



**SUGGESTED
STATE
LEGISLATION
2005
Volume 64**

Developed by the
Committee on Suggested State Legislation

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Foreword

The Council of State Governments (CSG) is pleased to bring you the **2005 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 volume 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. 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.

January 2005
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Suggested State Legislation 2005 Volume 64

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Contents

CSG Committee on Suggested State Legislation 2003/2004	7
Introduction	18
Suggested State Legislation Style	20
Sample Act	21

Suggested State Legislation

Alert Before Disconnecting Emergency Phone Lines	22
Allowing Employees to Take Leave to Attend Criminal Proceedings	23
Cancer Drug Repository	26
Center for Multicultural Health	29
Collaborative Law Procedures for Divorces	31
Common Sense Consumption	34
Community Service Voice Mail	36
Confidentiality of Addresses in Civil Proceedings	40
Cooperative Processing (Statement)	42
Dispensing of Returned Prescription Drugs by Prison Pharmacies	44
Encroachment of Incompatible Land Uses around Military Installations (Note)	46
Freedom to Work: People with Disabilities.....	51
Harmful Electronic or Electromagnetic Devices	53
Health Care Quality and Patient Safety Legislation (Note)	56
Health Insurance Coverage for Children in Process of Adoption	59
Indoor Pyrotechnics Safety Permit	61
Integrated Permit System	68
Intent to Surrender for Adoption	71
Limits on Civil Damages Awarded to Felons	79
Manufactured Home Owners and Community Owners Act	81
Master Farmer Program	105
Master School Principal Program	107
Medical Malpractice Reform	110
Mobile Dental Services	115
Motor Fuel Marketing	116
Notification of Presence of Wild Animals.....	122
Organ Transplants and HIV	124
Pornography and Child Exploitation Prevention	126
Prisoner Complaints against State Corrections Health Officials	129
Procedures for Release by a State Agency of Statistical Information for Research Purposes	131
Prohibiting Gutka Sales	135
Prohibiting Local Governments from Regulating Activities Related to Fertilizer	137
Regulating Arbitration Service Providers	140
Regulating Kegs	143
Regulating Poultry Production Contracts	144
Regulating the Catheterization of Students (Statement)	146
Relating to the Protection of Certain Records in the Possession of Building Officials	147
Requiring the Installation of Dental Amalgam Separator Systems in Dental Offices	149

Silicosis Claim or a Mixed Dust Disease Claim	151
Statewide First Responder Building Mapping Information System	167
Student Records	170
Tongue Splitting	171
Volunteer Advocates for Seniors	172
Cumulative Index, 1985-2005	175

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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 more than 60 years, The Council of State Governments' Suggested State Legislation (SSL) program has informed state policy-makers on a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype on interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to internal security. The result was a program of suggested state legislation published as *A Legislative Program for Defense*. The Committee reconvened following the nation's entry into World War II in order to develop a general program of state war legislation. By 1946, the volume of *Suggested State War Legislation* 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. They are generally 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.

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.

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

Submitted as:

State:

Act/Bill Number

Status:

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Criminal Rehabilitation Research
2 Act."

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

5 (1) "Commission" means the [rehabilitation research commission].

6 (2) "Commissioner" means a member of the [rehabilitation research commission].

7 (3) "Offender" means a person adjudicated delinquent or convicted of a criminal offense
8 under the laws and ordinances of the state and its political subdivisions.

9
10 Section 3. [*Rehabilitation Research Commission.*]

11 (1) A [rehabilitation research commission] is established to review, approve, and
12 facilitate research directed at the rehabilitation of delinquent and criminal offenders and to
13 disseminate the results of that research to correctional officials and other interested individuals
14 and agencies.

15 (2) The commission shall consist of 10 members appointed by the [governor] with the
16 advice and consent of the [Senate].

17
18 ***

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

21
22 Section ... [*Repealer.*] [Insert repealer clause.]

23
24 Section ... [*Effective Date.*] [Insert effective date.]

Alert Before Disconnecting Emergency Phone Lines

This Act requires telecommunications carriers to alert local authorities at least two weeks before discontinuing service on dedicated lines for fire alarms.

Submitted as:

Illinois

Public Act 93-0412

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Alert Before Disconnecting
2 Emergency Phone Lines Act."

3
4 Section 2. [*Fire Alarms; Discontinuance of Service.*] When a telecommunications carrier
5 initiates a discontinuance of service on a known emergency system or fire alarm system that is
6 required by the local authority to be a dedicated phone line circuit to the central dispatch of the
7 fire department or fire protection district or, if applicable, the police department, the
8 telecommunications carrier shall also transmit a copy of the written notice of discontinuance to
9 that local authority.

10
11 Section 3. [*Severability.*] [Insert severability clause.]

12
13 Section 4. [*Repealer.*] [Insert repealer clause.]

14
15 Section 5. [*Effective Date.*] [Insert effective date.]

Allowing Employees to Take Leave to Attend Criminal Proceedings

This Act requires employers who employ six or more people to allow an employee to take leave to attend criminal proceeding if the employee was a victim of certain crimes or is in the immediate family of the victim of such crimes. Employers who violate the provisions of the legislation are deemed to be engaging in an unlawful employment practice.

The Act requires employees to give notice to employers when the employees need to leave work to attend a criminal proceeding. The draft provides that such leave, subject to the work agreement or collective bargaining agreement between employer and employee, need not be paid leave. This legislation allows an employer to show that an employee's leave to attend a criminal proceeding creates an undue hardship for the employer and allows the employer to limit victim's amount of leave under such circumstances. The Act requires courts to consider a crime victim's work schedule when scheduling a criminal proceeding.

Submitted as:

Oregon

SB610

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 Enable Employees to Take
2 Leave to Attend Criminal Proceedings."

3

4 Section 2. [*Definitions.*]

5 (1) "Covered employer" means an employer who employs six or more people in this
6 state for each working day during each of [20 or more calendar workweeks] in the year in which
7 an eligible employee takes leave to attend a criminal proceeding or in the year immediately
8 preceding the year in which an eligible employee takes leave to attend a criminal proceeding.

9 (2) "Crime victim" means a person who has suffered financial, social, psychological or
10 physical harm as a result of a person felony, as defined in [insert citation], and includes a
11 member of the immediate family of the person.

12 (3) "Criminal proceeding" has the meaning given that term in [insert citation] and
13 includes a juvenile proceeding under [insert citation] or any other proceeding at which a crime
14 victim has a right to be present.

15 (4) "Eligible employee" means an employee who:

16 (a) Worked an average of more than [25 hours] per week for a covered employer
17 for at least [180 days] immediately before the date the employee takes leave to attend a criminal
18 proceeding; and

19 (b) Is a crime victim.

20 (5) "Immediate family" means spouse, domestic partner, father, mother, sibling, child,
21 stepchild and grandparent.

22 (6) "Undue hardship" means a significant difficulty and expense to a business and
23 includes consideration of the size of the covered employer's business and the covered employer's
24 critical need for the employee.

25
26 Section 3. [*Allowing Employees to Attend Criminal Proceedings.*]
27 (1) Except as provided in subsection (2) of this section, a covered employer shall allow
28 an eligible employee to take leave from employment to attend a criminal proceeding.
29 (2) A covered employer may limit the amount of leave an eligible employee takes to
30 attend a criminal proceeding if the employee's leave creates an undue hardship to the covered
31 employer's business.
32 (3) An eligible employee may notify the prosecuting attorney if taking leave to attend a
33 criminal proceeding would cause undue hardship to the covered employer. The prosecuting
34 attorney shall then notify the court or hearing body. The court or hearing body must take the
35 schedule of the employee into consideration when scheduling a criminal proceeding.
36 (4) Except as provided in subsections (5) and (6) of this section, and unless otherwise
37 provided by the terms of an agreement between the eligible employee and the covered employer,
38 a collective bargaining agreement or an employer policy, a covered employer is not required to
39 grant leave with pay under this Act to an eligible employee to attend a criminal proceeding.
40 (5) An eligible employee who takes leave to attend a criminal proceeding may use any
41 paid accrued vacation leave during the period of leave or may use any other paid leave that is
42 offered by the covered employer in lieu of vacation leave during the period of leave.
43 (6) Subject to the terms of any agreement between the eligible employee and the covered
44 employer or the terms of a collective bargaining agreement or an employer policy, the covered
45 employer may determine the order in which accrued leave is to be used when more than one type
46 of accrued leave is available to the employee.

47
48 Section 4. [*Notice of Intent to Take Leave to Attend a Criminal Proceeding.*]
49 (1) An eligible employee shall give the covered employer:
50 (a) Reasonable notice of the employee's intention to take leave to attend a criminal
51 proceeding; and
52 (b) Copies of any notices of scheduled criminal proceedings that the employee
53 receives from a law enforcement agency under [insert citation].
54 (2) All records kept by a covered employer regarding an eligible employee's leave under
55 this Act or notices received under subsection (1) of this section are subject to the laws relating to
56 confidentiality.

57
58 Section 5. [*Denying Leave to Attend a Criminal Proceeding to an Eligible Employee.*]
59 (1) A covered employer who denies leave to an eligible employee or who discharges,
60 threatens to discharge, intimidates or coerces because the employee takes leave to attend a
61 criminal proceeding commits an unlawful employment practice.
62 (2) Any person claiming to be aggrieved by an unlawful employment practice specified
63 in subsection (1) of this section may file a civil action under [insert citation]. The provisions of
64 [insert citation] do not apply to an unlawful employment practice specified in subsection (1) of
65 this section.

66
67 Section 6. [*Aggrieved Parties: Actions.*]
68 (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection
69 (2) of this section may file a civil action in circuit court. In any action under this subsection, the
70 court may order injunctive relief and such other equitable relief as may be appropriate, including
71 but not limited to reinstatement or the hiring of employees with or without back pay. A court
72 may order back pay in an action under this subsection only for the [two-year] period immediately
73 preceding the filing of a complaint under [insert citation] with the [Commissioner of the Bureau

of Labor and Industries], or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by [insert citation].

(2) An action may be brought under subsection (1) of this section for the following unlawful practices: [insert citations.]

(3) In any action under subsection (1) of this section alleging a violation of [insert citation]:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or [\$200], whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by [insert citation]; and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) In any action under subsection (1) of this section alleging a violation of [insert citation], the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or [\$250], whichever is greater.

(5) Any person against whom any distinction, discrimination or restriction on account of race, religion, sex, marital status, color or national origin has been made by any place of public accommodation, as defined in [insert citation], by any person acting on behalf of such place or by any person aiding or abetting such place or person in violation of [insert citation] may bring an action against the operator or manager of such place, the employee or person acting on behalf of such place or the aider or abettor of such place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by [insert citation].

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

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

Section 9. [*Effective Date*.] [Insert effective date.]

Cancer Drug Repository

This Act creates a Cancer Drug Repository Program and requires the state Department of Health and Human Services to establish a cancer drug repository program for the collection and redistribution of unadulterated cancer drugs in their original sealed and tamper-evident unit dose packaging. The law requires the Director of Health and Human Services in consultation with the state Board of Pharmacy to adopt rules and regulations governing the Program. The rules and regulations must include standards and procedures for inspecting, accepting, safely storing and dispensing donated cancer drugs, eligibility standards and an identification card based on economic need to receive cancer drugs from the Program, immunity provisions and forms, a maximum dispensing fee, a list of cancer drugs that will be accepted and a list of cancer drugs that will not be accepted, and a form to be signed by the cancer drug donor.

The Program will be permitted to accept cancer drugs from any person, including a cancer drug manufacturer or health care facility, provided that the cancer drugs are donated at a pharmacy, hospital or nonprofit clinic that has elected to participate in the Program and meets the eligibility requirements adopted by the Board. Participation in the Cancer Drug Repository Program is voluntary. Resale of cancer drugs donated to the Program is prohibited.

Submitted as:

Nebraska

LB 756

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Cancer Drug Repository Program
2 Act."

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

4 (1) "Cancer Drug" means a prescription drug used to treat

5 (a) Cancer or its side effects or

6 (b) The side effects of a prescription drug used to treat cancer or its side effects;

7 (2) "Department" means the [department of health and human services regulation and
8 licensure];

9 (3) "Health Care Facility" has the definition found in [insert citation];

10 (4) "Health Clinic" has the definition found in [insert citation];

11 (5) "Hospital" has the definition found in [insert citation];

12 (6) "Pharmacy" has the definition found in [insert citation];

13 (7) "Physician's Office" means the office of a person licensed to practice medicine and
14 surgery or osteopathic medicine and surgery;

15 (8) "Prescribing Practitioner" means a health care practitioner licensed under the
16 Uniform Licensing Law who is authorized to prescribe cancer drugs; and

17 (9) "Prescription Drug" has the definition found in [insert citation].
18

19 Section 3. [*Establishing the Cancer Drug Repository Program.*] The [department] shall
20 establish a Cancer Drug Repository Program for accepting donated cancer drugs and dispensing
21 such drugs to state residents. Participation in the program shall be voluntary.
22

23 Section 4. [*Donations: Criteria.*]

24 (1) Any person or entity, including, but not limited to, a cancer drug manufacturer or
25 health care facility, may donate cancer drugs to the Cancer Drug Repository Program.

26 (2) Cancer drugs may be donated at a physician's office, pharmacy, hospital, or health
27 clinic that elects to participate in the program and meets criteria established by the [department]
28 for such participation.

29
30 Section 5. [*Donations: Limitations.*]

31 (1) A cancer drug shall only be accepted or dispensed under the Cancer Drug Repository
32 Program if such drug is in its original, unopened, sealed, and tamper-evident unit dose
33 packaging, except that a cancer drug packaged in single unit doses may be accepted and
34 dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened.

35 (2) A cancer drug shall not be accepted or dispensed under the Cancer Drug Repository
36 Program if:

37 (a) Such drug bears an expiration date that is earlier than six months after the date
38 the drug was donated; or

39 (b) Such drug is adulterated or misbranded as described in [insert citation].

40 (3) Subject to limitations provided in this section, unused cancer drugs dispensed under
41 the [Medical Assistance Program] established in [insert citation] may be accepted and dispensed
42 under the Cancer Drug Repository Program.

43
44 Section 6. [*Storage, Distribution and Dispensing of Drugs.*]

45 (1) A physician's office, pharmacy, hospital, or health clinic that accepts donated cancer
46 drugs under the Cancer Drug Repository Program shall comply with all applicable provisions of
47 state and federal law relating to the storage, distribution, and dispensing of such drugs and shall
48 inspect all such drugs prior to dispensing to determine if they are adulterated or misbranded as
49 described in [insert citation]. Such drugs shall only be dispensed pursuant to a prescription issued
50 by a prescribing practitioner. Such drugs may be distributed to another participating physician's
51 office, pharmacy, hospital, or health clinic for dispensing.

52 (2) A physician's office, pharmacy, hospital, or health clinic may charge a handling fee
53 for distributing or dispensing cancer drugs under the Cancer Drug Repository Program. Such fee
54 shall be established in rules and regulations adopted and promulgated by the [department].
55 Cancer drugs donated under the Program shall not be resold.

56
57 Section 7. [*Liability.*]

58 (1) Any person or entity, including a cancer drug manufacturer, which exercises
59 reasonable care in donating, accepting, distributing, or dispensing cancer drugs under this Act or
60 rules and regulations adopted and promulgated under the Act shall be immune from civil or
61 criminal liability or professional disciplinary action of any kind for any injury, death, or loss to
62 person or property relating to such activities.

63 (2) Notwithstanding subsection (1) of this section, the donation of a cancer drug by a
64 cancer drug manufacturer does not absolve the manufacturer of any criminal or civil liability that
65 would have existed but for the donation, nor shall such donation increase the liability of such
66 cancer drug manufacturer that would have existed but for the donation.

67
68 Section 8. [*Rules and Regulations.*] The [department], upon the recommendation of the

69 state [Board of Pharmacy], shall adopt and promulgate rules and regulations to carry out this Act.
70 Initial rules and regulations under the Act shall be adopted and promulgated no later than ninety

71 days after the operative date of this Act. Such rules and regulations shall include, but not be
72 limited to:

73 (1) Eligibility criteria and other standards and procedures for physician's offices,
74 pharmacies, hospitals, and health clinics that accept and distribute or dispense donated cancer
75 drugs;

76 (2) Necessary forms for administration of the Cancer Drug Repository Program,
77 including, but not limited to, forms for use by people or entities that donate, accept, distribute, or
78 dispense cancer drugs under the Program;

79 (3) The maximum handling fee that may be charged by physician's offices, pharmacies,
80 hospitals, or health clinics that accept and distribute or dispense donated cancer drugs; and

81 (4) (a) Categories of cancer drugs that the Cancer Drug Repository Program will
82 accept for dispensing; and

83 (b) Categories of cancer drugs that the Program will not accept for dispensing and
84 the reason that such drugs will not be accepted.

85
86 Section 9. [*Severability.*] [Insert severability clause.]

87
88 Section 10. [*Repealer.*] [Insert repealer clause.]

89
90 Section 11. [*Effective Date.*] [Insert effective date.]

Center for Multicultural Health

This Act establishes a center to promote and coordinate the research and other activities of the state and local health departments, local mental health authorities, public schools, community-based organizations and area Indian tribes that are related to multicultural and minority health issues.

Submitted as:

Utah

SB 135 (enrolled version)

Status: Passed Legislature on 03/02/04. Sent to governor.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Establish a Center for
2 Multicultural Health."

3
4 Section 2. [*Definitions.*] As used in this Act, "multicultural and minority health issues"
5 means health, including mental and oral health, issues of particular interest to cultural, ethnic,
6 racial, or other subpopulations, including:

7 (a) Disparities in:

8 (i) Disease incidence, prevalence, morbidity, mortality, treatment, and treatment
9 response; and

10 (ii) Access to care; and

11 (b) Cultural competency in the delivery of health care.

12
13 Section 3. [*Center for Multicultural Health.*] There is created within the [Department of
14 Health] The Center for Multicultural Health. The Center for Multicultural Health shall:

15 (a) Promote and coordinate the research, data production and dissemination, education,
16 and health promotion activities of the [Department of Health], local health departments, local
17 mental health authorities, public schools, community-based organizations, Indian Tribes, and
18 other organizations within the state as they relate to multicultural and minority health issues;

19 (b) Assist in the development and implementation of programs to address multicultural
20 and minority health issues;

21 (c) Promote the dissemination and use of information on multicultural and minority
22 health issues by minority populations, health care providers, and others;

23 (d) Seek federal funding and other resources to accomplish its mission;

24 (e) Provide technical assistance to entities within the state seeking funding to study or
25 address multicultural and minority health issues;

26 (f) Provide staff assistance to any advisory committee created by the [Department of
27 Health] to study multicultural and minority health issues; and

28 (g) Annually report to the [Legislature] on its activities and accomplishments.

29
30 Section 4. [*Funding.*] As an ongoing appropriation subject to future budget constraints,
31 there is appropriated from the [General Fund] for [fiscal year 2004-05], [\$100,000] to the
32 [Department of Health] to fund the personnel costs of the Center for Multicultural Health.

33
34 Section 5. [*Severability*.] [Insert severability clause.]
35
36 Section 6. [*Repealer*.] [Insert repealer clause.]
37
38 Section 7. [*Effective Date*.] [Insert effective date.]

Collaborative Law Procedures for Divorces

This Act enables divorcing couples to settle their disputes by written agreement with limited judicial intervention.

Submitted as:
North Carolina
Session Law 2003-371
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 Establishing Collaborative
2 Law Procedures Whereby Parties Seeking a Divorce and Their Attorneys May Settle Their
3 Disputes by Written Agreement with Limited Judicial Intervention."
4

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

6 (1) "Collaborative law" means a procedure in which a husband and wife who are
7 separated and are seeking a divorce, or are contemplating separation and divorce, and their
8 attorneys agree to use their best efforts and make a good faith attempt to resolve their disputes
9 arising from the marital relationship on an agreed basis. The procedure shall include an
10 agreement by the parties to attempt to resolve their disputes without having to resort to judicial
11 intervention, except to have the court approve the settlement agreement and sign the orders
12 required by law to effectuate the agreement of the parties as the court deems appropriate. The
13 procedure shall also include an agreement where the parties' attorneys agree not to serve as
14 litigation counsel, except to ask the court to approve the settlement agreement.

15 (2) "Collaborative law agreement" means a written agreement, signed by a husband and
16 wife and their attorneys, that contains an acknowledgement by the parties to attempt to resolve
17 the disputes arising from their marriage in accordance with collaborative law procedures.

18 (3) "Collaborative law procedures" mean the process for attempting to resolve disputes
19 arising from a marriage as set forth in this Act.

20 (4) "Collaborative law settlement agreement" means an agreement entered into between a
21 husband and wife as a result of collaborative law procedures that resolves the disputes arising
22 from the marriage of the husband and wife.

23 (5) "Third-party expert" means a person, other than the parties to a collaborative law
24 agreement, hired pursuant to a collaborative law agreement to assist the parties in the resolution
25 of their disputes.
26

27 Section 3. [*Agreement Requirements.*] A collaborative law agreement must be in writing,
28 signed by all the parties to the agreement and their attorneys, and must include provisions for the
29 withdrawal of all attorneys involved in the collaborative law procedure if the collaborative law
30 procedure does not result in settlement of the dispute.
31

32 Section 4. [*Tolling of Time Periods.*] A validly executed collaborative law agreement
33 shall toll all legal time periods applicable to legal rights and issues under law between the parties
34 for the amount of time the collaborative law agreement remains in effect. This section applies to

any applicable statutes of limitations, filing deadlines, or other time limitations imposed by law or court rule, including setting a hearing or trial in the case, imposing discovery deadlines, and requiring compliance with scheduling orders.

Section 5. [*Notice of Collaborative Law Agreement.*]

(a) No notice shall be given to the court of any collaborative law agreement entered into prior to the filing of a civil action under this Act.

(b) If a civil action is pending, a notice of a collaborative law agreement, signed by the parties and their attorneys, shall be filed with the court. After the filing of a notice of a collaborative law agreement, the court shall take no action in the case, including dismissal, unless the court is notified in writing that the parties have done one of the following:

(1) Failed to reach a collaborative law settlement agreement.

(2) Both voluntarily dismissed the action.

(3) Asked the court to enter a judgment or order to make the collaborative law settlement agreement an act of the court in accordance with Section 6 of this Act.

Section 6. [*Judgment on Collaborative Law Settlement Agreement.*] A party is entitled to

an entry of judgment or order to effectuate the terms of a collaborative law settlement agreement if the agreement is signed by each party to the agreement.

Section 7. [*Failure to Reach Settlement; Disposition by Court; Duty of Attorney to Withdraw.*]

(a) If the parties fail to reach a settlement and no civil action has been filed, either party may file a civil action, unless the collaborative law agreement first provides for the use of arbitration or alternative dispute resolution.

(b) If a civil action is pending and the collaborative law procedures do not result in a collaborative law settlement agreement, upon notice to the court, the court may enter orders as appropriate, free of the restrictions of Section 5(b) of this Act.

(c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this section, the attorneys representing the parties in the collaborative law proceedings may not represent either party in any further civil proceedings and shall withdraw as attorney for either party.

Section 8. [*Privileged and Inadmissible Evidence.*]

(a) All statements, communications, and work product made or arising from a collaborative law procedure are confidential and are inadmissible in any court proceeding. Work product includes any written or verbal communications or analysis of any third-party experts used in the collaborative law procedure.

(b) All communications and work product of any attorney or third-party expert hired for purposes of participating in a collaborative law procedure shall be privileged and inadmissible in any court proceeding, except by agreement of the parties.

Section 9. [*Alternate Dispute Resolution Permitted.*] Nothing in this Act shall be

construed to prohibit the parties from using, by mutual agreement, other forms of alternate dispute resolution, including mediation or binding arbitration, to reach a settlement on any of the issues included in the collaborative law agreement. The parties' attorneys for the collaborative law proceeding may also serve as counsel for any form of alternate dispute resolution pursued as part of the collaborative law agreement.

83 Section 10. [*Collaborative Law Procedures Surviving Death.*] Consistent with [insert
84 citation], the personal representative of the estate of a deceased spouse may continue a
85 collaborative law procedure with respect to equitable distribution that has been initiated by a
86 collaborative law agreement prior to death, notwithstanding the death of one of the spouses. The
87 provisions of Section 4 of this Act shall apply to time limits applicable under [insert citation] for
88 collaborative law procedures continued pursuant to this section.

89
90 Section 11. [*Severability.*] [Insert severability clause.]

91
92 Section 12. [*Repealer.*] [Insert repealer clause.]

93
94 Section 13. [*Effective Date.*] [Insert effective date.]

Common Sense Consumption

This Act provides for limited liability of food manufacturers, packers, distributors, and others from claims relating to weight gain and obesity.

Submitted as:

Georgia

HB 1519 (enrolled version)

Status: Passed Legislature in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Common Sense Consumption
2 Act."

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

5 (1) "Claim" means any claim by or on behalf of a natural person, as well as any
6 derivative or other claim arising there from asserted by or on behalf of any other person.

7 (2) "Federal Act" means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C.
8 Section 301, et seq., 52 Stat. Section 1040, et seq.).

9 (3) "Generally-known condition allegedly caused by or allegedly likely to result from
10 long-term consumption" means a condition generally known to result or likely to result from the
11 cumulative effect of consumption and not from a single instance of consumption.

12 (4) "Knowing and willful" means that:

13 (A) The conduct constituting a violation of federal or state law was committed
14 with the intent to deceive or injure consumers or with actual knowledge that such conduct was
15 injurious to consumers; and

16 (B) The conduct constituting such violation was not required by regulations,
17 orders, rules, or other pronouncement of, or any statute administered by, a federal, state, or local
18 government agency.

19 (5) "Other person" means any individual, corporation, company, association, firm,
20 partnership, society, joint-stock company, or other entity, including any governmental entity or
21 private attorney general.

22
23 Section 3. [*Limiting Certain Manufacturers from Civil Liability.*] Except as provided in
24 Section 4 of this Act, a manufacturer, packer, distributor, carrier, holder, seller, marketer, or
25 advertiser of a food, as defined in Section 201(f) of the Federal Act, or an association of one or
26 more such entities, shall not be subject to civil liability arising under any law of this state for any
27 claim arising out of weight gain, obesity, a health condition associated with weight gain or
28 obesity, or other generally-known condition allegedly caused by or allegedly likely to result from
29 long-term consumption of food.

30
31 Section 4. [*Civil Liability Resulting from Misbranding or Willful Actions Causing Injury.*]
32 The limitation of liability provided for in Section 3 of this Act shall not preclude civil liability
33 where the claim of weight gain, obesity, health condition associated with weight gain or obesity,

or other generally-known condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

(1) A material violation of an adulteration or misbranding requirement prescribed by statute or regulation of this state or of the United States and the claimed injury was proximately caused by such violation; or

(2) Any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that such violation is knowing and willful and the claimed injury was proximately caused by such violation.

Section 5. [*Contents of Complaint.*]

(1) In any action exempted under paragraph (1) of Section 4 of this Act, the complaint initiating such action shall state with particularity the following:

(A) The statute, regulation, or other law of this state or of the United States that was allegedly violated;

(B) The facts that are alleged to constitute a material violation of such statute, regulation, or other law; and

(C) The facts alleged to demonstrate that such violation proximately caused actual injury to the plaintiff.

(2) In any action exempted under paragraph (2) of Section 4 of this Act, in addition to the requirements of subsection (1) of this section, the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was knowing and willful. For purposes of this Act, the requirements of subsection (1) of this section are hereby deemed part of the substantive law of this state and not merely in the nature of procedural provisions.

Section 6. [*Stays and Discovery.*] In any action exempted under Section 4 of this Act, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. During the pendency of any state of discovery pursuant to this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of such party and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under [insert citation].

Section 7. [*Covered Claims.*] The provisions of this Act shall apply to all covered claims pending on the effective date of this Act and all claims filed thereafter, regardless of when the claim arose.

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

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

Section 10. [*Effective Date.*] [Insert effective date.]

Community Service Voice Mail

This Act authorizes a Community Service Voice Mailbox Program that enables qualified low-income people to get an individually assigned telephone number and the ability to record a personal greeting and a secure private security code to retrieve messages. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge. The Community Service Voice Mail Program is funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for the purpose.

Submitted as:

Washington

Chapter 134, Laws 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 the "Community Service Voice Mail
2 Program Act."

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

5 (1) "Community agency" means local community agencies that administer community
6 service voice mail programs.

7 (2) "Community service voice mail" means a computerized voice mail system that
8 provides low-income recipients with:

9 (a) An individually assigned telephone number;

10 (b) The ability to record a personal greeting; and

11 (c) A private security code to retrieve messages.

12 (3) "Department" means the [department of social and health services].

13 (4) "Service year" means the period between [July 1st and June 30th].

14 (5) "Community action agency" means local community action agencies or local
15 community service agencies designated by the [department of community, trade, and economic
16 development] under [insert citation].

17
18 Section 3. [*Universal Telephone Service.*] The [legislature] finds that universal telephone
19 service is an important policy goal of the state. The [legislature] further finds that:

20 (1) (a) Recent changes in the telecommunications industry, such as federal access
21 charges, raise concerns about the ability of low-income people to continue to afford access to
22 local exchange telephone service; and

23 (b) Many low-income people making the transition to independence from
24 receiving supportive services through community agencies do not qualify for economic
25 assistance from the [department].

26 (2) Therefore, the [legislature] finds that:

27 (a) It is in the public interest to take steps to mitigate the effects of these changes
28 on low-income people; and

(b) Advances in telecommunications technologies, such as community service voice mail provide new and economically efficient ways to secure many of the benefits of universal service to low-income people who are not customers of local exchange telephone service.

Section 4. [*Components of the Community Service Voice Mail Program.*] The Community Service Voice Mail Program shall be available to participants of [department] programs set forth in [insert citation]. Assistance shall consist of the following components:

(1) A discount on service connection fees of [fifty percent or more] as set forth in [insert citation].

(2) A waiver of deposit requirements on local exchange service, as set forth in [insert citation].

(3) A discounted flat rate service for local exchange service, which shall be subject to the following conditions:

(a) The [commission] shall establish a single telephone assistance rate for all local exchange companies operating in this state. The telephone assistance rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The [commission] shall, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The telephone assistance rate shall only be available to eligible customers subscribing to the lowest available priced local exchange flat rate service, where the lowest priced local exchange flat rate service, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate. Low-income senior citizens [sixty years of age] and older and other low-income persons identified by the [department] as medically needy shall, where single-party service is available, be provided with single-party service as the lowest available local exchange flat rate service.

(d) The cost of providing the service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge(s) and, to the extent necessary, from the [Telephone Assistance Fund] created by [insert citation].

(4) A discount on a community service voice mailbox that provides recipients with

(a) An individually assigned telephone number;

(b) The ability to record a personal greeting; and

(c) A secure private security code to retrieve messages.

Section 5. [*Funding the Community Service Voice Mail Program.*]

(1) The Community Service Voice Mail Program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in [insert citation]. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed [fourteen cents] per month. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Community Service Voice Mail Program." All money collected from the telephone assistance excise tax shall be transferred to a [Telephone Assistance Fund] administered by the [department].

(2) Local exchange companies shall bill the Fund for their expenses incurred in offering the Community Service Voice Mail Program, including administrative and program expenses. The [department] shall disburse the money to the local exchange companies. The [department] is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The [department] shall recover its administrative costs from the [Fund]. The

[department] may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The [department] shall enter into an agreement with the [department of community, trade, and economic development] for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The Community Service Voice Mail Service Program may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge.

Section 6. *[Rules.]*

(1) The [commission] and the [department] may adopt any rules necessary to implement [insert citation].

(2) Rules necessary for the implementation of community service voice mail services shall be made by the [commission] and the [department] in consultation with the [department of community, trade, and economic development].

Section 7. *[Reimbursement Limits.]* The [state] Telephone Assistance Program shall limit reimbursement to

(1) One residential switched access line per eligible household, or

(2) One discounted community service voice mailbox per eligible person.

Section 8. *[Waivers.]* Local exchange companies shall waive deposits on local exchange service for eligible subscribers and provide a [fifty percent] discount on the company's customary charge for commencing telecommunications service for eligible subscribers. Part or all of the remaining [fifty percent] of service connection fees may be paid by funds from federal government or other programs for this purpose. The [commission] or other appropriate agency shall make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered from the telephone assistance fund.

Section 9. *[Eligibility Requirements.]*

(1) Adult recipients of [department]-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the Telephone Assistance Program. The [department] shall notify the participants of their eligibility.

(2) Participants in Community Service Voice Mail Programs are eligible for participation in services available under [insert citation] after completing use of community service voice mail services. Eligibility shall be for a period including the remainder of the current service year and the following service year. Community agencies shall notify the [department] of participants eligible under this subsection.

Section 10. *[Reports.]* The [department] shall report to the appropriate committees of the [legislature] by [December 1] of each year on the status of the state telephone assistance program. The report shall include the number of participants by qualifying social service programs receiving benefits from the telephone assistance program and the type of benefits participants receive. The report shall also include a description of the geographical distribution of

126 participants, the program's annual revenue and expenditures, and any recommendations for
127 legislative action.

128

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

130

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

132

133 Section 13. [*Effective Date*.] [Insert effective date.]

Confidentiality of Addresses in Civil Proceedings

This Act provides that in any civil proceeding a court may, upon its own motion or upon the motion of any party, authorize any party to keep their address confidential from any adverse party in any pleadings or other papers submitted to the court, where a court finds that revealing such an address poses an unreasonable risk to the health or safety of a party.

Submitted as:

New York

S5522-A

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Establish the Confidentiality
2 of Addresses in Civil Proceedings."

3

4 Section 2. [*Confidentiality of Addresses in Civil Proceedings.*]

5 (a) Notwithstanding any other provision of law, in any civil proceeding, whether or not
6 an order of protection or temporary order of protection is sought or has been sought in the past,
7 the court may, upon its own motion or upon the motion of any party, authorize any party to keep
8 their residential and business addresses and telephone numbers confidential from any party in
9 any pleadings or other papers submitted to the court, where the court makes specific findings on
10 the record supporting a conclusion that disclosure of such addresses or telephone numbers would
11 pose an unreasonable risk to the health or safety of a party. Pending such a finding, any such
12 addresses or telephone numbers of the party seeking confidentiality shall be safeguarded and
13 sealed in order to prevent its inadvertent or unauthorized use or disclosure.

14 (b) Notwithstanding any other provision of law, if a party has resided or resides in a
15 residential program for victims of domestic violence as defined in [insert citation], the present
16 address of such party and the address of the residential program for victims of domestic violence
17 shall not be revealed by the court or any court personnel who may have access to such
18 information.

19 (c) Upon such authorization, the court shall designate the clerk of the court or such other
20 disinterested person as it deems appropriate, with consent of such disinterested person, as the
21 agent for service of process for the party whose residential and business addresses or telephone
22 numbers are to remain confidential and shall notify the parties of such designation and the
23 address of the agent in writing. The clerk or disinterested person designated by the court shall,
24 when served with process on behalf of the party whose information is to remain confidential,
25 promptly notify such party whose information is to remain confidential and forward such process
26 to him or her in a manner calculated to be timely received.

27 (d) In any case in which such confidentiality authorization is made, the party whose
28 information is to remain confidential shall inform the clerk of the court or disinterested person
29 designated by the court of any change in address for purposes of receipt of service of process or
30 any papers.

31

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

33

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

35

36 Section 5. [*Effective Date.*] [Insert effective date.]

Cooperative Processing (Statement)

In many states people or entities in the agriculture industry may create nonprofit marketing cooperative associations. The marketing cooperative association provides agricultural product marketing services for the benefit of its members or shareholders who own and control the cooperative. Cooperatives are deemed non-profit business forms as they are organized for the sole purpose of rendering services for their members/owners. Under current law in many states, non-farm investors are prohibited from investing capital into these enterprises. Tennessee Chapter 534 of 2003 provides for the establishment of a "processing cooperative association" for people in the agriculture industry. The cooperative can be used to market, process, or otherwise change the form or marketability of crops, livestock, and other agricultural products for its members/owners. Generally, this Act sets out provisions for the formation, organization and operation of cooperatives to market, process, or otherwise change the form or marketability of crops, livestock and other agricultural products, including manufacturing and further processing of those products and other purposes that are necessary to facilitate the production or marketing of agricultural products by patron members and other purposes that are related to the business of the cooperative; to provide supplies and services to its members; and for purposes that cooperatives are authorized by law.

The Tennessee legislation creates a hybrid between a traditional cooperative and a modern limited liability law corporation that gives farmers, as patron members, the ability to partner with non-patron investment members yet receive the same favorable tax treatment as nonprofit cooperative associations. This allows outside investment in co-ops without the higher tax normally associated with such investments provided the Commissioner of Agriculture has determined the cooperative will provide new or improved markets for Tennessee products or opportunities for partners to participate in processing Tennessee products. Called "New-Generation" or "New-Age" Cooperatives, this Act facilitates private investment in rural technology. This permits venture capitalists or other investors to own up to 49 percent of a cooperative. The legislation allows cooperatives to organize on a "pass-through" basis similar to LLCs based on the state's existing LLC law with special provisions to maintain the concept of a cooperative.

Cooperative organizers can act for themselves or as the agents of other entities. Among other powers, a cooperative can:

- (1) Buy, sell, or deal in its own products, the products of the cooperative's individual members, patrons, or nonmembers, the products of another cooperative association, or the products of another person or entity;
- (2) Enter into or become a party to a contract or agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members;
- (3) Purchase and hold, lease, mortgage, encumber, sell, exchange, or convey buildings, real estate, or personal property; and
- (4) Issue bonds and loan or borrow money to or from individual members, the cooperative, or associations.

A cooperative could have two types of members:

- (1) Non-patron members who do not have product delivery obligations and are primarily investment members; and
- (2) Patron members who have rights and obligations of product delivery to the cooperative, and they have preference in both governance and financial rights.

A cooperative would be governed by a board of directors which would take all action for and on behalf of the cooperative except those actions reserved or granted to members. The board

would have not less than three directors at least one of whom must be elected by the patron members.

The distribution of a cooperative's net income would be made at least annually. Net income allocated to patron members in excess of dividends on equity and additions to reserves would be distributed to patron members on the basis of patronage. If the bylaws do not provide for the allocation of the profits and losses between patron membership interests and non-patron membership interests, then the allocation of profits and losses among non-patron membership interests individually and patron membership interests collectively would be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests. Cooperatives could merge or consolidate with each other or other business entities.

Cooperatives that are established under the Tennessee Act are subject to the same fees and taxed in the same manner as nonprofit cooperative associations for agricultural products under present law. At least 51 percent of the voting power on general matters of the cooperative would be allocated to one or more directors elected by patron members or in the alternative one or more directors elected by patron members would have at least 51 percent voting power on general matters.

Submitted as:

Tennessee

Chapter 534 of 2003

Status: Enacted into law in 2004.

Dispensing of Returned Prescription Drugs by Prison Pharmacies

The 2003 *Suggested State Legislation* Volume 62 contains a draft Act that is based on Oklahoma HB1297, a 2001 law. That SSL draft directs the state board of health, the state board of pharmacy and the state health commission to jointly develop and implement a pilot program through which unused prescription drugs, other than opiates, can be transferred from nursing facilities to pharmacies operated by city-county health departments or county pharmacies for the purpose of distributing the medication to state residents who are medically indigent. Medically indigent people are those who have no health insurance or who lack reasonable means to purchase prescribed medications.

The 2003 draft Act also:

- Authorizes residents of a nursing facility, or the representative or guardian of a resident, to donate unused non-opiate prescription medications for dispensation to medically indigent people;
- Makes an exception to provisions of the pharmacist licensure laws that prohibit pharmacists from selling, bartering, or giving away unused medications for participation in the program;
- Provides liability protection for physicians, pharmacists, and other health care professionals for participation in the program when acting within the scope of practice of their license and in good faith compliance with the rules promulgated pursuant to the Act;
- Requires that the rules promulgated to implement the program provide for:
 - A formulary for the medications to be distributed pursuant to the program,
 - The protection of the privacy of the individual for whom the medication was originally prescribed,
 - The integrity and safe storage and safe transfer of the medication, which may include limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose or which remain in intact packaging, and
 - The tracking of and accountability for the medications; and
- Requires the state board of health, the state board of pharmacy, the state health commission, the state board of medical licensure and supervision, and the state board of osteopathic examiners to review and evaluate the program no later than 18 months after its implementation and report any recommendations to the governor and the Legislature.

The draft Act in this 2005 SSL volume provides that a prison pharmacy may dispense returned prescription drugs to any patient in any state prison if all of the following conditions are satisfied:

- The prescription drug was never in the possession of the patient to whom it was originally prescribed;
- The prescription drug is returned in its original container; and
- A pharmacist determines that the prescription drug has not been adulterated or misbranded.

Submitted as:

Wisconsin

Act 54 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 Relating to Dispensing
2 Returned Prescription Drugs by the State Prison Pharmacies."

3
4 Section 2. [*State Prisons.*] A prescription drug that is returned to a pharmacy that
5 primarily serves patients confined in a state prison may be dispensed to any patient in any state
6 prison, but only if all of the following are satisfied:

7 (a) The prescription drug was never in the possession of the patient to whom it was
8 originally prescribed.

9 (b) The prescription drug is returned in its original container.

10 (c) A pharmacist determines that the prescription drug has not been adulterated or
11 misbranded.

12
13 Section 3. [*Severability.*] [Insert severability clause.]

14
15 Section 4. [*Repealer.*] [Insert repealer clause.]

16
17 Section 5. [*Effective Date.*] [Insert effective date.]

Encroachment of Incompatible Land Uses around Military Installations (Note)

Encroachment by communities neighboring U.S. military installations and training ranges is becoming a serious national problem, not only for the U.S. Department of Defense, but also for states that host military bases. Each of the 50 states and every U.S. territory is home to at least one military facility of some kind.

Encroachment, incompatible uses of land, air, water and other resources, represents the cumulative impact of uncontrolled urban development near military installation boundaries. Other encroachment concerns for the Defense Department (DoD) are the increasingly complex and costly regulatory restrictions that interrupt or delay military operations and the competition for natural resources with neighboring communities. Unchecked growth and restrictions now jeopardize the ability of many U.S. military installations to perform their missions.

In the past, military installations, most of which were established before World War II, generally were located far from urban areas. This is no longer the case. In 2002, the General Accounting Office reported that nearly 80 percent of the nation's military bases were witnessing growth around their fence lines at a rate higher than the national average. At the same time, the footprint of the 21st Century military has expanded. Today's weapons and tactics require increasingly large battle spaces. In World War II, for instance, an Army infantry brigade area of operations measured 8 by 12 kilometers. Today, an infantry brigade's area of operations is 50 by 65 kilometers. While the demands of modern military training call for larger training spaces, incompatible land uses and uncoordinated development near military bases increasingly are reducing available military testing and training spaces. The military's larger footprint also exposes installation neighbors to increasing aircraft over-flights, artillery fire, dust, and noise.

An installation that cannot perform its mission may not remain a viable installation for defense purposes and may face closure. Mission viability is one of the criteria the 2005 Base Realignment and Closure (BRAC) Commission will use in making its recommendations for bases to be closed. The Secretary of Defense has called for as many as 25 percent of existing DoD installations to be closed or consolidated in the 2005 BRAC round.

While incompatible resource issues near military installations represent a problem for the Department of Defense, base closings translate into lost jobs and revenues for states and local economies, most of which may not be recovered in redevelopment projects. The economic benefits of hosting a base extend much farther than the fence line, crossing county and state boundaries and providing opportunities to residents and businesses that support the base's operation. States such as Arizona and Florida have recently conducted economic studies to quantify the benefits their bases provide. The 2002 "Economic Impact of Arizona's Principal Military Operations" found that the military directly employed more than the state's top three private sector employers combined. The 2003 "Florida Defense Industry Economic Analysis" found that during "Fiscal year 2002 defense-related spending is directly or indirectly responsible for \$44 billion, or 9.8 percent, of Florida's gross state product." Other states need no study to certify that their military installations have an economic impact. Tinker Air Force Base, for instance, is the single largest employer in Oklahoma.

Generally, real estate developers and local communities do not encroach upon their neighboring military bases by design, nor do most regulators aim to curb military operations by promulgating punitive regulations. Most commercial and residential development around bases occurs with little or no coordination with the military base commander, and it may occur one house or building at a time, without the knowledge that a fence-line development might impact a parachute drop zone or that high-impact lighting of a shopping center might affect nighttime

training at the base. Encroachment most frequently occurs as local and state communities and the military go about their business, independently, and without regular communication or coordination.

Survivability and success on the battlefield are critically linked to realistic, live training on military installations. A nation at war requires its military installations to provide trained and tested soldiers, sailors and airmen. By increasing coordination and communication and working out compatible use issues, local and state governments and the military can and do work together to sustain installation training and testing missions over the long run and to improve the quality of life for surrounding communities.

In recent years, states have begun to pass legislation that aims to minimize encroachment and build compatible uses of air, land and water resources around military installations. Among them are Arizona, California, Florida, Georgia, Kentucky, South Carolina, Texas, Virginia and Washington. Each state's unique legislative efforts reflect that state's culture, but their efforts all share common themes: Ensure compatible land uses for the military and community, and increase coordination and communication between local governments and military bases.

Florida

Florida CS for CS for SB 1604 (signed by the governor May 25, 2004) makes a legislative finding on the compatibility of development with military installations, provides for the exchange of information relating to proposed land use decisions between county and local governments and military installations, and provides for consideration by the county or local planners of comments by the commanding officer or his designee on local land use decisions affecting the installation. SB 1604 also provides for a representative of a military installation to serve as an ex-officio, non-voting member of the county or local government's land planning or zoning boards and encourages the commanding officer to provide information on community planning assistance grants. Finally, SB 1604 requires the future land use plan element of comprehensive plans to include compatibility with military installations.

Georgia

Georgia SB 261 (signed by the governor June 3, 2003) requires that when a zoning proposal or zoning decision involves land adjacent to or in the vicinity of a military base, the appropriate planning department or other agency charged with reviewing zoning proposals and the commander of the affected military installation investigate and make recommendations with regard to six enumerated items, all related to compatible use. The bill requires that the commander's investigation and recommendations be provided to the planning department or agency and to the governor.

Kentucky

Kentucky HB 357, which was enacted into law in 2003, contains provisions which amend Kentucky law concerning minimum requirements for comprehensive plans. HB 357 adds a requirement for provisions in the plans for accommodation of all military installations greater than or equal to 300 acres that are within or adjacent to the planning unit's boundaries. The goal of the accommodation is to minimize conflicts between the installation and the planning unit's residential population. The provisions are to be made in consultation with command authorities at the installation to determine the installation needs.

Virginia

Virginia Chapter 799 (signed by the governor April 14, 2004) is among the simplest of the new compatible-use laws. It requires a planning commission to give at least 10 days' advance notice to a military installation commander and an invitation to provide comments or recommendations before any hearing on a proposed change to a comprehensive land use plan, a proposed zoning change, or an application for a special exception for a change in use involving a parcel of land within 3,000 feet of the installation. The law also requires that comprehensive plans and accompanying maps include the location of military bases and military airports and their adjacent safety areas.

Washington

The Act featured in this *Suggested State Legislation* volume is based on Washington Chapter 28 of the Laws of 2004. This draft Act states that the United States military is a vital component of the Washington state economy, that protection of military installations from incompatible development of land is essential to the health of the Washington economy and quality of life and that incompatible uses of land reduce the ability of the military to complete its mission or undertake new ones. It concludes that protection of land around Washington military installations from incompatible development is a state priority. The Act provides that comprehensive plans, development regulations and their amendments should not allow incompatible development in the vicinity of a military installation; that the commander of a federal military installation of 100 or more personnel shall be notified by a city or county of its intent to amend its comprehensive plan or development regulations to address lands adjacent to the installation; and give the commander no less than 60 days to provide written comments and supporting facts. Failure to provide comments creates a presumption that the proposal will not have an adverse impact.

This Act declares that military installations are of particular importance to the economic health of the state and it is a priority of the state to protect the land surrounding military installations from incompatible development.

The Act directs that counties and cities that have a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States Department of Defense within or adjacent to its border, shall notify the commander of the military installation of the county or city's intent to amend its comprehensive plan to address lands adjacent to military installations and consider policies to ensure those lands are protected from incompatible development.

Submitted as:

Washington

Chapter 28, Laws of 2004

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*.] This Act may be cited as "An Act Relating to Encroachment of
- 2 Incompatible Land Uses around Military Installations."

