Memorial

This book is dedicated to the memory of Virgil F. Puskarich for his outstanding service on behalf of The Council of State Governments and the Committee on Suggested State Legislation. Virgil was appointed to the Committee in 1985 and served as Committee Vice-Chair from 1999 until his death in December 2003.

“Virgil brought his special flair for perceptive, fair-minded analysis to SSL discussions. We will miss him as a wonderful friend and an invaluable Committee member.”

Senator Pam Redfield, Committee Co-Chair
The Council of State Governments, the multibranch association of the states, U.S. territories and commonwealths prepares states for tomorrow, today, by working 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:

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Foreword

The Council of State Governments (CSG) is pleased to bring you the 2004 edition of *Suggested State Legislation*, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this part represents many hours of work by The Council’s Committee on Suggested State Legislation, CSG Policy Task Forces, and CSG staff.

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

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Suggested State Legislation 2004, Volume 63

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Introduction

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

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of Suggested State Legislation.

For 63 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 2004 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 produces 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.

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 [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.]
Agriculture Odor Management

This Act addresses odor management from agriculture (animal) operations. It provides for regulations concerning construction of animal waste facilities in order to manage animal agriculture odor. It also gives first-time violators the opportunity to work through the problem rather than fines.

It is the intent of this Act to manage animal odors when they are generated at a level in excess of those odors normally associated with accepted agricultural practices. It authorizes the state department of agriculture as the lead agency to administer and implement the provisions and to ensure that any requirements imposed upon agricultural operations are cost-effective and economically, environmentally and technologically feasible.

The design and construction of new or modified liquid waste systems are to be done by licensed professional engineers, approved by the director of the department of agriculture and constructed in accordance with the state department of environmental quality standards.

The draft provides opportunities for first-time violators to work with the state department of agriculture to develop and implement odor management plans. It maintains confidentiality of any reports or records, specifies the format for filing complaints, and stipulates penalties for subsequent violations. It also creates an Agriculture Odor Management Fund to provide money for research, grants, and projects dealing with agriculture animal odor.

Submitted as:
Idaho
Title 25, Chapter 3801-3809
Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Agriculture Odor Management Act.”

Section 2. [Legislative Findings.]
(1) The agriculture industry is a vital component of this state’s economy and during the normal course of producing the food and fiber required by this state and our nation, odors are generated. It is the intent of the [legislature] to manage these odors when they are generated at a level in excess of those odors normally associated with accepted agricultural practices in this state.

(2) The [state department of agriculture] is hereby authorized as the lead agency to administer and implement the provisions of this Act. In carrying out the provisions of this Act, [the department] will make reasonable efforts to ensure that any requirements imposed upon agricultural operations are cost-effective and economically, environmentally, and technologically feasible.

Section 3. [Authority and Duties of the Director Concerning Odors from Agricultural Operations.] The [director of the department of agriculture] is authorized to regulate odors from agricultural operations. In order to carry out its duties pursuant to the provisions of this Act, the
Section 4. [Definitions.] When used in this Act:

(1) “Accepted agricultural practices” means those management practices normally associated with agriculture, and which should include management practices intended to control odor generated by an agricultural operation.

(2) “Agricultural animals” means those animals including, but not limited to, mink, domestic cervidae, horses, and ratites raised for agricultural purposes.

(3) “Agricultural operations” means those operations where livestock or other agricultural animals are raised, or crops are grown, for commercial purposes, not to include those operations set forth within [insert citation].

(4) “Best management practices” means practices, techniques or measures which are determined by the [department] to be a cost-effective and practicable means of managing odors generated on an agricultural operation to a level associated with accepted agricultural practices.

(5) “Department” means the [state department of agriculture].

(6) “Director” means the [director of the state department of agriculture].

(7) “Liquid waste system” means those wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system.

(8) “Livestock” means cattle, sheep, swine and poultry.

(9) “Manure” means animal excrement that may also contain bedding, spilled feed or soil.

(10) “Modified” means structural changes and alterations to the livestock operation which would require increased wastewater storage or containment capacity or such changes which would increase the amount of manure entering wastewater storage containment facilities.

(11) “Nutrient management plan” means a plan prepared in conformance with the nutrient management standard.

(12) “Nutrient management standard” means the 1999 publication by The United States Department Of Agriculture, Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, and all subsequent amendments, additions or other revisions thereto, or other equally protective standard approved by the [director].

(13) “Odor” means the property or quality of a substance that stimulates or is perceived by the sense of smell, or by other means as the department may determine by rule, the standards for which shall be judged on criteria that shall include intensity, duration, frequency, offensiveness, and health risks.

(14) “Odor management plan” means a site-specific plan approved by the [director] to manage odor from an agricultural operation to a level associated with accepted agricultural practices by utilizing best management practices.

(15) “Person” means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties.

(16) “Wastewater” means water containing manure which is generated on a livestock operation.

(17) “Wastewater storage and containment facilities” means wastewater storage ponds, wastewater treatment lagoons and evaporative ponds.
Section 5. [Design and Construction.] All new or modified liquid waste systems shall be
designed by licensed professional engineers, approved by the [director of the department of
agriculture] for compliance with the provisions of this Act, and constructed in accordance with
standards and specifications either approved by the [director for management of odors] or in
accordance with any existing relevant memorandums of understanding with the [state
department of environmental quality], provided however, that all persons shall submit plans and
specifications for new or modified liquid waste systems to the director for approval and shall not
begin construction of a liquid waste system prior to approval of plans and specifications by the
[director]. If construction is commenced prior to receiving necessary approval, the [director]
may order construction activities to be ceased. No material deviation shall be made from the
approved plans and specifications without the prior written approval of the [director]. Within
[thirty (30) days] of completion of construction, alteration or modification of any new or
modified liquid waste system, complete and accurate plans and specifications depicting the
actual construction, alteration or modification performed must be submitted by the operator to
the [director]. If construction does not materially deviate from the plans approved by the
director, a statement to that effect shall be filed by the agricultural operation with the [director].

Section 6. [First-Time Violators, Odor Management Plan, Exceptions.]
(1) If it is determined by the [department] that an agricultural operation, not to include
those operations set forth within [insert citation], is generating odors in excess of levels
associated with accepted agricultural practices, the agricultural operation shall be deemed to
have committed a first-time violation of the provisions of this Act, provided that the agricultural
operation has never been determined by the [department] to have committed a prior violation of
the provisions of this Act. The [department] shall provide the owner or operator of the
agricultural operation with written notice of the violation and an opportunity for a hearing
pursuant to the [state administrative procedure act].
(2) The [department] shall require any agricultural operation determined to have
committed a first-time violation of the provisions of this Act to cooperate with the [department]
and to develop and submit an odor management plan to the [director] for approval.
(3) All odor management plans shall be in writing and signed by the [director of the
department of agriculture] and the owner or operator of the agricultural operation. Odor
management plans shall designate a period of time in which the agricultural operation will be in
full compliance with the plan and shall provide for periodic review by the [department], no less
than annually, for a period of [three (3) years] from the date of the plan. Failure to comply with
the odor management plan shall constitute a subsequent violation of the provisions of this Act.
(4) All approved odor management plans shall be implemented as approved by the
[director].
(5) If, after a reasonable period of time as determined by the [department], an approved
odor management plan does not reduce odor to a level associated with accepted agricultural
practices, the [department] shall review the plan with the owner or operator of the agricultural
operation and adjust the plan to meet the goals of this Act.
(6) Odor management plans shall be designed to work in conjunction with any required
nutrient management plans.
(7) An odor emission caused by an act of God or a mechanical failure shall not constitute
a violation of this Act provided that the agricultural operation from which the odor emission is
emanating takes reasonable steps to promptly repair the cause of the emission.

Section 7. [Inspections -- Records Confidential.] The [director or his designee] is
authorized to enter and inspect any agricultural operation and have access to or copy any facility
records deemed necessary to ensure compliance with the provisions of this Act or required odor
management plans. Prior to conducting an investigation, the [department] shall notify the board
of county commissioners for the county in which the agricultural operation is located and the
board of county commissioners may have a designee accompany the [director or his designee]
during the inspection. All records copied or obtained by the [director or his designee] as a result
of an inspection pursuant to this section shall be confidential private records and shall be exempt
from disclosure under [insert citation] except:

(1) Records otherwise deemed to be public records not exempt from disclosure pursuant
to [insert citation]; and

(2) Inspection reports, determinations of compliance or noncompliance and all other
records created by the [director or his designee] pursuant to this section.

Section 8. [Complaints.] The [department] shall respond to all odor complaints lodged
against agriculture operations. A complaint must include the name, address and telephone
number of the complainant. The response of the [department] may be limited to informing the
complainant that an odor plan is being implemented. Complaints pursuant to this section are a
public record open to public inspection and copying pursuant to [insert citation].

Section 9. [Subsequent Violations -- Penalties.]

(1) An agricultural operation, after having been determined to have committed a first-
time violation of the provisions of this Act, shall be deemed to have committed a subsequent
violation if the operation:

(a) Is determined by the [department] to have committed a subsequent violation
within a [three (3) year] period of time; or

(b) Failed to comply with an odor management plan developed pursuant to
[insert citation].

(2) An agricultural operation, after having been determined to have committed a first-
time violation of the provisions of this Act, may be deemed to have committed a subsequent
violation if the [director] determines that the operation has failed to cooperate by failing to
submit an acceptable odor management plan.

(3) Those agricultural operations determined to have committed a subsequent violation
of this Act shall be assessed a civil penalty by the [department] or its duly authorized agent not
to exceed [ten thousand dollars ($10,000)] for each offense and be liable for reasonable
attorney’s fees and costs.

(4) Assessment of a civil penalty as provided herein may be made in conjunction with
any other [department] administrative action and shall be based on the severity of the offense
and the degree of cooperation with the [department].

(5) No civil penalty may be imposed unless the person charged was given notice and
opportunity for a hearing pursuant to the [state administrative procedure act].

(6) If the [department] is unable to collect the civil penalty or if any person fails to pay
all or a set portion of a civil penalty as determined by the [department], the [department] may
recover such amount by action in the appropriate court.

(7) Any person against whom the [department] has assessed a civil penalty under this
section may, within [thirty (30) days] of the final action making the assessment, appeal the
assessment to the [district court of the county in which the violation is alleged] by the
[department] to have occurred.

(8) Money collected for violations shall be deposited in the [state treasury] and credited
to the [general fund].
(9) The imposition or computation of monetary penalties shall take into account the seriousness of the violation, and such other matters as justice requires. The [director] shall prepare a written report setting forth the basis upon which any monetary penalty is imposed and/or computed and shall retain the report on file with the [department].

Section 10. [Agriculture Odor Management Fund.] There is hereby created in the [state treasury] a fund to be known as the [Agriculture Odor Management Fund], which shall consist of all money that may be appropriated to it by the [legislature] or made available to it from federal, private or other sources. The [department] may expend such amounts as are appropriated by the [legislature] from the fund for research, grants, projects, programs or other expenditures.

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

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

Section 13. [Effective Date.] [Insert effective date.]
Biodiesel Fuel

This Act establishes regulations for selling biodiesel fuel. Biodiesel is a clean-burning fuel made from domestically produced renewable fats and oils such as soybean oil or recycled cooking oils. It is registered as a fuel and fuel additive with the Environmental Protection Agency and meets standards from the California Air Resources Board and American Society for Testing and Materials.

Submitted as:
Arizona
Chapter 104 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 Regulating the Sale of Biodiesel Fuel.”

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

(1) “Biodiesel” means a diesel fuel substitute that satisfies all of the following:
   (a) Is produced from nonpetroleum renewable resources if the qualifying volume
       of nonpetroleum renewable resources meets the standards for California diesel fuel as adopted
       by the California Air Resources Board pursuant to 13 California Code of Regulations Sections
       2281 and 2282 in effect on January 1, 2000.
   (b) Meets the registration requirement for fuels and additives established by the
       Environmental Protection Agency pursuant to Section 211 of the Clean Air Act.
   (c) The use of the diesel fuel substitute complies with the requirements listed in
       10 Code of Federal Regulations Part 490, as printed in the Federal Register, Volume 64,
       Number 96, May 19, 1999.
   (d) Is sold, offered or exposed for sale as a neat product or blended with diesel
       fuel.

(2) “Department” means the [state department of weights and measures].

(3) “Diesel” means a refined middle distillate for use as a fuel in a compression-ignition
    internal combustion engine.

(4) “Director” means the [director of the department of weights and measures].

(5) “Person” means both the plural and the singular, as the case demands, and includes
    individuals, partnerships, corporations, companies, societies and associations.

Section 3. [Prohibitions Against Selling Biodiesel Fuel.]

(1) A person shall not sell or offer or expose for sale biodiesel that is not tested or does
    not meet the specifications established by the American Society for Testing and Materials
    (ASTM) D6751 or any blend of biodiesel and diesel fuel that is not tested or does not meet the
    specifications established by ASTM D975 and that contains sulfur in excess of [five hundred
    parts per million] for use in areas as defined in [insert citation].

(2) A person that blends biodiesel that is intended as a final product for the fueling of
    motor vehicles shall report to the [director] by the [fifteenth day of each month] the quantity and
quality of biodiesel shipped to or produced in this state during the preceding month. A person who supplies biodiesel subject to this subsection shall report the following by batch:

(a) The percentage of biodiesel in a final blend.
(b) The volume of the finished product.
(c) For neat biodiesel, the results of analysis for those parameters established by ASTM D6751.
(d) For biodiesel blended with any diesel fuel, the results of the analysis of the following motor fuel parameters as established by ASTM D975:
   (I) Sulfur content.
   (II) Aromatic hydrocarbon content.
   (III) Cetane number.
   (IV) Specific gravity.
   (V) American Petroleum Institute Gravity.
   (VI) The temperatures at which ten per cent, fifty per cent and ninety per cent of the diesel fuel boiled off during distillation.

(3) The report required by subsection 2 of this section shall be on a form prescribed by the [director] and shall contain a certification of truthfulness and accuracy of the data submitted and a statement of the supplier's consent permitting the [department] or its authorized agent to collect samples and access records as provided in rules adopted by the [department]. A corporate officer who is responsible for operations at the facility that produces or ships the final product shall sign the report.

(4) A person shall label dispensers at which biodiesel is dispensed in such a manner as to notify other persons of the volume percentage of biodiesel in the finished product.
Campus Sex Offender Registration

This Act requires registered sex offenders to re-register if they become employed by, enrolled in, or volunteer at an institution of postsecondary education, or if they are employed or volunteering at an institution of postsecondary education and change jobs or the location at which they are employed or volunteer at an institution of postsecondary education.

The law directs the state bureau of investigation to develop and distribute standardized registration forms to various state and local agencies. It directs the state bureau of investigation to develop a database identifying everyone who is required to register under the Act and who volunteers at or are employed or enrolled at an institution of postsecondary education. It makes the database available to all law enforcement agencies that have an institution of postsecondary education in their jurisdiction. It also requires each institution of postsecondary education to provide a statement to its campus community concerning where the campus sex offender registration information may be obtained.

Submitted as:
Colorado
Chapter 299 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 Concerning Sex Offender Registration in Relation to People Associated with Institutions of Postsecondary Education.”

Section 2. [Registration: Procedure, Frequency, Place, Change Of Address.]
(1) Anyone who is required to register pursuant to [insert citation] shall also be required to register each time such person:
   (A) Becomes employed or changes employment or employment location, if employed by an institution of postsecondary education;
   (B) Enrolls or changes enrollment in an institution of postsecondary education, or changes the location of enrollment; or
   (C) Volunteers or changes the volunteer work location, if volunteering at an institution of postsecondary education.

Section 3. [Registration Forms.]
(1) The [state bureau of investigation] shall prescribe standardized forms to be used to comply with this Act, and the [state bureau of investigation] shall provide copies of such standardized forms to the courts, probation departments, community corrections programs, the department of corrections, the department of human services, and local law enforcement agencies. Such standardized forms may be provided in electronic form. Such standardized forms shall be used to register people pursuant to this Act and to enable people to cancel registration, as necessary. The standardized forms shall provide that the people required to register pursuant to this Act disclose such information as is required on the standardized forms. The information required on the standardized forms shall include, but need not be limited to:
   (A) The name, date of birth, address, and place of employment of the person required to register, and, if the place of employment is an institution of postsecondary education,
all addresses and locations of the employing institution of postsecondary education at which the
person may be physically located;

(B) If the person is volunteering at an institution of postsecondary education, all
addresses and locations of the volunteering institution of postsecondary education at which the
person may be physically located;

(C) If the person enrolls or is enrolled in an institution of postsecondary
education, all addresses and locations of the institution of postsecondary education at which the
person attends classes or otherwise participates in required activities;

(D) All names used at any time by the person required to register, including both
aliases and legal names;

(E) For any person who is a temporary resident of the state, the person’s address in
his or her state of permanent residence and the person’s place of employment in this state or the
educational institution in which he or she is enrolled in this state, and, if the temporary resident
of the state is enrolled in, employed by, or volunteers at an institution of postsecondary
education, all addresses and locations of the institution of postsecondary education at which the
temporary resident attends classes or otherwise participates in required activities or works or
performs volunteer activities;

(F) The name, address, and location of any institution of postsecondary education
where the person required to register is enrolled;

(G) The name, address, and location of any institution of postsecondary education
where the person required to register volunteers.

Section 4. [Campus Sex Offender Information.] Each institution of postsecondary
education in the state shall provide a statement to its campus community identifying the name
and location at which members of the community may obtain the law enforcement agency
information collected pursuant to this Act, concerning registered sex offenders.

Section 5. [Colorado Sex Offender Registry: Creation, Maintenance, Release of
Information.] The [insert agency] shall develop an interactive database within the sex offender
registry to provide, at a minimum, the following information to all criminal justice agencies in
whose jurisdictions an institution of postsecondary education is located:

(A) Identification of all people who are required to register pursuant to [insert
citation] who volunteer or are employed or enrolled at an institution of postsecondary education
and the institution at which each such person volunteers, is employed, or is enrolled;

(B) Identification of all people who are sexually violent predators who volunteer or
are employed or enrolled at an institution of postsecondary education and the institution at
which each such person volunteers, is employed, or is enrolled.

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

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

Section 8. [Effective Date.] [Insert effective date.]
Campus Sexual Assault Information

This Act:
• Requires institutions of higher learning to develop, publish, and implement policies and practices to promote prevention, awareness, and remedies for campus sexual assault;
• Provides that each institution of higher education must include a statement in their annual security report which advises where law enforcement information may be obtained concerning registered sex offenders, and
• Requires offenders who are enrolled at, employed by, or carrying on a vocation at an institution of higher education to provide notice of a change in status to a law enforcement agency.

Submitted as:
South Carolina
Act 310, 2002
Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Campus Sexual Assault Information Act.”

Section 2. [Legislative Findings.] The serious nature and consequences of sexual assault and the particular problems caused by sexual assault within a campus community prompt the General Assembly to encourage institutions of higher learning to develop, with input from students, faculty, and staff, a comprehensive sexual assault policy to address prevention and awareness of sexual assault and to establish procedures that address campus sexual assaults. The General Assembly further encourages institutions of higher learning to make all reasonable efforts to support a student who is the victim of a sexual assault in a full report of the sexual assault to appropriate law enforcement authorities, including institutional and local police, and to make all reasonable efforts to provide assistance to and to cooperate with the student as the report is investigated and resolved.

Section 3. [Definitions.] As used in Sections 4 through 7 of this Act:
(1) “Campus” means a building or property:
   (a) Owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes;
   (b) Owned or controlled by a student organization recognized by the institution including, but not limited to, fraternity, sorority, and cooperative houses;
   (c) Controlled by the institution but owned by a third party.
(2) “Campus sexual assault” means a sexual assault that occurs on campus.
(3) “Institution of higher learning” or “institution” means a public two-year or four-year college, community or junior college, technical school, or university located in this State, and
also any private two-year or four-year college, community or junior college, technical school, or university located in this State that elects to be governed by Sections 1 through 7 of this Act.

(4) “Student” means an individual who is enrolled in an institution of higher learning on a full-time or part-time basis.

Section 4. [Written Campus Sexual Assault Policy.]

(1) Not later than one hundred twenty days after the effective date of this Act, each institution of higher learning must establish and implement a written campus sexual assault policy regarding at least:

(a) The institution's campus sexual assault programs, aimed at prevention and awareness of sexual assaults; and

(b) The procedures followed by the institution once a sexual assault occurs and is reported.

(2) The policy described in subsection (1) must address at least all the following areas:

(a) Education programs to promote the prevention and awareness of sexual assault;

(b) Possible sanctions following the final determination of an institutional disciplinary procedure regarding a sexual assault;

(c) Procedures a student follows if a sexual assault occurs, including the people to be contacted, the importance of preserving evidence of the criminal sexual assault, and the authorities to whom the alleged offense must be reported;

(d) Procedures for institutional disciplinary action in cases of alleged sexual assault, including a clear statement that both the accuser and the accused:

   (i) Have the same opportunities to have support people or legal counsel, if the institution's policy allows the presence of outside legal counsel, present during an institutional disciplinary proceeding; and

   (ii) Must be informed of the outcome of an institutional disciplinary proceeding brought alleging a sexual assault.

(e) Notification to a student of the right to notify proper law enforcement authorities, including institutional and local police, and of the option to be assisted by representatives of the institution in notifying law enforcement authorities if the student chooses;

(f) Notification of a student of existing medical, advocacy, counseling, mental health, and student services for victims of sexual assault, both on campus and in the community;

(g) Notification of a student of options for, and available assistance in, changing academic and living situations after an alleged campus sexual assault, if requested by the victim and if the changes are reasonably available.

(3) This action does not expand or reduce a private right of action of a person to enforce the provisions of this Act.

(4) Each institution of higher learning must distribute to students, faculty, and staff the written campus sexual assault policy required by this Act by printing the policy in one or more of the institution's publications made widely available to students, such as the institution's catalog, student handbook, or staff handbook. Each institution of higher learning must include on admissions and employment applications a notification that a copy of the institution's campus sexual assault policy is available upon request. In addition, the institution's law enforcement personnel, security personnel, and counseling center must make the written policy available to a student who reports being a victim of a sexual assault involving another student or occurring on campus.
Section 5. [Description of the Jurisdiction, Procedures, and Time Deadlines of Institutional Disciplinary Proceedings.] In addition to the publication required by Section 4 of this Act, each institution of higher learning must make available to all students a description of the jurisdiction, procedures, and time deadlines of institutional disciplinary proceedings.

Section 6. [Model Sexual Assault Policy for Institutions of Higher Learning.] The [[insert agency]] shall develop, print, and distribute a model sexual assault policy for institutions of higher learning, which complies with the requirements herein. The model policy shall be distributed to all institutions of higher learning in the state for their use as a reference in formulating their sexual assault policy.

Section 7. [Campus Sex Crimes Prevention.] Each institution of higher education must include a statement in their annual security report which advises the campus community where law enforcement information concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address. For purposes of this Act, the annual security report means the report published pursuant to Section 485 of the Higher Education Act of 1965 as amended (20 U.S.C. Section 1092(f)). This information must be included in reports beginning in [2003].

Section 8. [Notice of Change in Status.]

(A) For purposes of this section: “employed and carries on a vocation” means employment that is full-time or part-time for a period of time exceeding [fourteen days] or for an aggregate period of time exceeding [thirty days] during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit; and “student” means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, professional institution, or institution of higher education. “Institution of higher education” means any two-year or four-year college, community or junior college, technical school, or university located in this State.

(B) Any person required to register under [insert citation] and who is employed by, enrolled at, or carries on a vocation at an institution of higher education must provide written notice to the [sheriff’s department in the county in which they reside] within [ten days] of each change in enrollment, employment, or vocation status at an institution of higher education in this state.

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

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

Section 11. [Effective Date.] [Insert effective date.]
Certificate of Birth Resulting in Stillbirth

This Act requires the state board of health to issue a “Certificate of Birth Resulting in Stillbirth” for unintended, intrauterine fetal deaths occurring after a gestational period of 20 weeks or more if a parent requests such a certificate. The requesting mother or father may provide a name for the stillborn child on the certificate.

Submitted as:
Virginia
Chapter 537 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as “An Act to Establish a Certificate of Birth Resulting in Stillbirth.”

2 Section 2. [Certificate of Birth Resulting in Stillbirth] Upon the request of either the mother or father on a report of fetal death in the state as defined in [insert citation] the [state registrar] shall issue a “Certificate of Birth Resulting in Stillbirth” for unintended, intrauterine fetal deaths occurring after a gestational period of 20 weeks or more. The requesting mother or father may, but shall not be required to, provide a name for the stillborn child on the “Certificate of Birth Resulting in Stillbirth.” The [state board of health] shall prescribe a reasonable fee to cover the administrative cost and preparation of such certificate. This section shall apply retroactively to any circumstances that would have resulted in the issuance of a “Certificate of Birth Resulting in Stillbirth,” as prescribed by the [state board of health].

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

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

5 Section 5. [Effective Date.] [Insert effective date.]
College Athlete Recruiting Rules

This Act:
- Provides a cause of action against certain people in favor of certain colleges and universities and student athletes for violations of college athletic recruitment rules and regulations;
- Provides for damages, costs, attorney’s fees, and injunctive relief; and
- Provides for certain required disclosures for all student-athletes in high schools in the state.

Submitted as:
Georgia
HB 95 (As passed House and Senate)
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Regulate Recruiting Student-Athletes.”

Section 2. [Definitions.] As used in this Act:
“Immediate family” shall mean a student-athlete’s spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, nephew, niece, aunt, uncle, first cousin, and the spouses and guardians of any such people.
“Person” shall mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, firm, or any other legal or commercial entity.
“Student-athlete” shall mean a student at any public or private institution of postsecondary education in this state or a student residing in this state who has applied, is eligible to apply, or may be eligible to apply in the future to a public or private institution of postsecondary education who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program.

Section 3. [Prohibitions and Exceptions Concerning Gifts to Student-Athletes.]
(a) Except as provided in subsection (b) of this section, no person shall give, offer, promise, or attempt to give any money or other thing of value to a student-athlete or member of a student-athlete’s immediate family:

(1) To induce, encourage, or reward the student-athlete’s application, enrollment, or attendance at a public or private institution of postsecondary education in order to have the athlete participate in intercollegiate sporting events, contests, exhibitions, or programs at that institution; or

(2) To induce, encourage, or reward the student-athlete’s participation in an intercollegiate sporting event, contest, exhibition, or program.

(b) This section shall not apply to:

(1) Any public or private institution of postsecondary education or to any officer or employee of such institution when the institution or officer or employee of such institution is
acting in accordance with an official written policy of such institution which is in compliance
with the bylaws of the National Collegiate Athletic Association;

(2) Any intercollegiate athletic awards approved or administered by the student-
athlete’s institution;

(3) Grants-in-aid or other full or partial scholarships awarded to a student-athlete
or administered by an institution of postsecondary education;

(4) Members of the student-athlete’s immediate family; and

(5) Money or things of value given by a person to a student-athlete or the
immediate family of a student-athlete that do not exceed [\$250.00] in value in the aggregate on
an [annual basis].

(c) Any person that violates the provisions of subsection (a) of this section shall be
guilty of a [misdemeanor of a high and aggravated nature].

Section 4. [Notification of Students.] Each public and private high school in this state
shall advise in writing at the beginning of each sports season each student who participates in
any athletic program sponsored by the school of the provisions of section 3 of this Act and shall
provide each student with information concerning the effect of receiving money or other things
of value on the student’s future eligibility to participate in intercollegiate athletics. The
provisions of this section shall not apply to intermural athletic programs at such schools.

Section 5. [Right of Action.] Each public and private institution of postsecondary
education located in this state that participates or engages in intercollegiate athletics shall have a
right of action against any person who engages in any activity concerning student-athletes that
results in the institution being penalized, disqualified, or suspended from participation in
intercollegiate athletics by a national association for the promotion and regulation of
intercollegiate athletics, by an athletic conference or other sanctioning body, or by reasonable
self-imposed disciplinary action taken by such institution to mitigate sanctions likely to be
imposed by such organizations as a result of such activity. The institution shall be entitled to
recover all damages which are directly related to or which flow from and are reasonably related
to such improper activity and to such penalties, disqualifications, and suspensions. Damages
shall include, but not be limited to, loss of scholarships, loss of television revenue, loss of bowl
revenue, and legal and other fees associated with the investigation of the activity and the
representation of the institution before the sanctioning organizations in connection with the
investigation and resolution of such activity. If the institution is the prevailing party in its cause
of action, it shall be entitled to an award of court costs, costs of litigation, and reasonable
attorney’s fees. The institution may also request and [the court] may enter an injunction against
any person found liable from having any further contact with the institution, its student-athletes,
and student-athletes who have expressed or might express an interest in attending the institution
and from attending athletic contests, exhibitions, games, or other such events in which one or
more of the institution’s student-athletes is participating. The right of action and remedies under
this section are in addition to all other rights of action that may be available to the institution.

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

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

Section 8. [Effective Date.] [Insert effective date.]
Debt Management Services

In 2002, credit card debt in the United States stood at nearly $700 billion and 1.5 million people in the United States filed for bankruptcy. Nearly nine million people in financial trouble contact a credit-counseling agency each year. The National Consumer Law Center released a report declaring the credit counseling industry is in crisis. Complaints about deceptive practices, improper advice, excessive fees and abuse of non-profit status have grown exponentially. For example, The Better Business Bureau of Metropolitan Washington reports that inquiries about this industry went from 2,083 in 2000 to 12,502 in 2002.

The credit counseling and debt management industry has undergone a tremendous transformation in recent years. At no cost, traditional debt management companies meet personally with consumers to educate them about budgeting, the judicious use of credit and offer debt management as a last resort to those on the verge of bankruptcy. The new breed of debt managers use Internet, cable TV and vast phone banks to sign up consumers who may or may not be in financial crisis. These groups charge up-front fees and require “voluntary” contributions for their services. One of the largest new companies, located in Montgomery County, Maryland, has 100,000 clients and processes more than $40 million monthly in payments from its customers.

In 2003, Maryland enacted the Debt Management Act (Chapter 374 of 2003) to reign in an aggressive new breed of debt management companies that operate as 501(c) tax exempt corporations but bear little resemblance to a true mission oriented non-profit organization. Other states have a patchwork of oversight ranging from no regulation to requiring a bond and limiting the fees allowed. The Maryland Debt Management Act goes beyond simple licensing to providing an appropriate level of consumer protection where none existed.

This SSL draft is based on Maryland’s law. The draft addresses four areas related to regulating debt management services; licensing, service, fees, and penalties.

Licensing

With limited exceptions, a person is required to obtain a license from the state before providing “debt management services.” Debt management services means receiving funds periodically from a consumer in order to distribute funds among the consumer’s creditors in full or partial payment of the consumer’s debts.

To qualify for a license, an applicant must be an organization and satisfy the commissioner that each of the applicant’s owners, officers, directors, principals, and agents has sufficient experience, character, financial responsibility, and general fitness to command the confidence of the public.

The president and any other officer, director, principal, or owner of the corporation must provide fingerprints for criminal background checks. Further, any agent acting on behalf of a licensee to manage or with access to a trust account of a consumer, must provide fingerprints for criminal background checks.

An applicant or licensee may be required to maintain general liability or fidelity insurance that insures against dishonesty, fraud, theft, or other malfeasance on part of an employee.

Applicants must post a surety bond of at least $10,000 and up to $350,000, as determined by the state. The surety bond filed must run to the state for the benefit of any consumer who is injured by a violation of the law.

Service Limits
Under the Act, a licensee may not perform debt management services for a consumer or collect a fee until it:
1. Provides the consumer with a consumer education program;
2. Provides the consumer with a financial analysis of, and an initial budget plan for, the consumer’s debt obligations through a debt management counselor certified by an independent organization;
3. Provides the consumer a list of all services available to a consumer and any related fees required;
4. Furnishes the consumer with a written accounting of all funds received and disbursed his behalf at least once per quarter and upon cancellation or termination of the agreement; and
5. Discloses where and to whom any consumer complaints can be lodged both in the executed agreement and on any licensee website.

The consumer has the right to rescind the agreement by giving written notice to the debt management services organization.

Debt management organizations are prohibited from, among other things:
1. Offering incentives of any value to consumers for participating in a debt management plan;
2. Paying a referral fee for acquiring a client receiving a referral fee for referring a client to another for credit services;
3. Executing a plan resulting in negative amortization; or
4. Acquiring a consumer’s debt obligation or extending credit to a consumer.

Fees Limited

Under the Act, fees are limited to $50 for any up-front or consultation fee and a monthly maintenance fee of up to $8 for each of the consumer’s creditors listed in the agreement, up to $40 per month. A licensee may only charge fees as authorized under law. Charging of unauthorized fees, except as a result of an accidental and bona fide error render the agreement void.

Funds collected from or on behalf of a consumer must be deposited in a trust account established for the benefit of consumers within 2 business days of receipt. The licensee must disburse these funds within 8 business days after receipt to the creditors in the plan.

Penalties And Enforcement

Under the Act, unless approved by the state, a licensee may not change an owner, officer, director, or principal of the licensee, or an agent who is acting on behalf of the licensee to manage a trust account of consumer funds, listed on the licensee’s application.

Licensees must preserve books, accounts, and records for 7 years. This requirement also applies to books, accounts, and records in the possession of a subsidiary, affiliate, or other person that relate to the operation of, and services provided by, a licensee’s debt management services business.

The state may deny licensure to an applicant, reprimand a licensee, or suspend or revoke a license for specified activities. The state may also issue cease and desist orders or orders to take affirmative corrective action, including restitution, to violators. Violators who fail to comply with a cease and desist order could be liable for a civil penalty of up to $1,000 for each violation.

A knowing and willful violation is a felony. Violators are subject to a fine of up to $1,000 for the first violation and $5,000 for each subsequent violation and/or five years’ imprisonment.
Submitted as:
Maryland
Chapter 374 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

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

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

“Commissioner” means the state [Commissioner of Financial Regulation].

“Consultation Fee” means a fee paid by a consumer to a debt management services provider in connection with the processing of any application that the consumer makes for debt management services.

“Consumer” means an individual who:

(1) Resides in the state; and

(2) Is seeking debt management services or has entered into a debt management services agreement.

“Consumer Education Program” means a program or plan that seeks to improve the financial literacy of consumers.

“Debt Management Counselor” means a permanent, temporary, or contractual employee of a debt management services provider or its agent who provides counseling to consumers on behalf of the debt management services provider.

“Debt Management Services” means receiving funds periodically from a consumer under an agreement with the consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.

“Debt Management Services Agreement” means a written contract, plan, or agreement between a debt management services provider and a consumer for the performance of debt management services.

“Debt Management Services Provider” means an organization that provides or offers to provide debt management services to a consumer.

“Fund” means the debt management services fund established under section 6 of this Act.

“Licensee” means an organization licensed under this Act to provide debt management services.

“Maintenance Fee” means a fee paid by a consumer to a debt management services provider for the maintenance or servicing of the consumer's accounts with the consumer's creditors in accordance with a debt management services agreement.

“Organization” means a nonprofit organization that is exempt from taxation under § 501(c) of the Internal Revenue Code.

“Resident Agent” means an individual residing in the state or a state corporation whose name, address, and designation as a resident agent are filed or recorded with the [state department of assessments and taxation] in accordance with the provisions of the [insert citation].

“Trust Account” means an account that is:

(1) Established in a financial institution that is federally insured;
(2) Separate from the debt management services provider's operating account;
(3) Designated as a “trust account” or by another appropriate designation indicating that the funds in the account are not the funds of the licensee or its officers, employees, or agents;
(4) Unavailable to creditors of the debt management services provider; and
(5) Used to hold funds paid by consumers to a debt management services provider for disbursement to creditors of the consumers.

