an application for renewal in the form prescribed under subsection (d), may file a copy of the application for renewal and a valid certificate of registration or a valid license from the other state. The attorney general shall accept the application for renewal from the other state as an application for renewal in [state] if the application to the other state:

(1) was submitted in the other state within six (6) months immediately preceding the filing in [state] and the applicant certifies that the information contained in the application for renewal is current;

(2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in [state]; and

(3) was signed by the applicant under penalty of perjury.

(f) A certificate of registration or a renewal of a registration is valid for two (2) years.

Section 5.

(a) The attorney general may suspend, revoke, or refuse to renew a certificate of registration for conduct that would have justified denial of registration under section 4(b) of this chapter.

(b) The attorney general may deny, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing under [insert citation].

Section 6. The attorney general may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Section 7. A fee established by the attorney general in accordance with [insert citation] must accompany an application for registration or renewal of registration.

Section 8.

(a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must contain the following:

(1) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete
agent has received or will receive from any other source for entering into the contract or for providing the services.

(2) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete signed the agency contract.

(3) A description of any expenses that the student athlete agrees to reimburse.

(4) A description of the services to be provided to the student athlete.

(5) The duration of the contract.

(6) The date of execution.

c) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

**WARNING TO STUDENT ATHLETE**

**IF YOU SIGN THIS CONTRACT:**

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST GIVE TO YOUR ATHLETIC DIRECTOR THE TEN (10) DAY NOTICE REQUIRED BY [INSERT CITATION] AND [INSERT CITATION] BEFORE EXECUTING THIS CONTRACT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN (14) DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

d) An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

Section 9.

(a) At least ten (10) days before a student athlete enters into an agency contract, the athlete agent shall give in a record the notice required by [insert citation] of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(b) At least ten (10) days before entering into an agency contract, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled or intends to enroll that the student athlete intends to enter into an agency contract.

Section 10.

(a) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.

(b) A student athlete may not waive the right to cancel an agency contract.

(c) If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

Section 11.

(a) An athlete agent shall retain the following records for a period of five (5) years:

(1) The name and address of each individual represented by the athlete agent.

(2) A copy of any agency contract entered into by the athlete agent.

(3) A record of any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.
(b) Records required by subsection (a) to be retained are open to inspection by the attorney general during normal business hours.

Section 12.
(a) An athlete agent who, with the intent to induce a student athlete to enter into an agency contract:
   (1) gives any materially false or misleading information or makes a materially false promise or representation;
   (2) furnishes anything of value to a student athlete before the student athlete enters into the agency contract; or
   (3) furnishes anything of value to any individual other than the student athlete or another registered athlete agent; commits a Class D felony.

   (b) An athlete agent who intentionally:
   (1) initiates contact with a student athlete unless registered under this Act;
   (2) refuses or fails to retain or permit inspection of the records required to be retained by section 11 of this Chapter;
   (3) fails to register when required by section 2 of this chapter;
   (4) provides materially false or misleading information in an application for registration or renewal of registration;
   (5) predates or postdates an agency contract; or
   (6) fails to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport; commits a Class D felony.

Section 13.
(a) An educational institution has a right of action against an athlete agent or a former student athlete for damages caused by a violation of this Act. In an action under this section, the court may award to the prevailing party costs and reasonable attorney’s fees.

   (b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of this Act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

   (c) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student athlete.

   (d) Any liability of the athlete agent or the former student athlete under this section is several and not joint.

   (e) This Act does not restrict rights, remedies, or defenses of any person under law or equity.

Section 14.
(a) A person who violates this Act is subject to a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation, as determined by the court. All civil penalties recovered under this chapter shall be deposited in the state general fund.

   (b) In addition to the civil penalty imposed under subsection (a), the attorney general may restrict, suspend, or revoke a certificate of registration of an athlete agent for violation of this Act.

   (c) The attorney general may institute and conduct an action in the name of the state of Indiana for any of the following:
      (1) An injunction in any [circuit or superior court] of [state] for injunctive relief to restrain a person from continuing any activity that violates this Act.
      (2) The assessment and recovery of the civil penalty provided in subsection (a).
(d) The attorney general may present any evidence of a crime under section 12 of this chapter to any prosecuting attorney for initiation of criminal proceedings against the offender. The attorney general shall cooperate with the prosecuting Attorney in the prosecution of the offense.

Section 15. 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 the states that enact it.

Section 16. The provisions of this Act governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.
Uniform Computer Information Transactions Statement

The National Conference of Commissioners on Uniform State Laws promulgated the Uniform Computer Information Transactions Act (UCITA) in 1999. This Act provides a comprehensive set of rules for licensing computer information, whether computer software or other clearly identified forms of computer information. Computerized databases and computerized music are other examples of computer information that would be subject to UCITA. It would also govern access contracts to sites containing computer information, whether on or off the Internet. UCITA would also apply to storage devices such as disks and CDs that exist only to hold computer information. Other kinds of goods which contain computer information as a material part of the subject matter of a transaction may also be made subject to UCITA by express reference in a contract. Otherwise, other laws would apply, such as the laws of sales or leases. UCITA would not govern contracts, even though they may be licensing contracts, for the traditional distribution of movies, books, periodicals, newspapers, or the like. Also, a transaction for the creation of a motion picture or a transaction with a free-lance contractor for news reporting, even though computer information is dominantly involved, is not governed by UCITA.

Why is there a need for licensing contracts, rather than sale contracts for computer information? Computer information is peculiarly vulnerable to dissipation of its value by copying. The genius of computers is their ability to retain and copy information. Copies of information look just like their originals. In fact, everything is a copy. There are no true originals. Copies can be duplicated in huge numbers and disseminated to millions of users in times measured in less than seconds. Therefore, those who invest capital, intellectual effort and labor into the creation of valuable computer information may lose the economic value of their products in seconds. Without the ability to control copying and dissemination of computer information, vendors risk losing everything. The risk is so great that without licensing, the development of computer information products could become uneconomical and the great economic benefit of computer information products could be lost.

The term “copy” is, in fact, defined in UCITA as the “medium on which information is fixed on a temporary or permanent basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid of a machine or device.” Transfer of a copy is the basis of a licensing transaction. UCITA clearly separates transfer of a copy from transfer of ownership of computer information or informational rights. A licensee’s rights are not dependent upon transfer of title to computer information or informational rights, although a license contract may expressly transfer title to computer information or informational rights and/or title to a copy.

A licensing contract involves transferring a copy of computer information, such as software to use in a computer, from a vendor (called licensor) to a recipient (called licensee). A license may also grant informational rights to the licensee. Informational rights include any intellectual property rights derived from copyright, patents and the like, but also all other rights in information that any other law provides to a person that allows control of the information or restriction on the use of the information by other people. The difference between a licensing contract and a sale contract is that the license generally contains restrictions on use and transfer of the computer information by the licensee during the life of the contract. A breach of express restrictions on use and transfer in the contract provides a remedy to the licensor.

Licensing of information is the standard of the computer information business today. The bulk of vendors license their computer information products. UCITA, therefore, does not originate licensing contracts. UCITA was developed to provide basic, recognizable default rules for the existing licensing activity that goes on and that expands as commerce in computer information expands. That expansion is the primary source of economic development in the United States and is projected to be the economic mainstay of the United States for the foreseeable future. UCITA, therefore, is responding to existing economic activity and a mode of contract upon which the computer information industry has come to rely. Firming up the law and establishing some certainty with respect to the rules that apply, and that apply uniformly, is the modest goal of UCITA. It is not a radical, destabilizing proposal. It is familiar law adapted to ongoing economic activity that can use stable, predictable law that otherwise does not now exist.
For the most part, the rules governing computer information contracts in UCITA are default rules. This means that they may be waived or varied by contract, and that in almost all cases the terms of a contract will prevail over a contrary rule in UCITA. Rules generally relating to fairness of the contract process are not default rules, and cannot be disclaimed by contract. Included in the rules that may not be disclaimed are the obligations of good faith, diligence, and reasonableness; limitations on enforcement imposed by unconscionability and fundamental public policy; and any standard of care prescribed in UCITA. Express rules for consumers also may not generally be disclaimed.

UCITA’s rules govern licensing of contracts for computer information and informational rights from formation through final performance, including remedies if there is a breach of contract. Included in UCITA are rules for warranties, both implied and express, and rules pertaining to risk of loss in a computer information transaction. Most of the rules in UCITA are the traditional and familiar rules of contract from the law of sales and from the common law, but adapted to the special nature of computer information licensing contracts. Freedom of contract is a dominating underlying policy for UCITA, exactly as that principle is the foundation for the law of commercial transactions, generally, and exactly as that law has served all commercial transactions in the United States and has contributed to the economic growth and health of the United States.

Although a license under UCITA may transfer informational rights, UCITA is not fundamentally rooted in intellectual property law. A license under UCITA is simply a commercial contract, dependent wholly on the parties’ ability to enter into a normal, commercial contract, just as a contract of sale or lease is simply and wholly a commercial contract. However, UCITA may not be used to vary or extend intellectual property rights, and expressly recognizes preemption by copyright, patent, or other federal intellectual property law in Section 105(b).

Like the law of sales and leases, in general, the right to contract is constrained by principles of unconscionability, good faith and fair dealing, UCITA has an additional restraint, an express power for a court to deny enforcement of a provision in a licensing contract that violates fundamental public policy. This public policy defense is unique in UCITA. An essential purpose of this defense is to give courts some latitude in reconciling commercial licensing law with the principles of intellectual property law. Most intellectual property law is federal, and UCITA expressly recognizes the pre-emptive effect of that federal law. But the public policy defense gives courts an additional power to consider intellectual property principles purely within the context of commercial law.

These are some highlights of UCITA:

1. Mass-market license. Traditionally, contract formation contemplates some negotiation and arm’s-length give and take between contracting parties. Commercial contract law has abandoned this image of contracting activity as the only image. Article 2 of the Uniform Commercial Code has long had rules governing contracts that do not form in the traditional image, and has legitimized form contracts for sales of goods for nearly half-a-century. The mass-market license is an electronic form contract for computer information licensing, exactly as there have been form contracts for the sales of goods for a very long time. The difference is that a mass-market license is often presented with the package for the computer information found in retail stores, and, more importantly as electronic commerce grows, as part of the transfer of computer information, electronically, from computer to computer. Whether called “shrink-wrap” or “click-wrap,” these are mass-market licenses. UCITA treats mass-market licenses differently from negotiated licenses. A mass-market license is not enforceable against the licensee unless the terms to be enforced are readily available to the licensee and until the licensee has had a appropriate time to review them. If, upon review, the licensee does not like the license contract or any part of it, the copy of the computer information may be returned to the vendor for a refund, plus reasonable expenses for making a rightful return and compensation for damages to a processing system by the removal of the information from that system. This right of return may not be waived or disclaimed in a contract. Nowhere else in the commercial law is there such a no-fault return policy for rejecting or repudiating a contract.