3 Section 2. [*Legislative Findings.*] The United States military is a vital component of this
4 state's economy. The protection of military installations from incompatible development of land
5 is essential to the health of this state's economy and quality of life. Incompatible development of
6 land close to a military installation reduces the ability of the military to complete its mission or
7 to undertake new missions, and increases its cost of operating. The U.S. Department of Defense
8 evaluates continued utilization of military installations based upon their operating costs, their
9 ability to carry out missions, and their ability to undertake new missions.

10
11 Section 3. [*Comprehensive Plans.*]

12 (1) Military installations are of particular importance to the economic health of this state
13 and it is a priority of this state to protect the land surrounding our military installations from
14 incompatible development.

15 (2) Comprehensive plans, amendments to comprehensive plans, development regulations,
16 or amendments to development regulations adopted under this section shall be adopted or
17 amended concurrent with the scheduled update provided in [insert citation], except that counties
18 and cities identified in [insert citation] shall comply with this section on or before [December 1,
19 2005], and shall thereafter comply with this section on a schedule consistent with state law.

20 (3) A comprehensive plan, amendment to a plan, a development regulation or amendment
21 to a development regulation, should not allow development in the vicinity of a military
22 installation that is incompatible with the installation's ability to carry out its mission
23 requirements. A city or county may find that an existing comprehensive plan or development
24 regulations are compatible with the installation's ability to carry out its mission requirements.

25 (4) As part of the requirements of [insert citation] each county and city planning under
26 [insert citation] that has a federal military installation, other than a reserve center, that employs
27 one hundred or more personnel and is operated by the United States Department of Defense
28 within or adjacent to its border, shall notify the commander of the military installation of the
29 county's or city's intent to amend its comprehensive plan or development regulations to address
30 lands adjacent to military installations to ensure those lands are protected from incompatible
31 development.

32 (5) (a) The notice provided under subsection (4) of this section shall request from the
33 commander of the military installation a written recommendation and supporting facts relating to
34 the use of land being considered in the adoption of a comprehensive plan or an amendment to a
35 plan. The notice shall provide [sixty days] for a response from the commander. If the commander
36 does not submit a response to such request within [sixty days], the local government may
37 presume that implementation of the proposed plan or amendment will not have any adverse
38 effect on the operation of the installation.

39 (b) When a county or city intends to amend its development regulations to be
40 consistent with the comprehensive plan elements addressed in (a) of this subsection, notice shall
41 be provided to the commander of the military installation consistent with subsection (4) of this
42 section. The notice shall request from the commander of the military installation a written
43 recommendation and supporting facts relating to the use of land being considered in the
44 amendment to the development regulations. The notice shall provide [sixty days] for a response
45 from the commander to the requesting government. If the commander does not submit a response
46 to such request within [sixty days], the local government may presume that implementation of
47 the proposed development regulation or amendment will not have any adverse effect on the
48 operation of the installation.

49
50 Section 4. [*Severability.*] [Insert severability clause.]
51

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

53

54 Section 6. [*Effective Date.*] [Insert effective date.]

Freedom to Work: People with Disabilities

The Act allows people with disabilities to work and save for retirement without losing their Medicaid coverage.

Submitted as:

Michigan

Act No. 32, Public Acts 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 the "Freedom to Work: People with
2 Disabilities Act."
3

4 Section 2. [*Definitions.*] As used in this Act,

5 (1) "Earned Income" and "Unearned Income" mean those terms as used by the family
6 independence agency in determining eligibility for the medical assistance program administered
7 under this Act.

8 (2) "Federal Poverty Guidelines" means the poverty guidelines published annually in the
9 Federal Register by the United States Department of Health and Human Services under its
10 authority to revise the poverty line under section 673(2) of subtitle B of title VI of the Omnibus
11 Budget Reconciliation Act of 1981, Public Law 97-35, 42 U.S.C. 9902.
12

13 Section 3. [*Establishing Program; Eligibility.*]

14 (1) The [department of community health] shall establish a program to provide medical
15 assistance to people who have earned income and who meet all of the following eligibility
16 criteria:

17 (a) The individual has been found to be disabled under the federal Supplemental
18 Security Income program or the Social Security Disability Income program, or would be found
19 to be disabled except for earnings in excess of the substantial gainful activity level as established
20 by the United States Social Security Administration.

21 (b) The individual is at least [16 years of age] and younger than [65 years].

22 (c) The individual has an unearned income level of not more than [100 percent] of
23 the current federal poverty guidelines.

24 (d) The individual is a current medical assistance recipient under [insert citation]
25 or meets income, asset, and eligibility requirements for the medical assistance program under
26 [insert citation].

27 (e) The individual is employed on a regular and continuing basis.

28 (2) The program is limited to the medical assistance services made available to recipients
29 under the medical assistance program administered under [insert citation] and does not include
30 personal assistance services in the workplace.

31 (3) Without losing eligibility for medical assistance, an individual who qualifies for and
32 is enrolled under this program is permitted to do all of the following:

33 (a) Accumulate personal savings and assets not to exceed [\$75,000].

34 (b) Accumulate unlimited retirement and individual retirement accounts.

35 (c) Have temporary breaks in employment that do not exceed [24 months] if the
36 temporary breaks are the result of an involuntary layoff or are determined to be medically
37 necessary.

(d) Work and have income that exceeds the amount permitted under [insert citation], but shall not have unearned income that exceeds [100 percent] of the federal poverty guidelines.

Section 4. [*Premiums.*]

(1) The [department of community health] shall establish a premium that is based on earned income for people enrolled in the program subject to all of the following provisions:

(a) The premium shall be based on the enrolled individual's annualized earned income above 250% of the current federal poverty guidelines for a family of 1.

(b) People with an earned income of between [250 percent] of the federal poverty guidelines for a family of 1 and [\$75,000] shall pay a sliding fee scale premium starting at [\$600] annually and increasing to [100 percent] of the average medical assistance recipient cost as determined by the [department of community health] for people with an annual income of [\$75,000] or more.

(c) The premium sliding fee scale shall have no more than [five] tiers.

(d) The premium for an enrolled individual shall generally be assessed on an annual basis based on the annual return required to be filed under the Internal Revenue Code of 1986 or other evidence of earned income and shall be payable on a monthly basis. The premium shall be adjusted during the year when a change in an enrolled individual's rate of annual income moves the individual to a different premium tier.

(2) An enrolled individual has an affirmative duty to report earned income changes that would result in a different premium within [30 days] to the [department of community health].

Section 5. [*Reports Required.*] The [department of community health] shall report to the [governor and the legislature] within [2 years] of the effective date of this Act regarding all of the following:

(a) The effectiveness of the program in achieving its purposes.

(b) The number of people enrolled in the program.

(c) The costs and benefits of the program.

(d) The opportunities and projected costs of expanding the program to working people with disabilities who are not currently eligible for the program.

(e) Additional services that should be covered under the program to assist working people with disabilities in obtaining and maintaining employment.

Section 6. [*Waiver for Consistency with Federal Regulations.*] If the terms of this section are inconsistent with federal regulations governing federal financial participation in the medical assistance program, the [department of community health] may to the extent necessary waive any requirement set forth in this Act.

Section 7. [*Implementation of Program.*] The program established by this Act shall be implemented on or before [insert date].

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

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

Section 10. [*Effective Date.*] [Insert effective date.]

Harmful Electronic or Electromagnetic Devices

This draft Act is based on two Michigan laws. This Act defines "harmful electronic or electromagnetic device" as a device designed to emit or radiate an electronic or electromagnetic pulse or signal or microwave intended to cause harm to others or cause damage to, destroy, or disrupt any electronic or telecommunications system or device including a computer or computer network.

This Act makes it a crime to manufacture, deliver, possess, transport, place, use, or release a real or imitation harmful electronic or electromagnetic device for an unlawful purpose or cause a person falsely believe that they have been exposed to a harmful electronic or electromagnetic device or harmful radioactive material or device.

Submitted as:

Michigan

Act 256 of 2003 and Act 257 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 Prohibit Manufacturing,
2 Delivering, Possessing, Transporting, Placing, Using or Releasing a Harmful Electronic or
3 Electromagnetic Device."
4

5 Section 2. [*Definitions.*]

6 (1) "Harmful electronic or electromagnetic device" means a device designed to emit or
7 radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse,
8 current, beam, signal, or microwave that is intended to cause harm to others or cause damage to,
9 destroy, or disrupt any electronic or telecommunications system or device, including, but not
10 limited to, a computer, computer network, or computer system.

11 (2) "Imitation electronic or electromagnetic device" means a device that is designed or
12 intended to represent a harmful electronic or electromagnetic device or that is alleged to be a
13 harmful electronic or electromagnetic device but is not.

14 (3) "Deliver" means the actual or constructive transfer of a harmful electronic or
15 electromagnetic device or imitation electronic or electromagnetic device from [1] person to
16 another regardless of any agency relationship.

17 (4) "For an unlawful purpose" includes, but is not limited to, having the intent to do any
18 of the following:

19 (a) Frighten, terrorize, intimidate, threaten, harass, injure, or kill any person.

20 (b) Damage or destroy any real or personal property without the permission of the
21 property owner or, if the property is public property, without the permission of the governmental
22 agency having authority over the property.

23 (5) "Telecommunications system" means that term as defined in [insert citation].
24

25 Section 3. [*Penalties for Manufacturing, Delivering, Possessing, Transporting, Placing,*
26 *Using or Releasing a Harmful Electronic or Electromagnetic Device for an Unlawful Purpose.*]

27 (1) A person shall not manufacture, deliver, possess, transport, place, use, or release a

harmful electronic or electromagnetic device or imitation harmful electronic or electromagnetic device for an unlawful purpose.

(2) A person who violates this section is guilty of a crime as follows:

(a) Except as provided in subdivisions (b) to (e), the person is guilty of a felony punishable by imprisonment for not more than [15 years] or a fine of not more than [\$10,000], or both.

(b) If the violation directly or indirectly results in property damage, the person is guilty of a felony punishable by imprisonment for not more than [20 years] or a fine of not more than [\$15,000], or both.

(c) If the violation directly or indirectly results in personal injury to another individual other than serious impairment of a body function or death, the person is guilty of a felony punishable by imprisonment for not more than [25 years] or a fine of not more than [\$20,000], or both.

(d) If the violation directly or indirectly results in serious impairment of a body function to another individual, the person is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than [\$25,000], or both.

(e) If the violation directly or indirectly results in the death of another individual, the person is guilty of a felony and shall be punished by imprisonment for life without eligibility for parole and may be fined not more than [\$40,000], or both.

Section 4. [*Vulnerable Target.*]

(1) If a person violates this Act and the violation is committed in or is directed at a vulnerable target, the person is guilty of a felony punishable by imprisonment for not more than [20 years]. The court may order a term of imprisonment imposed under this section to be served consecutively to the term of imprisonment for the underlying violation.

(2) As used in this section, "vulnerable target" means any of the following:

(a) A child care center or day care center as defined in [insert citation]

(b) A health care facility or agency as defined in [insert citation].

(c) A building or structure that is open to the general public.

(d) A church, synagogue, mosque, or other place of religious worship.

(e) A public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade 1 through 12.

(f) An institution of higher education.

(g) A stadium.

(h) A transportation structure or facility that is open to the public, including, but not limited to, a bridge, a tunnel, a public highway, or a railroad.

(i) An airport. As used in this subdivision, "airport" means that term as defined in [insert citation]

(j) Port facilities. As used in this subdivision, "port facilities" means that term as defined in [insert citation].

(k) A public services facility. As used in this subdivision, "public services facility" means any of the following facilities whether publicly or privately owned:

(i) A natural gas refinery, natural gas storage facility, or natural gas pipeline.

(ii) An electric, steam, gas, telephone, power, water, or pipeline facility.

(iii) A nuclear power plant, nuclear reactor facility, or nuclear waste storage facility.

(l) A petroleum refinery, petroleum storage facility, or petroleum pipeline.

76 (m) A vehicle, locomotive or railroad car, aircraft, or watercraft used to provide
77 transportation services to the public or to provide for the movement of goods in commerce.

78 (n) A building, structure, or other facility owned or operated by the federal
79 government, by this state, or by a political subdivision or any other instrumentality of this state
80 or of a local unit of government.

81
82 Section 5. [*Charging, Convicting or Punishing Someone for Other Violations of Law that*
83 *Result from the Same Transaction.*] A charge under or a conviction or punishment for a violation
84 of this Act does not prevent a person from being charged with, convicted of, or punished for any
85 other violation of law arising from the same transaction.

86
87 Section 6. [*Exceptions.*]

88 (1) This Act does not does not apply to any of the following:

89 (a) A member of the military forces of the United States or of this state acting
90 under a lawful order or while engaged in a lawful military activity.

91 (b) A law enforcement officer enforcing the laws of the United States or of this
92 state or while engaged in a lawful law enforcement activity.

93 (c) A person engaged in self-defense or the lawful defense of another person.

94 (d) Unless acting with an unlawful purpose, a person acting within the scope of
95 his or her employment under a rule or a permit or license of the United States or of this state.

96 (2) Unless acting with an unlawful purpose, a person who within the scope of his or her
97 employment violates a rule or a provision of a permit or license issued by the United States or
98 this state to manufacture, deliver, possess, transport, place, classify, label, use, or release a
99 harmful electronic or electromagnetic device shall not be prosecuted under this Act.

100 (3) This Act does not prohibit the possession and use of a device that uses electro-
101 muscular disruption technology as permitted under [insert citation.]

102
103 Section 7. [*Severability.*] [Insert severability clause.]

104
105 Section 8. [*Repealer.*] [Insert repealer clause.]

106
107 Section 9. [*Effective Date.*] [Insert effective date.]

Health Care Quality and Patient Safety Legislation

(Note)

Health care researchers have long documented the gap between what is known and what is done in health care. Much of the research on the most effective treatments and approaches to care takes a long time to be assimilated into the average clinic or hospital. A study performed by the RAND Corporation in 2003 found that on average Americans receive care that matches appropriate standards of quality only about half the time.

Furthermore, in 2000, the Institute of Medicine released a report documenting that as many as 98,000 deaths occur each year due to medical errors. The report also established that many of the errors that occur in medicine and the subsequent deaths they cause are due to poor systems within health care, not individual incompetence or neglect. In many cases, improvements to systems of care within health care settings could prevent many of the errors that occur, but shame, liability concerns and lack of disclosure hinder efforts to address gaps in quality and medical errors.

Within health care and government, a growing number of decision makers are examining how to create environments that continually improve care and enhance patient safety. Several states have recognized the need to promote health care quality and patient safety through legislative action. Twenty-two states now require some type of reporting of medical errors, and seven states have established patient safety centers. Listed below are examples of recent legislation that seeks to improve health care quality and patient safety through reporting and comparing performance on certain measures of quality, reporting of medical errors or adverse events, and establishing patient safety centers.

Connecticut

Connecticut Public Act No. 02-125, "Creating a Program for Quality in Health Care" (SSL Docket 2004 21-25B-05) requires the Department of Public Health (DPH) to establish a quality of care program for health care facilities. DPH must develop a health care quality performance measurement and reporting system, initially applicable to the state's hospitals. The DPH will produce a report that compares the state's hospitals based on the performance measures. The law also requires as a condition of licensure that all hospitals to implement a quality management program. The quality management plan must be submitted annually to DPH and be certified by an independent quality auditor.

New Jersey

New Jersey SCS for S557, "Patient Safety Act" (SSL Docket 2004 21-25B-03) establishes a medical error reporting system by mandating that health care facilities provide confidential disclosure to the New Jersey Department of Health and Senior Services or the Department of Human Services of serious preventable adverse events. The bill also encourages the voluntary disclosure of less serious events and near misses. Every licensed health care facility is required to submit a patient safety plan to the state that includes a patient safety committee and a process to have the committee analyze errors and near misses and incorporate evidence-based safety practices and patient safety training for personnel.

New York

In 2000, New York enacted wide-ranging legislation calling for a statewide health information system authorizing the collection and consolidation of data on health care providers, practitioners and health plans making this information available to the public. New York's Patient Health Information and Quality Improvement Act of 2000 established the Patient Safety Center within the New York State Department of Health. This new Center was established to reduce medical errors and improve patient safety through better collection and analysis of data and improving access to health care information by the public.

Pennsylvania

Pennsylvania HB1802, the "Medical Care Availability and Reduction of Error Act" of 2002 (highlighted in a Statement on SSL Docket 2004 21-24A-05), contains provisions addressing patient safety. According to a legislative staff summary, this law creates a new state Patient Safety Authority (PSA). The authority will conduct or contract out the collection, analysis and evaluation of data regarding reported serious events and incidents; recommend to the authority changes in health care practices and procedures to reduce the number and severity of serious events and incidents; and advise a reporting medical facility of immediate changes that can be instituted to reduce serious events or incidents. The PSA is authorized to conduct its own review of reported incidents, if the authority is dissatisfied with the adequacy of the facility's investigation. The PSA is required to make an annual report to the General Assembly and the Department of Health including recommended changes in policy to promote and enhance patient safety.

The legislation also imposes new requirements on health care facilities. These requirements will apply to hospitals, ambulatory, surgical facilities, and birth centers, all of which must do the following as a condition of licensure:

- Pay the surcharge to create a Patient Safety Trust Fund (the surcharge amount will be determined by the Department of Health and shall be proportionate to each facility and not exceed \$5 million in 2002 and 2003);
- Develop an internal patient safety plan and submit it to the department for approval;
- Provide a system of reporting, which shall be available seven days a week, 24 hours a day;
- Designate a patient safety officer;
- Establish a patient safety committee;
- Inform all employees of the patient safety plan and require compliance with the plan as a condition of employment;
- Prohibit retaliatory action against a worker who reports a serious event or incident;
- Provide written notification to the patient if a serious event occurred during hospitalization;
- Report all serious events and incidents to the authority within 24 hours of confirming the occurrence; and
- Report infrastructure failures to the department within 24 hours of confirmation that such failures have occurred.

The legislation provides penalty provisions to be imposed on health care facilities not complying with new reporting requirements. In addition to penalties imposed under the Health Care Facilities Act, a facility may also be subject to a penalty of \$1,000 per day imposed by the Health Department for failure to report a serious event or infrastructure failure. Moreover, the

reporting of a serious event or infrastructure failure by a facility may lead to a licensure investigation and disciplinary action.

Oregon

Oregon Chapter 686 of 2003 created a semi-independent Patient Safety Commission in July, 2003, to reduce the occurrence of serious adverse events in the state through establishing a voluntary reporting system, sharing evidence-based practices to improve safety and outcomes, and identifying quality improvement techniques. Reports to the Commission are confidential and exempt from public disclosure.

Health Insurance Coverage for Children in Process of Adoption

This Act concerns health insurance coverage for children who are in the process of being adopted, and provides specifications of what such coverage must consist.

Submitted as:

Connecticut

House Bill 6442 / Public Act 03-70

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 Concerning Health Insurance
2 Coverage for Children in Process of Adoption."

3
4 Section 2. [*Individual Health Insurance Policy Coverage.*]

5 (a) Each individual health insurance policy providing coverage of the type specified in
6 [insert citation] delivered, issued for delivery, amended, renewed or continued in this state shall
7 provide coverage for a child legally placed for adoption with the insured or subscriber who is an
8 adoptive parent or a prospective adoptive parent, even though the adoption has not been
9 finalized, provided the child lives in the household of such insured or subscriber and the child is
10 dependent upon such person for support and maintenance.

11 (b) Coverage for such child legally placed for adoption shall consist of coverage for
12 injury and sickness including necessary care and treatment of medically diagnosed congenital
13 defects and birth abnormalities within the limits of the policy.

14 (c) If payment of a specific premium or subscription fee is required to provide coverage
15 for a child legally placed for adoption with the insured or subscriber who is an adoptive parent or
16 a prospective adoptive parent, the policy or contract may require that notification of acceptance
17 of such child and payment of the required premium or fees be furnished to the insurer, hospital or
18 medical service corporation or health care center within [thirty-one days] after the acceptance of
19 such child in order to continue coverage beyond such [thirty-one-day] period, provided failure to
20 furnish such notice or pay such premium or fees shall not prejudice any claim originating within
21 such [thirty-one-day] period.

22 (d) Such policy shall cover such child legally placed for adoption on the same basis as
23 other dependents, and may not contain any provision concerning preexisting conditions,
24 insurability, eligibility or health underwriting approval for a child legally placed for adoption,
25 except that an insurer, hospital or medical service corporation or health care center may require
26 health underwriting for a child legally placed for adoption if a required premium or subscription
27 fee and completed application materials are not provided to the insurer, hospital or medical
28 service corporation or health care center before the expiration of the [thirty-one-day] period
29 following the date the child was legally placed for adoption.

30
31 Section 3. [*Group Health Insurance Policy Coverage.*]

32 (a) Each group health insurance policy providing coverage of the type specified in [insert
33 citation] delivered, issued for delivery, amended, renewed or continued in this state shall provide

34 coverage for a child legally placed for adoption with an employee or other member of the
35 covered group who is an adoptive parent or a prospective adoptive parent, even though the
36 adoption has not been finalized, provided the child lives in the household of such employee or
37 member and the child is dependent upon such employee or member for support and maintenance.

38 (b) Coverage for such child legally placed for adoption shall consist of coverage for
39 injury and sickness including necessary care and treatment of medically diagnosed congenital
40 defects and birth abnormalities within the limits of the policy.

41 (c) If payment of a specific premium or subscription fee is required to provide coverage
42 for a child legally placed for adoption with the insured or subscriber who is an adoptive parent or
43 a prospective adoptive parent, the policy may require that notification of acceptance of such
44 child and payment of the required premium or fees be furnished to the insurer, hospital or
45 medical service corporation or health care center within [thirty-one days] after the acceptance of
46 such child in order to continue coverage beyond such [thirty-one-day] period, provided failure to
47 furnish such notice or pay such premium or fees shall not prejudice any claim originating within
48 such [thirty-one-day] period.

49 (d) Such policy shall cover such child legally placed for adoption on the same basis as
50 other dependents, and may not contain any provision concerning preexisting conditions,
51 insurability, eligibility or health underwriting approval for a child legally placed for adoption,
52 except that an insurer, hospital or medical service corporation or health care center may require
53 health underwriting for a child legally placed for adoption if a required premium or subscription
54 fee and completed application materials are not provided to the insurer, hospital or medical
55 service corporation or health care center before the expiration of the thirty-one-day period
56 following the date the child was legally placed for adoption.

57
58 Section 4. [*Severability.*] [Insert severability clause.]

59
60 Section 5. [*Repealer.*] [Insert repealer clause.]

61
62 Section 6. [*Effective Date.*] [Insert effective date.]

Indoor Pyrotechnics Safety Permit

This Act establishes a permit process to authorize using pyrotechnics at indoor sporting, cultural and theatrical events. It also increases penalties for those who ignite indoor fireworks without a permit.

Submitted as:

New York

Assembly 6893 B

Status: Enacted as Chapter 584 in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as an "Act to Require Permits for Indoor
2 Pyrotechnics."

3
4 Section 2. [*Definitions.*] For the purposes of this Act:

5 a. "Airburst" means a pyrotechnic device that is suspended in the air to simulate outdoor
6 aerial fireworks shells without producing hazardous debris.

7 b. "Areas of public assembly" means all buildings or portions of buildings used for
8 gathering together fifty or more persons for amusement, athletic, civic, dining, educational,
9 entertainment, patriotic, political, recreational, religious, social, or similar purposes, the entire
10 fire area of which they are a part, and the means of egress therefrom.

11 c. "Assistant" means a person who works under the supervision of the pyrotechnic
12 operator.

13 d. "Audience" means spectators whose primary purpose is to view a performance.

14 e. "Building" means a combination of any materials, whether portable or fixed, having a
15 roof, to form a structure affording shelter for people, animals, or property. The word "building"
16 shall be construed for the purposes of this section as though followed by the words "or part" or
17 "parts thereof," unless the context clearly requires a different meaning.

18 f. "Concussion mortar" means a device specifically designed and constructed to produce a
19 loud noise and a violent jarring shock for dramatic effect without producing any damage.

20 g. "Fallout area" is the area in which any hazardous debris falls after a pyrotechnic device
21 is fired. The fallout area is defined as a circle that, in turn, is defined by the fallout radius.

22 h. "Fallout radius" is the line that defines the fallout area of a pyrotechnic device. The
23 line is defined by two points. The first point is at the center of a pyrotechnic device. The second
24 point is the point most distant from the center of the pyrotechnic device at which any hazardous
25 debris from the device can fall.

26 i. "Fire area" is the floor area of a story of a building within exterior walls, party walls,
27 firewalls, or any combination thereof.

28 j. "Hazardous debris" is any debris, produced or expelled by the functioning of a
29 pyrotechnic device, that is capable of causing personal injury or unpredicted property damage.
30 This includes, but is not limited to, hot sparks, heavy casing fragments, and unignited
31 components. Materials such as confetti, lightweight foam pieces, feathers, or novelties are not to
32 be construed as hazardous debris.

k. "Owner" means any person, agent, firm, association, limited liability company, partnership, or corporation having a legal or equitable interest in the property.

l. "Performance" means the enactment of a musical, dramatic, operatic, or other entertainment production. The enactment may begin and progress to its end according to a script, plan, or other preconceived list of events, or deviate therefrom. A performance includes any encores.

m. "Performer" is any person active in a performance during which pyrotechnics are used and who is not part of the audience or support personnel. Among others, performers include, but are not limited to, actors, singers, musicians, and acrobats.

n. "Permit authority" means the agency authorized to grant and issue the permits provided for in this section, which agency in the territory within a state park shall be the state agency having custody and control thereof, in the territory within a county park shall be the county park commission, or such other agency having jurisdiction, control, and/or operation of the parks or parkways within which any pyrotechnics are to be used, in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose by the legislative body thereof, in a village shall be an officer designated for the purpose by the board of trustees thereof, and, in the territory of a town outside of villages, shall be an officer designated for the purpose by the town board thereof.

o. "Permittee" means

(1) The person or people who are responsible, as provided in subparagraph two of this paragraph, for obtaining the necessary permit or permits for the use of indoor pyrotechnics in areas of public assembly or for a production, or who are responsible for obtaining such permit or permits under an applicable local law or ordinance authorized pursuant to subdivision five of this section.

(2) The owner of a place of public assembly or building in which pyrotechnics are to be used shall be responsible for obtaining such permit or permits; provided, however, that such owner, in writing, by agreement or lease, may require or otherwise authorize a lessee, licensee, pyrotechnic operator, or other party to be responsible for obtaining such permit or permits, in which case such other party or parties shall be deemed responsible for obtaining such permit or permits and shall be the permittee for purposes of this Act; provided further that the structure is otherwise appropriate for such use under the [state fire prevention and building code] or other such applicable code.

p. "Producer" means an individual who has overall responsibility for the operation and management of the performance where the pyrotechnics are to be used. Generally, the producer is an employee of the promotion company, entertainment company, festival, theme park, or other entertainment group

q. "Production" means all the performances of a musical, dramatic, operatic, or other show or series of shows

r. "Pyrotechnic device" means any device containing pyrotechnic materials and capable of producing a special effect as defined in this subdivision.

s. "Pyrotechnic material (pyrotechnic special effects material)" is a chemical mixture used in the entertainment industry to produce visible or audible effects by combustion, deflagration, or detonation. Such a chemical mixture consists predominantly of solids capable of producing a controlled, self-sustaining, and self-contained exothermic chemical reaction that results in heat, gas, sound, light, or a combination of these effects. The chemical reaction functions without external oxygen.

t. "Pyrotechnic operator (special effects operator)" means an individual who has responsibility for pyrotechnic safety and who controls, initiates, or otherwise creates special effects.

u. "Pyrotechnic special effect" means a special effect created through the use of pyrotechnic materials and devices.

v. "Pyrotechnics" means controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, dispersion of aerosols, emission of visible electromagnetic radiation, or a combination of these effects to provide the maximum effect from the least volume.

w. "Rocket" means a pyrotechnic device that moves by the ejection of matter produced by the internal combustion of propellants.

x. "Special effect" means a visual or audible effect used for entertainment purposes, often produced to create an illusion. For example, smoke might be produced to create the impression of fog being present, or a puff of smoke, a flash of light, and a loud sound might be produced to create the impression that a cannon has been fired.

y. "Support personnel" means any individual who is not a performer or member of the audience. Among others, support personnel include the road crew of any production, stagehands, property masters, security guards, fire watch officers, janitors, or any other employee.

z. "Venue manager" is an individual who has overall responsibility for the operation and management of the facility where pyrotechnics are to be used in a performance.

Section 3. [*Permit Requirements.*]

a. All uses of all pyrotechnics in areas of public assembly shall be approved by the permit authority. The permit authority shall determine that appropriate measures are established to provide acceptable crowd management, security, fire protection, (including sprinklers), and other emergency services. All planning and use of pyrotechnics shall be coordinated with the venue manager and producer.

b. Before the performance of any production, the permittee shall submit a plan for the use of pyrotechnics to the permit authority. After a permit has been granted, the permittee shall keep the plan available at the site for safety inspectors or other designated agents of the permit authority. Any addition of pyrotechnics to a performance or any significant change in the presentation of pyrotechnics shall require approval by the permit authority, except that reducing the number or size of pyrotechnics to be used in a performance shall not be considered to be a significant change in the presentation.

c. (1) The plan for the use of pyrotechnics shall be made in writing or such other form as is required or approved by the permit authority.

(2) The plan shall provide the following:

(i) Name of the person, group, organization, or other entity sponsoring the production.

(ii) Date and time of day of the production.

(iii) Exact location of the production.

(iv) Name of the person actually in charge of firing the pyrotechnics (i.e., the pyrotechnic operator).

(v) Number, names, and ages of all assistants who are to be present.

(vi) Qualifications of the pyrotechnic operator.

(vii) Pyrotechnic experience of the operator.

(viii) Confirmation of any applicable local, state, and federal licenses held by the operator or assistant.

(ix) Evidence of the permittee's insurance carrier or financial responsibility.

(x) Number and types of pyrotechnic devices and materials to be used, the operator's experience with those devices and effects, and a definition of the general responsibilities of assistants.

(xi) Diagram of the grounds or facilities where the production is to be held. This diagram shall show the point at which the pyrotechnic devices are to be fired, the fallout radius for each pyrotechnic device used in the performance, the lines behind which the audience shall be restrained, and the placement of sprinkler systems.

(xii) Point of on-site assembly of pyrotechnic devices.

(xiii) Manner and place of storage of the pyrotechnic materials and devices.

(xiv) Material safety data sheet (MSDS) for the pyrotechnic materials to be used.

(xv) Certification that the set, scenery, and rigging materials are inherently flame-retardant or have been treated to achieve flame retardancy.

(xvi) Certification that all materials worn by performers in the fallout area during use of pyrotechnic effects shall be inherently flame-retardant or have been treated to achieve flame retardancy.

(3) All plans shall be submitted as soon as is possible so that the permit authority has time to be present and to notify other interested parties. In no event shall such advance notice be less than [five business days].

d. A walk-through and a representative demonstration of the pyrotechnics shall be approved by the permit authority before a permit is approved. The permit authority may waive this requirement based on past history, prior knowledge, and other factors; provided that the authority is confident that the discharge of pyrotechnics can be conducted safely. The demonstration shall be scheduled with sufficient time allowed to reset/reload the pyrotechnics before the arrival of the audience.

e. All pyrotechnic operators shall be at least [twenty-one years old] and licensed or approved by the permit authority in accordance with all applicable laws, if any. All assistants shall be at least [eighteen years old].

Section 4. [*Conduct of Pyrotechnic Performances.*]

a. [Two or more] fire extinguishers of the proper classification and size as approved by the permit authority shall be readily accessible while the pyrotechnics are being loaded, prepared for firing, or fired. In all cases, at least [two] pressurized water or pump extinguishers shall be available. Additional fire extinguishing equipment shall be provided as required by the permit authority. Personnel who have a working knowledge of the use of the applicable fire extinguishers shall be present while the pyrotechnics are being handled, used, or removed. No personnel shall use or handle pyrotechnic materials or devices while under the influence of intoxicating beverages, narcotics, controlled substances, and prescription or nonprescription drugs that can impair judgment. Fire detection and life safety systems shall not be interrupted during the operation of pyrotechnic effects.

b. (1) All pyrotechnic devices shall be mounted in a secure manner to maintain their proper positions and orientations so that, when they are fired, the pyrotechnic effects described in the plan submitted by the permittee are produced. Pyrotechnic devices shall be mounted so that no fallout from the device endangers human lives, results in personal injury, or damages property. Pyrotechnic materials shall be fired only from equipment specifically constructed for the purpose of firing pyrotechnic materials. The pyrotechnic operator shall be responsible for selecting equipment and materials that are compatible.

(2) Where rockets are launched before an audience, performers, or support personnel, the rockets shall be attached securely to a guide wire or cable with both ends securely attached and placed on an impact-resistant surface located at the terminal end of the guide. This guide wire or cable shall be of sufficient strength and flame resistance to withstand the exhaust from the rocket. An effective arrangement to stop the rocket shall be provided.

(3) Pyrotechnics shall be:

(i) Placed so that any hazardous debris falls into a safe, flame-resistant area;

(ii) Fired so that the trajectory of their pyrotechnic material is not carried over the audience; and

(iii) Placed for firing so that no flammable materials are within their fallout area.

(4) Pyrotechnic devices and materials used indoors shall be specifically manufactured and marked for indoor use by the manufacturer.

(5) Airbursts shall be permitted to be fired above the assembled audience, subject to the following conditions:

(i) The airburst shall be suspended by a minimum [30-gauge metal wire] that is attached securely to a secure support acceptable to the authority having jurisdiction.

(ii) The airburst shall occur at a minimum height of [three times] the diameter of the effect.

(iii) Where the effect is demonstrated, there shall be no burning or glowing particles below the [fifteen-foot level] above the floor.

c. Each pyrotechnic device fired during a performance shall be separated from the audience by at least [fifteen feet] but not by less than [twice] the fallout radius of the device. Concussion mortars shall be separated from the audience by a minimum of [twenty-five feet]. There shall be no glowing or flaming particles within [ten feet] of the audience.

d. (1) The facility where pyrotechnic materials and devices are handled and used shall be maintained in a neat and orderly condition and shall be kept free of any conditions that can create a fire hazard.

(2) Smoking shall not be permitted within [twenty-five feet] of the area where pyrotechnics are being handled or fired; provided that smoking by performers as part of the performance shall be permitted as blocked in rehearsals and if expressly approved by the pyrotechnic operator and the permit authority.

e. (1) The pyrotechnic effect operator shall advise all performers and support personnel that they are exposed to a potentially hazardous situation when performing or otherwise carrying out their responsibilities in the vicinity of a pyrotechnic effect. Performers and support personnel familiar and experienced with the pyrotechnic effects being used shall be permitted to be in the area of a pyrotechnic effect, but only voluntarily and in the performance of their duties.

(2) No part, projectile, or debris from the pyrotechnic material or device shall be propelled so that it damages overhead properties, over-head equipment, or the ceiling and walls of the facility.

(3) Immediately before any performance, the pyrotechnic operator shall make a final check of wiring, positions, hook-ups, and pyrotechnic devices to ensure that they are in proper working order. The pyrotechnic operator also shall verify safety distances.

(4) The placement and wiring of all pyrotechnic devices shall be designed to minimize the possibility of performers and support personnel disturbing the devices during a performance.

(5) The pyrotechnic operator shall exercise extreme care throughout the performance to ensure that the pyrotechnic devices function correctly and that the performers, support personnel, and audience are clear of the devices.

(6) When pyrotechnics are fired, the quantity of smoke developed shall be controlled so as not to obscure the visibility of exit signs or paths of egress.

Section 5. [*Bonds.*] Before granting and issuing a permit for a use of pyrotechnics as provided in this Act, the permit authority shall require an adequate bond from the applicant therefore, unless such applicant is a state park, county park, city, village, or town, or from the person to whom a contract for such use shall be awarded, in a sum to be fixed by the permit authority, which, however, shall not be less than [five hundred thousand dollars], conditioned for the payment of all damages which may be caused to a person or people or to property by reason of the use so permitted and arising from any acts of the permittee, his or her agents, employees, contractors, or subcontractors. Such bond shall run to the owner of the facility for which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors, or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes herein provided.

Section 6. [*Local Laws or Ordinances Superseded.*] All local laws or ordinances regulating the use of pyrotechnics within the contemplation of this Act are hereby superseded by the provisions of this Act, with the exception of:

- (1) All laws or ordinances enacted by a city of one million or more people; and
- (2) Other local laws or ordinances that prohibit the use of indoor pyrotechnics.

Section 7. [*Unpermitted Use of Indoor Pyrotechnics.*]

a. A person is guilty of unpermitted use of indoor pyrotechnics in the second degree when he or she is responsible for obtaining a necessary permit to use indoor pyrotechnics, as required by this Act, and, without obtaining such permit or knowing that he or she is not in compliance with the terms of a permit, he or she intentionally ignites or detonates pyrotechnics for which such permit is required, or knowingly permits another to ignite or detonate such pyrotechnics, in a building, as defined in this Act. Unpermitted use of indoor pyrotechnics in the second degree is a [Class A misdemeanor].

b. A person is guilty of unpermitted use of indoor pyrotechnics in the first degree when he or she commits the crime of unpermitted use of indoor pyrotechnics in the second degree, as defined in this section, and, within the previous [five-year] period, he or she has been convicted one or more times of the crime of unpermitted use of indoor pyrotechnics in the second degree, as defined in this section, or unpermitted use of indoor pyrotechnics in the first degree, as defined in this section. Unpermitted use of indoor pyrotechnics in the first degree is a [Class E felony].

c. A person is guilty of aggravated unpermitted use of indoor pyrotechnics in the second degree when he or she commits the crime of unpermitted use of indoor pyrotechnics in the second degree, as defined in this section, and, by means of igniting or detonating such indoor pyrotechnics, he or she recklessly:

- (1) Causes physical injury to another person; or

273 (2) Damages the property of another person in an amount that exceeds [two
274 hundred fifty dollars]. Aggravated unpermitted use of indoor pyrotechnics in the second degree
275 is a [Class E felony].

276 d. A person is guilty of aggravated unpermitted use of indoor pyrotechnics in the first
277 degree when he or she commits the crime of unpermitted use of indoor pyrotechnics in the
278 second degree, as defined in this section, and, by means of igniting or detonating such indoor
279 pyrotechnics, he or she recklessly causes serious physical injury or death to another person.
280 Aggravated unpermitted use of indoor pyrotechnics in the first degree is a [Class D felony].

281
282 Section 8. [*Severability*.] [Insert severability clause.]

283
284 Section 9. [*Repealer*.] [Insert repealer clause.]

285
286 Section 10. [*Effective Date*.] [Insert effective date.]

Integrated Permit System

In many states, state, federal, and local environmental regulations are administered by several different agencies, most of which have their own permitting requirements. In addition, many of the permit process requirements conflict, overlap or are duplicative. As a result, environmental permits can be delayed when review processes are done in sequence rather than concurrently.

This Act directs the state Office of Permit Assistance (OPA) to develop a guide for creating a unified project decision support document to be used by state and federal agencies and local governments in support of regulatory decision making. The OPA also is required to develop recommendations for an integrated permit system that incorporates project design, environmental review, permitting, and mitigation; develop recommendations for legislative changes to statutory authorizations and administrative procedures needed to establish the system; and develop detailed recommendations for full-scale testing of the system through one or more pilot projects.

For purposes of developing the guide and the integrated permit system, the OPA is directed to conduct a pilot project using a project deemed to have significance in terms of economic development. The OPA must submit progress reports to the appropriate legislative committees by December 1 for three years.

Submitted as:

Washington

Chapter 245, 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 an Integrated
2 Permit System."

3
4 Section 2. [*Legislative Findings.*]

5 (A) The [legislature] finds that environmental review and permitting, especially as
6 applied to complex or controversial projects, can be characterized by multiple overlapping
7 agency authorities, as a result of multiple governing statutes, generally adopted in isolation from
8 one another, whose purposes and requirements may not be integrated and cause correspondingly
9 uncoordinated implementation by administrative agencies. As a result, numerous and differing
10 project descriptions, inconsistent administrative records, unproductive and redundant
11 requirements, delays, and disproportionate costs caused by all of these may impede the making
12 of sound and expeditious decisions by agencies and appropriate project changes by permit
13 applicants, contrary to the intent and purpose of environmental review and permitting and the
14 interests of permit applicants and the public.

15 (B) A single project may be governed by local, state, federal, and tribal laws. A single
16 project may be subject to all of the following requirements and others not listed here:

17 (1) Federal section 404 permit, section 7 consultation, essential fish habitat
18 consultation, section 401 water quality certification, section 402 waste discharge permit, section
19 402 general permit, section 4(f) parks and recreational lands use approval, superfund clean-up

requirements, air quality conformity, underground storage tank removal, and coastal zone management program consistency certification;

(2) State storm water pollution control plan approval, hydraulic project approval, aquatic lands use approval, historic and archaeological approval, archaeological excavation and removal permit, state model toxics control act clean-up requirements, asbestos removal, and air quality operating permit; and

(3) Local shoreline substantial development permit, conditional use permit or variance, shoreline design review, critical areas ordinance review, historic district approval, street use permit, demolition permit, grading permit, noise variance, storm water and drainage control approval, and utility approval.

(C) The [legislature] finds that the public, as well as permit applicants, agencies, and affected parties, will benefit from an environmental review and permitting system that integrates and makes easily accessible the requirements and documentation for agency decision making, facilitating timely and effective participation in the process.

Section 3. *[Definitions.]*

(A) A unified project administrative procedure is the common, integrated process used for the development of a project-specific unified project decision support document.

(B) A unified permit binder is the same as a unified project decision support document.

(C) A unified project decision support document is a single document that contains and integrates all project-specific application, design, environmental review, permitting and mitigation analyses and evaluations needed to support permitting and regulatory decisions.

Section 4. *[Integrated Permit System: Intent, Process, Components.]*

(A) The [legislature] intends to proceed in steps to develop and adopt an integrated permit system, working through the [office of permit assistance], in cooperation with the [department of transportation], the [transportation permit efficiency and accountability committee], and local, state, federal, and tribal regulatory agencies. When implemented, the integrated permit system would integrate project design, environmental review, permitting, and mitigation elements into a single process.

(B) Major components of the integrated permit system are a unified project decision support document and a unified project administrative procedure. A unified project decision support document is intended to be a single document proactively developed to support and satisfy all needs for information, analysis, and evaluation; document and justify incremental project decisions; inform the public and interested parties; and support integration of project design, environmental review, permitting, and mitigation elements. A unified project administrative procedure is intended to harmonize, reduce, or eliminate duplicative or conflicting procedural requirements for environmental analysis, agency decision making, and public review and comment. A unified project decision support document might be implemented by intergovernmental agreement under existing law. A unified project administrative procedure may require changes to existing law.

(C) The integrated permit system, including the unified project decision support document and unified project administrative procedure, will not modify or change any agency's substantive regulatory authority including that agency's responsibility and authority to issue and condition its specific permit(s). The integrated permit system will promote procedural changes which lead to greater efficiency while maintaining environmental and community safeguards. In developing new approaches for public involvement, care shall be taken to maintain or enhance the quality of public involvement opportunities.

(D) The [legislature] intends by this Act to authorize, through a pilot project, development of a guidance document for implementation of a unified project decision support document and development of recommendations for an integrated permit system and for changes to existing law needed for implementation of a unified project administrative procedure.

Section 5. [*Guidance Document/Recommendations.*]

(A) By [December 1, 2005], the [office of permit assistance] shall develop a guidance document for creating a unified project decision support document for state and federal agencies and local governments that will be sufficient to support all regulatory decision making. The [office] shall, in consultation with the [department of transportation] and the [transportation permit efficiency and accountability committee], test and, as necessary, revise and add to the "unified permit binder" currently being developed by the [department of transportation] to provide a standardized outline, checklists, and templates for preparation of a single master support document for all regulatory decision making concerning a project. The [office] shall address regulatory decision-making processes under existing substantive authorities and administrative procedures, applicable existing statutory requirements for environmental review and permitting, information necessary for decision making, and existing requirements for public and agency involvement and its documentation. The resulting document shall be designed to be a complete, concise, and logically organized guidance document for creating a unified project decision support document for state and federal agencies and local governments.

(B) By [December 1, 2005], the [office] shall develop recommendations for an integrated permit system to integrate the procedural aspects of project design, environmental review, permitting, and mitigation; develop recommendations for legislative changes to statutory authorizations and administrative procedures needed to establish the system; and develop detailed recommendations for full-scale testing of the system through one or more pilot projects. The elements of the integrated permit system shall include use of a unified project decision support document available on the internet for purposes of public review and comment and for decision making by agencies and local governments with jurisdiction over the project; a unified project administrative procedure for regulatory decision making that harmonizes, reduces or eliminates duplicative, or conflicting procedural requirements for environmental analysis, public review and comment.

(C) The [office] shall fulfill the requirements of subsections (A) and (B) of this section using a pilot project of economic development significance, after obtaining agreement to participate in the pilot project from the project proponent and the state agencies and local governments with jurisdiction. As needed, the [office] may also seek agreement to participate from federal and tribal agencies with jurisdiction.

(D) The [office] shall submit a report to the standing legislative committees with jurisdiction by [December 1, 2003], and [December 1, 2004], regarding progress on subsections (A) and (B) of this section and by [December 1, 2005], upon completion of subsections (A) and (B) of this section.

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

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

Section 8. [*Effective Date.*] [Insert effective date.]

Intent to Surrender for Adoption

This Act:

- Provides a procedure whereby a pregnant person or the mother of a child may execute a nonbinding intent to surrender her child for adoption before the actual surrender process begins;
- Provides that the purpose of the intent to surrender for adoption process is to begin planning for the child and to provide early notice to any alleged or adjudicated father of the mother's intent to surrender the child for adoption;
- Provides that this process may not be used to terminate a legal father's rights;
- Provides capacity requirements for the mother;
- Requires counseling for the mother in private adoptions, and specifies an intent to surrender does not effect the mother or legal father's parental rights;
- Provides that an intent to surrender for adoption must be filed in a court of proper venue;
- Requires the intent to surrender to contain certain information relative to the mother, alleged father, and the child;
- Requires the intent to surrender to contain certain declarations including the mother's mental capacity, her understanding of her rights, and that the intent to surrender is voluntary;
- Provides a form for the intent to surrender and requires that it be in authentic form and dated and signed by the mother and her parents or tutor if required by law;
- Provides that an alleged or adjudicated father shall file an objection within 15 days of service of the notice of intent to surrender or within five days of the birth of the child to preserve his right to oppose an adoption;
- Provides that a failure to timely object results in a waiver of any subsequent notices of surrender and adoption;
- Provides that a court may terminate the parental rights of both parents if a subsequent act of surrender for adoption is properly executed;
- Provides that if an alleged or adjudicated father timely files an objection to an intent to surrender, he is deemed to have filed an objection to the adoption and is entitled to receive notice of all subsequent filings;
- Provides that if the mother does not file an act of surrender for adoption, the intent to surrender shall be dissolved without legal consequences;
- Provides that within 90 days of the filing of her intent to surrender, the mother may file a motion for hearing to determine the father's parental rights and directs that the court shall schedule a hearing to decide whether the father has established or forfeited his parental rights in accordance with state law within 20 days after the time the father was served with the motion for hearing;
- Provides that if the father fails to establish his parental rights, he shall be deemed to have waived notice and service of any subsequent pleadings regarding the surrender or adoption proceeding, he shall not have no cause of action to challenge the child's adoption, and his parental rights are subject to termination upon the filing and approval of the mother's surrender;
- Provides a form for notice of the filing of an intent to surrender to an alleged or adjudicated father which explains the intent to surrender process, how to file a timely objection, and the consequences of not filing an objection;

- Provides for service of the notice of filing an intent to surrender; and
- Provides that if an intent to surrender for adoption has been executed, the subsequent surrender shall be filed in the same court.

Submitted as:

Louisiana

Act 564

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Intent to Surrender for Adoption
2 Act."

3
4 Section 2. [*Intent to Surrender for Adoption.*] During her pregnancy or thereafter, a
5 mother of a child may execute an intent to surrender for adoption in accordance with this Act.

6
7 Section 3. [*Intent to Surrender for Adoption; Purpose; Limitations.*]

8 A. The purpose of an act of intent to surrender for adoption is to facilitate early planning
9 for the child who may be surrendered by the mother for adoption and to provide due notice at the
10 earliest possible time to any alleged or adjudicated father who may have an interest in the child's
11 custody.