Section 3. [Exemptions.] This Act does not apply to the following people when engaged in the regular course of their respective businesses and professions:
(1) An attorney at law;
(2) An escrow agent;
(3) A certified public accountant;
(4) A banking institution, other-state bank, national banking association, credit union, or savings and loan association;
(5) A person that:
   (i) Provides bill payer services, as defined in [insert citation];
   (ii) Does not initiate any contract with individual creditors of the debtor to compromise a debt or arrange a new payment schedule; and
   (iii) Does not provide any debt counseling services;
(6) A person that provides accelerated mortgage payment services, as defined in [insert citation];
(7) An approved servicer, as defined in [insert citation];
(8) A title insurer, title insurance agency, or abstract company; or
(9) A judicial officer or a person acting under a court order;
(10) A person while performing services incidental to the dissolution, winding up, or liquidation of a partnership, corporation, or other business enterprise;
(11) A trade or mercantile association acting in the course of arranging the adjustment of debts with a business establishment; or
(12) A mortgage lender, as defined in [insert citation], that:
   (i) Is licensed by the [commissioner]; and
   (ii) Does not receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.

Section 4. [Rules and Regulations.] To carry out the provisions of this Act, the [commissioner] may:
(1) Adopt rules and regulations;
(2) Enter into cooperative and information sharing agreements with any other federal or state agencies having supervisory responsibility over debt management services businesses; and
(3) Exchange information about a debt management services provider, including information obtained during an examination, with any state or federal agency having authority over the debt management services provider.

Section 5. [Fees.]
(A) The [commissioner] by regulation shall establish:
(1) A fee, not exceeding [$2,000], for the issuance of a license under this Act in an even-numbered year; and

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(2) A fee, not exceeding [$1,000], for the issuance of a license under this Act in an odd-numbered year;

(3) A fee, not exceeding [$2,000], for renewal of a license issued under this Act;

(4) A fee, not exceeding [$100], for each location in the state at which a licensee provides debt management services under this Act, payable at the time of issuance of an initial license and at each renewal of a license; and

(5) A fee, not exceeding [$1,000], for an investigation of an applicant or licensee under this Act.

(B) Any fees charged by the [commissioner] under this Act shall approximate the direct and indirect costs of administering and enforcing this Act.

Section 6. [Debt Management Services Fund.]

(A) There is a [Debt Management Services Fund] that consists of:

(1) All revenue received for the licensing of organizations that provide debt management services under this Act;

(2) Income from investments that the [state treasurer] makes for the [Fund]; and

(3) Except as provided in subsection (G) of this section, any other fee or revenue received by the [commissioner] under this Act.

(B) The purpose of the [Fund] is to pay all the costs and expenses incurred by the [commissioner] that are related to the regulation of the debt management services business under this Act, including:

(1) Expenditures authorized under this Act; and

(2) Any other expense authorized in the [state budget].

(C) (1) The [treasurer] is the custodian of the [Fund]; and

(2) The [treasurer] shall deposit payments received from the [commissioner] into the [Fund].

(D) (1) The [Fund] is a continuing, nonlapsing fund that is not subject to [insert citation], and may not be deemed a part of the [General Fund] of the state.

(2) Unless otherwise provided by law, no part of the [Fund] may revert or be credited to:

   (i) The [General Fund] of the state; or


(E) (1) All the costs and expenses of the [commissioner] relating to the regulation of the debt management services business under this Act shall be included in the [state budget].

(2) Any expenditures from the [Fund] to cover costs and expenses of the [commissioner] may be made only:

   (i) By an appropriation from the [Fund] approved by the [legislature] in the [annual state budget]; or

   (ii) By the [budget amendment procedure] provided for in [insert citation].

(3) If, in any fiscal year, the amount of the revenue collected by the [commissioner] and deposited into the [Fund] exceeds the actual appropriation for the [commissioner] to regulate the debt management services business under this Act, the excess amount shall be carried forward within the [Fund].

(F) The [office of legislative auditors] shall audit the accounts and transactions of the [Fund] under [insert citation].

(G) The [commissioner] shall pay all fines and penalties collected by the [commissioner] under this Act into the [General Fund] of the state.
Section 7. [Providing Debt Management Services.]

(A) A person may not provide debt management services to consumers unless the person:

1. Is licensed by the [commissioner] under this Act; or
2. Is exempt from licensing under this Act.

(B) To qualify for a license, an applicant shall satisfy the [commissioner] that:

1. The applicant is an organization;
2. Each of the owners, officers, directors, and principals of the applicant has sufficient experience, character, financial responsibility, and general fitness to:
   i. Engage in the business of providing debt management services;
   ii. Warrant the belief that the debt management services business will be conducted lawfully, honestly, fairly, and efficiently; and
   iii. Command the confidence of the public;
3. Each agent acting on behalf of the applicant to manage a trust account required under section 14 of this Act has sufficient experience, character, financial responsibility, and general fitness to:
   i. Engage in the business of managing a trust account; and
   ii. Warrant the belief that the management of the trust account will be conducted lawfully, honestly, fairly, and efficiently; and
   iii. Command the confidence of the public; and
4. The applicant has a net worth computed according to generally accepted accounting principles of at least $50,000, plus an additional net worth of $10,000 for each location at which debt management services will be provided to consumers, up to a maximum of $500,000 as provided in subsection (C) of this section.

(C) The [commissioner] may require a net worth of up to $500,000, subject to a consideration of the following:

1. The nature and volume of the business or proposed business of the applicant;
2. The amount, nature, quality, and liquidity of the assets of the applicant;
3. The amount and nature of the liabilities, including contingent liabilities, of the applicant;
4. The history of and prospects for the applicant to earn and retain income;
5. The quality of the operations of the applicant;
6. The quality of the management of the applicant;
7. The nature and quality of the person that has control of the applicant; and
8. Any other factor that the [commissioner] considers relevant.

Section 8. [Licensing.]

(A) To apply for a license, an applicant shall submit to the [commissioner] an application on the form that the [commissioner] provides.

(B) The application shall include:

1. The applicant's name, business address, telephone number, electronic mail address, if any, and website address, if any;
2. The address of each location in the state at which the applicant will provide debt management services;
3. The name and address of each owner, officer, director, and principal of the applicant;
4. The name, address, and telephone number of the applicant's resident agent in the state; and
(5) A description of the ownership interest of any officer, director, agent, or employee of the applicant in any affiliate or subsidiary of the applicant or in any other business entity that provides any service to the applicant or any consumer relating to the applicant's debt management services business;

(6) The name and address of any agent acting on behalf of the applicant to manage a trust account required under section 14 of this Act;

(7) The applicant's federal employer identification number;

(8) A list of any state in which:

(i) The applicant engages in the business of providing debt management services;

(ii) The applicant is registered or licensed to provide debt management services; and

(iii) The applicant's registration or license has been suspended or revoked;

(9) A statement of whether any pending judgment, tax lien, material litigation, or administrative action by any government agency exists against the applicant;

(10) The most recent, unconsolidated financial statement of the applicant that:

(i) Is prepared in accordance with generally accepted accounting principles applied on a consistent basis;

(ii) Includes a certified opinion audit prepared by an independent certified public accountant; and

(iii) Was prepared no more than [12 months] before the date of application;

(11) Evidence of nonprofit status under § 501(c) of the Internal Revenue Code;

(12) If the applicant is a corporation, a detailed description of the applicant's corporate structure, including parent companies, subsidiaries, and affiliates;

(13) The applicant's business credit report;

(14) Evidence of general liability or fidelity insurance that insures against dishonesty, fraud, theft, or other malfeasance on the part of an employee of the applicant;

(15) A description of the applicant's consumer education program that is provided to consumers;

(16) A description of the applicant's financial analysis and initial budget plan, including any form or electronic model, that are used to evaluate the financial condition of consumers;

(17) A copy of the debt management services agreement that the applicant will use in its debt management services business;

(18) A copy of the applicant's plan to ensure that each debt management counselor is certified by an independent organization within [6 months] after the debt management counselor is hired, and that any employee who is a supervisor or manager of a debt management counselor is certified by an independent organization within [3 months] after the employee is hired; and

(19) Any other information that the [commissioner] reasonably requires.

(C) The [commissioner] may refuse an application if it contains erroneous or incomplete information.

(D) With the application, the applicant shall pay to the [commissioner]:

(1) A license fee in the amount established under section 5 of this Act, and

(2) A nonrefundable investigation fee in the amount established under section 5 of this Act.

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(E) With the application, the applicant shall file a surety bond with the [commissioner] as provided in section 11 of this Act.

(F) In connection with an initial application, a renewal application, and at any other time the [commissioner] requests, an applicant or licensee shall provide fingerprints for use by the Federal Bureau of Investigation and the [state criminal justice information system central repository] of the [department of public safety and correctional services] to conduct criminal history records checks.

(G) An applicant or licensee required to provide fingerprints under this section shall pay any processing or other required fee.

(H) If the applicant or licensee is a corporation, the fingerprinting and criminal history records check requirements shall apply to the president and any other officer, director, principal, or owner of the corporation as required by the [commissioner].

(I) The [commissioner] shall require any agent acting on behalf of a licensee to manage a trust account required under section 14 of this Act, and any agent of the licensee who has access to the account, to provide fingerprints for use by the [Federal Bureau Of Investigation] and the [state criminal justice information system central repository] of the [department of public safety and correctional services] to conduct criminal history records checks.

(J) After an applicant for a license files a complete application, files a surety bond, and pays the license and investigation fees required under this Act, the [commissioner] shall investigate the facts relevant to the application to determine if the applicant meets the requirements of this Act.

(K) Unless the [commissioner] notifies an applicant that a different time period is necessary, the [commissioner] shall approve or deny each application for a license within [60 days] after the date on which the complete application is filed, the surety bond is filed, and the fees are paid.

(L) The [commissioner] shall issue a license to any applicant that meets the requirements of this Act.

(M) (1) If an applicant does not meet the requirements of this Act, the [commissioner]:

   (i) Subject to the hearing provisions of section 9 of this Act, shall deny the application;
   (ii) Shall notify the applicant immediately of the denial;
   (iii) Shall refund the license fee; and
   (iv) Shall keep the investigation fee.

   (2) Within [30 days] after the [commissioner] denies an application, the [commissioner] shall state the reasons for the denial in writing and mail them to the applicant at the address listed in the application.

(N) The [commissioner] shall include on each license:

   (1) The name of the licensee;
   (2) The address at which the business is to be conducted; and
   (3) The debt management services license number of the licensee.

(O) A license authorizes the licensee to provide debt management services.

(P) A license may not be transferred, assigned, or pledged.

(Q) (1) If the licensee has an office in the state, the licensee shall prominently display the license in a location that is open to the public and at which the licensee engages in the business of providing debt management services.

   (2) If the licensee does not maintain an office in the state, the licensee shall maintain the license in the licensee's headquarters.
A licensee that offers or provides debt management services through the Internet shall include the following notice on its website:

“The [commissioner of financial regulation] for [state] will accept any questions and complaints from residents regarding (name and license number of the debt management services provider) at [address of commissioner], phone [toll-free number of the commissioner].”

A license issued under this Act expires on [December 31 of each odd-numbered year] unless it is renewed for a [2-year term] as provided in subsection (T) of this section.

On or before [December 1 of the year of expiration], a license may be renewed for a [2-year term] if the licensee:

1. Otherwise is entitled to be licensed;
2. Pays to the [commissioner] the renewal fee established under section 5 of this Act;
3. Files with the [commissioner] a surety bond renewal certificate or a new surety bond required under section 11 of this Act; and
4. Submits to the [commissioner] a renewal application on the form that the [commissioner] requires.

The [commissioner] may determine that licenses issued under this Act shall expire on a staggered basis.

Section 9. [Denying, Reprimanding, Suspending or Revoking Debt Management Services Licenses.]

(A) Except as provided in subsection (C) of this section, and subject to the hearing provisions of section 9 of this Act, the [commissioner] may deny a license to an applicant, reprimand a licensee, or suspend or revoke the license of a licensee if the applicant or licensee:

1. Fraudulently or deceptively obtains or attempts to obtain a license;
2. Fraudulently or deceptively uses a license or debt management services license number;
3. Presents or attempts to present the debt management services license number of another licensee as the applicant's or licensee's debt management services license number;
4.Violates any provision of this Act or any regulation adopted under this Act;
5. Is convicted under the laws of the United States or of any state of:
   (i) A felony; or
   (ii) A misdemeanor that is directly related to the fitness and qualification of the applicant or licensee to engage in the business of providing debt management services;
6. In connection with the provision of debt management services:
   (i) Commits a fraud;
   (ii) Engages in an illegal or dishonest activity;
   (iii) Has engaged or participated in an unsafe or unsound act; or
   (iv) Misrepresents or fails to disclose a material fact to a person entitled to that information;
7. Engages in false, misleading, or deceptive advertising; or
8. Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the applicant or licensee has not been or will not be conducted honestly, fairly, and equitably.

(B) In determining whether to deny a license to an applicant, reprimand a licensee, or suspend or revoke the license of a licensee for a reason listed in subsection (A)(5) of this section, the [commissioner] shall consider:
The nature of the crime;
(2) The relationship of the crime to the activities authorized by the license;
(3) With respect to a felony, the relevance of the conviction to the fitness and qualification of the applicant or licensee to provide debt management services;
(4) The length of time since the conviction; and
(5) The behavior and activities of the applicant or licensee since the conviction.

(C) Subject to the hearing provisions of section 9 of this Act, the [commissioner] shall deny a license to an applicant and suspend or revoke the license of a licensee if the applicant or licensee or an owner, officer, director, or principal of the applicant or licensee has:
(1) Committed a violation of subsection (A) of this section that directly results in property damage or monetary loss by any other person; and
(2) Has not restored the property or money to the person or paid the value of the property to the person.
(D) Before the [commissioner] denies an application for a license under this Act or takes any action under this section of this Act, the [commissioner] shall give the applicant or licensee an opportunity for a hearing.
(E) Notice of the hearing shall be given and the hearing shall be held in accordance with [insert citation].

Section 10. [Surrendering Licenses.]
(A) (1) A licensee may surrender a license by sending to the [commissioner] a written statement that the license is surrendered.
(B) The statement shall provide:
(i) The reason for the license surrender;
(ii) For each consumer for whom the licensee is providing debt management services, the following information:
(a) The name of the consumer;
(b) The total amount of funds held by the licensee for distribution to the consumer’s creditors; and
(c) The name of each creditor of the consumer that is receiving payments from the licensee for debts owed by the consumer to the creditor, and the outstanding balance owed to each creditor.
(C) The surrender of a license does not:
(1) Affect any administrative, civil, or criminal liability of the licensee for acts committed before the license is surrendered;
(2) Affect the surety bond required under section 11 of this Act; or
(3) Entitle the licensee to the return of any fee paid to the [commissioner] under section 5 of this Act.

Section 11. [Surety Bond.]
(A) With the application for a new or renewal license, the applicant or licensee shall file a surety bond or bond renewal certificate with the [commissioner] as provided in this section.
(B) (1) A surety bond filed under this section shall run to the state for the benefit of any consumer who is injured by a violation of this subtitle or a regulation adopted under this Act committed by a licensee or an agent of a licensee, including an agent managing a trust account.
(2) The surety bond shall be:
(i) In an amount not less than [$10,000] and not more than [$350,000], as set by the [commissioner];
(ii) Issued by a bonding, surety, or insurance company that is authorized
to do business in the state; and

(iii) Conditioned so that the licensee and its agent shall comply with all
state and federal laws and regulations governing the business of providing debt management
services.

(3) The liability of a surety:

(i) Is not affected by the insolvency or bankruptcy of the licensee or its
agent or by any misrepresentation, breach of warranty, failure to pay a premium, or other act or
omission of the licensee or its agent; and

(ii) Continues as to all transactions of the licensee, and transactions of its
agent on behalf of the licensee, for no longer than [2 years] after the licensee ceases, for any
reason, to be licensed.

(4) The [commissioner] may allow the amount of the surety bond to be reduced if
the amount of the licensee's outstanding debt management services liabilities in the state is
reduced.

(5) In setting the amount of the surety bond, the [commissioner] shall consider:

(i) The financial condition and business experience of the applicant or
licensee and the agent of the applicant or licensee;

(ii) For an applicant, the projected monthly and annual volume of debt
management services to be provided in the state;

(iii) For a licensee, the average monthly and annual volume of debt
management services provided in the state during the previous [12-month period];

(iv) The potential loss to consumers who remit funds to the applicant or
licensee if the applicant or licensee becomes financially impaired; and

(v) Any other factor the [commissioner] considers appropriate.

(C) If the principal amount of a surety bond is reduced by payment of a claim or
judgment, the licensee shall file with the [commissioner] any new or additional surety bond in
the amount that the [commissioner] sets.

(D) The [commissioner] may waive the surety bond requirement under this section if the
[commissioner] determines that the volume of debt management services provided by the
applicant or licensee does not warrant the need for a surety bond.

(E) A penalty imposed under section 23 of this Act may be paid and collected from the
proceeds of a surety bond required under this section.

Section 12. [Notice of Change in Licensee’s Application.]

(A) (1) A licensee shall give the [commissioner] written notice of any change in the
information required to be included in the licensee's application under section 8(B)(1) and (2) of
this Act within [30 days] before the change is effective.

(2) The licensee shall provide with the notice evidence that, after the change
described in the notice, the licensee will continue to satisfy the surety bond requirement under
section 11 of this Act.

(B) Unless approved by the [commissioner], a licensee may not change an owner, officer,
director, or principal of the licensee, or an agent who is acting on behalf of the licensee to
manage a trust account, listed on the licensee's application under section 8(B)(3) and (6) of this
Act.

(C) (1) To request approval of a proposed change described in subsection (B) of this
section, the licensee shall notify the [commissioner] in writing of the proposed change and
submit any information that the [commissioner] requires.
For a proposed change in owner or agent acting on behalf of the licensee to manage a trust account, the [commissioner] may determine that the filing of a new application for the issuance of a license is warranted.

Unless the [commissioner] notifies the licensee that a different time period is necessary, the [commissioner] shall approve or deny a request for a change described in subsection (B) of this section within [60 days] after the date the [commissioner] receives all information required under paragraph (1) of this subsection.

Section 13. [Consumer Education, Financial Analysis, Budget Plan, List of Participating Creditors, Counseling and Debt Management Services Agreement.]

(A) (1) A licensee may not perform debt management services for a consumer unless:

(i) The licensee provides the consumer with a consumer education program;

(ii) The licensee, through a debt management counselor certified by an independent organization, has:

(a) Prepared a financial analysis of and an initial budget plan for the consumer's debt obligations;

(b) Provided a copy of the financial analysis and the initial budget plan to the consumer; and

(c) Provided to the consumer, for all creditors identified by the consumer, a list of:

(I) The creditors that the licensee reasonably expects to participate in the management of the consumer's debt under the debt management services agreement; and

(II) The creditors that the licensee reasonably expects not to participate in the management of the consumer's debt under the debt management services agreement;

(iii) The licensee and the consumer have executed a debt management services agreement that describes the debt management services to be provided by the licensee to the consumer;

(iv) The licensee has a reasonable expectation based on the licensee's past experience that each creditor of the consumer that is listed as a participating creditor in the consumer's debt management services agreement will accept payment of the consumer's debts owed to the creditor as provided in the consumer's debt management services agreement; and

(v) A copy of the completed debt management services agreement has been provided to the consumer.

(2) (i) A licensee may provide to a consumer the materials required under paragraph (1)(ii) of this subsection using the Internet if:

(a) A debt management counselor of the licensee has reviewed and approved the computer program or application used to create the financial analysis and initial budget plan; and

(b) The consumer is:

(I) Advised of the availability of counseling; and

(II) Afforded the opportunity for counseling and for discussion of the financial analysis and initial budget plan with a debt management counselor at any time.

(ii) [Insert citation] applies to the provision of materials and associated transactions under this paragraph.
(B) Each debt management services agreement shall:

(1) Be signed and dated by the licensee and the consumer; and

(2) Include, in at least 12 point type:

(i) The name, address, and phone number of the consumer;

(ii) The name, address, phone number, and license number of the licensee;

(iii) A description of the debt management services to be provided to the consumer and any fees to be charged to the consumer for the debt management services;

(iv) A disclosure of the existence of the surety bond required under section 11 of this Act;

(v) The name and address of the financial institution in which funds, paid by the consumer to the licensee for disbursement to the consumer's creditors, will be held;

(vi) A notice of the right of a party to the debt management services agreement to rescind the debt management services agreement by giving written notice of rescission to the other party;

(vii) A schedule of payments that the consumer must make to the debt management services provider, including:

(a) The amount of each payment and the date on which each payment is due; and

(b) An itemization of the maintenance fees that will be retained by the debt management services provider, and the amount of money that will be paid to the consumer's creditors, from each payment the consumer makes to the debt management services provider;

(viii) A list of:

(a) Each participating creditor of the consumer to which payments will be made under the debt management services agreement;

(b) The amount owed to each creditor; and

(c) A schedule of payments that the debt management services provider will make to each participating creditor from the consumer's payments, including the amount of each payment and the date on which each payment will be made; and

(d) Each creditor that the licensee reasonably expects not to participate in the management of the consumer's debt under the debt management services agreement;

(ix) A disclosure that the licensee also may receive compensation from the consumer's creditors for providing debt management services to the consumer;

(x) A disclosure that the licensee may not, as a condition of entering into a debt management services agreement, require a consumer to purchase for a fee a counseling session, an educational program, or materials and supplies;

(xi) A disclosure that the licensee may not require a voluntary contribution from a consumer for any service provided by the licensee to the consumer;

(xii) A disclosure that, by executing the debt management services agreement, the consumer authorizes any financial institution in which the licensee has established a trust account for deposit of the consumer's funds to disclose to the [commissioner] any financial records relating to the trust account during the course of any investigation or examination of the licensee by the [commissioner];

(xiii) A disclosure that execution of a debt management services agreement may impact the consumer's credit rating and credit scores; and

(xiv) The following notice:
“The [commissioner of financial regulation] will accept questions and
complaints from residents regarding [name and license number of the debt
management service provider] at [address of the commissioner] phone [toll-free
number of the commissioner]. Do not sign this agreement before you read it.
You must be given a copy of this agreement.”

(C) A debt management services agreement between a consumer and a person that is not
a licensee under this subtitle shall be null and void, and all fees paid to the person under the debt
management services agreement shall be recoverable by the consumer, together with reasonable
attorney's fees.

Section 14. [Trust Accounts.]
(A) Within [2 business days] after receipt, a licensee shall deposit, in a trust account
established for the benefit of consumers, any funds paid to the licensee by or on behalf of a
consumer for disbursement to the consumer's creditors.
(B) A licensee shall:
(1) Maintain separate records of account for each consumer to whom the licensee
is providing debt management services;
(2) Disburse any funds paid by or on behalf of a consumer to the consumer's
creditors within [8 business days] after receipt of the funds; and
(3) (i) Correct any misdirected payments resulting from an error by the licensee;
and
(ii) Reimburse the consumer for any actual fees or other charges imposed by
a creditor as a result of the misdirection.
(C) A licensee may not commingle any trust account established for the benefit of
consumers with any operating accounts of the licensee.

Section 15. [Licensee Fees.]
(A) With respect to the provision of debt management services, a licensee may not
impose any fees or other charges on a consumer, or receive any funds or other payments from a
consumer or another person on behalf of a consumer:
(1) Except as provided in subsections (G)(3) and (I) of this section, until after the
licensee and consumer have executed a debt management services agreement; and
(2) Only as allowed under this section.
(B) (1) A licensee may charge a consultation fee not exceeding [$50].
(2) The cost of a credit report on a consumer shall be paid from the consultation
fee paid by the consumer.
(C) (1) Subject to paragraph (2) of this subsection, a licensee may charge a monthly
maintenance fee not exceeding [$8] for each creditor of a consumer that is listed in the debt
management services agreement between the licensee and the consumer.
(2) The total fees charged to a consumer under paragraph (1) of this subsection
may not exceed [$40] per month.
(D) A licensee may collect from or on behalf of a consumer the funds the consumer has
agreed to pay to the licensee under the debt management services agreement.
(E) A licensee may not charge a fee to:
(1) Prepare a financial analysis or an initial budget plan for the consumer;
(2) Counsel a consumer about debt management;
(3) Provide a consumer with the consumer education program described in the
licensee's license application; or
(4) Rescind a debt management services agreement.
(F) (1) A licensee may not require a voluntary contribution from a consumer for any service provided by the licensee to the consumer.

(2) A licensee may accept a voluntary contribution from a consumer for a debt management service provided by the licensee to the consumer if the aggregate amount of the voluntary contribution and any other fees received by the licensee from the consumer for debt management services does not exceed the total amount the licensee is authorized to charge the consumer under subsections (B) and (C) of this section.

(G) (1) Before providing debt management services to a consumer, a licensee shall provide the consumer a list of services and their charges describing:

(i) Those services that the licensee offers:

(a) Free of charge if the consumer enters into a debt management services agreement with the licensee; and

(b) For a charge if the consumer does not enter into a debt management services agreement with the licensee; and

(ii) Those services that the licensee offers for a charge that are not offered as a part of debt management services.

(2) A licensee may not, as a condition of entering into a debt management services agreement, require a consumer to purchase for a fee a counseling session, an educational program, or materials and supplies.

(3) A licensee may charge a consumer a fee for a counseling session, an educational program, or materials and supplies if the consumer does not enter into a debt management services agreement with the licensee.

(H) (1) In addition to any other right of rescission contained in the debt management services agreement, a consumer may modify or rescind a debt management services agreement if the consumer is notified of a creditor's nonparticipation under this subsection.

(2) If a creditor that is listed as participating in the debt management services agreement declines to participate in debt management services under the agreement, the licensee shall notify the consumer by certified mail, or other verifiable means approved by the consumer, at least [5 business days] before the consumer's next scheduled payment under the agreement.

(3) The notice shall include:

(i) The identity of the creditor; and

(ii) The right of the consumer to modify or rescind the agreement.

(4) A consumer who rescinds a debt management services agreement under this subsection is entitled to a refund of all unexpended funds that the consumer has paid to the licensee for the reduction of the consumer's debt.

(I) If a payment by a consumer under this section to a licensee is dishonored, the licensee may charge the consumer the amount allowable for dishonored checks or other instruments under [insert citation], whether or not the consumer has entered into a debt management services agreement with the licensee.

(J) With respect to the provision of debt management services, if a licensee imposes any fee or other charge or receives any funds or other payments not authorized under this section, except as a result of an accidental and bona fide error:

(1) The debt management services agreement shall be void; and

(2) The licensee shall return the amount of the unauthorized fees, charges, funds, or payments to the consumer.

Section 16. [Licensees: Written Statements.]

(A) A licensee shall provide to each consumer with whom the licensee has a debt management services agreement a written accounting of:
(1) The amount of funds received from the consumer for payment to the
consumer's creditors since the last report; and
(2) The amounts and dates of disbursements made to each creditor of the
consumer since the last report.

(B) A licensee shall provide the accounting required under subsection (A) of this section:
(1) At least [once during each calendar quarter]; and
(2) On cancellation or termination of the debt management services agreement.

Section 17. [Prohibitions: Licensees.]
(A) A licensee may not:
(1) Purchase any debt or obligation of a consumer;
(2) Lend money or provide credit to a consumer;
(3) Obtain a mortgage or other security interest in property owned by a
consumer;
(4) Operate as a collection agency, as defined in [insert citation];
(5) Structure a debt management services agreement in a manner that would
result in a negative amortization of any of the consumer's debts;
(6) Make any false, misleading, or deceptive representations or omissions of
information in connection with the offer, sale, or performance of any service;
(7) Offer, pay, or give a substantial gift, bonus, premium, reward, or other
compensation to a person for referring a prospective customer to the licensee;
(8) Offer an incentive, including a gift, bonus, premium, reward, or other
compensation, to a consumer for executing a debt management services agreement with the
licensee;
(9) Charge for or provide credit insurance; or
(10) Compromise any debts of a consumer unless the licensee has obtained the
prior written approval of the consumer, and the compromise benefits the consumer.

(B) (1) Notwithstanding any other provision of state law, a licensee may not, directly
or indirectly, collect any fee for referring, advising, procuring, arranging, or assisting a
consumer in obtaining any extension of credit or other consumer service from a lender or
service provider if the licensee, or any owner, officer, director, principal, or employee of the
licensee, is an owner, partner, director, officer, or employee of the lender or service provider.
(2) This subsection does not prohibit a licensee from referring, advising,
procuring, arranging, or assisting a consumer in obtaining any extension of credit or other
consumer service from a lender or service provider of which the licensee, or any owner, officer,
director, principal, or employee of the licensee, is an owner, partner, director, officer, or
employee, if:
   (i) The licensee does not directly or indirectly collect any fee; and
   (ii) The consumer is provided with a written disclosure of the
relationship.

Section 18. [Licensee Annual Reports.]
(A) (1) On or before [April 30 of each year], a licensee shall report to the
[commissioner] on the debt management services business of the licensee conducted during the
preceding calendar year.
(2) The annual report shall be on the form that the [commissioner] requires.
(3) The report shall include:
(i) An audited financial statement that is prepared in accordance with generally accepted accounting principles and includes a balance sheet, income statement, statement of changes in fund balances, and statement of cash flow;

(ii) An alphabetical list of all debt management counselors who provided services for the licensee during the previous calendar year;

(iii) The number of consumers for whom the licensee provided debt management services under a debt management services agreement during the preceding calendar year;

(iv) The number of consumers who signed new debt management services agreements with the licensee during the preceding calendar year;

(v) The highest number of consumers for whom the licensee provided debt management services under a debt management services agreement during any month in the preceding calendar year; and

(vi) The amounts paid by consumers to the licensee, both in total and for each month, during the preceding calendar year, broken down by:

   (I) Payments to be disbursed to creditors; and

   (II) Payments for the licensee's services.

(B) (1) Within [15 days] after the occurrence of any of the following events, a licensee shall file a written report with the [commissioner] describing the event and its expected impact on the licensee's activities in the state:

   (i) The filing for bankruptcy or reorganization by the licensee;

   (ii) The institution of a revocation or suspension proceeding against the licensee by a governmental authority that is related to the licensee's debt management services business in any state;

   (iii) A felony indictment or conviction of the licensee, or any of its officers directors, or debt management counselors, that is related to the licensee's debt management services business;

   (iv) The commencement of a civil action by a consumer against the licensee, or its owners, officers, directors, principals, or debt management counselors, that is related to the licensee's debt management services business;

   (v) The filing of any material litigation against the licensee, or its owners, officers, directors, principals, or debt management counselors, that is related to the licensee's debt management services business; and

   (vi) A list of all third-party vendors and other service providers that the licensee used in providing debt management services at any time in the preceding calendar year.

(2) The written report required under paragraph (1) of this subsection shall be sent to the [commissioner] by certified mail, return receipt requested, and include details sufficient to identify the event.

(C) The [commissioner] may require any other reports from a licensee that the [commissioner] considers necessary.

(D) If a licensee fails to make any report required by this subtitle, the [commissioner] may require the licensee to pay a surcharge not exceeding [$50] for each day that the report is overdue.

Section 19. [Licensee Records.]

(A) To enable the [commissioner] to determine compliance with this Act, a licensee shall make and preserve the following books, accounts, and records for a period of at least [7 years]:

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(1) A general ledger containing all assets, liability, capital, income, and expense accounts;
(2) Each debt management services agreement between the licensee and a consumer;
(3) Books and records for each consumer with whom the licensee has a debt management services agreement; and
(4) Bank statements and bank reconciliation records.

(B) A licensee may retain the books, accounts, and records required under this section at any location, provided that the licensee:
(1) Notifies the [commissioner] in writing of the location of the books, accounts, and records; and
(2) Makes the books, accounts, and records available at a location in the state, as agreed by the commissioner and the licensee, within [7 days] after a written request for examination by the [commissioner].

(C) A licensee shall retain the books, accounts, and records required under this section in:
(1) Original form; or
(2) Photographic, electronic, or other similar form approved by the [commissioner].

(D) If the [commissioner] finds that the books, accounts, and records of the licensee are insufficient to determine compliance with this subtitle, the [commissioner] may require the licensee to have a certified public accountant audit the licensee, at the licensee's expense, for any period of time that the commissioner considers necessary.

(E) (1) A licensee shall keep all books, accounts, and records relating to a consumer confidential, and may not disclose any information about a consumer except to a duly authorized government official, the consumer, or the consumer's representative.
(2) A duly authorized government official may disclose information obtained under paragraph (1) of this subsection only in accordance with [insert citation].

(F) The requirements of this section also apply to books, accounts, and records in the possession of a subsidiary, affiliate, or other person that relate to the operation of and services provided by the licensee's debt management services business.

Section 20. [Violations.]

(A) To discover any violations of this subtitle or to obtain any information required by this subtitle, the [commissioner] at any time may investigate the business of:
(1) A licensee;
(2) A person that is engaged or participating in the business of providing debt management services; and
(3) Any other person that the [commissioner] has cause to believe is violating this subtitle or any regulation adopted under this subtitle, whether that person claims to be within or beyond the scope of this [subtitle].

(B) For the purposes of this section, the [commissioner]:
(1) Shall be given access to the place of business, books, papers, records, safes, and vaults of the person under investigation; and
(2) May summon and examine under oath any person whose testimony the [commissioner] requires.

(C) If, after an investigation conducted under this subsection, the [commissioner] finds that the person that was investigated violated this subtitle or any regulation adopted under this subtitle, the person shall pay all reasonably incurred costs of the investigation.
If a person fails to comply with a subpoena or summons of the [commissioner] under this Act or to testify concerning any matter about which the person may be interrogated under this Act, the [commissioner] may file a petition for enforcement with the [circuit court] for any [county].

On petition by the [commissioner], the [court] may order the person to attend and testify or produce evidence.

Section 21. [Examinations of Licensee.]
(A) The [commissioner] may conduct an on-site examination of a licensee with or without prior notice.
(B) The licensee shall pay all reasonably incurred costs directly related to an examination conducted under this section, including the travel expenses, lodging expenses, and a per diem for examiners.
(C) An on-site examination may be conducted in conjunction with an examination performed by a representative of a responsible supervisory agency of another state.
(D) (1) The [commissioner], in lieu of an on-site examination, may accept the examination report of a responsible supervisory agency of another state.
(2) A report accepted under paragraph (1) of this subsection is considered for all purposes as an official report of the [commissioner].
(E) The [commissioner] may:
(1) Examine all books, accounts, and records that the [commissioner] determines are necessary to conduct a complete examination, including the books, accounts, and records in the possession of a subsidiary, affiliate, or other person that relate to the operation of and services provided by the licensee's debt management services business; and
(2) Examine under oath any owner, officer, director, principal, and employee of the licensee or any other individual who may provide information on behalf of the licensee.

Section 22. [Licensee Advertising.] A licensee shall include in any advertisement the licensee's debt management services license number.

Section 23. [Violations, Enforcement and Penalties.]
(A) (1) The [commissioner] may enforce the provisions of this Act and regulations adopted under this Act by:
   (i) Issuing an order requiring the violator:
      1. To cease and desist from the violation and any further similar violations; and
      2. To take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation; and
   (ii) Imposing a civil penalty not exceeding [$1,000] for each violation.
(2) An order issued under this subsection may apply to a licensee's agent that violates any provision of this subtitle or the regulations adopted under this Act.
(3) If a violator fails to comply with an order issued under paragraph (1)(i) of this subsection, the [commissioner] may impose a civil penalty not exceeding [$1,000] for each violation from which the violator failed to cease and desist or for which the violator failed to take corrective affirmative action.
(B) The [commissioner] may file a petition in the [circuit court] for any county seeking enforcement of an order issued under this section.
(C) In determining the amount of financial penalty to be imposed under subsection (a) of this section, the [commissioner] shall consider the following:
(1) The seriousness of the violation;
(2) The good faith of the violator;
(3) The violator's history of previous violations;
(4) The deleterious effect of the violation on the public;
(5) The assets of the violator; and
(6) Any other factors relevant to the determination of the financial penalty.