2. Warranties of license are incorporated into UCITA, based on the warranty provisions for sale of goods under Article 2 of the Uniform Commercial Code. But computer information requires special implied
warranties. One is the warranty of compatibility of computer systems under Section 405(b). The licensor has an implied warranty, if the licensee is relying upon the licensor for skill and judgment in selecting components of a computer system, that the components will function together as a system. Implied warranties may be disclaimed. Disclaimers in mass-market contracts must be conspicuous. Any affirmation of fact or promise made by a licensor as part of the basis of the bargain, becomes an express warranty of the licensor.

3. There are special rules for communication of computer information in electronic form. Since these transactions are almost all electronic, and faceless, it is necessary to have rules governing the attribution of electronic signatures, and the accuracy of electronic messages. Part 2, Subpart B is largely devoted to these communications rules. The term “authenticate” is the basis for these rules. A signature or its electronic equivalent is the basic means of authentication under UCITA. That “authentication” is attributed to the person whose intentional act that “authentication” is. A party relying upon that authentication has the burden of establishing attribution, which may be shown in any manner, including evidence of the efficacy of any “attribution procedure” used in the communication. An “attribution procedure” is any procedure that provides greater assurance than a simple transmission of information that the “authentication” is that of the party to which it is attributed. There are both simple and complex attribution procedures available for identifying the person who sends an electronic communication, and people may choose the procedures that suit their particular transactions.

Attribution procedures may have impact on message content in an electronic communication. If a procedure is in place to detect errors or changes in the message communicated, a party that conforms to the procedure is not bound by an error or change that results because the other party does not conform to the procedure. There is a special rule for consumers. Consumers who make errors while entering automated transactions are not bound by the unintended erroneous message, so long as the consumer notifies the other party of the error promptly after it is identified, properly returns the computer information received and has not obtained value or benefit from using the information.

4. An “access contract” is a contract to enter the information system (read computer) of another to obtain information, or use that information system for specific purposes. Most current computer users have access contracts, if for no other reason than to use the Internet. UCITA governs these contracts with special rules relating to rights of access in Section 611.

UCITA also governs support contracts, and service contracts for the correction of performance problems. No licensor of information is required to provide such contracts (computer software support services are common), but if it does, it is subject to the express terms of the contract, or if silent, to what is “reasonable in light of ordinary standards of the business, trade, or industry . . .”

5. In Section 816, UCITA places restrictions on a licensor’s authority to disable computer information subject to a license and in use by a licensee for breach of contract. The remedy is not available unless the licensee has manifested assent to the specific part of the licensing contract that permits exercise of the remedy. There must be notice to the licensee at least 15 days prior to the exercise of the remedy. This notice gives the licensee the opportunity to cure the breach. The licensor may not exercise the remedy if it knows that exercise “will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third parties not involved in the dispute” (between licensor and licensee). The conditions for exercise of the remedy in Section 816 may not be waived or varied by contract.

In 2000, the ULC amended UCITA Section 103(b)(2); Section 103(d)(2)(A) and (B); Section 103(f)(1) and (2); Section 103(g); and new Section 216. These amendments included a number of styling and clarification amendments as well as amendments required to be ratified by the Conference that were part of a discussion with the following associations: Motion Picture Association of America, Magazine Publishers of America, Newspaper Association of America, National Cable Television Association, National Association of Broadcasters, and the Recording Industry Association of America. Five of these associations had concerns about UCITA and in lengthy discussions, these amendments were worked out as a package and with the adoption of these amendments by the Conference, these associations formally in writing have withdrawn their opposition to the enactment of UCITA.
Amendments to Section 102(a)(39)(A) and (B); Section 103(d)(2):
While most transactions that involve the relationship between the insured and the insurer would be covered by either the financial services transactions exclusion or excluded by the definitions applicable to the scope of the Act, the state insurance commissioners requested clarity that transactions of similar type subject to similar state regulatory authority were clearly excluded.

Amendments to Section 103(d)(7)(A) and (B); Section 112(g)
This second group of amendments were worked out with telecommunications industry and under these changes they have agreed to support enactment of UCITA. The changes do not alter the substantive policy of the Act and the substance was already discussed in comments.

Amendment to Section 104(1)
This is merely a clarification of the intent to include statutory rules and adds clarity in light of discussion in several States.

Amendment to Section 816
These amendments clarify the limitations on electronic self-help. The prohibition for mass-market transactions more clearly states a result that was the most likely effect of the existing limitations in the section. The addition to subsection (d) is a non-substantive clarification the inclusion of which was indicated by discussion in the various States.

In January 2001, the ULC Executive Committee approved amendments to Sections 605 and 816 of UCITA. Sections 605 and 816 are intended to act in harmony. Section 605(f) was intended to make clear that the procedural limitations and safeguards of Section 816 in the event of a breach cannot be avoided by reliance on Section 605. In the JCOTS (Joint Commission on Technology and Science, Virginia) Study, there was concern that the language might be exploited so as to not accomplish this purpose. Accordingly, changes were made to the definition of “automatic restraint” to clearly state that it “prevents” a breach; and Section 605(f) now states more clearly that in the event of a possible simultaneous breach and prevention of a breach, under (b)(4), Section 816 applies unless the affirmative acts are within (i) and (ii). This change of wording was carefully and extensively examined by all interested groups and the JCOTS staff to accomplish the stated purpose. The acceptance of the amendments will result in substantial added support from retail and financial services industries.

The amendments to Section 816 clarify what is a “wrongful use” of electronic self-help (Section 816(c)); remove an ambiguity as to the two kinds of harm that are prohibited by striking the word “grave” (Section 816(g)(1)); and clarify that the repossession of a tangible copy is permissible without breach of peace or the use of electronic self-help (Section 816(j)). These changes will increase support for U.C.I.T.A.

The ULC will consider final approval to the amendments to Sections 605 and 816 in the summer of 2001.

The language of these amendments and related notes is listed on the following pages.
SECTION 102. DEFINITIONS.

(a) In this [Act]:

(1) “Access contract” means a contract to obtain by electronic means access to, or information from, an information processing system of another person, or the equivalent of such access.

(2) “Access material” means any information or material, such as a document, address, or access code, that is necessary to obtain authorized access to information or control or possession of a copy.

(3) “Aggrieved party” means a party entitled to a remedy for breach of contract.

(4) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of performance, course of dealing, and usage of trade as provided in this [Act].

(5) “Attribution procedure” means a procedure to verify that an electronic authentication, display, message, record, or performance is that of a particular person or to detect changes or errors in information. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment.

(6) “Authenticate” means:

(A) to sign; or

(B) with the intent to sign a record, otherwise to execute or adopt an electronic symbol, sound, message, or process referring to, attached to, included in, or logically associated or linked with, that record.

(7) “Automated transaction” means a transaction in which a contract is formed in whole or part by electronic actions of one or both parties which are not previously reviewed by an individual in the ordinary course.

(8) “Cancellation” means the ending of a contract by a party because of breach of contract by another party.

(9) “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(10) “Computer information” means information in electronic form which is obtained from or through the use of a computer or which is in a form capable of being processed by a computer. The term includes a copy of the information and any documentation or packaging associated with the copy.

(11) “Computer information transaction” means an agreement or the performance of it to create, modify, transfer, or license computer information or informational rights in computer information. The term includes a support contract under Section 612. The term does not include a transaction merely because the parties’ agreement provides that their communications about the transaction will be in the form of computer information.

(12) “Computer program” means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result. The term does not include separately identifiable informational content.

(13) “Consequential damages” resulting from breach of contract includes (i) any loss resulting from general or particular requirements and needs of which the breaching party at the time of contracting had reason to know and which could not reasonably be prevented and (ii) any injury to an individual or damage to property other than the subject matter of the transaction proximately resulting from breach of warranty. The term does not include direct damages or incidental damages.

(14) “Conspicuous,” with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. Conspicuous terms include the following:
(A) with respect to a person:

(i) a heading in capitals in a size equal to or greater than, or in contrasting type, font, or color to, the surrounding text;

(ii) language in the body of a record or display in larger or other contrasting type, font, or color or set off from the surrounding text by symbols or other marks that draw attention to the language; and

(iii) a term prominently referenced in an electronic record or display which is readily accessible or reviewable from the record or display; and

(B) with respect to a person or an electronic agent, a term or reference to a term that is so placed in a record or display that the person or electronic agent cannot proceed without taking action with respect to the particular term or reference.

(15) “Consumer” means an individual who is a licensee of information or informational rights that the individual at the time of contracting intended to be used primarily for personal, family, or household purposes. The term does not include an individual who is a licensee primarily for professional or commercial purposes, including agriculture, business management, and investment management other than management of the individual’s personal or family investments.

(16) “Consumer contract” means a contract between a merchant licensor and a consumer.

(17) “Contract” means the total legal obligation resulting from the parties’ agreement as affected by this [Act] and other applicable law.

(18) “Contract fee” means the price, fee, rent, or royalty payable in a contract under this [Act] or any part of the amount payable.

(19) “Contractual use term” means an enforceable term that defines or limits the use, disclosure of, or access to licensed information or informational rights, including a term that defines the scope of a license.

(20) “Copy” means the medium on which information is fixed on a temporary or permanent basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid of a machine or device.

(21) “Course of dealing” means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(22) “Course of performance” means repeated performances, under a contract that involves repeated occasions for performance, which are accepted or acquiesced in without objection by a party having knowledge of the nature of the performance and an opportunity to object to it.

(23) “Court” includes an arbitration or other dispute-resolution forum if the parties have agreed to use of that forum or its use is required by law.

(24) “Delivery,” with respect to a copy, means the voluntary physical or electronic transfer of possession or control.

(25) “Direct damages” means compensation for losses measured by Section 808(b)(1) or 809(a)(1). The term does not include consequential damages or incidental damages.

(26) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(27) “Electronic agent” means a computer program, or electronic or other automated means, used by a person independently to initiate an action, or to respond to electronic messages or performances, on the person’s behalf without review or action by an individual at the time of the action or response to the message or performance.

(28) “Electronic message” means a record or display that is stored, generated, or transmitted by electronic means for the purpose of communication to another person or electronic agent.