12 B. An act of intent to surrender for adoption may be executed only by a pregnant female
13 or mother of a child.

14 C. The intent to surrender for adoption process may be used only when the alleged or
15 adjudicated father is identified and can be served.

16 D. The intent to surrender for adoption process may not be used to terminate the rights of
17 a legal father.

18
19 Section 4. [*Intent to Surrender for Adoption; Capacity; Legal Counseling, Affidavit;
20 Effect on Parental Rights.*]

21 A. A pregnant female or mother of a child may execute an act of intent to surrender for
22 adoption if she meets the requirements for capacity to execute an act of surrender as set forth in
23 [insert citation].

24 B. In all private adoptions, she must receive legal counseling in accordance with [insert
25 citation]. Her counsel shall execute an affidavit of counsel, which shall be attached to the intent
26 to surrender for adoption and comply with the requirements of [insert citation].

27 C. Execution of an intent to surrender for adoption shall have no effect upon the parental
28 rights of the pregnant female or mother of a child or of the legal father.

29
30 Section 5. [*Filing of Intent to Surrender for Adoption.*] The agency or attorney for the
31 prospective adoptive parents shall file any intent to surrender for adoption in a court of proper
32 venue as authorized by [insert citation].

33
34 Section 6. [*Contents of Intent to Surrender for Adoption; Form.*]

35 A. Every act of intent to surrender for adoption shall contain the following information:

(1) The name, county of domicile, age, and marital status of the pregnant female anticipating adoption of her unborn child or of the mother of a child.

(2) The name and address of the alleged father of the child or expected child.

(3) The anticipated or actual birth date of the child.

(4) The [court] in which the act of intent to surrender for adoption will be filed.

B. The act of intent to surrender for adoption shall also recite the following declarations:

(1) Whether the act of intent to surrender for adoption is being executed prior to or after the birth of the child.

(2) That she has no mental incapacity and is under no interdiction that impairs her capacity to consent to the surrender of her child.

(3) That, if required by [insert citation], she is joined in the act of intent to surrender for adoption by her parents or tutor.

(4) That she has been informed and understands that the act of intent to surrender for adoption is only in anticipation of adoption and does not mean that she agrees to surrender the child.

(5) That she has been informed and understands that her rights as the parent of the child are not being terminated by execution of this act of intent to surrender for adoption.

(6) That she has been informed and understands that the act of intent to surrender for adoption is being executed for the purpose of determining whether the alleged father will oppose her plans for surrendering her child for adoption.

(7) That she has been informed and understands that if the alleged father responds by filing a timely written objection, he will receive notice of any motion for hearing to determine his parental rights that she may thereafter file or of any surrender she may thereafter execute and will be given notice of a hearing on his opposition and will be given an opportunity to present evidence to acknowledge his paternity, to demonstrate his fitness as a parent, and to demonstrate his commitment to the child.

(8) That she has been informed and understands that if the father does not respond by filing a timely written objection, that his potential parental rights may be terminated by the court upon the court's approval of her surrender.

(9) That she freely and voluntarily executes the act of intent to surrender for adoption and understands that she is not required to execute it and that failing to execute it will not prevent her from later deciding to surrender her child for adoption.

C. In a private adoption, the act of intent to surrender for adoption shall also recite that the pregnant female or mother has consulted with and been fully advised by an attorney about the meaning of these declarations and the consequences of the act of intent to surrender for adoption, other than the attorney, associate, partner, shareholder, or employee of the attorney's law firm or corporation for the prospective adoptive parent.

D. The act of intent to surrender for adoption shall be in authentic form and shall be dated and signed by the pregnant female or mother and her representative, if applicable. If required by [insert citation], it shall also be signed by the minor's parents or tutor, or the written consent of the court shall be attached.

E. The act of intent to surrender for adoption shall contain the requirements in substantially the following form:

INTENT TO SURRENDER A CHILD FOR ADOPTION
STATE OF (NAME)
COUNTY OF (NAME)

BEFORE ME, the undersigned notary public, and in the presence of the two undersigned competent witnesses who are over the age of eighteen, _____ (NAME OF MOTHER), personally

came and appeared, a female of the age of (AGE), who is (MARITAL STATUS), and domiciled in the County of (NAME OF COUNTY), who being first duly sworn, did depose and state:

(1) She is pregnant and expects to deliver a child on or about (EXPECTED DELIVERY DATE)

OR

[She is the mother of (CHILD'S NAME), born on (DATE OF BIRTH) in the (COUNTY OF BIRTH), State of (STATE OF BIRTH).]

(2) The father of the child is [is believed to be] (FATHER'S NAME), and his address is (ADDRESS).

(3) To the best of her knowledge, the alleged father:

(a) Has not executed a notarial act of acknowledgment or legitimation of the child.

(b) Has not admitted his paternity of the child by registering with the putative father registry.

(c) Has not informally acknowledged his paternity of this child.

(d) Has not had his paternity of this child established by court judgment.

OR

[The paternity of this child has been established by the judgment of the (NAME OF COURT) on (DATE) finding that (FATHER'S NAME) is the father.]

(4) The court in which this act of intent to surrender for adoption is to be filed is (NAME OF JUVENILE COURT) located in (CITY AND COUNTY OF COURT).

(5) Affiant declares that she has no mental incapacity and is under no interdiction that impairs her capacity to surrender the child.

(6) Affiant declares that she has been informed and understands that this act of intent to surrender for adoption is only in anticipation of adoption and does not mean that she agrees to surrender the child nor does her refusal to sign this intent to surrender for adoption prevent her from surrendering the child after birth for adoption.

(7) Affiant declares that she has been informed and understands that her rights as the parent of the child are not being terminated by execution of this act of intent to surrender for adoption.

(8) Affiant declares that she has been informed and understands that this act of intent to surrender for adoption is being executed for the purpose of determining whether the father will oppose her plans for surrendering her child for adoption.

(9) Affiant declares that she has been informed and understands that if the father responds by filing a timely written objection, he will receive notice of any motion for hearing to determine his parental rights that she may thereafter file or of any surrender she may thereafter execute, and will be given notice of a hearing on his opposition, and will be given an opportunity to present evidence to acknowledge his paternity, to demonstrate his fitness as a parent, and to demonstrate his commitment to the child.

(10) Affiant declares that she has been informed and understands that if the father does not respond by filing a timely written objection, that his potential parental rights may be terminated by the court upon the court's approval of her surrender.

(11) Affiant declares that she freely and voluntarily executes this act of intent to surrender for adoption.

(ADDITIONAL DECLARATIONS IF THE INTENT TO SURRENDER IS FOR A PRIVATE ADOPTION)

(12) Affiant declares that she is eighteen years of age or older.

OR

[Affiant declares that she is under the age of eighteen and that (NAME OF PARENTS OR TUTOR) join in this act of intent to surrender for adoption.]

OR

[Affiant declares that she is under the age of eighteen and that (NAME OF JUVENILE COURT) located in (CITY AND COUNTY OF COURT) has given its written consent for her execution of this act of intent to surrender for adoption.]

(13) Affiant declares that she has consulted with and been fully advised by an attorney about the meaning of these declarations and the consequences of this act of intent to surrender for adoption, other than the attorney for the prospective adoptive parent or an associate, partner, shareholder, or employee of the prospective adoptive parent's attorney's law firm or corporation.

Sworn to, signed, and notarized, after being carefully read and explained to (NAME OF MOTHER) in the presence of the undersigned notary and witnesses on this _____ day of _____, 20__.

AFFIANT MOTHER

WITNESSES

(ADDITIONAL SIGNATURE(S) IN PRIVATE ADOPTION IF THE MOTHER IS A MINOR)

PARENT(S)/TUTOR OF MINOR MOTHER

NOTARY PUBLIC AND SEAL

(REQUIRED ADDITIONAL ATTACHMENT(S) IF THE ACT OF INTENT TO SURRENDER FOR ADOPTION IS FOR PRIVATE ADOPTION):

- (AFFIDAVIT OF ATTORNEY FOR MOTHER)

(REQUIRED ADDITIONAL ATTACHMENT IF THE SURRENDER IS BY A MINOR MOTHER WHOSE PARENT(S) OR TUTOR REFUSE TO JOIN IN THE INTENT TO SURRENDER FOR ADOPTION):

- (WRITTEN CONSENT OF THE COURT)

Section 7. [*Failure to File Timely Objection to Adoption; Termination of Parental Rights.*]

A. To preserve his right to oppose a subsequent adoption, the alleged or adjudicated father shall file an objection, in accordance with Section 9 of this Act, within [fifteen days] of service of the notice of intent to surrender for adoption, or, if the child has not yet been born, within [five days] of the birth of the child, whichever is earlier.

B. If the father fails to file a timely objection, he shall be deemed to have waived notice of the filing and service of any pleading in any subsequent surrender or adoption proceeding and to have no cause of action to challenge the child's adoption.

C. The court shall, upon motion, render an order terminating the parental rights of both parents if:

(1) A motion for hearing to determine the father's rights or a surrender by the mother is filed within [ninety days] of the filing of the intent to surrender.

(2) The surrender is filed in court in accordance with [insert citation].

(3) In accordance with [insert citation], the court finds that the surrender meets the requirements of this Act.

Section 8. [*Objection to Intent to Surrender for Adoption; Effect.*]

A. If an alleged or adjudicated father timely files with the court an objection to the intent to surrender for adoption, in accordance with Section 9 of this Act, he shall be deemed to have filed a timely opposition to the adoption in accordance with [insert citation].

B. Within [ninety days] of the filing of her intent to surrender, the mother may file a motion for hearing to determine the father's parental rights. The court shall schedule a hearing to decide whether the father has established or forfeited his parental rights in accordance with [insert citation] within [twenty days] after the time the father was served with the motion for hearing. If the father fails to establish his parental rights, he shall be deemed to have waived notice of the filing and service of any pleading in any subsequent surrender or adoption

proceeding and to have no cause of action to challenge the child's adoption and his parental rights are subject to termination upon the filing and approval of the mother's surrender.

C. If the mother thereafter files a surrender within [ninety days] of the filing of her intent to surrender and the father's rights have not been previously determined to be waived pursuant to Paragraph B of this section, such a father shall be entitled to receive notice of its filing. The court shall schedule a hearing to decide whether the father has established or forfeited his parental rights, in accordance with [insert citation], within [twenty days] after the time he was served with the notice of the surrender.

D. If the mother does not file a motion for hearing pursuant to Paragraph B of this section or thereafter file a surrender within [ninety days] of the filing of her intent to surrender, the intent to surrender shall be dissolved and shall be without legal consequences. Evidence of the intent to surrender, now dissolved, shall not be considered evidence of unfitness.

Section 9. *[Notice of Filing of Act of Intent to Surrender for Adoption; Form; Objection and Form.]*

A. The notice of filing of a mother's intent to surrender for adoption shall contain the following information in substantially the following form:

**NOTICE OF FILING OF ACT OF INTENT TO SURRENDER
FOR ADOPTION**

Be advised that on the _____ day of _____, 20____, _____ (MOTHER'S NAME) voluntarily filed an act of intent to surrender for adoption of her minor child, namely _____, born on the _____ day of _____, 20____, in the County of _____, State of _____.

OR

[Be advised that on the _____ day of _____, 20____, _____ (MOTHER'S NAME) voluntarily filed an act of intent to surrender for adoption of her expected child to be born on or about _____, 20____.]

The act of intent to surrender for adoption names you as the father of this child. The act of intent to surrender for adoption does not bind the mother to follow through with plans to surrender her child for adoption. She may change her mind. Its only purpose is to determine whether you will oppose plans for surrendering this child for adoption.

You may attempt to oppose the proposed adoption of this child only by filing a written objection with this court within [fifteen days] after you receive this notice. In your objection, you must provide the court with an address where you can be contacted about further proceedings, if any, regarding the child's adoption. A form for your use is attached. Note that this objection must be signed under oath before a notary public after you have proved your identity. If the objection does not have the notary's signature, it is not effective. If you do file such a written objection:

(1) You will have the right to receive notice of any surrender for adoption that the mother may hereafter sign giving up her parental rights to the child.

(2) You will also have the right to be given notice of any hearing scheduled by the court to decide whether your parental rights should be terminated. At that hearing, you must show that you are claiming or have acknowledged paternity of the child and must prove that you have assumed parental responsibility for the child, that you are a fit parent, and that you are willing and able to take custody of the child. At that hearing, the court will decide whether your efforts have been sufficient to preserve your parental rights regarding this child and to prevent the child's adoption.

These notices will be served upon you at the address you provide in your written objection. If you do not file a written, notarized objection within [fifteen days] from the time you receive this notice, then you waive notice and service of future surrender or adoption proceedings, you have no cause of action to challenge the child's adoption, and all rights you may have as the child's alleged father may be terminated by order of this court and the child may be adopted if the mother does decide to sign a surrender of the child for adoption.

These are serious consequences. You are urged to contact a lawyer to advise you further."

B. With every notice of the filing of an act of intent to surrender for adoption, this form must be included for the alleged father's use:

OBJECTION TO ADOPTION

_____ (Court File #)

STATE OF _____ (NAME OF STATE)

COUNTY OF _____ (NAME OF COUNTY)

I, _____ (FATHER'S NAME), have received notice of an act of intent to surrender for adoption filed by _____ (NAME OF PREGNANT FEMALE OR MOTHER), which names me as the father.

I believe that I am the father of this child.

I object to any adoption of this child.

I can be reached for notification of any surrender for adoption executed by the mother and any hearing on my opposition to the adoption of this child at:

(ADDRESS: STREET, CITY AND ZIP CODE).

I understand that all notices will be made at that address unless I notify the court listed below in writing of a different address. If I move without notifying the court, I understand that the court will rule that no further attempts need to be made to contact me about any adoption of this child.

(SIGNATURE)

(PRINT NAME)

SWORN TO AND SUBSCRIBED BEFORE ME,

Notary, on this the _____ day of _____, _____, at

(CITY) _____ (STATE)

NOTARY PUBLIC AND SEAL

In order to be effective, this objection must either be mailed by registered or certified mail or filed by you or your representative with the following court:

NAME OF COURT OF _____ COUNTY)

(Address)

Section 10. [Notice of Filing of Intent to Surrender for Adoption; Service upon Identified Alleged Fathers, Residents and Nonresidents.] Notice of filing of an intent to surrender for

adoption shall be given by personal service or by registered or certified mail, return receipt requested, delivery restricted to the addressee, to any alleged or adjudicated and identified father.

Section 11. [*Filing of Surrender; Institution of Records Check.*]

A. Within [three days] after the surrender becomes irrevocable under [insert citation], exclusive of legal holidays, the agency or attorney for the prospective adoptive parents shall file the authentic act of voluntary surrender, together with any certification for adoption or court order approving the adoptive placement required by [insert citation] in a court of proper venue as authorized by [insert citation].

B. If the parent has previously executed an intent to surrender for adoption, pursuant to this Act, the surrender shall be filed in that same court.

C. The surrender, and certification for adoption or court order approving the adoptive placement if required, may be filed later than [three days] after execution only with leave of court for good cause shown.

D. Upon filing, the court shall promptly review the surrender and any accompanying documents to ensure their sufficiency in accordance with [insert citation]. If any document fails to comply with the requirements of this Act, the court shall immediately notify all counsel of record and may refuse to accept the surrender until such time as the defects are remedied. If the surrender and documents are found to comply with the requirements of this Act, the court shall enter an order approving the surrender and immediately notify all counsel of record.

E. Upon the filing of any court order approving the adoptive placement pursuant to [insert citation], the court shall immediately issue both of the following orders:

(1) That the local [sheriff] conduct a records check for all federal arrests and convictions and all state arrests and convictions in this and any other states in which either of the prospective adoptive parents has been domiciled.

(2) That the [department] conduct a records check for validated complaints of child abuse or neglect in this or any other state in which either of the prospective adoptive parents has been domiciled since becoming a major, involving either prospective adoptive parent.

F. Each order shall state the full name, date of birth, Social Security Number, and former and current state of domicile since becoming a major of each prospective adoptive parent.

G. The [sheriff] and the [department] shall accord priority to these orders and shall provide a certificate indicating all information discovered or that no information has been found.

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

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

Section 14. [*Effective Date.*] [Insert effective date.]

Limits on Civil Damages Awarded to Felons

This Act prohibits a convicted felon from recovering damages for personal injury or property damage incurred by the felon while committing, or as a result of committing, the felony.

The limitation under the Act on recovery of damages by a convicted felon does not apply to recovery of damages for death or personal injury resulting from a device used to provide security that is intended to or likely to cause great bodily harm or death.

Under the Act, any applicable statute of limitations for a civil action to recover damages for injury or death incurred by a perpetrator during the commission, or as a result of the commission, of a felony is tolled during the period of a criminal proceeding charging the perpetrator with a felony. Similarly, any applicable statute of limitations for an action by a convicted felon to recover damages from an individual who assisted or attempted to assist in the prevention of the act, the protection of the victim, or the apprehension or detention of the felon, is tolled during the period of a criminal proceeding against the individual charging that individual with a crime as a result of his or her assistance or attempted assistance.

The Act expressly authorizes a court to stay a civil action covered until the final disposition of a criminal proceeding that relates to the ability to recover damages.

Submitted as:

Wisconsin

Act 87 of 2003

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. This Act may be cited as "An Act Relating to Limiting Recovery for People
2 Injured While Involved in a Felony."

3
4 Section 2. [*Limiting Felon's Right to Damages.*]

5 (1) In this Act:

6 (a) "Crime" means a crime under the laws of this state or under federal law.

7 (b) "Damages" means damages for an injury to real or personal property, for
8 death, or for personal injury.

9 (c) "Felony" means a felony under the laws of this state or under federal law.

10 (d) "Victim" means a person against whom an act constituting a felony was
11 committed.

12 (2) No person may recover damages from any of the following people for injury or death
13 incurred while committing, or as a result of committing, an act that constituted a felony, if the
14 person was convicted of a felony for that act:

15 (a) A victim of that felony.

16 (b) An individual other than a victim of that felony who assisted or attempted to
17 assist in the prevention of the act, who assisted or attempted to assist in the protection of the
18 victim, or who assisted or attempted to assist in the apprehension or detention of the person
19 committing the act unless the individual who assisted or attempted to assist is convicted of a
20 crime as a result of his or her assistance or attempted assistance.

21 (3) This Act does not prohibit a person from recovering damages for death or personal
22 injury resulting from a device used to provide security that is intended or likely to cause great
23 bodily harm, as defined in [insert citation], or death.

24 (4) (a) Any applicable statute of limitations for an action to recover damages against
25 a person described under sub. (2) (a) or (b) for injury or death incurred while committing, or as a
26 result of committing, an act that constituted a felony is tolled during the period beginning with
27 the commencement of a criminal proceeding charging the person who committed the act with a
28 felony for that act and ending with the final disposition, as defined in [insert citation], of the
29 criminal proceeding.

30 (b) Any applicable statute of limitations for an action to recover damages from an
31 individual described under sub. (2)(b) for injury or death incurred while committing, or as a
32 result of committing, an act that constituted a felony is tolled during the period beginning with
33 the commencement of a criminal proceeding charging the individual described under sub. (2)(b)
34 with a crime as a result of his or her assistance or attempt to assist and ending with the final
35 disposition, as defined in [insert citation], of the criminal proceeding. This paragraph does not
36 apply if a criminal proceeding described in par. (a) does not result in a felony conviction and
37 there is no other criminal proceeding described under par. (a) pending.

38 (5) A court may stay a civil action described under sub. (2) until the final disposition of a
39 criminal proceeding described under sub. (4).

40
41 Section 3. [*Initial Applicability.*] This Act first applies to damages incurred on the
42 effective date of this Act.

43
44 Section 4. [*Severability.*] [Insert severability clause.]

45
46 Section 5. [*Repealer.*] [Insert repealer clause.]

47
48 Section 6. [*Effective Date.*] [Insert effective date.]

Manufactured Home Owners and Community Owners Act

In 1983 Delaware enacted House Bill 2 to rewrite the state Mobile Home Lots and Leases Act of 1986 to reflect changes in the mobile home industry during the past 17 years. HB2 governs the rental of lots upon which manufactured homes are placed by their owners in manufactured home communities and specifies the rights and duties of community owners and home owners.

The extensive "truth-in-leasing" section in that Act lists over 20 provisions that must be included in a rental agreement, as well as a similar number that may not be included. If a landlord misrepresents a material fact regarding the manufactured home community, a homeowner may terminate the lease within 18 months of its execution.

Under the Act, rental agreements for lots in a manufactured home community must be automatically renewed for the same term and with the same provisions, with the exception of rent, which may be increased only once every 12 months. Only if a tenant chooses not to renew the lease or the landlord has "due cause" to not renew the lease, will it not be renewed. "Due cause" reasons are very specific and are similar to the reasons for summary possession actions in the state code.

The section about fees, services, and utilities in the Act is considerably more specific than in the 1986 Act. Under the Act, a community owner must provide homeowners with a written accounting of all fees and other charges, including those for the use of optional facilities or services. The bill prohibits entrance and exit fees, and provides for meetings between community owners and homeowner representatives to discuss any discontinued utilities, facilities, or services. An independent accountant must calculate the value of any reduction and the landlord must pass the savings on to the homeowners.

The Act directs that if a community owner intends to change the land use of the community to any use other than as a manufactured home condominium or cooperative community, the community owner must notify the home owners at least one year in advance and distribute a relocation plan designed to assist home owners in their relocation.

The law establishes a trust fund to which community owners and homeowners contribute \$1.50 each per rented lot will assist homeowners financially when they must relocate due to land use change. The contribution amount may change, depending on the use of monies in the fund. The fund will also pay for homes which cannot be relocated and for the removal and/or disposal of abandoned homes left in a community. The trust fund will initially have a \$10 million cap, but the cap may be reset.

The bill expands the security deposit and pet deposit section of prior state law and creates 3 categories for manufactured home standards: new homes, homes not for resale, and homes for resale and retention in the community.

Under HB 2, a homeowner will have 9 years to comply with community standards; a new homeowner will have 3 years to comply after the purchase of a home already in the community.

The Act changes the state conversion provisions to limit the provisions use to manufactured home communities which are converting to manufactured home condominium or cooperative communities. It also changes the term "mobile homes" to "manufactured homes."

There were four amendments to HB2. HA 1 to HB 2 corrected several technical errors; clarified a few ambiguous sentences; restored provisions in the bill regarding unsigned rental agreements; allows a landlord to charge an additional security deposit not to exceed a normal billing period charge for a governmental mandated charge which is the responsibility of a tenant

but becomes the responsibility of the landlord if not paid by the tenant; and removes a few redundant phrases.

HA 2 to HB 2 conformed the provisions of proposed §7009(e) of the new Manufactured Home Owners and Community Owners Act to the *prima facie* elements of "fraudulent inducement" under existing Delaware case law. See Desert Equities, Inc. v. Morgan Stanley. 624 A.2d 1199, 1208 (Del. 1993).

These Acts also clarified that promissory notes and other financial obligations of the Authority are not backed by the full faith and credit of the State.

HB 284 was a "clean-up" bill for HB 2, which was signed by the Governor on July 11, 2003.

Section 1 of HB 284 adds a definition of "seasonal property" based on Delaware case law [*Oberly v. Simpson*, Del. Ch. 551 A.2d 804 (1988)].

Section 2 then exempts seasonal property from the provisions of the Act.

Section 3 requires 2 of the 4 members of the Delaware Manufactured Home Relocation Authority board of directors who represent the manufactured home industry to reside in Delaware. The present law does not require any of the 4 members to be Delaware residents. Section 4 calls for the Governor to name one of the 9 board members as the chairperson of the board.

Sections 5 and 9 change the name of the entity that will administer the Delaware Manufactured Home Relocation Trust Fund from the Consumer Protection Unit of the Attorney General's Office to the Division of Revenue of the Department of Finance.

Sections 6 and 8 allow tenants who live in a manufactured home community that is being converted to a manufactured home condominium community or to a manufactured home cooperative community to apply for Trust Fund money.

Section 7 prohibits the Relocation Authority from exempting any landlord or tenant from paying the Trust Fund Assessment; requires the Authority to have the Trust Fund audited annually and to make the audit available to the public; and requires the Authority to make available to the public, at least quarterly, payments made from the Fund, a description of the property related to each payment, and the reason for each payment.

Section 10 removes an unnecessary and repetitive provision. The similar provision appears in §7006(b)(9).

Section 11 eliminates the provision that allows a landlord to collect an additional security deposit for certain government-mandated charges.

The draft in this SSL volume is based upon Delaware HB 2 and its amendments and HB 284.

Submitted as:

Delaware

HB 2 and HB 284

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act may be cited as the "Manufactured Home Owners and
2 Community Owners Act."

3

4 Section 2. [*Purposes and Policies; Enforceability*.]

(a) This Act must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to clarify and establish the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured home owners (tenants), and residents of manufactured home communities; and

(2) to encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities.

(b) This Act applies to all rental agreements for manufactured home lots and regulates and determines the legal rights, remedies, and obligations of all parties to a rental agreement, wherever executed, for a lot for a manufactured home in a manufactured home community within this State. A provision of a rental agreement which conflicts with a provision of this subchapter and is not expressly authorized herein is unenforceable. The unenforceability of a provision does not affect the enforceability of other provisions of a rental agreement which can be given effect without the unenforceable provision.

Section 3. [*Jurisdiction.*]

(a) Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages, or possesses real estate situated in this State submits to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation or right arising under this Act.

(b) A summary proceeding to recover the possession of a rented lot, pursuant to [insert citation], may be maintained in the [Justice of the Peace Court] in the county where the property is located.

(c) This Act governs the relationship between manufactured home owners (tenants) and manufactured home community owners (landlords) pertaining to the rental of lots in manufactured home communities.

Section 4. [*Definitions.*] Unless otherwise expressly stated, if a word or term is not defined under this section, it has its ordinarily accepted meaning or means what the context implies. In this subchapter, the following definitions apply.

(a) 'Agreement' means a written rental agreement.

(b) 'Authority' means the [Manufactured Home Relocation Authority].

(c) 'Common area' means shared land or facilities within a manufactured home community over which the landlord retains control.

(d) 'Community owner' or 'landlord' means the owner of [two or more] manufactured home lots offered for rent. It includes a lessor, sub-lessor, park owner, or receiver of [two or more] manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for [two or more] manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.

(e) 'Guest' or 'visitor' means a person who is not a tenant or resident of a manufactured home community and who is on the premises of the manufactured home community with the express or implied permission of a tenant or resident of the community.

(f) 'Hold over' means to retain possession of a rented lot in a manufactured home community after the termination, non-renewal, or expiration of a rental agreement governing the rented lot.

(g) 'Holdover' means an act of retaining or a tenant who retains possession of a rented lot in a manufactured home community after the termination, non-renewal, or expiration of a rental agreement governing the rented lot.

(h) 'Home owner' or 'tenant' means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.

(i) 'Landlord' or 'community owner' means the owner of [two or more] manufactured home lots offered for rent. It includes a lessor, sub-lessor, park owner, or receiver of [two or more] manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for [two or more] manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.

(j) 'Lease' or 'rental agreement' means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.

(k) 'Manufactured home' means a factory-built, single-family dwelling:

(1) transportable in one or more sections, which is either [8 body feet] or more in width and [40 body feet] or more in length, or, when erected on site, has more than [400 square feet] in living area; and

(2) with or without a permanent foundation and designed to be used as a year-round dwelling when connected to the required utilities; and

(3) if manufactured since [June 15, 1976], built in accordance with manufactured home construction requirements promulgated by the federal Department of Housing and Urban Development (HUD) or by other applicable codes. 'Manufactured home' is synonymous with 'mobile home', 'trailer', and similar terms used elsewhere in [insert citation].

(l) 'Manufactured home community' means a parcel of land where [two or more] lots are rented or offered for rent for the placement of manufactured homes. Manufactured home community is synonymous with 'mobile home park', 'trailer park', and 'trailer court'.

(m) 'Notice' means a written announcement, warning, or other communication delivered to or served upon a person, as designated in statute.

(n) 'Premises' means the rented lots in a manufactured home community, the structures upon them, and the facilities and appurtenances thereon, as well as the grounds, common areas, and facilities held out for the use of the tenants and/or residents generally or whose use is contracted for between landlord and tenant.

(o) 'Quiet enjoyment' includes the peaceful possession of the premises in a manufactured home community without unwarranted disturbance.

(p) 'Recreational vehicle' means a travel trailer, camping trailer, park trailer, camper, camper motor home, or similar accommodation which is primarily designed as temporary living quarters for recreational camping or for seasonal or travel use and which either has its own motor power or is mounted on or drawn by another vehicle.

(q) 'Rent' means money paid by a tenant to a landlord for the possession, use, and enjoyment of a rented lot and other parts of the premises in a manufactured home community pursuant to a rental agreement. For purposes of summary possession, rent includes late fees for rent, other fees and charges, including utility charges, and the tenant's share of the state [Manufactured Home Relocation Trust Fund] assessment.

(r) 'Rental agreement' or 'lease' means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.

(s) 'Resident' means a person who resides in a manufactured home located in a manufactured home community. A resident may or may not be a tenant.

(t) 'Seasonal property' means a parcel of land operated as a vacation resort on which [two or more] lots are rented or offered for rent for the placement of manufactured homes or other dwellings used less than [8 months] of the year. A seasonal property is characterized by a lack of availability of year-round utilities and by the fact that its tenants have primary residences elsewhere.

(u) 'Tenant' or 'home owner' means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.

(v) 'Trust Fund' means the state [Manufactured Home Relocation Trust Fund].

(w) 'Utility charge' means a charge by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television, or trash.

(x) 'Utility service' means a service provided by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television, or trash.

Section 5. [*Exemptions.*]

(a) The rental of ground upon which a recreational vehicle is placed, including any facilities or utilities thereon, is exempt from the requirements of this Act, and nothing in this Act may be construed as determining, regulating, or governing the legal rights of parties to any lease or rental agreement for the ground on which a recreational vehicle is situated.

(b) The rental of ground within the category of seasonal property is exempt from the requirements of this Act, and nothing in this Act may be construed as determining, regulating, or governing the legal rights of parties to any lease or rental agreement for the rental of ground within the category of seasonal property.

Section 6. [*Requisites for Rental of a Manufactured Home Lot.*] A landlord may not rent a lot in a manufactured home community without first delivering a copy of the rental agreement, a copy of the rules, standards, and fee schedule of the manufactured home community, and a copy of this Act to the prospective tenant who shall acknowledge such delivery by signing a receipt.

Section 7. [*Provisions of a Rental Agreement.*]

(a) A rental agreement for a lot in a manufactured home community must contain:

(1) specific identification and location of the rented lot within the manufactured home community;

(2) a stipulation of the total amount of annual rent for the lot;

(3) a stipulation of the term of the rental agreement and the terms of payment of rent, whether monthly, quarterly, semiannually, or annually;

(4) the amount of rent due for each term of payment and the date on which each payment of rent is due;

(5) the amount of any late-payment fee for rent and the conditions under which the fee may be imposed;

(6) a listing of each other fee or charge in a manner that identifies the service to be provided for the fee or charge in accordance with the provisions of Section 9 of this Act;

(7) the name and address of the landlord or the person authorized to receive notices and accept service on the landlord's behalf;

(8) the name and location of the federally insured financial institution where the landlord's security-deposits account is located;

(9) a services rider which contains a description of each utility, facility, and service provided by the landlord and available to the tenant, clearly indicating the financial responsibility of the tenant and the landlord for installation and maintenance, and for the related fees or charges that may be imposed upon the tenant by the landlord;

(10) a rental agreement summary which must contain a brief description of the manufactured home, the rented lot, rental amount, term, landlord's mailing address, tenant's mailing address, fees, security deposit, information regarding rent adjustment, community status, and method of notice;

(11) the grounds for termination, as described in this Act;

(12) a specific reference to this Act as the law governing the relationship between the landlord and the tenant regarding the lot rental;

(13) provisions requiring the landlord to:

a. maintain and re-grade the lot area where necessary and in good faith to prevent the accumulation of stagnant water thereon and to prevent the detrimental effects of moving water;

b. maintain the manufactured home community in such a manner as will protect the health and safety of residents, visitors, and guests;

c. identify each lot area in the community in such a way that each tenant can readily identify his or her area of responsibility and specify the duties of the tenant in maintaining his or her area of responsibility;

d. maintain the community, including common areas and rental lots not under rent, keeping it free of species of weeds or plant growth which are noxious or detrimental to the health of the residents;

e. make a good faith effort to exterminate insects, rodents, vermin, or other pests which are dangerous to the health of the residents when an infestation exists in the common areas of the community;

f. maintain all water, electrical, plumbing, gas, sewer, septic, and other utilities and services provided by the landlord in good working order, repairing these utilities and services within the earlier of [48 hours] after written notification of a utility or service problem, or as soon thereafter as is practicable if a repair within [48 hours] is not practicable;

g. when applicable, specify whether septic systems are to be maintained by the landlord or by the tenant;

h. respect the privacy of residents and agree not to enter into, under, or on the manufactured home without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property. However, the landlord may, with [72 hours]' notice, inspect any utility connections owned by the landlord or for which the landlord is responsible;

i. maintain all roads within the community in good condition;

j. comply with all federal, State, and local building codes;

k. allow the tenant freedom of choice in the purchase of goods and services other than utilities and related services subject to the limitations in subsection (b)(13) of this section;

(14) provisions requiring the tenant to:

a. keep the exterior of the manufactured home and the rented lot in a clean and sanitary condition;

b. refrain from storing outside on the lot occupied by the tenant's manufactured home building materials, furniture, or similar items usually not stored outside a home by a property owner in a residential area;

c. dispose of all rubbish, garbage, and other waste materials in a clean and sanitary manner;

d. abide by all reasonable written rules concerning use, occupation, and maintenance of the premises, and amendments thereto, as provided for in Section 21 of this Act;

e. abide by all reasonable written manufactured home standards, and amendments thereto, as provided for in Section 22 of this Act.

(b) A rental agreement for a lot in a manufactured home community may not contain:

(1) a provision whereby the tenant authorizes a person to confess judgment on a claim arising out of the rental agreement;

(2) a provision whereby the tenant agrees to waive or to forego any right or remedy provided by law;

(3) a provision whereby the tenant waives the right to a jury trial;

(4) a provision which permits the landlord to take possession of the rented lot or the tenant's personal property without the benefit of formal legal process;

(5) a provision which permits the landlord to collect a fee for late payment of rent without allowing the tenant to remit the rent in full a minimum of [5 days] beyond the date the rent is due;

(6) a provision which permits the landlord to impose for late payment of rent, based on a monthly payment, a fee in excess of the greater of [\$25] or [5 percent] of the rental payment specified in the rental agreement;

(7) a provision which permits the landlord to charge an amount in excess of [1 month]'s rent for a security deposit, unless mutually agreed to, or to retain the security deposit upon termination of the rental agreement even though the tenant has paid the rent and any fees or charges in full as of the date of termination and has caused no damage to the landlord's property;

(8) a provision which permits the landlord to collect a deposit in excess of one normal billing period for any governmental mandated charge which is the responsibility of the tenant and would ultimately become the responsibility of the landlord if not paid by the tenant, or to retain the deposit upon termination of the lease if the tenant has paid the mandated charge;

(9) a provision which prohibits the tenant from terminating the rental agreement upon a minimum of [30 days] notice when a change in the location of the tenant's current employment causes the tenant to commute [30 miles] farther from the manufactured home community than his or her current commuting distance from the community, or a provision which prohibits a tenant who is a member of the armed forces of the United States from terminating a rental agreement with less than [30 days] notice to the landlord if the tenant receives reassignment orders which do not allow at least [30 days] notice;

(10) a provision for a waiver of any cause of action against, or indemnification for the benefit of, the landlord by the tenant for any injury or harm caused to the tenant or to residents, guests, or visitors or to the property of the tenant, residents, guests, or visitors resulting from any negligence of the landlord or of a person acting for the landlord in the performance of the landlord's obligations under the rental agreement;

(11) a provision which denies to the tenant the right to treat a continuing, substantial violation by the landlord of any agreement or duty protecting the health, welfare, or safety of the tenant or residents as a constructive or actual eviction which would otherwise permit the tenant to terminate the rental agreement and to immediately cease payments thereunder; provided that the landlord fails to correct the condition giving rise to the violation or fails to cease the violation within a reasonable time after written notice is given to the landlord by the tenant;

(12) a provision which prohibits displaying a for-sale sign that advertises the sale of a manufactured home in a manufactured home community; however, the landlord may establish reasonable limitations as to the number of signs and the size and placement of signs;

(13) a provision which unreasonably limits freedom of choice in the tenant's purchase of goods and services, provided, however, that:

a. the landlord is not required to allow service vehicles to have access to the manufactured home community in such numbers or with such frequency that a danger is created or that damage beyond ordinary wear and tear is likely to occur to the infrastructure of the community;

b. the landlord may restrict trash collection to a single provider; and

c. the landlord may select shared utilities;

(14) a provision which permits the recovery of attorney's fees by either party in a suit, action, or proceeding arising from the tenancy;

(15) a provision which violates any federal, State, or local law;

(16) a provision which requires the tenant to:

a. sell or transfer a manufactured home to the landlord; or

b. buy a manufactured home from the landlord; or

c. sell a manufactured home through the services of the landlord;

(17) a provision which requires the tenant to provide the landlord with a key to the tenant's manufactured home or any appurtenances thereto;

(18) a provision which regulates the use of satellite dishes or television antennas that conflicts with federal law or FCC regulations;

(19) a provision which requires the tenant to accept automatic deduction of rent payments from his or her checking or other account;

(20) a provision which grants the landlord an option or right of first refusal to purchase the tenant's manufactured home;

(21) a provision which limits to a liquidated sum the recovery to which the tenant otherwise would be entitled in an action to recover damages for a breach by the landlord in the performance of the landlord's obligations under the rental agreement.

(c) If a court of competent jurisdiction finds that a tenant's rental agreement contains a provision in violation of subsection (b) of this section:

(1) the landlord shall remove the provision and provide all affected tenants by regular mail with either an amended rental agreement or corrective addendum to the rental agreement within [30 days] of the exhaustion of all appeals, if any are taken; and

(2) the landlord is liable to the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any.

(d) If a court of competent jurisdiction finds that a landlord has willfully included in the rental agreement a provision in violation of subsection (b) of this section, the tenant is entitled to recover [3 months]' rent in addition to an award under subsection (c) of this section.

(e) A rental agreement must be executed before a tenant occupies a lot.

(f) A landlord may not offer a lot for rent in a manufactured home community unless the lot conforms to the applicable State, county, or municipal statutes, ordinances, or regulations under which the manufactured home community was created, or under which the manufactured home community currently and lawfully exists.

(g) A violation of subsection (f) of this section is punishable by a fine of not more than [\$1,000].

Section 8. *[Term of Rental Agreement; Renewal of Rental Agreement.]*

(a) The term of a rental agreement for a lot in a manufactured home community must be:

(1) [one year]; or

(2) a shorter or longer term that is mutually agreed upon by the parties and is designated in writing within the rental agreement.

(b) Upon the expiration of the term of a rental agreement, the rental agreement must be automatically renewed by the landlord for the same term and with the same provisions as the

original agreement, with the exception that modified provisions relating to the amount and payment of rent are permitted, and, with the mutual agreement of all parties to the rental agreement, other modifications not prohibited by law, unless:

(1) the tenant notifies the landlord in writing, a minimum of [60 days] prior to the expiration of the rental agreement, that the tenant does not intend to renew it, or a shorter or longer period of time as is mutually agreed upon by the parties; or

(2) the landlord notifies the tenant in writing, a minimum of [60 days] prior to the expiration of the rental agreement, that the agreement will not be renewed for due cause, as described in Section 12 of this Act.

Section 9. [*Fees; Services; Utility Rates.*]

(a) A 'fee' or 'charge' is a monetary obligation, other than lot rent, designated in a fee schedule pursuant to subsection (b) of this section and assessed by a landlord to a tenant for a service furnished to the tenant, or for an expense incurred as a direct result of the tenant's use of the premises or of the tenant's acts or omissions. A fee or charge may be considered as rent for purposes of termination of a rental agreement, summary possession proceedings, or for other purposes if specified in [insert citation].

(b) A landlord must clearly disclose all fees in a fee schedule attached to each rental agreement.

(c) A landlord may assess a fee if the fee relates to a service furnished to a tenant or to an expense incurred as a direct result of the tenant's use of the premises. However, a fee that is assessed due to the tenant's failure to perform a duty arising under the rental agreement may be assessed only after the landlord notifies the tenant of the failure and allows the tenant [5 days] after notification to remedy or correct the failure to perform. A tenant's failure to pay the fee within [5 days] of notification is a basis for termination of the rental agreement pursuant to Section 12 of this Act.

(d) A prospective tenant in a manufactured home community may be required to pay an application fee to be used by the landlord to determine the prospective tenant's credit worthiness. A landlord may not charge an application fee that exceeds the greater of [10 percent] of the monthly lot rent or [\$50]. A landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the prospective tenant for the full amount paid by the prospective tenant, and shall maintain for a period of at least [2 years] complete records of all application fees charged and the amount received for each fee. If a landlord unlawfully demands or charges more than the allowable application fee, the prospective tenant is entitled to damages equal to double the amount demanded or charged as an application fee by the landlord.

(e) If a landlord pays a tenant's utility charge to a third party due to the tenant's failure to do so, the charge is considered a pass-through utility charge. In addition to any late charge paid by the landlord to the third party, the landlord may assess a third-party-payment fee not to exceed the greater of [5 percent] of the total payment by the landlord to the third party or [\$25].

(f) A landlord may assess a late-payment fee for the late payment of rent if:

(1) the rent is not paid within [5 days] after the due date specified in the rental agreement; and

(2) the rental agreement provides for a late-payment fee.

(g) A landlord may assess an optional-user fee for the use of designated facilities or services. Failure of a tenant to pay an optional-user fee for requested use of a facility or service may not be the basis for termination of the rental agreement. However, continued use of the requested facility or service without paying the optional-user fee may result in termination of the rental agreement pursuant to Section 12 of this Act. Optional-user fees include, but are not limited to, fees for the use of a swimming pool, marine facilities, and tennis courts.

(h) The amount of an optional-user fee must be reasonably related to the cost of providing the facility or service upon which the fee is based.

(i) A fee may not be increased more than once during any [twelve-month] period. A utility rate may be adjusted as provided in subsection (j) of this section. A landlord shall notify a tenant in writing of any fee increase or additional fee at least [60 days] prior to the effective date of the increase or addition. A fee increase or an additional fee is unenforceable unless proper written notice has been given to the tenant.

(j) A landlord may charge a tenant for utilities provided by the landlord to the tenant if specified in the rental agreement. The rate charged by a landlord for a utility may not exceed the utility's retail consumer rate, and the rate charged by the landlord may be adjusted without notice on a monthly basis.

(k) A landlord may not assess an entrance or exit fee. An entrance fee is any fee assessed by a landlord to a tenant prior to the tenant's occupancy of a rented lot, except for an application fee or a security deposit, or for those fees or charges for utilities, for direct services actually rendered, or for the use of facilities, all of which must be identified and described in the rental agreement or in a separate notice pursuant to Section 7 of this Act. An exit fee is a fee assessed by a landlord to a tenant immediately prior to or after the tenant's final departure from the rented lot, except for those fees or charges for direct services actually rendered by the landlord which would not otherwise be provided without charge in the normal course of business.

(l) If a utility, facility, or service previously provided pursuant to the rental agreement is discontinued, the landlord shall adjust the tenant's rent, charge, or fee payment by deducting the landlord's direct operating costs of providing the discontinued utility, facility, or service. An adjustment is determined as follows:

(1) No less than [60 days] prior to the discontinuance of the utility, facility, or service, the landlord shall notify all affected tenants of the discontinuance, and include in the notification an explanation of the discontinuance and the reduction in the direct operating cost, if any, associated with the discontinuance.

(2) Within [10 days] after the landlord's notice pursuant to paragraph (1) of this subsection, the tenants may form a committee not to exceed [five] members. The committee and the landlord shall meet together at a mutually convenient time and place to discuss the discontinuance of the utility, facility, or service.

(3) At the meeting, the landlord shall disclose and explain all material factors for the proposed discontinuation of the utility, facility, or service, together with supporting documentation. The reduction in the direct operating cost of the utility, facility, or service, as determined by an independent public accountant or certified public accountant paid for by the landlord, is binding upon both the landlord and the tenants.

Section 10. *[Termination of Rental Agreement by Tenant during First Month of Occupancy; During First 18 Months of Occupancy.]*

(a) If a landlord fails to substantially comply with the provisions of a rental agreement, or if there is a material non-compliance with this Act or any statute, ordinance, or regulation governing the landlord's maintenance or operation of the manufactured home community, a tenant may, upon written notice to the landlord, terminate the rental agreement and vacate the rented lot by removing his or her manufactured home and all personal possessions at any time during the first month of occupancy. The tenant has no further obligation to pay rent after the date of vacating the lot. A tenant retains the right to terminate a rental agreement beyond the first month of occupancy if the tenant remains in possession of the lot in reliance on the written promise by the landlord to correct the condition or conditions which would justify termination of the agreement by the tenant during the first month of occupancy.

(b) If a condition exists which deprives a tenant of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement, the tenant may notify the landlord in writing of the condition, and, if the landlord does not remedy the condition within [15 days] from the date of mailing, the tenant may terminate the rental agreement and vacate the rented lot by removing his or her manufactured home and all personal possessions. The tenant has no further obligation to pay rent after the date of vacating the lot. Notice pursuant to this subsection need not be given if the condition renders the premises uninhabitable or poses an imminent threat to the health, safety, or welfare of the tenant or a resident of the tenant's manufactured home.

(c) A tenant may not terminate a rental agreement pursuant to this section for a condition caused by lack of due care by the tenant, a resident of the tenant's manufactured home, or any other person on the premises with the tenant's or resident's consent.

(d) If a condition referred to in subsection (a) or (b) of this section was caused by the landlord, the tenant may recover any damages sustained as a result of the condition, including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing while the manufactured home is uninhabitable or while an imminent threat to health, safety, or welfare exists, or while the tenant is deprived of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement prior to the termination of the rental agreement by the tenant, and for a reasonable length of time following the termination of the rental agreement.

(e) If a landlord or the landlord's authorized representative intentionally misrepresents a material fact regarding a manufactured home community, the scope or extent of services provided by the landlord, or a provision of a rental agreement in a brochure, newspaper, radio or television advertisement, or other document or advertisement, for the purpose of inducing a tenant to enter into a rental agreement, and the tenant reasonably relies upon the misrepresentation to the tenant's detriment when entering into the rental agreement, the tenant has the right to terminate the rental agreement within [18 months] of execution of the rental agreement.

Section 11. *[Termination or Nonrenewal of Rental Agreement by Landlord; Due Cause: Change in Land Use.]*

(a) A landlord may terminate a rental agreement for a lot in a manufactured home community before it expires or may refuse to renew an agreement only for due cause. Due cause means:

(1) an intended change in the use of the land of a manufactured home community as specified in subsection (b) of this section; or

(2) the grounds for termination pursuant to Section 12 of this Act.

(b) If a change is intended in the use of land on which a manufactured home community or a portion of a manufactured home community is located and the landlord intends to terminate or not renew a rental agreement, the landlord shall:

(1) provide all tenants affected with at least a [one-year] termination or non-renewal notice, which informs the tenants of the intended change of use and of their need to secure another location for their manufactured homes. The landlord may not increase the lot rental amount of an affected tenant after giving notice of a change in use;

(2) give all notice required by this section in writing. All notice must be posted on the affected tenant's manufactured home and sent to the affected tenant by certified mail, return receipt requested, addressed to the tenant at an address specified in the rental agreement or at the tenant's last known address if an address is not specified in the rental agreement;

(3) provide, along with the [one-year] notice required by paragraph (1) of this subsection, a relocation plan (Plan) to each affected tenant of the manufactured home

community. The Plan must be written in a straightforward and easily comprehensible manner and include the following:

a. the location, telephone number, and contact person of other manufactured home communities, known to the landlord after reasonable effort, within a [25-mile] radius of the manufactured home community where the change of land use is intended;

b. the location, telephone number, and contact person of housing for tenants with disabilities and for older tenants, known to the landlord after reasonable effort, within a [25-mile] radius of the manufactured home community where the change of land use is intended;

c. a listing, known to the landlord after reasonable effort, of government and community agencies available to assist tenants with disabilities and older tenants;

d. a basic description of relocation and abandonment procedures and requirements;

e. a preliminary indication of whether a tenant's manufactured home can or cannot be relocated;

f. a copy of this section of this Act;

(4) submit the Plan to the state [Manufactured Home Relocation Authority] at the same time that the Plan is submitted to the affected tenants;

(5) update the Plan and distribute the updated Plan every [three months]. If the landlord fails to provide a quarterly update to each affected tenant and to the [Authority], the date of termination of the tenant's rental agreement will be extended by [one month] for each omitted quarterly update; and

(6) during the relocation process observe and comply with all federal, State, and local laws relating to older tenants and tenants with disabilities.