(D) A person who knowingly and willfully violates any provision of this Act is guilty of
a felony and on conviction is subject to a fine not exceeding [$1,000] for the first violation and
not exceeding [$5,000] for each subsequent violation or imprisonment not exceeding [5 years]
or both.

Section 24. [Remedies for Damages from Debt Management Services.] In addition to any
other remedies provided in this Act, a consumer may bring a civil action to recover for any
damages caused by a violation of this Act, including court costs and reasonable attorney's fees.

Section 25. [Retroactive Application of Debt Management Services Act.]
(A) In the absence of an order by the [commissioner of financial regulation] to the
contrary, an organization providing debt management services to [state] consumers on the
effective date of this Act may continue to provide debt management services to [state]
consumers without being licensed, as required under this Act, until the [commissioner] approves
or disapproves the organization's application for a license if:

(1) The organization applies for a license no later than [60 days] after the date
the [commissioner] makes license applications available; and
(2) The organization complies with all other provisions of this Act.

(B) A license issued on or after [October 1, 2003], and on or before [December 31,
2003], expires on [December 31, 2005], unless it is renewed for a [2-year term] as provided in
section 8 of this Act.

Section 26. [Reports.] That, on or before [insert date], the [commissioner] shall report, in
accordance with [insert citation] to the [Senate Finance Committee] and the [House Economic
Matters Committee] on the number of licenses that the [commissioner] has issued under this Act
and any recommendations for changes to this Debt Management Services Act.

Section 27. [Debt Adjusting.]
(A) In this Section, "debt adjusting" means the making of a contract, expressed or
implied, with a debtor and another person engaged in the debt adjusting business by which the
debtor agrees to pay a certain amount of money periodically to the other, who for consideration
distributes the money among specified creditors in accordance with an agreed plan.

(B) A person may not engage in the business of debt adjusting.

(C) A person who violates this section is guilty of a misdemeanor and on conviction is
subject to imprisonment not exceeding [6 months] or a fine not exceeding [$500] or both.

(D) This section does not apply to the following when engaged in the regular course of
their respective businesses and professions:

(1) A lawyer;
(2) A bank or fiduciary, authorized to transact business in this state and perform
credit and financial adjusting service in the regular course of its principal business;
(3) A title insurer or abstract company, while doing an escrow business;
(4) A judicial officer or a person acting under a court order;
(5) A nonprofit, religious, fraternal, or cooperative organization that offers debt management service exclusively for members, if a charge is not made and a fee is not imposed;
(6) A certified public accountant; and
(7) A trade or mercantile association in the course of arranging the adjustment of debts with a business establishment.

Section 28. [Severability.] [Insert severability clause.]

Section 29. [Repealer.] [Insert repealer clause.]

Section 30. [Effective Date.] [Insert effective date.]
Defrauding Administration of a Drug Test

This Act criminalizes actions and products that defraud the results of drug tests.

Submitted as:
New Jersey
Assembly 2098
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 Criminalize Defrauding the Administration of a Drug Test.”

Section 2. [Definitions.] As used in this Act, “defraud the administration of a drug test” means to submit a substance that purports to be from a person other than its actual source, or purports to have been excreted or collected at a time other than when it was actually excreted or collected, or to otherwise engage in conduct intended to produce a false or misleading outcome of a test for the presence of a chemical, drug or controlled dangerous substance, or a metabolite of a drug or controlled dangerous substance, in the human body. It shall specifically include, but shall not be limited to, the furnishing of urine with the purpose that the urine be submitted for urinalysis as a true specimen of a person.

Section 3. [Penalties.]
A. Any person who offers for sale or rental, or who manufactures, sells, transfers, or gives to any person, any instrument, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test, is guilty of a crime of the [third degree].
B. Any person who knowingly defrauds the administration of a drug test that is administered as a condition of employment or continued employment as a law enforcement officer, corrections officer, school bus driver, operator of a motorbus, employee of a rail passenger service, firefighter, provider of emergency first-aid or medical services, or any other occupation that requires the administration of a drug test as a condition of employment or continued employment by law, rule or regulation of the state or a local agency, public authority, or the federal government, is guilty of a crime of the [third degree].
C. Any person who knowingly defrauds the administration of a drug test that is administered as a condition of monitoring a person on bail, in custody or on parole, probation or pretrial intervention, or any other form of supervision administered in connection with a criminal offense or juvenile delinquency matter, is guilty of a crime of the [third degree].
D. Any person who knowingly possesses any instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test is guilty of a crime of the [fourth degree].
F. Any person who knowingly defrauds the administration of a drug test which is administered as a condition of any employment or continued employment not specified in subsection C of this section is guilty of a crime of the [fourth degree].

Section 4. [Severability.] [Insert severability clause.]
Section 5. [Repealer.] [Insert repealer clause.]

Section 6. [Effective Date.] [Insert effective date.]
Emergency Evacuation Plans for People with Disabilities

This Act directs that by January 1, 2004, every high-rise building owner must establish and maintain an emergency evacuation plan for disabled occupants of the building who have notified the owner of their need for assistance. As used in the Act, "high-rise building" means any building 80 feet or more in height. The owner is responsible for maintaining and updating the plan as necessary to ensure that the plan continues to comply with the provisions of the Act. It exempts municipalities with more than 1,000,000 people and which already have ordinances establishing emergency procedures for high-rise buildings.

Submitted as:
Illinois
Public Act 92-0705
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 Establish Emergency Evacuation Plans in High-Rise Buildings for People with Disabilities.”

Section 2. [Scope.] This Act does not apply within a municipality with a population of over [1,000,000] that, before the effective date of this Act, has adopted an ordinance establishing emergency procedures for high-rise buildings.

Section 3. [Required Emergency Evacuation Plan for People with Disabilities.] By [January 1, 2004], every high-rise building owner must establish and maintain an emergency evacuation plan for disabled occupants of the building who have notified the owner of their need for assistance. As used in this Act, "high-rise building" means any building [80] feet or more in height. The owner is responsible for maintaining and updating the plan as necessary to ensure that the plan continues to comply with the provisions of this Act.

Section 4. [Plan Requirements.]
(a) Each plan must establish procedures for evacuating people with disabilities from the building in the event of an emergency, when those people have notified the owner of their need for assistance.
(b) Each plan must provide for a list to be maintained of people who have notified the owner that they are disabled and would require special assistance in the event of an emergency. The list must include the unit, office, or room number location that the disabled person occupies in the building. It is the intent of this Act that these lists must be maintained for the sole purpose of emergency evacuation. The lists may not be used or disseminated for any other purpose.
(c) The plan must provide for a means to notify occupants of the building that a list identifying people with a disability in need of emergency evacuation assistance is maintained by the owner, and the method by which occupants can place their name on the list.
In hotels and motels, each plan must provide an opportunity for a guest to identify himself or herself as a person with a disability in need of emergency evacuation assistance.

The plan must identify the location and type of any evacuation assistance devices or assistive technologies that are available in the building. If the plan provides for areas of rescue assistance, the plan must provide that these areas are to be identified by signs that state "Area of Rescue Assistance" and display the international symbol of accessibility. Lettering must be permanent and must comply with “Americans with Disabilities Act Accessibility Guidelines.”

Each plan must include recommended procedures to be followed by building employees, tenants, or guests to assist people with disabilities in need of emergency evacuation assistance.

A copy of the plan must be maintained at all times in a place that is easily accessible by law enforcement or fire safety personnel, such as in the management office of the high-rise building, at the security desk, or in the vicinity of the fireman's elevator recall key, the life safety panel, or the fire pump room.

Section 5. [Implementation.]

(a) The plan must be made available to local law enforcement and fire safety personnel upon request.

(b) The plan must provide the names of and contact information regarding any building personnel to be contacted by law enforcement or fire safety personnel in the event of an emergency requiring implementation of the plan.

(c) The plan must provide for dissemination or availability of the appropriate evacuation procedures portions of the plan to building employees, tenants, or guests.

(d) The plan must identify the roles and responsibilities of building personnel in carrying out the evacuation plan. The plan must provide for appropriate training for building personnel regarding their roles and responsibilities.

(e) The plan must provide for drills regarding evacuation procedures not less than once per year. A written record of the date of the drill must be kept with the evacuation plan.

Section 6. [Penalty.] Failure to comply with any Section of this Act is a [petty offense] punishable by a fine of [$500].

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

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

Section 9. [Effective Date.] [Insert effective date.]
Ethanol Production Incentive

This Act establishes a countercyclical financial incentive for the production of ethanol in any newly constructed ethanol production plants. This Act is based upon a North Dakota law that implemented the first program in the nation to create a market-based support system for the growing ethanol industry.

Submitted as:
North Dakota
SB 2222
Status: Enacted as Chapter 57 in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Establish Ethanol Production Incentives.”

Section 2. [Definition.] In this Act, "eligible facility" means an ethanol production plant constructed in this state after [July 31, 2003].

Section 3. [Ethanol Production Incentive - Calculation and Payment.] The [agricultural products utilization commission] shall provide [quarterly] to each eligible facility a production incentive based on the average [state] price per bushel of corn received by farmers during the quarter, as established by the state [agricultural statistics service] and the average [state] rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by the American Coalition for Ethanol. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 of this section with the sum arrived at under subsection 2.

1. a. If the average quarterly price per bushel of corn is above [one dollar and eighty cents], for each [one cent] by which the quarterly price is above [one dollar and eighty cents], the [agricultural products utilization commission] shall add to the amount payable under this section [one-tenth of one cent] times the number of gallons of ethanol produced by the eligible facility during the quarter.

   b. If the average quarterly price per bushel of corn is [one dollar and eighty cents], the [agricultural products utilization commission] shall add [zero] to any amount payable under this section.

   c. If the average quarterly price per bushel of corn is below [one dollar and eighty cents], for each [one cent] by which the quarterly price is below [one dollar and eighty cents], the [agricultural products utilization commission] shall subtract from the amount payable under this section [one-tenth of one cent] times the number of gallons of ethanol produced by the eligible facility during the quarter.

2. a. If the average quarterly rack price per gallon of ethanol is above [one dollar and thirty cents], for each [one cent] by which the average quarterly rack price is above [one dollar and thirty cents], the [agricultural products utilization commission] shall subtract from the amount payable under this section, [two-tenths of one cent] times the number of gallons of ethanol produced by the eligible facility during the quarter.
b. If the average quarterly rack price per gallon of ethanol is [one dollar and thirty cents], the [agricultural products utilization commission] shall subtract [zero] from any amount payable under this section.

c. If the average quarterly rack price per gallon of ethanol is below [one dollar and thirty cents], for each [one cent] by which the average quarterly rack price is below [one dollar and thirty cents], the [agricultural products utilization commission] shall add to the amount payable under this section [two-tenths of one cent] times the number of gallons of ethanol produced by the eligible facility during the quarter.

Section 4. [Subsidy Limitations.] The [agricultural products utilization commission] may not distribute more than [one million six hundred thousand dollars] annually in payments under section 3 of this Act. No eligible facility may receive state ethanol payments that exceed a cumulative total of [ten million dollars]. Change in ownership of an eligible facility does not affect the [ten million dollar cumulative total] allowed to be paid to that eligible facility under this section.

Section 5. [Ethanol Production Incentive Fund - Continuing Appropriation.] There is created in the [State Treasury] a special fund known as the [Ethanol Production Incentive Fund]. The [Fund] consists of transfers made in accordance with section 7 of this Act and deposits made in accordance with section 8 of this Act. All money in the [Fund] is appropriated on a continuing basis to the [agricultural products utilization commission] for use in paying ethanol production incentives under sections 3 and 4 of this Act and section 6 of this Act.

Section 6. [Duration and Limitation of Ethanol Plant Production Incentives.]

1. An ethanol plant that was in operation before [July 1, 1995], and which has a production capacity of fewer than [fifteen million gallons (56781000 liters)] of ethanol may receive up to [six hundred thousand dollars] in production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before [July 1, 1995], and which produced [fifteen million (56781000 liters) or more gallons] in the previous fiscal year is eligible to receive an equal share in up to [three hundred thousand dollars] in production incentives from the state in a fiscal year.

2. The [agricultural products utilization commission] shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by [forty cents]. The [commission] shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers. Within [ninety days] after the conclusion of the plant's fiscal year, the plant shall submit to the [budget section of the legislative council] a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

Section 7. [Distribution of Registration Fees Collected.] Any money in the [Registration Fund] accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the [legislature’s] appropriation for such purposes, must be promptly deposited in the [Highway Tax Distribution Fund] which must be distributed in the manner as prescribed by law. The [state treasurer] shall transfer annually from the [Highway Tax Distribution Fund] to the [Ethanol Production Incentive Fund] an amount equal to [forty percent] of all sums collected for the registration of farm vehicles
under [insert citation] that no transfer may be made in an amount that would result in the
balance of the [Ethanol Production Incentive Fund] exceeding [five million dollars].

Section 8. [Refund of Tax for Fuel Used for Agricultural Purposes - Reductions.] Any
consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the
motor vehicle fuel tax has been paid may file a claim with the [commissioner] for a refund
under [insert citation]. The amount of the tax refund under this section must be reduced by
[seven cents] per gallon [3.79 liters] except for those fuels used in aircraft or with respect to
refunds claimed by aircraft fuel users. [One cent] per gallon [3.79 liters] withheld from the
refund must be deposited in the [Ethanol Production Incentive Fund].

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

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

Section 11. [Effective Date.] [Insert effective date.]
Good Samaritan Volunteer Firefighters’ Assistance

This Act protects agencies and people that donate qualified fire control or fire rescue equipment to a volunteer fire company from liability for civil damages for personal injuries, property damage, or death proximately caused after the distribution by a defect in the equipment.

Exceptions to this liability protection would apply to a person or agency if the defect that proximately causes the injury, damage, or loss resulted from an act or omission of the person or agency, that constitutes malice, gross negligence, recklessness, or intentional misconduct. This also applies if the person or agency is the manufacturer of the qualified fire control or fire rescue equipment.

Submitted as:
New York
Chapter 41 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Good Samaritan Volunteer Firefighters’ Assistance Act.”

Section 2. [Definitions.] For purposes of this Act:
(A) “Person” means any individual and any governmental or other entity.
(B) “Qualified Fire Control or Rescue Equipment” means fire control or fire rescue equipment that has been recertified by an authorized technician as meeting the manufacturer’s specifications and has been distributed through a state or local agency to the volunteer fire company.
(C) “Authorized technician” means a technician that has been certified by the manufacturer of fire control or fire rescue equipment to inspect such equipment. The technician need not be employed by the state or local agency administering the distribution of the fire control or fire rescue equipment.

Section 3. [Liability Protection.]
(A) A fire department or district, including a person acting as an agent thereof, that acts reasonably in donating qualified fire control or fire rescue equipment to a volunteer fire company, shall not be liable in civil damages under any state law for personal injuries, property damage, or death proximately caused after the donation by a defect in the equipment.
(B) Any state or local agency, including a person acting as an agent of such an agency, that acts reasonably in administering the distribution of qualified fire control or fire rescue equipment to a volunteer fire company, shall not be liable for civil damages under any state law for personal injuries, property damage, or death proximately caused after the distribution by a defect in the equipment.

Section 4. [Exceptions to Liability Protection.]
(A) Section 3 of this Act shall not apply to a person or agency if:
(1) The defect that proximately causes the injury, damage, or loss resulted from an act or omission of the person or agency, that constitutes malice, gross negligence, recklessness, or intentional misconduct;

(2) The person or agency is the manufacturer of the qualified fire control or fire rescue equipment; or

(3) The person or agency modified or altered the equipment after it had been recertified by an authorized technician as meeting the manufacturer’s specifications.

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

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

Section 7. [Effective Date.] [Insert effective date.]
Government Data Collection and Dissemination Practices Concerning Social Security Numbers

This draft generally prohibits state agency-issued identification cards, student identification cards, or license certificates issued or replaced after July 1, 2003, from displaying entire social security numbers. The legislation exempts road tax licenses issued under the terms of the International Fuel Tax Agreement.

Submitted as:
Virginia
HB 1744
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as "An Act to Regulate Government Data Collection and Dissemination Practices Concerning Social Security Numbers."

Section 2. [Disclosure or Display of Social Security Number.]
A. It shall be unlawful for any agency to require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because the individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or state law.

B. Agency-issued identification cards, student identification cards, or license certificates issued or replaced on or after [July 1, 2003], shall not display an individual’s entire social security number except as provided in [insert citation].

C. Any agency-issued identification card, student identification card, or license certificate that was issued prior to [July 1, 2003], and that displays an individual’s entire social security number shall be replaced no later than [July 1, 2006], except that voter registration cards issued with a social security number and not previously replaced shall be replaced not later than December 31st following the completion by the state and all localities of the decennial redistricting following the 2010 census. This subsection shall not apply to driver’s licenses and special identification cards issued by the [department of motor vehicles] pursuant to [insert citation] and road tax registrations issued pursuant to [insert citation].

D. The provisions of subsections A and C of this section shall not be applicable to licenses issued by the [state corporation commission’s bureau of insurance] until such time as a national insurance producer identification number has been created and implemented in all states. Commencing with the date of such implementation, the licenses issued by the [state corporation commission’s bureau of insurance] shall be issued in compliance with subsection A of this section. Further, all licenses issued prior to the date of such implementation shall be replaced no later than [12 months] following the date of such implementation.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Health Insurance: Exclusion from Coverage

This Act permits a rider to be added to health insurance policies that excludes coverage for biologically based mental illness when coverage would otherwise be denied because of biologically based mental illness pre-existing conditions. It is based on a South Dakota law that was enacted to enable people with certain illnesses to buy health insurance from private carriers instead of being forced into the state high-risk health insurance pool.

Submitted as:
South Dakota
HB1236
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Allow for the Exclusion of Certain Health Insurance Coverage as a Condition of Procuring Individual Health Insurance.”

Section 2. [Health Insurance Policies to Provide Coverage for Biologically Based Mental Illnesses.]
(A) As used in this Act, “Biologically Based Mental Illness” means schizophrenia and other psychotic disorders, bipolar disorder, major depression, and obsessive-compulsive disorder.
(B) Coverage for the treatment and diagnosis of biologically based mental illnesses under any policy of health insurance that is delivered, issued for delivery, or renewed in this state, may be reduced or eliminated by a rider to, or an endorsement on, a new policy if the insurer would reject the application for the policy without the rider or endorsement based upon the applicant's preexisting condition of the type covered by subsection (A) of this section.
(C) Any rider, endorsement, or application added to a policy after the date of issue or at reinstatement or renewal which reduces or eliminates benefits or coverage in the policy requires signed acceptance by the policyholder. After the date of policy issue, any rider or endorsement which increases benefits or coverage with an accompanying increase in premium during the policy term must be agreed to in writing signed by the insured, unless the increased benefits or coverage is required by law.

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

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

Section 5. [Effective Date.] [Insert effective date.]
High School Diploma Civics Education Seal

This Act directs the state board of education to establish criteria for awarding a diploma seal for excellence in civics education and understanding of the state and federal constitutions and the democratic model of government.

Submitted as:
Virginia
Chapter 691 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. This Act may be cited as “An Act to Establish a Seal for Excellence in Civics Education.”

Section 2. [Diploma Seal for Excellence in Civics Education.]

The [state board of education], by [insert date], shall establish criteria for awarding a special seal on standard and advanced studies diplomas. The special seal shall be awarded for excellence in civics education and understanding the state and federal constitutions and the democratic model of government. The [board] shall consider including in the criteria:

(A) The successful completion of history, government, and civics courses;
(B) Courses that incorporate character education;
(C) Voluntary participation in community service or extracurricular activities; and
(D) Related requirements as it deems appropriate.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Identity Theft Passport Program (Statement)

Identity theft is predicted to be one of the most pervasive crimes of the 21st century. Most people think identify theft involves financial crimes such as fraudulently using someone’s credit card. However, just proving one’s identity can also be a problem for identity crime victims. Virginia Chapter 914 of 2003 creates an Identity Theft Passport to help with the latter. Specifically, Chapter 914 states:

“Any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification may file a petition with the court for relief. A person who has petitioned the court pursuant to § 19.2-392.2 as a result of a violation of § 18.2-186.3, may submit to the Attorney General a certified copy of a court order obtained pursuant to § 19.2-392.2. The Office of the Attorney General, in cooperation with the State Police, may issue an ‘Identity Theft Passport’ stating that such an order has been submitted. The Office of the Attorney General may provide access to such information to criminal justice agencies and individuals who have submitted a court order pursuant to this section.”

The Identity Theft Passport is a card that people can carry and present to law enforcement or other people who may challenge the carrier about their identity. It is designed to serve as a shield to protect victims from unlawful detention or the arrest for crimes committed by someone else under a stolen identity. An Identity Theft Passport is available to any Virginian who files a police report because they believe they are a victim of identity crime or has obtained a court order expunging their record as a result of identity crime. The Virginia Attorney General’s Office issues Identity Theft Passports. Virginians can download an application for an Identity Theft Passport from the Internet or fill out the application online.

Virginia Chapter 914 also addresses how credit-reporting agencies should deal with identity fraud reports:

§ 18.2-186.3:1. Identity Fraud; Consumer Reporting Agencies; Police Reports:

A. If a consumer, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., submits to a consumer reporting agency, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., a copy of a valid police report, the consumer reporting agency shall, within 30 days of receipt thereof, block the reporting of any information that the consumer alleges appears on his credit report, as defined by the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq., as a result of a violation of § 18.2-186.3. The consumer reporting agency shall promptly notify the furnisher of the information that a police report has been filed, that a block has been requested, and the effective date of the block.

B. Consumer reporting agencies may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes that: (i) the information was blocked due to a misrepresentation of a material fact by the consumer; (ii) the information was blocked due to fraud, in which the
consumer participated, or of which the consumer had knowledge, and which may for purposes of this section be demonstrated by circumstantial evidence; (iii) the consumer agrees that portions of the blocked information or all of it were blocked in error; (iv) the consumer knowingly obtained or should have known that he obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions; or (v) the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the consumer's report of a violation of § 18.2-186.3.

C. If blocked information is unblocked pursuant to this section, the consumer shall be notified in the same manner as consumers are notified of the reinsertion of information pursuant to the Fair Credit Reporting Act at 15 U.S.C. § 1681i, as amended. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he obtained possession of any goods, services, or moneys.

D. A consumer reporting agency shall accept the consumer's version of the disputed information and correct the disputed item when the consumer submits to the consumer reporting agency documentation obtained from the source of the item in dispute or from public records confirming that the report was inaccurate or incomplete, unless the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the documentation submitted and notifies the consumer in writing of that decision, explaining its reasons for unblocking the information and setting forth the specific, verifiable facts on which the decision is based.

E. A consumer reporting agency shall delete from a consumer credit report inquiries for credit reports based upon credit requests that the consumer reporting agency verifies were initiated as a result of a violation of § 18.2-186.3.

F. The provisions of this section do not apply to (i) a consumer reporting agency that acts as a reseller of credit information by assembling and merging information contained in the databases of other consumer reporting agencies, and that does not maintain a permanent database of credit information from which new consumer credit reports are produced, (ii) a check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods, or (iii) a demand deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.
Improving Air Quality (Statement)

In March 2000, Arizona Governor Jane Hull established a “Brown Cloud Summit” to identify ways of reducing a brown cloud over parts of the state and to recommend proposals to address the pollution that contributes to the brown cloud. The Summit adopted its final recommendations in January 2001. These recommendations generally address three categories: (1) long-term market driven strategies to improve visibility and provide health benefits; (2) short-term and long-term voluntary and mandatory measures to reduce emissions and improve public health; and (3) goals established with citizen input to improve the brown cloud and improve monitoring of the brown cloud. The brown cloud is generally acknowledged to be the combination of carbon particles and nitrogen dioxide gas that creates the brown color of haze. Extremely small particles of pollutants, such as particulate matter and the chemical conversion of nitrogen dioxide and sulfur dioxide to particles, generally comprise the brown cloud.

Arizona Chapter 371 of 2001 implements recommendations from the Summit. These include imposing diesel engine idling restrictions in Maricopa County, expanding a non-attainment area, implementing a roadside diesel emission testing program, continuing funding for a voluntary vehicle repair and retrofit program, and continuing limited uses of a state clean air fund for two years for converting heavy-duty vehicles to operate on alternative fuels and for the construction of natural gas refueling stations.

Specifically the Arizona law:

- Defines idling to mean the operation of an engine in the operating mode, where the engine in not engaged in gear and the engine operates at a speed at the RPM specified by the engine or vehicle manufacturer for when the accelerator is fully released and there is no load on the engine;
- Addresses mandatory engine idling restrictions for engines that propel a heavy-duty diesel vehicle (GVW 14,000+ pounds);
- Allows counties to adopt ordinances to restrict engine idling;
- Requires the local ordinances to provide exemptions for vehicles such as police, fire and emergency vehicles, situations such as traffic delays or the need for a driver to sleep in the vehicle, and equipment operation such as refrigeration of cargo;
- Directs that a county control officer or any law enforcement officer authorized to enforce traffic laws may enforce such ordinances;
- Establishes a 5-year voluntary program among power suppliers and the construction industry to identify viable sources of electric power to reduce the use of generators;
- Provides general guidelines for opacity cut-points, citations and alternative standards;
- Directs the state department of environmental quality to administer a pilot program for the emissions testing of diesel vehicles with a GVWR of greater than 10,000 pounds;
- Directs the state department of environmental quality to collect pilot program data including the feasibility of a civil penalty system and submit the report to a diesel vehicle emissions testing committee;
- Authorizes public and private sector entities to purchase or retrofit non-road emissions reducing equipment in certain circumstances and areas;
- Permits public and private sector entities in certain areas to use low-sulfur diesel fuel in vehicles retrofitted with oxidation catalysts and particulate filters;
- Directs the state department of transportation to develop a plan to increase the use of bypass routes on days of poor visibility in a metropolitan area; and
• Directs the state department of transportation to establish a daily visibility index for certain areas and a method to gauge improvement in visibility for those areas over time.
Industrial Accountability for Environmental Violations (Statement)

Delaware enacted HB60 in 2003. That Act is designed to deter people from engaging in activity that will pollute the environment. Major provisions include ensuring that all non-confidential information regarding chronic violators is made available to the public and holding corporations and their agents criminally liable not only for intentional and knowing violations of state environmental statutes and regulations, but also reckless submissions of false statements to the state environmental agency and reckless tampering with monitoring equipment. A reckless violation occurs when a person is aware of and consciously disregards a substantial and unjustifiable risk that a false statement or monitoring error exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. The Act creates felony punishments for intentional or knowing violations of environmental laws and regulations, when those violations cause serious physical harm to a person or serious damage to the environment. It also establishes criminal sanctions, including felony sanctions, for some intentional or knowing violations by corporate officers.

Sections 3 (e) through (m) are key components of HB60:

(e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited partnership conducting business in the State of Delaware who intentionally or knowingly authorizes or directs said business entity or its employees or agents to (i) falsify or conceal any material fact required to be disclosed to the Department, (ii) destroy, conceal or alter any records that the corporation is required by this title, the Department’s regulations, or an order of the Department to maintain, or to (iii) commit any act in violation of this Act or rules promulgated by the Department, shall upon conviction be punished by a fine of not less than $500 nor more than $10,000 or by imprisonment for not more than 6 months, or both. If an act described in this subsection causes serious physical injury to another person or serious harm to the environment as one result of such an act, the officer, manager, or general partner committing the act shall upon conviction be sentenced in compliance with the sentencing guidelines established for Class D felonies in 11 Del.C § 4205. Nothing in this subsection shall be read to establish any additional elements for conviction of the criminal offenses described in subsections (a) through (d) of this Section.

(f) Each day of violation with respect to acts or omissions described in this Section shall be considered as a separate violation.

(g) The Superior Court shall have exclusive jurisdiction over prosecutions brought pursuant to subsections (a) through (e) of this Section, and concurrent jurisdiction over prosecutions brought pursuant to subsection (h).

(h) Whoever violates this Act, or any rule or regulation promulgated thereunder or any rule or regulation in effect as of July 26, 1974, or any permit condition, or any order of the Secretary, shall be punished by a fine of not less than $50 nor more than $500 for each violation. Each day of violation shall be considered as a separate violation. The courts of the justices of the peace shall have jurisdiction of offenses under this subsection.
(i) Any person prosecuted pursuant to subsection (h) of this Section shall not be prosecuted for the same offense under subsections (a) through (e) of this Section.

(j) The terms “intentionally,” “knowingly,” “recklessly,” “negligently,” and “serious physical injury,” as used in this Section, shall have the meanings assigned to them by Title 11, Chapter 2 of the Delaware Code.

(k) The term "serious harm to the environment" shall mean damage to the air, water, or soil which has or will, beyond a reasonable doubt, cause serious physical injury to any persons working at the facility in question or people within a 50 mile radius of the facility in question.

(l) It is an affirmative defense to a prosecution that the specific conduct charged was freely and knowingly consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence. The provisions of this subparagraph are subject to the restrictions enumerated at 11 Del.C. § 453.

(m) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses may apply under this Section.
Jury Service

This Act establishes certain provisions for jury service. It also creates a Lengthy Trial Fund to compensate jurors who serve more than ten days of jury service. The Fund will be comprised of money collected from a fee on court filing, appearance and answer or response fees, beginning January 1, 2004.

Specifically, the Act:

- Requires the state Supreme Court to impose an additional fee for each filing, appearance and answer or response fee charged by a clerk of the superior court beginning January 1, 2004;
- Directs the state Supreme Court to deposit the funds into the Lengthy Trial Fund;
- Allows the State Treasurer to invest and divest money in the Fund, and specifies that the money earned from investment will be credited to the Fund;
- Allows the court to exempt any filing the court determines to involve a minimal use of resources, and that customarily is not afforded the opportunity for a trial by jury;
- Grants the Supreme Court the power to administer the Lengthy Trial Fund and adopt rules for the Fund’s administration, including:
  1. The selection and appointment of the Fund’s administrator.
  2. Procedures for the administration of the Fund, including payment of necessary personnel, accounting, auditing, and investment of the monies in the Fund.
  3. The submission of an annual report regarding the amount of money collected and disbursed from the Fund and the number of jurors paid.
- Directs the Supreme Court to spend the money to pay full or partial wage replacement to jurors who serve on juries for more than ten days and whose employers pay less than full regular wages;
- Allows not more than three per cent of the money in the Fund to be used by the Supreme Court for the costs of administering the Fund;
- Directs the court clerk to collect and send the money to the county treasurer who then transmits them to the state treasurer;
- Requires a prospective juror who has a mental or physical condition that causes the juror to be incapable of performing jury service to be excused based on the judge’s discretion;
- Defines “undue or extreme physical or financial hardship;”
- Exempts prospective jurors whose service would “substantially and materially affect the public interest or welfare in an adverse manner;”
- Clarifies that undue financial or physical hardship does not exist based solely on the fact that the prospective juror will be required to be absent from their place of employment;
- Stipulates that documents produced pursuant to an excuse from the Act are not public and may not be released to the general public;
- Allows a prospective juror to be permanently excused if the judge finds the underlying grounds to be permanent in nature;
- Prohibits an employer from requiring or requesting an employee to use annual, vacation or sick leave for time spent in jury service or jury selection except that the Act does not require an employer to provide the benefits to employees who are otherwise not entitled to them;
- Raises the fine for failure to attend on the date scheduled for jury service;
- Revises provisions for a request of service postponement;
- Allows a postponement that is not more than three months;
• Stipulates that jury service postponement may only be granted twice;
• Directs the court to postpone and reschedule the service of a prospective juror of an employer of five or fewer full time employees if another employee from the same employer is summoned during the same period of time;
• Allows a presiding judge and jury commissioner to apply for an exemption from the frequency of service and service obligation provisions for not more than one year;
• Prohibits any court in the state from requiring a juror to serve within two years following the last day of the juror’s service (frequency of service);
• Provides definitions for the fulfillment of jury service (obligation of service) if a person:
  1. Serves on one trial until being excused or discharged.
  2. Appears in court but is not assigned to a trial division or selection of a jury before the end of that day.
  3. Is assigned on one day to one or more trial divisions for jury selection and serves through the completion of a jury selection or is excused.
  4. Complies with the request to telephone a court or check a court’s web site to determine whether to report on a particular day, for four days within a thirty-day period.
• Provides the court with a valid telephone number and stands ready to serve on the same day for a period of two days;
• Allows the Court to pay replacement or supplemental wages of up to $300 per day beginning on the eleventh day of jury service, or if it is found to be a significant financial hardship for the juror, the Court may pay the juror an addition $100 per day from the fourth through the tenth days of jury service;
• Stipulates that payment is contingent upon the availability of funds;
• Specifies that a juror who serves on a lengthy trial will receive no less than $40 a day;
• Directs a juror who is eligible for payment to submit a request form for payment from the Fund;
• Payment is limited to the difference between the state paid jury fee and the actual amount of wages a juror earns, up to the maximum amount allowed by the new section ($300 per day x number of days over ten) minus any compensation from the juror’s employer;
• Requires a juror who requests payment from the Fund to do the following:
  1. Disclose information on the juror’s regular wages.
  2. Submit information from the juror’s employer to verify the information provided by the juror before receiving payment from the Fund.
  3. Submit a sworn affidavit attesting to the juror’s approximate gross weekly income if the juror is self-employed.
• Specifies that the money may only be used for the sole purpose of the lengthy trial juror compensation; and
• Repeals the Lengthy Trial Fund in ten years.

Submitted as:
Arizona
Chapter 200 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation
(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Reform Jury Service.”

Section 2. [Obligation of Qualified Citizens to Serve on Juries.]
   A. It is the policy of this state that all qualified citizens have an obligation to serve on juries when summoned by the courts of this state, unless excused.
   B. It is unlawful for a juror who is summoned and who fails to obtain a postponement or who is not excused from jury service to willfully and without reasonable excuse fail to attend on the date scheduled for jury service. The juror may be attached as for a direct contempt of court and may be compelled to attend on the date scheduled for jury service, and a fine not exceeding $500 may be imposed by the court for nonattendance upon the court.

Section 3. [Jurors' Term of Service; Exemption.]
   A. A person's jury service obligation is fulfilled when the person does any of the following:
      1. Serves on one trial until being excused or discharged.
      2. Appears at court but is not assigned to a trial division for selection of a jury before the end of that day.
      3. Is assigned on one day to one or more trial divisions for jury selection and serves through the completion of jury selection or is excused.
      4. Complies with a request to telephone a court or check a court's web site to determine whether to report on a particular day, for four days within a thirty-day period.
      5. Provides the court with a valid telephone number and stands ready to serve on the same day, for a period of two days.
   B. A presiding judge of a county superior court, in coordination with the jury commissioner, may apply to the supreme court for an exemption for the county from this section for a specified period of time, not to exceed one year.

Section 4. [Frequency of Service; Exemption.]
   A. A juror who has been summoned and selected to serve on a jury in this state is not required to serve again as a juror in any court in this state for two years following the last day of the juror's service.
   B. A presiding judge, in coordination with the jury commissioner, may apply to the state supreme court for an exemption from this section for a specified period of time, not to exceed one year.

Section 5. [Postponement of Jury Service.]
   A. A person who is scheduled to appear for jury service may postpone the date of their initial appearance for jury service two times only. On request, postponement shall be granted if all of the following apply:
      1. The prospective juror has not previously been granted a postponement.
      2. The prospective juror appears in person or contacts the jury commissioner by telephone, electronic mail or in writing to request a postponement.
      3. A postponement shall not be for more than three months after the date on which the prospective juror originally was called to serve and shall be a date when the court will be in session.
   B. A jury commissioner may approve a subsequent request for postponement of jury service only in the event of an extreme emergency that could not have been anticipated at the
time the initial postponement was granted. The prospective juror is subject to being resummoned at the discretion of the [jury commissioner].