(29) “Financial accommodation contract” means an agreement under which a person extends a financial accommodation to a licensee and which does not create a security interest governed by [Article 9 of the Uniform Commercial Code]. The agreement may be in any form, including a license or lease.
(30) “Financial services transaction” means an agreement that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) a deposit, loan, funds, or monetary value represented in electronic form and stored or capable of storage by electronic means and retrievable and transferable by electronic means, or other right to payment to or from a person;

(B) an instrument or other item;

(C) a payment order, credit card transaction, debit card transaction, funds transfer, automated clearing house transfer, or similar wholesale or retail transfer of funds;

(D) a letter of credit, document of title, financial asset, investment property, or similar asset held in a fiduciary or agency capacity; or

(E) related identifying, verifying, access-enabling, authorizing, or monitoring information.

(31) “Financier” means a person that provides a financial accommodation to a licensee under a financial accommodation contract and either (i) becomes a licensee for the purpose of transferring or sublicensing the license to the party to which the financial accommodation is provided or (ii) obtains a contractual right under the financial accommodation contract to preclude the licensee’s use of the information or informational rights under a license in the event of breach of the financial accommodation contract. The term does not include a person that selects, creates, or supplies the information that is the subject of the license, owns the informational rights in the information, or provides support for, modifications to, or maintenance of the information.

(32) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(33) “Goods” means all things that are movable at the time relevant to the computer information transaction. The term includes the unborn young of animals, growing crops, and other identified things to be severed from realty which are covered by [Section 2-107 of the Uniform Commercial Code]. The term does not include computer information, money, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles.

(34) “Incidental damages” resulting from breach of contract:

(A) means compensation for any commercially reasonable charges, expenses, or commissions reasonably incurred by an aggrieved party with respect to:

(i) inspection, receipt, transmission, transportation, care, or custody of identified copies or information that is the subject of the breach;

(ii) stopping delivery, shipment, or transmission;

(iii) effecting cover or retransfer of copies or information after the breach;

(iv) other efforts after the breach to minimize or avoid loss resulting from the breach; and

(v) matters otherwise incident to the breach; and

(B) does not include consequential damages or direct damages.

(35) “Information” means data, text, images, sounds, mask works, or computer programs, including collections and compilations of them.

(36) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(37) “Informational content” means information that is intended to be communicated to or perceived by an individual in the ordinary use of the information, or the equivalent of that information.

(38) “Informational rights” include all rights in information created under laws governing patents, copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that gives a person, independently of contract, a right to control or preclude another person’s use of or access to the information on the basis of the rights holder’s interest in the information.
(39) “Insurance services transaction” means an agreement between the insurer and the insured that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) an insurance policy, contract, or certificate; or
(B) a right to payment under an insurance policy, contract, or certificate.

(40) “Knowledge,” with respect to a fact, means actual knowledge of the fact.

(41) “License” means a contract that authorizes access to, or use, distribution, performance, modification, or reproduction of, information or informational rights, but expressly limits the access or uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee has title to a licensed copy. The term includes an access contract, a lease of a computer program, and a consignment of a copy. The term does not include a reservation or creation of a security interest to the extent the interest is governed by [Article 9 of the Uniform Commercial Code].

(42) “Licensee” means a person entitled by agreement to acquire or exercise rights in, or to have access to or use of, computer information under an agreement to which this [Act] applies. A licensor is not a licensee with respect to rights reserved to it under the agreement.

(43) “Licensor” means a person obligated by agreement to transfer or create rights in, or to give access to or use of, computer information or informational rights in it under an agreement to which this [Act] applies. Between the provider of access and a provider of the informational content to be accessed, the provider of content is the licensor. In an exchange of information or informational rights, each party is a licensor with respect to the information, informational rights, or access it gives.

(44) “Mass-market license” means a standard form used in a mass-market transaction.

(45) “Mass-market transaction” means a transaction that is:

(A) a consumer contract; or
(B) any other transaction with an end-user licensee if:
   (i) the transaction is for information or informational rights directed to the general public as a whole, including consumers, under substantially the same terms for the same information;
   (ii) the licensee acquires the information or informational rights in a retail transaction under terms and in a quantity consistent with an ordinary transaction in a retail market; and
   (iii) the transaction is not:
      (I) a contract for redistribution or for public performance or public display of a copyrighted work;
      (II) a transaction in which the information is customized or otherwise specially prepared by the licensor for the licensee, other than minor customization using a capability of the information intended for that purpose;
      (III) a site license; or
      (IV) an access contract.

(46) “Merchant” means a person:

(A) that deals in information or informational rights of the kind involved in the transaction;
(B) that by the person’s occupation holds itself out as having knowledge or skill peculiar to the relevant aspect of the business practices or information involved in the transaction; or
(C) to which the knowledge or skill peculiar to the practices or information involved in the transaction may be attributed by the person’s employment of an agent or broker or other intermediary that by its occupation holds itself out as having the knowledge or skill.

(47) “Nonexclusive license” means a license that does not preclude the licensor from transferring to other licensees the same information, informational rights, or contractual rights within the same scope. The term includes a consignment of a copy.

(48) “Notice” of a fact means knowledge of the fact, receipt of notification of the fact, or reason to know the fact exists.
“Notify,” or “give notice,” means to take such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person actually comes to know of it.

“Party” means a person that engages in a transaction or makes an agreement under this [Act].

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, also a legal or commercial entity.

“Published informational content” means informational content prepared for or made available to recipients generally, or to a class of recipients, in substantially the same form. The term does not include informational content that is:

(A) customized for a particular recipient by one or more individuals acting as or on behalf of the licensor, using judgment or expertise; or
(B) provided in a special relationship of reliance between the provider and the recipient.

“Receipt” means:

(A) with respect to a copy, taking delivery; or
(B) with respect to a notice:
   (i) coming to a person’s attention; or
   (ii) being delivered to and available at a location or system designated by agreement for that purpose or, in the absence of an agreed location or system:
      (I) being delivered at the person’s residence, or the person’s place of business through which the contract was made, or at any other place held out by the person as a place for receipt of communications of the kind; or
      (II) in the case of an electronic notice, coming into existence in an information processing system or at an address in that system in a form capable of being processed by or perceived from a system of that type by a recipient, if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given and the sender does not know that the notice cannot be accessed from that place.

“Receive” means to take receipt.

“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.

“Release” means an agreement by a party not to object to, or exercise any rights or pursue any remedies to limit, the use of information or informational rights which agreement does not require an affirmative act by the party to enable or support the other party’s use of the information or informational rights. The term includes a waiver of informational rights.

“Return,” with respect to a record containing contractual terms that were rejected, refers only to the computer information and means:

(A) in the case of a licensee that rejects a record regarding a single information product transferred for a single contract fee, a right to reimbursement of the contract fee paid from the person to which it was paid or from another person that offers to reimburse that fee, on:
   (i) submission of proof of purchase; and
   (ii) proper redelivery of the computer information and all copies within a reasonable time after initial delivery of the information to the licensee;
(B) in the case of a licensee that rejects a record regarding an information product provided as part of multiple information products integrated into and transferred as a bundled whole but retaining their separate identity:
   (i) a right to reimbursement of any portion of the aggregate contract fee identified by the licensor in the initial transaction as charged to the licensee for all bundled information products which was actually paid, on:
(I) rejection of the record before or during the initial use of the 
bundled product; 
(II) proper redelivery of all computer information products in the 
bundled whole and all copies of them within a reasonable time after initial delivery of the information to the 
licensee; and 
(III) submission of proof of purchase; or 
(ii) a right to reimbursement of any separate contract fee identified by the 
licensor in the initial transaction as charged to the licensee for the separate information product to which the 
rejected record applies, on: 
(I) submission of proof of purchase; and 
(II) proper redelivery of that computer information product and all 
copies within a reasonable time after initial delivery of the information to the licensee; or 
(C) in the case of a licensor that rejects a record proposed by the licensee, a right to 
proper redelivery of the computer information and all copies from the licensee, to stop delivery or access to 
the information by the licensee, and to reimbursement from the licensee of amounts paid by the licensor with 
respect to the rejected record, on reimbursement to the licensee of contract fees that it paid with respect to the 
rejected record, subject to recoupment and setoff.

“Scope,” with respect to terms of a license, means:
(A) the licensed copies, information, or informational rights involved; 
(B) the use or access authorized, prohibited, or controlled; 
(C) the geographic area, market, or location; or 
(D) the duration of the license.

“Seasonable,” with respect to an act, means taken within the time agreed or, if no 
time is agreed, within a reasonable time.

“Send” means, with any costs provided for and properly addressed or directed as 
reasonable under the circumstances or as otherwise agreed, to deposit a record in the mail or with a 
commercially reasonable carrier, to deliver a record for transmission to or re-creation in another location or 
information processing system, or to take the steps necessary to initiate transmission to or re-creation of a 
record in another location or information processing system. In addition, with respect to an electronic 
message, the message must be in a form capable of being processed by or perceived from a system of the type 
the recipient uses or otherwise has designated or held out as a place for the receipt of communications of the 
kind sent. Receipt within the time in which it would have arrived if properly sent, has the effect of a proper 
sending.

“Standard form” means a record or a group of related records containing terms 
prepared for repeated use in transactions and so used in a transaction in which there was no negotiated change 
of terms by individuals except to set the price, quantity, method of payment, selection among standard 
options, or time or method of delivery.

“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.

“Term,” with respect to an agreement, means that portion of the agreement which 
relates to a particular matter.

“Termination” means the ending of a contract by a party pursuant to a power 
created by agreement or law otherwise than because of breach of contract.

“Transfer:”
(A) with respect to a contractual interest, includes an assignment of the contract, but 
does not include an agreement merely to perform a contractual obligation or to exercise contractual rights 
through a delegate or sublicensee; and 
(B) with respect to computer information, includes a sale, license, or lease of a copy 
of the computer information and a license or assignment of informational rights in computer information.
“Usage of trade” means any practice or method of dealing that has such regularity
of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to
the transaction in question.

(b) The following definitions in [the Uniform Commercial Code (1998 Official Text)] apply to this
[Act]:

(1) “Burden of establishing” [Section 1-201].
(2) “Document of title” [Section 1-201].
(3) “Financial asset” [Section 8-102(a)(9)].
(4) “Funds transfer” [Section 4A-104].
(5) “Identification” to the contract [Section 2-501].
Text)].
Official Text)].
(8) “Item” [Section 4-104].
(9) “Letter of credit” [Section 5-102].
(10) “Payment order” [Section 4A-103].
(11) “Sale” [Section 2-106].

SECTION 103. SCOPE; EXCLUSIONS.

(a) This [Act] applies to computer information transactions.

(b) Except for subject matter excluded in subsection (d) and as otherwise provided in Section 104, if
a computer information transaction includes subject matter other than computer information or subject matter
excluded under subsection (d), the following rules apply:

(1) If a transaction includes computer information and goods, this [Act] applies to the part of
the transaction involving computer information, informational rights in it, and creation or modification of it.
However, if a copy of a computer program is contained in and sold or leased as part of goods, this [Act]
applies to the copy and the computer program only if:

(A) the goods are a computer or computer peripheral; or
(B) giving the buyer or lessee of the goods access to or use of the program is
ordinarily a material purpose of transactions in goods of the type sold or leased.