(c) If a landlord has given the required notice to a tenant and has fulfilled all other requirements of this Act, the failure of the [Authority] to perform its duties or authorize payments does not prevent the landlord from completing the change in use of land.

Section 12. [*Termination or Nonrenewal of Rental Agreement by Landlord; Due Cause: Noncompliance.*]

(a) A landlord may terminate a rental agreement with a tenant immediately upon written notice if the tenant does not comply with the terms of the rental agreement or the requirements of this Act and the noncompliance is the result of:

(1) clear and convincing evidence that conduct of the tenant or of a resident of the tenant's manufactured home caused, is causing, or threatens to cause, immediate and irreparable harm to any person or property in the manufactured home community;

(2) conviction of a crime or adjudication of delinquency committed by a tenant or by a resident of the tenant's manufactured home, the nature of which at the time of the crime or act of delinquency caused immediate and irreparable harm to any person or property in the manufactured home community;

(3) clear and convincing evidence of a material misrepresentation on the tenant's application to rent a lot in the manufactured home community which, if the truth were known, would have resulted in the denial of the application;

(4) the failure of the tenant to provide proper notification to the landlord prior to selling or transferring to a buyer or transferee title of a manufactured home which the buyer or transferee intends to retain in the manufactured home community, pursuant to Section 24(c) of this Act; or

(5) the failure of a tenant to bring his or her manufactured home into compliance with written standards pursuant to Sections 22(b) or 24(e) of this Act.

(b) A landlord may terminate a rental agreement with a tenant by providing prior written notice as follows:

(1) If the tenant's noncompliance with the terms of the rental agreement or the requirements of this Act involves conduct of the tenant, of a resident of the tenant's manufactured home, or of a guest or visitor of the tenant or resident which results in the disruption of the rights of others entitled to the quiet enjoyment of the premises, the landlord shall notify the tenant in writing to immediately cause the conduct to cease and not allow its repetition. The notice must specify the conduct which formed the basis for the notice and notify the tenant that if substantially the same conduct recurs within [6 months], whether or not the [6-month] period falls within [one] lease period or overlaps [two] lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(2) If the noncompliance is based upon a condition on or of the premises of the manufactured home community, the landlord shall notify the tenant in writing, specifying the condition constituting the noncompliance and allowing the tenant [12 days] from the date of mailing or personal service to remedy the noncompliance. If the tenant remains in noncompliance at the expiration of the [12-day] period, whether or not the [12-day] period falls within [one] lease period or overlaps [two] lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(3) If rent, which includes late fees for rent, other fees and charges, including utility charges, and the [Trust Funds] assessment, is not received by the landlord by the [fifth] day after the due date or during the grace period stated in the rental agreement, whichever is longer, the landlord shall notify the tenant in writing, demanding payment and stating that unless the required payment is made within [seven] days from the date of mailing or personal service, the rental agreement will be terminated. If the tenant remains in default after the [7-day] period, whether or not the [7-day] period falls within [one] lease period or overlaps [two] lease periods, the landlord may terminate the rental agreement and bring an action to recover the rent due and for summary possession.

(c) Whether or not repeated instances of noncompliance fall within [one] lease period or overlap [two] or more lease periods, if there are repeated instances of noncompliance by the tenant with a provision of the rental agreement, with any rule or regulation material to the rental agreement, or with a provision of this Act, even when corrected by the tenant, a landlord may immediately terminate the rental agreement and bring an action for summary possession and any monies due, or may refuse to renew the agreement pursuant to Section 8 of this Act. 'Repeated instances of noncompliance' include:

(1) failure of the tenant on [4] separate occasions within [12] consecutive payment periods, to make a rent payment by the [5th] day after the due date or during the grace period stated in the rental agreement, whichever is longer, resulting in notice being sent to the tenant pursuant to subsection (b)(3) of this section;

(2) failure of the tenant on [2] separate occasions within [12] consecutive payment periods to reimburse a landlord within [7] days of notice from the landlord to the tenant that the landlord paid the tenant's utility charge;

(3) tender by the tenant on [2] separate occasions within [12] consecutive payment periods of a bank draft or check which is dishonored by a financial institution for any reason, except for a mistake by the financial institution;

(4) [four] separate incidents of noncompliance as described in subsection (b)(1) or (2) of this section within a [12-month] period; or

(5) any combination of [four] separate incidents of noncompliance as described in any paragraph of this subsection within a [12-month] period.

(d) A landlord may not terminate a rental agreement or refuse to renew a rental agreement pursuant to subsection (c)(1) of this section unless the landlord notifies the tenant after the [3rd] separate occasion within [12] consecutive payment periods that a subsequent incident of noncompliance described in subsection (c)(1) of this section may result in either the immediate termination of the rental agreement or the non-renewal of the rental agreement at its expiration.

(e) In an action for summary possession based on nonpayment of rent, the tenant is entitled to raise by defense or counterclaim any claim against the landlord that is related to the rental of the lot.

(f) A notice sent to a tenant advising the tenant that the rental agreement is terminated or will be terminated or will not be renewed must specify the reasons for such action in sufficient detail so that the dates, places, and circumstances concerning the termination are clear. Mere reference to or recital of the language of this section is not sufficient.

(g) A landlord's right to terminate a rental agreement prior to the expiration of the agreement or right to refuse to renew at the expiration of the agreement does not arise until the landlord has complied with the applicable notice provision upon which the landlord is relying for the termination or non-renewal of the agreement.

Section 13. *[Manufactured Home Relocation Authority.]*

(a) The state [Manufactured Home Relocation Authority ('Authority')] is administered by a [board of directors] made up of [nine] members, [four] of whom are appointed by the [Governor] from a list of at least [10] nominees submitted by the largest not-for-profit association representing manufactured home owners in this State. Of the [four], one must be an owner and resident of a manufactured home located in [County], one must be an owner and resident of a manufactured home in [County], and one must be the owner and resident of a manufactured home in [County]. The [fourth] must be an owner of, but need not necessarily reside in, a manufactured home located in this State. Another [four] members are appointed by the [Governor] from a list of at least [10] nominees submitted by the largest not-for-profit association representing the manufactured home industry in this State. [Two out of 4] of these members must reside in this State, and each member must be either a community owner or an agent or designated representative of a community owner. [One] additional member is appointed by the [Governor] from the public-at-large. There is no requirement that the at-large member reside in this State. All members of the [board of directors] serve for [6-year] terms. Each term ends on [June 30]. The terms are staggered so that no more than the terms of [3 members] end on any [June 30]. The [Governor] shall designate one member of the [board of directors] as the [chairperson of the board].

(b) (1) The [board of directors of the Authority] may employ or retain such persons as are reasonable and necessary to perform the administrative and financial transactions and responsibilities of the [Authority] and to perform other necessary and proper functions not prohibited by law. The [Authority] is responsible for all direct and indirect costs for its operations, including, but not limited to, receipts and disbursements, personnel, rental of facilities, and reimbursement to other State agencies for services provided and, therefore, must be fiscally revenue-neutral.

(2) Members of the [board of directors of the Authority] may be reimbursed from monies of the [Authority] for actual and necessary expenses incurred by them as members, but may not otherwise be compensated for their services.

(3) There is no civil liability on the part of, and no civil cause of action of any nature against, the [Authority], an agent or employee of the [Authority], the [board of directors of the Authority], or a member of the [board of directors of the Authority] for any act or

omission in the performance of powers and duties under this Act unless the act or omission complained of was done in bad faith or with gross or wanton negligence.

(4) Meetings of the [board of directors of the Authority] are subject to the provisions of the [state open meetings law]. All meetings must be conducted at a central location in the State, unless agreed to for a given meeting by [75 percent] of the [board members].

(c) The [Authority's board of directors] shall:

(1) adopt a plan of operation and articles, bylaws, and operating rules;

(2) establish procedures under which applicants for payments from the [Authority] may be approved;

(3) authorize payments and adjust, eliminate, or reinstate the [Trust Fund] assessment established in Section 14 of this Act only if a minimum of [75 percent] of the members of the [board of directors] approve the payments or assessments.

(d) The [Authority] and its [board of directors] may:

(1) sue or be sued;

(2) borrow from private finance sources and issue notes or vouchers in order to meet the objectives of the [Authority] and those of the [Trust Fund] established in Section 14 of this Act.

Section 14. *[Manufactured Home Relocation Trust Fund.]*

(a) The [Manufactured Home Relocation Trust Fund (Trust Fund)] is established in the the [Division of Revenue of the Department of Finance] for exclusive use by the [Manufactured Home Relocation Authority] to fund the [Authority's] administration and operations. All interest earned from the investment or deposit of monies in the [Trust Fund] must be deposited into the [Trust Fund].

(b) Monies in the [Trust Fund] may be expended only:

(1) to pay the administrative costs of the [Authority]; and

(2) to carry out the objectives of the [Authority] by assisting manufactured home owners who are tenants in a manufactured home community where the community owner intends to change the use of all or part of the land on which the community is located or where the community owner intends to convert the manufactured home community to a manufactured home condominium community or to a manufactured home cooperative community and by assisting manufactured home community owners with the removal and/or disposal of non-relocatable or abandoned manufactured homes.

(c) The [Trust Fund] terminates on [July 1, 2014] unless terminated sooner or extended by the [General Assembly].

(d) The cap on the [Trust Fund] is [\$10 million]. The cap may be adjusted, eliminated, or reinstated by the [board of directors of the Authority] at any time, subject to the voting requirements of Section 13(c)(3) of this Act.

(e) If the [Trust Fund] ceases to exist, the funds held at the time of dissolution must be liquidated as follows:

(1) 50 percent of the total funds, on a per capita basis, to tenants of rented lots in manufactured home communities in this State who have occupied the lots for at least the [12 months] immediately prior to the time of the dissolution; and

(2) 50 percent of the total funds to landlords owning rented lots at the time of dissolution, prorated on the number of lots actually rented by the landlords for at least the [12 months] immediately prior to the time of dissolution.

(f) (1) The [board of directors of the Authority] shall set a [\$3.00] monthly assessment for deposit in the [Trust Fund] for each rented lot in a manufactured home community. The [board] may adjust, eliminate, or reinstate the assessment, and shall notify

landlords and tenants of each adjustment, elimination, or reinstatement pursuant to [board] regulations. If the [board] does not adopt an adjusted assessment on or before [January 31, 2006], the [board] shall eliminate the fee in its entirety.

(2) One-half of the monthly assessment set pursuant to paragraph (1) of this subsection is the obligation of the tenant of the rented lot, and one-half of the assessment is the obligation of the landlord. The landlord shall collect the tenant's portion of the assessment on a monthly basis as additional rent. The landlord shall remit to the [Trust Fund] both its portion and the tenant's portion of the assessment on a quarterly basis. The landlord is responsible for safeguarding all assessments it collects. Failure by a tenant to pay to the landlord the tenant's portion of the assessment as additional rent is grounds for termination of the rental agreement pursuant to Section 12 of this Act. The [board of directors] may place a lien against the property of any person who is required to pay the assessment to the [Trust Fund], but fails to do so. An assessment is not due or collectable for a vacant lot.

(3) If a lot is rented for any portion of a month, the full monthly assessment must be paid to the [Trust Fund].

(4) If a rental agreement contains a capping provision which limits the amount by which rent may be increased, the [Trust Fund] assessment is deemed not to be rent for purposes of rent increases.

(g) The [Authority] may not for any reason, including age, income level, or geography, exempt any landlord or tenant from paying the [Trust Fund] assessment.

(h) The [Trust Fund] must be audited annually. If the [State Auditor's Office] performs the audit, the [Authority] shall pay to the State from the [Trust Fund] the cost of the audit. The completed audit must be made available to the public by placing it on a website, by offering it as a hard copy for a fee which reflects reasonable reproduction cost, or in some other manner determined by the [Authority.]

(i) In addition to providing for an annual audit pursuant to subsection (h) of this section, the [Authority] shall make available to the public, at least on a quarterly basis, the amount of the payment made to each tenant and landlord, along with a description of the property related to the payment and the reason for the payment.

Section 15. *[Relocation Expenses; Payments for Non-Relocatable Homes.]*

(a) If a tenant is required to relocate due to a change in use or conversion of the land in a manufactured home community as set forth in Section 11(b) and complies with the requirements of this section, the tenant is entitled to payment from the [Trust Fund] of the lesser of:

(1) the actual, reasonable expenses of moving the manufactured home and existing appurtenances to a new location within a [25-mile] radius of the vacated manufactured home community including, but not limited to, the cost of taking down, moving, and setting up the home in a new location; or,

(2) the maximum relocation payment, which must be established by the [Authority's board of directors]. The determination by the [board] of the amount of a relocation payment is final and may not be appealed.

(b) A tenant is not entitled to compensation for relocation under subsection (a) of this section if:

(1) the landlord moves the tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community at the landlord's expense;

(2) the tenant is vacating the manufactured home community and so informed the landlord before notice of the change in use was given;

(3) the tenant abandons the manufactured home as set forth in subsection (f) of this section; or

(4) the tenant has failed to pay the tenant's share of the [Trust Fund] assessment during the course of the tenancy.

(c) Compensation for non-relocatable homes.

(1) A tenant is entitled to compensation from the [Trust Fund] for his or her manufactured home if the home, which is on a lot subject to a change in use of land, cannot be relocated. The [board of directors of the Authority] shall establish criteria for determining whether a home can or cannot be relocated. The criteria must include:

(i) availability of a replacement home site; and

(ii) feasibility of physical relocation.

(2) If the [board] determines that a manufactured home cannot be relocated pursuant to paragraph (1) of this subsection, the [board] shall provide compensation to the tenant. The amount of compensation, as determined by a [board]-approved, certified manufactured home appraiser, is the fair market value of the home as sited and any existing appurtenances, but excludes the value of the underlying land. However, the amount of compensation may not exceed an amount set by the [board] and which may be adjusted from time to time by the [board], to be paid in exchange for the title of the non-relocatable manufactured home. Prior to receiving payment for a non-relocatable home, the tenant must deliver to the [board] the current title to the home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release. The [board] shall then relinquish the title to the landlord to facilitate the removal and/or disposal of the home from the manufactured home community. For the purpose of compensation to the landlord pursuant to Section 16 of this Act, a home that cannot be relocated is deemed abandoned. The determination of the [board] as to the amount of compensation is final and may not be appealed.

(d) Except as provided for abandonment in subsection (f) of this section, in order to obtain payment from the [Trust Fund] for the relocation of a manufactured home, a tenant must submit to the [Authority], with a copy to the landlord, an application for payment which includes:

(1) a copy of the notice of termination or nonrenewal of the rental agreement due to change in use of land, as required by Section 11(b)(1) of this Act; and

(2) a contract with a licensed moving or towing contractor for the moving expenses for the manufactured home.

(e) The [Authority] shall approve or reject payment to a moving or towing contractor within 30 days after receipt of the information required by this section, and forward a copy of the approval or rejection to the tenant, with a voucher for payment if payment is approved.

(f) In lieu of collecting payment from the [Trust Fund] pursuant to subsection (a) of this section, a tenant may abandon the manufactured home in the manufactured home community and collect from the [Trust Fund] [\$1,500] for a single-section home or [\$2,500] for a multi-section home, as long as the tenant delivers to the [Authority] a current [state] title to the manufactured home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release.

Section 16. *[Payment of Funds to Landlord for Removal and/or Disposal of Abandoned Homes.]*

(a) A landlord is entitled to receive from the [Trust Fund] payment in an amount determined by the [board] to be sufficient to remove and/or dispose of a non-relocatable or abandoned manufactured home pursuant to Section 15(c) and (f) of this Act.

(b) Payment for removal and/or disposal of a manufactured home pursuant to subsection (a) of this section must be authorized by the [Authority] and made in the form of a voucher issued to the [Division of Revenue of the Department of Finance], directing the [Division] to issue a check in a designated amount to the landlord.

(c) If the [Trust Fund] does not have sufficient monies to make a payment to a landlord pursuant to this section, the [Authority] shall issue a written promissory note to the landlord for funds due and owing. Promissory notes may be redeemed in order of issuance of the notes as additional monies come into the [Trust Fund].

(d) If a landlord realizes a profit from the removal and/or disposal of a manufactured home, the landlord shall reimburse the [Trust Fund] for any profit gained by the landlord pertaining to that home.

(e) A landlord may not receive payment from the [Trust Fund] if the landlord has failed to pay the landlord's share of the total [Trust Fund] assessment during the course of tenancies or has failed to remit the tenants' share as required by Section 14(f)(2) of this Act.

(f) It is a [class A misdemeanor] for a landlord or a landlord's agent to file any notice, statement, or other document required under this section which is false or contains a material misstatement of fact.

Section 17. *[Payment of Funds to Homeowners.]*

(a) When a payment to a tenant is authorized by the [Authority], payment must be made in the form of a voucher issued to the [Division of Revenue of the Department of Finance], directing the [Division] to issue a check in a designated amount to the named tenant.

(b) If the [Trust Fund] does not have sufficient monies to make a payment to a tenant pursuant to this section, the [Authority] shall issue a written promissory note to the tenant for funds due and owing. A promissory note may be redeemed in order of issuance of the notes as additional monies come into the [Trust Fund].

(c) It is a [class A misdemeanor] for a tenant or a tenant's agent to file any notice, statement, or other document required under this section which is false or contains a material misstatement of fact.

Section 18. *[Holdover Remedies After Rental Agreement Terminates, Expires, or Is Not Renewed.]* Following a determination by a court of competent jurisdiction that a landlord is entitled to possession of a rented lot in a manufactured home community, if the tenant continued in and/or continues in possession of the lot after the date of termination, expiration, or non-renewal of the rental agreement without the consent of the landlord, the tenant is liable for, and the landlord is entitled to receive, a payment of double the periodic rent under the terminated, expired, or non-renewed rental agreement, but only if the tenant held over and/or holds over in bad faith. Double-rent is computed and prorated for each day the tenant remained in and/or remains in possession of the lot after the date on which the rental agreement terminated, expired, or was not renewed. If a holdover is determined to be in good faith, the landlord is entitled to a payment of the periodic rent under the rental agreement, computed and prorated for each day the tenant remained in and/or remains in possession of the lot after the date on which the rental agreement terminated, expired, or was not renewed.

Section 19. *[Effect of Unsigned Rental Agreement.]*

(a) If the landlord does not sign a written rental agreement which has been signed and tendered to him or her by the tenant, acceptance of rent from the tenant without reservation by the landlord gives to the rental agreement the same effect as if it had been signed by the landlord.

(b) If the tenant does not sign a rental agreement which has been signed and tendered to him or her by the landlord, acceptance of possession of the rented lot and payment of rent

without reservation give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Even if a rental agreement which is given effect by the operation of this section provides for a term longer than [1 year], it operates to create only a [1-year] term.

Section 20. [*Security Deposits; Pet Security Deposits.*]

(a) (1) A landlord may require a tenant to pay a security deposit if provided for in the rental agreement.

(2) A landlord may not require a tenant to pay a security deposit in an amount in excess of [1 month's] rent unless the tenant agrees to do so and the full amount is specified in the rental agreement.

(b) (1) Every security deposit paid to a landlord must be placed by the landlord in an escrow bank account in a federally-insured financial institution with an office that accepts deposits within the State. The account must be designated as a security-deposits account and may not be used by the landlord for any purposes other than those described in subsection (c) of this section. The landlord shall disclose in the rental agreement the location of the security deposit account. If the landlord changes the location of the security deposit account, the landlord shall notify each tenant of the new location within [30 days] of the change. Security deposit principal must be held and administered for the benefit of the tenant, and the tenant's claim to such money has priority over that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(2) A security deposit paid pursuant to a new rental agreement signed on or after the effective date of this Act must be immediately escrowed pursuant to paragraph (1) of this subsection. A security deposit paid as provided for in an existing rental agreement signed prior to the effective date of this Act must be escrowed pursuant to paragraph (1) of this subsection on or before [June 30, 2005].

(c) The purposes of a security deposit are:

(1) to reimburse a landlord for actual damages which exceed normal wear and tear to the landlord's property and which were caused by the tenant;

(2) to pay a landlord for all rent, rent arrearage, fees, charges, [Trust Fund] assessments, and other monies due and owed to the landlord by the tenant;

(3) to reimburse a landlord for all reasonable expenses incurred in renovating and re-renting the landlord's property caused by the premature termination of the rental agreement by the tenant, except for termination pursuant to Section 10 of this Act.

(d) Within [20 days] after the expiration or termination of a rental agreement, the landlord shall provide the tenant with an itemized list of damages, if any, to the landlord's property and the estimated cost of repair for each item. The landlord shall tender payment for the difference between the security deposit and the cost for repair of damage to the landlord's property. Failure to do so constitutes an acknowledgment by the landlord that no payment for repair of damage is due. A tenant's acceptance of a payment submitted with an itemized list of damages constitutes agreement on the damages as specified by the landlord, unless the tenant objects in writing within 10 days of receipt of the landlord's tender of payment to the amount withheld by the landlord.

(e) If a landlord is not entitled to all or any portion of a security deposit, the landlord shall remit to the tenant within [20 days] of the expiration or termination of the rental agreement the portion of the security deposit to which the landlord is not entitled.

(f) Penalties.

(1) Failure by a landlord to remit to a tenant the security deposit or the difference between the security deposit and the cost for repair of damage within [20 days] from the

831 expiration or termination of the rental agreement entitles the tenant to double the amount
832 wrongfully withheld.

833 (2) Failure by a landlord to disclose the location of the security deposit account
834 within [20 days] of a written request by a tenant or failure by a landlord to deposit a security
835 deposit in a federally-insured financial institution with an office that accepts deposits within the
836 State results in forfeiture of the security deposit by the landlord to the tenant. Failure by a
837 landlord to return the full security deposit to a tenant pursuant to this paragraph within [20 days]
838 from the effective date of forfeiture entitles the tenant to double the amount of the security
839 deposit.

840 (g) All communications and notices required under this section must be directed to a
841 landlord at the address specified in the rental agreement and to a tenant at an address specified in
842 the rental agreement or at a forwarding address, if a forwarding address was provided to the
843 landlord in writing by the tenant. Failure by a tenant to provide a forwarding address relieves the
844 landlord of the responsibility to give notice pursuant to this section and removes the landlord's
845 liability for double the amount of the security deposit. However, the landlord continues to be
846 liable to the tenant for any unused portion of the security deposit if, within one year from the
847 expiration or termination of the rental agreement, the tenant makes a claim in writing to the
848 landlord.

849 (h) Pet deposits.

850 (1) A landlord may require a tenant to pay a pet security deposit for each pet if
851 provided for in the rental agreement. Damage to a landlord's property caused by a tenant's pet
852 must first be deducted from the pet security deposit. If the pet deposit is insufficient, pet damages
853 may be deducted from the tenant's non-pet security deposit.

854 (2) If a non-pet security deposit is insufficient to cover non-pet damages described
855 in subsection (c) of this section, damages may be deducted from the pet security deposit even if
856 such damages were not caused by a pet. A pet security deposit is a type of security deposit and is
857 subject to subsections (b), (d), (e), (f), and (g) of this section.

858 (3) A landlord may not require a tenant to pay a pet security deposit in an amount
859 in excess of [1 month's] rent, unless the tenant agrees to do so and the full amount is specified in
860 the rental agreement.

861 (4) A landlord may not require a pet security deposit from a tenant if the pet is a
862 certified and trained support animal for a person with a disability who is a resident of a
863 manufactured home on a rented lot.

864 (5) Notwithstanding legal ownership of a pet, for purposes of this Act, a pet that
865 resides in a manufactured home, and/or on the lot where the home is located in a manufactured
866 home community, is deemed owned and controlled by a tenant who resides in the manufactured
867 home.

868 (i) If a rental agreement so specifies, a landlord may increase a security deposit
869 commensurate with an increase in rent. If an increase of the security deposit exceeds [10 percent]
870 of the monthly rent, the tenant may choose to pay the increase in the security deposit prorated
871 over the term of the rental agreement but not to exceed [12 months], except in the case of a
872 month-to-month tenancy, in which case payment of the increase may not be prorated over a
873 period in excess of [4 months] unless mutually agreed to by the landlord and tenant.

874
875 Section 21. *[Rules.]*

876 (a) A landlord may promulgate reasonable written rules concerning the occupancy and
877 use of the premises and the use of the landlord's property, and concerning the behavior of
878 manufactured home community tenants, residents, guests, and visitors, provided that the rules
879 further any of the following purposes:

- 880 (1) promoting the health, safety, or welfare of tenants, residents, guests, or
881 visitors;
882 (2) promoting the residents' quiet enjoyment;
883 (3) preserving the property values of tenants and/or landlords;
884 (4) promoting the orderly and efficient operation of the manufactured home
885 community;
886 (5) preserving the tenants' and/or landlords' property from abuse.

887 (b) A landlord may not arbitrarily or capriciously enforce a rule. A landlord may choose
888 not to enforce a rule based upon the documented special needs or hardship of a tenant or resident
889 without waiving the right to the later enforcement of the rule as to that tenant or resident or any
890 other tenant or resident.

891 (c) A landlord may amend an existing rule at any time, but the amended rule is not
892 effective until the date specified in the amended rule or [60 days] after the landlord delivers to
893 the tenant written notice of the amended rule, whichever is later.

894 (1) Within [10 days] of the landlord's notice of an amended rule, a committee, not
895 to exceed [five] members, may be chosen by any method agreed to by the tenants of the
896 manufactured home community.

897 (2) The committee shall meet with the landlord at a mutually convenient time and
898 place to discuss the amended rule.

899 (3) At the meeting, the landlord shall disclose and explain all material factors and
900 present any supporting documentation for the amended rule.

901
902 Section 22. [*Manufactured Home Standards.*]

903 (a) Standards for manufactured homes of new tenants.

904 (1) A landlord shall adopt reasonable written standards regarding the size, age,
905 quality, appearance, construction, materials, and safety features for a manufactured home
906 entering the landlord's manufactured home community.

907 (2) A landlord may refuse to allow the placement of a manufactured home on a lot
908 in the manufactured home community if the manufactured home does not comply with the
909 reasonable written standards adopted pursuant to paragraph (1) of this subsection.

910 (b) Standards for manufactured homes not for sale. A tenant who is residing in a
911 manufactured home community at the time a standard is promulgated must bring his or her
912 manufactured home into compliance with the standard within [9 years] of the promulgation of
913 the standard or be subject to a summary possession proceeding pursuant to [insert citation].
914 However, if a change in a manufactured home is necessary to protect life or for other safety
915 reason, the landlord may require that the change be made in less than [9 years]. Once work
916 begins on the manufactured home, the necessary change must be completed within a reasonable
917 time.

918 (c) Standards for manufactured homes for resale or transfer of title and retention in the
919 manufactured home community.

920 (1) A landlord shall adopt reasonable written standards regarding the resale or
921 transfer of title of a manufactured home intended for retention in the landlord's manufactured
922 home community. The standards must relate only to appearance, maintenance, safety, and
923 compliance with State and local housing, building, or health codes, and the 1976 HUD Code. A
924 landlord may not issue standards in which the age of a manufactured home is the exclusive or
925 dominant criterion prohibiting the home from being sold and retained in the community after the
926 sale is consummated.

927 (2) If a manufactured home does not meet a landlord's written standards for resale
928 or transfer of title and retention in the manufactured home community, a tenant may attempt to

bring the home into compliance with the standards. The landlord shall, within 10 days of a written request from the tenant, re-evaluate the home in a reasonable and fair manner.

(d) A standard promulgated pursuant to subsection (a), (b), or (c) of this section may not be arbitrarily or capriciously enforced. A landlord may choose not to enforce a standard based upon the documented special needs or hardship of a tenant without waiving the right to the later enforcement of the standard as to that tenant or any other tenant.

(e) A landlord may at any time establish or amend a standard promulgated pursuant to subsection (a), (b), or (c) of this section, but an established or amended standard promulgated pursuant to subsection (b) or (c) of this section is not effective until the date specified in the established or amended standard or [60 days] after the landlord delivers to the tenant written notice of the established or amended standard, whichever is later.

(1) Within 10 days of the landlord's notice of the established or amended standard, a committee, not to exceed five members, may be chosen by any method agreed to by the tenants of the manufactured home community.

(2) The committee shall meet with the landlord at a mutually convenient time and place to discuss the established or amended standard.

(3) At the meeting, the landlord shall disclose and explain all material factors and present any supporting documentation for the established or amended standard.

Section 23. [*Rent Increases.*] A landlord may not increase a tenant's lot rent more than once during any 12-month period, regardless of the term of the tenancy or the term of the rental agreement. A landlord shall give written notice of a lot rent increase to a tenant a minimum of [60 days] prior to the effective date of the rent increase.

Section 24. [*Manufactured Home Transfer; Rented Lot Transfer.*]

(a) This section governs the sale or transfer of title of a manufactured home which the buyer or transferee intends to retain in the manufactured home community.

(b) A rental agreement for a lot in a manufactured home community is not transferable from the tenant who owns the manufactured home on the lot to the buyer or transferee to whom the tenant intends to sell or transfer title to the home, unless the home qualifies for retention in the manufactured home community according to written standards promulgated pursuant to Section 22 of this Act, and unless the landlord accepts the buyer or transferee as a tenant. Acceptance or rejection of a buyer or transferee under this subsection must be on the same basis by which the landlord accepts or rejects any prospective tenant. A landlord who rejects a prospective tenant must give the rejected prospective tenant a written statement that explains the cause for the rejection.

(c) A tenant who owns a manufactured home in a manufactured home community and plans to sell or transfer title to the home to a buyer or transferee who intends to retain the home in the manufactured home community must notify the landlord in writing [3 weeks] prior to the scheduled sale or transfer of title of the manufactured home and the transfer of the lot rental agreement, giving the name and address of the prospective buyer or transferee. Failure on the part of a tenant to so notify the landlord is grounds for termination of the tenant and landlord's rental agreement by the landlord.

(d) If a landlord accepts a prospective tenant, the transfer of an existing rental agreement must be completed using one of the following two methods. The selection of the method is at the exclusive discretion of the tenant/seller of the manufactured home, and the buyer is bound by that selection.

(1) The tenant/seller agrees to an assignment of the lease to the buyer, with all of the existing obligations and benefits, including but not limited to the rental amount under the

existing rental agreement, for the remaining term of the agreement. If this option is elected, the existing rental agreement between the tenant/seller and the landlord is simultaneously assigned by the tenant-seller and assumed by the buyer and the buyer becomes the new tenant. Upon the sale, assignment, and assumption, the landlord will amend the existing rental agreement and list the buyer as the new tenant.

(2) The tenant-seller chooses to terminate the existing rental agreement. The buyer may then negotiate the terms of and enter into a new rental agreement for a full term at a rental amount set by the landlord. If this option is elected, the existing rental agreement is terminated upon the execution of the new rental agreement.

(e) For a sale or transfer of title of a manufactured home for retention in a manufactured home community on [January 1, 2004] and thereafter, standards promulgated pursuant to Section 22 of this Act apply. In addition, a buyer or transferee who becomes a tenant in a manufactured home community has [3 years] from the date of the resale or transfer to complete changes to his or her manufactured home required under the written standards of the manufactured home community. However, if the changes are necessary to protect life or for other safety reasons, the landlord may require that changes be made in less than [3 years]. Further, if a seller-tenant does not make necessary changes to meet the standards prior to sale, the buyer or transferee shall deposit [120 percent] of the estimated cost of the changes necessary to meet the standards into an account jointly controlled by the landlord and the buyer or transferee. Once work begins on the manufactured home, the necessary changes must be completed within a reasonable time.

(f) A buyer or transferee who does not complete required changes pursuant to subsection (e) of this section is subject to a summary possession proceeding pursuant to [insert citation].

Section 25. *[Retaliatory Acts Prohibited.]*

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempted or completed act on the part of a landlord to pursue an action against a tenant for summary possession, to terminate a tenant's rental agreement, to cause a tenant to move involuntarily from a rented lot in the manufactured home community, or to decrease services to which a tenant is entitled under a rental agreement, after:

(1) the tenant has complained in good faith to either the landlord or to an enforcement authority about a condition affecting the premises of the manufactured home community which constitutes a violation of this subchapter or a violation of a housing, health, building, sanitation, or other applicable statute or regulation;

(2) an enforcement authority has instituted an enforcement action based on a complaint by the tenant for a violation of this subchapter or a violation of a housing, health, building, sanitation, or other applicable statute or regulation with respect to the premises;

(3) the tenant has formed or participated in a manufactured home tenants' organization or association; or

(4) the tenant has filed a legal action against the landlord or the landlord's agent for any reason.

(c) If a tenant proves that a landlord attempted to commit or committed an act pursuant to subsection (b) of this section within [90 days] of the tenant's action under paragraphs 1 through 4 of subsection (b) of this section, the landlord's act is presumed to be a retaliatory act.

(d) Affirmative defenses to a claim that a landlord attempted to commit or committed a retaliatory act include proof by a preponderance of the evidence that:

(1) the landlord had due cause for termination of the rental agreement pursuant to this Act and gave the required notice to the tenant;

(2) the tenant's legal action against the landlord relates to a condition caused by the lack of ordinary care by the tenant or by a resident of the tenant's manufactured home or by a guest or visitor on the premises with the tenant's or resident's consent;

(3) the rented lot was in substantial compliance with all applicable statutes and regulations on the date of the filing of the tenant's legal action against the landlord; or

(4) the landlord could not have reasonably remedied the condition complained of by the tenant by the date of the filing of the tenant's legal action against the landlord.

(e) A tenant subjected to a retaliatory act set forth in subsection (b) of this section is entitled to recover the greater of [3 months'] rent, or [3 times] the damages sustained by the resident, in addition to the court costs of the legal action.

Section 26. [*Delivery of Written Notice.*]

(a) Unless otherwise specified, notice required by this Act may be served personally upon a tenant of a manufactured home community by leaving a copy of the notice at the tenant's dwelling place with an adult person who resides therein. Notice required by this Act may be served personally upon a landlord or upon any other person in the employ of the landlord whose responsibility is to accept such service. If a landlord is a corporation, firm, unincorporated association, or other artificial entity, service of the notice may be made by leaving a copy of the notice at its office or place of business with an agent authorized to accept such notice or authorized by law to receive service of process. Service of notice or process may be obtained through personal service by a special process-server appointed by the court.

(b) In lieu of personal service, notice required by this Act may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the tenant at the address of the tenant's rented lot, or at an alternative address which the tenant provided in writing to the landlord. Notice required by this Act may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the landlord at the landlord's last known dwelling place or at the landlord's last known office or place of business. Proof of mailing regular first class mail on US Postal Service Form 3817 or its successor, or a return receipt, signed or unsigned, for certified mail constitutes valid service of any notice required under this Act.

Section 27. [*Enforcement.*] A violation of a provision of this Act by a landlord is within the scope of the enforcement duties and powers of the [Consumer Protection Unit], or its successor, of the [Attorney General's Office].

Section 28. [*Sale or Rent of Manufactured Home Community.*] A manufactured home community owner shall notify the tenants of the manufactured home community within [20 days] of the owner's acceptance of any *bona fide* offer to buy or rent the community.

Section 29. [*Change of Use; Conversion.*] This Act governs a change in use of a manufactured home community, as described in Section 11(b) of this Act, to any use other than a conversion of the community to a manufactured home cooperative or condominium community, which is governed by [insert citation].

Section 30. [*Severability.*] [Insert severability clause.]

Section 31. [*Repealer.*] [Insert repealer clause.]

Section 32. [*Effective Date.*] [Insert effective date.]

Master Farmer Program

States are under pressure from the U.S. Environmental Protection Agency to meet Total Maximum Daily Load water quality standards, particularly for water bodies with current high pollution levels. Non-point source pollution, such as agricultural run-off, is considered a leading cause of deteriorating water quality. This SSL draft is based on Louisiana Act 145, which enacted a Master Farmer Program to address such concerns.

This SSL draft establishes a program that is designed to help agricultural producers voluntarily reduce the impact their operations have on the environment. The program would be a cooperative effort between the United States Department of Agriculture, Natural Resources and Conservation Service, the state farm bureau, state university, the state departments of agriculture and natural resources, and soil and water conservation districts. It involves classroom instruction, attendance at model farm field days and development and implementation of farm specific conservation plans. Participating farmers who complete the curriculum are certified as Master Farmers and must submit soil and water conservation plans for their farms to meet certain standards as established by the United States Department of Agriculture, Natural Resources and Conservation Service, the state department of agriculture and the affected soil and water conservation district. Any farmer who has received certification will be presumed to be in compliance with the state soil and water quality requirements as long as their certification is maintained in accordance with best management practices.

Submitted as:

Louisiana

Act 145 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 Certify Master Farmers."

2

3 Section 2. [*Master Farmer Certification.*]

4 A. The [commissioner of agriculture and forestry] may certify individuals as master
5 farmers in accordance with this section. Each individual must successfully complete a master
6 farmer certification program and have implemented an individual comprehensive soil and water
7 conservation plan that meets the standards and specifications of the United States Department of
8 Agriculture, Natural Resources And Conservation Service, the [state department of agriculture
9 and forestry], and the affected [soil and water conservation district].

10 B. The [commissioner] may adopt rules and regulations setting out the requirements for
11 obtaining a certification. The curriculum shall be established by the [state university agriculture
12 center]. The [state university agriculture center] may consult with other agencies and
13 organizations as needed, including but not limited to the state [department of environmental
14 quality], [department of natural resources], state farm bureau, the United States Department of
15 Agriculture, Natural Resources and Conservation Service, and the state [soil and water
16 conservation committee]. The curriculum shall include but is not limited to the instruction on
17 environmental issues in agriculture, non-point source pollution, best management and

conservation practices, soil and water quality monitoring demonstrations, and development and implementation of an individual comprehensive soil and water conservation plan.

C. Any individual who has received a master farmer certification shall be presumed to be in compliance with state soil and water quality requirements as long as certification is maintained. The master farmer certification shall continue as long as the individual actively maintains his specific comprehensive conservation plan in accordance with best management practices.

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

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

Section 5. [*Effective Date*.] [Insert effective date.]

Master School Principal Program

This Act creates a Master School Principal Program. The program consists of three phases. Phase one expands the knowledge and leadership skills of the participating principals. Phase two requires the participating principals to apply strategies and to collect evidence of improvement in student learning and school processes. Phase three requires participating principals to publicly demonstrate the ability and skills that lead to sustained academic improvement in a school and a school district. The program is administered by a state leadership academy. A school principal who successfully completes the program is designated a master school principal by a state leadership academy.

The Act also directs the state department of education to promulgate rules and regulations for an additional high-need school salary bonus, including a hold-back longevity bonus, for principals receiving master school principal status and serving as a principal of a public school in phase two or phase three school improvement status or located in a school district in academic distress.

Submitted as:

Arkansas

Act 44 of 2003

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Establish a Master School
2 Principal Program."

3
4 Section 2. [*Definitions.*] For purposes of this Act:

5 (a) "Incentive bonus" means a bonus paid to master principals serving as a principal of
6 any public school in the state;

7 (b) "High-need school salary bonus" means an annual bonus to master principals serving
8 as a principal of a public school in phase two or phase three school improvement status or
9 located in a school district in academic distress; and

10 (c) "Hold-back longevity bonus" means a portion of the high-need school salary bonus
11 held back to be paid at the end of [three years] and [five years] of serving as a principal of the
12 same public school in phase two or phase three school improvement status or located in a school
13 district in academic distress.

14
15 Section 3. [*Master School Principal Program.*]

16 (a) There is created the master school principal program to provide training programs
17 and opportunities to expand the knowledge base and leadership skills of public school principals.

18 (b) The program shall be administered by the [state leadership academy].

19 (c) The program shall consist of no less than a three-phase process developed by the
20 [state leadership academy] and approved by the state [board of education], including:

21 (1) Phase one, which shall expand the knowledge base and leadership skills of the
22 principal;

(2) Phase two, which shall require the principal to apply strategies and to collect evidence of improvement in student learning and school processes; and

(3) Phase three, which shall require the principal to publicly demonstrate the ability and skills that lead to sustained academic improvement in a school and a school district.

(d) A school principal successfully completing the program shall be designated as a master school principal by the [state leadership academy].

(e) (1) The state [department of education] and [state leadership academy] shall:

(i) Develop criteria for selecting candidates for the process;

(ii) Review and modify, as deemed appropriate, the program performance areas; and

(iii) (A) Develop a rigorous assessment process based on the performance areas.

(B) The assessment shall include, but shall not be limited to, demonstrable, performance-based evidence of the performance areas.

(2) The number of school principals participating each year may be determined by the amount of funding available for the program.

Section 4. *[Bonuses for Achieving Master School Principal Status.]*

(a) The state [department of education] shall promulgate rules and regulations for the [\$9,000] yearly incentive bonus provided under this section for principals receiving master school principal status.

(b) The state [department of education] shall pay a yearly incentive bonus of [\$9,000] for every school year for no more than [five years] to any building-level principal who:

(1) Receives a master school principal designation from the [state leadership academy]; and

(2) Is, at the time of receiving the bonus, employed full-time as a building-level principal in a state public school district.

(c) The state [department of education] shall promulgate rules and regulations for an additional high-need school salary bonus, including a hold-back longevity bonus, for principals receiving master school principal status and serving as a principal of a public school in phase two or phase three school improvement status or located in a school district in academic distress.

(d) (1) The department shall pay a high-need school salary bonus of [\$25,000] for every school year for no more than (five) years to any building-level principal who:

(i) Receives a master school principal designation from the [state leadership academy]; and

(ii) Is, at the time of receiving the [\$25,000] bonus, employed full-time as a building-level principal in a state public school district that is or was:

(A) A public school in phase two or phase three school improvement status at the time the master school principal began his or her employment as a master school principal of the school; or

(B) A public school located in a school district in academic distress at the time the master school principal began his or her employment as a master school principal of the school.

(2) The high-need school salary bonus under subdivision (d)(1) of this section shall be paid as follows:

(i) [\$20,000] for each school year;

(ii) An additional [\$5,000] to be set aside for each qualifying school year to be paid as follows:

71 (A) A [\$15,000] hold-back longevity bonus at the end of [three]
72 consecutive school years as a master school principal in the same school; and

73 (B) A [\$10,000] hold-back longevity bonus at the end of [five]
74 consecutive school years as a master school principal in the same school.

75 (3) The high-need school salary bonus with the hold-back longevity bonus
76 payable under this section shall be paid in addition to the [five-year] incentive bonus allowed
77 under this Act, if the master principal is within the time frame for eligibility for the [five-year]
78 incentive bonus.

79 (c) No person shall receive either a yearly incentive bonus, a salary bonus, or a longevity
80 bonus, regardless of the person's past participation in the master school principal program, if the
81 person leaves the full-time employment as a principal of a state public school district.

82
83 Section 5. [*Severability*.] [Insert severability clause.]

84
85 Section 6. [*Repealer*.] [Insert repealer clause.]

86
87 Section 7. [*Effective Date*.] [Insert effective date.]

Medical Malpractice Reform

This Act contains a clause wherein the state legislature asks the state Supreme Court to require a plaintiff filing a medical liability claim to include a certificate of expert review as to each defendant and to establish an expedited discovery process in medical liability claims to provide for the timely resolution of the disputes. It requires certain insurers who write malpractice insurance to report information to the state department of insurance at least annually regarding any medical, dental, optometric, or chiropractic claim asserted against a risk located in this state, if the claim resulted in a final judgment in any amount; a settlement in any amount; or a final disposition of the claim resulting in no indemnity payment on behalf of the insured.

This Act regulates defendants' use of affidavits of noninvolvement in medical claims. It establishes qualifications for expert witnesses who provide testimony in a medical liability action and regulates the collection and disclosure of medical claims data by the state department of insurance. It also prohibits using a defendant's statement of sympathy as evidence in a medical liability action.

Submitted as:

Ohio

HB 215 (enrolled version)

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Regulate the Collection and
2 Disclosure of Medical Claims Data; to Address Using a Defendant's Statement of Sympathy as
3 Evidence in a Medical Liability Action, and to Establish Qualifications for Expert Witnesses in
4 Medical Liability Actions."

5
6 Section 2. [*Amending State Law to Require a Plaintiff Filing a Medical Liability Claim to*
7 *Include a Certificate of Expert Review as to Each Defendant.*] The [General Assembly]
8 respectfully requests the [Supreme Court] to amend the [Rules of Civil Procedure] to require a
9 plaintiff filing a medical liability claim to include a certificate of expert review as to each
10 defendant. The [General Assembly] respectfully requests that the certificate of expert review
11 require the signature of an expert witness from the same specialty as the defendant; said witness
12 shall be required to meet the statutory evidentiary and case law requirements of a medical expert
13 capable of testifying at trial. A certificate of expert review should be required to state with
14 particularity the expert's familiarity with the applicable standard of care, the expert's
15 qualifications, the expert's opinion as to how the applicable standard of care was breached, and
16 the expert's opinion as to how the breach resulted in the injury or death.

17
18 Section 3. [*Amending State Law to Establish an Expedited Discovery Process in Medical*
19 *Liability Claims to Provide for the Timely Resolution of the Disputes.*] The [General Assembly]
20 respectfully requests the [Supreme Court] to amend the [Rules of Civil Procedure] to establish an
21 expedited discovery process in medical liability claims to provide for the timely resolution of the
22 disputes.
23

24 Section 4. *[Reporting Claims Against a Risk Regarding Medical, Dental, Optometric or*
25 *Chiropractic Medical Care.]*

26 (A) The state [superintendent of insurance], by rule adopted in accordance with [insert
27 citation] shall require each authorized insurer, surplus lines insurer, risk retention group, self-
28 insurer, captive insurer, the medical liability underwriting association if created under [insert
29 citation], any other entity that provides medical malpractice insurance to risks located in this
30 state, to report information to the [department of insurance] at least annually regarding any
31 medical, dental, optometric, or chiropractic claim asserted against a risk located in this state, if
32 the claim resulted in any of the following results:

- 33 (1) A final judgment in any amount;
34 (2) A settlement in any amount;
35 (3) A final disposition of the claim resulting in no indemnity payment on behalf of
36 the insured.

37 (B) The report required by division (A) of this section shall contain such information as
38 the [superintendent] prescribes by rule adopted in accordance with [insert citation], including,
39 but not limited to, the following information:

- 40 (1) The name, address, and specialty coverage of the insured;
41 (2) The insured's policy number;
42 (3) The date of the occurrence that created the claim;
43 (4) The name and address of the injured person;
44 (5) The date and amount of the judgment, if any, including a description of the
45 portion of the judgment that represents economic loss, non-economic loss and, if applicable,
46 punitive damages;
47 (6) In the case of a settlement, the date and amount of the settlement;
48 (7) Any allocated loss adjustment expenses;
49 (8) Any other information required by the superintendent pursuant to rules
50 adopted in accordance with [insert citation].

51 (C) The [superintendent] may prescribe the format and the manner in which the
52 information described in division (B) of this section is reported. The [superintendent] may, by
53 rule adopted in accordance with [insert citation], prescribe the frequency that the information
54 described in division (B) of this section is reported.

55 (D) The [superintendent] may designate one or more rating organizations licensed
56 pursuant to [insert citation] or other agencies to assist the [superintendent] in gathering the
57 information, and making compilations thereof, required by this section.

58 (E) There shall be no liability on the part of, and no cause of action of any nature shall
59 arise against, any person or entity reporting under this section or its agents or employees, or the
60 department of insurance or its employees, for any action taken that is authorized under this
61 section.

62 (F) The [superintendent] may impose a fine not to exceed [five hundred dollars] against
63 any person designated in division (A) of this section that fails to timely submit the report
64 required under this section. Fines imposed under this section shall be paid into the [state
65 treasury] to the credit of the [department of insurance operating fund] created under [insert
66 citation].

67 (G) Except as specifically provided in division (H) of this section, the information
68 required by this section shall be confidential and privileged and is not a public record as defined
69 in [insert citation]. The information provided under this section is not subject to discovery or
70 subpoena and shall not be made public by the [superintendent] or any other person.

71 (H) The [department of insurance] shall prepare an annual report that summarizes the
72 closed claims reported under this section. The annual report shall summarize the closed claim

reports on a statewide basis, and also by specialty and geographic region. Individual claims data shall not be released in the annual report. Copies of the report shall be provided to the members of the [General Assembly].