Section 6. [Excusing Prospective Jurors from Jury Duty.]

A. If a prospective juror's answers to a questionnaire as required by [insert citation] indicate that the person is unqualified for jury service or, in the opinion of the judge or [jury commissioner], state grounds sufficient to be excused from jury service, the person's name shall not be included on the qualified juror list and the person shall be notified that they are excused from jury service.

B. The [jury commissioner] may investigate the accuracy of the answers to the questionnaire and may call upon law enforcement agencies for assistance in the investigation.

C. A person, upon their timely application to the [court], shall be excused temporarily from service as a juror if any of the following apply:

1. The prospective juror has a mental or physical condition that causes the juror to be incapable of performing jury service. The juror or the juror's personal representative shall provide the [court] with a medical statement from a physician who is licensed pursuant to [insert citation] that verifies that a mental or physical condition renders the person unfit for jury service.

2. Jury service by the prospective juror would substantially and materially affect the public interest or welfare in an adverse manner.

3. Jury service would cause undue or extreme physical or financial hardship to the prospective juror or a person under the prospective juror's care or supervision. For the purposes of this paragraph:

   (a) A judge or [jury commissioner] of the [court] for which the person was called to jury service shall determine whether jury service would cause the prospective juror undue or extreme physical or financial hardship.

   (b) A person who requests to be excused under this paragraph shall take all actions necessary to obtain a ruling on the request before the date on which the person is scheduled to appear for jury duty.

   (c) Undue or extreme physical or financial hardship is limited to the following circumstances in which a person:

      (i) Would be required to abandon a person under the potential juror's care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury.

      (ii) Would incur costs that would have a substantial adverse impact on the payment of the person's necessary daily living expenses or on those for whom the potential juror provides regular employment or the principal means of support.

      (iii) Would suffer physical hardship that would result in illness or disease.

      (iv) Is not currently capable of understanding the English language.

   (d) Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from the prospective juror's place of employment.

   (e) A person who requests to be excused under this paragraph shall provide the judge or [jury commissioner] with documentation that supports the request to be excused, such as federal and state income tax returns, payroll records, medical statements from physicians licensed pursuant to [insert citation], proof of dependency or guardianship or other similar documents. The judge or [jury commissioner] may excuse a person if the documentation
clearly supports the request to be excused. These documents are not public records and shall not be disclosed to the general public.

D. A person who is excused temporarily pursuant to this section becomes eligible for qualification as a juror when the temporary excuse expires unless the person is permanently excused from jury service.

E. A person may be permanently excused only if the deciding judge or [jury commissioner] determines that the underlying grounds for being excused are permanent in nature.

Section 7. [Absence from Employment for Jury Duty; Vacation and Seniority Rights; Automatic Postponement; Violation; Classification.]

A. An employer shall not require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process or actually serving on a jury. This subsection does not require an employer to provide annual, vacation or sick leave to employees who are otherwise not entitled to such benefits under company policies.

B. An employer shall not refuse to permit an employee to serve as a juror. No employer may dismiss or in any way penalize any employee because the employee serves as a grand or trial juror. An employer is not required to compensate an employee when the employee is absent from employment because of jury service.

C. An employee shall not lose seniority or precedence while absent from employment due to serving as a member of a grand or trial jury. Upon return to employment the employee shall be returned to the employee's previous position, or to a higher position commensurate with the employee's ability and experience as seniority or precedence would ordinarily entitle the employee.

D. A court shall postpone and reschedule the service of a summoned juror of an employer with [five or fewer full-time employees], or [their equivalent], if during the same period another employee of that employer is serving as a juror. A postponement pursuant to this subsection does not affect a person's right to one automatic postponement under [insert citation].

E. A person who violates any provision of this section is guilty of a [class 3 misdemeanor].

Section 8. [Lengthy Trial Fund.]

A. A Lengthy Trial Fund is established consisting of money received from additional fees paid on all filings, appearances, responses and answers pursuant to section 9 of this Act. The money in the Fund shall not be used for any purpose other than as prescribed in this section.

B. The [state supreme court] shall administer the Fund and shall adopt rules for the administration of the Fund. Not more than [three per cent] of the money in the Fund shall be used for the reasonable and necessary costs of administering the Fund. On or before the [fifteenth day of each month], on receipt of a request for reimbursement, the [state supreme court] shall transmit money from the Fund to a [jury commissioner] for money paid to a juror under this section, together with a fee of not less than the amount prescribed in [insert citation] for each application for payment of replacement or supplemental earnings by a juror.

C. Beginning [July 1, 2004] and subject to the availability of money, for jury trials that commence on or after [July 1, 2004], money in the Fund shall be used to pay full or partial earnings replacement or supplementation to jurors who serve as petit jurors for more than [ten days] and who receive less than full compensation. The amount of replacement or supplemental earnings shall be at least [forty dollars] but not more than [three hundred dollars per day per
juror] beginning on the [eleventh day of jury service] and at least [forty dollars] but not more
than [one hundred dollars per day] from the [fourth day to the tenth day of jury service].

D. Beginning on [July 1, 2004], a juror whose jury service lasts more than [ten days]
may submit a request for payment from the Lengthy Trial Fund. The amount a juror receives
from the Fund is limited to the difference between the state paid jury fee and the actual amount
of earnings a juror earns, not less than [forty dollars], up to the maximum level payable under
subsection C of this section, minus any amount the juror actually received from the juror's
employer during the same time period. A juror who requests payment from the Fund:
1. Shall disclose on the form the juror's regular earnings, the amount the juror's
employer will pay during the term of jury service starting on the [eleventh day and thereafter],
the amount of replacement or supplemental earnings being requested and any other information
that the [jury commissioner] deems necessary.
2. Before receiving payment from the Fund, shall submit verification from the
juror's employer regarding the earnings information that is provided under paragraph 1 of this
subsection. This verification may include the employee's most recent earnings statement or a
similar document.
3. In order to verify the weekly income if the juror is self-employed or receives
compensation other than wages, shall provide a sworn affidavit attesting to the juror's
approximate gross weekly income, together with any other information that the [state supreme
court] requires.

E. The [state supreme court] shall annually report to the [joint legislative budget
committee] on the amount of money collected and disbursed from the Fund and the number of
jurors who received money from the Fund.

Section 9. [Additional Filing, Appearance and Answer or Response Fees; Deposit.]
A. In addition to any other assessment authorized by law, the [state supreme court] shall
establish an additional fee on each filing, appearance and answer or response fee charged by a
clerk of the superior court.
B. The [clerk] shall collect the additional fee and monthly remit the additional fees to the
county treasurer. The county treasurer shall transmit the fees to the [state treasurer] on or before
the [fifteenth day of each month] for deposit pursuant to the [Lengthy Trial Fund] established by
section 8 of this Act. The [state treasurer] shall invest and divest money in the Fund as provided
by [insert citation], and money earned from investment shall be credited to the Fund.
C. The additional fee may be deferred or waived pursuant to [insert citation].
D. In establishing the additional fees under subsection A of this section, the [state
supreme court] may designate by rule that the additional fees not be imposed on filings in cases
that involve minimal use of court resources or that are not afforded the opportunity for a trial by
jury.

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

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

Section 12. [Effective Date.] [Insert effective date.]
Multiple Pollutant Reduction

This Act establishes caps for emissions of sulfur dioxide, oxides of nitrogen, and carbon dioxide by existing fossil fuel burning steam electric power plants. It permits the banking and trading of emissions reductions to achieve compliance with the caps. Compliance is not required of a plant that installs qualifying repowering technology or an eligible replacement unit.

Submitted as:
New Hampshire
Chapter 130 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 Relative to Additional Emissions Reductions from Existing Fossil Fuel Burning Steam Electric Power Plants.”

Section 2. [Legislative Findings.]
I. The [Legislature] finds that the economic interests of ratepayers will be best served through the flexible implementation of an integrated, multi-pollutant emission reduction strategy as electric industry deregulation proceeds in this state. The advance knowledge of the requirements of this Act, and a flexible regulatory approach used to implement them, will reduce uncertainty and risk for prospective buyers of the state’s existing fossil fuel burning steam electric power plants, thus enhancing their value at divestiture. Providing prospective buyers a significant time period in which to recover their investment will also enhance the divestiture value of these facilities. Combined, these factors will maximize recovery from the divested power plant assets, correspondingly reduce the stranded costs that must be paid over time by ratepayers, and thus allow electric rates to decline further or faster than they would otherwise.

II. The [Legislature] finds that while air quality has improved in recent years, scientific advances have demonstrated that adequate protection of public health, environmental quality, and economic well-being, requires additional, concerted reductions in air pollutant emissions. The [Legislature] also finds that the state's tradition of environmental leadership is also well served by additional emission reductions.

III. Recent studies and scientific evidence indicates that significant negative human health and ecosystem impacts continue to be caused by air pollution. The [Legislature] finds that the substantial quantities of several harmful air pollutants that continue to be emitted from existing fossil fuel burning steam electric power plants, despite recent reductions in the emission of certain air pollutants from some of these facilities, contribute to these harmful impacts and that additional emissions reductions from these sources are warranted.

IV. Specifically, the [Legislature] finds that aggressive further reductions in emissions of sulfur dioxide (SO2), oxides of nitrogen (NOx), mercury, and carbon dioxide (CO2) must be pursued. These pollutants are primarily responsible for human health and ecosystem impacts

V. The [Legislature] finds that a high quality-of-life environment has been, and will continue to be, essential to this state’s economic well-being. The [Legislature] further finds that protecting the state’s high quality-of-life environment by reducing air pollutant emissions
returns substantial economic benefit to the state through avoided health care costs; greater
tourism resulting from healthier lakes and improved vistas; more visits by fishermen, hunters,
and wildlife viewers to wildlife ecosystems, and a more productive forest and agricultural
sector.

VI. For the above reasons and others, the [Legislature] finds that substantial additional
reductions in emissions of SO2, NOx, mercury, and CO2 must be required of existing fossil fuel
burning steam electric power plants in the state. Due to the collateral benefits and economies of
scale associated with reducing multiple pollutant emissions at the same time, the [Legislature]
finds that such aggressive emission reductions are both feasible and cost-effective if
implemented simultaneously through a comprehensive, integrated power plant strategy.

VII. The [Legislature] also finds that the environmental benefits of air pollutant
reductions can be most cost-effectively achieved if implemented in a fashion that allows for
regulatory and compliance flexibility under a strictly limited overall emissions cap. Specifically,
market-based approaches, such as trading and banking of emission reductions within a cap-and-
trade system, allow sources to choose the most cost-effective ways to comply with established
emission reduction requirements. This approach also provides sources with an incentive to
reduce air pollutant emissions sooner and by greater amounts, promotes the development and
use of innovative new emission control technologies, and specifies to the greatest extent
possible performance results regarding environmental improvement rather than dictating
expensive, facility-specific, command-and-control regulatory requirements. The [Legislature]
acknowledges that future federal regulations may mandate some facility-specific requirements
regarding mercury reductions.

VIII. The [Legislature] also finds that energy conservation results in direct reductions in
air pollutant emissions. Thus, incentives for energy conservation are an important component of
an overall clean power strategy. The [Legislature] recognizes that energy conservation
expenditures made by utilities using system benefits charge funds can benefit all citizens and
ratepayers.

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

I. “Affected sources” means existing fossil fuel burning steam electric power plant units
in this state, excluding any units that may be repowered.

II. “Allowance” means a limited authorization to emit [one ton] of SO2, [one ton] of
NOx, [one pound] of mercury, or [one ton] of CO2 during a specified year.

III. “Commissioner” means the [commissioner of the department of environmental
services].

IV. “Department” means the [department of environmental services].

V. “Discrete emission reduction” or "DER" means an emission reduction generated over
a discrete period of time, and measured in weight (e.g., tons).

VI. “Ozone transport region” means an ozone transport region as established by section
184(a) of the Clean Air Act, 42 U.S.C. section 7511c.

VII. “Person” means any individual, partnership, firm or co-partnership, association,
company, trust, corporation, department, bureau, agency, private or municipal corporation, or
any political subdivision of the state, the United States or political subdivisions or agencies
thereof, or any other entity recognized by law as subject to rights and duties.

VIII. “Renewable energy” means energy derived from hydro, geothermal, wind, solar
thermal, photovoltaic, biomass, methane waste, tidal, or other source approved by the
[department].
IX. “Repowered unit” means an affected source that has installed qualifying repowering technology as defined by 40 C.F.R. part 72, or has replaced a unit by a new unit, provided the new replacement unit:

(a) Is on the same or contiguous property as the replaced unit, regardless of owner;
(b) Has a maximum power output rate equal to or greater than the maximum power output rate of the replaced unit; and
(c) Is designed to control, or is equipped with best available technology to control, emissions of multiple pollutants simultaneously, and in conformity with the emissions rates and reductions used to establish section 4 of this Act.

X. “System benefits charge funds” or “SBC funds” means revenues collected by [electric power company companies] located in the state to fund energy efficiency and conservation and load management programs approved by the [public utilities commission].

Section 4. [Integrated Power Plant Strategy.]

I. The [department] shall implement an integrated, multi-pollutant strategy to reduce air emissions from affected sources.

II. The integrated, multi-pollutant strategy shall be implemented in a market-based fashion that allows trading and banking of emission reductions to comply with the overall statewide annual emission caps established under this section.

III. Allowances, up to the amount of these caps, shall be allocated to each affected source based on the output of each affected source. The [department] shall make publicly available all allocations prior to the effective date of such allocations.

III. The strategy shall include implementation of the following statewide annual emissions caps:

(a) [7,289 tons] annually applicable to total sulfur dioxide (SO2) emissions from the affected sources;
(b) [3,644 tons] annually applicable to total oxides of nitrogen (NOx) emissions from the affected sources;
(c) An annual cap applicable to total mercury emissions from all affected sources burning coal as a fuel, to be recommended by the [department] not more than [60 days] following the U.S. Environmental Protection Agency's proposed regulation establishing a Maximum Achievable Control Technology (MACT) standard for mercury emissions from [electric power company] boilers, but in no case later than [March 31, 2004], with timely consideration by the [legislature] expected by [July 1, 2005]; and
(d) [5,425,866 tons] annually applicable to total carbon dioxide (CO2) emissions from the affected sources until [December 31, 2010], and after [December 31, 2010], a lower cap to be recommended by the [department] no later than [March 31, 2004], with timely consideration by the [Legislature] expected by [July 1, 2005].

Section 5. [Compliance.]

I. The owner or operator of each affected source shall file a compliance plan with the [department] describing the technologies, operational modifications, market-based approaches, or other methods that will be used to comply with the emission caps established under section 4 (III) of this Act. Compliance plans shall also include a report of the mercury content analysis program results required by this section and a report of the stack testing results for mercury emissions from the affected facilities as required by this Act. An initial compliance plan shall be filed no later than [one year] after the effective date of this section. Amended compliance plans...
shall be submitted to the [department] [45 days] prior to the implementation of any change to
the plan.

II. The owner or operator of each affected source burning coal as fuel shall conduct a
mercury content analysis program. This program shall consist of monthly fuel samples and
analyses for at least [12 consecutive months] and the submittal of a final report to the
[department] no later than [one year] after the effective date of this section.

III. Stack testing for mercury emissions shall be completed using a [department]
approved test method no later than [one year] after the effective date of this section. The owner
or operator shall submit a test protocol to the [department] at least [45 days] prior to the
commencement of stack testing.

IV. Compliance with the emission caps established under section 4 (III) of this Act may
be demonstrated by making emission reductions at the affected sources, using compliance
market-based approaches, or other methods acceptable to the [department].

(a) (1) Affected sources may use SO2 allowances from federal or regional
trading and banking programs and incentive programs established under this Act to comply with
the SO2 emission cap established under section 4 (III) of this Act. In addition, allowances or
credits from other programs may be acceptable as determined by the [department].

(2) Affected sources shall transfer to the [department] all annual
allocations provided under the federal Acid Rain Program. Affected sources shall receive from
the department SO2 allowances equivalent to the cap established in section 4 (III) of this Act.
Additionally, in order to promote local reductions, for each year after the compliance date that
combined SO2 emissions from affected sources are below the annual average emissions for the
previous [3 years], affected sources shall receive additional SO2 allowances in a combined
amount equal to the difference between the current year emissions and the average annual
emissions for the previous [3 years].

(3) Further, in order to encourage reductions in upwind emissions and
thereby provide greater benefit to air quality in this state, for each [0.80] allowance purchased
by an affected source under the federal Acid Rain Program and utilized for compliance with the
provisions of this Act which originates from within the ozone transport region, the affected
source shall receive an additional [0.20] allowance from the [department].

(4) The combined sum of all allowances received by the affected sources under
subparagraphs (a)(2) and (a)(3) shall not exceed [20,000] in any given year, and shall be
credited to the affected sources’ accounts in the year following each annual compliance period.

(b) Affected sources may use NOx allowances from federal or regional trading
and banking programs, or other programs acceptable to the [department], and NOx
discrete emissions reductions from state trading and banking programs, to comply with
the NOx emission cap established under section 4 (III). NOx discrete emissions
reductions may only be used to comply with that portion of the NOx emission cap
established under section 4 (III), III which does not apply to emissions between [May 1
and September 30] of any calendar year.

(c) Affected sources may use CO2 allowances from federal or regional trading
and banking programs, or other programs acceptable to the [department] to comply with
the CO2 emission cap established under section 4 (III) of this Act. Early reductions of
CO2 may be banked for future use in regional or national trading programs or to meet
the emission caps established under section 4 (III).

(d) Future mercury allowances or other emissions reduction units or mechanisms
secured from other sources shall only be acceptable in meeting that portion of the
emission cap established under section 4 (III) (c) that is more stringent than federal
requirements. Early reductions of mercury may be banked for future use or to meet the mercury emission cap established under section 4 (III) of this Act.

V. The owner or operator of each affected source shall be allowed to recover all prudent costs associated with compliance in a manner consistent with [insert citation].


I. In order to encourage energy efficiency, energy conservation, renewable energy, and the reductions in local emissions that result, the integrated multi-pollutant strategy shall promote energy efficiency and conservation through conservation and load management programs.

II. [Electric power company] may utilize SBC funds equivalent to the unencumbered amount, if any, rolled over from the prior program year for energy efficiency projects at facilities owned and operated by [electric power company] provided that the company made a good faith effort in the prior program year to meet the goals approved by the [public utilities commission] for its core energy efficiency programs, and provided that the SBC funds used by [electric power company] shall not exceed [2 percent] of all SBC funds collected in the prior program year. [Electric power company] may utilize these funds to implement approved core energy efficiency initiatives or measures at [electric power company] facilities that are cost effective and which enhance the efficient use of energy at [electric power company] facilities. Any energy savings resulting from the use of these funds by [electric power company] at its facilities will not be included in the calculation of [electric power company]’s energy efficiency program goals, any shareholder incentive, or any other incentive program. In any year that [electric power company] utilizes SBC funds, the [electric power company] shall submit a report to the [public utilities commission] and the [department] detailing how these funds were utilized, and will make the report available to interested parties. Any party may request that the [public utilities commission] schedule a hearing to review these reports and the expenditure by [electric power company] of rolled over SBC funds at its facilities.

III. For expenditures made by [electric power company] independent of SBC funds for energy efficiency, new renewable energy projects, or conservation and load management, the department shall provide emissions allowances to [electric power company] equivalent to the amount of such allowances that could have been purchased at market prices by the same dollar amount as the expenditure made. Such expenditures shall be consistent with the core energy efficiency programs approved by the [public utilities commission] or other programs acceptable to the [department] and shall, to the greatest extent practicable, result in demonstrable energy improvements.

Section 7. [Powers and Duties of the Commissioner.] The [commissioner] may:

I. Develop a trading and banking program to provide appropriate compliance flexibility in meeting the emission caps established under section 4 (III) of this Act, and to encourage earlier and greater emissions reductions and the development of new emission control technologies in order to maximize the cost-effectiveness with which the environmental benefits of this chapter are achieved.

II. Propose to the [Legislature] for legislative enactment a program to reduce emissions that impair visibility in mandatory Class I Federal Areas, if evaluation and assessment of the program established under this section reveals after its implementation that further reductions of emissions that impair visibility are necessary. Any program proposed under this paragraph shall be at least as stringent as that specified in the Clean Air Act, amendments thereto, and regulations promulgated thereunder.
III. Propose to the [Legislature] for legislative enactment appropriate processes to encourage pollution prevention, energy efficiency, and other methods to cost-effectively achieve emissions reductions.

Section 8. [Enforcement.]
I. Any violation of any provision of this Act, or of any rule adopted under this Act, shall be subject to enforcement by injunction, including mandatory injunction, issued by the [superior court] upon application of the [attorney general]. Any such violation shall also be subject to a [civil forfeiture] to the state of not more than [$25,000] for each violation, and for each day of a continuing violation.

II. Any person who knowingly violates any of the provisions of this Act, or any rule adopted under this Act, shall be guilty of a [misdemeanor if a natural person], or guilty of a [felony] if any other person.

III. The [commissioner], after notice and hearing pursuant to [insert citation], may impose an [administrative fine] not to exceed [$2,000] for each offense upon any person who violates any provision of this Act or any rule adopted pursuant to this Act. Rehearings and appeals from a decision of the [commissioner] under this paragraph shall be in accordance with [insert citation]. Any [administrative fine] imposed under this paragraph shall not preclude the imposition of further penalties under this Act. The proceeds of [administrative fines] imposed pursuant to this paragraph shall be deposited in the [general fund].

(a) Notice and hearing prior to the imposition of an [administrative fine] shall be in accordance with [insert citation] and procedural rules adopted by the [commissioner] pursuant to [insert citation].

(b) The [commissioner] shall determine fines based on the following:

(1) For a minor deviation from a requirement causing minor potential for harm, the fine shall be not less than [$100] and not more than [$1,000].
(2) For a minor deviation from a requirement causing moderate potential for harm, the fine shall be not less than [$601] and not more than [$1,250].
(3) For a minor deviation from a requirement causing major potential for harm, the fine shall be not less than [$851] and not more than [$1,500].
(4) For a moderate deviation from a requirement causing minor potential for harm, the fine shall be not less than [$601] and not more than [$1,250].
(5) For a moderate deviation from a requirement causing moderate potential for harm, the fine shall be not less than [$851] and not more than [$1,500].
(6) For a moderate deviation from a requirement causing major potential for harm, the fine shall be not less than [$1,251] and not more than [$1,750].
(7) For a major deviation from a requirement causing minor potential for harm, the fine shall be not less than [$851] and not more than [$1,500].
(8) For a major deviation from a requirement causing moderate potential for harm, the fine shall be not less than [$1,251] and not more than [$1,750].
(9) For a major deviation from a requirement causing major potential for harm, the fine shall be not less than [$1,501] and not more than [$2,000].

(c) The [commissioner] may assess additional fines for repeat violations.

Section 9. [Rulemaking Authority.] The [commissioner] shall adopt rules commencing no later than [180 days] after the effective date of this section, relative to:

I. The establishment of trading and banking programs as authorized by this Act.
II. The establishment of a method for allocating allowances and other emissions reduction units or mechanisms as authorized by this Act.
III. Emissions monitoring, record keeping, reporting, and other such actions as may be necessary to verify compliance with this Act.

Section 10. [Compliance Dates.] The owner or operator of each affected source shall comply with the provisions of this Act by [December 31, 2006].

Section 11. [Non-Severability.] No provision of this Act shall be implemented in a manner inconsistent with the integrated, multi-pollutant strategy or this Act in its entirety, and to this end, the provisions of this Act are not severable.

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

Section 13. [Effective Date.] [Insert effective date.]
Organ Donor Rights Legislation (Note)

Nationwide there is a shortage of donor organs, which means only a fraction of those on the waiting list receive a transplant. More than 82,500 men, women and children are currently on the waiting list for an organ. Underlying the shortage of donated organs and tissues is the disparity between how many people say they believe in donation, but how few transplants actually occur.

The Uniform Anatomical Gift Act (UAGA) Section 2(h) states:

“An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.”

Although many states have enacted the UAGA, including Section 2(h), health care providers still routinely seek the approval of family members before proceeding with donation, due to liability concerns. Often grieving family members will refuse organ and tissue donation, even when they know their deceased loved one desired to donate. Accordingly, this issue is a significant problem, with studies showing that about 50 percent of families refuse consent for donating a loved one’s organs when given the opportunity.

In response to this problem, an increasing number of states are addressing this issue by strengthening legislative language regarding the rights of organ donors. Legislation typically states that if there is evidence that an individual wished to donate organs and tissues (e.g., a driver’s license or advanced directive), the next of kin cannot refuse donation. Then, hospitals and physicians inform family members of their loved one’s decision to donate, in the same way that a lawyer informs the family about the contents of a deceased person’s will. Recently the Association of Organ Procurement Organizations (AOPO) have also come out in favor of state legislation that supports donor rights. Listed below are examples of legislation from various states that strengthen donor rights.

**Delaware**

SB4 passed in 2001 adds the following language to Section 2711 of Title 16 of the Delaware Code:

(g) A donor's gift of all or any part of the individual's body, as indicated pursuant to this chapter, including, but not limited to, a designation on a driver's license or identification card, donor card, advance health care directive, will or other document of gift, may not be revoked by the next-of-kin or other persons identified in subsection (c) of this section, nor shall the consent of any such person at the time of the donor's death or immediately thereafter be necessary to render the gift valid and effective.

**Indiana**

Indiana House Bill 1628 passed in 2001 provides civil immunity to hospitals and physicians who follow donors’ wishes. HB 1268 reads:

SECTION 1. IC 29-2-16-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

90 2004 Suggested State Legislation
Sec. 2.5.
(a) This section applies if:
   (1) a donor makes an anatomical gift in writing under section 2(a) of
       this chapter or IC 9-24-17; and
   (2) the gift is not revoked by:
       (A) the donor before the donor's death; or
       (B) a guardian under section 11 of this chapter.
(b) The individuals identified in section 2(b) of this chapter have no legal
    standing or authority to:
   (1) modify a deceased donor's gift of any part of the donor's body made
       in writing under section 2 of this chapter or IC 9-24-17; or
   (2) prevent the donor's anatomical gift from being made.
(c) This section does not limit the individuals identified in section 2(b) of
    this chapter from:
   (1) making a gift of all or any part of a decedent's body; or
   (2) revoking a gift of all or any part of a decedent's body; as provided in
       section 2(b) of this chapter.
(d) Actual notice obtained by:
   (1) a recovery agency acting under section 3.5(a) of this chapter; or
   (2) a hospital acting under section 3.5(b) of this chapter; of an
       individual's written anatomical gift that is made under section 2(a) of
       this chapter or IC 9-24-17 creates a rebuttable presumption that the individual
       made an anatomical gift for purposes of this section.
(e) Actual notice obtained by:
   (1) a recovery agency acting under section 3.5(a) of this chapter; or
   (2) a hospital acting under section 3.5(b) of this chapter; of an
       individual's written revocation of an anatomical gift that is made under
       section 2(a) of this chapter or IC 9-24-17 creates a rebuttable presumption
       that the individual revoked the anatomical gift for purposes of this section.
(f) A health care provider is immune from civil liability for following a
    donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17.

SECTION 2. IC 29-2-16-3.5 IS ADDED TO THE INDIANA CODE AS A
NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:
Sec. 3.5. (a) If:
   (1) a hospital's designated organ recovery agency determines that an
       individual whose death is imminent or who has died is medically suitable for
       organ donation;
   (2) a hospital's designated organ recovery agency, in the absence of
       alternative arrangements by the hospital, and:
       (A) using the standards of a potential tissue and eye donor;
       (B) using the notification protocol developed by the hospital; and
       (C) consulting with the hospital's designated tissue recovery agency
           and eye recovery agency; determines that an individual whose death is
           imminent or who has died is medically suitable for tissue or eye donation;
   (3) a hospital's designated tissue recovery agency determines that an
       individual whose death is imminent or who has died is medically suitable for
       tissue donation; or
   (4) a hospital's designated eye tissue recovery agency determines that an
individual whose death is imminent or who has died is medically suitable for eye donation; the respective recovery agency shall attempt to ascertain whether the individual has made a written anatomical gift under section 2(a) of this chapter or under IC 9-24-17 and, if so, whether the individual has subsequently revoked the anatomical gift in writing. The recovery agency shall consult with the individuals identified in section 2(b) of this chapter who are reasonably available and may consult with any other sources that are available to the recovery agency.

(b) The recovery agency shall provide to the following any information obtained by the recovery agency under subsection (a):
   (1) The hospital.
   (2) The attending physician.
   (3) The physician who certified the individual's death if there is not an attending physician.

(c) A recovery agency identified in subsection (a) may enter into a written agreement with a hospital to allow the hospital to ascertain whether an individual made a written anatomical gift under subsection 2(a) of this chapter or IC 9-24-17 and whether any subsequent written revocation of the anatomical gift occurred.

(d) The hospital shall provide to the following any information obtained by the hospital under subsection (c):
   (1) The recovery agency.
   (2) The attending physician.
   (3) The physician who certified the individual's death if there is not an attending physician.

(e) A hospital or a recovery agency is immune from civil liability for determining in good faith and in compliance with this section that:
   (1) an individual made a written anatomical gift; or
   (2) an individual subsequently made a written revocation of an anatomical gift.

SECTION 4. IC 29-2-16-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Sec. 7.5. (a) The individual's attending physician, or, if none, the:
   (1) physician that certifies the individual's death;
   (2) hospital where the individual is admitted;
   (3) hospital where the individual's remains are being kept; or
   (4) individual identified in section 2 (b) of this chapter;
may petition the probate court in the county where the remains of the individual who is the subject to the petition are located, or the county in which the individual died, for the information referred to in subsection (b).

(b) A person identified in subsection (a) may petition the probate court specified in subsection (a) to determine whether the individual:
   (1) made a written anatomical gift under section 2(a) of this chapter or IC 9-24-17, for purposes of section 2.5 of this chapter; or
   (2) made a written revocation of an anatomical gift under section 2(a) of this chapter or under IC 9-24-17, for purposes of section 2.5 of this chapter.

(c) If the probate court determines under subsection (b) of this chapter that the individual made a written anatomical gift that was not subsequently
revoked in writing by the individual, the court shall order that the anatomical gift of an organ, tissue, or an eye be recovered. (d) The probate court may modify or waive notice and a hearing if the court determines that a delay would have a serious adverse effect on:
   (1) the medical viability of the individual; or
   (2) the viability of the individual's anatomical gift of an organ, tissue, or an eye.

Tennessee

Act Chapter No. 404, Section 68-30-115(f) enacted in 2001 states:

“The rights of the donee created by the gift are paramount to the rights of others except as provided by section 68-30-108(a).”

West Virginia

HB 4370 passed in 2002 adds the language:

§16-19-2 (h) An anatomical gift may not be revoked by the donor's next-of-kin or other persons identified in subsection (a), section three of this article, nor shall the consent of any of these persons, at the time of the donor's death or immediately thereafter, be necessary to render the gift valid and effective.
Pooled Trusts for People with Disabilities

This Act enables people with disabilities to pool their assets into a common trust to help generate income without having to count the interest earned from the joint trust assets against their eligibility requirements for state medical assistance.

Submitted as:
Pennsylvania
Chapter 168 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 “The Pooled Trust Act.”

Section 2. [Definitions.] The following words and phrases when used in this Act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Beneficiary” means an individual with a disability who has the right to receive services and benefits of a pooled trust.

“Board” means a group of people vested with the management of the business affairs of a trustee.

“Disability” means a physical or mental impairment as defined in section 1614 of the Social Security Act (49 Stat. 620, 42 U.S.C. 2 § 1382c).

“Pooled Trust” means a trust that meets all of the following:

(1) Contains assets of more than one beneficiary.

(2) Each beneficiary has a disability.

(3) Is managed by a nonprofit corporation.

(4) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts. Accounts in the trust may be established by the parent, grandparent or legal guardian of the person with a disability, by the individual with a disability or by a court.

(5) Upon the death of a beneficiary, amounts in the beneficiary’s accounts are:

(i) Retained by the trust for the benefit of other beneficiaries, or other people with disabilities; or

(ii) Used to reimburse the [state] in an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.

“Trustee.” A nonprofit organization that manages a pooled trust.

Section 3. [Organization of a Pooled Trust.]

(a) Administration -- A pooled trust shall be administered by a trustee governed by a board. The trust may employ people as necessary.

(b) Fiduciary Status of Board -- The members of a board and employees of a trustee, if any, shall stand in a fiduciary relationship to the beneficiaries and the trustee regarding investment of the trust and shall not profit, either directly or indirectly, with respect thereto.

(c) Control and Management -- A trustee shall maintain a separate account for each beneficiary of a pooled trust, but for purposes of investment and management of funds, the
trustee may pool these accounts. The trustee shall have exclusive control and authority to
manage and invest the money in the pooled trust in accordance with this section, subject,
however, to the exercise of that degree of judgment, skill and care under the prevailing
circumstances that a person of prudence, discretion and intelligence, who are familiar with
investment matters, exercise in the management of their affairs, considering the probable
income to be derived from the investment and the probable safety of their capital. The trustee
may charge a trust management fee to cover the costs of administration and management of the
pooled trust.

(d) Conflict of Interest -- A board member shall disclose and abstain from participation
in a discussion or voting on an issue when a conflict of interest arises with the board member on
a particular issue or vote.

(e) Compensation -- No board member may receive compensation for services provided
as a member of the board. No fees or commissions may be paid to a board member. A board
member may be reimbursed for necessary expenses incurred which are in the best interest of the
beneficiaries of the pooled trust as a board member upon presentation of receipts.

(f) Disbursements -- The trustee shall disburse money from a beneficiary’s account only
on behalf of the beneficiary. A disbursement from a beneficiary’s account shall be in the best
interest of the beneficiary.

Section 4. [Pooled Trust Fund.] All money received for pooled trust funds shall be
deposited with a court-approved corporate fiduciary or with the [State Treasury] if no court-
approved corporate fiduciary is available to the trustee. The funds shall be pooled for investment
and management. A separate account shall be maintained for each beneficiary, and quarterly
accounting statements shall be provided to each beneficiary by the trustee. The court-approved
corporate fiduciary or the [State Treasury] shall provide quarterly accounting statements to the
trustee. The court-approved corporate fiduciary or the [State Treasury] may charge a trust
management fee to cover the costs of managing the funds in the pooled trust.

Section 5. [Reporting.]

(a) Preparation and Filing of Annual Financial Report -- In addition to reports required to
be filed under [insert citation relating to partnerships and limited liability companies], the
trustee shall file an annual report with the [Office Of Attorney General] along with an itemized
statement which shows the funds collected for the year, income earned, salaries paid, other
expenses incurred and the opening and final trust balances. A copy of this statement shall be
available to the beneficiary, trustor or designee of the trustor, upon request.

(b) Preparation of Annual Beneficiary’s Report -- The trustee shall prepare and provide
each trustor or the trustor’s designee annually with a detailed individual statement of the
services provided to the trustor’s beneficiary during the previous 12 months and of the services
to be provided during the following 12 months. The trustee shall provide a copy of this
statement to the beneficiary, upon request.

Section 6. [Coordination of Services.]

(a) Medical Assistance -- In the determination of eligibility for medical assistance
benefits, the interest of any disabled beneficiary in a pooled trust shall not be considered as a
resource for purposes of determining the beneficiary’s eligibility for medical assistance.