(2) Subject to subsection (d)(3)(A), if a transaction includes an agreement for creating or for
obtaining rights to create computer information and a motion picture, this [Act] does not apply to the
agreement if the dominant character of the agreement is for creating or obtaining rights to create a motion
picture. In all other such agreements, this [Act] does not apply to the part of the agreement that involves a
motion picture excluded under subsection (d)(3), but does apply to the computer information.

(3) In all other cases, this [Act] applies to the entire transaction if the computer information
and informational rights, or access to them, is the primary subject matter, but otherwise applies only to the
part of the transaction involving computer information, informational rights in it, and creation or modification
of it.

(c) To the extent of a conflict between this [Act] and [Article 9 of the Uniform Commercial Code],
[Article 9] governs.

(d) This [Act] does not apply to:

(1) a financial services transaction;
(2) an insurance services transaction;
(3) an agreement to create, perform or perform in, include information in, acquire, use,
    distribute, modify, reproduce, have access to, adapt, make available, transmit, license, or display:
    (A) a motion picture or audio or visual programming that is provided by broadcast,
satellite, or cable as defined or used in the Federal Communications Act and related regulations as they
existed on July 1, 1999, or by similar methods of delivering that programming, other than in (1) a mass-market
(ii) a submission of an idea or information or release of informational rights that may result in making a motion picture or a similar information product; or

(B) a motion picture, a sound recording, musical work, or phonorecord as defined or used in Title 17 of the United States Code as of July 1, 1999, or an enhanced sound recording, other than in the submission of an idea or information or release of informational rights that may result in the creation of such material or a similar information product.

(4) a compulsory license; or

(5) a contract of employment of an individual, other than an individual hired as an independent contractor to create or modify computer information, unless the independent contractor is a freelancer in the news reporting industry as that term is commonly understood in that industry;

(6) a contract that does not require that information be furnished as computer information or a contract in which, under the agreement, the form of the information as computer information is otherwise insignificant with respect to the primary subject matter of the part of the transaction pertaining to the information; or

(7) unless otherwise agreed in a record between the parties:

(A) telecommunications products or services provided pursuant to federal or state tariffs; or

(B) telecommunications products or services provided pursuant to agreements required or permitted to be filed by the service provider with a federal or state authority regulating these services or under pricing subject to approval by a federal or state regulatory authority.

(8) subject matter within the scope of [Article 3, 4, 4A, 5, 6, 7, or 8 of the Uniform Commercial Code].

(e) As used in subsection (d)(2)(B), (d)(3)(B), “enhanced sound recording” means a separately identifiable product or service the dominant character of which consists of recorded sounds but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of those sounds or (ii) other information so long as recorded sounds constitute the dominant character of the product or service despite the inclusion of the other information.

(f) In this section, “motion picture” means:

(1) “motion picture” as defined in Title 17 of the United States Code as of July 1, 1999; or

(2) a separately identifiable product or service the dominant character of which consists of a linear motion picture, but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of the motion picture or (ii) other information as long as the motion picture constitutes the dominant character of the product or service despite the inclusion of the other information.

(g) In this section, “audio or visual programming” means audio or visual programming that is provided by broadcast, satellite, or cable as defined or used in the Communications Act of 1934 and related regulations as they existed on July 1, 1999, or by similar methods of delivery.

SECTION 104. MIXED TRANSACTIONS: AGREEMENT TO OPT-IN OR OPT-OUT. The parties may agree that this [Act], including contract-formation rules, governs the transaction, in whole or part, or that other law governs the transaction and this [Act] does not apply, if a material part of the subject matter to which the agreement applies is computer information or informational rights in it that are within the scope of this [Act], or is subject matter within this [Act] under Section 103(b), or is subject matter excluded by Section 103(d)(1) or (2)(3). However, any agreement to do so is subject to the following rules:

(1) An agreement that this [Act] governs a transaction does not alter the applicability of any statute, rule, or procedure that may not be varied by agreement of the parties or that may be varied only in a manner specified by the rule or procedure, including a consumer protection statute [or administrative rule]. In addition, in a mass-market transaction, the agreement does not alter the applicability of a law applicable to a copy of information in printed form.

(2) An agreement that this [Act] does not govern a transaction:

(A) does not alter the applicability of Section 214 or 816; and
(B) in a mass-market transaction, does not alter the applicability under this [Act] of
the doctrine of unconscionability or fundamental public policy or the obligation of good faith.

(3) In a mass-market transaction, any term under this section which changes the extent to
which this [Act] governs the transaction must be conspicuous.

(4) A copy of a computer program contained in and sold or leased as part of goods and which
is excluded from this [Act] by Section 103(b)(1) cannot provide the basis for an agreement under this section
that this [Act] governs the transaction.

SECTION 112. MANIFESTING ASSENT; OPPORTUNITY TO REVIEW.

(a) A person manifests assent to a record or term if the person, acting with knowledge of, or after
having an opportunity to review the record or term or a copy of it:

(1) authenticates the record or term with intent to adopt or accept it; or

(2) intentionally engages in conduct or makes statements with reason to know that the other
party or its electronic agent may infer from the conduct or statement that the person assents to the record or
term.

(b) An electronic agent manifests assent to a record or term if, after having an opportunity to review
it, the electronic agent:

(1) authenticates the record or term; or

(2) engages in operations that in the circumstances indicate acceptance of the record or term.

(c) If this [Act] or other law requires assent to a specific term, a manifestation of assent must relate
specifically to the term.

(d) Conduct or operations manifesting assent may be proved in any manner, including a showing that
a person or an electronic agent obtained or used the information or informational rights and that a procedure
existed by which a person or an electronic agent must have engaged in the conduct or operations in order to
do so. Proof of compliance with subsection (a)(2) is sufficient if there is conduct that assents and subsequent
conduct that reaffirms assent by electronic means.

(e) With respect to an opportunity to review, the following rules apply:

(1) A person has an opportunity to review a record or term only if it is made available in a
manner that ought to call it to the attention of a reasonable person and permit review.

(2) An electronic agent has an opportunity to review a record or term only if it is made
available in manner that would enable a reasonably configured electronic agent to react to the record or term.

(3) If a record or term is available for review only after a person becomes obligated to pay or
begins its performance, the person has an opportunity to review only if it has a right to a return if it rejects the
record. However, a right to a return is not required if:

(A) the record proposes a modification of contract or provides particulars of
performance under Section 305; or

(B) the primary performance is other than delivery or acceptance of a copy, the
agreement is not a mass-market transaction, and the parties at the time of contracting had reason to know that
a record or term would be presented after performance, use, or access to the information began.

(4) The right to a return under paragraph (3) may arise by law or by agreement.

(f) The effect of provisions of this section may be modified by an agreement setting out standards
applicable to future transactions between the parties.

(g) Providers of online services, network access, and telecommunications services, or the operators
of facilities thereof, do not manifest assent to a contractual relationship simply by their provision of these
services to other parties, including but not limited to transmission, routing, or providing connections, linking,
caching, hosting, information location tools, or storage of materials at the request or initiation of a person
other than the service provider.

SECTION 201. FORMAL REQUIREMENTS.

(a) Except as otherwise provided in this section, a contract requiring payment of a contract fee of
$5,000 or more is not enforceable by way of action or defense unless:
(1) the party against which enforcement is sought authenticated a record sufficient to indicate that a contract has been formed and which reasonably identifies the copy or subject matter to which the contract refers; or
(2) the agreement is a license for an agreed duration of one year or less or which may be terminated at will by the party against which the contract is asserted.

(b) A record is sufficient under subsection (a) even if it omits or incorrectly states a term, but the contract is not enforceable under that subsection beyond the number of copies or subject matter shown in the record.

(c) A contract that does not satisfy the requirements of subsection (a) is nevertheless enforceable under that subsection if:

(1) a performance was tendered or the information was made available by one party and the tender was accepted or the information accessed by the other; or
(2) the party against which enforcement is sought admits in court, by pleading or by testimony or otherwise under oath, facts sufficient to indicate a contract has been made, but the agreement is not enforceable under this paragraph beyond the number of copies or the subject matter admitted.

(d) Between merchants, if, within a reasonable time, a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, the record satisfies subsection (a) against the party receiving it unless notice of objection to its contents is given in a record within 10 days after the confirming record is received.

(e) An agreement that the requirements of this section need not be satisfied as to future transactions is effective if evidenced in a record authenticated by the person against which enforcement is sought.

(f) A transaction within the scope of this [Act] is not subject to a statute of frauds contained in another law of this State.

D. IDEA OR INFORMATION SUBMISSION

SECTION 216. IDEA OR INFORMATION SUBMISSION.

(a) The following rules apply to a submission of an idea or information for the creation, development, or enhancement of computer information which is not made pursuant to an existing agreement requiring the submission:

(1) A contract is not formed and is not implied from the mere receipt of an unsolicited submission.

(2) Engaging in a business, trade, or industry that by custom or practice regularly acquires ideas is not in itself an express or implied solicitation of the information.

(3) If the recipient seasonably notifies the person making the submission that the recipient maintains a procedure to receive and review submissions, a contract is formed only if:

(A) the submission is made and a contract accepted pursuant to that procedure; or
(B) the recipient expressly agrees to terms concerning the submission.

(b) An agreement to disclose an idea creates a contract enforceable against the receiving party only if the idea as disclosed is confidential, concrete, and novel to the business, trade, or industry or the party receiving the disclosure otherwise expressly agreed.

SECTION 816. LIMITATIONS ON ELECTRONIC SELF-HELP.

(a) In this section, “electronic self-help” means the use of electronic means to exercise a licensor’s rights under Section 815(b).

(b) On cancellation of a license, electronic self-help is not permitted, except as provided in this section. Electronic self-help is prohibited in mass-market transactions.

(c) If the parties agree to permit electronic self-help, a licensee shall separately manifest assent to a term authorizing use of electronic self-help. The term must:

(1) provide for notice of exercise as provided in subsection (d);
(2) state the name of the person designated by the licensee to which notice of exercise must be given and the manner in which notice must be given and place to which notice must be sent to that person; and

(3) provide a simple procedure for the licensee to change the designated person or place.

(d) Before resorting to electronic self-help authorized by a term of the license, the licensor shall give notice in a record to the person designated by the licensee stating:

(1) that the licensor intends to resort to electronic self-help as a remedy on or after 15 days following receipt by the licensee of the notice;

(2) the nature of the claimed breach that entitles the licensor to resort to self-help; and

(3) the name, title, and address, including direct telephone number, facsimile number, or e-mail address, to which the licensee may communicate concerning the claimed breach.