(I) As used in this section, medical, dental, optometric, and chiropractic claims include those claims asserted against a risk located in this state that either:

(1) Meet the definition of a "medical claim," "dental claim," "optometric claim," or "chiropractic claim" under [insert citation];

(2) Have not been asserted in any civil action, but that otherwise meet the definition of a "medical claim," "dental claim," "optometric claim," or "chiropractic claim" under [insert citation.]

Section 5. [*Civil Actions Concerning Unanticipated Outcomes of Medical Care.*]

(A) In any civil action brought by an alleged victim of an unanticipated outcome of medical care or in any arbitration proceeding related to such a civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim, and that relate to the discomfort, pain, suffering, injury, or death of the alleged victim as the result of the unanticipated outcome of medical care are inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

(B) For purposes of this section, unless the context otherwise requires:

(1) "Health care provider" has the same meaning as in [insert citation].

(2) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a victim.

(3) "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

(4) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

Section 6. [*Affidavit of Noninvolvement.*]

(A) (1) A health care provider named as a defendant in a civil action based upon a medical claim is permitted to file a motion with the court for dismissal of the claim accompanied by an affidavit of noninvolvement. The defendant shall notify all parties in writing of the filing of the motion. Prior to ruling on the motion, the court shall allow the parties not less than [thirty days] from the date that the parties were served with the notice to respond to the motion.

(2) An affidavit of noninvolvement shall set forth, with particularity, the facts that demonstrate that the defendant was misidentified or otherwise not involved individually or through the action of the defendant's agents or employees in the care and treatment of the plaintiff, was not obligated individually or through the defendant's agents or employees to provide for the care and treatment of the plaintiff, and could not have caused the alleged malpractice individually or through the defendant's agents or employees in any way.

(B) (1) The parties shall have the right to challenge the affidavit of noninvolvement by filing a motion and submitting an affidavit with the court that contradicts the assertions of noninvolvement made in the defendant's affidavit of noninvolvement.

(2) If the affidavit of noninvolvement is challenged, any party may request an oral hearing on the motion for dismissal. If requested, the court shall hold a hearing to determine if the defendant was involved, directly or indirectly, in the care and treatment of the plaintiff, or was obligated, directly or indirectly, for the care and treatment of the plaintiff.

(3) The court shall consider all evidence submitted by the parties and the parties' arguments and may dismiss the civil action based upon the defendant's lack of involvement in the elements of the plaintiff's medical claim. The court shall rule on all challenges to the affidavit of noninvolvement within [seventy-five days] after the filing of the affidavit of noninvolvement.

(4) A court's dismissal of a claim against a defendant pursuant to this section shall be deemed otherwise than upon the merits and without prejudice pursuant to [insert citation].

(C) If the court determines that a health care provider named as a defendant has falsely filed or made false or inaccurate statements in an affidavit of noninvolvement, the court, upon a motion or upon its own initiative, shall immediately reinstate the claim against that defendant, if previously dismissed. Reinstatement of a party pursuant to this [division] shall not be barred by any statute of limitations defense that was not valid at the time the original affidavit was filed.

(D) In any action in which the defendant is found by the court to have knowingly filed a false or inaccurate affidavit of noninvolvement, the court shall impose upon the person who signed the affidavit or represented the defendant, or both, an appropriate sanction, including, but not limited to, an order to pay to other parties to the claim the amount of the reasonable expenses that the parties incurred as a result of the filing of the false or inaccurate affidavit, including reasonable attorney's fees.

(E) In any action in which the court determines that a party falsely objected to a defendant's affidavit of noninvolvement, or knowingly provided an inaccurate statement regarding a defendant's affidavit, the court shall impose upon the party or the party's counsel, or both, an appropriate sanction, including, but not limited to, an order to pay to the other parties to the claim the amount of the reasonable expenses that the parties incurred as a result of the submission of the false objection or inaccurate statement, including reasonable attorney's fees.

(F) As used in this section:

(1) "Health care provider" has the same meaning as in [insert citation].

(2) "Medical claim" means any claim that is asserted in any civil action against a health care provider and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes derivative claims for relief.

Section 7. [*Competency for Giving Expert Testimony on Liability Issues in Medical Claims.*]

(A) No person shall be deemed competent to give expert testimony on the liability issues in a medical claim, as defined in [insert citation] unless:

(1) Such person is licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery by the state medical board or by the licensing authority of any state;

(2) Such person devotes three-fourths of the person's professional time to the active clinical practice of medicine or surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, or to its instruction in an accredited university;

(3) The person practices in the same or a substantially similar specialty as the defendant. The court shall not permit an expert in one medical specialty to testify against a health care provider in another medical specialty unless the expert shows both that the standards of care and practice in the two specialties are similar and that the expert has substantial familiarity between the specialties.

(4) If the person is certified in a specialty, the person must be certified by a board recognized by the American board of medical specialties or the American board of osteopathic specialties in a specialty having acknowledged expertise and training directly related to the particular health care matter at issue.

(B) Nothing in division (A) of this section shall be construed to limit the power of the trial court to adjudge the testimony of any expert witness incompetent on any other ground.

(C) Nothing in division (A) of this section shall be construed to limit the power of the trial court to allow the testimony of any other witness, on a matter unrelated to the liability issues in the medical claim, when that testimony is relevant to the medical claim involved.

Section 8. [*Temporary Medical License for People Who Testify as Expert Witnesses in Actions Against a Physician.*] A person licensed in another state to practice medicine, who testifies as an expert witness on behalf of any party in this state in any action against a physician for injury or death, whether in contract or tort, arising out of the provision of or failure to provide health care services, shall be deemed to have a temporary license to practice medicine in this state solely for the purpose of providing such testimony and is subject to the authority of the state medical board and the provisions of [insert citation]. The conclusion of an action against a physician shall not be construed to have any effect on the board's authority to take action against a physician who testifies as an expert witness under this section.

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

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

Section 11. [*Effective Date.*] [Insert effective date.]

Mobile Dental Services

This Act amends the state Tort Claims Act to expand the definition of charitable health care provider to cover free, mobile dental services through a community service project. Charitable health care providers are considered state employees for purposes of tort liability.

Submitted as:

Kansas

SB 304 (as enrolled and signed by governor)

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 Expand the Definition of
2 Charitable Health Care Provider to Include Mobile Dental Services."

3
4 Section 2. [*Definitions.*] As used in this Act, unless the context clearly requires otherwise:

5 (a) "Charitable Health Care Provider" means a person licensed by the [state board of
6 healing arts] as an exempt licensee or a federally active licensee, a person issued a limited permit
7 by the [state board of healing arts], a physician assistant licensed by the [state board of healing
8 arts] or a health care provider as the term "health care provider" is defined under [insert citation],
9 who has entered into an agreement with the [secretary of health and environment] to provide
10 dentistry services defined by [insert citation] that are targeted, but are not limited to medically
11 indigent people, and are provided on a gratuitous basis at a location sponsored by a not-for-profit
12 organization that is not the dentist or dental hygienist office location. Except that such dentistry
13 services and dental hygienist services shall not include "oral and maxillofacial surgery" as
14 defined by [insert citation] or use "sedation" or "general anesthesia" as defined by [insert
15 citation].

16 (b) "Medically Indigent Person" means a person who lacks resources to pay for medically
17 necessary health care services and who meets the eligibility for qualification as a medically
18 indigent person established by the [secretary of health and environment] under [insert citation].

19
20 Section 3. [*Severability.*] [Insert severability clause.]

21
22 Section 4. [*Repealer.*] [Insert repealer clause.]

23
24 Section 5. [*Effective Date.*] [Insert effective date.]

Motor Fuel Marketing

This legislation prohibits pricing practices designed to diminish or eliminate the independent motor fuel market sector, which over time yields higher prices and a less efficient marketplace.

Submitted as:

New York

Chapter 691 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 the "Motor Fuel Marketing Practices
2 Act."

3
4 Section 2. [*Legislative Findings and Intent.*] The [legislature] finds that fair and healthy
5 competition in the marketing of motor fuel provides maximum benefits to consumers in this state
6 and that certain marketing practices which impair such competition are contrary to the public
7 interest. Predatory practices and, in certain circumstances, discriminatory practices constitute
8 unfair trade practices and anti-competitive restraints which reduce motor fuel industry
9 competition and, if left to continue unabated, will ultimately threaten or harm the consuming
10 public. It is the intent of the [legislature] to promote and encourage competition to ensure the
11 general welfare of citizens of this state by prohibiting such unfair practices.

12
13 Section 3. [*Definitions.*] As used in this Act:

14 (a) "Affiliate" means any person whose stock is more than [fifty percent] owned by, or
15 who, regardless of stock ownership, is controlled by or is under common control with, any other
16 person.

17 (b) "Competition" means the vying for motor fuel sales between any [two or more] sellers
18 in the same relevant geographic market.

19 (c) "Dealer" means any person, other than a refiner or wholesaler, who is engaged in the
20 business of selling motor fuel at a retail outlet.

21 (d) "Direct labor cost" means the personnel costs incurred and attributable to providing
22 motor fuel sales at a retail outlet and includes, without limitation, the personnel costs relating to
23 the purchase, storage, inventory, and sale of motor fuel, the maintenance of equipment, and
24 environmental reporting and compliance, but does not include the costs of environmental
25 cleanup or remediation. In no case shall the direct labor cost be less than the cost of one
26 employee's salary and benefits, based upon that employee's working those hours in which the
27 retail outlet is providing motor fuel available to the public.

28 (e) "Motor fuel" means any petroleum product including any special fuel that is used for
29 the propulsion of any motor vehicle.

30 (f) "Nonrefiner" means any person, other than a refiner, engaged in the sale of motor fuel.

31 (g) "Nonrefiner cost" means the nonrefiner's invoice cost of the motor fuel, by grade, less
32 credit card allowances, trade discounts, and rebates actually received, to which shall be added
33 federal, state, and local taxes and fees applicable to motor fuel; freight charges to the retail

outlet; and direct labor costs and the reasonable rental value of the retail outlet attributable to the sale of motor fuel by the nonrefiner. If motor fuel is sold with another item at a combined price, nonrefiner motor fuel cost shall also include the cost of the other item and the direct labor costs and the reasonable rental value of the retail outlet attributable to the retail sale of the item by the nonrefiner.

(h) "Persons" means any individual, public or private corporations or limited liability corporations, companies, associations, societies, firms, partnerships, limited liability partnerships, joint stock companies, the United States, this state and any of its political subdivisions or agents.

(i) "Posted terminal price" means a refiner's posted price at a terminal, by grade of motor fuel, to the wholesale class of trade within a general trade area. If a refiner does not have a posted terminal price in a general trade area, such refiner's posted terminal price shall be deemed to be no lower than the lowest posted terminal price of motor fuel of like grade and quality of any other refiner selling to the wholesale class of trade in the general trade area.

(j) "Reasonable rental value" means the bona fide amount of rent which would reasonably be paid in an arm's length transaction for the use of the specific individual retail outlet, including land and improvements, utilized for the sale of motor fuel. The value of the land and improvements shall include the costs of equipment, signage, utilities, property taxes, and insurance, if paid by the owner; environmental compliance, such as testing, detection, and containment systems; but does not include the costs of environmental cleanup and remediation. In determining the reasonable rental value of the specific retail outlet, the rental amount of comparable retail outlets in the relevant geographic market shall be considered. When motor fuel is sold at the retail level along with other products, the reasonable rental value attributable to the sale of motor fuel at the retail outlet shall be allocated by the percentage of gross sales attributable to motor fuel sales.

(k) "Refiner" means any person who produces and stores or exchanges motor fuel at a terminal facility and who sells or transfers motor fuel through the loading rack at such terminal facility, and includes an affiliate of such refiner with respect to such affiliate's sale of motor fuel.

(l) "Refiner cost" means a refiner's posted terminal price plus federal, state, and local taxes and fees applicable to motor fuel; freight charges to its retail outlet; and direct labor costs and reasonable rental value of the retail outlet attributable to the retail sale of motor fuel by the refiner. If motor fuel is sold with another item at a combined price, refiner cost shall also include the cost of the other item and direct labor costs and reasonable rental value of the retail outlet attributable to the retail sale of the item by the refiner.

(m) "Relevant geographic market" means the geographic area of effective competition.

(n) "Rent" means the payment of an amount by any person in return for the right to occupancy or use of the property of another.

(o) "Reseller" means any person who purchases motor fuel for resale to another person regardless whether such subsequent sale is at retail or to another reseller.

(p) "Retail outlet" means a facility, including land and improvements, where motor fuel is offered for sale at retail to the public.

(q) "Sale" or "sell" means any transfer, gift, barter, sale, offer for sale, or advertisement for sale in any manner or by any means whatsoever, including any transfer of motor fuel from a person to itself or an affiliate at another level of distribution, but does not include product exchanges at the wholesale level of distribution.

(r) "Supplier" means any person who conveys, transports or otherwise causes motor fuel to be delivered to another person except that any person who conveys, transports or otherwise causes motor fuel to be delivered as part of a retail sale shall not be considered a supplier.

(s) "Terminal facility" means any inland, waterfront, or offshore appurtenance on land used for the purpose of receiving, storing, handling, or transferring motor fuel, but does not include bulk storage facilities owned or operated by a wholesaler.

(t) "Wholesaler" means any person, other than a refiner or dealer, who purchases motor fuel at a terminal facility and supplies motor fuel to retail outlets.

Section 4. [*Predatory Practices Unlawful; Exceptions.*]

(a) (1) It is unlawful for any refiner engaged in commerce in this state to sell any grade or quality of motor fuel at a retail outlet at a price which is less than [ninety-eight percent] of the refiner cost where the effect is to injure competition.

(2) It is unlawful for any nonrefiner engaged in commerce in this state to sell any grade or quality of motor fuel at a retail outlet at a price which is less than [ninety-eight percent] of the nonrefiner cost where the effect is to injure competition.

(b) It is unlawful for any refiner, including any affiliate or agent thereof, to sell any grade or quality of motor fuel at a retail outlet at a price that is less than [ninety-eight percent] of the price charged by that refiner to any wholesaler or dealer under written contract for the like grade and quality of motor fuel, to the extent that the wholesaler or dealer resells in the relevant geographic market where the refiner's retail price is in effect.

(c) (1) An isolated, inadvertent incident involving activity prohibited pursuant to subdivision (a) or (b) of this section shall not be a violation of this Act.

(2) A refiner's sale at a price which is less than [ninety-eight percent] of the refiner cost or a nonrefiner's sale at a price which is less than [ninety-eight percent] of the nonrefiner cost made in good faith to meet an equally low retail price of a competitor selling motor fuel of like grade or quality in the same relevant geographic market which can be used in the same motor vehicle, or of the same or similar items in combination with motor fuel of like grade or quality which can be used in the same motor vehicle, is not a violation of this Act.

Section 5. [*Discriminatory Practices Unlawful; Exceptions.*]

(a) It is unlawful for any person engaged in commerce in this state:

(1) To sell for resale any grade or quality of motor fuel at a price which is less than ninety-eight percent of the price at which the seller contemporaneously sells motor fuel of like grade or quality to another person on the same level of distribution, in the same class of trade, and within the same relevant geographic market as the purchaser where the effect is to injure competition.

(2) To knowingly receive for resale any grade or quality of motor fuel at a price which is less than ninety-eight percent of the price at which the seller from which the motor fuel is purchased or received contemporaneously sells motor fuel of like grade or quality to any person on the same level of distribution, in the same class of trade, and within the same relevant geographic market as the purchaser where the effect is to injure competition.

(b) A sale of motor fuel of like grade and quality at different prices to persons at the same level of distribution is not a violation of this section if the difference in price is due to a difference in the cost of sale or delivery resulting from differing methods or quantities at which the grade of motor fuel is sold or delivered.

(c) Subject to the limitations of subdivision (b) of Section 4 of this Act, a sale made in good faith to meet an equally low price of a competitor selling motor fuel of like grade and quality which can be used in the same motor vehicle is not a violation of this section.

(d) It is unlawful for a refiner to sell any grade or quality of motor fuel to a wholesaler under written contract at a price, after adding federal, state, and local taxes and fees, which is higher than the net price, after deducting all allowances, rebates, and discounts, at which the

refiner contemporaneously sells motor fuel of like grade and quality to a dealer in competition with any retail outlet supplied by such wholesaler, where the effect is to injure competition, except to the extent that the difference in price is attributable to a rebate, rent subsidy, or other concession which is offered to the wholesaler on proportionately equal or comparable terms.

(e) An isolated, inadvertent incident involving the activity prohibited pursuant to subdivision (a) or (d) of this section shall not be a violation of this Act.

Section 6. [*Discriminatory Allocations Unlawful.*]

(a) It is unlawful for any person supplying motor fuel in this state to limit or allocate the quantity of motor fuel available to a reseller purchasing under contract from such supplier because such reseller was prevented by such supplier from purchasing the minimum quantities such reseller was obligated to purchase from such supplier in the immediately preceding year, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.

(b) It is unlawful for a supplier to limit or allocate for more than [five consecutive days] the quantity of motor fuel available to a reseller purchasing under contract from such supplier, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.

Section 7. [*Unfair Practices Unlawful.*]

(a) It shall be unlawful for a refiner or other supplier to fix or maintain the retail price of motor fuel at a retail outlet supplied by that refiner or supplier. Nothing in this section shall be construed to prevent a refiner or supplier from counseling concerning retail prices, provided no threat or coercion is used in the counseling. This subdivision shall not apply to retail outlets operated by the refiner or supplier.

(b) It is unlawful for any person who supplies motor fuel to a dealer for resale and who leases a retail outlet to the dealer to impose any material modification in the contractual arrangements during the term of the contract, including a material modification of the leased retail outlet, unless such modification is made in good faith and based upon reasonable business practices.

Section 8. [*Certain Rebates Unlawful.*] It is unlawful for any person selling motor fuel to offer or give a rebate, rent subsidy, or concession of any kind in connection, either directly or indirectly, with the sale of motor fuel to a person for resale when the seller does not provide, on proportionately equal terms, the same rebate, rent subsidy, or concession, or the equivalent of the rebate, rent subsidy, or concession, to all persons purchasing for resale in the relevant geographic market, where the effect is to injure competition. If a wholesaler receives a rebate, rent subsidy, or concession, the wholesaler must offer on proportionately equal terms, the rebate, rent subsidy, or concession, or the equivalent of the rebate, rent subsidy, or concession, to any retail outlet supplied by such wholesaler to the extent the wholesaler passes through such rebate, rent subsidy or concession. However, a rebate, rent subsidy, or concession made in good faith to meet the same or a comparable rebate, rent subsidy, or concession of a competitor shall not be a violation of this Act, provided that any person who sells motor fuel to any wholesaler or dealer under written contract for resale in the relevant geographic market shall offer the rebate, rent subsidy, or concession, or the equivalent of such rebate, rent subsidy, or concession, to all other similarly situated wholesalers and dealers on proportionately equal terms.

180 Section 9. [*Exempt Sales.*] The provisions of this Act shall not apply to the following
181 retail sales by a refiner:

182 (a) A bona fide clearance sale for the purpose of discontinuing trade in such motor fuel;

183 (b) A final business liquidation sale;

184 (c) A sale of the refiner's motor fuel by a fiduciary or other officer under the order or
185 direction of any court; or

186 (d) Sales made during a grand opening to introduce a new or remodeled business not to
187 exceed [three days], which grand opening shall be held within [sixty days] from the date the new
188 or remodeled business begins operations.

189
190 Section 10. [*Enforcement; Civil Penalties.*]

191 (a) Any person who knowingly violates this Act shall be subject to a civil penalty not to
192 exceed [ten thousand dollars] per violation. Each day that a violation of this Act occurs shall be
193 considered a separate violation, but no civil penalty shall exceed [two hundred fifty thousand
194 dollars].

195 (b) Any complaints regarding violations of this Act shall be first filed with the state
196 [consumer protection board] which shall conduct an investigation and may request in writing the
197 production of documents and records as part of its investigation. Trade secrets and proprietary
198 business information contained in the documents or records received by the state [consumer
199 protection board] pursuant to a written request or a subpoena are confidential. If the person upon
200 whom such request was made fails to produce the documents or records within [thirty days] after
201 the date of the request, the state [consumer protection board] may issue and serve subpoenas to
202 compel the production of such documents and records. If any person shall refuse to comply with
203 a subpoena issued under this section, the state [consumer protection board] may petition a court
204 of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.
205 Refiners shall afford the state [consumer protection board] reasonable access to the refiners'
206 posted terminal price. After completion of an investigation, the state [consumer protection board]
207 shall either:

208 (i) Dismiss the complaint following a determination that no violation occurred;

209 (ii) Dismiss the complaint following a determination that there has been a de
210 minimus injury to competition; or

211 (iii) Determine that a violation has likely occurred and, if so, shall attempt to
212 resolve the matter by settlement. If no settlement is achieved, then the matter shall be referred to
213 the [attorney general] for further proceedings, including, if necessary, legal action.

214 (c) Any records, documents, papers, maps, books, tapes, photographs, files, sound
215 recordings, or other business material, regardless of form or characteristics, obtained by the state
216 [consumer protection board] pursuant to subpoena are confidential. At the conclusion of an
217 investigation, any matter determined by the state [consumer protection board], the [attorney
218 general], or by a federal or state judicial or administrative body, to be a trade secret or
219 proprietary confidential business information held by either the state [consumer protection
220 board] or the [attorney general] pursuant to such investigation shall be considered confidential.
221 Such materials may be used in any administrative or judicial proceeding so long as the
222 confidential or proprietary nature of the material is maintained.

223 (d) The civil penalty imposed under this section and/or any injunctive relief may be
224 sought in a civil action brought by the [attorney general] in any court of competent jurisdiction.
225 If the [attorney general] prevails in a civil action, the court may award the [attorney general]
226 reasonable attorneys' fees as it deems appropriate.

228 Section 11. [*Limitations Period for Actions.*] Any action brought by the [attorney general]
229 shall be commenced within [two years] after the alleged violation occurred or should reasonably
230 have been discovered.

231
232 Section 12. [*Consumer Complaints.*] The [executive director of the state consumer
233 protection board] shall have the power and duty on behalf of the [board], to initiate, investigate,
234 attempt to resolve, and if necessary refer to the [attorney general] any matters or complaints
235 received pursuant to this Act.

236
237 Section 13. [*Severability.*] [Insert severability clause.]

238
239 Section 14. [*Repealer.*] [Insert repealer clause.]

240
241 Section 15. [*Effective Date.*] [Insert effective date.]

Notification of Presence of Wild Animals

This Act directs that except for pet dealers, anyone who owns or possesses a wild animal must report the presence of the wild animal to the local city or county clerk. That information is then reported to various police, fire and emergency personnel in the area in order to make such people aware of the animal's presence in case such personnel are dispatched to the address where the wild animal is located.

Submitted as:

New York

Chapter 680 of 2002

Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act may be cited as "An Act Requiring Notification of
2 Presence of Wild Animals."

3 1. The knowledge of the presence of dangerous wild animals, in the context of emergency
4 services responses, is necessary to protect public safety and the safety of emergency services
5 personnel.

6 2. As used in this section:

7 (a) "Emergency services personnel" means fire, police, and ambulance
8 personnel.

9 (b) "Person" means any individual, partnership, corporation, association, or
10 other entity.

11 (c) "Wild animal" means any or all of the following orders and families:

12 (1) Nonhuman primates and prosimians;

13 (2) Felidae (with the exception of domesticated cats);

14 (3) Canidae (with the exception of domesticated dogs);

15 (4) Ursidae;

16 (5) All venomous snakes and all constrictors and python snakes that are
17 ten feet or greater in length; and

18 (6) Crocodilia that are five feet or greater in length.

19 3. The [state fire administrator], in consultation with the [department of environmental
20 conservation], shall develop and maintain a list of the common names of wild animals to be
21 reported.

22 4. Except for pet dealers as defined in [insert citation], every person owning, possessing,
23 or harboring a wild animal within this state shall report the presence thereof to the clerk of the
24 city, town, or village in which such wild animal is owned, possessed, or harbored. Such report
25 shall be filed annually on a date to be determined by the [state fire administrator] in the manner
26 prescribed by the [state fire administrator]. A separate report shall be filed for each street address
27 at which any such wild animal may be found.

28 5. Such clerk shall forward a copy of such report to each state police troop, county
29 sheriff, and municipal police agency having jurisdiction over the location of such wild animal. A
30 copy thereof shall also be forwarded to each fire department, fire corporation, or fire company
31 serving such location and to each ambulance or emergency medical service department,

32 ambulance corporation, or ambulance or emergency medical service company serving such
33 location. In lieu of forwarding a copy of each report, the clerk may compile the contents of the
34 several reports, and forward the compilation.

35 6. Any person who fails to report the presence of a wild animal as required in this section
36 shall be subject to a civil penalty of not more than [two hundred fifty dollars] for the first
37 offense, and upon being found guilty of a second or subsequent offense, by a civil penalty of not
38 less than [two hundred fifty dollars] or more than [one thousand dollars]. Except as otherwise
39 provided by law, such a violation shall not be a crime and the penalty or punishment imposed
40 therefor shall not be deemed for any purpose a criminal penalty or punishment and shall not
41 impose any disability upon or affect or impair the credibility as a witness, or otherwise, of a
42 person found guilty thereof.

43
44 Section 2. [*Severability.*] [Insert severability clause.]

45
46 Section 3. [*Repealer.*] [Insert repealer clause.]

47
48 Section 4. [*Effective Date.*] [Insert effective date.]

Organ Transplants and HIV

This Act directs that it is not a violation of law for a person to perform a solid organ transplant of an organ from an HIV-positive donor to a person who has tested positive for exposure to HIV or any other identified causative agent of AIDS and who is in immediate threat of death unless the transplant is performed. It also provides that a tissue bank that provides an organ from an HIV-positive donor under this provision may not be criminally or civilly liable for the furnishing the organ.

Submitted as:

Illinois

HB 3857 (enrolled version)

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act may be cited as "An Act Concerning Solid Organ
2 Transplants and the Human Immunodeficiency Virus and Acquired Immunodeficiency
3 Syndrome."
4

5 Section 2. [*Registry of Sperm and Tissue Banks*.]

6 (a) The [Department] shall establish a registry of all sperm banks and tissue banks
7 operating in this state. All sperm banks and tissue banks operating in this state shall register with
8 the [Department] by [May 1] of each year. Any person, hospital, clinic, corporation, partnership,
9 or other legal entity that operates a sperm bank or tissue bank in this state and fails to register
10 with the [Department] pursuant to this Section commits a business offense and shall be subject to
11 a fine of [\$5,000].

12 (b) All donors of semen for purposes of artificial insemination, or donors of corneas,
13 bones, organs, or other human tissue for the purpose of injecting, transfusing, or transplanting
14 any of them in the human body, shall be tested for evidence of exposure to human
15 immunodeficiency virus (HIV) and any other identified causative agent of acquired
16 immunodeficiency syndrome (AIDS) at the time of or after the donation but prior to the semen,
17 corneas, bones, organs, or other human tissue being made available for that use. However, when
18 in the opinion of the attending physician the life of a recipient of a bone, organ, or other human
19 tissue donation would be jeopardized by delays caused by testing for evidence of exposure to
20 HIV and any other causative agent of AIDS, testing shall not be required.

21 (c) Except as otherwise provided in [insert citation] a person may not intentionally,
22 knowingly, recklessly, or negligently use the semen, corneas, bones, organs, or other human
23 tissue of a donor unless the requirements of subsection (b) have been met. Except as otherwise
24 provided in [insert citation], no person may intentionally, knowingly, recklessly, or negligently
25 use the semen, corneas, bones, organs, or other human tissue of a donor who has tested positive
26 for exposure to HIV or any other identified causative agent of AIDS. Violation of this subsection
27 (c) shall be a [Class 4 felony].

28 (d) It is not a violation of this Section for a person to perform a solid organ transplant of
29 an organ from an HIV infected donor to a person who has tested positive for exposure to HIV or
30 any other identified causative agent of AIDS and who is in immediate threat of death unless the

transplant is performed. A tissue bank that provides an organ from an HIV infected donor under this subsection may not be criminally or civilly liable for the furnishing of that organ under this subsection.

(e) For the purposes of this Section, "Human tissue" shall not be construed to mean whole blood or its component parts. "Tissue bank" means any facility or program that is involved in procuring, furnishing, donating, processing, or distributing corneas, bones, organs, or other human tissue for the purpose of injecting, transfusing, or transplanting any of them in the human body. "Solid organ transplant" means the surgical transplantation of internal organs including, but not limited to, the liver, kidney, pancreas, lungs, or heart. "Solid organ transplant" does not mean a bone marrow based transplant or a blood transfusion. "HIV infected donor" means a deceased donor who was infected with HIV or a living donor known to be infected with HIV and who is willing to donate a part or all of one or more of his or her organs. A determination of the donor's HIV infection is made by the donor's medical history or by specific tests that document HIV infection, such as HIV RNA or DNA, or by antibodies to HIV.

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

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

Section 5. [*Effective Date*.] [Insert effective date.]

Pornography and Child Exploitation Prevention

This Act addresses computer pornography involving children and creates the crime of obscene Internet contact with a child.

Submitted as:

Georgia

HB 462 (As Passed House and Senate)

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 Create the Crime of
2 Obscene Internet Contact with a Child."

3
4 Section 2. [*Computer Pornography and Children.*]

5 (a) As used in this Act:

6 (1) "Child" means any person under the age of 16 years.

7 (2) "Identifiable child" means a person:

8 (A) Who was a child at the time the visual depiction was created, adapted,
9 or modified or whose image as a child was used in creating, adapting, or modifying the visual
10 depiction; and

11 (B) Who is recognizable as an actual person by the person's face, likeness,
12 or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or
13 by electronic or scientific means as may be available. The term shall not be construed to require
14 proof of the actual identity of the child.

15 (3) "Sadomasochistic abuse" has the same meaning as provided in [insert
16 citation].

17 (4) "Sexual conduct" has the same meaning as provided in [insert citation].

18 (5) "Sexual excitement" has the same meaning as provided in [insert citation].

19 (6) "Sexually explicit nudity" has the same meaning as provided in [insert
20 citation].

21 (7) "Visual depiction" means any image and includes undeveloped film and video
22 tape and data stored on computer disk or by electronic means which is capable of conversion into
23 a visual image or which has been created, adapted, or modified to show an identifiable child
24 engaged in sexually explicit conduct.

25 (b) (1) A person commits the offense of computer pornography if such person
26 intentionally or willfully:

27 (A) Compiles, enters into, or transmits by means of computer;

28 (B) Makes, prints, publishes, or reproduces by other computerized means;

29 (C) Causes or allows to be entered into or transmitted by means of
30 computer; or

31 (D) Buys, sells, receives, exchanges, or disseminates any notice,
32 statement, or advertisement, or any child's name, telephone number, place of residence, physical
33 characteristics, or other descriptive or identifying information for the purpose of offering or
34 soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

(2) Any person convicted of violating paragraph (1) of this subsection shall be punished by a fine of not more than [\$10,000] and by imprisonment for not less than [one] nor more than [20 years], or both.

(c) (1) It shall be unlawful for any person intentionally or willfully to utilize a computer on-line service, or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, or on-line messaging service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child, to commit any illegal act described in [insert citation], relating to the offense of sodomy or aggravated sodomy; relating to the offense of child molestation or aggravated child molestation; relating to the offense of enticing a child for indecent purposes; or [insert citation] relating to the offense of public indecency; or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than [one] nor more than [20 years] and by a fine of not more than [\$25,000]; provided, however, that, if at the time of the offense the victim was [14 or 15 years] old and the defendant was no more than [three years] older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.

(d) (1) A person commits the offense of obscene Internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, or on-line messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for a violation of this subsection on the unsupported testimony of a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than [one] nor more than [ten years] or by a fine of not more than [\$10,000] provided, however, that, if at the time of the offense the victim was [14 or 15 years] old and the defendant was no more than [three years] older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.

(e) (1) It shall be unlawful for any owner or operator of a computer on-line service, Internet service, or local bulletin board service intentionally or willfully to permit a subscriber to utilize the service to commit a violation of this section, knowing that such person intended to utilize such service to violate this section. No owner or operator of a public computer on-line service, Internet service, or local bulletin board service shall be held liable on account of any action taken in good faith in providing the aforementioned services.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

(f) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to prosecution under this section.

(g) A person is subject to prosecution in this state pursuant to [insert citation], relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this section which the person engages in while either within or outside of this state if, by such conduct, the person commits a violation of this section which involves a child who resides in this state or another person believed by such person to be a child residing in this state.

84 (h) Any violation of this section shall constitute a separate offense.
85
86 Section 3. [*Severability*.] [Insert severability clause.]
87
88 Section 4. [*Repealer*.] [Insert repealer clause.]
89
90 Section 5. [*Effective Date*.] [Insert effective date.]

Prisoner Complaints against State Corrections Health Officials

This Act provides that a complaint filed by a state prisoner with the state department of health against a health practitioner employed by the state department of corrections, is not legally sufficient unless there is a showing that the prisoner has exhausted all available administrative remedies within the state correctional system. This Act does not limit or prevent access to the department of health for review of legitimate health concerns.

This Act permits the department of health after a preliminary inquiry to determine legal sufficiency and proceed to discipline a practitioner if the department determines that "the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner." The department of health must be notified within 15 days whenever the department of corrections disciplines or allows a health care practitioner to resign for an offense related to the practice of their profession.

Submitted as:

Florida

Chapter 2003-27

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be described as "An Act Concerning Prisoner
2 Complaints against State Corrections Health Officials."
3

4 Section 2. [*Disciplinary Proceedings.*]

5 (1) The [Department of Corrections], for the boards under its jurisdiction, shall cause to
6 be investigated any complaint that is filed before it if the complaint is in writing, signed by the
7 complainant, and legally sufficient. A complaint filed by a state prisoner against a health care
8 practitioner employed by or otherwise providing health care services within a facility of the
9 [Department of Corrections] is not legally sufficient unless there is a showing that the prisoner
10 complainant has exhausted all available administrative remedies within the state correctional
11 system before filing the complaint. However, if the [Department of Health] determines after a
12 preliminary inquiry of a state prisoner's complaint that the practitioner may present a serious
13 threat to the health and safety of any individual who is not a state prisoner, the [Department of
14 Health] may determine legal sufficiency and proceed with discipline. The [Department of
15 Health] shall be notified within [15 days] after the [Department of Corrections] disciplines or
16 allows a health care practitioner to resign for an offense related to the practice of his or her
17 profession. A complaint is legally sufficient if it contains ultimate facts that show that a violation
18 of this Act, of any of the practice acts relating to the professions regulated by the department, or
19 of any rule adopted by the department or a regulatory board in the department has occurred. In
20 order to determine legal sufficiency, the department may require supporting information or
21 documentation. The [Department of Corrections] may investigate, and the [Department of
22 Corrections] or the appropriate board may take appropriate final action on, a complaint even
23 though the original complainant withdraws it or otherwise indicates a desire not to cause the
24 complaint to be investigated or prosecuted to completion. The [Department of Corrections] may

investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The [Department of Corrections] may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a state statute, a rule of the [Department of Corrections], or a rule of a board.

(2) Except as provided in [insert citation], when an investigation of any subject is undertaken, the [Department of Corrections] shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within [20 days] after service to the subject of the complaint or document. The subject's written response shall be considered by the [probable cause panel]. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the [Secretary of the Department of Corrections, or the secretary's designee], and the [chair of the respective board or the chair of its probable cause panel] agree in writing that such notification would be detrimental to the investigation, the [Department of Corrections] may withhold notification. The [department] may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

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

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

Section 5. [*Effective Date*.] [Insert effective date.]

Procedures for Release by a State Agency of Statistical Information for Research Purposes

This Act establishes a procedure for the release by a state agency of statistical information for research purposes. Under this Act, a requestor of such information shall sign a data use agreement specifying certain limitations for the use of the information.

Submitted as:

New Hampshire

Chapter 292, 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 the "Act Establishing a Procedure for
2 Release by a State Agency of Statistical Information for Research Purposes."

3
4 Section 2. [*Statement of Purpose.*]

5 I. The [legislature] recognizes that:

6 (a) Preserving the confidentiality of individually identifiable information in the
7 possession of the state is of great importance to our citizens;

8 (b) Openness in the conduct of public business is essential to a democratic
9 society;

10 (c) Information and data collected or maintained with public funds is held for the
11 collective benefit of the citizenry;

12 (d) Public policy can be improved and program administration can be made more
13 efficient and effective through analysis of information and data; and

14 (e) The collection and maintenance of reliable and comprehensive health care data
15 is necessary to promote informed decision-making, increase accountability in the health care
16 system, and improve health care planning.

17 II. Therefore, the [legislature] hereby determines that there is a need to collect encrypted
18 insurance claims data and to clarify the conditions under which limited data sets and health care
19 data and information that may relate to individual citizens may be released.

20
21 Section 3. [*Release of Statistical Tables and Limited Data Sets for Research:*
22 *Definitions.*]

23 I. As used in this Act:

24 (a) "Agency" means each state board, commission, department, institution, officer
25 or other state official or group.

26 (b) "Agency Head" means the head of any governmental agency which is
27 responsible for the collection and use of any data on persons or summary data.

28 (c) "Cell Size" means the count of individuals that share a set of characteristics
29 contained in a statistical table.

30 (d) "Data Set" means a collection of personal information on one or more
31 individuals, whether in electronic or manual files.

32 (e) "Direct Identifiers" means:

- 33 (1) Names.
34 (2) Postal address information other than town or city, state, and zip code.
35 (3) Telephone and fax numbers.
36 (4) Electronic mail addresses.
37 (5) Social security numbers.
38 (6) Certificate and license numbers.
39 (7) Vehicle identifiers and serial numbers, including license plate
40 numbers.
41 (8) Personal Internet IP addresses and URLs.
42 (9) Biometric identifiers, including finger and voiceprints.
43 (10) Personal photographic images.
44 (f) "Individual" means a human being, alive or dead, who is the subject of
45 personal information and includes the individual's legal or other authorized representative.
46 (g) "Limited Data Set" means a data set from which all direct identifiers have
47 been removed or blanked.
48 (h) "Personal Information" means information relating to an individual that is
49 reported to the state or is derived from any interaction between the state and an individual and
50 which:
51 (1) Contains direct identifiers.
52 (2) Is under the control of the state.
53 (i) "Provided By Law" means use and disclosure as permitted or required by state
54 law governing programs or activities undertaken by the state or its agencies, or required by
55 federal law.
56 (j) "Public Record" means records available to any person without restriction.
57 (k) "State" means this state and its agencies or instrumentalities.
58 (l) "Statistical Table" means single or multivariate counts based on the personal
59 information contained in a data set and which does not include any direct identifiers.
60

61 Section 4. [*Application and Data Use Agreement Procedures.*]

62 I. Except as otherwise provided by law, upon request an agency shall release limited data
63 sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files
64 to requestors for the purposes of research under the following conditions:

- 65 (a) The requestor submits a written application that contains:
66 (1) The following information about the principal investigator in charge of
67 the research:
68 (A) Name, address, and phone number;
69 (B) Organizational affiliation;
70 (C) Professional qualification; and
71 (D) Name and phone number of principal investigator's contact
72 person, if any.
73 (2) The names and qualifications of additional research staff, if any, who
74 will have access to the data.
75 (3) A research protocol which shall contain:
76 (A) A summary of background, purposes, and origin of the
77 research;
78 (B) A statement of the general problem or issue to be addressed by
79 the research;
80 (C) The research design and methodology including either the
81 topics of exploratory research or the specific research hypotheses to be tested;

(D) The procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and
(E) The intended research completion date.
(4) The following information about the data or statistical tables being requested:
(A) General types of information;
(B) Time period of the data or statistical tables;
(C) Specific data items or fields of information required, if applicable;
(D) Medium in which the data or statistical tables are to be supplied; and
(E) Any special format or layout of data requested by the principal investigator.
(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:
(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.
(2) Agreement not to use or further disclose the information as otherwise required by law.
(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.
(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:
(A) Otherwise provided by law; or
(B) The information is a public record.
(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.
(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

Section 5. [*Stipulations for Data Release.*]

I. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

- (a) The application submitted is complete.
- (b) Adequate measures to ensure the confidentiality of any person are documented.
- (c) The investigator and research staff are qualified as indicated by:
 - (1) Documentation of training and previous research, including prior publications; and
 - (2) Affiliation with a university, private research organization, medical center, state agency, or other institution that will provide sufficient research resources.
- (d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

Section 6. [*Agency Response; Denial.*] Within [10 days] of a receipt of written application, the agency head, or designee, shall respond to the request. Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to

other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

Section 7. [*Violations.*] Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.

Section 8. [*Fees.*] Nothing in this Act shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

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

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

Section 11. [*Effective Date.*] [Insert effective date.]

Prohibiting Gutka Sales

Gutka is a smokeless tobacco product legally imported from India. Its chewing gum form is sweet and can contain three to four times the amount of nicotine as a cigarette and can contain unhealthy additives like magnesium carbonate. This Act prohibits the sale of gutka to minors, but allows it to be purchased by adults from tobacco businesses.

Submitted as:

New York

A04789 - - B

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 Prevent the Sale of Gutka to
2 Minors."

3
4 Section 2. [*Definitions.*] As used in this Act, "gutka" means a product containing lime
5 paste, spices, areca and tobacco.

6
7 Section 3. [*Sale of Gutka Prohibited.*]

8 1. No person shall knowingly sell or provide gutka to any other person under [eighteen
9 years old]. No other provision of law authorizing the sale of tobacco products, other than
10 subdivision two of this section, shall authorize the sale of gutka. Any person who violates the
11 provisions of this subdivision shall be subject to a civil penalty of not more than [five hundred
12 dollars].

13 2. (a) The provisions of subdivision one of this section shall not apply to a tobacco
14 business, as defined in [insert citation].

15 (b) Any person operating a tobacco business wherein gutka is sold or offered for
16 sale is prohibited from selling such gutka to individuals under [eighteen years of age], and shall
17 post in a conspicuous place a sign upon which there shall be imprinted the following statement,
18

19 "Selling gutka to people under [eighteen years old] is prohibited by law."
20

21 Such sign shall be printed on a white card in red letters at least [one-half inch] in height.

22 (c) Sales of gutka by a tobacco business shall be made only to an individual who
23 demonstrates, through a driver's license or other photographic identification card issued by a
24 government entity or educational institution indicating that the individual is at least [eighteen
25 years old]. Such identification need not be required of any individual who reasonably appears to
26 be at least [twenty-five years old], provided, however, that such appearance shall not constitute a
27 defense in any proceeding alleging the sale of a tobacco product to an individual under [eighteen
28 years old].

29 (d) (i) Any person operating a tobacco business wherein gutka is sold or
30 offered for sale may perform a transaction scan as a precondition for such purchases.

31 (ii) In any instance where the information deciphered by the transaction
32 scan fails to match the information printed on the driver's license or non-driver identification

33 card, or if the transaction scan indicates that the information is false or fraudulent, the attempted
34 transaction shall be denied.

35 (iii) In any proceeding pursuant to [insert citation], it shall be an
36 affirmative defense that such person had produced a driver's license or non-driver identification
37 card apparently issued by a governmental entity, successfully completed that transaction scan,
38 and that the gutka had been sold, delivered or given to such person in reasonable reliance upon
39 such identification and transaction scan. In evaluating the applicability of such affirmative
40 defense the [commissioner] shall take into consideration any written policy adopted and
41 implemented by the seller to effectuate the provisions of this Act. Use of a transaction scan shall
42 not excuse any person operating a tobacco business wherein gutka is sold, or the agent or
43 employee of such person, from the exercise of reasonable diligence otherwise required by this
44 Act. Notwithstanding the above provisions, any such affirmative defense shall not be applicable
45 in any civil or criminal proceeding, or in any other forum.

46 (e) A tobacco business or agent or employee of such business shall only use a
47 device capable of deciphering any electronically readable format, and shall only use the
48 information recorded and maintained through the use of such devices, for the purposes contained
49 in paragraph (d) of this subdivision. No tobacco business or agent or employee of such business
50 shall resell or disseminate the information recorded during such a scan to any third person. Such
51 prohibited resale or dissemination includes but is not limited to any advertising, marketing or
52 promotional activities. Notwithstanding the restrictions imposed by this paragraph, such records
53 may be released pursuant to a court ordered subpoena or pursuant to any other statute that
54 specifically authorizes the release of such information. Each violation of this paragraph shall be
55 punishable by a civil penalty of not more than [one thousand dollars].

56 (f) A tobacco business or agent or employee of such business may electronically
57 or mechanically record and maintain only the information from a transaction scan necessary to
58 effectuate this section. Such information shall be limited to the following:

- 59 (i) Name,
60 (ii) Date of birth,
61 (iii) Driver's license or non-driver identification number, and
62 (iv) Expiration date.

63 (g) As used in this subdivision, "a device capable of deciphering any
64 electronically readable format", "card holder" and "transaction scan" shall have the same
65 meanings as are ascribed to such terms by [insert citation].

66
67 Section 13. [*Severability.*] [Insert severability clause.]

68
69 Section 14. [*Repealer.*] [Insert repealer clause.]

70
71 Section 15. [*Effective Date.*] [Insert effective date.]

Prohibiting Local Governments from Regulating Activities Related to Fertilizer

This Act prohibits political subdivisions under the state from regulating the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers and declares that no political subdivision may adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers. The purpose of the Act is to help ensure that these materials are regulated based on sound scientific principles needed to protect human health and the environment and that there is no disruption to the uniform movement of these products in commerce throughout the state.

Submitted as:
West Virginia
SB 631 (enrolled version)
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act Concerning Local Government
2 Regulation of Activities Relating to Fertilizer."
3

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

5 (a) "Brand" means a term, design or trademark used in connection with one or several
6 grades of regulated product.

7 (b) "Bulk fertilizer" means fertilizer delivered to the purchaser either in solid or liquid
8 state in a nonpackage form to which a label cannot be attached.

9 (c) "Commissioner" means the [commissioner of agriculture] of this state or his or her
10 duly authorized agent.

11 (d) "Compost" means a biologically stable material derived from the composting
12 process.

13 (e) "Custom media" means a horticultural growing medium prepared to exact
14 specifications of the person who will be planting in the medium.

15 (f) "Department" means the [state department of agriculture].

16 (g) "Distribute" means to import, consign, to offer for sale, sell, barter, warehouse or
17 otherwise supply a regulated product in this state.

18 (h) "Distributor" means any person who distributes a regulated product in this state.

19 (i) "Embargo" means a written stop sale order issued by the [commissioner of
20 agriculture] prohibiting the sale, use of or transportation of any regulated product in any manner
21 until the embargo is released by the commissioner.

22 (j) "Fertilizer" means any substance containing one or more recognized plant nutrients,
23 including natural organic fertilizer, which is designed for use or claimed to have value in
24 promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime,
25 limestone, wood ashes and gypsum and other products exempted by rule of the commissioner.

26 (k) "Fertilizer material" means a fertilizer which either:

27 (1) Contains important quantities of no more than one of the primary plant
28 nutrients: (nitrogen (N), available phosphate (P₂O₅) and soluble potash (K₂O); or

(2) Has [eighty-five percent] or more of its plant nutrient content present in the form of a single chemical compound; or

(3) Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(l) "Grade" means the percentage of total nitrogen, available phosphate and soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis; provided that:

(1) Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate and soluble potash; and provided, however, that;

(2) Fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units.

(m) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(1) Total nitrogen (N) percent

Available phosphate (P_2O_5) percent

Soluble potash (K_2O)..... percent

(2) For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphatic materials, the total available phosphate or degree of fineness may also be guaranteed.

(3) Guarantees for other plant nutrients may be permitted or required by rule of the commissioner and shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.

(n) "Horticultural growing medium" means any substance or mixture of substances promoted as or intended to function as a commercial or consumer growing medium for the managed growth of horticultural crops in containers.

(o) "Investigational allowance" means an allowance for variations inherent in the collection, preparation and analysis of an official sample of regulated product.

(p) "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a regulated product.

(q) "Labeling" means all written, printed or graphic matter, upon or accompanying any regulated product, or advertisements, brochures, posters or electronic announcements used in promoting the sale of regulated products.

(r) "Local legislation" means, but not limited to, any ordinance, motion, resolution, amendment, regulation or rule adopted by a political subdivision.

(s) "Manufacture" means to produce, compound, mix, blend or in any way alter the chemical or physical characteristics of a regulated product.

(t) "Manufacturer" means any person who manufactures a regulated product.