(b) Reductions -- No State agency shall reduce the benefits or services available to an
individual because that person is a beneficiary of a pooled trust. The beneficiary’s interest in a
pooled trust shall not be reachable in satisfaction of a claim for support and maintenance of the
beneficiary.
Section 7. [Notice.] The [Office of the Attorney General] shall make available information on the treatment of pooled trusts to the people with disabilities in the medical assistance program.

Section 8. [Applicability.] This Act shall apply to pooled trusts established on or after the effective date of this Act and to the accounts of individual beneficiaries established on or after the effective date of this Act in pooled trusts created before the effective date of this Act.

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

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

Section 11. [Effective Date.] [Insert effective date.]
Predatory Lending (Note)

Imagine losing ownership of your home at the end of your life because of questionable business practices and terms that you don’t fully understand, but were persuaded to agree to. Imagine being plunged into significant debt for the same reason. Such is the case in America as companies target the poor and elderly for high-interest and high-fee loans and mortgages.

According to the Association for Community Reform Now (ACORN), predatory lending generally involves:

- Aggressive and deceptive marketing;
- Attaching prepayment penalties to a loan, and typically at high rates;
- Balloon payments;
- Charging higher interest rates than a borrower’s credit warrants;
- Financing excessive fees into loans;
- Home improvement scams;
- Loan flipping;
- Making loans for more than 100% loan to value;
- Making loans without regard to the borrower’s ability to pay;
- Negative amortization;
- Property flipping; and
- Single premium credit insurance.

Several states introduced or enacted legislation in 2001 and 2002 to combat the problem.

**Alabama**

Senate Bill 273 of 2002 would prohibit making equity-based loans that include financing high points and financial fees.

**California**

AB 489, which became law in 2001, imposes various requirements on consumer loans secured by specified real property, defined as “covered loans.” The law prohibits various acts in making covered loans, including the following:

- Failing to consider the financial ability of a borrower to repay the loan;
- Financing specific types of credit insurance into a consumer loan transaction;
- Making a covered loan without providing the consumer a specified disclosure, and
- Recommending or encouraging a consumer to default on an existing consumer loan in order to solicit or make a covered loan that refines the consumer loan.

Violations are subject to a civil penalty.

**Colorado**

Colorado, HB 1259, which became law in 2002, creates additional protections regarding certain “covered loans” as defined in the federal “Home Ownership and Equity Protection Act of 1994,” including:

- Charging a fee for providing a credit balance;
- Financing of credit insurance;
- Increased interest rates after default;
The following are examples of measures taken by states to address concerns regarding lending practices:

- Lending without regard to repayment ability;
- Limitations on balloon payments, accelerations of indebtedness;
- Mandatory arbitration clauses;
- Negative amortization;
- Prepayment penalties;
- Prohibiting advance payments;
- Recommendations to default on existing loans;
- Refinancing that does not benefit the borrower or that results in a loss of certain benefits to the borrower.
- Requiring certain disclosures and reporting; and
- Using loan proceeds to pay home improvement contractors.

This measure also preempts local law attempting to regulate lending activities that are subject to the Act or to certain federal authorities; specifies civil remedies; and grants the state attorney general authority to enforce the consumer protections.

Colorado Chapter 145 of 2001 requires the owners of certain loans secured by deeds of trust that encumber dwellings, and owners of loans primarily secured by an interest in land, to comply with the notice provisions of the “Uniform Consumer Credit Code” before the commencement of foreclosure proceedings. Failure of any owner to comply with such provisions necessarily precludes said people from providing default information to a credit-reporting agency; and constitutes an absolute defense in any debt recovery action. It also clarifies the definition of “consumer loan.”

Connecticut

Public Act 01-34 of 2001 requires lenders to make certain disclosures to prospective borrowers seeking high-cost home loans, including the interest rate and the consequences of mortgaging a home. It prohibits lenders from including certain loan provisions or from taking certain actions with respect to high-cost home loans, such as charging unwarranted or excessive fees or providing incomplete information. It also imposes conditions on a lender's ability to sell credit insurance to a borrower.

The Act allows lenders to charge a fee for payoff statements only when they are delivered on an expedited basis pursuant to an agreement with the borrower. It creates new penalties for lenders who violate its provisions.

Florida

Concerning high-cost home loans, Chapter 57 of 2002:
- Allows a borrower to cure a default;
- Authorizes the state banking department to bring actions for injunctions; providing for issuance of subpoenas;
- Authorizes the state banking department to impose certain fines under certain circumstances;
- Authorizes the state banking department to issue and serve cease and desist orders for certain purposes;
- Prohibits certain acts relating to high-cost home loans;
- Provides that a lender who violates the Act forfeits the interest in the high-cost home loan;
• Provides that certain unintentional good-faith errors are not deemed violations of the Act;
• Requires certain disclosures for high-cost home loans;
• Requires lenders of high-cost home loans to provide notice to borrowers prior to taking foreclosure actions, and
• Specifies the liability of purchasers and assignees.

Georgia

SB 435 of 2002 would:
• Create a Council for the Prevention of Predatory Lending through Education;
• Direct the Council to design, approve, and implement education programs that inform and educate consumers, particularly those most vulnerable to being taken advantage of by predatory and unscrupulous lenders, as to the dangers and pitfalls of entering into a home loan through cooperation contracting with community based organizations to accomplish such directive;
• Direct the Council to refer individual cases in which there is evidence of an apparent violation of federal or state laws or regulations to the appropriate governmental agency for further investigation and action, and
• Direct the Council to conduct an extensive statewide study of the root cause of home loans that go into default and foreclosure, using as much empirical data as are available.

Georgia HB 1361:
• Creates specific and numerous consumer protections for covered home loans and high-cost home loans, and
• Prohibits practices and limitations relating to covered home loans and high-cost home loans;
• Provides for penalties and enforcement; to provide for exceptions for unintentional violations.

This bill became law in 2002.

Iowa

HCR 21 of 2002 would establish a legislative committee to study predatory and subprime lending practices.

Massachusetts

Senate Bill 18 of 2002 would establish practices to govern high-cost home loans. Such loans are defined as loans in which the annual percentage rate of the home at consummation exceeds five or more percentage points the average weekly yield on United States Treasury securities adjusted to a constant maturity of one year.

New York

A11856, which became law in 2001, imposes certain requirements on high-cost home loans. These include:
- Requiring all high-cost home loans to have a legend on the top of the mortgage indicating that it is a high-cost home loan;
- Applying to any person who acting in bad faith attempts to avoid said provisions by splitting or dividing a high cost-home loan transaction;
- Providing that a lender acting in good faith that fails to comply with certain parts of the Act would not be deemed in violation of the section if the lender notifies the borrower of the compliance failure within 30 days of the loan closing and appropriate restitution is made or the compliance failure resulted from a bona fide error;
- Allowing for a private right of action against a lender or mortgage broker within 6 years of the origination of the loan;
- Directing that violators of the Act are liable to the borrowers for actual damages and statutory damages;
- Allowing a court to award reasonable attorney fees to a borrower;
- Providing for injunctive, declaratory and other equitable relief for borrowers;
- Deeming a home loan agreement void if intentional violation by the lender of the Act is found by a court;
- Allowing a borrower to recover any payments certain circumstances;
- Granting borrowers the right to rescind upon a judicial finding that the high-cost home loan violates provisions of the Act whether such violation is raised as an affirmative claim or defense, and
- Granting borrowers the right to assert any claims in recoupment and defenses to payment in a foreclosure action against the assignee or original lender of the loan.

**North Carolina**

Session Law 332 of 1999 modifies permissible fees which may be charged in connection with home loans secured by first mortgage or first deed of trust, to impose restrictions and limitations on high-cost home loans, to revise the permissible fees and charges on certain loans, to prohibit unfair or deceptive practices by mortgage brokers and lenders, and to provide for public education and counseling about predatory lending.

**Pennsylvania**

Act 55 of 2001 regulates the terms and conditions of certain subprime mortgage loan transactions. Generally, it prohibits business entities and affiliates from making, issuing or arranging subprime or high-cost loans or assisting others in so doing in an abusive, unscrupulous or misleading manner. The law also provides for enforcement, a private right of action, education, outreach, and counseling about such transactions.

**Virginia**

Chapter 511 of 2001 increases the maximum penalty for a violation of the state Mortgage Lender and Broker Act from $1,000 to $2,500, and increases the amount of a bond that mortgage lenders and brokers are required to post from $5,000 to $25,000. The measure also prohibits a mortgage lender from recommending or encouraging a person to default on an existing loan or other debt, if such default adversely affects such person's creditworthiness, in connection with the solicitation or making of a refinancing mortgage loan.
Chapter 510 of 2001 prohibits mortgage lenders and brokers from flipping mortgage loans. "Flipping" a mortgage loan means refinancing a mortgage loan within 12 months after the mortgage was originated when refinancing doesn’t benefit the borrower.
Prescription Drug Labels: Purpose of Drug

This Act specifies that prescription labels must include information concerning the purpose for which a drug is being prescribed if a patient requests that information. It also specifies that a pharmacist may fill a prescription even if the information is not provided, without having to contact the practitioner or patient. Physicians, podiatrists, dentists, optometrists, advance practice nurses and physician assistants would be required to inform patients of the option to have this information included on the prescription label, but failure to do so would not result in any disciplinary action against the practitioner’s professional license.

Submitted as:
Colorado
Chapter 78 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Requiring Certain Information on Prescription Drug Labels.”

Section 2. [Definition.] As used in this Act, “Order” means a prescription order which is any order, other than a chart order, authorizing the dispensing of a single drug or device that is written, mechanically produced, computer generated and signed by the practitioner, transmitted electronically or by facsimile, or produced by other means of communication by a practitioner and that includes the name or identification of the patient, the date, the symptom or purpose for which the drug is being prescribed, if included by the practitioner at the patient’s authorization, and sufficient information for compounding, dispensing, and labeling.

Section 3. [Prescription Drug Labeling.]
(A) A prescription drug dispensed pursuant to an order as defined in this Act must be labeled as follows:

(1) If the prescription is for an anabolic steroid, the purpose for which the Anabolic steroid is being prescribed shall appear on the label.

(2) If the prescription is for any drug other than an anabolic steroid, the symptom or purpose for which the drug is being prescribed shall appear on the label, if, after being advised by the practitioner, the patient or the patient’s authorized representative so requests.

(B) If the symptom or purpose for which a drug is being prescribed is not provided by the practitioner, the pharmacist may fill the prescription order without contacting the practitioner, patient, or the patient’s representative, unless the prescription is for an anabolic steroid.

Section 4. [Prescriptions - Requirement to Advise Patients.]
(A) Physicians or Physician Assistants:

(1) A physician licensed under [insert citation], or a physician assistant licensed under [insert citation] and who has been delegated the authority to prescribe medication, may advise the physician’s or the physician assistant’s patients of their option to have the symptom or purpose for which a prescription is being issued included on a prescription order.
(2) A physician’s or a physician assistant’s failure to advise a patient under subsection (A)(1) of this section shall not be grounds for any disciplinary action against the physician’s or the physician assistant’s professional license.

(3) Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a physician or physician’s assistant in a negligence or tort action, nor shall such failure be evidence in any civil action against a physician or a physician’s assistant.

(B) Podiatrists:

(1) A podiatrist licensed under [insert citation] may advise the podiatrist’s patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A podiatrist’s failure to advise a patient under subsection (B)(1) of this section shall not be grounds for any disciplinary action against the podiatrist’s professional license.

(3) Failure to advise a patient pursuant to subsection (B)(1) of this section shall not be grounds for any civil action against a podiatrist in a negligence or tort action, nor shall such failure be evidence in any civil action against a podiatrist.

(C) Dentists:

(1) A dentist licensed under [insert citation] has the right to prescribe such drugs or medicine, perform such surgical operations, administer such general or local anesthetics, and use such appliances as may be necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to a family member or himself or herself any habit-forming drug, as defined in [insert citation], or any controlled substance, as defined in [insert citation], other than in the course of legitimate dental practice and pursuant to the rules promulgated by the [state board of dentistry] regarding controlled substance record keeping.

(2) A dentist licensed under [insert citation] may advise the dentist’s patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(3) A dentist’s failure to advise a patient under subsection (C)(2) of this section shall not be grounds for any disciplinary action against the dentist’s professional license.

(4) Failure to advise a patient pursuant to subsection (C)(2) of this section shall not be grounds for any civil action against a dentist in a negligence or tort action, nor shall such failure be evidence in any civil action against a dentist.

(D) Advance Practice Nurses:

(1) An advanced practice nurse who has been granted authority to prescribe prescription drugs and controlled substances under [insert citation] may advise the nurse's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A nurse’s failure to advise a patient under subsection (D)(1) of this section shall not be grounds for any disciplinary action against the nurse’s professional license.

(3) Failure to advise a patient pursuant to subparagraph (D)(1) of this section shall not be grounds for any civil action against a nurse in a negligence or tort action, nor shall such failure be evidence in any civil action against a nurse.

(E) Optometrists:

(1) An optometrist licensed under [insert citation] may advise the optometrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.
(2) An optometrist’s failure to advise a patient under subsection (E)(1) of this section shall not be grounds for any disciplinary action against the optometrist's professional license.

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

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

Section 7. [Effective Date.] [Insert effective date.]
Preservation Interim Loan Program

This Act establishes a program and a fund to help qualified buyers quickly access financing in order to gain control of at-risk subsidized housing developments before those developments are converted to market rate properties. The idea behind the legislation is to help preserve a viable number of affordable housing units.

Submitted as:
California
Chapter 721, 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 Establish a Preservation Interim Loan Program.”

Section 2. [Legislative Findings.] The legislature finds and declares:
(a) The federal Housing and Urban Development Department subsidizes units of this state’s affordable rental housing. As the owners' obligations expire, many of these units have already been converted to market-rate housing, and additional units are considered at risk of imminent conversion. In addition, other units financed with state and federal low-income housing tax credits will face some risk of conversion as the first generation of tax credit developments reach the expiration of their income and rent restrictions over the next [five years]. These at-risk units will likely convert to market-rate housing unless they are acquired by organizations that commit to maintaining affordable rents.
(b) The loss of these assisted units represents not only a loss of precious affordable housing stock and hardship and potential dislocation for tenants, many of whom are seniors, but also the loss of millions of federal housing assistance dollars to this state each year.
(c) This looming loss of affordable rental housing is exacerbated by this state’s failure to produce the new housing units needed to house the state's population in recent years. The shortage is most strongly felt in the areas of low-cost housing for working families, people moving from welfare to work, and seniors and disabled people.
(d) Affordable housing organizations that wish to purchase properties at risk of converting to market-rate housing often do not have access to the short-term capital needed to purchase the properties quickly. This lack of short-term capital greatly reduces the likelihood that these properties will remain affordable.
(e) The intent of this Act is to create a short-term capital loan program to ensure that the state’s supply of affordable housing is not depleted by the conversion of existing government-assisted rental housing to market-rate housing.

Section 3. [Definitions.] As used in this Act:
(a) “Assisted housing development” means a multifamily rental housing development that receives governmental assistance under any of the following federal programs:
(1) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-
based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(2) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)).
(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(3) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(4) Programs under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(b) “Fund” means the Preservation Opportunity Fund created by Section 5 of this Act.

(c) “Department” means the [state department of housing and community development].

(d) “Agency” means the [state housing financing agency].

Section 4. [Preservation Opportunity Program.]

(a) There is hereby created the “Preservation Opportunity Program.”

(b) The [department] shall contract with the [agency] for the administration of this section, and the [agency] shall establish the terms upon which loans may be made consistent with this section.

(c) A project shall meet all of the following requirements to be eligible for a loan:

(1) It shall be an assisted housing development.

(2) The borrower shall, in conjunction with this loan, receive a loan from the [agency's] [Preservation Acquisition Program] established under [insert citation] for the acquisition of this project.

(3) The borrower shall agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for a term of not less than [30 years]. To the extent economically feasible, the development shall be continuously occupied in the approximate percentages that those households have occupied that development as of the date of acquisition by the purchaser or the approximate percentages specified in existing federal, state, or locally imposed use restrictions, whichever is higher. This obligation shall be recorded at the close of escrow in the office of the county recorder of the county in which the development is located. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, if they are available and are provided at a level sufficient to maintain the project's fiscal viability. Nothing in this paragraph shall be construed to require the future income restriction of units unrestricted under the new regulatory agreement required by this subdivision.

(d) Projects that meet the requirements of subdivision (c) shall be evaluated for funding based on their ability to address the following priorities:

(1) First priority shall be given to projects whose rent restrictions have expired or are eligible to expire within [two years] of application for a loan under this program.

(2) Second priority shall be given to projects with rent restrictions expiring within [five years].

(e) The loans for assisted housing developments under this section shall include the following terms:

(1) The [agency] shall determine the term of the loan. A loan may not exceed a term of [two years], unless the [agency] determines, in its discretion, that a longer term is required to do both of the following:

(A) To preserve the affordability of a project.
To ensure the financial viability of a project.

(2) The rate of interest shall not exceed [3 percent per annum] on the unpaid balance for that portion of the loan made with [General Fund] or general obligation bond moneys. The rate of interest for portions of the loan made with [non-General Fund], nongeneral obligation bond moneys shall be established by the [agency].

(3) Simple interest shall accrue but be deferred until loan maturity or transfer of the property.

(4) Any other terms and provisions that the agency may deem proper.

Section 5. [The Preservation Opportunity Fund.]

(a) A “Preservation Opportunity Fund” is hereby created in the State Treasury. All money in the fund is continuously appropriated to the [department] without regard to fiscal years for the purposes of this Act and for costs incurred in administering the program. The combined administrative expenses of the [department] and the [agency] shall not exceed [5 percent] of the funds deposited in the fund for the purposes of this Act.

(b) The following shall be paid into the fund:

(1) Any money appropriated and made available by the [legislature] for purposes of the fund.

(2) Any money that the [department] or the [agency] receives in repayment of loans from the fund, including interest therefrom.

(3) Any other money that may be made available to the [department] for the purposes of this Act from any other source.

Section 6. [Interim Repositioning Program.]

(a) There is hereby created the “Interim Repositioning Program,” the purpose of which is to leverage private capital to increase the funding available to preserve at-risk housing.

(b) The [department] shall administer this program and establish the terms upon which loans may be made consistent with this section.

(c) The [department] shall select a single sponsor through a competitive process. The sponsor shall meet all of the following criteria:

(1) Be a not-for-profit corporation based in this state.

(2) Demonstrate sufficient organizational stability and capacity to carry out the activity for which it is requesting funds, including the capacity to acquire, renovate, or rehabilitate, asset manage and property manage a portfolio of assisted housing developments, and, if applicable, to underwrite, close, and service loans. Capacity may be demonstrated by substantial successful experience performing similar activities, or through other means acceptable to the department.

(3) Demonstrate a feasible strategy to meet the leveraging requirements of subdivision (g) within [60 days] after being chosen as the sponsor.

(4) Demonstrate past experience in the cost-effective use of public resources.

(5) Submit a detailed business plan as to how the sponsor intends to meet the requirements of this section. The business plan shall include a description of appropriate financial controls, acquisition procedures, underwriting procedures, and internal controls.

(d) The [department] shall give bonus points in the rating and ranking process to an applicant who can demonstrate letters of intent from private entities to provide capital to meet the leverage requirement of this section.

(e) The [department] shall make a loan for a term of not more than [five years] to the project sponsor for the purposes of subdivision (i).
(f) Principal and accumulated interest is due and payable upon completion of the term of the loan. The loan shall bear simple interest at a rate of [3 percent per annum] on the unpaid principal balance.

(g) Before expending any state funds, the sponsor shall raise at least [$3] of private capital as equity to match every dollar of Interim Repositioning Program loan proceeds. To be considered private capital, outside funds shall be committed for a term at least equal to the term of the loan made pursuant to this section and available to be used for the purposes of this section. If the sponsor is unable to meet these matching requirements within [60 days] of selection as the sponsor, the loan shall be repaid with accumulated interest to the department, deposited in the fund, and made available to the next highest rated qualified project sponsor identified pursuant to subdivision (c). If, within [180 days], there is no remaining qualified project sponsor available, any unexpended funds shall be made available for the purposes of section 4 of this Act.

(h) Funds lent to the project sponsor pursuant to this section and the required private matching funds shall be used to finance up to [20 percent] of the cost of acquiring an assisted housing development.

(i) The sponsor shall use Interim Repositioning Program loan proceeds and the required private matching funds for the following purposes:

   (1) To acquire an assisted housing development in this state for which rent restrictions have expired or are eligible to expire within [five years] of the date that the [department] chooses the sponsor. First priority shall be given to projects for which rent restrictions have expired or are eligible to expire within [two years].

   (2) To make loans not to exceed a term of [three years] to any entity described in [insert citation] for the acquisition of an assisted housing development for which rent restrictions have expired or are eligible to expire within [five years] of the date the agency chooses the project sponsor. First priority for loans shall be given to projects for which rent restrictions have expired or are eligible to expire within [two years]. The rate of interest on loans made pursuant to this paragraph shall be equal to the lowest feasible rate sufficient to cover the cost of capital to the sponsor.

(j) The sponsor, in the event he or she directly acquires an assisted housing development, or the borrower, if he or she has received a loan from the project sponsor pursuant to this section, shall agree to obligate himself or herself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for a term of not less than [30 years]. To the extent economically feasible, the development shall be continuously occupied in the approximate percentages that those households who have occupied that development as of the date of acquisition by the purchaser or the approximate percentages specified in existing federal, state, or locally imposed use restrictions, whichever is higher. This obligation shall be recorded at the close of escrow in the office of the county recorder of the county in which the development is located. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, if they are available and provided at a level sufficient to maintain the project's fiscal viability. Nothing in this paragraph shall be construed to require the future income restriction of units unrestricted under the new regulatory agreement required by this subdivision.

(k) The [department], in its loan agreement with the sponsor, shall establish a schedule for the timely expenditure of funds by the sponsor.

(l) The [department] shall select a sponsor for the purposes of this section within [six months] of the date funding becomes available.
(m) The [department] may, upon consultation with interested parties, including potential applicants and housing advocates, administer this program through a notice of funding availability that shall not be subject [insert citation].

Section 6. [Annual Report.] The [department] shall include in its last annual report submitted to the [Legislature], pursuant to [insert citation], on or before [December 31, 2005], all of the following:

(a) A general description of activities undertaken pursuant to this Act.

(b) For each project assisted pursuant to this Act, a description of the expiration date of the project's rent restrictions; the name and location of the purchaser; the acquisition price; the number of assisted units preserved; and the level of affordability maintained.

(c) If the sponsor for the Interim Repositioning Program subsequently sells any projects, a description of the name and location of the purchaser, the purchase price, and the total transaction costs.

(d) With respect to the Interim Repositioning Program, an evaluation of the sponsor's success in leveraging private capital.

(e) A comparison of the cost of preserving units under the Preservation Opportunity Program versus the Interim Repositioning Program.

(f) If sufficient data exist, a comparison of the cost of preserving units with rent restrictions that have expired or are eligible to expire within [two years] versus units with rent restrictions that are eligible to expire within [three to five years].

(g) An overall assessment of the effectiveness of the Preservation Opportunity Program and the Interim Repositioning Program as tools for preserving affordable housing.

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

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

Section 9. [Effective Date.] [Insert effective date.]
Prohibiting Dismissing Certain Emergency Workers

This Act prohibits employers from firing employees who are volunteer firefighters, rescue squad members, emergency medical technicians, peace officers, or members of an emergency management agency, and are late to or absent from work because they respond to an emergency. However, employers may charge any time that such employees use to respond to emergencies against the employees’ regular pay.

Submitted as:
Kentucky
HB 388
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 Prohibiting Dismissing Certain Emergency Workers under Certain Conditions.”

Section 2. [Prohibitions Against Terminating Certain Emergency Workers.]
(A) No employer shall terminate an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency, because that employee, when acting as a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency, is absent or late to the employee's employment in order to respond to an emergency prior to the time the employee is to report to his or her place of employment.

(B) An employer may charge any time that an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency loses from employment because of the employee's response to an emergency against the employee's regular pay.

(C) An employer may request an employee who loses time from the employee's employment to respond to an emergency to provide the employer with a written statement from the supervisor or acting supervisor of the volunteer fire department, rescue squad, emergency medical services agency, law enforcement agency, or the director of the emergency management agency stating that the employee responded to an emergency and listing the time and date of the emergency.

(D) Any employee that is terminated in violation of the provisions of this section may bring a civil action against his or her employer. The employee may seek reinstatement to the employee's former position, payment of back wages, reinstatement of fringe benefits, and where seniority rights are granted, the reinstatement of seniority rights. In order to recover, the employee shall file this action within [one year] of the date of the violation of this section.

Section 3. [Severability.] [Insert severability clause.]
Section 4. [Repealer.] [Insert repealer clause.]
Section 5. [Effective Date.] [Insert effective date.]
Prohibiting Pyramid Promotional Schemes

This Act defines and bans illegal pyramid promotional schemes and establishes penalties for establishing or operating an illegal pyramid scheme.

Submitted as:
South Dakota
HB 1183
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit Pyramid Promotional Schemes.”

Section 2. [Definitions.] For the purposes of this Act:
“Promote” means contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme.
“Appropriate Inventory Repurchase Program” means a program by which a plan or operation repurchases, upon request and upon commercially reasonable terms, when the salesperson’s business relationship with the company ends, current and marketable inventory in the possession of the salesperson that was purchased by the salesperson for resale. Any such plan or operation shall clearly describe the program in its recruiting literature, sales manual, or contract with independent salespeople, including the disclosure of any inventory which is not eligible for repurchase under the program.
“Inventory” includes both goods and services, including company-produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespeople to purchase.
“Commercially Reasonable Terms” means the repurchase of current and marketable inventory within [twelve months] from the date of purchase at not less than [ninety percent] of the original net cost, less appropriate set-offs and legal claims, if any.
“Current and Marketable” excludes inventory that is no longer within its commercially reasonable use or shelf-life period, that was clearly described to salespeople prior to purchase as seasonal, discontinued, or special promotion products not subject to the plan or operation’s inventory repurchase program, or that has been used or opened.
“Pyramid Promotional Scheme” means any plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other people into the plan or operation rather than from the sale and consumption of goods, services, or intangible property by a participant or other people introduced into the plan or operation. The term includes any plan or operation under which the number of people who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, or any plan or operation under which a person, on giving any consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.
“Compensation” means a payment of any money, thing of value, or financial benefit conferred in return for inducing another person to participate in a pyramid promotional scheme.
“Consideration” means the payment of cash or the purchase of goods, services, or intangible property. The term does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities.

“Inventory Loading” means that the plan or operation requires or encourages its independent salespeople to purchase inventory in an amount, which exceeds that which the salesperson can expect to resell for ultimate consumption or to consume in a reasonable time period, or both.

Section 3. [Participation in Any Pyramid Promotional Scheme: Penalties.]

(A) No person may establish, promote, operate, or participate in any pyramid promotional scheme. A limitation as to the number of people who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme. It is not a defense under this section that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation.

(B) Any person who establishes or operates a pyramid promotional scheme is guilty of a [Class 5 felony]. Any person who knowingly participates in a pyramid promotional scheme is guilty of a [Class 1 misdemeanor].

Section 4. [Participation in Any Pyramid Promotional Scheme: Exceptions.]

(A) Nothing in this Act may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and the plan or operation implements an appropriate inventory repurchase program.

(B) The provisions of this Act do not preclude, preempt, or prohibit the [attorney general] from proceeding against any plan or scheme or any person involved with such plan or scheme under any other provision of law.

Section 5. [Violations.]

(A) If it appears to the [attorney general] that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act, or any order under this Act, the [attorney general] may do one or more of the following:

(1) Issue a cease and desist order, with or without prior hearing, against any person engaged in the prohibited activities, directing such person to cease and desist from further illegal activities;

(2) Bring an action in the [circuit court] to enjoin the acts or practices to enforce compliance with this Act, or any order under this Act; or

(3) Impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this Act, or any order issued under this Act, in an amount not to exceed [ten thousand dollars] per violation per person.

(B) The [attorney general] may bring actions to recover penalties pursuant to this subdivision in [circuit court]. All civil penalties received shall be deposited in the [state general fund].

(C) Any person named in a cease and desist order issued pursuant to this Act shall be notified of his or her right to file, within [fifteen days] after the receipt of the order, a written notice for a hearing with the [attorney general]. If the [attorney general] does not receive a
written request for a hearing within the time specified, the cease and desist order shall be
permanent and the person named in the order deemed to have waived all rights to a hearing.
Every such order shall state its effective date and shall concisely state its intent or purpose and
the grounds on which it is based. Any person aggrieved by a final order issued pursuant to this
Act may obtain a review of the order in the [circuit court] pursuant to the provisions of [insert
citation].

(D) Upon a proper showing a permanent or temporary injunction, restraining order, or
writ of mandamus shall be granted and a receiver or conservator may be appointed for the
defendant or defendant’s assets. In addition, upon a proper showing by the [attorney general],
the [court] may enter an order of rescission, restitution, or disgorgement directed to any person
who has engaged in any act constituting a violation of any provision of this Act, or any order
under this Act. The court may not require the [attorney general] to post a bond. In addition to
fines or penalties, the [attorney general] shall collect costs and attorney fees.

Section 6. [Burden of Showing Compliance.] The burden of showing compliance with
the provisions of this Act lies with the plan, scheme, or person involved with such plan or
scheme.

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

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

Section 9. [Effective Date.] [Insert effective date.]
Prohibiting the Sale and Distribution of Mercury-Added Novelties

This Act:
- Prohibits the sale and distribution in a state of mercury-added novelties after July 1, 2003;
- Limits the circumstances under which mercury fever thermometers may be sold or supplied to an individual after July 1, 2003;
- Restricts a public or nonpublic school from using or purchasing a mercury commodity, mercury compounds, or mercury-added instructional equipment and materials after July 1, 2003;
- Provides that a person may sell or provide a mercury commodity to another person after July 1, 2003, only if the person meets certain conditions;
- Requires the state department of environmental management and solid waste management districts to implement mercury education programs;
- Permits local units of government to implement such programs, and
- Requires the state environmental quality service council to review various issues concerning mercury before January 1, 2004.

Submitted as:
Indiana
HB 1901 (enrolled version)

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit Selling and Distributing Mercury-Added Novelties.”

Section 2. [Definitions.] As used in this Act:
"Antique” refers to a product manufactured before 1980.
“Department” means the [department of environmental protection].
“District” refers to a county solid waste management district, joint solid waste management district, or a regional water, sewage, or solid waste district established under [insert citation].
“Manufacturer” means any individual, corporation, limited liability company, partnership, trust, estate, or unincorporated association that:
(1) produces in the United States a mercury-added product that does not consist of multiple components produced by separate entities;
(2) is the last entity to produce or assemble in the United States a mercury-added product that consists of multiple components produced by separate entities; or
(3) domestically distributes a mercury-added product produced in a foreign country.
“Mercury-Added Novelty” means a mercury-added product intended mainly for personal or household enjoyment or adornment, including:
(1) items intended for use as practical jokes;
(2) figurines;
(3) adornments;
(4) toys;
(5) games;
(6) cards;
(7) ornaments;
(8) yard statues and figurines;
(9) candles;
(10) jewelry;
(11) holiday decorations; and
(12) footwear and other items of apparel.

“Mercury-Added Product” means:

(1) a product that contains:
   (A) elemental mercury;
   (B) metallic mercury in an alloy;
   (C) inorganic mercury salt; or
   (D) organic mercury; intentionally added by the manufacturer in order to provide
   a specific characteristic, appearance, or quality to the product or to perform a specific beneficial
   function for the product; or
   (2) a product with a component that meets the criteria of subdivision (1).

“Mercury-Added Product” does not include:

(1) a product in which mercury is a residue from the intentional use of mercury in the
   manufacturing process, if the mercury residue does not:
   (A) provide a specific characteristic, appearance, or quality to the product; or
   (B) perform a specific beneficial function for the product; or

(2) a mercury commodity.

“Mercury Commodity” means a product that consists of only mercury and its container
(such as a container of mercury that is opened and from which mercury is put into a mercury-
added product) if the mercury is not performing a specific beneficial function for the product.

“Mercury Fever Thermometer” means a mercury-added product that is a thermometer or
another medical or scientific instrument and is used for measuring body temperature.

“Nonpublic School” means any school that is not maintained by a public school
 corporation. The term includes, but is not necessarily limited to, any private school or any
 parochial school.

“Person” means an individual, a corporation, a limited liability company, a partnership, a
trust, an estate, or an unincorporated association.

“Public School” means any school maintained by a public school corporation.

Section 3. [Mercury Commodities.]

After July 1, 2003, a person may sell or provide a mercury commodity to another in
this state (other than for collection for recycling) only if:

(1) the person selling or providing the mercury commodity provides a material safety
data sheet with the mercury commodity; and

(2) the person selling or providing the mercury commodity requires the purchaser or
recipient to sign a statement with respect to the mercury in the mercury commodity that the
purchaser or recipient:
   (A) will use the mercury only:
       (i) for medical purposes;
       (ii) in dental amalgam dispose-caps;
(iii) for training;
(iv) for research; or
(v) for manufacturing purposes;
(B) understands that mercury is toxic;
(C) will store and use the mercury appropriately so that no individual is exposed to the mercury under normal conditions of use; and
(D) will not intentionally:
   (i) place or cause to be placed; or
   (ii) allow anyone under the control of the purchaser or recipient to place or cause to be placed; the mercury commodity in solid waste for disposal or in a wastewater disposal system.

Section 4. [Mercury Collection Programs.]
   (1) Districts, in cooperation and with the support of the [department], shall implement mercury collection programs for the public and small businesses.
   (2) Local government units, in cooperation and with the support of the [department], may implement mercury collection programs for the public and small businesses.

Section 5. [Education Programs Concerning Reusing and Recycling Mercury.]
   (1) The [department of environmental protection] and districts in cooperation and with the support of the [department], shall implement education programs to provide information to the public concerning the reuse and recycling of mercury in mercury commodities and mercury-added products and collection programs available to the public for mercury commodities; and mercury-added products.
   (2) Local government units, in cooperation and with the support of the [department], may implement education programs to provide information to the public concerning the reuse and recycling of mercury in mercury commodities and mercury-added products; and collection programs available to the public for mercury commodities; and mercury-added products.

Section 6. [Recommendations.] Before [January 1, 2004], the [department of environmental protection] shall review issues relating too the labeling and disposal of products that contain mercury, and the notification, restrictions on sales, and limitations on the use of elemental mercury as added by this Act, and if appropriate, make legislative recommendations based on the reviews conducted under this Act.

Section 7. [Public and Nonpublic Schools.] After [July 1, 2003], a public school or nonpublic school may not use or purchase for use in a primary or secondary classroom a mercury commodity, mercury compounds, or mercury-added instructional equipment or materials except measuring devices and thermometers for which no adequate substitute exists for use in laboratories.

Section 8. [Mercury-Added Novelties.]
   (1) This Act does not apply to a mercury-added novelty if the novelty uses a mercury-added button cell battery to function and the only mercury contained in the novelty is found in the mercury-added button cell battery.
   (3) After [July 1, 2003], a mercury-added novelty may not be offered for final sale or distributed for promotional purposes in this state if the offerer or distributor knows or has reason to know that the novelty contains mercury.
Section 9. [Mercury Thermometers.]

(1) This Act does not apply to a mercury thermometer or to a thermometer if the thermometer uses a mercury-added button cell battery and the only mercury contained in the thermometer is found in the mercury-added button cell battery.

(2) Except as provided in subsection (3), after [July 1, 2003], a person may sell or supply a mercury fever thermometer to an individual only if the person is a pharmacist or a pharmacist's assistant working at a pharmacy and the thermometers are stored in such a manner that the pharmacist or the pharmacist's assistant must obtain the thermometer for the individual.