(e) A licensee may recover direct and incidental damages caused by wrongful use of electronic self-help. The licensee may also recover consequential damages for wrongful use of electronic self-help, whether or not those damages are excluded by the terms of the license, if:

(1) within the period specified in subsection (d)(1), the licensee gives notice to the licensor’s designated person describing in good faith the general nature and magnitude of damages;

(2) the licensor has reason to know the damages of the type described in subsection (f) may result from the wrongful use of electronic self-help; or

(3) the licensor does not provide the notice required in subsection (d).

(f) Even if the licensor complies with subsections (c) and (d), electronic self-help may not be used if the licensor has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons not involved in the dispute.

(g) A court of competent jurisdiction of this State shall give prompt consideration to a petition for injunctive relief and may enjoin, temporarily or permanently, the licensor from exercising electronic self-help even if authorized by a license term or enjoin the licensee from misappropriation or misuse of computer information, as may be appropriate, upon consideration of the following:

(1) grave harm of the kinds stated in subsection (f), or the threat thereof, whether or not the licensor has reason to know of those circumstances;

(2) irreparable harm or threat of irreparable harm to the licensee or licensor;

(3) that the party seeking the relief is more likely than not to succeed under its claim when it is finally adjudicated;

(4) that all of the conditions to entitle a person to the relief under the laws of this State have been fulfilled; and

(5) that the party that may be adversely affected is adequately protected against loss, including a loss because of misappropriation or misuse of computer information, that it may suffer because the relief is granted under this [Act].

(h) Before breach of contract, rights or obligations under this section may not be waived or varied by an agreement, but the parties may prohibit use of electronic self-help, and the parties, in the term referred to in subsection (c), may specify additional provisions more favorable to the licensee.

(i) This section does not apply if the licensor obtains possession of a copy without a breach of the peace and the electronic self-help is used solely with respect to that copy.

SECTION 905. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.
The provisions of this [Act] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (____ U.S.C.____), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.
AMENDMENTS TO SECTIONS 605 AND 816 OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AS APPROVED BY THE EXECUTIVE COMMITTEE OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS PURSUANT TO SECTION 4.3(3) OF ITS CONSTITUTION AT ITS MIDYEAR MEETING IN SAVANNAH, GEORGIA, JANUARY 13th and 14th, 2001 and REVIEWED AND MODIFIED BY THE COMMITTEE ON STYLE OF THE NATIONAL CONFERENCE at its MEETING IN SARASOTA FLORIDA, JANUARY 17th-21st, 2001.


Sections 605 and 816 are intended to act in harmony. Section 605(f) was intended to make clear that the procedural limitations and safeguards of Section 816 in the event of a breach cannot be avoided by reliance on Section 605. In the JCOTS (Joint Commission on Technology and Science, Virginia) Study, there was concern that the language might be exploited so as to not accomplish this purpose. Accordingly, changes were made to the definition of “automatic restraint” to clearly state that it “prevents” a breach; and Section 605(f) now states more clearly that in the event of a possible simultaneous breach and prevention of a breach, under (b)(4), Section 816 applies unless the affirmative acts are within (i) and (ii). This change of wording was carefully and extensively examined by all interested groups and the JCOTS staff to accomplish the stated purpose. The acceptance of the amendments will result in substantial added support from retail and financial services industries.

The amendments to Section 816 clarify what is a “wrongful use” of electronic self-help (Section 816(c)); remove an ambiguity as to the two kinds of harm that are prohibited by striking the word “grave” (Section 816(g)(1)); and clarify that the repossession of a tangible copy is permissible without breach of peace or the use of electronic self-help (Section 816(j)). These changes will increase support for U.C.I.T.A.

Amendments to Section 605 of U.C.I.T.A.

SECTION 605. ELECTRONIC REGULATION OF PERFORMANCE.

(a) In this section, “automatic restraint” means a program, code, device, or similar electronic or physical limitation the intended purpose of which is to restrict use of information contrary to the contract or applicable law.

(b) A party entitled to enforce a limitation on use of information may include an automatic restraint in the information or a copy of it and use that restraint if:

(1) a term of the agreement authorizes use of the restraint;

(2) the restraint prevents a use that is inconsistent with the agreement;

(3) the restraint prevents use after expiration of the stated duration of the contract or a stated number of uses; or

(4) the restraint prevents use after the contract terminates, other than on expiration of a stated duration or number of uses, and the licensor gives reasonable notice to the licensee before further use is prevented.

(c) This section does not authorize an automatic restraint that affirmatively prevents or makes impracticable a licensee’s access to its own information or information of a third party, other than the licensor, if that information is in the possession of the licensee or a third party and accessed without use of the licensor’s information or informational rights.

(d) A party that includes or uses an automatic restraint consistent with subsection (b) or (c) is not liable for any loss caused by the use of the restraint.

(e) This section does not preclude electronic replacement or disabling of an earlier copy of information by the licensor in connection with delivery of a new copy or version under an agreement to replace or disable the earlier copy by electronic means with an upgrade or other new information.

(f) This section does not authorize use of an automatic restraint to enforce remedies in the event because of breach of contract or of for cancellation for breach. If a right to cancel for breach of contract and a
right to exercise a restraint under subsection (b)(4) exist simultaneously, any affirmative acts constituting electronic self-help may only be taken under Section 816, including the prohibition on mass-market transactions, instead of this section. Affirmative acts under this subsection do not include:

(1) use of a program, code, device or similar electronic or physical limitation that operates automatically without regard to breach; or

(2) a refusal to prevent the operation of a restraint authorized by this section or to reverse its effect.

Amendments to Section 816 of U.C.I.T.A.

SECTION 816. LIMITATIONS ON ELECTRONIC SELF-HELP

(a) In this section:

(1) “electronic self-help” means the use of electronic means to exercise a licensor’s rights under Section 815(b).

(2) “Wrongful use of electronic self-help” means use of electronic self-help other than in compliance with this section.

(b) On cancellation of a license, electronic self-help is not permitted, except as provided in this section. Electronic self-help is prohibited in mass-market transactions.

(c) If the parties agree to permit electronic self-help, the licensee shall separately manifest assent to a term authorizing use of electronic self-help. In accordance with Section 112(c), a general assent to a license containing a term authorizing use of electronic self-help is not sufficient to manifest assent to the use of electronic self-help. The term must:

(1) provide for notice of exercise as provided in subsection (d);

(2) state the name of the person designated by the licensee to which notice of exercise must be given and the manner in which notice must be given and place to which notice must be sent to that person; and

(3) provide a simple procedure for the licensee to change the designated person or place.

(d) Before resorting to electronic self-help authorized by a term of the license, the licensor shall give notice in a record to the person designated by the licensee stating:

(1) that the licensor intends to resort to electronic self-help as a remedy on or after 15 days following receipt by the licensee of the notice;

(2) the nature of the claimed breach that entitles the licensor to resort to self-help; and

(3) the name, title, and address, including direct telephone number, facsimile number, or e-mail address, to which the licensee may communicate concerning the claimed breach.

(e) A licensee may recover direct and incidental damages caused by wrongful use of electronic self-help. The licensee may also recover consequential damages for wrongful use of electronic self-help, whether or not those damages are excluded by the terms of the license, if:

(1) within the period specified in subsection (d)(1), the licensee gives notice to the licensor’s designated person describing in good faith the general nature and magnitude of damages;

(2) the licensor has reason to know the damages of the type described in subsection (f) may result from the wrongful use of electronic self-help; or

(3) the licensor does not provide the notice required in subsection (d).

(f) Even if the licensor complies with subsections (c) and (d), electronic self-help may not be used if the licensor has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons not involved in the dispute.

(g) A court of competent jurisdiction of this State shall give prompt consideration to a petition for injunctive relief and may enjoin, temporarily or permanently, the licensor from exercising electronic self-help even if authorized by a license term or enjoin the licensee from misappropriation or misuse of computer information, as may be appropriate, upon consideration of the following:

(1) grave harm of the kinds stated in subsection (f), or the threat thereof, whether or not the licensor has reason to know of those circumstances;
(2) irreparable harm or threat of irreparable harm to the licensee or licensor;
(3) that the party seeking the relief is more likely than not to succeed under its claim when it is finally adjudicated;
(4) that all of the conditions to entitle a person to the relief under the laws of this State have been fulfilled; and
(5) that the party that may be adversely affected is adequately protected against loss, including a loss because of misappropriation or misuse of computer information, that it may suffer because the relief is granted under this [Act].

(h) Before breach of contract, rights or obligations under this section may not be waived or varied by an agreement, but the parties may prohibit use of electronic self-help, and the parties, in the term referred to in subsection (c), may specify additional provisions more favorable to the licensee.

(i) This section does not apply if the licensor obtains physical possession of a copy without a breach of the peace and the electronic self-help is used solely with respect to that copy without use of electronic self-help, in which case the lawfully obtained copy may be erased or disabled by electronic means.

Virginia

Virginia originally enacted the Uniform Computer Information Transactions Act (UCITA) as Chapter 101 of 2000 (§ 59.1-501.1 et seq.). It was amended twice in 2001.

Chapter 762 of 2001 amended Virginia’s Uniform Computer Information Transactions Act (UCITA) and the Virginia Consumer Protection Act (VCPA) (§ 59.1-196 et seq.). The law changes UCITA’s references to other laws or rules to other statutes, administrative rules, regulations or procedures where applicable. The bill also changes references to the VCPA to other consumer protection statutes, administrative rules or regulations including, but not limited to, the VCPA. The bill provides that a mass-market license may be transferred if such transfer involves making a gift or donation of a computer along with mass-market software to a public school, a public library, a charity or a consumer. The bill amends the definition of “goods” as used in the VCPA to include “computer information” and “informational rights” as defined in UCITA.

Chapter 763 of 2001 amended Virginia’s UCITA to:
• Clarify the definitions of “electronic agent” and “mass-market transaction;”
• Modify UCITA’s scope over motion pictures and online service providers;
• Clarify the applicability of other statutes, rules and regulations;
• Provide that a contract term that specifies a judicial forum must be expressly stated, and in a mass-market transaction, such contract term must be expressly and conspicuously stated;
• Modify the terms of mass-market licenses; create a special rule for using standard form licenses with nonprofit libraries, archives, and educational institutions;
• Modify the terms governing transferability;
• Clarify the definition of automatic restraint; and
• Modify the restrictions on use of electronic self-help.
Utilization of Unused Prescriptions

This Act directs the state board of health, the state board of pharmacy and the state health commission to jointly develop and implement a pilot program through which unused prescription drugs, other than opiates, can be transferred from nursing facilities to pharmacies operated by city-county health departments or county pharmacies for the purpose of distributing the medication to state residents who are medically indigent. Medically indigent people are those who have no health insurance or who lack reasonable means to purchase prescribed medications.