(u) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(v) "Natural organic fertilizer" means materials derived from either plant or animal products containing one or more elements other than carbon, hydrogen and oxygen which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic

or anaerobic/aerobic bacterial action or any combination of these. These materials may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis or pelleting.

(w) "Official sample" means any sample of regulated product collected by the commissioner or his or her agent and designated as "official" by the commissioner.

(x) "Percent" or "percentage" means the percentage by weight.

(y) "Person" means an individual, partnership, association, firm or corporation.

(z) "Political subdivision" means any local government entity which includes, but is not limited to, any city, county or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographical area smaller than that of the state.

(aa) "Primary nutrients" means nitrogen (N), available phosphate (P_2O_5) and soluble potash (K_2O).

(bb) "Registrant" means the person who registers regulated products under the provisions of this article.

(cc) "Regulated product" means any product governed by this article, including any fertilizer, specialty fertilizer, soil amendment and horticultural growing medium.

(dd) "Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared or sold for manurial, soil enriching or soil corrective purposes, or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing any chemical or physical change in the soil. The following are exempt from the definition of "soil amendment": Fertilizer, unmanipulated animal manures, horticultural growing medium, agricultural liming materials, unmixed mulch and unmixed peat.

(ee) "Specialty fertilizer" means a fertilizer distributed primarily for non-farm use, such as home gardens, lawns, shrubbery, flowers, house plants, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

(ff) "Synthetic" means any substance generated from another material or materials by means of a chemical reaction.

(gg) "Ton" means a net weight of two thousand pounds avoirdupois.

(hh) "Unmanipulated manure" means substances composed of the excreta of domestic animals, or domestic fowls, which has not been processed or conditioned in any manner, including, but not limited to, processing or conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any material or materials, other than those which have been used for bedding, sanitary or feeding purposes for animals or fowls or by any other means.

Section 3. [*Local Legislation Prohibited.*] No political subdivision may regulate the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers; and, in addition, no political subdivision may adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers. Local legislation in violation of this section is void and unenforceable.

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

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

Section 6. [*Effective Date.*] [Insert effective date.]

Regulating Arbitration Service Providers

This SSL draft Act is based upon California Chapters 952 and 1158 of 2002. The draft regulates consumer arbitrations. This Act requires full disclosure of consumer arbitration outcomes so that any patterns of bias can be detected. It waives fees for indigent claimants and bans shifting arbitration fees to a claimant who does not prevail in arbitration. The Act also attempts to ensure impartiality of arbitration providers by prohibiting conflicts of interest.

Submitted as:

California

Chapters 952 and 1158 of 2002

Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Regulate Arbitration Service
2 Providers."

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

4 (a) "Consumer arbitration" means an arbitration conducted under a predispute arbitration
5 provision that meets the criteria listed in paragraphs (1) through (3) below. "Consumer
6 arbitration" excludes arbitration proceedings conducted under or arising out of public or private
7 sector labor relations laws, regulations, or agreements.

8 (1) The contract is with a consumer party, as defined in these standards;

9 (2) The contract was drafted by or on behalf of the nonconsumer party; and

10 (3) The consumer party was required to accept the arbitration provisions in the
11 contract.

12 (b) "Consumer party" is a party to an arbitration agreement who, in the context of that
13 arbitration agreement, is any of the following:

14 (1) An individual who seeks or acquires, including by lease, any goods or
15 services, including but not limited to financial services and insurance, primarily for personal,
16 family, or household purposes.

17 (2) An individual who is an enrollee, subscriber or insured under a health care
18 plan or health care insurance, or an individual with a medical malpractice claim.

19 (3) An employee or applicant for employment, in a dispute arising out of or
20 relating to the employee's employment or the applicant's prospective employment that is subject
21 to the arbitration agreement.

22 (c) "Financial interest" is holding a position in a business as officer, director, trustee or
23 partner or holding any position in management; or ownership of more than five percent interest
24 in a business.

25
26 Section 3. [*Requiring Private Arbitration Companies to Collect, Publish, and Make*
27 *Certain Information Available to the Public.*]

28 (a) Any private arbitration company that administers or is otherwise involved in 50 or
29 more consumer arbitrations a year shall collect, publish at least quarterly, and make available to
30 the public in a computer-searchable format, which shall be accessible at the Internet Web site of
31 the private arbitration company, if any, and on paper upon request, all of the following
32 information regarding each consumer arbitration within the preceding five years:

(1) The nonconsumer party, if the nonconsumer party is a corporation or other business entity that is a party to the arbitration.

(2) The type of dispute involved, including goods, banking, insurance, health care, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges: [less than \$100,000, \$100,000 to \$250,000, inclusive, and over \$250,000].

(3) Whether the consumer or nonconsumer was the prevailing party.

(4) On how many occasions, if any, the nonconsumer has previously been a party in an arbitration or mediation administered by the private arbitration company.

(5) Whether the consumer party was represented by an attorney.

(6) The date the private arbitration company received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or private arbitration company.

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing.

(8) The amount of the claim, the amount of the award, and any other relief granted, if any.

(9) The name of the arbitrator, his or her total fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) If the required information is provided by the private arbitration company in a computer-searchable format at the company's Internet Web site and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(c) A private arbitration company that administers or conducts fewer than [50] consumer arbitrations per year may collect and publish the information required by subdivision (a) [semiannually], provide the information only on paper, and charge the actual cost of copying.

(d) No private arbitration company shall have any liability for collecting, publishing, or distributing the information in accord with this section.

Section 4. [*Private Arbitration Company Fees.*]

(a) All fees and costs charged to or assessed upon a consumer by a private arbitration company in a consumer arbitration, [exclusive of arbitrator fees] shall be waived for any person having a gross monthly income that is less than [300 percent] of the federal poverty guidelines.

(b) Nothing in this section shall affect the ability of a private arbitration company to shift fees that would otherwise be charged or assessed upon a consumer party to another party.

(c) Prior to requesting or obtaining any fee, a private arbitration company shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to a consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(d) Any consumer requesting a waiver of fees or costs may establish eligibility by making a declaration under oath on a form provided by the private arbitration company for signature stating his or her monthly income and the number of persons living in the household. No private arbitration company may require a consumer to provide any further statement or evidence of indigence.

(e) Any information obtained by a private arbitration company about a consumer's identity, financial condition, income, wealth, or fee waiver request shall be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except a private arbitration company may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

Section 5. [*Prohibitions against Losing Parties Paying the Fees and Costs of Prevailing Parties in an Arbitration.*] No neutral arbitrator or private arbitration company shall administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, provider organization, attorney, or witnesses.

Section 6. [*Financial Interest of Arbitration Companies in Any Party to an Arbitration or Attorney for a Party to an Arbitration.*] No private arbitration company may administer a consumer arbitration to be conducted in this state, or provide any other services related to such a consumer arbitration, if

(1) The private arbitration company has, or within the preceding year has had, a financial interest in any party or attorney for a party.

(2) Any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the private arbitration company.

Section 7. [*Severability.*] Should a court decide that any provision of this Act is unconstitutional, preempted, or otherwise invalid, that provision shall be severed, and such a decision shall not affect the validity of the Act other than the part severed.

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

Section 9. [*Effective Date.*] [Insert effective date.]

Regulating Kegs

This Act establishes a procedure for tagging each keg of beer sold at retail for off premises consumption and requires retailers to maintain records of keg purchases. This Act also provides penalties for violations. Other states with keg registration laws include: California, Connecticut, Idaho, Maryland, Massachusetts, Missouri, Nebraska, New Mexico, North Dakota, Oregon, Utah, Vermont, Virginia and Washington.

Submitted as:

Rhode Island

Chapter 115, 2002

Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Keg Registration Act."

2

3 Section 2. [*Restricting Selling Kegs of Beer.*]

4 (a) Every retailer of kegs of beer shall affix a removable tag to each keg of beer sold
5 which shall contain:

6 (1) The name and address of the person purchasing the keg;

7 (2) The following language:

8

9 "[State] law prohibits the sale, delivery, service of or giving away to, or causing, or
10 permitting or procuring to be sold, delivered, served, or given away any alcoholic
11 beverage to any person who has not reached his or her [21st birthday]. A violation of this
12 statute is an offense punishable by a fine of up to [\$1,000] and [6 months' imprisonment].
13 Minimum fine for first offense is [\$350]. The purchaser shall not remove or obliterate the
14 keg tag nor allow its removal or obliteration. A keg without a tag attached shall be
15 subject to confiscation by the police."

16

17 (b) The retailer shall maintain a record of persons purchasing kegs, a keg sales book,
18 which includes: name, address, date, and name brand of beer, and whether or not the keg was
19 returned without the tags or not returned at all.

20 (c) The sign-in keg sales book shall be prescribed, published, and approved at the
21 direction and control of the [division]. The book shall contain at least [400 pages], shall be
22 uniform throughout the state, and shall be distributed at a cost not to exceed [\$7.00].

23 (c) The provisions of this section shall not apply to those classes of licensed beverage
24 retailers, which are prohibited by law from making off premises sales.

25 (d) The [director of the department of business regulation] shall design a uniform keg tag,
26 which fulfills the provisions of this section.

27

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

29

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

31

32 Section 5. [*Effective Date.*] [Insert effective date.]

Regulating Poultry Production Contracts

This SSL draft is based upon a Georgia 2004 law. According to CSG Agriculture Policy staff, the Georgia law is the first in the country that permits poultry growers to have poultry production contracts reviewed outside a poultry integrator's office. It also allows the contract producer to request data used to determine the compensation paid under a production contract. This draft provides for the regulation of certain poultry production contracts and practices related thereto. Specifically, the draft directs that any production contract entered into, extended, renewed, or amended on or after the effective date of the draft shall be voidable by the contract grower or contract producer if:

- The contract grower or contract producer has not been afforded the opportunity to have the proposed production contract reviewed outside the business premises of the integrator or processor or its agents by an attorney or adviser of the contract grower's or contract producer's choosing for at least three business days prior to execution; provided, however, that this paragraph shall not apply to the mere extension or renewal of an existing contract with no change in material terms from the existing contract other than the period covered thereby;
- The contract does not quote certain provisions; or
- The contract is not signed by all parties before chicks are placed with the contract grower or contract producer.

Submitted as:

Georgia

HB 648 (as passed House and Senate)

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act Concerning the Regulation of
2 Poultry Production Contracts."
3

4 Section 2. [*Definitions.*]

5 (a) "Contract grower or contract producer" means a producer of poultry who holds a legal
6 interest in a contract operation and who produces poultry under a production contract at that
7 contract operation.

8 (b) "Integrator or processor" means a person who owns poultry that is produced by a
9 contract grower or contract producer or who is engaged in the business of manufacturing goods
10 from poultry, including by slaughtering or processing poultry.

11 (c) "Production contract" means an agreement executed by an integrator or processor that
12 provides for the production of poultry or the provision of management services relating to the
13 production of poultry by a contract grower or contract producer in this state.
14

15 Section 3. [*Provisions for Voiding Contracts.*]

16 (a) Any production contract entered into, extended, renewed, or amended on or after the
17 effective date of this chapter shall be voidable by the contract grower or contract producer if:

18 (1) The contract grower or contract producer has not been afforded the
19 opportunity to have the proposed production contract reviewed outside the business premises of
20 the integrator or processor or its agents by an attorney or adviser of the contract grower's or
21 contract producer's choosing for at least [three business days] prior to execution; provided,

however, that this paragraph shall not apply to the mere extension or renewal of an existing contract with no change in material terms from the existing contract other than the period covered thereby;

(2) The contract does not quote the provisions of subsection (b) of this section; or

(3) The contract is not signed by all parties before chicks are placed with the contract grower or contract producer.

(b) (1) Unless waived in writing by the contract grower or contract producer at the time of signing a production contract, the contract grower or contract producer shall have a right to cancel a production contract until [12:00 Midnight of the third business day after the day on which he or she signs the contract] or until chicks have been placed with the contract grower or contract producer, whichever occurs first.

(2) Notice of cancellation under this subsection shall be given in writing to the integrator or processor at the place of business as set forth in the production contract by certified mail or statutory overnight delivery, return receipt requested, which shall be posted before termination of the right to cancel under paragraph (1) of this subsection. Notice of such written cancellation need not include any particular words or phrases to be effective so long as it indicates the intention of the contract grower or contract producer not to be bound by the production contract.

Section 4. [*Integrators and Processors: Providing Growers or Producers Information and Data Used to Determine Compensation Paid to Grower or Producers.*] Any integrator or processor shall provide to any contract grower or contract producer upon request thereby any statistical information and data used to determine compensation paid to such contract grower or contract producer under a production contract, other than a trade secret as defined by [insert citation].

Section 5. [*Right of Growers or Contract Producers to Be Present at Weighing of Poultry Produced by Such Grower or Producer.*] Any contract grower or contract producer or the designee thereof shall have the right to be present at the weighing of poultry produced by such grower or producer, be present at the weighing of feed delivered by the integrator or processor, and observe the weights and measures used to determine compensation due such grower or producer under a production contract.

Section 6. [*Violations.*]

(a) Violations of the provisions of Section 4 or 5 of this Act shall be subject to the same civil remedies and in the same manner as provided by [insert citation] for people whose business or property has been injured or damaged as a result of an unfair or deceptive act or practice in violation of [insert citation].

(b) The provisions of Section 4 or 5 of this Act may be enforced by the [Commissioner] in the same manner as provided by [insert citation] for enforcement of the provisions of said part by the [administrator of consumer affairs] against a person reasonably appearing to have engaged in unfair or deceptive act or practice in violation of [insert citation], and the [superior courts] may grant injunctive relief and impose the same civil penalties for violations of injunctions as provided in said part."

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

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

Section 9. [*Effective Date.*] [Insert effective date.]

Regulating the Catheterization of Students (Statement)

Any state that receives funds under the Federal Education of the Handicapped Act must ensure "all handicapped children the right to a free and appropriate education." A "free and appropriate education" is defined as "special education and related services." The U.S. Supreme Court has interpreted the term "related services" to include clean, intermittent catheterization because it is a service that is necessary to allow a child to remain at school during the day.

Washington state law also requires public school districts and private schools that offer classes for any of grades kindergarten through twelve to provide for clean, intermittent bladder catheterization of students, or assisted self-catheterization of students pursuant. However, some school employees may not feel qualified or comfortable performing catheterizations of students. In response, Washington enacted Chapter 172, Laws of 2003. That Act provides that school district employees, other than nurses, who have not agreed in writing to perform clean, intermittent bladder catheterization as a specific part of their job description, may file a written letter of refusal to perform clean, intermittent bladder catheterization of students. The written letter of refusal may not serve as grounds for discharge, nonrenewal, or other action adversely affecting the employee's contract status.

The new law requires any public school district or private school that provides clean, intermittent bladder catheterization to document the provision of training given to employees who perform these services. These records shall be made available for review at any audit.

Finally, Chapter 172, Laws of 2003 also provides that any employee of a public school district or private school that performs health services, such as catheterization, must have a job description that lists all of the health services that the employee may be required to perform for students.

Submitted as:

Washington

Chapter 172, Laws of 2003

Status: Enacted into law in 2003.

Relating to the Protection of Certain Records in the Possession of Building Officials

This Act expands protections for public (state and local government) and private sector multi-family, office and retail buildings from public disclosure required under the state Freedom of Information Act (FOIA). The measure exempts critical infrastructure portions of engineering and construction drawings and plans from state FOIA requirements, the disclosure of which would jeopardize the safety or security of any public or private commercial, multi-family residential or retail building or its occupants in the event of terrorism or other threat to public safety. The measure requires the owner or lessee to invoke these protections in writing, identify the drawings, plans, or other materials to be protected; and state the reasons why protection is necessary. Lastly, the measure requires building officials to institute procedures to ensure these sensitive records are securely stored, handled, and released in accordance with law.

Submitted as
Virginia
Chapter 891 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 Exclude Portions of
2 Engineering and Construction Drawings and Plans that Reveal Critical Structural Components
3 from the state Freedom of Information Act."
4

5 Section 2. [*Exclusions to State Freedom of Information Act.*] The following records are
6 excluded from the provisions of [insert citation] but may be disclosed by the custodian in their
7 discretion, except where such disclosure is prohibited by law:

8 (A) Portions of engineering and construction drawings and plans that reveal critical
9 structural components, security equipment and systems, ventilation systems, fire protection
10 equipment, mandatory building emergency equipment or systems, elevators, electrical systems,
11 telecommunications equipment and systems, and other utility equipment and systems submitted
12 for the purpose of complying with the [Uniform Statewide Building Code] or the [Statewide Fire
13 Prevention Code], the disclosure of which would jeopardize the safety or security of any public
14 or private commercial office, multi-family residential or retail building or its occupants in the
15 event of terrorism or other threat to public safety, to the extent that the owner or lessee of such
16 property, equipment or system in writing:

17 (i) Invokes the protections of this paragraph;

18 (ii) Identifies the drawings, plans, or other materials to be protected; and

19 (iii) States the reasons why protection is necessary.

20 (B) Nothing in this subdivision shall prevent the disclosure of information relating to any
21 building in connection with an inquiry into the performance of that building after it has been
22 subjected to fire, explosion, natural disaster or other catastrophic event.
23

24 Section 3. [*Security of Certain Records.*] Building Code officials shall institute
25 procedures to ensure the safe storage and secure handling by local officials having access to or in

the possession of engineering and construction drawings and plans containing critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the [Uniform Statewide Building Code] or the [Statewide Fire Prevention Code].

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

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

Section 6. [*Effective Date*.] [Insert effective date.]

Requiring the Installation of Dental Amalgam Separator Systems in Dental Offices

This Act requires a dental office that, in the course of treating its patients, adds, removes or modifies dental amalgam, to install an amalgam separator system in the wastewater line in accordance. Wastewater containing dental amalgam particles must pass through the amalgam separator system prior to discharge to either a publicly owned treatment works or a private septic or waste disposal system, and waste containing dental amalgam must be collected from the amalgam separator system and disposed of in a manner satisfactory to the state department or health or environment. An "amalgam separator system" is a device that removes dental amalgam from the waste stream prior to its discharge into either the local public wastewater system or a private septic system located at the dental facility and that meets a minimum removal efficiency of 95% if installed prior to March 20, 2003 or 98% if installed on or after March 20, 2003, as determined through testing in accordance with standards contained in "ISO 11143, Dental Equipment - Amalgam Separators," published by the International Organization for Standardization, in effect on the date the system is installed

Submitted as:

Maine

Chapter 301 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 Require the Installation of
2 Dental Amalgam Separator Systems in Dental Offices."

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

5 (1) "Amalgam separator system" means a device that removes dental amalgam from the
6 waste stream prior to its discharge into either the local public wastewater system or a private
7 septic system located at the dental facility and that meets a minimum removal efficiency of 95%
8 if installed prior to March 20, 2003 or 98% if installed on or after March 20, 2003, as determined
9 through testing in accordance with standards contained in "ISO 11143, Dental Equipment -
10 Amalgam Separators," published by the International Organization for Standardization, in effect
11 on the date the system is installed.

12 (2) "Dental amalgam" means a mixture of silver and mercury used to restore dental
13 integrity.

14 (3) "Dental office" means any dental clinic, dental office or dental practice, but does not
15 include the practice of oral and maxillofacial surgery.

16 (4) "Department" means [insert department].
17

18 Section 3. [*Amalgam Separator System Required.*] No later than [December 31, 2004], a
19 dental office that, in the course of treating its patients, adds, removes or modifies dental amalgam
20 must install an amalgam separator system in the wastewater line in accordance with the
21 following:

22 A. Wastewater containing dental amalgam particles must pass through the
23 amalgam separator system prior to discharge to either a publicly owned treatment works or a
24 private septic or waste disposal system, and waste containing dental amalgam must be collected
25 from the amalgam separator system and disposed of in a manner satisfactory to the [department];

26 B. Once the amalgam separator system has been installed, the dental office must
27 notify the [department] in writing:

28 (I) Of the type of system installed;

29 (II) That the system is certified as meeting the standards required in
30 accordance with [insert citation];

31 (III) Of the date upon which the system became operational; and

32 (IV) Of the method of disposing of the material after removal from the
33 separator system.

34 C. If the amalgam separator system is connected to a publicly owned treatment
35 works, the dental office shall provide the same notification to the [director or chief engineer] of
36 that facility;

37 D. Installation, operation and maintenance of an approved amalgam separator
38 system by a dentist in accordance with manufacturer's recommendations must fulfill the
39 requirements of this section. A dentist must demonstrate proper operation and maintenance by
40 maintaining, for a period of [3 years], all shipping records for replacement filters sent to licensed
41 recyclers and written documentation that demonstrates that the system has been properly
42 inspected and maintained; and

43 E. The [department], after receiving proper notification of the installation of the
44 amalgam separator system and after being satisfied that it meets the requirements of this section,
45 must provide the dentist or the dental practice with written confirmation of receipt of evidence of
46 compliance with this section in a format suitable for display by the dental office.

47
48 Section 4. [*Plan to Reduce Mercury Pollution from Dental Procedures and Related*
49 *Sources.*] By [July 15, 2002], the [department] shall work with dentists and other interested
50 parties to develop a pollution prevention plan for mercury from dental procedures that provides
51 for reasonable measures to reduce mercury pollution from dental procedures and related sources.
52 The plan must include options and strategies for implementing source reduction.

53
54 Section 5. [*Severability.*] [Insert severability clause.]

55
56 Section 6. [*Repealer.*] [Insert repealer clause.]

57
58 Section 7. [*Effective Date.*] [Insert effective date.]

Silicosis Claim or a Mixed Dust Disease Claim

This Act:

- Provides the minimum medical requirements that are required for a silicosis claim or a mixed dust disease claim based on a nonmalignant condition, based on lung cancer of an exposed person who is a smoker, or based on wrongful death of an exposed person;
- In a tort action in which a silicosis claim or a mixed dust disease claim is alleged, this Act requires the filing of a written report and supporting test results constituting prima-facie evidence of an exposed person's physical impairment that meets the minimum requirements for the particular claim;
- Provides procedures for the defendant in the case to challenge the adequacy of the plaintiff's prima-facie evidence and for the court to resolve the issue of whether the plaintiff has made a prima-facie showing and provides that a proceeding for a prima-facie showing is a provisional remedy that is subject to appeal under current law;
- Requires the court, upon a finding of a plaintiff's failure to make a prima-facie showing, to administratively dismiss the plaintiff's claim without prejudice and to maintain its jurisdiction over the case, and permits a plaintiff whose case has been administratively dismissed to reinstate the case;
- Provides that the procedures apply only to tort actions that allege a silicosis claim or a mixed dust disease claim and are filed on or after the provisions' effective date;
- Provides that the period of limitations with respect to a silicosis claim or a mixed dust disease claim based on a nonmalignant condition does not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, a physical impairment due to a nonmalignant condition;
- Generally provides that a premises owner is not liable for any injury to any individual resulting from silica or mixed dust exposure, subject to certain exceptions and presumptions;
- Specifies that the provisions regarding silica and mixed dust litigation and premises liability are not intended or interpreted to affect the rights of any party under bankruptcy proceedings or the ability to make a claim or demand against a trust established pursuant to a plan of reorganization under a Chapter 11 bankruptcy;
- Specifies that the provisions regarding silica and mixed dust litigation and premises liability do not affect the scope or operation of any workers' compensation law or veterans' benefit program;
- Specifies that the provisions regarding silica and mixed dust litigation do not require or permit the exhumation of bodies in making the prima-facie showing or rebutting the presumption set forth in the Act regarding the ten-year latency period;
- Codifies the elements of the common law cause of action for piercing the corporate veil and specifies the elements that have to be proven with respect to the liability of a shareholder in a silica claim or a mixed dust disease claim under the doctrine of piercing the corporate veil;
- Specifies that any such liability of the shareholder is exclusive and preempts any other obligation or liability imposed upon that shareholder for that obligation or liability under common law or otherwise;
- States that the Act's provisions regarding piercing the corporate veil are intended to codify the elements of the common law cause of action for piercing the corporate veil and to abrogate the common law cause of action and remedies relating to piercing the corporate veil in silica and mixed dust disease claims;

- Provides that the Act's provisions regarding piercing the corporate veil apply to all silica claims or mixed dust disease claims commenced on or after the provisions' effective date or commenced prior to and pending on that effective date;
- In tort actions alleging any injury or loss to person resulting from exposure to silica or mixed dust as a result of the defendant's tortious act, requires the plaintiff to prove that that particular defendant's conduct and the exposure to silica or mixed dust was a substantial factor in causing the injury or loss; and
- Specifically requests the state Supreme Court to adopt certain rules related to silica claims and mixed dust disease claims.

Submitted as:

Ohio

Amended Substitute HB 342

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Establish Requirements for
2 Silicosis Claims or Mixed Dust Disease Claims."

3
4 Section 2. [*Definitions.*]

5 As used in this Act:

6 (A) "AMA Guides to the Evaluation of Permanent Impairment" means the American
7 Medical Association's Guides to the Evaluation of Permanent Impairment (fifth edition 2000) as
8 may be modified by the American Medical Association.

9 (B) "Board-Certified Internist" means a medical doctor who is currently certified by the
10 American Board of Internal Medicine.

11 (C) "Board-Certified Occupational Medicine Specialist" means a medical doctor who is
12 currently certified by the American Board of Preventive Medicine in the specialty of
13 occupational medicine.

14 (D) "Board-Certified Oncologist" means a medical doctor who is currently certified by
15 the American Board of Internal Medicine in the subspecialty of medical oncology.

16 (E) "Board-Certified Pathologist" means a medical doctor who is currently certified by
17 the American Board of Pathology.

18 (F) "Board-Certified Pulmonary Specialist" means a medical doctor who is currently
19 certified by the American Board of Internal Medicine in the subspecialty of pulmonary medicine.

20 (G) "Certified B-reader" means an individual qualified as a "final" or "B-reader" as
21 defined in 42 C.F.R. section 37.51(b), as amended.

22 (H) "Civil action" means all suits or claims of a civil nature in a state or federal court,
23 whether cognizable as cases at law or in equity or admiralty. "Civil action" does not include any
24 of the following:

25 (1) A civil action relating to any workers' compensation law;

26 (2) A civil action alleging any claim or demand made against a trust established
27 pursuant to 11 U.S.C. section 524(g);

28 (3) A civil action alleging any claim or demand made against a trust established
29 pursuant to a plan of reorganization confirmed under Chapter 11 of the United States Bankruptcy
30 Code, 11 U.S.C. Chapter 11.

(I) "Competent medical authority" means a medical doctor who is providing a diagnosis for purposes of constituting prima-facie evidence of an exposed person's physical impairment that meets the requirements specified in sections 3 or 4 of this Act, whichever is applicable, and who meets the following requirements:

(1) The medical doctor is a board-certified internist, pulmonary specialist, oncologist, pathologist, or occupational medicine specialist.

(2) The medical doctor is actually treating or has treated the exposed person and has or had a doctor-patient relationship with the person.

(3) As the basis for the diagnosis, the medical doctor has not relied, in whole or in part, on any of the following:

(a) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which that examination, test, or screening was conducted;

(b) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that was conducted without clearly establishing a doctor-patient relationship with the claimant or medical personnel involved in the examination, test, or screening process;

(c) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that required the claimant to agree to retain the legal services of the law firm sponsoring the examination, test, or screening.

(4) The medical doctor spends not more than [twenty-five percent] of the medical doctor's professional practice time in providing consulting or expert services in connection with actual or potential tort actions, and the medical doctor's medical group, professional corporation, clinic, or other affiliated group earns not more than [twenty percent] of its revenues from providing those services.

(J) "Exposed person" means either of the following, whichever is applicable:

(1) A person whose exposure to silica is the basis for a silicosis claim under section 3 of this Act;

(2) A person whose exposure to mixed dust is the basis for a mixed dust disease claim under section 4 of this Act.

(K) "ILO scale" means the system for the classification of chest x-rays set forth in the International Labour Office's guidelines for the use of ILO International Classification of Radiographs of Pneumoconioses (2000), as amended.

(L) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs.

(M) "Mixed dust" means a mixture of dusts composed of silica and one or more other fibrogenic dusts capable of inducing pulmonary fibrosis if inhaled in sufficient quantity.

(N) "Mixed dust disease claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with mixed dust. "Mixed dust disease claim" includes a claim made by or on behalf of any person who has been exposed to mixed dust, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to mixed dust.

(O) "Mixed dust pneumoconiosis" means the interstitial lung disease caused by the pulmonary response to inhaled mixed dusts.

(P) "Nonmalignant condition" means a condition, other than a diagnosed cancer, that is caused or may be caused by either of the following, whichever is applicable:

(1) Silica;

(2) Mixed dust;

(Q) "Pathological evidence of mixed dust pneumoconiosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar and parenchymal stellate (star-shaped) nodular scarring and that there is no other more likely explanation for the presence of the fibrosis.

(R) "Pathological evidence of silicosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of round silica nodules and birefringent crystals or other demonstration of crystal structures consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells) in the lung parenchyma and that there is no other more likely explanation for the presence of the fibrosis.

(S) "Physical impairment" means any of the following, whichever is applicable:

(1) A nonmalignant condition that meets the minimum requirements of section 3 of this Act or lung cancer of an exposed person who is a smoker that meets the minimum requirements of section 3 of this Act;

(2) A nonmalignant condition that meets the minimum requirements of section 4 of this Act or lung cancer of an exposed person who is a smoker that meets the minimum requirements of section 4 of this Act.

(T) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains, or controls privately owned lands, ways, or waters, or any buildings and structures on those lands, ways, or waters, and all privately owned and state-owned lands, ways, or waters leased to a private person, firm, or organization, including any buildings and structures on those lands, ways, or waters.

(U) "Radiological evidence of mixed dust pneumoconiosis" means a chest x-ray showing bilateral rounded or irregular opacities in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale.

(V) "Radiological evidence of silicosis" means a chest x-ray showing bilateral small rounded opacities (p, q, or r) in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale.

(W) "Regular basis" means on a frequent or recurring basis.

(X) "Silica" means a respirable crystalline form of silicon dioxide, including, but not limited to, alpha quartz, cristobalite, and tridymite.

(Y) "Silicosis claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with silica. "Silicosis claim" includes a claim made by or on behalf of any person who has been exposed to silica, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to silica.

(Z) "Silicosis" means an interstitial lung disease caused by the pulmonary response to inhaled silica.

(AA) "Smoker" means a person who has smoked the equivalent of one-pack year, as specified in the written report of a competent medical authority pursuant to section 3 of this Act during the last [fifteen years].

(BB) "Substantial contributing factor" means both of the following:

(1) Exposure to silica or mixed dust is the predominate cause of the physical impairment alleged in the silicosis claim or mixed dust disease claim, whichever is applicable.

(2) A competent medical authority has determined with a reasonable degree of medical certainty that without the silica or mixed dust exposures the physical impairment of the exposed person would not have occurred.

(CC) "Substantial occupational exposure to silica" means employment for a cumulative period of at least five years in an industry and an occupation in which, for a substantial portion of a normal work year for that occupation, the exposed person did any of the following:

(1) Handled silica;

(2) Fabricated silica-containing products so that the person was exposed to silica in the fabrication process;

(3) Altered, repaired, or otherwise worked with a silica-containing product in a manner that exposed the person on a regular basis to silica;

(4) Worked in close proximity to other workers engaged in any of the activities described in division (CC) (1), (2), or (3) of this section in a manner that exposed the person on a regular basis to silica.

(DD) "Substantial occupational exposure to mixed dust" means employment for a cumulative period of at least [five years] in an industry and an occupation in which, for a substantial portion of a normal work year for that occupation, the exposed person did any of the following:

(1) Handled mixed dust;

(2) Fabricated mixed dust-containing products so that the person was exposed to mixed dust in the fabrication process;

(3) Altered, repaired, or otherwise worked with a mixed dust-containing product in a manner that exposed the person on a regular basis to mixed dust;

(4) Worked in close proximity to other workers engaged in any of the activities described in division (DD) (1), (2), or (3) of this section in a manner that exposed the person on a regular basis to mixed dust.

(EE) "Tort action" means a civil action for damages for injury, death, or loss to person. "Tort action" includes a product liability claim that is subject to [insert citation]. "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(FF) "Veterans' benefit program" means any program for benefits in connection with military service administered by the veterans' administration under Title 38 of the United States Code.

(GG) "Workers' compensation law" means [insert citation].

Section 3. *[Physical Impairment as Contributing Factor to a Silicosis Claim in Any Tort Action.]*

(A) Physical impairment of the exposed person, to which the person's exposure to silica is a substantial contributing factor, shall be an essential element of a silicosis claim in any tort action.

(B) No person shall bring or maintain a tort action alleging a silicosis claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in [insert citation], that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to silica is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) Evidence verifying that a competent medical authority has taken a detailed

occupational and exposure history of the exposed person from the exposed person or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the silicosis claim for a nonmalignant condition, including all of the following:

(a) All of the exposed person's principal places of employment and exposures to airborne contaminants;

(b) Whether each principal place of employment involved exposures to airborne contaminants, including, but not limited to, silica or other disease causing dusts, that can cause pulmonary impairment and, if that type of exposure is involved, the general nature, duration, and general level of exposure.

(2) Evidence verifying that a competent medical authority has taken a detailed medical and smoking history of the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable causes of those medical problems;

(3) A diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person, that both of the following apply to the exposed person:

(a) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

(b) The exposed person has silicosis based at a minimum on radiological or pathological evidence of silicosis.

(C) No person shall bring or maintain a tort action alleging that silica caused that person to contract lung cancer if the exposed person is or was also a smoker, in the absence of a prima-facie showing, in the manner described in section 5 of this Act, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to silica is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) A diagnosis by a competent medical authority that the exposed person has primary lung cancer and that exposure to silica is a substantial contributing factor to that cancer;

(2) Evidence that is sufficient to demonstrate that at least [ten years] have elapsed from the date of the exposed person's first exposure to silica until the date of diagnosis of the exposed person's primary lung cancer. The [ten-year] latency period described in this division is a rebuttable presumption and the plaintiff has the burden of proof to rebut the presumption.

(3) Both of the following:

(a) Radiological or pathological evidence of silicosis;

(b) Evidence of the exposed person's substantial occupational exposure to silica.

(D) (1) No person shall bring or maintain a tort action alleging a silicosis claim based on wrongful death, as described in [insert citation], of an exposed person, in the absence of a prima-facie showing, in the manner described in [insert citation], that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were the result of a medical condition, and that the person's exposure to silica was a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(a) A diagnosis by a competent medical authority that exposure to silica was a substantial contributing factor to the death of the exposed person;

(b) Evidence that is sufficient to demonstrate that at least [ten years] have elapsed from the date of the exposed person's first exposure to silica until the date of diagnosis under division (D)(1)(a) of this section or death of the exposed person. The [ten-year] latency

period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Both of the following:

(i) Radiological or pathological evidence of silicosis;

(ii) Evidence of the exposed person's substantial occupational exposure to silica.

(2) If a person files a tort action that alleges a silicosis claim based on wrongful death, as described in [insert citation], of an exposed person and further alleges in the action that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section and that the exposed person lived with the other person for the period of time specified in section 2 of this Act, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(E) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official statement of the American Thoracic Society entitled "Lung Function Testing: Selection Of Reference Values And Interpretive Strategies" as published in *American Review of Respiratory Disease*, 1991:144:1202-1218.

(F) All of the following apply to the court's decision on the prima-facie showing that meets the requirements of division (B), (C), or (D) of this section:

(1) The court's decision does not result in any presumption at trial that the exposed person has a physical impairment that is caused by a silica-related condition.

(2) The court's decision is not conclusive as to the liability of any defendant in the case.

(3) The court's findings and decision are not admissible at trial.

(4) If the trier of fact is a jury, the court shall not instruct the jury with respect to the court's decision on the prima-facie showing, and neither counsel for any party nor a witness shall inform the jury or potential jurors of that showing.

Section 4. [*Physical Impairment as Contributing Factor to a Mixed Dust Disease Claim in any Tort Action.*]

(A) Physical impairment of the exposed person, to which the person's exposure to mixed dust is a substantial contributing factor, shall be an essential element of a mixed dust disease claim in any tort action.

(B) No person shall bring or maintain a tort action alleging a mixed dust disease claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in section 5 of this Act, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to mixed dust is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) Evidence verifying that a competent medical authority has taken a detailed occupational and exposure history of the exposed person from the exposed person or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the mixed dust disease claim for a nonmalignant condition, including all of the following:

(a) All of the exposed person's principal places of employment and

exposures to airborne contaminants;

(b) Whether each principal place of employment involved exposures to airborne contaminants, including, but not limited to, mixed dust, that can cause pulmonary impairment and, if that type of exposure is involved, the general nature, duration, and general level of the exposure.

(2) Evidence verifying that a competent medical authority has taken a detailed medical and smoking history of the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable causes of those medical problems;

(3) A diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person, that both of the following apply to the exposed person:

(a) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

(b) The exposed person has mixed dust pneumoconiosis, based at a minimum on radiological or pathological evidence of mixed dust pneumoconiosis.

(C) No person shall bring or maintain a tort action alleging that mixed dust caused that person to contract lung cancer if the exposed person is or was also a smoker, in the absence of a prima-facie showing, in the manner described in division (A) of section 5 of this Act, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to mixed dust is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) A diagnosis by a competent medical authority that the exposed person has primary lung cancer and that exposure to mixed dust is a substantial contributing factor to that cancer;

(2) Evidence that is sufficient to demonstrate that at least [ten years] have elapsed from the date of the exposed person's first exposure to mixed dust until the date of diagnosis of the exposed person's primary lung cancer. The [ten-year] latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(3) Both of the following:

(a) Radiological or pathological evidence of mixed dust pneumoconiosis;

(b) Evidence of the exposed person's substantial occupational exposure to mixed dust.

(D) (1) No person shall bring or maintain a tort action alleging a mixed dust disease claim based on wrongful death, as described in [insert citation], of an exposed person, in the absence of a prima-facie showing, in the manner described in section 5 of this Act, that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were the result of a medical condition, and that the person's exposure to mixed dust was a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(a) A diagnosis by a competent medical authority that exposure to mixed dust was a substantial contributing factor to the death of the exposed person;

(b) Evidence that is sufficient to demonstrate that at least [ten years] have elapsed from the date of the exposed person's first exposure to mixed dust until the date of diagnosis under division (D)(1)(a) of this section or death of the exposed person. The [ten-year] latency period described in this division is a rebuttable presumption, and the plaintiff has the

burden of proof to rebut the presumption.

(c) Both of the following:

(i) Radiological or pathological evidence of mixed dust pneumoconiosis;

(ii) Evidence of the exposed person's substantial occupational exposure to mixed dust.

(2) If a person files a tort action that alleges a mixed dust disease claim based on wrongful death, as defined in [insert citation] of an exposed person and further alleges in the action that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section and that the exposed person lived with the other person for the period of time specified in division (DD) of section 2 of this Act the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(E) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official statement of the American thoracic society entitled "Lung Function Testing: Selection of Reference Values And Interpretive Strategies" as published in *American Review of Respiratory Disease*, 1991:144:1202-1218.

(F) All of the following apply to the court's decision on the prima-facie showing that meets the requirements of division (B), (C), or (D) of this section:

(1) The court's decision does not result in any presumption at trial that the exposed person has a physical impairment that is caused by a mixed dust-related condition.

(2) The court's decision is not conclusive as to the liability of any defendant in the case.

(3) The court's findings and decision are not admissible at trial.

(4) If the trier of fact is a jury, the court shall not instruct the jury with respect to the court's decision on the prima-facie showing, and neither counsel for any party nor a witness shall inform the jury or potential jurors of that showing.

Section 5. [Written Report Supporting Test Results for Physical Impairment.]

(A) The plaintiff in any tort action who alleges a silicosis claim or a mixed dust disease claim shall file, within [thirty days] after filing the complaint or other initial pleading, a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements specified in division (B), (C), or (D) of section 3 of this Act or division (B), (C), or (D) of section 4 of this Act, whichever is applicable. The defendant in the case shall be afforded a reasonable opportunity, upon the defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of the physical impairment for failure to comply with the minimum requirements specified in division (B), (C), or (D) of section 3 of this Act or division (B), (C), or (D) of section 4 of this Act, whichever is applicable. The defendant has [one hundred twenty days] from the date the prima-facie evidence of the exposed person's physical impairment is proffered to challenge the adequacy of that prima-facie evidence. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in divisions (I)(1), (3), and (4) of section 2 of this Act.

(B) If the defendant challenges the adequacy of the prima-facie evidence of the exposed person's physical impairment as provided in division (A) of this section, the court shall determine

from all of the evidence submitted whether the proffered prima-facie evidence meets the minimum requirements specified in division (B), (C), or (D) of section 3 of this Act or division (B), (C), or (D) of section 4 of this Act, whichever is applicable. The court shall resolve the issue of whether the plaintiff has made the prima-facie showing required by any of those divisions as applicable, by applying the standard for resolving a motion for summary judgment.

(C) The court shall administratively dismiss the plaintiff's claim without prejudice upon a finding of failure to make the prima-facie showing required by division (B), (C), or (D) of section 3 of this Act or division (B), (C), or (D) of section 4 of this Act, whichever is applicable. The court shall maintain its jurisdiction over any case that is administratively dismissed under this division. Any plaintiff whose case has been administratively dismissed under this division may move to reinstate the plaintiff's case if the plaintiff makes a prima-facie showing that meets the minimum requirements specified in any of those divisions as applicable.

(D) This section applies only to tort actions that allege a silicosis claim or a mixed dust disease claim and that are filed on or after the effective date of this section.

Section 6. [*Period of Limitations Regarding Silicosis Claims or Mixed Dust Disease Claims.*]

(A) Notwithstanding any other provision of the Revised Code, with respect to any silicosis claim or mixed dust disease claim based upon a nonmalignant condition that is not barred as of the effective date of this section, the period of limitations shall not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that the person has a physical impairment due to a nonmalignant condition. A silicosis claim or a mixed dust disease claim based upon a nonmalignant condition that is filed before the cause of action pursuant to this division arises is preserved for purposes of the period of limitations.

(B) A silicosis claim or a mixed dust disease claim that arises out of a nonmalignant condition shall be a distinct cause of action from a silicosis claim or a mixed dust disease claim, as the case may be, relating to the same exposed person that arises out of silica-related cancer or mixed dust-related cancer. No damages shall be awarded for fear or risk of cancer in any tort action asserting only a silicosis claim or a mixed dust disease claim for a nonmalignant condition.

(C) No settlement of a silicosis claim or a mixed dust disease claim for a nonmalignant condition that is concluded after the effective date of this section shall require, as a condition of settlement, the release of any future claim for silica-related cancer or mixed dust-related cancer.

Section 7. [*Premises Owner's Liability for Silicosis or Mixed Dust Disease Claims.*] The following apply to all tort actions for silicosis or mixed dust disease claims brought against a premises owner to recover damages or other relief for exposure to silica or mixed dust on the premises owner's property:

(A) A premises owner is not liable for any injury to any individual resulting from silica or mixed dust exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property.

(B) If exposure to silica or mixed dust is alleged to have occurred before [January 1, 1972], it is presumed that a premises owner knew that this state had adopted safe levels of exposure for silica or mixed dust and that products containing silica or mixed dust were used on its property only at levels below those safe levels of exposure. To rebut this presumption, the plaintiff must prove by a preponderance of the evidence that the premises owner knew or should have known that the levels of silica or mixed dust in the immediate breathing zone of the plaintiff regularly exceeded the threshold limit values adopted by this state and that the premises

owner allowed that condition to persist.

(C) (1) A premises owner is presumed to be not liable for any injury to any invitee who was engaged to work with, install, or remove products containing silica or mixed dust on the premises owner's property if the invitee's employer held itself out as qualified to perform the work. To rebut this presumption, the plaintiff must demonstrate by a preponderance of the evidence that the premises owner had actual knowledge of the potential dangers of the products containing silica or mixed dust at the time of the alleged exposure that was superior to the knowledge of both the invitee and the invitee's employer.

(2) A premises owner that hired a contractor before [January 1, 1972], to perform the type of work at the premises owner's property that the contractor was qualified to perform cannot be liable for any injury to any individual resulting from silica or mixed dust exposure caused by any of the contractor's employees or agents on the premises owner's property unless the premises owner directed the activity that resulted in the injury or gave or denied permission for the critical acts that led to the individual's injury.

(3) If exposure to silica or mixed dust is alleged to have occurred after [January 1, 1972], a premises owner is not liable for any injury to any individual resulting from that exposure caused by a contractor's employee or agent on the premises owner's property unless the plaintiff establishes the premises owner's intentional violation of an established safety standard that was in effect at the time of the exposure and that the alleged violation was in the plaintiff's breathing zone and was the proximate cause of the plaintiff's medical condition.

(D) As used in this section:

(1) "Threshold limit values" means the maximum allowable concentration of silica, or other dust, set forth in [insert citation].

(2) "Established safety standard" means that, for the years after [1971], the concentration of silica or mixed dust in the breathing zone of the worker does not exceed the maximum allowable exposure limits for the eight-hour time-weighted average airborne concentration as promulgated by the Occupational Safety and Health Administration (OSHA) in effect at the time of the alleged exposure.

(3) "Employee" means an individual who performs labor or provides construction services pursuant to a construction contract, as defined in [insert citation], or a remodeling or repair contract, whether written or oral, if at least ten of the following criteria apply:

(a) The individual is required to comply with instructions from the other contracting party regarding the manner or method of performing services.

(b) The individual is required by the other contracting party to have particular training.

(c) The individual's services are integrated into the regular functioning of the other contracting party.

(d) The individual is required to perform the work personally.

(e) The individual is hired, supervised, or paid by the other contracting party.

(f) A continuing relationship exists between the individual and the other contracting party that contemplates continuing or recurring work even if the work is not full time.

(g) The individual's hours of work are established by the other contracting party.

(h) The individual is required to devote full time to the business of the other contracting party.

(i) The individual is required to perform the work on the premises of the other contracting party.

- 472 (j) The individual is required to follow the order of work set by the other
473 contracting party.
- 474 (k) The individual is required to make oral or written reports of progress
475 to the other contracting party.
- 476 (l) The individual is paid for services on a regular basis, including hourly,
477 weekly, or monthly.
- 478 (m) The individual's expenses are paid for by the other contracting party.
- 479 (n) The individual's tools and materials are furnished by the other
480 contracting party.
- 481 (o) The individual is provided with the facilities used to perform services.
- 482 (p) The individual does not realize a profit or suffer a loss as a result of
483 the services provided.
- 484 (q) The individual is not performing services for a number of employers at
485 the same time.
- 486 (r) The individual does not make the same services available to the
487 general public.
- 488 (s) The other contracting party has a right to discharge the individual.
- 489 (t) The individual has the right to end the relationship with the other
490 contracting party without incurring liability pursuant to an employment contract or agreement.

491
492 Section 8. *[Exceptions.]*

493 (A) Nothing in this Act is intended to do, and nothing in any of those sections is
494 interpreted to do, either of the following:

495 (1) Affect the rights of any party in bankruptcy proceedings;

496 (2) Affect the ability of any person who is able to make a showing that the person
497 satisfies the claim criteria for compensable claims or demands under a trust established pursuant
498 to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C.
499 Chapter 11, to make a claim or demand against that trust.

500 (B) This Act shall not affect the scope or operation of any workers' compensation law or
501 veterans' benefit program or the exclusive remedy of subrogation under the provisions of that
502 law or program and shall not authorize any lawsuit that is barred by any provision of any
503 workers' compensation law.

504 (C) Nothing in this Act shall require or permit the exhumation of bodies in making the
505 prima-facie showing as required by section 3 or 4 of this Act or rebutting the presumption as
506 provided in section 3 or 4 of this Act.

507
508 Section 9. *[Burden of Proof a Tort Action Alleges any Injury or Loss to Person Resulting*
509 *from Exposure to Silica or Mixed Dust as a Result of the Tortious Act of One or More*
510 *Defendants.]*

511 (A) If a plaintiff in a tort action alleges any injury or loss to person resulting from
512 exposure to silica or mixed dust as a result of the tortious act of one or more defendants, in order
513 to maintain a cause of action against any of those defendants based on that injury or loss, the
514 plaintiff must prove that the conduct of that particular defendant was a substantial factor in
515 causing the injury or loss on which the cause of action is based.