(3) A licensed practitioner of medicine may sell or supply a mercury fever thermometer to an individual.

Section 10. [Mercury and Antiques.] This Act does not apply to antiques.

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

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

Section 13. [Effective Date.] [Insert effective date.]
Prohibiting the Sale of Prepaid Adult Entertainment Cards

This Act prohibits selling prepaid adult entertainment cards to people younger than 18 years. Prepaid adult entertainment cards are products, either sold at wholesale, retail, or distributed gratis as a promotion, which permit cardholders to access one or more erotic or pornographic Internet sites or “adult” telephone services by means of a predetermined user identification and password unique to each card.

Submitted as:
South Dakota
SB 73 (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 the Sale of Prepaid Adult Entertainment Cards and to Provide a Penalty Therefor.”

Section 2. [Definitions.] For the purposes of this Act, a prepaid adult entertainment card is:
(A) A product, either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one or more erotic or pornographic Internet sites by means of a predetermined user identification and password unique to each card; or
(B) A product, either sold at wholesale, retail, or distributed gratis as a promotion, which permits the cardholder to access one or more adult entertainment telephone services for a predetermined number of minutes by means of a telephone number and an access code or password unique to each card.

Section 3. [Penalties.] It is a [Class 1 misdemeanor] to sell, give, or distribute any prepaid adult entertainment card or any prepaid adult entertainment telephone card to any person under [eighteen] years of age.

Section 4. [Civil Damages.]
(A) Any person who knowingly participates in any conduct proscribed by this Act is liable for civil damages.
(B) Any of the following people may bring an action for damages caused by another person's conduct as proscribed by this Act:
(1) The victimized minor;
(3) A parent, legal guardian, or sibling of a victimized minor; or
(3) Any person injured as a result of the willful, reckless, or negligent actions of a person who knowingly participated in conduct proscribed by this Act.
If the parent or guardian is named as a defendant in the action, the court shall appoint a special guardian to bring the action on behalf of the minor.
(C) Any person entitled to bring an action under this section may seek damages from any person who knowingly participated in the sale or in the chain of distribution of any prepaid adult entertainment card or any prepaid adult entertainment telephone card proscribed by this Act.

(D) Any person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the proscribed conduct;

(2) Noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by the proscribed conduct;

(3) Exemplary damages;

(4) Attorneys’ fees; and

(5) Disbursements.

(E) Any action for damages under this Act shall be commenced within [six years] of the time the plaintiff knew, or had reason to know, of any injury caused by violations of this Act. The knowledge of a parent, guardian, or custodian may not be imputed to the minor. For a plaintiff, the statute of limitations under this section is tolled while any potential plaintiff is incapacitated by minority.

Section 5. [Prepaid Adult Entertainment Telephone Cards Subject to Seizure and Destruction.] As a public nuisance, all prepaid adult entertainment cards and prepaid adult entertainment telephone cards are subject to seizure and destruction without compensation by any law enforcement agency with appropriate jurisdiction.

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

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

Section 8. [Effective Date.] [Insert effective date.]
Prohibiting Using State Funds and Facilities to Assist, Promote or Deter Union Organizing

This Act prohibits using state funds and facilities to assist, promote or deter union organizing. This includes using such money to train managers, supervisors or other administrative personnel to encourage or discourage employees from participating in a union organizing drive. The law establishes a legislative finding regarding the proprietary interest of the state in ensuring that scarce public resources are utilized solely for the public purpose for which they were appropriated and requires employers to keep records of the expenditures of state funds sufficient to show that state funds have not been utilized in a prohibited manner.

Submitted as:
New York
11784A
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 Using State Funds and Facilities to Assist, Promote or Deter Union Organizing.”

Section 2 [Prohibition against Use of State Funds.]

1. The [legislature] hereby finds and declares that sound fiscal management requires vigilance to ensure that funds appropriated by the legislature for the purchase of goods and provision of services are ultimately expended solely for the purpose for which they were appropriated. The [legislature] finds and declares that when public funds are appropriated for the purchase of specific goods and/or the provision of services, and those funds are instead used to encourage or discourage union organization, the proprietary interests of this state are adversely affected. As a result, the[legislature] declares that the use of state funds and property to encourage or discourage employees from union organization constitutes a misuse of the public funds and a misapplication of scarce public resources, which should be utilized solely for the public purpose for which they were appropriated.

2. Notwithstanding any other provision of law, no monies appropriated by the state for any purpose shall be used or made available to employers to:

   (a) Train managers, supervisors or other administrative personnel regarding methods to encourage or discourage union organization, or to encourage or discourage an employee from participating in a union organizing drive;

   (b) Hire or pay attorneys, consultants or other contractors to encourage or discourage union organization, or to encourage or discourage an employee from participating in a union organizing drive; or

   (c) Hire employees or pay the salary and other compensation of employees whose principal job duties are to encourage or discourage union organization, or to encourage or discourage an employee from participating in a union organizing drive.

3. Any employer that utilizes funds appropriated by the state and engages in such activities shall maintain, for a period of not less than [three years] from the date of such activities, financial records, audited as to their validity and accuracy, sufficient to show that
state funds were not used to pay for such activities. An employer shall make such financial
records available to the state entity that provided such funds and the [attorney general] within
[ten business days] of receipt of a request from such entity or the [attorney general] for such
records.

4. The [attorney general] may apply in the name of the people of this state for an order
enjoining or restraining the commission or continuance of the alleged violation of this section.
In any such proceeding, a court may order the return to the state of the unlawfully expended
funds. Further, a court may impose a civil penalty not to exceed [one thousand dollars] where it
has been shown that an employer engaged in a violation of subdivision two of this section;
provided, however, that a court may impose a civil penalty not to exceed [one thousand dollars]
or [three] times the amount of money unlawfully expended, whichever is greater, where it is
shown that the employer knowingly engaged in a violation of subdivision two of this section or
where the employer previously had been found to have violated subdivision two within the
preceding [two years]. All monies collected pursuant to this section shall be deposited in the
state [general fund].

5. The [commissioner of labor relations] shall promulgate regulations describing the
form and content of the financial records required pursuant to this section, and the
[commissioner] shall provide advice and guidance to state entities subject to the provisions of
this section as to the implementation of contractual and administrative measures to enforce the
purposes of this section.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Prohibiting Viewing Video Signals while Operating a Motor Vehicle

This Act generally prohibits driving a motor vehicle with a television capable of receiving any pre-recorded visual presentation unless the television is behind the driver's seat or not visible to the driver while operating the motor vehicle.

Submitted as:
Louisiana
Act 1171 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit the Viewing of Certain Video Signals or the Placement of Certain Video Signal Receivers in Certain Places in Motor Vehicles.”

Section 2. [Video Signals and Equipment in Motor Vehicles.]
(A) Except as provided in subsection C of this section, no person shall drive a motor vehicle which is equipped with a television receiver, screen, or other means of visually receiving a television broadcast or a video signal that produces entertainment or business applications, which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle.
(B) Additionally, no retailer shall install a television receiver, screen or other means of receiving a visual television broadcast or video signal that produces entertainment or business applications, in a motor vehicle at any point forward of the back of the driver’s seat or at any point which would make the device visible to the driver while operating the motor vehicle.
(C) This section does not apply to the following equipment when installed in a motor vehicle:
   (1) A vehicle information display.
   (2) A navigation or global positioning display.
   (3) A mapping display.
   (4) A visual display used to monitor the area immediately to the rear or sides of a motor vehicle for the purpose of maneuvering the vehicle.
   (5) A television receiver, video monitor, television or video screen that produces entertainment or business applications, or any other similar means of visually displaying a television broadcast or video signal, if that equipment has a device that, when the motor vehicle is being driven, disables the equipment for all uses except as a visual display as described in (1) through (4) of this subsection C if this section.
(D) This section does not apply to a self-contained motor home that is in excess of [twenty-one feet] in length.

Section 3. [Severability.] [Insert severability clause.]
Section 4. [Repealer.] [Insert repealer clause.]
Section 5. [Effective Date.] [Insert effective date.]
Public School Volunteer Health Care Practitioners

This SSL draft is compiled from Section 9 of Florida Chapter 230 of 2002. The draft provides incentives to health care practitioners to provide their services in the public schools without receiving compensation. The practitioner must be a licensed physician, physician assistant, nurse, pharmacist, optometrist, dentist, dental hygienist, midwife, speech pathologist or physical therapist who has submitted fingerprints, passed a background check and completed all forms procedures in order to participate in the program. A participating practitioner will receive a waiver for his or her biennial license renewal fee and 25 hours of continuing education credits. Active practitioners must volunteer at least 80 hours per school year and retired practitioners must volunteer 400 hours per school year to receive the waiver and education credits. School districts may schedule the practitioners at their discretion.

Submitted as:
Florida
Chapter 230 of 2002, Section 9
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 Create a Public School Volunteer Health Care Practitioner Program.”

   Section 2. [Public School Volunteer Health Care Practitioner Program.]
   (A) There is established a Public School Volunteer Health Care Practitioner Program to provide incentives to encourage health care practitioners to provide their services, without compensation, in the public schools; and such program is intended to complement other programs designed to provide health services or increase the level of health care in the public schools. School districts may establish a schedule for health care practitioners who participate in the program.

   (B) For purposes of this section, the term “health care practitioner” means a physician licensed under [insert citation]; an osteopathic physician licensed under [insert citation]; a chiropractic physician licensed under [insert citation]; a podiatric physician licensed under [insert citation]; an optometrist licensed under [insert citation]; an advanced registered nurse practitioner, registered nurse, or licensed practical nurse licensed under [insert citation]; a pharmacist licensed under [insert citation]; a dentist or dental hygienist licensed under [insert citation]; a midwife licensed under [insert citation]; a speech language pathologist or audiologist licensed under [insert citation]; or a physical therapist licensed under [insert citation].

   (C) (1) Notwithstanding [insert citation], any health care practitioner who participates in the program established in this section and thereby agrees to provide services without compensation, in a public school for at least [80 hours] a year for each school year during the [biennial licensure period], or, if the health care practitioner is retired, for at least [400 hours] a year for each school year during the licensure period, upon providing sufficient proof from the applicable school district that the health care practitioner has completed such hours at the time of license renewal under procedures specified by the [Department of Health], shall be eligible for the following:
(i) Waiver of the biennial license renewal fee for an active license; and
(ii) Fulfillment of a maximum of [25 percent] of the continuing education
hours required for license renewal, pursuant to [insert citation].

(2) A health care practitioner must complete all forms and procedures for
participation in the program prior to the applicable license renewal date.

(D) To participate in the program, a health care practitioner must:
(1) Have a valid, active license to practice their profession in this state.
(2) Submit fingerprints and have a background screening in accordance with the
requirements of [insert citation], unless already provided and completed for practitioner
licensing, profiling, or credentialing purposes.

(E) The school district, through its self-insurance program, shall bear the cost of any
increase in premiums for liability protection for health care practitioners participating in the
program other than those employed by the school or school district.

(F) (1) The [Department of Health] shall have the responsibility to supervise the
program and perform periodic program reviews as provided in [insert citation].
(2) The [Department of Health], in cooperation with the [Department of
Education], shall publicize the availability of the program and its benefits.

(G) The [Department of Health], in cooperation with the [Department of Education],
may adopt rules necessary to implement this section. The rules shall include the forms to be
completed and procedures to be followed by applicants and school personnel under the program.

(H) The provisions of this section shall be implemented to the extent of specific
appropriations contained in the annual [General Appropriations Act] for such purpose.

(I) (1) The forms and procedures required by this section must be completed and
distributed to the school districts by [insert date].
(2) Each school district must make the application forms and any other materials
required by subsection (G) of this section available to all public schools in the district within [1
month] after the forms and procedures are completed and distributed to the school district.
(3) Publication of the program, as required by subsection (F)(2) of this section
must begin within [1 month] after the forms and procedures are completed and distributed to the
school district.

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

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

Section 5. [Effective Date.] [Insert effective date.]
Reforming Certain Procedures and Remedies in Civil Actions, including Medical Malpractice Awards (Statement)

Texas enacted House Bill 4 in 2003 and amended its state Constitution in 2003 to help end a growing medical malpractice crisis and to ensure all Texans can access quality, affordable health care. The reforms in House Bill 4 include a $250,000 cap on non-economic damages to prevent exorbitant jury awards that drive up malpractice rates. The cap applies to all doctors involved in a case to deter trial lawyers from skirting the reforms by suing every doctor who saw the patient. In addition, there is a $250,000 cap on non-economic damages against a single institution and a $500,000 cap on all health-care institutions combined.

Other provisions of the Act that will help limit frivolous malpractice claims include:

- Requiring a plaintiff to provide an expert witness report from a qualified physician within four months of filing suit. This will prevent lawyers from dragging out frivolous lawsuits.
- Tightening up the Good Samaritan law to make it easier for a health care professional to provide emergency care to someone in need without fear of a lawsuit.
- Creating a Texas Medical Disclosure panel to draft a list of common risks which need to be disclosed to patients before they consent to a procedure.

According to Texas officials and staff, HB 4 consists of the following components:

Article 1
Class Actions
- Extends jurisdiction to the Texas Supreme Court to hear an appeal from a trial court order certifying or refusing to certify a class;
- Stays all proceedings in the trial court pending that appeal;
- Requires the Texas Supreme Court to promulgate rules to be used by trial courts in calculating the fees to be awarded to class counsel, including rules requiring that:
  - The fee must be calculated using the Lodestar method, which requires a reasonable fee based on the hours actually worked by class counsel; and
  - If part of the recovery by the class is non-cash, the fee paid to class counsel must be in cash and non-cash in the same percentage as the recovery by the class.
- Requires that before a class is certified, the trial court must rule on any plea to the jurisdiction in which it is asserted that the plaintiff’s claims are within the jurisdiction of a state agency.

Article 2
Settlement Offers
- Provides incentives for parties to make and accept reasonable settlement offers early in lawsuits by shifting litigation-related costs when a party refuses a pre-trial settlement offer that turns out to be as good as or better than what that party ultimately wins:
  - This cost-shifting mechanism is available in most civil cases, and comes into play upon the defendant filing an election to have the mechanism in play in that case;
  - The defendant’s litigation costs are shifted to the plaintiff if the plaintiff’s judgment is less than 80% of the defendant’s settlement offer;
  - The plaintiff’s litigation costs are shifted to the defendant if the plaintiff’s judgment is more than 120% of the plaintiff’s settlement offer; and
Even if costs are shifted against the plaintiff, the plaintiff still recovers at least 50% of his or her economic damages plus the amount of any statutory liens against the plaintiff’s recovery.

Article 3
Multidistrict Litigation
• Creates a five-member Judicial Panel on Multidistrict Litigation, appointed by the Chief Justice of the Texas Supreme Court, that is empowered to transfer factually related cases pending in multiple counties to a single court for consolidated or coordinated pretrial proceedings;
  • The cases must be returned to the county in which the case was filed for trial; and
  • This procedure, which is modeled on federal law, provides for more consistent outcomes and reduces the overall cost of large-scale litigation by creating a procedure for consolidating cases with common fact questions.

Venue
• Fixes an anomaly in the current law by allowing an immediate appeal of a trial court’s decision that a plaintiff in a multi-plaintiff case has independently established venue in the county of suit.

Forum Non Conveniens
• Creates a single standard based on federal law for determining whether a case should be dismissed so that it may be pursued in a more appropriate state or country; and
  • The court will be able to dismiss a case that has no connection to Texas and should have been brought in another state or country if dismissal is in the interest of justice and for the convenience of the parties.

Article 4
Proportionate Responsibility
• Ensures that named defendants will be responsible only for the portion of fault attributable to them by allowing the jury or factfinder to consider the conduct of all potentially responsible persons when allocating fault for a plaintiff’s injury:
  o The jury may allocate fault to any responsible person, including a bankrupt, criminal, person beyond the court’s jurisdiction, or employer with workman’s compensation immunity; and
  o Does not impose additional liability or cost on businesses that carry workers’ compensation insurance or others who are not parties to the case or are immune from liability.
• Provides that the credit for the pre-trial settlement by another defendant in cases other than healthcare liability claims is based on the percentage of responsibility allocated to the settling defendant rather than being based on the amount of the settlement;
• Provides that the credit for the pre-trial settlement by another defendant with respect to healthcare liability claims is based on the total dollar amount of the settlements unless all nonsettling defendants agree to a credit based on the percentage of responsibility allocated to the settling defendant; and
• Corrects a problem with the definition of “claimant,” identified by the Texas Supreme Court.

Article 5
Products Liability Reform

- Establishes a 15-year statute of repose for product liability claims, except in “latent disease” cases, in which the disease does not manifest for many years after use of the product;
- Creates an “innocent retailer defense” under which a retailer cannot be held liable for a product defect unless the retailer has some actual responsibility for the defect:
  - Numerous exceptions to the defense are provided, including an exception that prevents use of the defense if the responsible manufacturer is outside the court’s jurisdiction or insolvent.
- Provides protection from liability, through the use of a rebuttable presumption, to manufacturers, distributors, or prescribers of pharmaceutical products in cases in which it is alleged that the defendant failed to provide an adequate warning about the product’s risk:
  - Defense is available if the defendant provided government approved warnings; and
  - Several exceptions are provided, including one making the defense inapplicable if the manufacturer misrepresented or withheld required information from the government.
- Provides additional protection from liability, through the use of a rebuttable presumption, for manufacturers who comply with federal standards or regulatory requirements applicable to a product:
  - Protection is available only if the standard was (1) mandatory, (2) applicable to the aspect of the product that allegedly caused harm, and (3) adequate to protect the public from the risk.
- Requires the Texas Supreme Court to revise the Texas Rules of Evidence to conform them to the Federal Rules of Evidence in regard to the admissibility of “subsequent remedial measures” in a products liability action.

Article 6
Pre-Judgment Interest

- Prohibits the assessment of pre-judgment interest on an award of future damages;
- Establishes a post-judgment interest rate that is based on the prime rate and, therefore, more closely reflects market conditions; and
- Adjusts the current floor and ceiling of the post-judgment interest rate from 10%-20% to 5%-15%.

Article 7
Appeal Bonds

- Modifies the rules relating to appeal bonds so that the cost of the bond alone will not make the appeal of a trial court judgment prohibitive; and
- Limits the bond requirement to compensatory damages awarded to the plaintiff and places reasonable limits on the total amount of a bond.

Article 8
Evidence Regarding the Use of Seat Belts

- Allows the jury or fact-finder to know whether a plaintiff was wearing a seat belt at the time of an accident for the purpose of allocating fault and determining the cause of damages.

Article 10
Health Care Liability Reform
Limit on Non-Economic Damages
- The limit on non-economic damages varies based on whether the defendant is a physician or health care provider or a health care institution:
  1. a $250,000 cap applies to all physicians and health care providers (other than health care institutions) on a per case/occurrence basis, and
  2. a $250,000 cap applies to each health care institution on a per case/occurrence basis; however, total damages against health care institutions, collectively, cannot exceed $500,000 in any single case.
    - Cap on non-economic damages not indexed for inflation; and
    - Health care provider not required to maintain proof of financial responsibility in order for cap on non-economic damages to apply.

An Alternative Limit on Non-Economic Damages
- An alternative limit on non-economic damages is established that is linked to an insurability requirement; this would be necessary only in the event the cap above, without the insurance requirement, is found unconstitutional (i.e., if HJR3 is not passed by the voters and a constitutional challenge to the above cap is successful). This cap is the same cap as above, but linked to the following insurance requirement:
  - Cap on non-economic damages applies to physician or registered nurse who provides proof of financial responsibility:
    - effective 9/1/03 - $200,000/$600,000
    - effective 9/1/05 - $300,000/$900,000
    - effective 9/1/07 - $500,000/$1 million.
  - Cap on non-economic damages applies to physicians in residency training programs who provides proof of financial responsibility of $100,000/$300,000;
  - Proof of financial responsibility established by:
    - Purchase of liability insurance or plan of insurance; or
    - Purchase of coverage through risk retention group
    - Maintenance of reserves in financial institution or letter of credit.

Limitation on Damages in Wrongful Death and Survival Cases
- Restores limitation on damages in wrongful death and survival cases:
  - Cap on compensatory and punitive damages of $500,000 indexed for inflation since 1977 (this cap is approximately $1.4 million today);
  - Restores the intent of prior law that this cap includes punitive damages;
  - Note: this is an existing $500,000 cap, which was deemed by the courts to apply only to certain cases; and was interpreted to exclude punitive damages;
  - Continues current law: no cap on the recovery of past or future health care expenses; and
  - Liability of insurer under Stowers’ Doctrine limited to liability amount of insured;
    - Note: This is the doctrine that requires an insurer to settle a case within policy limits if the insured wants to settle. [It is often in the interest of the insured to settle a case within policy limits so that he/she is not at risk for any potential awards above policy limits if the case were to proceed. This is true regardless of the merits of the case.]
  - Limits a claimant’s recovery of health care expenses to the amounts actually paid or incurred, which will prevent a claimant from recovering based on a provider’s charges for services.
Periodic Payments
- Allows future damages other than medical expenses to be paid through periodic payments:
  - Future damages in excess of $100,000 made be made by periodic payments rather than by lump-sum, but court not required to order periodic payments plan;
  - Judgment shall specify how and when the periodic payments are made;
  - Periodic payments of future health care will terminate upon death of recipient;
  - Periodic payments of future earnings will not terminate upon death of recipient;
  - Court shall require defendant(s) to provide proof of adequate insurance or post security adequate to assure full payment of the periodic payment; and
  - Attorney fees are paid at time of judgment based on present value of future damages.

10 Year Statute of Repose
- 10 year statute of repose established for health care liability cases

Emergency Care:
- Requires jury instructions on circumstances associated with emergency care;
- Claimant must prove in cases involving emergency care that physician or health provider, with willful and wanton negligence, deviated from degree of care that is reasonably expected of an ordinarily prudent physician or provider;
- Clarifies how the Good Samaritan Law applies to physicians and other health care providers who respond to emergency situations; and
- Modifies various pre-trial procedures to address frequency of claims;
  - Eliminates cost bond requirement;
  - Allows parties to extend date for serving expert report by agreement;
  - Defendants must object to sufficiency of report within 21 days;
  - Allows time extensions to cure deficiencies in expert report;
  - If expert report not timely filed, the court shall dismiss the action and award attorney fees and costs to defendant(s); and
  - Allows interlocutory appeal if trial judge fails to dismiss claim due to failure to meet expert report requirement.

HIPAA Confidentiality Requirements:
- Establishes process for disclosure of patient’s medical records in compliance with HIPAA.

Experts:
- Clarifies qualifications for expert rendering opinion on causal relationship between injury and alleged departure from applicable standard of care;
- Establishes qualifications for expert in suit against providers, other than a physician;
- Limits liability of hospitals that provide charity care services; and
- Defers application of a nursing home insurance requirement that was to go into effect September 1, 2003, until September 1, 2005.

Article 11
Claims Against Employees of a Local Governmental Unit
- Extends current limit on personal liability of governmental employees to health care
workers employed by a local governmental unit; and
  - Limits liability of nonprofit organizations that manage a city or hospital district hospital.

Article 13
  Damages
  - Requires jury awards of punitive damages to be based on a unanimous jury verdict;
  - Limits recovery of health care expenses to expenses actually incurred by the plaintiff; and
  - Allows the jury to consider a plaintiff’s income taxes when awarding lost future income.

Article 15
  Public School Teachers
  - Provides additional protection for teachers against frivolous litigation related to the actions taken by the teacher at school (same as SB930, which also passed).

Article 16
  Admissibility of Evidence (Nursing Homes)
  - Limits the admissibility of various surveys, reports, and other findings by state agencies.

Article 17
  Successor Liability for Asbestos Related Litigation
  - Limits a successor corporation’s liability in asbestos related litigation to the amount of the assets of the acquired company if the acquisition that generated the asbestos related liability took place before May 13, 1968. [Does not limit the successor corporation’s liability for its own wrongdoing – only for the acts of the acquired company].

Article 18 & 19
  Charitable / Volunteer Immunity
  - Provides protection from lawsuits for volunteers of charitable organizations and volunteer firefighters.

Article 20
  Design Professionals
  - In a suit against a registered architect or licensed professional engineer, requires the plaintiff, at the time suit is filed, to provide an affidavit by a third-party registered architect or licensed professional engineer setting forth the specific acts of negligence it is alleged the defendant committed.

Article 21
  Limitation on Trespass Actions for Air Contaminants
  - Limits a trespass action for migration or transport of an air contaminant only on a showing of actual and substantial damage to the plaintiff. [Excepts those relating to odors.]

Article 22
  Limitation of Liability for Nonprofit Hospitals
• Limits the liability of a nonprofit hospital or hospital system that provides charity care and community benefits in an amount equal to at least 8% of the net patient revenue of the hospital or system, and provides at least 40% of the charity care provided in the county in which the hospital or system is located.

**Proposition 12**

Texas voters subsequently approved Proposition 12 in September 2003. This Constitutional Amendment authorizes the Legislature to limit noneconomic damages in civil lawsuits. Noneconomic damages include loss for past, present or future pain and suffering, mental anguish, loss of consortium, loss of companionship and society, disfigurement or physical impairment. The limitations on noneconomic damages apply regardless of whether the claim or cause of action arose or was derived from common law, a statute or other law. The authority of the Legislature to establish limitations on noneconomic damages by the constitutional amendment applies to health care liability reform legislation enacted during the 2003 legislative session and in subsequent sessions. After Jan. 1, 2005, the Legislature could enact limitations on noneconomic damages in non-health care civil actions. Proposition 12 does not impact economic damages which cover medical expenses and lost income.
Renewable Energy Electricity Generating Cooperatives

In general, this Act represents agreement between property owner/generation interests and utilities that small renewable generators may be connected to the grid and the power sold. For the small electric utilities, this is a major step forward in promoting renewable generation in rural states.

Specifically, this legislation:

- Authorizes the formation of renewable generation cooperatives. This will permit landowners whose land is not leased for wind farms to aggregate their surplus generation and collectively market that power in the wholesale marketplace;
- Requires the state corporation commission, in cooperation with the state’s utilities and renewable generation interests, to develop standardized interconnection criteria. This will eliminate conflict between small rural electric coops and individual property/generation owners; and
- Provides an alternative financing option for transmission line upgrades and new construction.

Submitted as:
Kansas
HB 2018
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Renewable Energy Electricity Generating Cooperative Act.”

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

(a) “Cooperative” means any corporation organized under the renewable energy electric generation cooperative act or which becomes subject to the renewable energy electric generation cooperative act in the manner hereinafter provided.

(b) “Person” means any natural person, firm, association, corporation, limited liability company, business trust or partnership.

(c) “Renewable attributes” has the meaning provided in [insert citation].

(d) “Renewable resources or technologies” means wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration and landfill gas resources or technologies.

Section 3. [Nonprofit Cooperatives/Membership Corporations.] [Five] or more people may organize a cooperative, nonprofit, membership corporation under the provisions of The Renewable Energy Electric Generation Cooperative Act for the purposes of conducting or promoting any lawful business under the [general corporation] laws of the state, generating electricity from renewable resources and technologies and transmitting and selling such electricity at wholesale.
Section 4. [Powers of Renewable Energy Electric Generation Cooperatives.]

(a) In addition to the powers conferred on all corporations under [insert citation], a cooperative organized under this Act shall have power to:

(1) Sue and be sued in its corporate name;
(2) Have perpetual existence;
(3) Adopt a corporate seal and alter the same;
(4) Generate, either as the cooperative or as individual members of the cooperative, electricity from renewable resources or technologies and transmit and sell such electricity at wholesale;
(5) Sell renewable attributes of the cooperative or of members of the cooperative;
(6) Construct, purchase, lease, equip, maintain and operate, and to sell, assign, convey, lease, mortgage, pledge or encumber electric transmission lines or systems, electric generating plants, and lands, buildings, structures, easements and rights-of-way and equipment, and any other real or personal property, tangible or intangible, necessary to accomplish the purpose for which the cooperative may be organized hereunder;
(7) Purchase, lease as lessee or otherwise acquire, and use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;
(8) Borrow money and otherwise contract indebtedness, and to issue notes, bonds and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues or income;
(9) Construct, maintain and operate electric transmission lines along, upon, under and across publicly owned lands and public thoroughfares, roads, highways, streets, alleys, bridges and causeways in conformity with the laws of this state;
(10) Become an incorporator, promoter, manager, member, stockholder or owner of other corporations or cooperatives, and conduct its business and exercise its powers within this state and to participate with other persons in any corporation, limited liability company, cooperative, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating person would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;
(11) Adopt, amend and repeal bylaws; and
(12) Do and perform any other acts and things, and to have and exercise any other powers which may be necessary, to accomplish the purpose for which the cooperative is organized.

(b) No cooperative organized under The Renewable Energy Electric Generation Cooperative Act nor any member of such cooperative shall:

(1) Enter into any contract for parallel generation services pursuant to [insert citation], and amendments thereto, with regard to power generated by such cooperative or member from renewable resources;
(2) Sell electricity at retail or have a certificated territory in this state;
(3) Transfer or distribute electricity to any other member of the cooperative; or
(4) Resell electricity provided to the cooperative or member by the cooperative’s or member’s provider of last resort.

Section 5. [Names of Renewable Electric Generation Cooperatives.] The name of an electric generation cooperative organized under The Renewable Energy Electric Generation Cooperative Act shall include the words “renewable,” “generation” and “cooperative” and the
abbreviation “Inc.”. The name of an electric generation cooperative shall be distinct from the
name of any other cooperative or corporation organized under the laws of, or authorized to do
business in, this state. Only a cooperative doing business in this state pursuant to The
Renewable Energy Electric Generation Cooperative Act shall use all of the following words in
its name: “renewable,” “generation” and “cooperative.”

Section 6. [Articles of Incorporation of a Renewable Energy Electric Generation
Cooperative.] (a) The articles of incorporation of a cooperative organized under this Act shall recite
that they are executed pursuant to this Act and shall state:
(1) The name of the cooperative;
(2) The address of its principal office;
(3) The names and addresses of the incorporators;
(4) The names and addresses of its directors; and
(5) The purposes for which it is organized.
(b) The articles of incorporation of a cooperative organized under The Renewable
Energy Electric Generation Cooperative Act may contain any provisions, not inconsistent with
The Renewable Energy Electric Generation Cooperative Act, which are deemed necessary or
advisable for the conduct of the business of the cooperative.
(c) The articles of incorporation shall be signed by each incorporator.

Section 7. [Bylaws of a Renewable Energy Electric Generation Cooperative.] The board
of directors shall adopt the first bylaws of a cooperative to be adopted following an
incorporation, conversion, merger or consolidation. Thereafter the members shall adopt, amend
or repeal the bylaws by the affirmative vote of a majority of those members voting thereon at a
meeting of the members. The bylaws shall set forth the rights and duties of members and
directors and may contain other provisions for the regulation and management of the affairs of
the cooperative not inconsistent with The Renewable Energy Electric Generation Cooperative
Act or with the cooperative’s articles of incorporation.

Section 8. [Membership of a Renewable Energy Electric Generation Cooperative.] (a) Each incorporator of a cooperative shall be a member thereof. No person shall
become a member of the cooperative unless such person operates generation facilities which use
renewable resources and have a capacity of at least [100] kilowatts and agrees to generate
electricity using such facilities and:
(1) Transmit and sell at wholesale through the cooperative any such electricity in
excess of that used by the person;
(2) Sell through the cooperative renewable attributes; or
(3) Both.
(b) Any member of a cooperative who so agrees shall cease to be a member of the
cooperative if such member does not comply with the terms of the agreement within two years
after such person becomes a member, or such lesser period as the bylaws of the cooperative may
provide. A husband and wife may hold a joint membership in a cooperative. Membership in a
cooperative shall not be transferable, except as provided in the bylaws. The bylaws may
prescribe additional qualifications and limitations in respect of membership.

Section 9. [Meetings of Members of a Renewable Energy Electric Generation
Cooperative.]
(a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the bylaws of the cooperative.

(b) Special meetings of the members may be called by the president, by the board of directors, by any [three] directors or by not less than [10%] of the members.

(c) Except as otherwise provided in The Renewable Energy Electric Generation Cooperative Act, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than [10 days] nor more than [35 days] before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage prepaid, addressed to the member at the member’s address as it appears on the records of the cooperative.

(d) Unless the bylaws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative shall be [5%] of all members, who must be present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting without further notice.

(e) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting of the members. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which voting shall be permitted. No person shall vote as proxy more than three members at any meeting of the members.

(f) Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall attend such meeting, such attendance shall constitute a waiver of notice of such meeting unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

Section 10. [Business Directors of a Renewable Energy Electric Generation Cooperative.]

(a) The business of a cooperative shall be managed by a board of not less than [five] directors, each of whom shall be a member of the cooperative. The bylaws shall prescribe the number of directors, their qualifications, other than those prescribed in The Renewable Energy Electric Generation Cooperative Act, the manner of holding meetings of the board of directors and of electing successors to directors who resign, die or are otherwise incapable of acting as a director. The bylaws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salary for their services as directors and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation without the approval of the members. The bylaws may provide that a fixed fee and expenses of attendance may be allowed to each director for attendance at each meeting of the board of directors and for other functions duly authorized for and on behalf of the cooperative.

(b) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in The Renewable Energy Electric Generation Cooperative Act. Each director shall hold office for the term for which elected and until a successor is elected and qualifies.
(c) Instead of electing all the directors annually, the bylaws may provide for half of the
directors, or a number as near thereto as possible, to be elected to serve until the next annual
meeting of the members and that the remaining directors shall be elected to serve until the
second succeeding annual meeting. Thereafter, as directors’ terms expire, the members shall
elect successor directors to serve until the second succeeding annual meeting after their election.
(d) Instead of electing the directors in the manner provided in subsection (b) or (c), the
bylaws may provide that the members shall be elected at such annual meetings to serve for
terms of [three years], except that the terms of the first directors elected pursuant to this
subsection may be fixed in such bylaws for a number of years not exceeding [three] and, upon
the expiration thereof, all members thereafter to be elected for terms of [three years].
(e) A majority of the board of directors shall constitute a quorum.
(f) If a husband and wife hold a joint membership in a cooperative, either one, but not
both, may be elected a director.

Section 11. [Officers of a Renewable Energy Electric Generation Cooperative.]
The officers of a cooperative shall consist of a president, vice-president, secretary and
treasurer. The offices shall be elected annually by and from the board of directors. When a
person holding any such office ceases to be a director, the person shall cease to hold such office.
The office of secretary and the office of treasurer may be held by the same person. The board of
directors may also elect or appoint such other officers, agents or employees as the board deems
necessary or advisable and the board shall prescribe the powers and duties of such officers,
agents or employees. Any officer may be removed from office and a successor elected in the
manner prescribed in the bylaws.

Section 12. [Amending the Articles of Incorporation of a Renewable Energy Electric
Generation Cooperative.] A cooperative may amend its articles of incorporation in any manner
not inconsistent with The Renewable Energy Electric Generation Cooperative Act by complying
with the following requirements: The proposed amendment shall be presented to a meeting of
the members, the notice of which shall set forth or have attached the proposed amendment. If
the proposed amendment, with any changes, is approved by the affirmative vote of not less than
[2/3] of those members voting at such meeting, articles of amendment shall be executed on
behalf of the cooperative by its president or vice-president and attested by its secretary. The
articles of amendment shall recite that they are executed pursuant to The Renewable Energy
Electric Generation Cooperative Act and shall state:

   (1) The name of the cooperative;
   (2) The address of its principal office; and
   (3) The amendment to its articles of incorporation. The president or vice
       president executing such articles of amendment shall make and annex thereto an affidavit stating
       that the amendment was submitted and adopted in compliance with the provisions of this
       section.