The Act also:

- Authorizes residents of a nursing facility, or the representative or guardian of a resident, to donate unused non-opiate prescription medications for dispensation to medically indigent people;
- Makes an exception to provisions of the pharmacist licensure laws that prohibit pharmacists from selling, bartering, or giving away unused medications for participation in the program;
- Provides liability protection for physicians, pharmacists, and other health care professionals for participation in the program when acting within the scope of practice of their license and in good faith compliance with the rules promulgated pursuant to the Act;
- Requires that the rules promulgated to implement the program provide for:
  1. A formulary for the medications to be distributed pursuant to the program,
  2. The protection of the privacy of the individual for whom the medication was originally prescribed,
  3. The integrity and safe storage and safe transfer of the medication, which may include limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose or which remain in intact packaging, and
  4. The tracking of and accountability for the medications; and
- Requires the state board of health, the state board of pharmacy, the state health commission, the state board of medical licensure and supervision, and the state board of osteopathic examiners to review and evaluate the program no later than 18 months after its implementation and report any recommendations to the governor and the Legislature.

Submitted as:
Oklahoma
HB1297 (enrolled version)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Utilization of Unused Prescription Medications Act.”

Section 2. [Pilot Program.]
(A) The [State Board of Health], the [State Board of Pharmacy] and the [State Health Care Authority] shall jointly develop and implement a pilot program consistent with public health and safety through which unused prescription drugs, other than prescription drugs defined as controlled dangerous substances by [insert citation], may be transferred from nursing facilities to pharmacies operated by city-county health departments or county pharmacies for the purpose of distributing the medication to residents of this state who are medically indigent.

(B) The [State Board of Health], the [State Board of Pharmacy], the [State Health Care Authority], the [State Board of Medical Licensure and Supervision], and the [State Board of Osteopathic Examiners]
shall review and evaluate the program no later than [eighteen (18)] months after its implementation and shall submit a report and any recommendations to the [Governor], the [Speaker of the House of Representatives], the [President Pro Tempore of the Senate], and the [Chairs] of the appropriate legislative committees.

(C) The [State Board of Health], the [State Board of Pharmacy] and the [State Health Care Authority] shall promulgate rules and establish procedures necessary to implement the program established by this section. The rules and procedures shall provide:

1. For a formulary for the medications to be distributed pursuant to the program;
2. For the protection of the privacy of the individual for whom the medication was originally prescribed;
3. For the integrity and safe storage and safe transfer of the medication, which may include but shall not be limited to limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose or which remain in intact packaging;
4. For the tracking of and accountability for the medications; and
5. For other matters necessary for the implementation of the program.

(D) In accordance with the rules and procedures of a program established pursuant to this section, the resident of a nursing facility, or the representative or guardian of a resident may donate unused prescription medications, other than prescription drugs defined as controlled dangerous substances by [insert citation], for dispensation to medically indigent people.

(E) Physicians, pharmacists and other health care professionals shall not be subject to liability for participation in the program established by this Act when acting within the scope of practice of their license and in good faith compliance with the rules promulgated pursuant to the Utilization of Unused Prescription Medications Act.

(F) For purposes of this section, “medically indigent” means a person who has no health insurance or who otherwise lacks reasonable means to purchase prescribed medications.

Section 3. [Penalties.] It shall be unlawful for any person, firm or corporation to sell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except through a program pursuant to the Utilization of Unused Prescription Medications Act or as otherwise provided by the State Board of Pharmacy or except as permitted by [insert citation].

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

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

Section 6. [Effective Date.] [Insert effective date.]
Voluntary Statewide Child Identification Program

This Act directs the state Transportation Cabinet to implement a program to issue identification cards to children ages 2 to 15. The draft also requires that descriptive information about children who get such ID cards will be stored in the state’s driver’s license identification system. Under the Act, the information in that system can then be used by the state missing persons clearinghouse and other public agencies to help identify or locate a missing child.

Submitted as:
Kentucky
HB 106, Section 1, (6)
Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.]
(1) The [Transportation Cabinet] shall implement a voluntary statewide child identification program. The program shall issue a color photo nondriver’s identification card to a child [two (2)] to [fifteen (15)] years of age.
(2) The application for a child identification card shall be accompanied by a Social Security card and a birth certificate for the child, or other proof of the child’s date of birth.
(3) The card shall contain the child’s name and the toll-free number of the state [Missing Person Clearinghouse] and the [State Police]. The card shall not contain the child’s Social Security number.
(4) The [cabinet] shall set a [four (4)] dollar fee for the child identification card. [Two (2)] dollars of the fee shall be used to cover the [cabinet’s] cost for equipment and supplies. [Two dollars (2)] dollars of the fee shall be an administrative fee of the [circuit clerk] for issuing the card which shall be deposited by the [Administrative Office of the Courts] into a trust and agency account for the [circuit clerks] and used for the purposes of hiring additional [deputy clerks] and providing salary adjustments to [deputy clerks].
(5) The card shall expire every [four (4)] years on the child’s birthday. Within the time period that the child identification card is valid, the card may be updated with a new photograph and information. The fee for an updated card shall be [four dollars ($4)], with [two dollars ($2)] of the fee going to the [cabinet] and [two dollars (2)] dollars going to the [Administrative Office of the Courts] in the same manner as the fee for an initial card as described in this subsection.
(6) The descriptive data and a photo image of the child shall be stored in the state [Driver's License Information System] and may be retrieved and used by public agencies subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. sec. 2721, and may also be used by the state [Missing Persons Clearinghouse].

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

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

Section 4. [Effective Date.] [Insert effective date.]
World Language Institute

This Act establishes a World Language Instruction Committee in the state department of education. The committee is to develop a plan to provide state public school pupils with opportunities for instruction in a wide variety of world languages, including instruction in a world language provided by a qualified entity other than the school district. The committee is to consider and include proposals in the plan regarding, but not limited to, the following items:

- The identification of statewide proficiency standards for world languages;
- The use of other programs currently in operation in other states;
- Procedures for use by a local school district in working with another entity desiring to provide instruction in a world language to a resident pupil of that district;
- Identification of the cost elements of the plan for the state and local districts, and
- Implementation of the plan as a statewide or a pilot program.

The committee is to issue its plan to the state board of education not later than eight months after the Act’s effective date.

Under the Act, a public high school student who wishes to take a world language course not offered in the resident public school district may complete and receive credit toward high school graduation for a world language course offered by a religious organization or any other non-public school organization or entity. However, in order to receive credit for the course, the pupil must meet local district proficiency requirements.

Submitted as:
New Jersey
Chapter 203 of 2001

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning Opportunities for World Language Instruction and Credit Toward High School Graduation Requirements for Certain World Language Courses.”

Section 2. [Legislative Findings.] The [Legislature] finds and declares that:

(A) There are many ethnic groups and different world languages used by people living in this state to describe, interpret and give meaning to their world.
(B) We live in a world that is increasingly interdependent creating the need for educated citizens who are multilingual and who have multicultural sensitivities.
(C) People who engage in commerce in this state are finding that their markets are no longer limited to an area where one language is predominant, but that markets in this state and in the United States and in many different parts of the world require the use of different world languages and an understanding of the cultures of which those languages are an integral part to effectively carry out commercial transactions.
(D) In such a world it is important to provide a variety of opportunities for public school pupils to learn different languages and to provide recognition, including credit toward a high school diploma, for those pupils who take advantage of these opportunities.
(E) The resources of local school districts are limited and, as such, it is not practicable to expect local school districts to develop and teach the variety of world languages in which local community groups may wish their children and youth to receive instruction.
(F) Many of these local community groups are well equipped to provide instruction in a world language and the culture that forms, shapes and provides meaning for that world language.

(G) It is therefore in the interest of the people of this state that the [department of education] establish a committee to develop a plan which would provide students in the public schools the opportunity to receive instruction in and graduation credit for a world language not taught in the public school district.

Section 3. [World Language Instruction Committee Created.]

(A) There is created in the [state department of education] the World Language Instruction Committee. The committee shall consist of [fifteen (15)] members selected as follows: the [commissioner of education] or the [commissioner’s designee]; [two (2)] members to be appointed by the [President of the Senate], who shall not be of the same political party; [two (2)] members to be appointed by the Speaker of the House, who shall not be of the same political party; [seven (7)] public members appointed by the [Governor], [three (3)] of whom shall be from the higher education academic community with experience in world language instruction; and [one (1)] member each from the [state education association]; the [state principals and supervisors association]; and the [state school boards association].

(B) All appointments shall be made within [thirty (30)] days after the effective date of this Act. Vacancies in the membership of the committee shall be filled in the same manner as the original appointments were made. Members of the committee shall serve without compensation.

(C) The [commissioner of education] or the [commissioner’s designee], shall serve as the committee’s chair and shall convene the committee within [thirty (30)] days after the appointment of its members. The committee shall select a vice-chair from among its members and a secretary who need not be a member of the committee.

Section 4. [Instruction Plan about World Languages.]

(A) The committee shall develop a plan that provides public school pupils with opportunities for instruction in a wide variety of world languages, including instruction in world languages provided by qualified entities other than school districts. The committee shall consider and include proposals in the plan regarding, but not limited to, the following items:

1. The identification of statewide proficiency standards for world languages;
2. The use of other world language programs currently in operation in other states;
3. Procedures for use by a local school district in working with another entity desiring to provide instruction in a world language to a resident pupil of that district;
4. Identification of the cost elements of the plan for the state and local districts, and
5. Implementation of the plan as a statewide or a pilot program.

(B) The committee may meet and hold hearings at the place or places it designates and shall issue its plan to the [state board of education] not later than [eight (8)] months after the effective date of this Act.

Section 5. [Committee Staff:] Staff and related support services shall be provided to the committee by the [state department of education]. The committee shall also be entitled to call to its assistance and avail itself of the services of the employees of any state, county or municipal board, bureau, commission or agency as it may require and as may be available to it for its purposes. The committee may meet and hold hearings at the place or places it designates and

Section 6. [Credit for World Language Courses not Offered by Public Schools.] A pupil who is enrolled in a public high school within the state who wishes to take a world language course not offered in the resident public school district may complete and receive credit toward high school graduation for a world language course offered by a religious organization or any other nonpublic school organization or entity. In order to receive credit for the course, the pupil shall meet local district proficiency requirements.

Section 7. [Severability.] [Insert severability clause.]
Section 8. [Repealer.] [Insert repealer clause.]