516 (B) A plaintiff in a tort action who alleges any injury or loss to person resulting from
517 exposure to silica or mixed dust has the burden of proving that the plaintiff was exposed to silica
518 or mixed dust that was manufactured, supplied, installed, or used by the defendant in the action
519 and that the plaintiff's exposure to the defendant's silica or mixed dust was a substantial factor in
520 causing the plaintiff's injury or loss. In determining whether exposure to a particular defendant's

silica or mixed dust was a substantial factor in causing the plaintiff's injury or loss, the trier of fact in the action shall consider, without limitation, all of the following:

(1) The manner in which the plaintiff was exposed to the defendant's silica or mixed dust;

(2) The proximity of the defendant's silica or mixed dust to the plaintiff when the exposure to the defendant's silica or mixed dust occurred;

(3) The frequency and length of the plaintiff's exposure to the defendant's silica or mixed dust;

(4) Any factors that mitigated or enhanced the plaintiff's exposure to silica or mixed dust.

(C) This section applies only to tort actions that allege any injury or loss to person resulting from exposure to silica or mixed dust and that are brought on or after the effective date of this section.

Section 10. *[Applying the Doctrine of Piercing the Corporate Veil to a Silicosis Claim or a Mixed Dust Disease Claim.]*

(A) A holder has no obligation to, and has no liability to, the covered entity or to any person with respect to any obligation or liability of the covered entity in a silicosis claim or a mixed dust disease claim under the doctrine of piercing the corporate veil unless the person seeking to pierce the corporate veil demonstrates all of the following:

(1) The holder exerted such control over the covered entity that the covered entity had no separate mind, will, or existence of its own.

(2) The holder caused the covered entity to be used for the purpose of perpetrating, and the covered entity perpetrated, an actual fraud on the person seeking to pierce the corporate veil primarily for the direct pecuniary benefit of the holder.

(3) The person seeking to pierce the corporate veil sustained an injury or unjust loss as a direct result of the control described in division (A)(1) of this section and the fraud described in division (A)(2) of this section.

(B) A court shall not find that the holder exerted such control over the covered entity that the covered entity did not have a separate mind, will, or existence of its own or to have caused the covered entity to be used for the purpose of perpetrating a fraud solely as a result of any of the following actions, events, or relationships:

(1) The holder is an affiliate of the covered entity and provides legal, accounting, treasury, cash management, human resources, administrative, or other similar services to the covered entity, leases assets to the covered entity, or makes its employees available to the covered entity.

(2) The holder loans funds to the covered entity or guarantees the obligations of the covered entity.

(3) The officers and directors of the holder are also the officers and directors of the covered entity.

(4) The covered entity makes payments of dividends or other distributions to the holder or repays loans owed to the holder.

(5) In the case of a covered entity that is a limited liability company, the holder or its employees or agents serve as the manager of the covered entity.

(C) The person seeking to pierce the corporate veil has the burden of proof on each and every element of the person's claim and must prove each element by a preponderance of the evidence.

(D) Any liability of the holder described in division (A) of this section for an obligation or liability that is limited by that division is exclusive and preempts any other obligation or

liability imposed upon that holder for that obligation or liability under common law or otherwise.

(E) This section is intended to codify the elements of the common law cause of action for piercing the corporate veil and to abrogate the common law cause of action and remedies relating to piercing the corporate veil in silicosis claims and mixed dust disease claims. Nothing in this section shall be construed as creating a right or cause of action that did not exist under the common law as it existed on the effective date of this section.

(F) This section applies to all silicosis claims and mixed dust disease claims commenced on or after the effective date of this section or commenced prior to and pending on the effective date of this section.

(G) This section applies to all actions asserting the doctrine of piercing the corporate veil brought against a holder if any of the following apply:

(1) The holder is an individual and resides in this state.

(2) The holder is a corporation organized under the laws of this state.

(3) The holder is a corporation with its principal place of business in this state.

(4) The holder is a foreign corporation that is authorized to conduct or has conducted business in this state.

(5) The holder is a foreign corporation the parent corporation of which is authorized to conduct business in this state.

(6) The person seeking to pierce the corporate veil is a resident of this state.

(H) As used in this section, unless the context otherwise requires:

(1) "Affiliate" and "beneficial owner" have the same meanings as in [insert citation].

(2) "Mixed dust," "mixed dust disease claim," "silica," and "silicosis claim" have the same meanings as in section 2 of this Act.

(3) "Covered entity" means a corporation, limited liability company, limited partnership, or any other entity organized under the laws of any jurisdiction, domestic or foreign, in which the shareholders, owners, or members are generally not responsible for the debts and obligations of the entity. Nothing in this section limits or otherwise affects the liabilities imposed on a general partner of a limited partnership.

(4) "Holder" means a person who is the holder, beneficial owner, or subscriber of shares or any other ownership interest of a covered entity, a member of a covered entity, or an affiliate of any person who is the holder, beneficial owner, or subscriber of shares or any other ownership interest of a covered entity.

(5) "Piercing the corporate veil" means any and all common law doctrines by which a holder may be liable for an obligation or liability of a covered entity on the basis that the holder controlled the covered entity, the holder is or was the alter ego of the covered entity, or the covered entity has been used for the purpose of actual or constructive fraud or as a sham to perpetrate a fraud or any other common law doctrine by which the covered entity is disregarded for purposes of imposing liability on a holder for the debts or obligations of that covered entity.

(6) "Person" has the same meaning as in [insert citation].

Section 11. *[Final Orders.]*

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, this state's constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that [prior to 1853] was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, or suppression of evidence, or a prima-facie showing pursuant to section 3 or 4 of this Act.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on [July 22, 1998], and all claims filed or actions commenced on or after [July 22, 1998], notwithstanding any provision of any prior statute or rule of law of this state.

Section 12. *[Procedures and Venues for Consolidating Silicosis Claims or Mixed Dust Disease Claims.]*

(A) As used in this section, "exposed person," "mixed dust," "mixed dust disease claim," "silica," "silicosis claim," and "substantial contributing factor" have the same meanings as in section 2 of this Act.

(B) The [General Assembly] acknowledges the [Court's] authority in prescribing rules governing practice and procedure in the courts of this state, as provided by the [state constitution].

(C) The [General Assembly] hereby requests the [Supreme Court] to adopt rules to specify procedures for venue and consolidation of silicosis claims or mixed dust disease claims brought pursuant to this Act.

(D) With respect to procedures for venue in regard to silicosis claims or mixed dust disease claims, the [General Assembly] hereby requests the [Supreme Court] to adopt a rule that requires that a silicosis claim or a mixed dust disease claim meet specific nexus requirements, including the requirement that the plaintiff be domiciled in this state or this state is the state in which the plaintiff's exposure to silica or mixed dust is a substantial contributing factor.

(E) With respect to procedures for consolidation of silicosis claims or mixed dust disease claims, the [General Assembly] hereby requests the [Supreme Court] to adopt a rule that permits consolidation of silicosis claims or mixed dust disease claims only with the consent of all parties, and in absence of that consent, permits a court to consolidate for trial only those silicosis claims

or mixed dust disease claims that relate to the same exposed person and members of the exposed person's household.

Section 13. [*The Lohrman Standard.*]

(A) It is the intent of the [General Assembly] in enacting this Act to establish specific factors to be considered when determining whether a particular plaintiff's exposure to a particular defendant's silica or mixed dust was a substantial factor in causing the plaintiff's injury or loss. The consideration of these factors, involving the plaintiff's proximity to the dust exposure, frequency of the exposure, or regularity of the exposure in tort actions involving exposure to silica or mixed dust is consistent with the factors listed by the court in *Lohrmann v. Pittsburgh Corning Cor.* (4th Cir. 1986), 782 F.2d 1156. The [General Assembly], by its enactment of these factors, intends to clarify and define for judges and juries the evidence that is relevant to the common law requirement that the plaintiff must prove proximate causation. The [General Assembly] recognizes that the courts of this state generally followed the rationale of the *Lohrmann* decision in determining whether a plaintiff had submitted any evidence that a particular defendant's product was a substantial cause of the plaintiff's injury in tort actions involving exposure to certain hazardous or toxic substances, and that the *Lohrmann* factors were of great assistance to the trial courts in the consideration of motions for summary judgment and to juries when deciding issues of proximate causation. The [General Assembly] further recognizes that a large number of states have adopted the *Lohrmann* standard.

(B) The *Lohrmann* standard provides litigants, juries, and the courts of this state an objective and easily applied standard for determining whether a plaintiff has submitted evidence that is sufficient to sustain the plaintiff's burden of proof as to proximate causation. Where specific evidence of frequency of exposure to, or proximity and length of exposure to, a particular defendant's silica or mixed dust is lacking, summary judgment is appropriate in tort actions involving silica or mixed dust because such a plaintiff lacks any evidence of an essential element that is necessary to prevail. To submit the legal concept of "substantial factor" to a jury in these complex cases without those scientifically valid defining factors would be to invite speculation on the part of juries, something that the [General Assembly] has determined not to be in the best interests of this state and its courts.

Section 14. [*Severability.*] [Insert severability clause.]

Section 15. [*Repealer.*] [Insert repealer clause.]

Section 16. [*Effective Date.*] [Insert effective date.]

Statewide First Responder Building Mapping Information System

Building mapping provides electronic plans of a building. Each map is a blueprint describing every room located in the building, along with its dimensions. Building map information can include:

- Floor plans;
- Fire protection information;
- Evacuation plans;
- Utility information;
- Known hazards; and
- Other information important to emergency personnel responding to a disaster or emergency.

The maps are designed to give an emergency responder as much information about the physical structure of the building as possible. The maps are saved in a centralized database that can be made available to emergency response agencies equipped with portable computers.

This Act directs state association of sheriffs and police chiefs to create and operate a statewide first responder building mapping information system (mapping system). All state and local government owned buildings will be mapped by the state association of sheriffs and police chiefs or another source, contingent on funding. Once the buildings are mapped, the mapping information data will be forwarded to the state association of sheriffs and police chiefs. All participating owners of non-government buildings may voluntarily forward their mapping and emergency data to the state association of sheriffs and police chiefs. Building mapping information will be made available to all state, local, federal, and tribal law enforcement agencies, along with the state military department and fire departments. The state association of sheriffs and police chiefs will develop mapping software standards that must be met in order to participate in the mapping system.

In consultation with the state emergency management office, the state information board services, the state fire chiefs' association, and the state patrol, the state association of sheriffs and police chiefs will head a committee to establish statewide first responder building mapping software. The committee will develop the type of information included in the mapping system and set standards that must be utilized by all entities participating. The committee will determine the order in which buildings are mapped and develop guidelines on how the information will be transmitted to the first responders. Lastly, the committee will recommend training guidelines to the state criminal justice training commission and the state fire marshal.

No state agency or local government is required to map a building unless the entire cost of mapping the building is provided by the state association of sheriffs and police chiefs or from other sources. The state association of sheriffs and police chiefs will pursue federal funds and develop grants to create the mapping system.

Units of local government and their employees are immune from civil liability for damages arising out of the creation or use of building mapping information, unless they acted with gross negligence or bad faith. All tactical and intelligence information provided to the state association of sheriffs and police chiefs for the statewide first responder building mapping information system is exempt from public disclosure.

Submitted as:
Washington

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Create a Statewide First
2 Responder Building Mapping Information System."

3
4 Section 2. [*Legislative Findings.*] The [legislature] recognizes the extreme dangers
5 present when the safety of our citizens requires first responders such as police and fire fighters to
6 evacuate and secure a building. In an effort to prepare for responding to unintended disasters,
7 criminal acts, and acts of terrorism, the [legislature] intends to create a statewide first responder
8 building mapping information system that will provide all first responders with the information
9 they need to be successful when disaster strikes. The first responder building mapping system in
10 this Act is to be developed for a limited and specific purpose and is in no way to be construed as
11 imposing standards or system requirements on any other mapping systems developed and used
12 for any other local government purposes.

13
14 Section 3. [*First Responder Building Mapping Information System.*]

15 (1) When funded, the [state association of sheriffs and police chiefs] shall create and
16 operate a statewide first responder building mapping information system.

17 (2) All state agencies and local governments must utilize building mapping software that
18 complies with the building mapping software standards established under section 3 of this Act
19 for any building mapped for this purpose after the statewide first responder building mapping
20 information system is operational. If, prior to creation of the statewide building mapping
21 information system, a local government has utilized building mapping software standards
22 established under section 3 of this Act, the local government may continue to use its own
23 building mapping system unless the [state association of sheriffs and police chiefs] provides
24 funding to bring the local government's system in compliance with the standards established
25 under section 3 of this Act.

26 (3) All state and local government-owned buildings that are occupied by state or local
27 government employees must be mapped when funding is provided by the [state association of
28 sheriffs and police chiefs], or from other sources. Nothing in this Act requires any state agency
29 or local government to map a building unless the entire cost of mapping the building is provided
30 by the [state association of sheriffs and police chiefs], or from other sources.

31 (4) Once the statewide first responder building mapping information system is
32 operational, all state and local government buildings that are mapped must forward their building
33 mapping information data to the [state association of sheriffs and police chiefs]. All participating
34 privately, federally, and tribally owned buildings may voluntarily forward their mapping and
35 emergency information data to the [state association of sheriffs and police chiefs]. The [state
36 association of sheriffs and police chiefs] may refuse any building mapping information that does
37 not comply with the specifications described in section 3 of this Act.

38 (5) Consistent with the guidelines developed under section 3 of this Act, the [state
39 association of sheriffs and police chiefs] shall electronically make the building mapping
40 information available to all state, local, federal, and tribal law enforcement agencies, the military
41 department of this state, and fire departments.

(6) Consistent with the guidelines developed under section 3 of this Act, the state association of sheriffs and police chiefs shall develop building mapping software standards that must be used to participate in the statewide first responder building mapping information system.

(7) The state association of sheriffs and police chiefs shall pursue federal funds to:

(a) Create the statewide first responder building mapping information system; and

(b) Develop grants for the mapping of all state and local government buildings in the order determined under section 3 of this Act.

(8) All tactical and intelligence information provided to the [state association of sheriffs and police chiefs] under this Act is exempt from public disclosure as provided in [insert citation].

Section 4. [*Committee to Establish Guidelines for a Statewide First Responder Building Mapping Information System.*]

(1) The [state association of sheriffs and police chiefs] in consultation with the [state emergency management office], the [state association of county officials], the [state association of cities], the [information services board], the [state fire chiefs' association], and the [state patrol] shall convene a committee to establish guidelines related to the statewide first responder building mapping information system. The committee shall have the following responsibilities:

(a) Develop the type of information to be included in the statewide first responder building mapping information system. The information shall include, but is not limited to floor plans, fire protection information, evacuation plans, utility information, known hazards, and text and digital images showing emergency personnel contact information;

(b) Develop building mapping software standards that must be utilized by all entities participating in the statewide first responder building mapping information system;

(c) Determine the order in which buildings shall be mapped when funding is received;

(d) Develop guidelines on how the information shall be made available. These guidelines shall include detailed procedures and security systems to ensure that the information is only made available to the government entity that either owns the building or is responding to an incident at the building;

(e) Recommend training guidelines regarding using the statewide first responder building mapping information system to the criminal justice training commission and the state patrol fire protection bureau.

(2) (a) Nothing in this section supersedes the authority of the information services board under [insert citation].

(b) Nothing in this section supersedes the authority of state agencies and local governments to control and maintain access to information within their independent systems.

Section 5. [*Immunity for Units of Local Government and Their Employees for Using the Statewide First Responder Building Mapping Information System.*] Units of local government and their employees, as provided in [insert citation], are immune from civil liability for damages arising out of the creation and use of the statewide first responder building mapping information system, unless it is shown that an employee acted with gross negligence or bad faith.

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

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

Section 8. [*Effective Date.*] [Insert effective date.]

Student Records

This Act requires disciplinary records, attendance records, health records other than confidential health records for which consent for dissemination has not been obtained and special education records to be included in the records that follow a student who transfers to another school.

Submitted as:

Maine

Chapter 472, Laws 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 the "Student Records Act."

2

3 Section 2. [*Transfer of Records.*] Upon application of a student to transfer to another
4 school administrative unit in this State or to enroll at a school administrative unit in this State
5 from an educational program or school for juveniles located in or operated by a correctional
6 facility or a school outside of the State, and upon the written request of the superintendent of the
7 school administrative unit into which the student seeks admission, school administrators at the
8 school administrative unit from which the student is transferring shall provide all of the student's
9 education records, including disciplinary records, attendance records, health records other than
10 confidential health records for which consent for dissemination has not been obtained and special
11 education records, to school administrators at the school administrative unit to which the student
12 is seeking a transfer. Confidential health records may be provided under this subsection only if
13 the school administrator at the school administrative unit from which the student is transferring
14 receives the authorization or consent necessary for the dissemination of information contained in
15 the following records:

16 A. Records concerning information on a person's HIV infection status, including the
17 results of an HIV test, as those records are described in [insert citation];

18 B. Records concerning information on a person's alcohol and other drug abuse treatment
19 as those records are described in [insert citation];

20 C. Records concerning information on a person's health care and treatment as those
21 records are described in [insert citation]; and

22 D. Records concerning information on a person's mental health treatment as those records
23 are described in [insert citation].

24

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

26

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

28

29 Section 5. [*Effective Date.*] [Insert effective date.]

Tongue Splitting

This Act prohibits a person other than a licensed physician or dentist from performing tongue splitting.

Submitted as:

Illinois

Public Act 93-0449

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Act Regulating Tongue Splitting."

2

3 Section 2. [*Definitions.*] As used in this Act, "tongue splitting" means the cutting of a
4 human tongue into two or more parts.

5

6 Section 3. [*Performing Tongue Splitting.*] A person may not perform tongue splitting on
7 another person unless the person performing the tongue splitting is licensed to practice medicine
8 in all its branches under [insert appropriate medical and dental licensing citation].

9

10 Section 4. [*Violations for Performing Tongue Splitting.*] Tongue splitting performed in
11 violation of this Act is a [Class A misdemeanor] for a first offense and a [Class 4 felony] for a
12 second or subsequent offense.

13

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

15

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

17

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

Volunteer Advocates for Seniors

This Act permits a court to appoint a volunteer advocate for seniors to represent and protect for a limited period the interests of an incapacitated or protected person who is at least 55 years old. It requires volunteer advocates to report to the court and make recommendations about the incapacitated or protected people for whom they are advocating. This Act provides civil immunity for such volunteer advocates.

Submitted as:

Indiana

HEA 1178 (enrolled version)

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act Concerning Volunteer
2 Advocates for Seniors."

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

5 (A) "Volunteer advocate for seniors" means an individual who:

- 6 (1) Is a volunteer;
7 (2) Has completed a limited guardian training program approved by a court;
8 (3) Is supervised by a community volunteer advocates for seniors program;
9 (4) Is appointed by a court to serve as a limited guardian for an incapacitated
10 person or protected person who is at least [55 years] old; and
11 (5) Provides reports and makes recommendations to a court.

12
13 Section 3. [*Appointing a Volunteer Advocate for Seniors.*]

14 (A) A court in a proceeding under this Act may appoint a volunteer advocate for seniors.
15 A volunteer advocate for seniors shall submit to the court:

- 16 (1) A progress report [15 days] after the date of appointment describing the
17 matters required by the court; and
18 (2) A final report [60 days] after the date of appointment:
19 (a) Describing the matters required by the court; and
20 (b) Making recommendations to the court as to whether a need exists for
21 continued representation to the court as to whether a need exists for continued representation of
22 the incapacitated or protected person.

23 (B) The court may appoint an attorney to represent a volunteer advocate for seniors.

24
25 Section 4. [*Duties of Volunteer Advocates for Seniors.*]

26 (A) A volunteer advocate for seniors shall:

- 27 (1) Serve as a limited guardian to represent and protect the interests of an
28 incapacitated or protected person who is at least [55 years] old;
29 (2) Investigate and gather information regarding the health, welfare and financial
30 circumstances of the incapacitated or protected person, as directed by a court;
31 (3) Facilitate and authorize health care, social welfare, and residential placement

32 services as needed by the incapacitated or protected person;

33 (4) Advocate for the rights of the incapacitated or protected person;

34 (5) Facilitate legal representation for the incapacitated or protected person; and

35 (6) Perform any other duty required by a court.

36 (B) A volunteer advocate for seniors may:

37 (1) Consent to medical and other professional care and treatment for the
38 incapacitated or protected person's health and welfare;

39 (2) Secure the appointment of a guardian or co-guardian in another state;

40 (3) Take custody of the incapacitated or protected person and establish the
41 person's place of abode within this or another state in accordance with [insert citation];

42 (4) Institute proceedings or take other appropriate action to compel the
43 performance by any person of a duty to support the incapacitated or protected person's health or
44 welfare; and

45 (5) Delegate to the incapacitated or protected person certain responsibilities for
46 decisions affecting the person's business affairs and well-being.

47
48 Section 5. [*Length of Service of Court-Appointed Volunteer Advocate for Seniors.*] If a
49 court appoints an individual to serve as a volunteer advocate for seniors, the appointment shall be
50 for a period of [60 days]. After the initial [60 day] period, the court may, upon petition by the
51 volunteer or upon the court's own motion, extend the appointment for a period as determined by
52 the court to be necessary to protect the interests of the incapacitated or protected person.

53
54 Section 6. [*Volunteer Advocate for Seniors as Officer of the Court.*] A volunteer
55 advocate for seniors is considered an officer of the court for the purpose of representing the
56 interests of an incapacitated or protected person.

57
58 Section 7. [*Volunteer Advocate for Seniors' Immunity for Civil Liability.*]

59 Except for gross misconduct:

60 (1) A volunteer advocate for seniors program that;

61 (2) An employee of a volunteer advocates for seniors program who; or

62 (3) A volunteer for a volunteer advocates for seniors program who;

63 performs duties in good faith is immune from any civil liability resulting from the program's,
64 employee's, or volunteer's performance.

65
66 Section 8. [*Consent to Refuse Health Care.*]

67 A volunteer advocate for seniors is not authorized to consent to or refuse health care as
68 defined in [insert citation] for an individual if:

69 (1) A spouse, a parent, an adult child, or an adult sibling of the individual or the
70 individual's religious superior, if the individual is a member of a religious order, is available,
71 capable, and suitable to consent to or refuse the health care on behalf of the individual; or

72 (2) The individual has previously:

73 (A) Appointed a health care representative under [insert citation];

74 (B) Authorized health care under [insert citation];

75 (C) Executed a power of attorney under [insert citation]; or

76 (D) Had a guardian appointed by the court under [insert citation].

77
78 Section 9. [*Changing the Physical Presence of a Protected Person.*] A guardian (other
79 than a temporary guardian) or volunteer advocate for seniors appointed under [insert citation]
80 may, with the approval of and under such conditions as may be imposed by the court after notice

81 and hearing, change the physical presence of the protected person to another place in this state or
82 to another state if the court finds that such a change is in the best interests of the protected
83 person. Upon such a change, the guardianship may be limited or terminated by the court.
84

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

86
87 Section 11. [*Repealer.*] [Insert repealer clause.]

88
89 Section 12. [*Effective Date.*] [Insert effective date.]

Cumulative Index, 1985-2005

The entries in this index cover topics from the **1985 Suggested State Legislation** volume through this, the **2005 print edition**. Generally, the entries are listed by subject, title, year published and page number. All individual entries under the subject headings are listed in chronological order. Entries after 1995 are usually listed once, however, there are subheadings and cross-references (see and see also entries) for some entries prior to that date.

Academic records, see records management

Acid rain, see conservation and the environment

Adoption, see domestic relations

Aged: Grandparents as Foster Parents, (1999) 112-113;
abuse and neglect of elderly: Elder Death Review Teams,
(2003) 46

banking: Lifeline Banking, (1986) 143-44

environment: Senior Environmental Corps Act, (1994) 152-54

health: Long Term Care Act, (1989) 157-59; Alzheimer's Disease Assistance Act, (1989) 160-64; Adult Day Care Center Program Act, (1990) 96-98; Open Drug Formulary Act, (1990) 113-14; Senior Citizens Prescription Drug Program Note, (2001) 85-88

housing: Protection for Tenants in Condominium Conversion, (1985) 35-42; (1986) 40-41; Delinquent Real Property Tax Notification Act, (1988) 38-40; Respite Demonstration Program (1986) 168-78; Public Guardians for the Elderly, (1987) 140-43; Unfair Home Improvement Loans for Senior Citizens, (1997) 24-26; Alzheimer's Care Disclosure, Nursing Home Violations (1998) 16-18; Long-Term Care Resident and Employee Immunization, (2000) 147-149; Assisted Living Communities, (2002) 17-23; Nursing Facilities: Electronic Monitoring, (2002) 80; Senior Living Program, (2002) 119

see also: state and local government - public pensions

Agriculture

alternative crops: Industrial Hemp, (2000) 117-118;

farm credit: Agricultural Linked Deposit Act (Statement), (1988) 192; Farm Mediation and Arbitration Program Act, (1989) 165-68

farms: Agricultural Land Preservation Act (Statement), (1991) 90-92; Sustainable Agriculture Act, (1991) 93-95; Farm and Ranch Solid Waste Cleanup and Abatement Program, (1999) 56-60; Poultry Waste Management, (2000) 184-187; Agriculture Odor Management, (2004) 23-27; Master Farmer Program, (2005) 105-106; Prohibiting Local Governments from Regulating Activities Related to Fertilizer, (2005) 137-139

licenses and licensing: (1986) 198-203; State Grain Insurance Act (Statement), (1988) 282

livestock: Downed Animals Act, (1995) 142; Livestock Exhibitions, (1996) 307-315; Livestock Management Facilities, (1999) 171-186; Livestock Waste Management, (1999) 187-198; Livestock Diseases, (2003) 84; Regulating Poultry Production Contracts, (2005) 144-145

marketing: Grain Warehouse Failure, (1986) 187-97; Farm Product Producer Lien, (1986) 204-05; Organic Food Products Standards, (1987) 167-69; Agriculture: False Information, (1998) 164-166; Fertilizer, (1999) 61-71; Competitive Livestock Markets, (2001) 6-10; Cooperative Processing (Statement), (2005) 42-43

milk and milk products: Milk Producer Security, (1986) 198-203

research: Field Crop Products: Civil Liability, (2001) 28
see also: conservation and the environment; labor - migrant workers

Air pollution, see conservation and the environment

Alcohol, see drugs and alcohol; consumer protection

Art, see business and commerce - copyright; culture, the arts and recreation

Asbestos, see hazardous material and waste disposal

Assistance for handicapped, see handicapped persons

Athletics: Athlete Agent Restrictions Act, (1989) 117-19; Action for Violation of NCAA Rules, (1989) 120-24; Extreme Sports Areas: Tort Claims Limitation, (2002) 44-45; Uniform Athlete Agents Act, (2003) 150; College Athlete Recruiting Rules, (2004) 36

Atomic energy, see nuclear energy

Auditors, see public finance and taxation-accounting and auditors

Automobiles, see transportation

Ballot, see election

Banks and financial institutions: Reverse Annuity Mortgage Act, (1986) 40-41; Money Laundering Act (Statement), (1988) 48; Limitation on Business Transacted with Producer Controlled-Insurer Act, (1988) 104-05; Cashing of State Checks Act, (1990) 139-40; Stop Payment Orders for Cashier's, Teller's or Certified Checks, (1992) 123-24; Collateral Pool for Public Deposits Act, (1992) 127-39; Interstate Bank Branching Act, (1994) 84-89; ATM Safety Act, (1997) 16-23; Foreign Capital Depository, (1999) 72-106; Uniform Money Services Act, (2002) 133-149; Predatory Lending Note, (2004) 97-101

funds transfer: Electronic Fund Transfer Privacy, (1986) 184-86; Direct Deposit, (1987) 181-83; Funds Transfers Act (Statement), (1992) 125-26; State Transportation Infrastructure Banks (Note), (1999) 260-261

guaranteed loans: Linked Deposit Act, (1986) 55-59

liquidation of closed banks: Model Liquidation Code for Closed, Insured Banks, (1985) 139-43

rules of procedure: Lifeline Banking, (1986) 143-44; Bank Account Availability, (1986) 206-09; Deferred Deposit Loans, (2002) 34

securities and investments: Limitation on Business Transacted with Producer Controlled-Insurer Act, (1988) 104-05; Investment Advisory Activities Act, (1989) 86-95

see also: consumer protection; insurance

Birth certificates, see domestic relations - adoption; records management; Certificate of Birth Resulting in Stillbirth, (2004) 35

Blood donors, see health care

Boats and boating, see transportation

Bonds and notes, see public finance and taxation

Budgets, see public finance and taxation
Building codes, see housing, land and property
Buildings, see housing, land and property; culture, the arts and recreation - historic preservation
Burial sites, Desecration of Burial Sites, (1985) 101-03
Business and commerce
 advance notice: Advance Notice by Businesses of Cessation of Operations, (1985) 134-35
 advertisements: Celebrity Rights Act, (1988) 276-81
 commercial law: Uniform Commercial Code Lease Act (Note), (1988) 31-35; Money Laundering Act (Statement), (1988) 48; Shareholders Protection Act, (1988) 49-57; Recreational Water Contact Facility Act, (1988) 58-61; Utility Holding Company Regulation Act (Statement), (1988) 62; Buyers' Club Regulation Act, (1988) 63-67; Health Insurance Pool Act (Statement), (1988) 68; Travel Promotion Regulation Act, (1988) 69-71; Videotape Rental Future Services Contract Act (Statement), (1988) 72; Flexible Rate Limitations for Problem Insurance Markets Act, (1988) 73-76; Limitations on Cancellation and Non-Renewal of Personal Insurance Policies Act, (1988) 77-82; Limitations on Cancellation and Non-Renewal of Commercial Insurance Policies Act, (1988) 83-91; Authority to Activate Joint Underwriting Association Act, (1988) 92-98; Municipal Reciprocal Insurer Act, (1988) 99-101; Limitation on Holdings of Non-Investment Grade Obligations Act, (1988) 102-03; Limitation on Business Transacted with Producer Controlled-Insurer Act, (1988) 104-05; Financial Guaranty Insurance Act, (1988) 106-19; Insurance Holding Company System Act, (1988) 120-43; Requirement for Independent Loss Reserve Certification Act, (1988) 144-45; Seizure of Impaired Insurers Act, (1988) 146-49; Unfair Claim Settlement Practices Act, (1988) 150-51; Risk Retention Groups and Purchasing Groups Act, (1988) 152-68; Fair Rates for Credit Insurance Act, (1988) 169-72; Collision Damage Waiver Insurance Act, (1988) 173-77; Prohibition of Anti-competitive Behavior, (1988) 178-80; Duties of Excess Lines Brokers Act, (1988) 181-86; Prohibited Dread Disease Insurance Coverages Act, (1988) 187-88; Insurance Frauds Prevention Act, (1988) 189-91; Lease-Purchase Agreement Act, (1991) 103-07; Stop Payment Orders for Cashier's, Teller's or Certified Checks, (1992) 123-24; Funds Transfers Act (Statement), (1992) 125-26; Property Insurance Declination, Termination and Disclosure Act, (1992) 140-44; Interstate Insurance Receivership Compact, (1996) 103-22; Collection of Royalties Bill, (1996) 123-27; Insurance Fraud Act, (1996) 139-52; Uniform Tobacco Products Sales Laws, (1997) 29-31; Holocaust Victims' Insurance Relief, (2001) 39-44; One-Stop Internet Permitting System and Expedited Permitting Program, (2001) 63-69; Uniform Computer Information Transactions Statement, (2003) 157; Regulating Arbitration Service Providers, (2005) 140-142
 copyrights and patents: Protection of Ownership Rights of Artists, (1985) 98; Protection of Artists Whose Work Has Been Altered, (1985) 99-100; Continuity of Contract Under European Monetary Union, (2000) 27-29; Electronic Proxy, (2000) 77-80
 corporate acquisitions: Corporate Takeovers (Note), (1986) 69; Corporate Shareholder Protection, (1986) 70-73; Corporate Takeover Regulation, (1986) 74-81; Corporate Takeover Disclosure, (1986) 82-90; Shareholders Protection Act, (1988) 49-57; Hospital Conversions, (1999) 131-137
 development: Economic Adjustment, (1985) 136-38; Business Infrastructure Development (1986) 42-47; Community Economic Development Support Act (Statement), (1988) 47; BIDCO Act, (1989) 57-81; Defense Contractor Restructuring Assistance Act, (1994) 75-83; Export Trade Revolving Loan Fund Act, (1994) 96-98, Business Tax Relief for Biotechnology/High Technology Industries Note, (2001) 3-5
 employee-owned businesses: Employee Ownership Assistance, (1985) 136-38 ; Business Coordination, (1999) 20-22
 small business: Small Business Litigation Expenses, (1985) 125-26; Capital Loan Fund, (1986) 48-54; Linked Deposit, (1986) 55-59; Small Business Set-Aside, (1986) 65-68; Small Business Incubator, (1986) 91-95; BIDCO Act, (1989) 57-81; Self-employment Assistance, (1999) 239-242; Small Business Air Quality Assistance, (1999) 246-249
 unfair trade practices: Motion Picture Fair Competition, (1985) 111-14; Travel Promotion Regulation Act, (1988) 69-71; Videotape Rental Future Services Contract Act (Statement), (1988) 72; Seizure of Impaired Insurers Act, (1988) 146-49; Unfair Claim Settlement Practices Act, (1988) 150-51; Risk Retention Groups and Purchasing Groups Act, (1988) 152-68; Collision Damage Waiver Insurance Act, (1988) 173-77; Prizes and Gifts Act, (1992) 145-48; Prize and Sweepstakes Regulation Act, (1995) 114-17; Holocaust Victims' Insurance Relief, (2001) 39-44; Telemarketers: Consent to Charge an Account (2003) 146
 see also: banks and financial institutions; consumer protection - motor vehicles; economic development; exports; licensing; transportation - motor vehicles
Campaign finance, see elections; ethics
Carnival amusement rides, see culture, the arts and recreation
Carpooling, see transportation - ridesharing
Cemeteries, see burial sites
Charitable organizations
 solicitation: Charitable Funds Solicitation Act, (1988) 283-91; Institutions of Public Charity, (Statement)
Child abuse, see crime and criminals
Child visitation, see crime and criminals
Clinics, see health care - hospitals and clinics
Colleges, see education - universities and colleges
Commerce, see business and commerce
Commercial development, see business and commerce
Commercial law, see business and commerce
Communications: Year 2000/Y2K (Note), (1999) 268-269; Rural Internet Access Authority, (2002) 114
 telecommunications: Federal Telecommunications Act of 1996 (Note), (1997) 34-39; Digital Signatures (Amendments), (1997) 75-96; Rights-of-Way: Telecommunications Providers, (1997) 97-103; Slamming and Loading, (1999) 243-245; State Internet Legislation (Note), (1999) 257-259; Digital State (2000) 37-42; Electronic Commerce Security, (2000); 50-73; Computer Contaminants; (2001) 11-13; Internet Privacy Policy, (2001) 45-46; Dark Fiber, (2003) 40;

telefacsimile: Unsolicited Telefacsimile Advertising Act, (1990) 63-64

telephone: Universal Telephone Service Program, (1985) 72-73; Phone Rate Change Moratorium, (1986) 109-10; Telephone Rate Equity, (1987) 127-32; Cellular Radio Telephone Privacy Act, (1989) 103-06; One-Call System ("Call Before You Dig"), (1990) 55-62; Telephone Recorded Message Services Act, (1990) 65-67; Alternate Operator Service Provider Act, (1991) 98-99; General Acute Care Hospital Interpreter Act, (1992) 45-47; Cellular Mobile Radio Communications Act (Statement), (1993) 133-34; Telephone Caller Identification Services Act, (1994) 172-75; Counterfeit Cellular Telephones, (1998) 67-70; Prepaid Calling Cards Rate Disclosure, (2002) 87; Community Service Voice Mail, (2005) 36-39

television: Cable Subscriber Privacy Protection Act, (1990) 134-38; Alternate Operator Service Provider Act, (1991) 98-99; Lifeline/Link Up Services, (2001) 47-50

Community development, see growth management

Community health services, see health care

Comparable worth, see labor - pay equity

Computer crime, see crime and criminals

Conflict of interest, see ethics

Conservation and the environment
Integrated Permit System, (2005) 68-70

air pollution: Woodstove Pollution, (1986) 7-9; Chlorofluorocarbon and Halon Compounds Control Legislation (Note), (1992) 67-69; State Fleet Alternative Fuels Act, (1992) 87-89; Emissions Reduction Market System (1998) 1-9; Quarry Operation, Reclamation and Safe Closure, (1999) 227-238; Small Business Air Quality Assistance (1999) 246-249; Loan Program to Fund Repairing Polluting Vehicles Which are Owned by Low-Income People, (2000) 140-146; Improving Air Quality Statement, (2004) 73-74; Multiple Pollutant Reduction, (2004) 83-89

education: Environmental Education Program, (1994) 155-64

environmental protection: Open Lands Management, (1986) 37-39; Scenic Roads Conservation, (1987) 1-4; State Flood Hazard Area Regulation Act, (1988) 1-21; Statewide Source Separation and Recycling Act (Statement), (1988) 23; State Underwater Antiquities Act, (1988) 266-75; Radon Gas Study, Monitoring, Information and Certification Program Acts, (1989) 6-10; Ocean Resources Management Planning Act, (1990) 29-38; Promotion of Paper Bag Usage Act, (1990) 53-54; Solid Waste Management Act (Statement), (1991) 58-59; Hard-to-Dispose Materials Act (Statement), (1991) 60-61; Agricultural Chemical Groundwater Protection Act, (1991) 62-75; Resources Enhancement and Protection Fund, (1991) 76-84; Sanitary Landfill and Solid Waste Management Legislation (Note), (1992) 70-73; Limited Immunity for Persons Responding to Oil Spills, (1992) 81-83; Senior Environmental Corps Act, (1994) 152-54; Oilfield Site Restoration Act, (1995) 40-54; Environmental Audit Privilege and Voluntary Disclosure Act, (1995) 55-60; Environmental Regulation Commission Act, (1996) 27-32; Environmental Opportunity Zone Act, (1997) 1-8; Aquaculture, (1998) 167-173; Vegetative Filter Strips, (1998) 174-175; Environmental Leadership Program (1999) 44-51; Exemplary Environmental Management Systems, (2001) 23-24; Regulating Ballast Waste Water Discharges, (2002) 103-107; Regional Water Banks Note, (2003) 111; Industrial Accountability for Environmental Violations (Statement), (2004) 75-76

erosion:

forestry: Comprehensive Forest Resource Program Planning, (1985) 1-3; Forestry Incentives Program, (1986) 14-19; Sustainable Forest Incentive, (2004) 147-152

refuse disposal and recycling: Statewide Source Separation and Recycling Act (Statement), (1988) 23; Promotion of Paper Bag Usage Act, (1990) 53-54; Plastic Container Coding System Act, (1990) 51-52; Solid Waste Management Act (Statement), (1991) 58-59; Hard-to-Dispose Materials Act (Statement), (1991) 60-61; Sanitary Landfill and Solid Waste Management Legislation (Note), (1992) 70-73; Used Oil Collection Act, (1993) 68-73; Land Recycling and Environmental Remediation Standards Act, (1996) 33-60; Conservation and Use of Sewage Effluent, (1997) 9-11; Farm and Ranch Solid Waste Cleanup and Abatement, (1999) 56-60; Nonhazardous and Nonliquid Waste Handling (Statement), (1999) 207-208

water pollution: Groundwater Management (Statement), (1985) 13; Ocean Resources Management Planning Act, (1990) 29-38; Agricultural Chemical Groundwater Protection Act, (1991) 62-75; Limited Immunity for Persons Responding to Oil Spills, (1992) 81-83; Stormwater Management and Sediment Reduction Act, (1993) 87-97; Marine Sewage Pumpout Act, (1994) 151; Adopt-A-River Program Act, (1995) 61-62 Notice for Withdrawing Groundwater, (2000) 176-179; Water Quality Management, (2000) 219-233

wetlands: Wetlands Regulation, (1985) 4-12; Freshwater Wetlands Protection Act (Statement), (1989) 1-5; State Nonfederal Wetland Regulation Extension Statement, (2004) 144-146

see also: fish and wildlife; hazardous materials and waste; public utilities and public works – water treatment

Construction, building, see housing, land and property

Consumer protection: Money Laundering Act (Statement), (1988) 48; Recreational Water Contact Facility Act, (1988) 58-61; Buyers' Club Regulation Act, (1988) 63-67; Health Insurance Pool Act (Statement), (1988) 68; Travel Promotion Regulation Act, (1988) 69-71; Limitations on Cancellation and Non-Renewal of Personal Insurance Policies Act, (1988) 77-82; Seizure of Impaired Insurers Act, (1988) 146-49; Charitable Funds Solicitation Act, (1988) 283-91; Radon Gas Study, Monitoring, Information and Certification Program Acts, (1989) 6-10; Lawn Care Products Application and Notice Act, (1991) 53-57; Tanning Facility Safety Standards Act, (1991) 100-02; Lease-Purchase Agreement Act, (1991) 103-07; Property Insurance Declination, Termination and Disclosure Act, (1992) 140-44; Prizes and Gifts Act, (1992) 145-48; Residential Real Estate Disclosure Act, (1993) 110-14; Psychotherapy Grievance Board Act, (1994) 138-50; Riverboat Gambling Control Legislation (Note), (1995) 112-13; Prize and Sweepstakes Regulation Act, (1995) 114-17; New Assistive Devices Warranty Act, (1995) 118-22; Holocaust Victims' Insurance Relief, (2001) 39-44; Tongue Splitting, (2005) 171

consumer information: Alcohol-Blended Fuel Labeling, (1986) 210-11; Organic Food Products Standards, (1987) 167-69; Uniform Open Dating Regulation, (1987) 170-73; Lawn Care Products Application and Notice Act, (1991) 53-57; Lease-Purchase Agreement Act, (1991) 103-07; Property Insurance Declination, Termination and Disclosure Act, (1992) 140-44; Prizes and Gifts Act, (1992) 145-48; Salvaged Food Act, (1996) 97-99; Ephedrine and Pseudoephedrine, (1998) 79-84; Electronic Mail Advertising, (2000) 74-76

credit and creditors: Credit Services Regulation, (1986) 96-100; Credit, Charge Card, and Retail Installment Account Disclosure Acts, (1988) 292-300; Fair Credit Extension Uniformity, (2003) 54; Using Credit Information In Personal Insurance, (2004) 177-181

credit practices: Credit, Charge Card, and Retail Installment Account Disclosure Acts, (1988) 292-300

household hazards: Uniform State Food, Drug, and Cosmetic (Statement), (1986) 217; Toxic Household Products Act, (1993) 48-51

merchandise, solicitation of: Mail Order Address Disclosure, (1985) 104; Buyers' Club Regulation Act, (1988) 63-67

motor vehicles: New Motor Vehicle Warranty and Dispute Resolutions Procedures, (1985) 105-10; Protection for Owners of Defective Motor Vehicles, (1985) 111-14; (1986) 210-11; Used Car Sales Protection, (1986) 212-16; Motorcycle Rider Education Act, (1988) 196-99; New Motor Vehicle Warranties (Statement), (1988) 301; All-Terrain Vehicles (Statement), (1989) 101-02; Repurchased Automobile Act, (1993) 108; Prohibiting Viewing Video Signals while Operating a Motor Vehicle, (2004) 122

product safety: Uniform State Consumer Product Safety, (1987) 174-80; Product Liability Reform Act, (1989) 82-85; Lawn Care Products Application and Notice Act, (1991) 53-57; Tanning Facility Safety Standards Act, (1991) 100-02; Toxic Household Products Act, (1993) 48-51; Youth Smoking Smoking Prevention Fund, (2000) 234-240

sales practices: Uniform Open Dating Regulation, (1987) 170-73; Buyers' Club Regulation Act, (1988) 63-67; Travel Promotion Regulation Act, (1988) 69-71; Videotape Rental Future Services Contract Act (Statement), (1988) 72; Flexible Rate Limitations for Problem Insurance Markets Act, (1988) 73-76; Grey Market Goods Warranty Disclosure Act, (1988) 302-05; Lease-Purchase Agreement Act, (1991) 103-07; Prizes and Gifts Act, (1992) 145-48; Brokerage Real Estate Disclosure, (1999) 9-19; Slamming and Loading, (1999) 243-245; Consumer Telemarketing Protection (2000) 25-26; Unauthorized Charges On Utility Bills-Cramming, (2001) 104-107; Halal Food, (2002) 52-53; Misrepresenting A Business Name or Location In a Telephone Directory or Directory Assistance Database, (2002) 79; Electronic Transmission of Sexually Explicit Advertisement Material, (2003) 51; Price Gouging After Disasters, (2003) 104; Service Contracts and Consumer Products Guaranty, (2003) 129; Prohibiting Pyramid Promotional Schemes, (2004) 111-113; Prohibiting the Sale of Prepaid Adult Entertainment Cards, (2004) 118-119; Prohibiting Gutka Sales, (2005) 135-136; Regulating Kegs, (2005) 143

see also: hazardous materials and waste - household use

Controlled substances, see drugs and alcohol

Copyrights, see business and commerce

Corporate acquisitions, see business and commerce

Courts, Prisoner Litigation Reform, (1999) 220-223; Juror Gratuities, (2003) 81

insanity defense:

juveniles and children: State Juvenile Pretrial Diversion Programs Act, (1988) 204-08; Actions by Adult Survivors of Childhood Sexual Abuse, (1991) 121-22; Visitation Dispute Resolution Act, (1992) 104-05; Youth Mentor Program, (1998) 75-78; Teen Courts, (1998) 87-91

lawyers: Interest on Lawyer Trust Accounts, (1985) 74-78; Service of Legal Papers By Alternative Methods, (1991) 115-20; Contingency Fee Contracts for Legal Services to States Note, (2001) 16

public guardian: Public Guardians for the Elderly, (1987) 140-43; Revision of Attorney Guardian Ad Litem Program, (1996) 189-95; Guardianship of Minors and Estates of Minors, (1996) 199-212

rules of procedure: Videotaped Testimony, (1986) 134-36; Grand Jury Procedures, (1986) 137-42; Victims of Crime (Note), (1988) 209; Actions by Adult Survivors of Childhood Sexual Abuse, (1991) 121-22; Battered Woman Syndrome Defense Act, (1992) 96-98; Uniform Correction of Clarification of Defamation Act, (1997) 137-141; Death Penalty: Unitary Review, (1998) 96-105; Forensic Testing: Post Conviction, (2002) 46-49; Search Warrants: Application by Video Conference, (2002) 118; Cyber Court, (2003) 35; Jury Service, (2004) 77-82; Confidentiality of Addresses in Civil Proceedings, (2005) 40-41

tort liability and negligence: Product Liability Reform Act, (1989) 82-85; Limited Immunity for Persons Responding to Oil Spills, (1992) 81-83; State Volunteer Service Act (Statement), (1992) 106-07; SLAPP (Strategic Lawsuits Against Political Participation) Legislation (Note), (1995) 21; Civil Liability for Bias Crimes, (1995) 22-24; Field Crop Products: Civil Liability, (2001) 28; Health Care Industry Liability Note, (2001) 29-36; Reforming Certain Procedures and Remedies in Civil Actions, including Medical Malpractice Awards (Statement), (2004) 125-131; Common Sense Consumption, (2005) 34-35; Medical Malpractice Reform, (2005) 110-114; Silicosis Claim or a Mixed Dust Disease Claim, (2005) 151-166

see also: business and commerce - small business; public finance and taxation

Credit, see consumer protection; crime and criminals

Crime and criminals

business: Animal Fighting and Baiting Act, (1988) 24-26; Money Laundering Act (Statement), (1988) 48

child abuse and domestic violence: Child Visitation Program, (1986) 145-46; (1986) 153-57; State Children's Trust Fund Act, (1988) 210-17; Mandatory Protective Behavior Instruction Act, (1988) 231-32; Batterers Pilot Program Act, (1990) 99-103; Actions by Adult Survivors of Childhood Sexual Abuse, (1991) 121-22; Prenatal Exposure to Controlled Substances Act, (1992) 17-19; Battered Woman Syndrome Defense Act, (1992) 96-98; Domestic Violence (No-Contact) Act, (1992) 99-100; Harassment Restraining Order Act, (1992) 101-03; Child Abuse and Neglect Reporting Legislation