Section 13. [Changing the Location of the Principal Office of a Renewable Energy
Electric Generation Cooperative.] A cooperative, upon authorization of its board of directors or
its members, may change the location of its principal office to any place within this state by
filing, in the [office of the secretary of state], a certificate which recites such change of principal
office and which is executed by the cooperative’s president or vice-president and attested by the
cooperative’s secretary.
Section 14. [Merger or Consolidation of Renewable Energy Electric Generation Cooperatives.]

(a) Any [two or more] cooperatives organized under The Renewable Energy Electric Generation Cooperative Act may merge into a single cooperative, which may be any one of the constituent cooperatives, or may consolidate into a new cooperative formed by the consolidation, by complying with the following requirements:

(1) The proposition for the merger or consolidation of the cooperatives and proposed articles of merger or consolidation shall be submitted to a meeting of the members of each merging or consolidating cooperative, the notice of which shall have attached a copy of the proposed articles of merger or consolidation; and

(2) If the proposed merger or consolidation and the proposed articles of merger or consolidation, with any amendments, are approved by the affirmative vote of not less than [2/3] of the members of each merging or consolidating cooperative voting at each such meeting, the articles of merger or consolidation in the form approved shall be executed on behalf of each merging or consolidating cooperative by its president or vice president and attested by its secretary.

(b) Voting on the proposed articles of merger or consolidation shall be in accordance with subsection (e) of section 9, and amendments thereto.

(c) The articles of merger or consolidation shall recite that they are executed pursuant to The Renewable Energy Electric Generation Cooperative Act and shall state:

(1) The name of each merging or consolidating cooperative and the address of its principal office;

(2) The name of the surviving or new cooperative and the address of its principal office;

(3) A statement that each merging or consolidating cooperative agrees to the merger or consolidation;

(4) The names and addresses of the directors of the surviving or new cooperative; and

(5) The terms and conditions of the merger or consolidation and the mode of carrying the same into effect, including the manner in which the members of the merging or consolidating cooperatives may or shall become members of the surviving or new cooperative.

Such articles may contain any provisions, not inconsistent with The Renewable Energy Electric Generation Cooperative Act, which are deemed necessary or advisable for the conduct of the business of the surviving or new cooperative.

(d) The president or vice-president of each merging or consolidating cooperative executing the articles of merger or consolidation shall make and annex thereto an affidavit stating that such articles were submitted and approved in compliance with the provisions of this section.

(e) In the case of a consolidation, the existence of the consolidating cooperatives shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative. In case of a merger, the separate existence of the merging cooperatives shall cease and the articles of incorporation of the surviving cooperatives shall be amended to the extent, if any, that changes therein are necessary in the articles of merger.

(f) All the rights, privileges, immunities and franchises and all property, real and personal, including applications for membership, all debts due on whatever account and all other choses in action, of each consolidating or merging cooperative shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed.

(g) The new or surviving cooperative shall be responsible and liable for all liabilities and obligations of each consolidating or merging cooperative and any claim existing or action or
proceeding pending by or against any of the consolidating or merging cooperatives may be
prosecuted as if the consolidation or merger had not taken place, but the new or surviving
cooperative may be substituted in its place.

(h) Neither the rights of creditors nor any liens upon the property of any such
cooperative shall be impaired by such consolidation or merger.

Section 15. [Dissolving a Renewable Energy Electric Generation Cooperative.]

(a) A cooperative which has not commenced business may be dissolved by delivering to
the [secretary of state] articles of dissolution which shall be executed on behalf of the
cooperative by a majority of the incorporators and which shall state:

(1) The name of the cooperative;
(2) The address of its principal office;
(3) That the cooperative has not commenced business;
(4) That any sums received by the cooperative, less any part thereof disbursed for
expenses of the cooperative, have been returned or paid to those entitled thereto;
(5) That no debt of the cooperative is unpaid; and
(6) That a majority of the incorporators elect that the cooperative be dissolved.

(b) A cooperative which has commenced business may be dissolved in the following
manner:

(1) The members at any meeting shall approve, by the affirmative vote of not less
than [2/3] of those members voting on such proposal at such meeting, a proposal that the
cooperative be dissolved. Upon such approval, a certificate of election to dissolve shall be
executed on behalf of the cooperative by its president or vice-president and attested by its
secretary. Such certificate shall state:

(A) The name of the cooperative;
(B) The address of its principal office; and
(C) That the members of the cooperative have duly voted that the
cooperative be dissolved. Such certificate shall be submitted to the [secretary of state] for filing,
together with an affidavit, made by the cooperative’s president or vice-president executing the
certificate, stating that the statements in the certificate are true.

(2) Upon the filing of the certificate and affidavit by the [secretary of state], the
cooperative shall cease to carry on its business except to the extent necessary for the winding up
thereof, but its corporate existence shall continue until articles of dissolution have been filed by
the [secretary of state]. The board of directors shall immediately cause notice of the dissolution
proceedings to be mailed to each known creditor of and claimant against the cooperative and to
be published [once a week for two successive weeks] in a newspaper of general circulation in
the county where the principal office of the cooperative is located. The board of directors shall
wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property
and assets, pay and discharge its debts, obligations and liabilities, and do all other things
required to wind up its business, and after paying or discharging or adequately providing for the
payment or discharge of all its debts, obligations and liabilities, shall distribute any remaining
sums among its members and former members in proportion to the patronage of the respective
members or former members during the [seven years] next preceding the date of the filing of the
certificate by the [secretary of state] or, if the cooperative has not in existence for such
period, then during the period of its existence prior to such filing. The board of directors shall
thereupon authorize the execution of articles of dissolution, which shall be executed on behalf of
the cooperative by its president or vice-president, and attested by its secretary.

(3) The articles of dissolution shall recite that they are executed pursuant to The
Renewable Energy Electric Generation Cooperative Act and shall state:
(A) The name of the cooperative;
(B) The address of its principal office;
(C) The date on which the certificate of election to dissolve was filed by the secretary of state;
(D) That there are no actions or suits pending against the cooperative;
(E) That all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefore; and
(F) That the preceding provisions of this subsection have been duly complied with.

c) The president or vice-president executing the articles of dissolution shall make and annex thereto an affidavit stating that the statements made therein are true.

Section 16. [Presenting Certain Articles to the Secretary of State.]
Articles of incorporation, amendment, consolidation, merger, conversion or dissolution, when executed and accompanied by such affidavits as required by applicable provisions of The Renewable Energy Electric Generation Cooperative Act, shall be presented to the secretary of state for filing in the records of the secretary’s office. If the secretary finds that the articles presented conform to the requirements of the renewable energy electric generation cooperative act, the secretary, upon the payment of the fees provided by The Renewable Energy Electric Generation Cooperative Act, shall file such articles in the records of the secretary’s office. Upon such filing the incorporation, amendment, consolidation, merger, conversion or dissolution shall be in effect. The provisions of this section shall also apply to certificates of election to dissolve and affidavits executed in connection with such certificates of election to dissolve pursuant to subsection (b) of section 17, and amendments thereto.

Section 17. [Distributing Revenues of a Renewable Energy Electric Generation Cooperative.]
(a) Except as otherwise determined by a vote of the members of the cooperative, revenues of a cooperative for any fiscal year in excess of the following shall be distributed by the cooperative to its members in accordance with the bylaws of the cooperative:
   (1) Amounts necessary to defray the expenses of operation and maintenance of facilities of the cooperative during such fiscal year;
   (2) Amounts necessary to pay interest and principal obligations of the cooperative coming due in such fiscal year;
   (3) Amounts necessary to finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of directors;
   (4) Amounts necessary to provide a reasonable reserve for working capital;
   (5) Amounts necessary to provide a reserve for the payment of indebtedness of the cooperative in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year.
(b) Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

Section 18. [Pledging the Assets of a Renewable Energy Electric Generation Cooperative.]
(a) The board of directors of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the
property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether
acquired or to be acquired, and wherever situated, as well as the revenues and income
therefrom, all upon such terms and conditions as the board of directors shall determine, to
secure any indebtedness of the cooperative.

(b) A cooperative may not otherwise sell, mortgage, lease or otherwise dispose of or
encumber all or a substantial portion of its property unless such sale, mortgage, lease or other
disposition or encumbrance is authorized by the affirmative vote of not less than a majority of
all the members of the cooperative.

Section 19. [Liability of Renewable Energy Electric Generation Cooperative Members
for Cooperative Debts.] No member of a cooperative shall be liable or responsible for any debts
of the cooperative and the property of the members shall not be subject to execution therefor.

Section 20. [Mortgages, Deeds or Trusts or Other Instruments Executed by a Renewable
Energy Electric Generation Cooperative Doing Business in this State.] Any mortgage, deed or
trust or other instrument executed by a cooperative doing business in this state pursuant to The
Renewable Energy Electric Generation Cooperative Act, which affects real and personal
property and which is recorded in the real property records in any county in which such property
is located or is to be located, shall have the same force and effect as if the mortgage, deed of
trust or other instrument were also recorded, filed or indexed as provided by law in the proper
office in such county as a mortgage of personal property. All after-acquired property of such
cooperative described or referred to as being mortgaged or pledged in any such mortgage, deed
of trust or other instrument, shall become subject to the lien thereof immediately upon the
acquisition of such property by such cooperative, whether or not such property was in existence
at the time of the execution of such mortgage, deed or trust or other instrument. Recordation of
any such mortgage, deed of trust or other instrument shall constitute notice and otherwise have
the same effect with respect to such after-acquired property as it has under the laws relating to
recording, with respect to property owned by such cooperative at the time of the execution of
such mortgage, deed of trust or other instrument and therein described or referred to as being
mortgaged or pledged thereby. The lien upon personal property of any such mortgage, deed of
trust or other instrument, after recordation thereof, shall continue in existence and of record for
the period of time specified therein without the refiling thereof or the filing of any renewal
certificate, affidavit or other supplemental information required by the laws relating to the
renewal, maintenance or extension of liens upon personal property.

Section 21. [Action or Suits Affecting an Easement or Lease Against a Renewable
Energy Electric Generation Cooperative or its Agent, Servant or Employee.] No action or suit
affecting an easement or lease may be brought against a cooperative doing business in this state
pursuant to The Renewable Energy Electric Generation Cooperative Act, or against any agent,
servant or employee thereof, by reason of the maintenance of electric transmission lines on any
real property after the expiration of a period of [two years] of continuous maintenance of such
lines without the consent of the person or persons legally entitled to object to such maintenance.

Section 22. [Taking Acknowledgments.] No person who is authorized to take
acknowledgments under the laws of this state shall be disqualified from taking
acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by
reason of being an officer, director or member of such cooperative.
Section 23. [Jurisdiction and Control over a Renewable Energy Electric Generation Cooperative.]

(a) Cooperatives doing business in this state pursuant to The Renewable Energy Electric Generation Cooperative Act shall be subject to the jurisdiction and control of the [state corporation commission] of this state in those provisions of [insert citation] applicable to electric utilities.

(b) No merger or consolidation of any cooperative organized under the provisions of The Renewable Energy Electric Generation Cooperative Act shall become effective until approved by the [state corporation commission].

Section 24. [Provisions of State Securities Act as Applied to Renewable Energy Electric Generation Cooperatives.] The provisions of the [state securities act] shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative doing business in this state pursuant to The Renewable Energy Electric Generation Cooperative Act to the United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of such [state securities act] shall not apply to the issuance of membership certificates by any cooperative.


(a) Every cooperative organized under The Renewable Energy Electric Generation Cooperative Act shall make an annual report in writing to the [secretary of state], showing the financial condition of the cooperative at the close of business on the last day of its tax period next preceding the date of filing, but if any such cooperative’s tax period is other than the calendar year, it shall give notice thereof to the [secretary of state] prior to [December 31] of the year it commences such tax period. The report shall be filed on or before the [15th] day of the [fourth] month following the close of the tax year of the electric cooperative. An extension for filing the annual report may be granted upon the filing of a written application with the [secretary of state] prior to the due date of the report, except that no such extension may be granted for a period of more than [90] days. The report shall be made on a form provided by the [secretary of state], containing the following information:

1. The name of the cooperative;
2. The location of the principal office of the cooperative;
3. The names and addresses of the president, secretary, treasurer and directors of the cooperative;
4. The number of members of the cooperative;
5. A balance sheet showing the financial condition of the cooperative at the close of business on the last day of its tax period next preceding the date of filing; and
6. The change or changes, if any, in the particulars made since the last annual report.

(b) The annual report shall be signed by the president, vice-president or secretary of the cooperative, sworn to before an officer duly authorized to administer oaths, and forwarded to the [secretary of state]. At the time of filing such annual report, the cooperative shall pay an annual franchise tax of [$20].

Section 26. [Payment of Costs of Use of Distribution and Transmission Systems by a Renewable Energy Electric Generation Cooperative.] A cooperative organized under The Renewable Energy Electric Generation Cooperative Act shall pay the costs of use of distribution and transmission systems by the cooperative to transmit electricity, the costs of a generation interconnect study to the extent required by the standard provisions for agreements for
interconnection and the costs of transmission system improvements, other upgrades and metering necessary for system operation. The cooperative shall negotiate with the owners of distribution and transmission systems for the purpose of determining such costs.

Section 27. [Retail Electric Supplier Fees to a Renewable Energy Electric Generation Cooperative.] If a member of a cooperative organized under The Renewable Energy Electric Generation Cooperative Act is located within the certificated territory of a retail electric supplier, such supplier may charge such member of the cooperative a monthly fee which reflects the cost of providing standby electric service, distribution system repair and maintenance and other reasonable costs of being the provider of last resort.

Section 28. [Agreements between a Renewable Energy Electric Generation Cooperative and the Owner are Subject to Safety and Reliability Criteria.] Any agreement between a cooperative organized under The Renewable Energy Electric Generation Cooperative Act and the owner of distribution or transmission lines directly interconnecting with generation facilities of members of such cooperative for use of such lines by the cooperative shall require that all safety, system reliability and other appropriate issues shall have been satisfactorily resolved by the parties prior to the cooperative’s first delivery of electricity.

Section 29. [Using Bonds to Build or Upgrade Electric Transmission Lines and Related Appurtenances.]
(a) As used in this section:

(1) “Appurtenances” means all substations, towers, poles and other structures and equipment necessary for the bulk transfer of electricity.

(2) “Electric transmission line” means any line or extension of a line which is at least [five miles] long and which is used for the bulk transfer of electricity.

(b) The state [development finance authority] is hereby authorized to issue revenue bonds in amounts sufficient to pay the following described costs of construction, upgrading and acquisition, including any required interest on the bonds during such construction, upgrading and acquisition, plus all amounts required for the costs of bond issuance and any required reserves on the bonds:

(1) Construction or upgrading of electric transmission lines and appurtenances to be used for the transfer of 69 kilovolts or more of electricity;

(2) Acquisition of the right-of-way on which transmission lines and appurtenances to be used for the transfer of 69 kilovolts or more of electricity are to be constructed; and

(3) Upgrading of electric transmission lines and appurtenances to be used for the transfer of 69 kilovolts or more of electricity. The bonds, and interest thereon, issued pursuant to this section shall be payable from revenues derived from use of the transmission lines.

(c) The provisions of [insert citation] shall not prohibit the issuance of bonds by the state [development finance authority] for the purposes of this section and any such issuance of bonds is exempt from the provisions of [insert citation] and amendments thereto, which would operate to preclude such issuance.

(d) Revenue bonds, including refunding revenue bonds, issued hereunder shall not constitute an indebtedness of this state, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.

(e) Revenue bonds, including refunding revenue bonds, issued hereunder and the income derived therefrom are and shall be exempt from all state, county and municipal taxation in this state, except state [estate taxes].
Section 30. [Agreements and Fees for Interconnecting Facilities of an Electric Public Utility with A Renewable Energy Electric Generator.] On or before [insert date], the [state corporation commission] shall establish standard provisions, including applicable fees, for agreements providing for interconnection between the facilities of an electric public utility, as defined by [insert citation], and a generator which generates electricity from renewable resources or technologies, as defined by section 2 of this Act, and amendments thereto.

Section 31. [Severability.] [Insert severability clause.]

Section 32. [Repealer.] [Insert repealer clause.]

Section 33. [Effective Date.] [Insert effective date.]
Federal law defines “navigable waters” to be “the waters of the United States.” The U.S. Army Corps of Engineers has interpreted “the waters of the United States” to include non-navigable, isolated, intrastate waters if they serve as habitat for migratory birds that cross state lines. Under federal law, activities involving the discharge of dredged or fill material into “navigable waters” must comply with certain guidelines contained in regulations promulgated by the federal Environmental Protection Agency (EPA) in order for a discharge permit to be issued by the U.S. Army Corps of Engineers. A recent U.S. Supreme Court decision, Solid Waste Agency of Northern Cook County v. Army Corps of Engineers, 69 U.S.L.W. 4048 (2001), limited the types of bodies of waters for which U.S. Army Corps of Engineers discharge permits are required. The Court held that these non-navigable, isolated, intrastate waters that serve as habitat for migratory birds cannot be interpreted by the Corps to be navigable waters and, therefore, no Corps discharge permits are required to discharge dredged or fill material into these bodies of water.

Wisconsin Act 6 of 2001 addresses discharges into wetlands that no longer are subject to the U.S. Army Corps of Engineers permitting process (i.e., nonfederal wetlands) and incorporates into state law the content of some of the federal provisions governing the issuance of the Corps discharge permits. These provisions are in addition to any other requirements under current state law that regulate discharges into wetlands.

Under the Act, no one may discharge dredged or fill material into a nonfederal wetland unless the discharge is authorized by a certification from the state Department of Natural Resources that the discharge will meet all applicable state water quality standards. The Act exempts from this certification process activities that are exempt from U.S. Army Corps of Engineers discharge permits under federal law. These exemptions include normal farming, forestry, and ranching activities, maintenance and reconstruction of damaged parts of structures that are in bodies of water, maintenance of drainage ditches, and construction and maintenance of certain farm and forest roads and temporary mining roads if certain requirements are met. As under federal law, a discharge that would be exempt loses its exemption under certain circumstances.

The exemption is lost if the discharge is incidental to an activity that brings the nonfederal wetland into a use for which it was not previously used and if the activity may impair the flow or circulation or reduce the reach of any nonfederal wetland. Under the Act, the state department of natural resources must promulgate rules to interpret and implement the provisions under the bill that establish the exemptions and the provisions concerning the loss of the exemptions. These rules must be consistent with applicable federal law or interpretations of that law made by the federal government. If federal law or the federal interpretations are subsequently modified, the department of natural resources must incorporate the modifications into the rules. The Act also creates a temporary process to be used between the date on which the bill becomes law and the date on which the rules are promulgated for determining whether a discharge is exempt. During that time, no person may discharge into a nonfederal wetland based on the discharge being exempt unless the person demonstrates to the department of natural resources at the discharge is exempt from current department of natural resources’ rules governing discharges into wetlands or that the discharge would be exempt under federal law or interpretations if the discharge were subject to the Corps permitting process.

Parallel to the general permitting procedures under federal law, the law provides that the state department of natural resources may issue general certifications for types of discharges that are similar in nature. A general certification allows any person to carry out the type of discharge...
subject to the general certification as opposed to an individual certification that is issued to a specific person. The Act requires that department of natural resources to issue general water quality certifications that are consistent with the general permits issued by U.S. Army Corps of Engineers that applied to nonfederal wetlands before the U.S. Supreme Court decision.

For an individual certification for a nonfederal wetland, the department of natural resources must approve or deny the certification within 120 days after the completed application for the certification is submitted unless the applicant and the department of natural resources agree to an extension. The Act imposes specific requirements on the department for determining whether the application is complete. If the department fails to meet the applicable deadline, the applicant may petition a court to compel the department to approve or deny the application. If the court grants the petition, the department must comply within 30 days after the granting of the petition, and the applicant shall be awarded reasonable attorney fees and court costs. The Act also requires the department of natural resources to promulgate a rule to establish time limits for determinations that the department makes as to whether projects comply with water quality standards that are applicable to wetlands that are not nonfederal wetlands.

The law also prohibits the department of natural resources from promulgating a rule that requires an applicant for a water quality certification for a nonfederal wetland that is less than one acre in size and that is not in an “area of special natural resource interest” to submit information concerning practical alternatives to the discharge that exist or that may be viable if a local governmental unit, a state transportation agency, or a federal transportation agency makes a determination that the discharge is necessary for public safety. Current law defines “an area of special natural resource interest” as being an area that has significant ecological, cultural, aesthetic, educational, recreational, or scientific values and specifically lists certain areas. The areas listed include fish and wildlife refuges, lakes, and state parks and forests.

Under the Act, a local governmental unit or a state transportation agency must make a determination of public safety if requested to do so by an applicant for a water quality certification for a nonfederal wetland. The law provides specific procedural and judicial review provisions for these determinations and allows any aggrieved party or the department of natural resources to seek judicial review of these determinations. It also authorizes an applicant to seek such a determination from a federal transportation agency.

This Act also provides that, even if an applicant for a water quality certification for a nonfederal wetland receives such a determination, the department of natural resources may proceed on its own to determine whether there is a practical alternative. Under this procedure, the department must first look for a practical alternative that will not conflict with the determination that the discharge is necessary for public safety on the land where the nonfederal wetland is located. If there is no practical alternative on that land, the department may look for a nonconflicting practical alternative on land where the nonfederal wetland is not located. If the department finds that no such practical alternative exists, it may require the applicant to implement a wetland mitigation project. A wetland mitigation project is one that restores, enhances, or creates another wetland to compensate for the adverse impact to the nonfederal wetland.

The Act contains provisions for identifying nonfederal wetlands. Under the Act, if the U.S. Army Corps of Engineers has issued a determination as to whether a wetland is a nonfederal wetland, department of natural resources must adopt that determination. If the Corps has not issued a determination, then the department makes the determination. The bill also requires that certain procedures be used to delineate the boundaries of nonfederal wetlands.

The law authorizes the department of natural resources to inspect any property on which there is located a nonfederal wetland beginning on the date on which an application for water quality certification that applies to that wetland is submitted and ending on the 30th day immediately following completion of the discharge or of any conditions imposed under the certification, or, if the application is denied or withdrawn, on the date of denial or withdrawal.
The department of natural resources may also inspect any property to investigate a discharge of dredged or fill material that the department has reason to believe is in violation of the statutes regulating nonfederal wetlands. It specifies a procedure the department must follow in investigating these possible violations. It also authorizes the department to gain access to inspect any records that must be kept by a holder of a water quality certification for a nonfederal wetland.
Sustainable Forest Incentive

It is reported that in the Minnesota legislative process, tax bills are heard in committee as stand-alone bills and then folded into an omnibus bill if the committee reports favorably on the bills. This SSL draft is excerpted from an omnibus tax bill that Minnesota enacted in 2001.

Referred to as the “Sustainable Forest Incentive Act,” this legislation substantially reduces the tax burden on managed forestland by creating a financial incentive for landowners that practice sustainable management on a long-term basis. To qualify, landowners must commit to keeping a minimum of 20 contiguous acres forested for eight years. They must also have a forest management plan approved by an “approved plan writer” who is certified by the state department of natural resources. Plans must include the landowner's goals for the property, a legal description, an inventory of the forest cover types, a map of the vegetation and boundaries, the proposed future conditions, an activity timetable and other pertinent forest management information. Landowners must also follow state “Forest Resources Council Timber Harvesting and Forest Management Guidelines” and agree to file certification forms annually.

Landowners enrolled in the program get an annual payment from the state department of revenue instead of a tax credit on their property tax bill.

Submitted as:
Minnesota
Statutes 2001, Chapter 290C
Status: Enacted into law in 2001 as part of an omnibus tax bill.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “The Sustainable Forest Incentive Act.”

Section 2. [Purpose.] It is the policy of this state to promote sustainable forest resource management on the state's public and private lands. Recognizing that private forests comprise part of state forest land resources, that healthy and robust forest land provides significant benefits to the, and that ad valorem property taxes represent a significant annual cost that can discourage long-term forest management investments, this Act, hereafter referred to as the "Sustainable Forest Incentive Act," is enacted to encourage the state's private forest landowners to make a long-term commitment to sustainable forest management.

Section 3. [Definitions.] As used in this Act:
"Approved plan writers" are natural resource professionals who are self-employed, employed by private companies or individuals, nonprofit organizations, local units of government, or public agencies, and who are approved by the [commissioner of natural resources]. People who are certified foresters by the Society of American Foresters shall be deemed to meet the standards required under this subdivision. The [commissioner of natural resources] shall issue a unique identification number to each approved planner.

"Capitalization rate.” By [July 1 of each year], the [commissioner] shall determine a statewide capitalization rate for use under this Act. The rate shall be the average annual effective interest rate for [a specified metropolitan area or statewide] on new loans under the
Farm Credit Bank system calculated under section 2032A(e)(7)(A) of the Internal Revenue Code.

“Claimant” means a person, who owns forest land in this state and files an application authorized by this Act. No more than one claimant is entitled to a payment under this Act with respect to any tract, parcel, or piece of land enrolled under this Act. When enrolled forest land is owned by two or more people, the owners must determine between them which person may claim the payments provided under this Act.

“Commissioner” means the [commissioner of revenue].

“Current use value” means the statewide average annual income per acre, multiplied by [90 percent] and divided by the capitalization rate determined under this section of this Act. The statewide net annual income shall be a weighted average based on the most recent data as of [July 1 of the computation year] on stumpage prices and annual tree growth rates and acreage by cover type provided by the [department of natural resources] and the [United States Department of Agriculture Forest Service North Central Research Station].

“Forest land” means land containing a minimum of [20 contiguous acres] for which the owner has implemented a forest management plan that was prepared or updated within the past [ten years] by an approved plan writer. At least [50 percent] of the contiguous acreage must be at least [ten percent] stocked by trees of any size, and capable of producing timber or of exerting an influence on the climate or on the water regime, or land from which the trees have been removed to less than [ten percent] stocking and which has not been developed for other use; and afforested areas. Acres are considered contiguous even if they are separated by a road, waterway, railroad track, or other similar intervening property.

“Forest land” does not include:
1. Land used for residential or agricultural purposes;
2. A state or federal conservation reserve or easement reserve program under [insert citation];
3. The state agricultural property tax under [insert citation];
4. Land subject to agricultural land reservation controls or restrictions as defined in [insert citation], or
5. Land improved with a structure, pavement, sewer, campsite, or any road, other than a township road, used for purposes not prescribed in the forest management plan.

“Forest management plan” means a written document providing a framework for site-specific healthy, productive, and sustainable forest resources. A forest management plan must include at least the following:
1. Owner-specific forest management goals for the property;
2. A reliable field inventory of the individual forest cover types, their age, and density;
3. A description of the soil type and quality;
4. An aerial photo and/or map of the vegetation and other natural features of the property clearly indicating the boundaries of the property and of the forest land;
5. The proposed future conditions of the property;
6. Prescriptions to meet proposed future conditions of the property;
7. A recommended timetable for implementing the prescribed activities; and
8. A legal description of the parcels encompassing the parcels included in the plan. All management activities prescribed in a plan must be in accordance with the recommended timber harvesting and forest management guidelines. The [commissioner of natural resources] shall provide a framework for plan content and updating and revising plans.

“Timber harvesting and forest management guidelines” means guidelines developed by the [state forest resources council] as defined in [insert citation].
Section 4. [Eligibility Requirements.]

(a) Property may be enrolled in the Sustainable Forest Incentive Program under this Act if all of the following conditions are met during the enrollment:

1. The property consists of at least [20 contiguous acres] and at least [50 percent] of the land must contain at least [ten percent] stocked by trees of any size and capable of producing timber, or of exerting an influence on the climate or on the water regime; land from which the trees described above have been removed to less than [ten percent] stocking and which has not been developed for other use; and afforested areas;
2. A forest management plan for the property must be prepared by an approved plan writer and implemented during the period in which the land is enrolled;
3. Timber harvesting and forest management guidelines must be used in conjunction with any timber harvesting or forest management activities conducted on the land during the period in which the land is enrolled;
4. The property must be enrolled for a minimum of [eight years];
5. There are no delinquent property taxes on the property; and
6. Claimants enrolling more than [1,920 acres] in the sustainable forest incentive program must allow year-round, nonmotorized access to fish and wildlife resources on enrolled land except within [one-fourth mile] of a permanent dwelling or during periods of high fire hazard as determined by the [commissioner of natural resources].

(b) Claimants required to allow access under paragraph (a), clause (6), do not by that action:

1. Extend any assurance that the land is safe for any purpose;
2. Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any injury to the person or property caused by an act or omission of the person.

Section 5. [Applications.]

(a) A landowner may apply to enroll forest land for the Sustainable Forest Incentive Program under this Act. The claimant must complete, sign, and submit an application to the [commissioner] by [September 30] in order for the land to become eligible beginning in the next year. The application shall be on a form prescribed by the [commissioner] and must include the information the [commissioner] deems necessary. At a minimum, the application must show the following information for the land and the claimant:

1. The claimant's social security number or state or federal business tax registration number and date of birth,
2. The claimant's address,
3. The claimant's signature,
4. The county's parcel identification numbers for the tax parcels that completely contain the claimant's forest land that is sought to be enrolled,
5. The number of acres eligible for enrollment in the program,
6. The approved plan writer's signature and identification number, and
7. Proof, in a form specified by the [commissioner], that the claimant has executed and acknowledged in the manner required by law for a deed, and recorded, a covenant that the land is not and shall not be developed in a manner inconsistent with the requirements and conditions of this Act. The covenant shall state in writing that the covenant is binding on the claimant and the claimant's successor or assignee, and that it runs with the land for a period of not less than [eight years]. The [commissioner] shall specify the form of the covenant and
provide copies upon request. The covenant must include a legal description that encompasses all the forest land that the claimant wishes to enroll under this section or the certificate of title number for that land if it is registered land.

(b) In all cases, the [commissioner] shall notify the claimant within [90 days] after receipt of a completed application that either the land has or has not been approved for enrollment. A claimant whose application is denied may appeal the denial as provided in Section 12 of this Act.

(c) Within [90 days] after the denial of an application, or within [90 days] after the final resolution of any appeal related to the denial, the [commissioner] shall execute and acknowledge a document releasing the land from the covenant required under this chapter. The document must be mailed to the claimant and is entitled to be recorded.

(d) The social security numbers collected from people under this section are private data as provided in [insert citation]. The state or federal business tax registration number and date of birth data collected under this section are also private data but may be shared with county assessors for purposes of tax administration and with county treasurers for purposes of the revenue recapture as defined in [insert citation].

Section 6. [Annual Certification.] On or before [July 1 of each year], beginning with the year after the claimant has received an approved application, the [commissioner] shall send each claimant enrolled under the Sustainable Forest Incentive Program a certification form. The claimant must sign the certification, attesting that the requirements and conditions for continued enrollment in the program are currently being met, and must return the signed certification form to the [commissioner] by [August 15 of that same year]. Failure to return an annual certification form by the due date shall result in removal of the lands from the provisions of the Sustainable Forest Incentive Program, and the imposition of any applicable removal penalty. The claimant may appeal the removal and any associated penalty according to the procedures and within the time allowed under this Act.

Section 7. [Calculation of Average Estimated Market Value; Timberland.] (a) The [commissioner] shall annually calculate a statewide average estimated market value per acre for class 2b timberland. Class 2b property is:

1. Real estate, rural in character and used exclusively for growing trees for timber, lumber, and wood and wood products;
2. Real estate that is not improved with a structure and is used exclusively for growing trees for timber, lumber, and wood and wood products, if the owner has participated or is participating in a cost-sharing program for a forestation, reforestation, or timber stand improvement on that particular property, administered or coordinated by the [commissioner of natural resources];
3. Real estate that is nonhomestead agricultural land; or
4. A landing area or public access area of a privately owned public use airport.

(b) Class 2b property has a net class rate of [one percent of market value].

Section 8. [Calculation of Incentive Payment.] An approved claimant under the Sustainable Forest Incentive Program is eligible to receive an annual payment. The payment shall equal the greater of:

1. The difference between the property tax that would be paid on the property using the previous year's statewide average total township tax rate and the class rate for class 2b timberland if the property were valued at:
(i) The average statewide timberland market value per acre calculated under Section 7 of this Act, and
(ii) The average statewide timberland current use value per acre calculated under Section 3 of this Act.

(2) [Two-thirds] of the property tax amount determined by using the previous year's statewide average total township tax rate, the estimated market value per acre as calculated in Section 7 of this Act, and the class rate for 2b timberland under Section 3 of this Act or

(3) [$1.50 per acre] for each acre enrolled in the Sustainable Forest Incentive Program.

Section 9. [Annual Incentive Payment; Appropriation.]

(1) An incentive payment for each acre of enrolled land will be made annually to each claimant in the amount determined under Section 8 of this Act. The incentive payment shall be paid on or before [October 1 each year] based on the certifications due [August 15 of that year]. Interest at the annual rate determined under [insert citation] shall be included with any incentive payment not paid by the later of [October 1] of the year the certification was due, or [45 days] after the completed certification was returned or filed if the [commissioner] accepts a certification filed after [August 15] of the taxes payable year as the resolution of an appeal.

(2) The amount necessary to make the payments under this section is annually appropriated to the [commissioner] from the [general fund].

Section 10. [Removal for Property Tax Delinquency.] The [commissioner] shall immediately remove any property enrolled in the Sustainable Forest Incentive Program for which taxes are determined to be delinquent and shall notify the claimant of such action. Lands terminated from the Sustainable Forest Incentive Program under this section are not entitled to any payments provided in this Act and are subject to removal penalties prescribed in Section 11 of this Act. The claimant has [60 days] from the receipt of notice from the [commissioner] under this section to pay the delinquent taxes. If the delinquent taxes are paid within this [60-day period], the lands shall be reinstated in the program as if they had not been withdrawn and without the payment of a penalty.

Section 11. [Withdrawal Procedures.] An approved claimant under the Sustainable Forest Incentive Program for a minimum of [four years] may notify the commissioner of the intent to terminate enrollment. Within [90 days] of receipt of notice to terminate enrollment, the commissioner shall inform the claimant in writing, acknowledging receipt of this notice and indicating the effective date of termination from the sustainable forest incentive program. Termination of enrollment in the Sustainable Forest Incentive Program occurs on [January 1 of the fifth calendar year] that begins after receipt by the [commissioner] of the termination notice. After the [commissioner] issues an effective date of termination, a claimant wishing to continue the property's enrollment in the sustainable forest incentive program beyond the termination date must apply for enrollment as prescribed in Section 5 of this Act. A claimant who withdraws a parcel of land from this program may not reenroll the parcel for a period of [three years]. Within [90 days] after the termination date, the [commissioner] shall execute and acknowledge a document releasing the land from the covenant required under this Act. The document must be mailed to the claimant and is entitled to be recorded. The [commissioner] may allow early withdrawal from the Sustainable Forest Incentive Program without penalty in cases of condemnation for a public purpose notwithstanding the provisions of this section.
Section 12. [Penalties for Removal.]

(a) If the [commissioner] determines that property enrolled in the Sustainable Forest Incentive Program is in violation of the conditions for enrollment as specified in Section 4 of this Act, the [commissioner] shall notify the claimant of the intent to remove all enrolled land from the Sustainable Forest Incentive Program. The claimant has [60 days] to appeal this determination. The appeal must be made in writing to the [commissioner], who shall, within [60 days], notify the claimant as to the outcome of the appeal. Within [60 days] after the [commissioner] denies an appeal, or within [120 days] after the [commissioner] received a written appeal if the [commissioner] has not made a determination in that time, the owner may appeal to a [tax court] if the appeal is from an order of the [commissioner].