Section 9. [Effective Date.] [Insert effective date.]
Federal Mandates for State Action

Federal mandates are traditionally described as actions by the federal government to force states to do something or preempt 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 $58 million or more (adjusted annually for inflation) in unfunded annual costs to the states is officially considered a mandate. 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. Readers can obtain CBO “Cost Estimates” for federal legislation at www.cbo.gov.

107th Congress-Second Session

The second session of the 107th Congress began on January 23rd, 2002 and is expected to conclude before the 2002 Thanksgiving holiday. At the time this Note was written, only 23 bills had been enacted into law. Thus, this Note, and the following table, highlight legislation from this session that has or may result in an unfunded mandate on the states or preempt state authority.

In addition, the Congressional Budget Office expects to complete by January 2003 “A Review of CBO’s Activities in 2002 Under the Unfunded Mandates Reform Act.” Interested readers can contact The Council of State Governments’ Washington, D.C. office at (202) 624-5460 to get a copy of that review.

“Homeland Security Act of 2002” (H.R. 5005)

Just days before its 2002 August recess, the House of Representatives passed H.R. 5005, the “Homeland Security Act,” by a vote of 296-132. This legislation establishes a new Department of Homeland Security that will merge the operations of 22 federal agencies and employ over 170,000 people. The Senate is expected to consider H.R. 5005 and two other pieces of related legislation in September 2002.

H.R. 5005 contains intergovernmental mandates as defined in the UMRA, but the CBO estimates that the costs to comply with the mandates would not exceed the current $58 million UMRA threshold. For example, H.R. 5005 requires owners and operators of U.S. airports to provide notice to the Under Secretary of Homeland Security, by December 31, 2002, if they are unable to accommodate systems that detect explosives. Under current law, explosive detection systems must be installed by December 31, 2002. In addition, the bill could preempt state jurisdiction over certain liability cases. The bill contains no new private-sector mandates as defined in UMRA.


This bill reauthorizes the Temporary Assistance for Needy Families (TANF) program and provides $16 billion in block grants to the states. H.R. 4737 passed the House of Representatives on May 16, 2002 by a vote of 229-197. An amended version of the bill passed the Senate Finance Committee on July 25, 2002. Subsequently, H.R. 4737 was placed on the Senate Legislative Calendar.

The CBO believes that H.R. 4737 probably would impose intergovernmental mandates, as defined in the UMRA, on states because it is likely that not all states could offset the costs of the Act's changes to the child support enforcement program. The costs of the mandates would depend on the degree to which states would be able to alter their responsibilities within the child support enforcement program and to compensate for the loss of receipts as a result of the Act. In total, states would face losses ranging from $73 million in
2007 to $90 million in 2011. To the extent that states are able to alter their programmatic responsibilities and offset some of these costs, the aggregate amounts may be lower than the threshold established in UMRA ($65 million in 2007, as adjusted for inflation).

Other provisions of the Act would significantly affect the way states administer their TANF and Medicaid programs, but because of the flexibility in those programs, the new requirements would not be intergovernmental mandates as defined in UMRA. In general, state, local, and tribal governments would benefit from the continuation of existing grants in TANF, the creation of new grant programs, and broader flexibility and options in some areas.

The “Federalized” Driver License

Three pieces of federal legislation currently under review by Congress would “federalize” the driver’s license, and thus, at a minimum, preempt what has historically been state jurisdiction:

“Driver’s License Modernization Act of 2002 (DLMA)” (H.R. 4633)

This bill, introduced by Rep. Jim Moran and Rep. Tom Davis of Virginia, requires that within five years states will implement driver’s license programs with the following requirements:

- Driver’s licenses will become “smart cards” with computer chips that store a variety of information;
- Biometric data to match the license with its owner will be collected;
- States’ participation in national databases will be required;
- Tamper-resistant security features will be incorporated into all license documents, and
- States will adopt and implement procedures for accurately documenting the identity and residence of an individual before issuing a driver’s license.

This legislation directs the Secretary of Transportation to establish necessary standards within six months of its adoption in consultation with the American Association of Motor Vehicle Administrators, the General Services Administration, and the National Institute of Standards and Technology. The bill also authorizes the federal government to appropriate $315 million for grants to states to help offset initial costs of this new system. The bill directs the Secretary of Transportation to set standards but doesn’t require federal funding to pay for new federally imposed requirements.

“Driver’s License Integrity Act of 2002”

Similar to the DLMA, this legislation drafted by Sen. Richard Durbin of Illinois would require:

- Minimum uniform standards for issuance and administration of state-issued driver’s licenses;
- Interstate sharing of driving information for verification with enhanced privacy protection within five years of enactment;
- Enhanced ability for verification and authentication of the driver’s license;
- Prevention of abuse and enhanced penalties for internal fraud;
- Similar state funding allocation, and
- The Secretary of Transportation to develop the minimum set of verification and identification requirements and supervise state implementation.

HR 4043

This legislation, introduced by Rep. Jeff Flake of Arizona, would bar Federal agencies from accepting a state-issued driver’s license for any identification-related purpose unless the state requires licenses issued to nonimmigrant aliens to expire upon the expiration of the aliens’ nonimmigrant visa.
## Other Federal Legislation Concerning Unfunded Mandates & State Preemptions
### 107th Congress, Second Session

<table>
<thead>
<tr>
<th>Bill</th>
<th>Title</th>
<th>Status</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>H.R. 3215</td>
<td>Combating Illegal Gambling Reform and Modernization Act</td>
<td>7/19/2002 Placed on the Union Calendar</td>
<td>Restricts gambling businesses involving interstate or foreign commerce by prohibiting the use of communications facilities to transmit bets or wagers. It imposes both intergovernmental and private-sector mandates. “CBO estimates that the total cost of complying with those intergovernmental mandates, which would be borne primarily by tribal governments, would exceed the established threshold in UMRA ($58 million in 2002, as adjusted for inflation).”</td>
</tr>
<tr>
<td>H.R. 3951</td>
<td>Financial Services Regulatory Relief Act</td>
<td>7/22/2002 Placed on the Union Calendar</td>
<td>Affects the operations of financial institutions and the agencies that regulate them. Contains intergovernmental mandates, but does not exceed the threshold. Also contains costs from private-sector mandates that exceed the threshold ($115 million in 2002).</td>
</tr>
<tr>
<td>H.R. 4090</td>
<td>Personal Responsibility, Work, and Family Promotion Act of 2002</td>
<td>5/14/2002 Placed on the Union Calendar</td>
<td>Reauthorizes Temporary Assistance for Needy Families (TANF) funding at current levels and alters several child support and Social Security Administration programs. It provides states with new authority to run demonstration projects. It contains no intergovernmental nor private-sector mandates but could affect how states administer programs, possibly affecting cost.</td>
</tr>
<tr>
<td>H.R. 4092</td>
<td>Working Toward Independence Act of 2002</td>
<td>5/10/2002 Placed on the Union Calendar</td>
<td>Makes changes to the Temporary Assistance for Needy Families (TANF) program and reauthorize the Child Care and Development Block Grant (CCDBG) Act. It provides states with new authority to run demonstration projects. It contains no intergovernmental nor private-sector mandates but could affect how states administer programs, possibly affecting cost.</td>
</tr>
<tr>
<td>S. 848</td>
<td>Social Security Number Misuse Prevention Act</td>
<td>7/11/2002 Committee on Finance hearings held</td>
<td>Limits the use, display, and sale of Social Security numbers by state, local, or tribal governments. Costs would likely exceed the intergovernmental threshold and possibly exceed the $115 million UMRA private-sector threshold.</td>
</tr>
<tr>
<td>S. 2201</td>
<td>Online Personal Privacy Act</td>
<td>5/17/2002 Ordered to be reported with amendment in the nature of a substitute favorably</td>
<td>Imposes restrictions on the collection of personal information on the Internet. Imposes intergovernmental and private-sector mandates but it is unclear whether or not they would exceed the threshold for either.</td>
</tr>
</tbody>
</table>
Cumulative Index, 1983-2003 (Print Version)

The entries in this index cover topics from the 1983 Suggested State Legislation volume through this 2003 printed edition. 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. Entries after 1995 are usually listed once, however, there are subheadings and cross-references (see and see also entries) for some entries prior to that date.

Academic records, see records management
Acid rain, see conservation and the environment
Adoption, see domestic relations
banking: Lifeline Banking, (1986) 143-44
environment: Senior Environmental Corps Act, (1994) 152-54
transportation: School Bus Service for the Elderly, (1983) 95
see also: state and local government - public pensions
Agriculture
farm credit: Agricultural Linked Deposit Act (Statement), (1988) 192; Farm Mediation and Arbitration Program Act, (1989) 165-68
licenses and licensing: (1986) 198-203; State Grain Insurance Act (Statement), (1988) 282
research: Field Crop Products: Civil Liability, (2001) 28
see also: conservation and the environment; labor - migrant workers
Air pollution, see conservation and the environment
Alcohol, see drugs and alcohol; consumer protection
Art, see business and commerce - copyright; culture, the arts and recreation
Asbestos, see hazardous material and waste disposal
Assistance for handicapped, see handicapped persons
Atomic energy, see nuclear energy
Auditors, see public finance and taxation – accounting and auditors
Automobiles, see transportation
Ballot, see election
liquidation of closed banks: Model Liquidation Code for Closed, Insured Banks, (1985) 139-43
see also: consumer protection; insurance
Birth certificates, see domestic relations - adoption; records management
Blood donors, see health care
Boats and boating, see transportation
Bonds and notes, see public finance and taxation

The Council of State Governments 184


Community development, see growth management
Community health services, see health care
Comparable worth, see labor - pay equity
Computer crime, see crime and criminals
Conflict of interest, see ethics
Conservation and the environment
acid rain: Acid Precipitation, (1983) 16-17
wetlands: Wetlands Regulation, (1985) 4-12; Freshwater Wetlands Protection Act (Statement), (1989) 1-5

see also: fish and wildlife; hazardous materials and waste; public utilities and public works – water treatment

Construction, building, see housing, land and property


see labor - pay equity
see crime and criminals
see ethics
see fish and wildlife; hazardous materials and waste; public utilities and public works – water treatment
see housing, land and property

The Council of State Governments 186


see also: hazardous materials and waste - household use

Controlled substances, see drugs and alcohol

Copyrights, see business and commerce

Corporate acquisitions, see business and commerce


see also: business and commerce - small business; public finance and taxation

Credit, see consumer protection; crime and criminals

Crime and criminals


Criminal justice and corrections

See also: Criminal justice and corrections; courts; drugs and alcohol

Criminal justice and corrections


Criminal procedure, see criminal justice and corrections

Culture, the arts and recreation


carnival amusement rides: Carnival Amusement Rides Safety and Inspection, (1983) 137-44

historic preservation: State Underwater Antiquities Act, (1988) 266-75


tourism: Travel Promotion Regulation Act, (1988) 69-71

see also: growth management

Deficit financing, see public finance and taxation - public debt

Dentists, see health care

Development, see growth management

Developmental disabilities, see handicapped persons

Disabled persons, see handicapped persons

Disasters, see state and local government - emergency management

Discrimination in employment, see labor

Disease control, see health care

Disposal of waste, see conservation and the environment; hazardous materials and waste
Distressed communities, see growth management - community development

Divorce, see domestic relations


juveniles: Crisis Intervention Unit, (1984) 62-68

marriage: Marital Property, (1985) 79-95

see also: crime and criminals - child abuse and domestic violence; labor - housewives and homemakers

Domestic violence, see crime and criminals - child abuse and domestic violence

Drugs and alcohol

alcoholism: Alcoholism and Drug Addiction Treatment and Support Act, (1990) 118-22

boating: Alcohol Boating Safety, (1986) 131-33


Early release, see criminal justice and correction

Economic development


see also: business and commerce - small business; conservation and the environment; exports; growth management


attendance: Homeless Child Education Act (Statement), (1992) 109

environmental education: Environmental Education Program, (1994) 155-64


see also: public finance and taxation; records management - academic

Elderly, see aged

Elections


Electronic banking, see banks and financial institutions - funds transfer

Emergency management, see state and local government

Employees, see state and local government; labor

Employment, see labor

see also: nuclear energy

Environment, see conservation and the environment

Environmental protection, see conservation and the environment

Equal access, see handicapped persons

Erosion, see conservation and the environment

Ethics, Campaign Finance, Ethics and Lobbying Regulation (Statement), (1992) 90-92

Euthanasia, see health care - right to die

Explosives and fireworks, Paramilitary Training Act, (1983) 128-29

see also: hazardous materials and waste

Exports
development: Export Development Authority and Assistance, (1985)

Family, see domestic relations

Farm credit, see agriculture

Farms, see agriculture

Finance, public, see public finance and taxation

Financial emergencies, local, see public finance and taxation - fiscal crises

Financial institutions, see banks and financial institutions

Firearms, see guns, firearms and other weapons

Firefighters, see hazardous materials - rules and regulations

Fireworks, see explosives and fireworks

Fiscal crises, local, see public finance and taxation

Fish and wildlife: State Fishing Enhancement Act (Statement), (1988) 22


habitat: Fish Habitat Improvement, (1984) 191-97

Flammable liquids, see hazardous materials and waste cleanup - disposal

Food, drug, and cosmetics, see consumer protection - household hazards

Food stamps, see public assistance - welfare

Forestry, see conservation and the environment

Funds transfer, see banks and financial institutions


see also business and commerce - unfair trade practices

Garbage, see conservation and the environment - refuse disposal

Gifted, education of, see education - special

Gold and silver dealers, see business and commerce - small business

Good samaritan laws, see hazardous materials - cleanup; public assistance - food

Governors, see state and local government - executive branch

Growth management

zoning: State Aviation Development Act (Statement), (1988) 194
see also: economic development; housing, land and property; transportation - airports

**Guns, firearms and other weapons**
replica: Replica Firearm Warning Label Act, (1990) 144

**Handicapped, education of**, see education - special

see also: education - special; aged - housing

**Hazardous materials and waste**
see also: conservation and the environment; consumer protection - household hazards; explosives and fireworks

**Health care**
emergency assistance: Emergency Assistance to Homeowners, (1985) 31-34
manufacture: Common Interest Ownership (Statement), (1986) 36
see also: growth management; public finance and taxation; public assistance - housing; aged - housing
see also: banks and financial institutions; crime and criminals
Infrastructure bank, see public finance and taxation
Inspector general, see public finance and taxation
Insurance
Intergovernmental relations:
The Council of State Governments

see also: state and local government

Interstate agreements, see intergovernmental relations - state/state

Inventions, see business and commerce - copyrights and patents

Investments, see banks and financial institutions; public finance and taxation

Itinerant vendors, see public finance and taxation

Judicial branch, see courts

Labor


pay equity: Pay Equity for State Employees, (1985) 147-48


see also: state and local government - employees

Land, see housing, land and property

Land development, see growth management

Land use planning, see growth management - land development

Landfills, see conservation and the environment - refuse disposal and recycling

Landlords and tenants, see housing, land and property

Law and lawyers, see courts; criminal justice and corrections

Law enforcement, see crime and criminals

Legal services, see courts - lawyers

Licensing, enforcement and regulation


see also: agriculture; business and commerce - security guards; health care - hospices; natural resources - mining

Litter, see conservation and the environment - refuse
Livestock, see agriculture

Loans, see banks and financial institutions

Local government, see state and local government

Marital property, see domestic relations - marriage

Marriage, see domestic relations

Migrant workers, see labor

Military, Military Honors Funeral, (2003) 93

Mines and minerals, see natural resources

Missing persons: Missing Persons, (1986) 152


Mortgages: Reverse Annuity Mortgage, (1986) 40-41

see also: housing, land and property

Motor vehicles, see consumer protection; transportation

Native Americans, American Indian Endowed Scholarship Program Act, (1992) 112-14

see also: burial sites

Natural resources
mines and minerals: Uniform Dormant Mineral Interests Act (Note), (1988) 36-37

Negligence, see courts - tort liability and negligence

Noise pollution, see conservation and the environment

Nominations, see elections

Nuclear energy
decommissioning: Decommissioning Nuclear Power Plants, (1983) 52-60

radiation control: Radiation Control, (1983) 27-43

see also: hazardous materials and waste - disposal

Nursing homes, see aged

Ombudsman, see state and local government - public relations

One man-one vote, see elections - reapportionment

Paramilitary training, see guns, firearms and other weapons

Parks, see culture, the arts and recreation

Parole, see criminal justice and corrections

Pay equity, see state and local government

Pensions, see banks and financial institutions; state and local government

Personal property, see housing, land and property

Pest control, see agriculture

Pesticides, see agriculture

Physicians, see health care

Plea bargaining, see criminal justice and corrections - sentencing

Police, see state and local government

Pollution, see conservation and the environment

Pornography, see crime and criminals - child abuse

Postal savings, see banks and financial institutions

Prepaid medical services, see health care - health maintenance organizations

Preschool education, see education

Prevention of retardation, see handicapped persons

Primaries, see elections

Prisons, see criminal justice and corrections

Privacy, see information systems

Probate, see wills

Probation, see criminal justice and corrections

Procurement, see state and local government - purchasing

Product safety, see consumer protection; courts; insurance

Property, see domestic relations - marriage; housing, land and property; public finance and taxation

Prosecutors, see criminal justice and corrections

Protected tenancy, see aged - housing

Public assistance


insurance or security funds: (1986) 187-97, 198-203


see also: courts - public guardians; health care

Public buildings, see housing, land and property

Public debt, see public finance and taxation

Public employees, see state and local government

Public finance and taxation
bonds and notes: Agricultural Land Preservation Act (Statement), (1991) 90-92

fiscal crises: Financially Distressed Municipality Act (Statement), (1988) 193


itinerant vendors: Tax Registration of Itinerant Vendors, (1985) 144-46


taxation (motor vehicles): Weight-Distance Tax, (1987) 79-91

taxation (sales); Sales Tax Relief for Purchasing Personal Computers, (2001) 84; Streamlined Sales Tax System for the 21st Century Model, (2001) 96-97; see also: business and commerce; courts; transportation

Public guardian, see courts

Public utilities and public works: Retail Transmission of Electricity, (1997) 40-6
cable television: Cable Subscriber Privacy Protection Act, (1990) 134-38
see also: communications; conservation and the environment - water pollution; nuclear energy

Purchasing, see state and local government

Radiation, see nuclear energy; state and local government - emergency management

Railroads, see transportation

Rape, see crime and criminals - sexual assault

Real estate, see housing, land and property

Receiverships, see banks and financial institutions - liquidation

see also: domestic relations - adoption

Recreation, see culture, the arts and recreation

Recycling, see conservation and the environment - refuse disposal

Refuse disposal, see conservation and the environment

Relocation assistance, see housing, land and property

Reorganization, governmental, see state and local government

Ridesharing, see state and local government - employees

Right to die, see health care

Roads, see growth management; transportation

Sales practices, see consumer protection

Securities, see banks and financial institutions; public finance and taxation

Senior citizens, see aged

Sewage disposal, see public utilities and public works - water treatment

Sexual assault, see crime and criminals

Shoplifting, see crime and criminals

Smoking laws, see health care

Snowmobiles, see transportation

Solar energy, see energy

Sovereign immunity, see state and local government

Special education, see education

Spouse abuse, see crime and criminals

State bill payments, see state and local government - administration of agencies

State funding, see public finance and taxation - investments

State and local government, Federal Mandates for State Action (Note), (1997); Regulatory Reform Comparative Risk Assessment and Cost/Benefit Analysis,(1997) 63-5
contracts: State Civil Rights Act, (1992) 93-95


pay equity: Pay Equity for State Employees, (1985) 147-49

pensions: Direct Deposit, (1987) 181-83


Urban development, see growth management
Veterans, see health care - treatment
Victims' rights, see criminal justice and correction
Vital statistics, see records management and data collection
Voting, see elections
Waste disposal, see conservation and the environment
Water pollution, see conservation and the environment
Water treatment, see public utilities and public works
Weapons, see guns, firearms and other weapons
Welfare, see public assistance
Wetlands, see conservation and the environment
Wills, see domestic relations - marital property
Work release, see criminal justice and correction
Workers' compensation, see labor
Zoning, see growth management

see also: intergovernmental relations; records management and data collection
State-federal relations, see intergovernmental relations
Statistics, see records management and data collection
Takeover legislation, see business and commerce - corporate acquisitions
Taxation, see public finance and taxation
Telephones, see communications
Television, see communications
Timesharing agreements, see housing, land and property - real estate transactions
Tort liability and negligence, see courts
Tourism, see culture, the arts and recreation
Toxic substances, see hazardous materials and waste
Trade regulation, see business and commerce; consumer protection
Traffic laws, see transportation
Transportation: State Transportation Infrastructure Banks (Note), (1999) 260-261
airports: Small Airport Zoning Regulation and Restriction, (1985) 28-30; State Aviation Development Act (Statement), (1988) 194
electric personal assistive mobility devices: Electric Personal Assistive Mobility Devices, (2003) 49
traffic laws: Highway and Street Intersection Safety Act, (1996) 100-02
see also: insurance - motor vehicles
Unemployment insurance, see labor
Unfair trade practices, see business and commerce
Unions, see labor
Universities, see education