(b) If the [commissioner] determines the property is to be removed from the Sustainable Forest Incentive Program, the claimant is liable for payment to the [commissioner] in the amount equal to the payments received under this Act for the previous [four-year period], plus interest. The claimant has [90 days] to satisfy the payment for removal of land from the Sustainable Forest Incentive Program under this section. If the penalty is not paid within the [90-day] period under this paragraph, the [commissioner] shall certify the amount to the county auditor for collection as a part of the general ad valorem real property taxes on the land in the following taxes payable year.

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

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

Section 15. [Effective Date.] [Insert effective date.]
Temporary Replacement of Certain Elected Officials Called for Active Duty in the Armed Forces

This Act enables local governments and school districts to appoint temporary replacements for elected officials who are in the National Guard or the Reserves and who are called to active duty.

Submitted as:
South Dakota
SB57
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Provide for the Temporary Replacement of Certain Elected Officials Called for Active Duty in the Armed Forces.”

Section 2. [Temporary Resignation/Replacement of Elected Officials.] If any member of a governing body of a county, municipality, school district, township, or special purpose district, who is also a member of the [insert state] National Guard or another reserve component of the armed forces of the United States, is called into active duty which causes the member to be unable to attend meetings of the governing body, the member may elect to temporarily resign from the governing body. Notice of temporary resignation may be given in the same manner as giving notice of resignation from such governing body. A temporary replacement may be made in accordance with the provisions of statute applying to the governing body. The temporary member shall serve until the member returns from active duty or until the expiration of the member's term, whichever occurs first.

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

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

Section 5. [Effective Date.] [Insert effective date.]
The Interstate Compact for Juveniles

The Council of State Governments, in cooperation with the Office of Juvenile Justice and Delinquency Prevention, is currently supervising the introduction of The Interstate Compact for Juveniles. At issue are the management, monitoring, supervision and return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control to states other than where they were sentenced. Also at issue is the safe return of juveniles who have run away from home and in doing so have left their state of residence.

The Interstate Compact on Juveniles, as currently written and/or utilized, is not an effective instrument for use by the juvenile justice system. Its language and methods are antiquated, its rules and procedures are not widely followed or understood and its structure and overall management is powerless to meet the real needs of juveniles within the modern justice system. Not all states maintain identical contextual language, and rules of the current compact are problematic and potentially detrimental to juveniles themselves.

These concerns, raised by both the public and corrections practitioners, have allowed CSG to take a lead role in amending the existing Interstate Compact. CSG is committed to ensuring that it remains an effective management tool for those juveniles who travel to, or are supervised in, states other than where they were sentenced or reside.

Primary changes to the original Juvenile Compact (1955) include:

- The establishment of an independent compact operating authority to administer ongoing compact activity, including a provision for staff support;
- Gubernatorial appointment representations of all member states on a national governing commission which meets annually to elect the compact operating authority members, and to attend to general business and rule making procedures;
- Rule-making authority;
- Provision for significant sanctions to support essential compact operations;
- Mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, etc.), and
- Compelling collection of standardized information.

Submitted as:
Model
Status: As of May 2003, Arizona, Montana, New Mexico, North Dakota, and Washington have enacted this compact into law.

Suggested State Legislation

(Title, enacting clause, etc.)

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I
PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control.
and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this Compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this Compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this Compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this Compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct non-compliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the Compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the purposes and policies of the Compact.

ARTICLE II
DEFINITIONS

As used in this Compact, unless the context clearly requires a different construction:

A. “Bylaws” means: those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. "Compact Administrator” means: the individual in each compacting state appointed pursuant to the terms of this Compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this Compact, the rules
adopted by the Interstate Commission and policies adopted by the State Council under this
Compact.

C. “Compacting State” means: any state which has enacted the enabling legislation for
this Compact.

D. “Commissioner” means: the voting representative of each compacting state
appointed pursuant to Article III of this Compact.

E. “Court” means: any court having jurisdiction over delinquent, neglected, or
dependent children.

F. “Deputy Compact Administrator” means: the individual, if any, in each compacting
state appointed to act on behalf of a Compact Administrator pursuant to the terms of this
compact responsible for the administration and management of the state’s supervision and
transfer of juveniles subject to the terms of this Compact, the rules adopted by the Interstate
Commission and policies adopted by the State Council under this Compact.

G. “Interstate Commission” means: the Interstate Commission for Juveniles created by
Article III of this Compact.

H. “Juvenile” means: any person defined as a juvenile in any member state or by the
rules of the Interstate Commission, including:
   (1) Accused Delinquent -- a person charged with an offense that, if committed
by an adult, would be a criminal offense;
   (2) Adjudicated Delinquent -- a person found to have committed an offense that,
if committed by an adult, would be a criminal offense;
   (3) Accused Status Offender -- a person charged with an offense that would not
be a criminal offense if committed by an adult;
   (4) Adjudicated Status Offender -- a person found to have committed an offense
that would not be a criminal offense if committed by an adult; and
   (5) Non-Offender -- a person in need of supervision who has not been accused or
adjudicated a status offender or delinquent.

I. “Non-Compacting State” means: any state which has not enacted the enabling
legislation for this Compact.

J. “Probation or Parole” means: any kind of supervision or conditional release of
juveniles authorized under the laws of the compacting states.

K. “Rule” means: a written statement by the Interstate Commission promulgated
pursuant to Article VI of this Compact that is of general applicability, implements, interprets or
prescribes a policy or provision of the Compact, or an organizational, procedural, or practice
requirement of the Commission, and has the force and effect of statutory law in a compacting
state, and includes the amendment, repeal, or suspension of an existing rule.

L. “State” means: a state of the United States, the District of Columbia (or its designee),
the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the
Northern Mariana Islands.

ARTICLE III
INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the “Interstate Commission for Juveniles.” The
commission shall be a body corporate and joint agency of the compacting states. The
commission shall have all the responsibilities, powers and duties set forth herein, and such
additional powers as may be conferred upon it by subsequent action of the respective
legislatures of the compacting states in accordance with the terms of this Compact.
B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its bylaws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The executive committee shall oversee the day-to-day activities of the administration of the Compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the Compact, its bylaws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members’ participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission’s bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:
1. Relate solely to the Interstate Commission’s internal personnel practices and
procedures;
2. Disclose matters specifically exempted from disclosure by statute;
3. Disclose trade secrets or commercial or financial information which is
privileged or confidential;
4. Involve accusing any person of a crime, or formally censuring any person;
5. Disclose information of a personal nature where disclosure would constitute a
clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes;
7. Disclose information contained in or related to examination, operating or
condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with
respect to a regulated person or entity for the purpose of regulation or supervision of such
person or entity;
8. Disclose information, the premature disclosure of which would significantly
endanger the stability of a regulated person or entity; or
9. Specifically relate to the Interstate Commission’s issuance of a subpoena, or
its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission’s
legal counsel shall publicly certify that, in the legal counsel’s opinion, the meeting may be
closed to the public, and shall reference each relevant exemptive provision. The Interstate
Commission shall keep minutes which shall fully and clearly describe all matters discussed in
any meeting and shall provide a full and accurate summary of any actions taken, and the reasons
therefore, including a description of each of the views expressed on any item and the record of
any roll call vote (reflected in the vote of each member on the question). All documents
considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate
movement of juveniles as directed through its rules which shall specify the data to be collected,
the means of collection and data exchange and reporting requirements. Such methods of data
collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date
technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:
1. To provide for dispute resolution among compacting states.
2. To promulgate rules to effect the purposes and obligations as enumerated in this
Compact, which shall have the force and effect of statutory law and shall be binding in the
compacting states to the extent and in the manner provided in this Compact.
3. To oversee, supervise and coordinate the interstate movement of juveniles
subject to the terms of this Compact and any bylaws adopted and rules promulgated by the
Interstate Commission.
4. To enforce compliance with the Compact provisions, the rules promulgated by
the Interstate Commission, and the bylaws, using all necessary and proper means, including but
not limited to the use of judicial process.
5. To establish and maintain offices which shall be located within one or more of
the compacting states.
6. To purchase and maintain insurance and bonds.
7. To borrow, accept, hire or contract for services of personnel.
8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission’s personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this Compact.

14. To sue and be sued.

15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this Compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

ARTICLE V
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

   a. Establishing the fiscal year of the Interstate Commission;

   b. Establishing an executive committee and such other committees as may be necessary;

   c. Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

   d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

   e. Establishing the titles and responsibilities of the officers of the Interstate Commission;
f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

g. Providing “start-up” rules for initial administration of the Compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the Compact.

Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The Commission’s executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person’s employment or duties for acts, errors, or omissions occurring within such person’s state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner’s representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission’s representatives or employees, harmless in the amount of any settlement or
judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the Compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the “Model State Administrative Procedures Act,” 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule’s entire text stating the reason(s) for that proposed rule;
2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;
3. Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and
4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission’s principal office is located for judicial review of such rule. If the court finds that the Interstate Commission’s action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the Compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII
Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this Compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact’s purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the Compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the Compact as well as issues and activities pertaining to compliance with the provisions of the Compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the Compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII
FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to
the audit and accounting procedures established under its bylaws. However, all receipts and
disbursements of funds handled by the Interstate Commission shall be audited yearly by a
certified or licensed public accountant and the report of the audit shall be included in and
become part of the annual report of the Interstate Commission.

ARTICLE IX
THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision.
While each state may determine the membership of its own state council, its membership must
include at least one representative from the legislative, judicial, and executive branches of
government, victims groups, and the compact administrator, deputy compact administrator or
designee. Each compacting state retains the right to determine the qualifications of the compact
administrator or deputy compact administrator. Each state council will advise and may exercise
oversight and advocacy concerning that state’s participation in Interstate Commission activities
and other duties as may be determined by that state, including but not limited to, development of
policy concerning operations and procedures of the Compact within that state.

ARTICLE X
COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto
Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands as
defined in Article II of this Compact is eligible to become a compacting state.
B. The Compact shall become effective and binding upon legislative enactment of the
compact into law by no less than 35 of the states. The initial effective date shall be the later of
July 1, 2004 or upon enactment into law by the 35th jurisdiction. Thereafter it shall become
effective and binding as to any other compacting state upon enactment of the Compact into law
by that state. The governors of non-member states or their designees shall be invited to
participate in the activities of the Interstate Commission on a non-voting basis prior to adoption
of the Compact by all states and territories of the United States.
C. The Interstate Commission may propose amendments to the Compact for enactment
by the compacting states. No amendment shall become effective and binding upon the Interstate
Commission and the compacting states unless and until it is enacted into law by unanimous
consent of the compacting states.

ARTICLE XI
WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

Section A. Withdrawal
1. Once effective, the Compact shall continue in force and remain binding upon each
and every compacting state; provided that a compacting state may withdraw from the Compact
by specifically repealing the statute which enacted the Compact into law.
2. The effective date of withdrawal is the effective date of the repeal.
3. The withdrawing state shall immediately notify the chairperson of the Interstate
Commission in writing upon the introduction of legislation repealing this Compact in the
withdrawing state. The Interstate Commission shall notify the other compacting states of the
withdrawing state’s intent to withdraw within sixty days of its receipt thereof.
4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the Compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this Compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:
   a. Remedial training and technical assistance as directed by the Interstate Commission;
   b. Alternative Dispute Resolution;
   c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and
   d. Suspension or termination of membership in the Compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state’s legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state’s legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to
enforce compliance with the provisions of the Compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees.

Section D. Dissolution of Compact
1. The Compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the Compact to one compacting state.
2. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII
SEVERABILITY AND CONSTRUCTION

A. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

B. The provisions of this Compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws
1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this Compact.
2. All compacting states’ laws other than state Constitutions and other interstate compacts conflicting with this Compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact
1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.
2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.
3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.
4. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.
Unsolicited Proposals for Public-Private Initiatives

This Act authorizes the state department of transportation to accept and evaluate unsolicited proposals for public-private initiatives and authorizes contracts for such initiatives. The Act also changes provisions relating to the department's participation with state funds in mass transportation systems and services.

Submitted as:
Georgia
SB 257 (As passed)
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Permit the State Department of Transportation to Consider Unsolicited Proposals for Public-Private Initiatives.”

Section 2. [Definitions.]
(a) As used in this Act:
   (1) “Department” means the [department of transportation].
   (2) “Private contribution” means resources supplied by a private entity to accomplish all or any part of the work on a transportation system project, including funds, financing, income, revenue, cost sharing, technology, staff, materials, equipment, expertise, data, or engineering, construction, or maintenance services, or other items of value. To the extent that this definition may conflict with any federal law or regulation, for any project utilizing federal funds, the federal definition shall supersede this subsection.
   (3) “Public-private initiative” means a nontraditional arrangement between the [department] and one or more private or public entities that provides for:
      (A) Acceptance of a private contribution to a transportation system project or service in exchange for a public benefit concerning that project or service;
      (B) Sharing of resources and the means of providing transportation system projects or services; or
      (C) Cooperation in researching, developing, and implementing transportation system projects or services.
   (4) “Transportation system” means the state transportation infrastructure and related systems, including highways, roadways and associated rights of way, bridges, tunnels, overpasses, ferries, airports, port facilities, vehicle parking facilities, park-and-ride lots, transit systems, transportation management systems, intelligent vehicle highway systems, or similar facilities used for the transportation of persons or goods, together with any other property, buildings, structures, parking areas, appurtenances, and facilities needed to operate such system, including any major transportation facility as defined by [insert citation].
   (5) “Unsolicited proposal” means a written proposal for a public-private initiative that is submitted by a private entity for the purpose of entering into an agreement with the [department] concerning a transportation system project but that is not in response to a formal solicitation or request issued by the [department].
Section 3. [Requirements for Considering Unsolicited Proposals for Public-Private Initiatives.]

(a) The [department] may receive, consider, evaluate, and accept an unsolicited proposal or a public-private initiative only if the proposal complies with all of the requirements of this section.

(b) The [department] may consider an unsolicited proposal only if the proposal:

(1) Is unique and innovative in comparison with and is not substantially similar to other transportation system projects already in the [state transportation improvement program] within the [department] or, if it is similar to a project in the [state transportation improvement program], that such project has not been fully funded by the department or any other entity as of the date the proposal is submitted. Unique or innovative features which may be considered by the [department] in evaluating such a proposal may include but not be limited to unique or innovative financing, construction, design, or other components as compared with other projects or as otherwise defined by [department] rules or regulations;

(2) Is independently originated and developed by the proposer; and

(3) Includes or is accompanied by:

(A) Such detail and information as the [department] may require by rule or regulation to assist in its evaluation of the proposal and to determine if the proposal benefits the public. Such information shall include a list of any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under [insert citation], and an itemized, auditable listing of the costs associated with the development of the proposal; and

(B) Such fees as may be required by the rules and regulations of the [department] for submission of such proposals.

(c) Paragraph (1) of subsection (b) of this section shall not be deemed to prohibit the [department] from encouraging the submission of unsolicited proposals that are well-developed and consistent with the [department’s] general policy priorities by providing written or oral information to any person regarding the policy priorities or the requirements and procedures for submitting an unsolicited proposal.

(d) If the unsolicited proposal does not comply with the requirements of subsection (b) of this section, the [department] shall return the proposal without further action. In taking such action, the [department] shall not disclose either the originality of the research or any proprietary information associated with the proposal to any other person or entity. If the unsolicited proposal complies with all the requirements of subsection (b) of this section, the [department] may further evaluate the proposal pursuant to this section.

(e) Within [30 days] of receipt of an unsolicited proposal that meets the requirements of subsection (b) of this section, the [department] shall provide public notice of the proposed project. This notice shall:

(1) Be published in a newspaper of general circulation which is a legal organ and upon such electronic website providing for general public access as the department may develop for such purpose or in the same manner as publications providing notice as described in [insert citation];

(2) Be provided to any person or entity that expresses in writing to the [department] an interest in the subject matter of the proposal and to any member of the [General Assembly] whose [House or Senate district] would be affected by such proposal;

(3) Outline the general nature and scope of the unsolicited proposal, including the location of the transportation system project and the work to be performed on the project; and

(4) Specify the address to which any comparable proposal must be submitted.
(f) Any person or entity who elects to submit a competing proposal for the proposed qualifying project to the [department] shall submit a written letter of intent to do so by no later than [30 days] after the [department’s] initial publication of the notice. Any letter of intent received by the [department] after the expiration of the [30-day] period shall not be valid and any competing proposal submitted thereafter by a person or entity who has not submitted a timely letter of intent shall not be considered by the department and shall be returned to the person or entity who did not submit a letter of intent by the deadline. For those people or entities who elect to submit a competing proposal and submit a timely letter of intent with the [department], any such competing proposal shall be submitted to the [department] by no later than [90 days] after the [department’s] initial publication of the notice required by this section. Only those competing, compliant proposals submitted by such deadline shall be considered by the [department].

(g) Upon receipt of a proposal properly submitted in response to the notice described in subsection (e) of this section that fully meets the requirements of subsection (b) of this section, the [department] shall:

1. Determine, in its discretion, if any submitted proposal is comparable in nature and scope to the unsolicited proposal and whether it warrants further evaluation;
2. Evaluate any comparable proposal; and
3. Conduct good faith discussions and, if necessary, negotiation concerning each comparable proposal.

(h) The [department] shall base its evaluation of the unsolicited proposal or comparable proposals on the following factors:

1. Unique and innovative methods, approaches, or concepts demonstrated by the proposal;
2. Scientific, technical, or socioeconomic merits of the proposal;
3. Potential contribution of the proposal to the [department’s] mission;
4. Capabilities, related experience, facilities, or techniques of the proposer as described in the proposal or unique combinations of these qualities that are integral factors for achieving the proposal objectives;
5. Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives; and
6. Any other factors appropriate to a particular proposal.

(i) Once the [department] has concluded its evaluation of the unsolicited proposal and any comparable proposals, the [department] may execute a commitment agreement with the entity submitting the most desirable proposal as determined by the [department’s] evaluation process. At least [two weeks] prior to approval of any project, the [department] shall present to the [House and Senate transportation committees] a report with respect to the proposed commitment agreement. Such commitment agreement shall indicate the [department’s] commitment to undertake a public-private initiative to execute the proposal if, after public comment:

1. The [department] determines that the project is financially feasible and in the public interest; and
2. The [department] and the proposer can arrive at agreeable terms and conditions, including the price of the project.

(j) The [department] may execute a commitment agreement relating to an unsolicited proposal or conforming comparable proposal only if:

1. The proposal receives a favorable evaluation;
(2) The [department] makes a written determination based on facts and circumstances that the proposal is an acceptable basis for an agreement to obtain services from the entity making the proposal; and

(3) The specific commitment agreement is specifically approved by affirmative vote of the [state transportation board].

(k) Once the commitment agreement is signed by the parties, prior to final contracting for any public-private initiative from the unsolicited or conforming comparable proposal, the [department]:

(1) Should provide public notice that the [department] will receive public comment with respect to such proposal. The notice shall:

(A) Be published in a newspaper of general circulation and which is a legal organ, and upon such electronic website providing for general public access as the [department] may develop for such specific purpose, or in the same manner as publications providing notice as described in [insert citation], or both, allowing at least [14 days] and no more than [45 days] for public comment to be submitted for consideration;

(B) Be provided to any person or entity that expresses in writing to the department an interest in the subject matter of the proposal;

(C) Outline the general nature and scope of the proposal, including the location of the transportation system project and the work to be performed on the project; and

(D) Specify the address to which any public comment must be submitted; and

(2) In its discretion, may provide additional opportunity for public comment at a public meeting or meetings. In such event, notice of such meetings shall be provided in the same manner as described in paragraph (1) of this subsection.

(l) In taking the actions required by subsections (e) and (k) of this section, the [department] shall not disclose either the originality of the research or any proprietary information associated with the proposal as listed by the proposer required by paragraph (3) of subsection (b) of this section.

(m) The provisions of [insert citation] to the contrary notwithstanding, no proposal shall become a 'public record' nor be subject to disclosure as such until such time as a commitment agreement has been signed and notice of solicitation of public comment has been published as required in subsection (k) of this section. At all times thereafter, the [department] shall not disclose trade secret or proprietary information, or both, specifically designated by the proposer as required by paragraph (3) of subsection (b) of this section which meets the definition of a trade secret under [insert citation].

(n) The power of eminent domain shall not be delegated to any private entity under any public-private initiative commenced or proposed pursuant to this Act.

(o) The [department] or the [department’s] designee has the authority to make the determination and take the actions required by this section.

(p) If the [department] rejects or declines to accept an unsolicited proposal but, within a period of [two years] following the submission of such proposal the [department] contracts for a substantially similar project, the [department] shall reimburse the proposer of the unsolicited proposal for the auditable costs associated with the preparation and development of the proposal upon a request for reimbursement to the [department]. This provision shall not apply if the [department] accepts a conforming comparable proposal through the procedures outlined in subsections (f) and (g) of this section.

Section 4. [Authority of Department of Transportation to Contract with Proposers of Public-Private Initiatives.]
(a) If the [department] follows the evaluation criteria set forth in section 3 of this Act and if an unsolicited proposal contains all the information required by that section and the proposal is accepted by the [department] as demonstrated by the execution of a commitment agreement, upon completion of the public comment period, the [department] shall have the authority to contract with the proposer for a public-private initiative based upon the proposal without subjecting such contract to public bid as required by [insert citation]. Such contracts shall be in compliance with all other applicable federal and state laws and each specific contract shall be specifically approved by affirmative vote of the [state transportation board].

(b) Any agreement entered into pursuant to this Act may authorize funding to include tolls, fares, or other user fees and tax increments for use of the transportation facility that is the subject of the proposal. The [department] may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. Any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation as provided by the Constitution and laws of this state. The [department] may determine that it serves the public purpose of this Act for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof, including, but not limited to, the [state road and tollway authority]. The [department] may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality, including, but not limited to, the [state road and tollway authority].

(c) The [department], in its sole discretion, may reject any unsolicited proposal at any time until a contract is signed with the entity submitting the proposal. In the event that a proposal is rejected but the [department] subsequently proceeds with all or part of such proposal within a period of [two years], the entity submitting the proposal shall be entitled to reimbursement of the costs of developing the proposal as indicated in subsection (p) of section 3 of this Act.

Section 5. [Awarding Contracts to Lowest Bidders.] Except as authorized by sections 3 and 4 of this Act, the [department] shall award the contract to the lowest reliable bidder, provided that the [department] shall have the right to reject any and all such bids whether such right is reserved in the public notice or not and, in such case, the [department] may readvertise, perform the work itself, or abandon the project.

Section 6. [Relating to Operation of Facilities or Systems and Financial Assistance to Systems.] The [department’s] participation with state funds in those programs specified in [insert citation] may be in cash, products, or in-kind services. The [department’s] participation with state funds shall be limited to a maximum of [15 percent] of the cost of the program. The remainder shall be provided from sources other than [department] funds or from revenues from the operation of public mass transportation systems.

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

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

Section 9. [Effective Date.] [Insert effective date.]
Use of Epinephrine Auto-Injectors by Pupils and Campers with Severe Allergies

This Act permits students and campers with severe, potentially life-threatening allergies or asthma to possess and self-administer auto-injections of epinephrine.

Submitted as:
New Hampshire
House Bill 92
Status: Enacted into law as Chapter 50 in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relative to the Use of Epinephrine Auto-Injectors by Pupils and Campers with Severe Allergies.”

Section 2. [Possession and Use of Epinephrine Auto-Injectors by Pupils Permitted.] A pupil with severe, potentially life-threatening allergies may possess and self-administer an epinephrine auto-injector if the following conditions are satisfied:

I. The pupil has the written approval of the pupil’s physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil’s physician:

(a) The pupil’s name.
(b) The name and signature of the licensed prescriber and business and emergency numbers.
(c) The name, route, and dosage of medication.
(d) The frequency and time of medication administration or assistance.
(e) The date of the order.
(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
(g) Specific recommendations for administration.
(h) Any special side effects, contraindications, and adverse reactions to be observed.
(i) The name of each required medication.
(j) Any severe adverse reactions that may occur to another pupil, for whom the epinephrine auto-injector is not prescribed, should such a pupil receive a dose of the medication.

II. The school principal or, if a school nurse is assigned to the pupil’s school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil’s parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an epinephrine auto-injector in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the epinephrine auto-injector at school or at any school-sponsored activity, event, or program.

V. In this section, “physician” includes any physician or health practitioner with the authority to write prescriptions.
Section 3. [Using an Epinephrine Auto-Injector in School.] Immediately after using the epinephrine auto-injector during the school day, the pupil shall report to the nurse’s office or principal’s office to enable the nurse or another school employee to provide appropriate follow-up care.

Section 4. [Availability of Epinephrine Auto-Injector in School.] The school nurse or, if a school nurse is not assigned to the school building, the school principal shall maintain for a pupil’s use at least one epinephrine auto-injector, provided by the pupil, in the nurse’s office or in a similarly accessible location.

Section 5. [Immunity for School Districts and School Employees Concerning Epinephrine Auto-Injectors.] No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil’s use of an epinephrine auto-injector if the provisions of section 2 of this Act have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector by a pupil.

Section 6. [Possession and Use of Epinephrine Auto-Injectors at Recreation Camps.] A recreation camp shall permit a child with severe, potentially life-threatening allergies to possess and use an epinephrine auto-injector, if the following conditions are satisfied:

I. The child has the written approval of the child’s physician and the written approval of the parent or guardian. The camp shall obtain the following information from the child’s physician:

(a) The child's name.
(b) The name and signature of the licensed prescriber and business and emergency numbers.
(c) The name, route, and dosage of medication.
(d) The frequency and time of medication administration or assistance.
(e) The date of the order.
(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
(g) Specific recommendations for administration.
(h) Any special side effects, contraindications, and adverse reactions to be observed.
(i) The name of each required medication.
(j) Any severe adverse reactions that may occur to another child, for whom the epinephrine auto-injector is not prescribed, should such a pupil receive a dose of the medication.

II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse shall receive copies of the written approvals required by paragraph I.

III. The child’s parent or guardian shall submit written verification from the physician confirming that the child has the knowledge and skills to safely possess and use an epinephrine auto-injector in a camp setting.

IV. If the conditions provided in this section are satisfied, the child may possess and use the epinephrine auto-injector at the camp or at any camp-sponsored activity, event, or program.

V. In this section, “physician” means any physician or health practitioner with the authority to write prescriptions.
Section 7. [Use of Epinephrine Auto-Injector in Recreation Camps.] Immediately after using the epinephrine auto-injector, the child shall report such use to the nurse or another camp employee to enable the nurse or camp employee to provide appropriate follow-up care.

Section 8. [Availability of Epinephrine Auto-Injector in Recreation Camps.] The recreational camp nurse or, if a nurse is not assigned to the camp, the recreational camp administrator shall maintain for the use of a child with severe allergies at least one epinephrine auto-injector, provided by the child, in the nurse’s office or in a similarly accessible location.

Section 9. [Immunity for Recreation Camps and Camp Employees Concerning Use of Epinephrine Auto-Injectors.] No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an epinephrine auto-injector if the provisions of section 6 of this Act have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector by a child.

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

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

Section 12. [Effective Date.] [Insert effective date.]
Use of Inhalers by Pupils and Campers with Asthma

This Act permits students and campers with asthma to possess and self-administer asthma medications.

Submitted as:
New Hampshire
HB 57
Status: Enacted into law as Chapter 51 in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Relative to the Use of Inhalers by Pupils and Campers with Asthma.”

Section 2. [Possession and Self-Administration of Asthma Inhalers by Pupils Permitted.] A pupil may possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:

I. The pupil has the written approval of the pupil’s physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil’s physician:

   (a) The pupil’s name.
   (b) The name and signature of the licensed prescriber and business and emergency numbers.
   (c) The name, route, and dosage of medication.
   (d) The frequency and time of medication administration or assistance.
   (e) The date of the order.
   (f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
   (g) Specific recommendations for administration.
   (h) Any special side effects, contraindications, and adverse reactions to be observed.
   (i) At least one emergency telephone number for contacting the parent or guardian.
   (j) The name of each required medication.

II. The school principal or, if a school nurse is assigned to the pupil’s school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil’s parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an asthma inhaler in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the inhaler at school or at any school sponsored activity, event, or program.

V. In this section, “physician” includes any physician or health practitioner with the authority to write prescriptions.
Section 3. [Immunity for Schools Districts and School Employees Concerning the Use of Inhalers.] No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil's use of an inhaler if the provisions of section 2 of this Act have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a pupil.

Section 4. [Possession and Use of Asthma Inhalers at Recreation Camps.] A recreation camp shall permit a child to possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:

I. The child has the written approval of the child's physician and the written approval of the parent or guardian. The camp shall obtain the following information from the child's physician:
   (a) The child's name.
   (b) The name and signature of the licensed prescriber and business and emergency numbers.
   (c) The name, route, and dosage of medication.
   (d) The frequency and time of medication administration or assistance.
   (e) The date of the order.
   (f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
   (g) Specific recommendations for administration.
   (h) Any special side effects, contraindications, and adverse reactions to be observed.
   (i) The name of each required medication.
   (j) At least one emergency telephone number for contacting the parent or guardian.

II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse shall receive copies of the written approvals required by paragraph I.

III. The child's parent or guardian shall submit written verification from the physician confirming that the child has the knowledge and skills to safely possess and use an asthma inhaler in a camp setting.

IV. If the conditions provided in this section are satisfied, the child may possess and use the inhaler at the camp or at any camp sponsored activity, event, or program.

V. In this section, “physician” includes any physician or health practitioner with the authority to write prescriptions.

Section 5. [Immunity for Recreation Camps and Recreation Camp Employees Concerning Use of Inhalers.] No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an inhaler if the provisions of section 4 of this Act have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a child.

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

Section 7. [Repealer.] [Insert repealer clause.]
Section 8. [Effective Date.] [Insert effective date.]
Using Credit Information when Issuing Personal Insurance

The purpose of this draft legislation is to protect consumers from underwriting and rating decisions, including denial or nonrenewal of insurance coverage, rate increases, and coverage reductions, that are based solely on consumer credit reports. The Act requires an insurer to notify a consumer who is adversely affected by his or her credit report what the reasons for the adverse decision were, what the specific credit-based causes were, and what contact information would be necessary to appeal the underwriting decision. Insurers, under the Act, are prohibited from considering an absence of credit history, or an inability to determine a credit history, as a negative indicator on an insurance score. Ultimately, the Act recognizes an insurance company’s right, under the Federal Fair Credit Reporting Act (FCRA) of 1970, to use credit experience in insurance underwriting and rating.

Submitted as:
National Conference of Insurance Legislators’ (NCOIL) Proposed Model Act Regarding Use of Consumer Credit Reports in Insurance Underwriting
Status: As adopted on November 22, 2002 by the NCOIL Property-Casualty Insurance Committee and the NCOIL Executive Committee

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Regarding Use of Credit Information in Personal Insurance.”

Section 2. [Purpose.] The purpose of this Act is to regulate the use of credit information for personal insurance, so that consumers are afforded certain protections with respect to the use of such information.

Section 3. [Scope.] This Act applies to personal insurance and not to commercial insurance. For purposes of this Act, “personal insurance” means private passenger automobile, homeowners, motorcycle, mobile-homeowners and non-commercial dwelling fire insurance policies [and boat, personal watercraft, snowmobile and recreational vehicle policies]. Such policies must be individually underwritten for personal, family or household use. No other type of insurance shall be included as personal insurance for the purpose of this Act.

Section 4. [Definitions.] For the purposes of this Act, these defined words have the following meaning:

A. Adverse Action—A denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of personal insurance.

B. Affiliate—Any company that controls, is controlled by, or is under common control with another company.

C. Applicant—An individual who has applied to be covered by a personal insurance policy with an insurer.
D. Consumer—An insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.

E. Consumer Reporting Agency—Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

F. Credit Information—Any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related shall not be considered “credit information,” regardless of whether it is contained in a credit report or in an application, or is used to calculate an insurance score.

G. Credit Report—Any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer’s creditworthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

H. Insurance Score—A number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

Section 5. [Use of Credit Information.] An insurer authorized to do business in [insert state] that uses credit information to underwrite or rate risks, shall not:

A. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

B. Deny, cancel or nonrenew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by Section 5(A).

C. Base an insured’s renewal rates for personal insurance solely upon credit information, without consideration of any other applicable factor independent of credit information.

D. Take an adverse action against a consumer solely because he or she does not have a credit card account, without consideration of any other applicable factor independent of credit information.

E. Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

1. Treat the consumer as otherwise approved by the Insurance Commissioner/Supervisor/Director, if the insurer presents information that such an absence or inability relates to the risk for the insurer.

2. Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.

3. Exclude the use of credit information as a factor and use only other underwriting criteria.

F. Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within [90 days] from the date the policy is first written or renewal is issued.

G. Use credit information unless not later than [every 36 months] following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection:
1. At annual renewal, upon the request of a consumer or the consumer’s agent, the insurer shall re-underwrite and re-rate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than [once in a twelve-month period].

2. The insurer shall have the discretion to obtain current credit information upon any renewal before [36 months], if consistent with its underwriting guidelines.

3. No insurer need obtain current credit information for an insured, despite the requirements of subsection (G)(1), if one of the following applies:
   (a) The insurer is treating the consumer as otherwise approved by the Commissioner.
   (b) The insured is in the most favorably-priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to order such report, if consistent with its underwriting guidelines.
   (c) Credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal, if consistent with its underwriting guidelines.
   (d) The insurer re-evaluates the insured beginning no later than [36 months] after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

H. Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

1. Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information.
2. Inquiries relating to insurance coverage, if so identified on a consumer’s credit report.
3. Collection accounts with a medical industry code, if so identified on the consumer’s credit report.
4. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer’s credit report as being from the home mortgage industry and made within [30 days] of one another, unless only one inquiry is considered.
5. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer’s credit report as being from the automobile lending industry and made within [30 days] of one another, unless only one inquiry is considered.

Section 6. [Dispute Resolution and Error Correction] If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within [30 days] of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last [12 months] of coverage or the actual policy period.

Section 7. [Initial Notification.]
A. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at
the time the insurance application is taken, that it may obtain credit information in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy, if such consumer has previously been provided a disclosure statement.

B. Use of the following example disclosure statement constitutes compliance with this section: “In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.”

Section 8. [Adverse Action Notification.] If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of both (A) and (B) of this subsection. Such insurer shall:

A. Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 USC 1681m(a).

B. Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer’s decision to take an adverse action. Such notification shall include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as “poor credit history,” “poor credit rating,” or “poor insurance score” does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this section.

Section 9. [Filing.] Insurers that use insurance scores to underwrite and rate risks must file their scoring models (or other scoring processes) with the Department of Insurance. A third party may file scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information.

B. Any filing relating to credit information is considered trade secret under [cite to the appropriate state law].

Section 10. [Indemnification.] An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of [an agent / a producer] who obtains or uses credit information and/or insurance scores for an insurer, provided the [agent / producer] follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

Section 11. [Sale of Policy Term Information by Consumer Reporting Agency.] A. No consumer reporting agency shall provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer’s credit information or a request for a credit report or insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer’s insurance may expire and the terms and conditions of the consumer’s insurance coverage.

B. The restrictions provided in subsection (A) of this section do not apply to data or lists the consumer reporting agency supplies to the insurance [agent / producer] from whom
information was received, the insurer on whose behalf such [agent / producer] acted, or such
insurer’s affiliates or holding companies.

C. Nothing in this section shall be construed to restrict any insurer from being able to
obtain a claims history report or a motor vehicle report.

Section 12. [Severability.] If any section, paragraph, sentence, clause, phrase, or any part
of this Act passed is declared invalid due to an interpretation of or a future change in the federal
Fair Credit Reporting Act, the remaining sections, paragraphs, sentences, clauses, phrases, or
parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

Section 13. [Effective Date.] This Act shall take effect on [insert date], applying to
personal insurance policies either written to be effective or renewed on or after [9 months] from
the effective date of the bill.
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