(Note), (1995) 68-69; Family Services Response System Act, (1995) 98-105; Domestic Abuse Death Review Team, (2002) 38-41; Pornography and Child Exploitation Prevention, (2005) 126-128

computers: Computer Crime and Misuse, (1985) 127-29; Computer Crimes Including Offenses by Minors, (1985) 130-33; Computer Crime Civil Redress, (1986) 123-26; Comprehensive Computer Crime, (1986) 127-30; Cyberstalking, (2000) 30-36; Unsolicited Bulk Electronic Mail, (2000) 213-218, Computer Contaminants, (2001) 11-13

crime prevention: Missing Children Record Flagging Act, (1988) 222-24; Criminal History Record Check for Transfer of Firearms, (1991) 132-35; Motor Vehicle Theft Prevention Act, (1992) 149-52; Street Gangs, (2000) 199-203; National Crime Prevention and Privacy Compact, (2001) 51-58; Voluntary Statewide Child Identification Program, (2003) 177

criminal acts: Animal Fighting and Baiting Act, (1988) 24-26; Money Laundering Act (Statement), (1988) 48; Insurance Frauds Prevention Act, (1988) 189-91; Action for Sexual Exploitation by Psychotherapists, (1989) 107-09; Dangerous Dogs Act, (1989) 110-13; Replica Firearm Warning Label Act, (1990) 144; Civil Liability for Theft Act, (1990) 145; Automobile Theft and Fraud Legislation (Note), (1991) 108-14; Sex Offender Act, (1991) 123-30; Vulnerable Adults Abuse and Exploitation Registry (Statement), (1991) 131; International Terrorism, (1998) 73-74; Gross Sexual Imposition With a Controlled Substance, (1999) 114-130; Inmate Assaults with Body Fluids or Other Hazardous Substances, (1999) 138-139; Intimidating Legislative Witnesses, (1999) 146-147; Perpetrator's Assumption of Risk, (1999) 212; Identity Theft-Misuse of Personal Identifying Information (Note), (2000) 98-102; Invasion of Privacy, (2000) 135-137; Counterfeiting Intellectual Property, (2001) 17-18; Prohibiting Felons from Owning Body Armor, (2001) 74-75; Terrorism Prevention, (2001) 101-103; Voyeurism, Aggravated Voyeurism, (2002) 150; Anti-Terrorism, (2003) 15; Privacy: Video Providers, (2003) 106; Defrauding Administration of A Drug Test, (2004) 59-60; Harmful Electronic or Electromagnetic Devices, (2005) 53-55

criminal profits: Criminal Profits Reparation, (1985) 50-52; Proceeds of Stories of Felons, (1985) 53-55; Comprehensive Forfeiture, (1985) 62-7; Counterfeiting Intellectual Property, (2001) 17-18; Limits on Civil Damages Awarded to Felons, (2005) 79-80

disposal of forfeited property: Sale of Forfeited Firearms, (2001) 83

drug racketeering: Drug Racketeering Activity Prohibitions, (1985) 58-61

law enforcement: Automobile Theft and Fraud Legislation (Note), (1991) 108-14; Motor Vehicle Theft Prevention Act, (1992) 149-52; Reporting Traffic Infractions of Diplomats, (2003) 115

sexual assault: Mandatory Protective Behavior Instruction Act, (1988) 231-32; Sex Offender Act, (1991) 123-30; DNA Database and Databank Act, (1996) 184-88; Chemical Castration of Sex Offenders (Note), (1999) 23-24; Conditional Release of Sex Offenders, (1999) 29-35; Statewide Sexual Assault Nurse Examiner Program, (2003) 137

shoplifting: Civil Liability for Theft Act, (1990) 145

see also: criminal justice and corrections; courts; drugs and alcohol

Criminal justice and corrections

criminal procedure: Uniform Rules of Criminal Procedure (Statement), (1986) 131-33; Prisoner Litigation Reform, (1999) 220-223; Uniform Criminal History Records Act (Note), (1988) 218-19; Uniform Rules of Evidence Act (Amendments), (1988) 220-21; Actions by Adult Survivors of Childhood Sexual Abuse, (1991) 121-22; Battered Woman Syndrome Defense Act, (1992) 96-98; Missing Child Rapid Response Act, (1996) 181-83; Concerning Imposition of the Death Penalty, (1996) 196-98; Habeas Corpus Petitions, (1997) 110-13; DNA Database and Databank Act, (1997) 114-19; Filing Fees for Criminal Offenders, (1997) 120-22; Disposal of Hazardous Materials Used as Evidence (Statement), (2000) 43; Preservation and Retention of DNA in Felony Cases, (2002) 88

juveniles: State Juvenile Pretrial Diversion Programs Act, (1988) 204-08; Juvenile Offender Recidivism Reduction Act, (1994) 119-21; Juvenile Justice Legislation (Note), (1995) 1-4; Juvenile Firearms Control Legislation (Note), (1995) 5-8 Community Dispute Resolution Centers and Juvenile Offenders, (2000) 19-24; The Interstate Compact for Juveniles, (2004) 154-165

parole and probation: Compact for the Supervision of Parolees and Probationers An Update, (1990) 123-27; Conditional Release of Sex Offenders (1999) 29-35; Interstate Compact for Adult Offender Supervision, (2000) 119-134

prisons: Home Detention Act, (1989) 114-16; Omnibus Criminal Justice Reform Act (Statement), (1993) 149-50; Inmate Assaults with Body Fluids or Other Hazardous Substances, (1999) 138-139; Prison Nursery Programs, (2002) 93; Dispensing of Returned Prescription Drugs by Prison Pharmacies, (2005) 44-45; Prisoner Complaints against State Corrections Health Officials, (2005) 129-130

rehabilitation: Batterers Pilot Program Act, (1990) 99-103; Sex Offender Act, (1991) 123-30; Juvenile Offender Recidivism Reduction Act, (1994) 119-21; Criminal Justice System Substance Abuse Act, (1995) 9-13

sentencing: Sex Offender Act, (1991) 123-30; Omnibus Criminal Justice Reform Act (Statement), (1993) 149-50; Alternate Incarceration Program, (1995) 14-16; Intensive Criminal Sanctions Act, (1995) 17-20; Chemical Castration of Sex Offenders (Note), (1999) 23-24; Conditional Release of Sex Offenders, (1999) 29-35

victim rights: Victim Notification of Offender Release, (1985) 56-57; Victims of Crime (Note), (1988) 209; Victims' Rights Implementation Act, (1994) 122-37; Automated Victim Notification System, (1999) 7-8; Community Dispute Resolution Centers and Juvenile Offenders, (2000) 19-24; Leave from Employment for Crime Victims, (2000) 138-139; Racial Profiling and Traffic Stop Statistics, (2001) 76-79; Identity Theft Passport Program (Statement), (2004) 71-72

see also: state and local government - police

Criminal procedure, see criminal justice and corrections

Culture, the arts and recreation Ticket Scalping Act, (1997) 217-19; In-line Skates Safety Requirements, (1997) 220-26

arts: Protection of Ownership Rights of Artists, (1985) 98; Protection of Artists Whose Work Has Been Altered, (1985) 99-100

historic preservation: State Underwater Antiquities Act, (1988) 266-75

parks: Urban Open Spaces and Recreation, (1986) 1-6, 37-38; Recreational Improvement and Rehabilitation, (1986) 179-83; Adopt-A-Park Program Act, (1993) 74-75

tourism: Travel Promotion Regulation Act, (1988) 69-71

Dams and reservoirs, see conservation and the environment - environmental protection

Deficit financing, see public finance and taxation - public debt

Dentists, see health care

Development, see growth management

Developmental disabilities, see handicapped persons

Disabled persons, see handicapped persons

Disasters, see state and local government - emergency management

Discrimination in employment, see labor

Disease control, see health care

Disposal of waste, see conservation and the environment; hazardous materials and waste

Distressed communities, see growth management - community development

Divorce, see domestic relations

Domestic relations: Kids Now – Early Childhood Initiative Statement, (2002) 73; Relief from Legal Determination of Paternity, (2003) 114; Collaborative Law Procedures for Divorces, (2005) 31-33

adoption: Access to Adoption Information Act (Statement), (1992) 108; Child Welfare Legislation (Note), (1996) 219-20; Standby Adoption, (2001) 89-95; Intent to Surrender for Adoption, (2005) 71-78

child care: Latch-Key Program Act, (1988) 227-30; Child Care Services Act, (1989) 141-47; Child Day Care Acts, (1990) 68-85; Prevention, Early Assistance and Early Childhood Act (Statement), (1991) 40-43; Tuition Assistance Program for Day Care Providers Act, (1991) 44-47; An Act Relating to Pilot After-School Programs in the Public Schools, (1997) 163-65

child custody: Child Custody, (1986) 158-61; Non-Spousal Artificial Insemination Act, (1988) 261-65; Visitation Dispute Resolution Act, (1992) 104-05; Family Preservation Services Act, (1993) 42-46; Children's Safety Centers Act, (1994) 117-18; Standby Guardianship, (1999) 250-256; Parenting Plans, (2001) 70-73

family planning: Pregnancy Options, (1987) 147-62; Non-Spousal Artificial Insemination Act, (1988) 261-65; Prevention, Early Assistance and Early Childhood Act (Statement), (1991) 40-43; Act to Prohibit Surrogate Parenting Contracts, (1994) 112-14; Cloning, (1999) 25-28

financial support: Interstate Income Withholding, (1987) 133-39; Pregnancy Options, (1987) 147-62; Child Support Security Deposit Act, (1989) 148-51; Child Support Enforcement Legislation (Statement), (1994) 115-16

foster care: Grandparents as Foster Parents, (1999) 112-113; Kinship Foster Care, (2002) 74; Road-to-Independence, Transitioning from Foster Care, (2003) 117

juveniles:

marriage: Marital Property, (1985) 79-95

see also: crime and criminals - child abuse and domestic violence; labor - housewives and homemakers

Domestic violence, see crime and criminals - child abuse and domestic violence

Drugs and alcohol

alcoholism: Alcoholism and Drug Addiction Treatment and Support Act, (1990) 118-22

boating: Alcohol Boating Safety, (1986) 131-33

narcotics: Imitation Controlled Substances, (1985) 58-61; Designer Drugs, (1987) 166; Regulation of Precursors to Controlled Substances Act, (1990) 115-17; Uniform Controlled Substances Act 1990 (Statement), (1992) 66; Sterile Needle and Syringe Exchange Program Act, (1993) 14-16; Criminal Justice System Substance Abuse Act, (1995) 9-13; Nitrous Oxide, (1997) 142-43; Controlled Substance Excise Tax Act (Statement), (1998) 71-72

prescription: Senior Citizens Prescription Drug Program Note, (2001) 85-88; Prescription Drug Cost Management, (2003) 101; Unauthorized Transfers of Accounts of Prescription Drug Customers (2003) 148; Utilization of Unused Prescriptions, (2003) 175; Prescription Drug Labels: Purpose of Drug, (2004) 102-104

treatment: Prenatal Providers - Easing the Shortage, (1992) 17-19; Sterile Needle and Syringe Exchange Program Act, (1993) 14-16

Early release, see criminal justice and correction

Economic development

planning: Enterprise Zone, (1986) 60-64, 179-83; Technology Finance Corporation, (1987) 38-41; Product Development Corporation, (1987) 59-67; State Flood Hazard Area Regulation Act, (1988) 1-21; Community Economic Development Support Act (Statement), (1988) 47; Comprehensive Planning and Land Use Regulation Act, (1990) 9-28; Local Government Transfer of Development Rights Act, (1991) 85-89; Agricultural Land Preservation Act (Statement), (1991) 90-92; Sustainable Agriculture Act, (1991) 93-95; Critical Industries Development Account, (1997) 27-28

promotion of private industry: Cooperative Economic Development, (1986) 42-47, 48-54; Economic Revitalization Tax Credit, (1987) 48-58; Community Economic Development Support Act (Statement), (1988) 47; BIDCO Act, (1989) 57-81; Defense Contractor Restructuring Assistance Act, (1994) 75-83; Export Trade Revolving Loan Fund Act, (1994) 96-98

see also: business and commerce - small business; conservation and the environment; exports; growth management

Education: Student Religious Liberty, (1999) 262-265; Safe School Helpline (Note), (2000) 195; Public Elementary and Secondary Student Fee Authorization, (2003) 108; Spread the Word Program, (2003) 135; World Language Institute, (2003) 178; Regulating the Catheterization of Students (Statement), (2005) 146; Student Records, (2005) 170; Master School Principal Program, (2005) 107-109

attendance: Homeless Child Education Act (Statement), (1992) 109

environmental education: Environmental Education Program, (1994) 155-64

exchange student: Exchange Student Placement Agency Licensing Act, (1992) 115-22

- family: Family Education and Resource Center Acts, (1990) 86-88; Mandatory Educational Course on Children's Needs for Divorcing Parents - Pilot Program, (1997) 157-62
- finance: State Baccalaureate Education System Trust, (1988) 233-44; Education Legislation (Note), (1991) 1-13; Private School Tuition, (1999) 224-226
- loans and scholarships: Liberty Scholarship Program Act, (1990) 89-95; Nursing Profession Acts, (1990) 106-12; Tuition Assistance Program for Day Care Providers Act, (1991) 44-47; American Indian Endowed Scholarship Program Act, (1992) 112-14; Intervention/Prevention Grants for Academically At-Risk Children (North Carolina), (1996) 223-28; Intervention/Prevention Grants for Academically At-Risk Children (Utah), (1996) 229-30; National Guard Youth ChalleNGe Program (2000) 169-171; New Economy Technology Scholarship, (2001) 59-62; Teacher Shortage Note, (2001) 98-100
- planning: Schools for the Future Act, (1988) 245-54; Nursing Profession Acts, (1990) 106-12; Electronic Textbooks Statement, (2001) 22
- preschool: Prevention, Early Assistance and Early Childhood Act (Statement), (1991) 40-43; Parents as Teachers Grant Program Act, (1993) 55-58
- reform: Education Legislation (Note), (1991) 1-13; Educational Act for the 21st Century (Statement), (1993) 52-54; Improvement of Student Achievement Act (Statement), (1995) 106-08; School Improvement Act (Statement), (1996) 221-22; Home School Interscholastic Activities, (1998) 136-137; Education Accountability (Statement), (2000) 46-49; Electronic Textbooks Statement, (2001) 22; Early Mathematics Placement Testing, (2002) 42-43; Financial Literacy, (2003) 59; High School Diploma Civics Education Seal, (2004 Part) 70
- special: Special Education Mediation, (1998) 108-112
- teacher training: Information Technology Education, (1987) 163-65; Mandatory Protective Behavior Instruction Act, (1988) 231-32; Tuition Assistance Program for Day Care Providers Act, (1991) 44-47; School Discipline (Note), (1998) 113-114; Alternative Teacher Certification, (1999) 1-6; Teacher Shortage Note, (2001) 98-100; Professional Preparation of School Personnel Note, (2002) 96-100
- universities and colleges: Higher Education Foreign Gift Disclosure, (1986) 162-63; State Baccalaureate Education System Trust, (1988) 233-44; College and University Security Information Act, (1990) 128-31; College Student Immunization Act, (1992) 63-65; Education of the Visually Impaired Act (Statement), (1995) 109; Prepaid Tuition Plans and College Savings Plans (Note), (1998) 115-115-117; Higher Education Performance Standards, (1998) 118-135; New Economy Technology Scholarship, (2001) 59-62; Restricting School Use of Student Social Security Numbers, (2002) 108-109; Campus Sex Offender Registration, (2004) 30-31; Campus Sexual Assault Information, (2004) 32-34
- vocational: Private Vocational School Regulation Act (Statement), (1992) 110-11; Youth Apprentice Pilot Program Act, (1994) 105-07; Youth Apprenticeships Legislation (Note), (1995) 110-11; Tax Credits for School-to-Career Internships, (1999) 266-267; Charter Technical Career Center, (2000) 10-18
- see also: public finance and taxation; records management - academic
- Elderly**, see aged
- Elections**
- campaign finance: Campaign Finance, Ethics and Lobbying Regulation (Statement), (1992) 90-92; Campaign Finance Legislation (Note), (1995) 144-47, Campaign Financing (Note) (2000) 1-9
- election law: Act to Extend Qualifying Deadlines for Elections, (1993) 151, Confidentiality of Elector Records Statement, (2002) 33; Appointment of Presidential Electors, (2003) 18; Gubernatorial Inauguration Finance Disclosure, (2003) 67; Political Cyberfraud, (2003) 99
- voting: Submarine Ballot, (1986) 111-13; Handicapped Voting, (1986) 114-22; Statewide Voter Registration and Outreach Act, (1988) 200-03; Mail Ballot Elections, (1997) 104-9; Internet Voting Note, (2002) 56-72; Pilot Program for Unassisted Voting by the Blind, (2003) 97
- Electronic banking**, see banks and financial institutions - funds transfer
- Emergency management**, see state and local government
- Employees**, see state and local government; labor
- Employment**, see labor
- Energy**
- alternatives: Hydrogen Research and Development, (2002) 54-55, Biodiesel Fuel, (2004) 29-29; Ethanol Production Incentive, (2004) 63-65
- conservation: Statewide Source Separation and Recycling Act (Statement), (1988) 23; State Fleet Alternative Fuels Act, (1992) 87-89; Net Energy Metering, (1998) 9-11; Guaranteed Energy Contracts, (1998) 12-15; Clean Energy Incentives, (2002) 28-32
- electricity: Utility Construction Review Act, (1991) 96-97; Electricity Deregulation (Note), (1998) 45-48; Renewable Energy Electricity Generating Cooperatives, (2004 Part III)
- energy efficiency rating: Building Efficiency Rating Act, (1996) 61-65
- natural gas: Natural Gas Service Expansion Act, (1995) 66-67
- oil and gasoline: Standby Petroleum Set-Aside, (1986) 210-11; Aboveground Storage Tank Act, (1992) 84-86; Used Oil Collection Act, (1993) 68-73; Motor Fuel Marketing, (2005) 116-121
- see also: nuclear energy
- Environment**, see conservation and the environment
- Environmental protection**, see conservation and the environment
- Equal access**, see handicapped persons
- Erosion**, see conservation and the environment
- Ethics**, Campaign Finance, Ethics and Lobbying Regulation (Statement), (1992) 90-92
- Euthanasia**, see health care - right to die
- Explosives and fireworks**: Indoor Pyrotechnics Safety Permit, (2005) 61-67
- Exports**
- council: State Export Council, (1985) 123-24
- development: Export Development Authority and Assistance, (1985)
- Family**, see domestic relations
- Farm credit**, see agriculture
- Farms**, see agriculture
- Finance, public**, see public finance and taxation

Financial emergencies, local, see public finance and taxation - fiscal crises

Financial institutions, see banks and financial institutions

Firearms, see guns, firearms and other weapons

Firefighters, see hazardous materials - rules and regulations

Fireworks, see explosives and fireworks

Fiscal crises, local, see public finance and taxation

Fish and wildlife: State Fishing Enhancement Act (Statement), (1988) 22

conservation: State Resources Reinvestment, (1987) 5-13; State Fishing Enhancement Act (Statement), (1988) 22; Act to Ban the Exportation and Importation of Wildlife, (1993) 76-86

habitat:

Flammable liquids, see hazardous materials and waste cleanup - disposal

Food, drug, and cosmetics, see consumer protection - household hazards

Food stamps, see public assistance - welfare

Forestry, see conservation and the environment

Funds transfer, see banks and financial institutions

Games of chance: Riverboat Gambling Act, (1996) 282-306

see also: business and commerce - unfair trade practices

Garbage, see conservation and the environment - refuse disposal

Gifted, education of, see education - special

Gold and silver dealers, see business and commerce - small business

Good samaritan laws, see hazardous materials - cleanup; public assistance - food

Governors, see state and local government - executive branch

Growth management

community development: Summary from States and Distressed Communities Study, (1985) 149-51; (1986) 60-64; State Flood Hazard Area Regulation Act, (1988) 1-21; Comprehensive Planning and Land Use Regulation Act, (1990) 9-28; Local Government Transfer of Development Rights Act, (1991) 85-89

land development: (1986) 37-41, 179-83; State Flood Hazard Area Regulation Act, (1988) 1-21; Comprehensive Planning and Land Use Regulation Act, (1990) 9-28; Local Government Transfer of Development Rights Act, (1991) 85-89; Agricultural Land Preservation Act (Statement), (1991) 90-92; Smart Growth, (1998) 35-43; Land Bank Authorities, (1999) 148-153

planning: Comprehensive Planning and Land Use Regulation Act, (1990) 9-28; Local Government Transfer of Development Rights Act, (1991) 85-89; Agricultural Land Preservation Act (Statement), (1991) 90-92; Comprehensive Planning/Growth Management Statement, (2003) 26

urban development: Product Development Corporation, (1987) 59-67; State Flood Hazard Area Regulation Act, (1988) 1-21; Development Impact Fee Act, (1993) 115-23; Urban Area Revitalization (Statement), (1998) 44

zoning: State Aviation Development Act (Statement), (1988) 194

see also: economic development; housing, land and property; transportation - airports

Guns, firearms and other weapons

control: Criminal History Record Check for Transfer of Firearms, (1991) 132-35; State Concealed Weapons Laws (Note), (1998) 85-86

replica: Replica Firearm Warning Label Act, (1990) 144

Handicapped, education of, see education - special

Handicapped persons, Handicapped Individuals Rental Discrimination Act, (1988) 27; Pooled Trusts for People with Disabilities, (2004) 94-96; Freedom to Work: People with Disabilities, (2005) 51-52

assistance: Assistance to Handicapped Child, (1986) 168-78; Community Care for Frail or Impaired Adults (1987) 144-46; Handicapped Individuals Rental Discrimination Act, (1988) 27; Prevention, Early Assistance and Early Childhood Act (Statement), (1991) 40-43; Service Dogs, (1998) 106-107

developmental disabilities: Community Care for Frail or Impaired Adults, (1987) 142-44; Self-Sufficiency Trust Fund Act, (1990) 104-05; Developmental Disabilities Services Acts, (1994) 54-64; Education of the Visually Impaired Act (Statement), (1995) 109

equal access: Handicapped Voting, (1986) 114-22; Handicapped Individuals Rental Discrimination Act, (1988) 27; Waiving Construction Permit Fees to Promote Accessibility, (1998) 32-34

legal rights: Handicapped Individuals Rental Discrimination Act, (1988) 27; Delinquent Real Property Tax Notification Act, (1988) 38-40; Guide Dogs and Eviction of Personal Care Attendants (Statement), (2000) 86

see also: education - special; aged - housing

Hazardous materials and waste

cleanup: Underground Storage Tanks Fund Acts - Alternatives for the States, (1989) 11-29; Hazardous Sites Cleanup Act (Statement), (1992) 78-80; Voluntary Remediation of Hazardous Substances and Petroleum Act, (1993) 59-67; Voluntary Hazardous Waste Cleanup Act (Statement), (1995) 63-65; Expedited Remedial Action Reform Act, (1996) 1-26

disposal: Asbestos Application, Removal, and Encapsulation, (1986) 10-13; Aboveground Flammable Liquids Storage, (1986) 20-22; Underground Storage Tank Regulation (Statement), (1986) 23-24; Underground Storage Tank, (1987) 15-22; Toxic Catastrophe Prevention, (1987) 23-32; Underground Storage Tanks Fund Acts - Alternatives for the States, (1989) 11-29; Hard-to-Dispose Materials Act (Statement), (1991) 60-61

household use: Toxic Household Products Act, (1993) 48-51

reduction: Hazardous Waste Reduction Model Act, (1990) 39-50

rules and regulations: Hazardous Waste Management Service, (1985) 14-18; Fire Service Right to Know, (1985) 19-21; Hazardous Chemical Employee Information, (1985) 22-27; Community Right-to-Know, (1986) 25-35; Underground Storage Tank, (1987) 15-22; Toxic Catastrophe Prevention, (1987) 23-32; Radon Gas Study, Monitoring, Information and Certification Program Acts, (1989) 6-10; Hazardous Waste Reduction Model Act, (1990) 39-50; Hard-to-Dispose Materials Act (Statement), (1991) 60-61; Aboveground Storage Tank Act, (1992) 84-86; Ozone Oversight Act, (1997) 12-15; Nonhazardous and Nonliquid Waste Handling (Statement), (1999) 207-208; Mercury (2003) 90; Prohibiting The Sale And

- Distribution of Most Mercury-Added Novelties, (2004) 114-117
- see also: conservation and the environment; consumer protection - household hazards; explosives and fireworks
- Health care:** AIDS Legislation (Note), (1989) 152-56; Alzheimer's Disease Assistance Act, (1989) 160-64; Adult Day Care Center Program Act, (1990) 96-98; Open Drug Formulary Act, (1990) 113-14; Mandated Benefits Review Procedures Act, (1991) 14-18; Access to Health Care (Note), (1992) 1-5; Breast Cancer Education, Detection and Screening Standards Acts, (1992) 6-16; Prenatal Exposure to Controlled Substances Act, (1992) 17-19; Prenatal Providers, Easing the Shortage, (1992) 20-27; Home Care Volunteer Program for Maternal and Child Health, (1992) 28-29; Home Dialysis Agencies Licensing Act, (1992) 30-44; General Acute Care Hospital Interpreter Act, (1992) 45-47; Uniform Disciplinary Act for Regulated Health Professions (Statement), (1992) 48-49; Health Care Decisions and Treatment: Provisions for Durable Power of Attorney and Health Care Agents (Note), (1992) 50-53; Insect Sting Emergency Treatment Act, (1992) 61-62; College Student Immunization Act, (1992) 63-65; Health Care Surrogate Act, (1993) 33-41; Homeless Minors Health Care Consent Act (Statement), (1993) 47; Health Care Legislation (Note), (1993) 1-5; Health Insurance Reform Legislation (Note), (1994) 1-11; Prioritization of Health Care Services Act, (1994) 12-23; Health Care Services Utilization Review Regulation Act, (1994) 31-39; Health Insurance Rates and Refunds Act, (1994) 40-42; Uniform Billing Format Act, (1994) 43-45; Maternity Care Access Act, (1994) 46-50; Breast Feeding Rights Act, (1994) 51; Mental Health Treatment Proxy Act, (1994) 52-53; Health Care Reform Legislation (Note), (1995) 26-28; Assisted Reproductive Technology Act, (1995) 29-33; Written Summary of Breast Cancer Treatment Alternatives Act, (1995) 34-35; Children's Mental Health Integrated Fund (Statement), (1995) 36-38; Dosage Form Definition Act, (1995) 39; Regulation of Health Care and Mental Health Services, (1996) 251-75; Statewide Immunization Program, (1996) 276-79; Health Care Legislation (Note), (1996) 277-81; Health Care - Elderly and Disabled Adults - Pilot Long-term Care Program, (1997) 144-56; Health Services Plans - Dispute Resolution, (1997) 174-78; Alzheimer's Care Disclosure, Nursing Home Violations, (1998) 16-18; Prenatal Care - HIV Testing (Note), (1998) 138-139; Health (Note), (1998) 140-144; Unauthorized Use of Sperm, Ova or Embryos, (1998) 145-146; Child Health Insurance (Note), (1998) 147; Telemedicine, (1998) 148-156; Cloning, (1999) 25-28; Genetic Information Privacy, (1999) 107-111; Premium Sharing, (1999) 213-219; Filling Transferred Prescriptions, (2000) 81-83; Senior Citizens Prescription Drug Program Note, (2001) 85-88; Health Care Industry Liability Note, (2001) 29-36; Hepatitis C: Education, Screening, and Reporting, (2001) 37-38; ; Public Cord Blood Tissue Bank, (2002) 101-102; Rural Health Access Pilot Program, (2002) 110; Hearing Aid Loan Bank Program, (2003) 78; Use of Epinephrine Auto-Injectors by Pupils and Campers with Severe Allergies, (2004) 171-173; Use of Inhalers by Pupils and Campers with Asthma, (2004) 174; Cancer Drug Repository, (2005) 26-28; Health Care Quality and Patient Safety Legislation (Note), (2005) 56-58
- assistance: Medicaid Reform, (1986) 168-78; Long Term Care Act, (1989) 157-59; Prevention, Early Assistance and Early Childhood Act (Statement), (1991) 40-43; Access to Health Care (Note), (1992) 1-5; Health Care Legislation (Note), (1993) 1-5; Health Insurance Reform Legislation (Note), (1994) 1-11; Prioritization of Health Care Services Act, (1994) 12-23; State Health Program Act, (1994) 24-30; Medical Savings Account Act, (1996) 231-34; Medicaid Fraud, (2000) 150-164; Senior Citizens Prescription Drug Program Note, (2001) 85-88; Health Care Industry Liability Note, (2001) 29-36; Lifeline/Link Up Services, (2001) 47-50
- blood donors: Blood Safety Act, (1993) 29-30
- cost containment: Health Insurance Pool Act (Statement), (1988) 68; Open Drug Formulary Act, (1990) 113-14; Access to Health Care (Note), (1992) 1-5; Health Care Legislation (Note), (1993) 1-5; Health Insurance Reform Legislation (Note), (1994) 1-11; Health Care Reform Legislation (Note), (1995) 26-28
- disease control: Recreational Water Contact Facility Act, (1988) 58-61; Infectious Waste Storage, Treatment and Disposal Acts, (1989) 30-41; AIDS Legislation (Note), (1989) 152-56; College Student Immunization Act, (1992) 63-65; Infectious Waste Act, (1992) 74-77; Tuberculosis-Specific Control Measures, (1997) 206-16; State Immunization Registry, (2000) 196-198; Exposure to Bloodborne Pathogens, (2001) 25-27; Safe Needles for Health Care Workers, (2001) 80-82
- education: Breast Cancer Education, Detection and Screening Standards Acts, (1992) 6-16; Hysterectomy Information Act, (1993) 31-32; Written Summary of Breast Cancer Treatment Alternatives Act, (1995) 34-35; Obesity, (1999) 209-211; Hepatitis C: Education, Screening, and Reporting, (2001) 37-38; Center for Multicultural Health, (2005) 29-30
- hereditary diseases:
- home health care: Home Health Care Licensing, (1986) 164-67; Home Care Volunteer Program for Maternal and Child Health, (1992) 28-29; Home Dialysis Agencies Licensing Act, (1992) 30-44; Home Care Patient/Client Rights, (2000) 95-97; Self-Directed In-Home Care, (2003) 123
- hospices: Hospice Program Licensing, (1985) 43-45
- hospitals and clinics: General Acute Care Hospital Interpreter Act, (1992) 45-47; Hospital Cooperation Act, (1996) 235-41; Hospital Conversions, (1999) 131-137
- laboratories: Confidentiality of Genetic Tests, (1999) 36-40; Limited-Service Rural Hospitals, (1999) 162-170
- organ donors: Anatomical Donations by Minors Act, (1991) 37-39; Organ Procurement and Storage Act, (1992) 54-60; Amendments to the Uniform Anatomical Gift Act, (1997) 123-36; Organ Transplants and HIV, (2005) 124-125
- physicians: Prenatal Providers - Easing the Shortage, (1992) 20-27; Malpractice Insurance for Retired Volunteer Physicians Act, (1993) 17-18; Medical Practices Diversion Program, (1996) 246-50; Physician Discipline and Physician Information (Note), (1998) 19-20; Organ Donor Rights Legislation (Note), (2004) 90-93

professionals: Emergency Medical Services Regulation and Licensing Act (Statement), (1988) 255; Emergency Medical Services Organization Act (Statement), (1988) 260; Nursing Profession Acts, (1990) 106-12; Prenatal Providers - Easing the Shortage, (1992) 20-27; Uniform Disciplinary Act for Regulated Health Professions (Statement), (1992) 48-49; Exposure to Bloodborne Pathogens, (2001) 25-27; Safe Needles for Health Care Workers, (2001) 80-82; Center for Nursing, (2003) 24; Nursing Shortage Solutions/Public School Volunteer Health Care Practitioners, (2004) 123-124; Mobile Dental Services, (2005) 115; Requiring the Installation of Dental Amalgam Separator Systems in Dental Offices, (2005) 149-150

records: Health Care Provider Records Access Act (Statement), (1988) 259; Disclosure of Health Care Records Act, (1993) 19-28; Autopsies and Sensitive Records: Confidentiality, (2002) 24-25; Diabetes Notation on Death Certificates, (2003) 43; Procedures for Release by a State Agency of Statistical Information for Research Purposes, (2005) 131-134

right to die: Do Not Resuscitate, (1997) 181-89

smoking: Prohibition of Employment Discrimination on Basis of Smoking, (1991) 34-35

treatment: Vietnam Veterans Health Treatment and Assessment, (1985) 46-49; Non-Spousal Artificial Insemination Act, (1988) 261-65; Prenatal Exposure to Controlled Substances Act, (1992) 17-19; Home Dialysis Agencies Licensing Act, (1992) 30-44; Health Care Decisions and Treatment: Provisions for Durable Power of Attorney and Health Care Agents (Note), (1992) 50-53; Insect Sting Emergency Treatment Act, (1992) 61-62; Intractable Pain Treatment Act (1997) 166-68; Emergency Medical Services for Children, (1997) 169-73; Experimental Medical Care Disclosure (1999) 52-55; Atypical Antipsychotic Medication-Distribution, (2001) 1-2; Senior Citizens Prescription Drug Program Note, (2001) 85-88; Health Care Industry Liability Note, (2001) 29-36

Health maintenance organizations, see health care

Hereditary diseases, see health care

Historic preservation, see culture, the arts and recreation

Home care, see aged - nursing homes

Home purchases, see housing, land and property - real estate transactions

Hospices, see health care

Hospitals, see health care

Housewives, see labor

Housing, land and property

building construction and design: Fire Sprinkler Systems, (1987) 33-37; Equitable Restrooms Act, (1993) 135-37; Building Inspections: Professional Engineers, (2002) 26-27; Construction Defect Claims, (2003) 27; Emergency Evacuation Plans for People With Disabilities, (2004) 61-62; Relating to the Protection of Certain Records in the Possession of Building Officials, (2005) 147-148; Statewide First Responder Building Mapping Information System, (2005) 167-169

building renovation: Special User Housing Rehabilitation Program Act, (1988) 41-44; Abandoned Housing Rehabilitation, (1989) 54-56; Equitable Restrooms Act, (1993) 135-37; Lead Exposure, (1999) 154-161; Mobile Home Rehabilitation, (2000) 165-168

development: Urban Neighborhood Redevelopment, (1987) 42-47; Comprehensive Planning and Land Use Regulation Act, (1990) 9-28; Local Government Transfer of Development Rights Act, (1991) 85-89; Development Impact Fee Act, (1993) 115-23; State Housing Initiatives Partnerships, (1995) 127-41; Land Use Mediation, (1998) 27-31; Land Bank Authorities, (1999) 148-153; Preservation Interim Loan Programs, (2004) 105-109

emergency assistance: Emergency Assistance to Homeowners, (1985) 31-34

home improvement: Urban Neighborhood Redevelopment, (1987) 42-47

landlords and tenants: Handicapped Individuals Rental Discrimination Act, (1988) 27; Floating Home Residency Laws (Note), (2000) 84-85

manufacture: Common Interest Ownership (Statement), (1986) 36; Manufactured Home Owners and Community Owners Act, (2005) 81-104

personal property: Uniform Statutory Rule Against Perpetuities Act (Note), (1988) 28-30; Private Property Protection Act, (1995) 123-26

public lands: Public Lands, (1986) 179-83

real estate transactions: Delinquent Real Property Tax Notification Act, (1988) 38-40; Residential Real Estate Disclosure Act, (1993) 110-14; Lease-to-Own Housing Program Act, (1994) 165-68; Brokerage Real Estate Disclosure, (1999) 9-19

see also: growth management; public finance and taxation; public assistance - housing; aged - housing

Information systems, State Internet Legislation (Note);

privacy: Uniform Motor Vehicle Records Disclosure Act, (1997) 227-31; Public Access to Legislative Documents, (1998) 49-51; Use of E-mail, (1998) 157-163; Internet Privacy Policy, (2001) 45-46; National Crime Prevention and Privacy Compact, (2001) 51-58; Personal Information: Disposal, (2003) 95

see also: banks and financial institutions; crime and criminals

Infrastructure bank, see public finance and taxation

Inspector general, see public finance and taxation

Insurance

certification of insurers: Surplus Lines Insurance, (1987) 68-78

group: Health Insurance Pool Act (Statement), (1988) 68; Municipal Reciprocal Insurer Act, (1988) 99-101; Fair Rates for Credit Insurance Act, (1988) 169-72; Access to Health Care (Note), (1992) 1-5; Health Care Legislation (Note), (1993) 1-5; Health Insurance Reform Legislation (Note), (1994) 1-11

insurance companies: Limitations on Cancellation and Non-Renewal of Commercial Insurance Policies Act, (1988) 83-91; Municipal Reciprocal Insurer Act, (1988) 99-101; Limitation on Holdings of Non-Investment Grade Obligations Act, (1988) 102-03; Limitation on Business Transacted with Producer Controlled-Insurer Act, (1988) 104-05; Financial Guaranty Insurance Act, (1988) 106-19; Insurance Holding Company System Act, (1988) 120-43; Seizure of Impaired Insurers Act, (1988) 146-49; Unfair Claim Settlement Practices Act, (1988) 150-51; Prohibition of Anti-Competitive Behavior Act, (1988) 178-80; Duties of Excess Lines Brokers Act, (1988) 181-86; Property Insurance Declination, Termination and Disclosure Act, (1992) 140-44; Insurance Claims for Excessive Charges Act, (1993) 109; Health

Insurance Rates and Refunds Act, (1994) 40-42;
 Experimental Medical Care Disclosure (1999) 52-55;
 Holocaust Victims' Insurance Relief, (2001) 39-44
 medical: Health Insurance Pool Act (Statement), (1988) 68;
 Prohibited Dread Disease Insurance Coverages Act,
 (1988) 187-88; Mandated Benefits Review Procedures
 Act, (1991) 14-18; Access to Health Care (Note),
 (1992) 1-5; Health Care Legislation (Note), (1993) 1-
 5; Health Insurance Reform Legislation (Note), (1994)
 1-11; Health Insurance Rates and Refunds Act, (1994)
 40-42; Health Care Reform Legislation (Note), (1995)
 26-28; Health Insurance Coverage for Off-Label Uses,
 (1996) 242-45; Genetic Discrimination, (1997) 190-
 92; Individual Health Insurance Market Reform,
 (1997) 193-205; Child Health Insurance (Note),
 (1998); Premium Sharing, (1999) 213-219; Health
 Care Plans/Policies – Disclosure and Continuity of
 Care, (2000) 87-94; Independent Review of Health
 Care Plans, (2000) 103-116; Patient Freedom of
 Information, (2000) 180-183; Timely Payment of
 Health Insurance Claims, (2000) 207-212; Senior
 Citizens Prescription Drug Program Note, (2001) 85-
 87; Health Care Industry Liability Note, (2001) 29-36;
 Health Insurance Grievance Review, (2003) 69;
 Health Insurance: Exclusion from Coverage, (2004)
 69; Health Insurance Coverage for Children in Process
 of Adoption, (2005) 59-60
 motor vehicle: Collision Damage Waiver Insurance Act,
 (1988) 173-77; Motor Vehicle Liability Insurance
 Enforcement Act, (1994) 169-71
 property: Property Insurance Declination, Termination and
 Disclosure Act, (1992) 140-44; Hurricane Relief Fund
 Act, (1996) 128-38
 sales practices: Flexible Rate Limitations for Problem
 Insurance Markets Act, (1988) 73-76; Limitations on
 Cancellation and Non-Renewal of Personal Insurance
 Policies Act, (1988) 77-82; Authority to Activate Joint
 Underwriting Association Act, (1988) 92-98
 state: State Risk Management, (1987) 92-100; Municipal
 Reciprocal Insurer Act, (1988) 99-101; State Grain
 Insurance Act (Statement), (1988) 282
Intergovernmental relations:
 state/federal: Public Access Across Federal Lands, (1996)
 176-80; Federal Mandates Act, (1996) 153-60; Federal
 Mandates for State Action (Note), (1992) 153-59;
 Federal Mandates for State Action (Note), (1993) 152-
 56; Federal Mandates for State Action (Note), (1994)
 179-85; Federal Mandates for State Action (Note),
 (1995) 150-54; Federal Mandates (Note), (1996) 171-
 73; Federal Mandates for State Action (Note), (1997)
 63-65; Federal Mandates for State Action (Note),
 (1998) 52-60; Federal Mandates for State Action
 (Note), (1999) 270-272; Federal Mandates for State
 Action (Note), (2000) 241-244; Federal Mandates for
 State Action Note, (2001) 110-111; Federal Mandates
 for State Action Note, (2002) 152-153, Federal
 Mandates for State Action, (2003) 181
 state/local: Missing Children Record Flagging Act, (1988)
 222-24; Comprehensive Planning and Land Use
 Regulation Act, (1990) 9-28; Local Government
 Mandate Relief Legislation (Note), (1994) 176-78;
 Local Government Service Delivery Systems, (1999)
 199-206
 state/state: Interstate Income Withholding, (1987) 133-39
 see also: state and local government

Interstate agreements, see intergovernmental relations -
 state/state
Inventions, see business and commerce - copyrights and
 patents
Investments, see banks and financial institutions; public
 finance and taxation
Itinerant vendors, see public finance and taxation
Judicial branch, see courts
Juries, see courts
Labor
 discrimination: Prohibition of Employment Discrimination
 on Basis of Smoking, (1991) 34-35; Genetic Screening
 in the Workplace (Note), (1991) 36; Act Prohibiting
 Discrimination Against Employees' Participation in
 Legal Activities During Non-Working Hours, (1994)
 108-11; Genetic Screening Prohibition Act
 (Statement), (1995) 25; Genetic Testing, Genetic
 Information, (2003) 60; Prohibiting Dismissing Certain
 Emergency Workers, (2004) 110
 employees: Hazardous Chemical Employee Information,
 (1985) 22-27; Family Leave Act, (1989) 135-40; State
 Employee Leave Transfer Program Act, (1991) 19-22;
 Employee Leasing Company Registration Act, (1993)
 124-27; Multiracial Classification Act, (1997) 32-3;
 Defined Contribution Plans, (1999) 41-43; Day Labor
 Services, (2001) 19-21
 employment incentives: Aid Recipient Employment
 Incentive Act, (1988) 45-46; Community Economic
 Development Support Act (Statement), (1988) 47
 pay equity: Pay Equity for State Employees, (1985) 147-48
 training programs: Civilian Conservation Work Program,
 (1985) 136-38; State Conservation Corps, (1986) 1-6;
 Youth Corps, (1986) 60-64; Aid Recipient
 Employment Incentive Act, (1988) 45-46; Community
 Economic Development Support Act (Statement),
 (1988) 47; Service Corps Program Act, (1993) 143-48;
 Workforce Development Partnership Program
 (Statement), (1994) 99-101; New Economy
 Technology Scholarship, (2001) 59-62
 unemployment compensation: Aid Recipient Employment
 Incentive Act, (1988) 45-46
 unions: Public Sector Labor-Management Cooperation Act,
 (1994) 102-04; Labor Organizations: Legal Fees and
 Court Costs, (2003) 82
 workers' compensation: Workers' Compensation Reform
 Legislation (Note), (1991) 23-33
 see also: state and local government - employees
Land, see housing, land and property
Land development, see growth management
Land use planning, see growth management - land
 development
Landfills, see conservation and the environment - refuse
 disposal and recycling
Landlords and tenants, see housing, land and property
Law and lawyers, see courts; criminal justice and
 corrections
Law enforcement, see crime and criminals
Legal services, see courts - lawyers
Licensing, enforcement and regulation
 business: Money Laundering Act (Statement), (1988)
 48; Recreational Water Contact Facility Act, (1988)
 58-61; Utility Holding Company Regulation Act
 (Statement), (1988) 62; Buyers' Club Regulation Act,
 (1988) 63-67; Travel Promotion Regulation Act,
 (1988) 69-71; Videotape Rental Future Services
 Contract Act (Statement), (1988) 72; Flexible Rate

- Limitations for Problem Insurance Markets Act, (1988) 73-76; Limitations on Cancellation and Non-Renewal of Personal Insurance Policies Act, (1988) 77-82; Limitations on Cancellation and Non-Renewal of Commercial Insurance Policies Act, (1988) 83-91; Authority to Activate Joint Underwriting Association Act, (1988) 92-98; Municipal Reciprocal Insurer Act, (1988) 99-101; Limitation on Holdings of Non-Investment Grade Obligations Act, (1988) 102-03; Limitation on Business Transacted with Producer Controlled-Insurer Act, (1988) 104-05; Financial Guaranty Insurance Act, (1988) 106-19; Insurance Holding Company System Act, (1988) 120-43; Requirement for Independent Loss Reserve Certification Act, (1988) 144-45; Seizure of Impaired Insurers Act, (1988) 146-49; Unfair Claim Settlement Practices Act, (1988) 150-51; Risk Retention Groups and Purchasing Groups Act, (1988) 152-68; Fair Rates for Credit Insurance Act, (1988) 169-72; Collision Damage Waiver Insurance Act, (1988) 173-77; Prohibition of Anti-Competitive Behavior Act, (1988) 178-80; Duties of Excess Lines Brokers Act, (1988) 181-86; Prohibited Dread Disease Insurance Coverages Act, (1988) 187-88; Insurance Frauds Prevention Act, (1988) 189-91; Model Veterinary Drug Code, (1989) 46-53; Check Cashing Services Act, (1990) 141-43; Utility Construction Review Act, (1991) 96-97; Health Care Services Utilization Review Regulation Act, (1994) 31-39; Riverboat Gambling Control Legislation (Note), (1995) 112-13; Business Coordination, (1999) 20-22; Environmental Leadership Program, (1999) 44-51; Fertilizer, (1999) 61-71; Unauthorized Charges On Utility Bills-Cramming, (2001) 104-107; Allowing Employees to Take Leave to Attend Criminal Proceedings, (2005) 23-25
- child care:
- education: Private Vocational School Regulation Act (Statement), (1992) 110-11; Exchange Student Placement Agency Licensing Act, (1992) 115-22
- health: Human Embryos Act, (1988) 256-58; Radon Gas Study, Monitoring, Information and Certification Program Acts, (1989) 6-10; Model Veterinary Drug Code, (1989) 46-53; Breast Cancer Education, Detection and Screening Standards Acts, (1992) 6-16; Home Dialysis Agencies Licensing Act, (1992) 30-44; Organ Procurement and Storage Act, (1992) 54-60; Health Care Services Utilization Review Regulation Act, (1994) 31-39; Registration of Durable Powers of Attorney for Health Care, (1997) 179-80; Confidentiality of Genetic Tests, (1999) 36-40; Experimental Medical Care Disclosure, (1999) 52-55; Foreign Capital Depository, (1999) 72-106
- professions: Emergency Medical Services Regulation and Licensing Act (Statement), (1988) 255; Emergency Medical Services Organization Act (Statement), (1988) 260; Nursing Profession Acts, (1990) 106-12; Uniform Disciplinary Act for Regulated Health Professions (Statement), (1992) 48-49; Debt Management Services, (2004) 38-58
- see also: agriculture; business and commerce - security guards; health care - hospices; natural resources - mining
- Litter**, see conservation and the environment - refuse
- Livestock**, see agriculture
- Loans**, see banks and financial institutions
- Local government**, see state and local government
- Marital property**, see domestic relations - marriage
- Marriage**, see domestic relations
- Migrant workers**, see labor
- Military**, Military Honors Funeral, (2003) 93; Encroachment of Incompatible Land Uses around Military Installations Note, (2005) 46-50
- Mines and minerals**, see natural resources
- Missing persons**: Missing Persons, (1986) 152 children: Intergovernmental Missing Child Recovery, (1986) 147-51; Missing and Exploited Children, (1986) 153-57; Missing Children Record Flagging Act, (1988) 222-24
- Mortgages**: Reverse Annuity Mortgage, (1986) 40-41 see also: housing, land and property
- Motor vehicles**, see consumer protection; transportation
- Native Americans**, American Indian Endowed Scholarship Program Act, (1992) 112-14 see also: burial sites
- Natural resources** mines and minerals: Uniform Dormant Mineral Interests Act (Note), (1988) 36-37
- Negligence**, see courts - tort liability and negligence
- Noise pollution**, see conservation and the environment
- Nominations**, see elections
- Nursing homes**, see aged
- Ombudsman**, see state and local government - public relations
- One man-one vote**, see elections - reapportionment
- Paramilitary training**, see guns, firearms and other weapons
- Parks**, see culture, the arts and recreation
- Parole**, see criminal justice and corrections
- Pay equity**, see state and local government
- Pensions**, see banks and financial institutions; state and local government
- Personal property**, see housing, land and property
- Pest control**, see agriculture
- Pesticides**, see agriculture
- Physicians**, see health care
- Plea bargaining**, see criminal justice and corrections - sentencing
- Police**, see state and local government
- Pollution**, see conservation and the environment
- Pornography**, see crime and criminals - child abuse
- Postal savings**, see banks and financial institutions
- Prepaid medical services**, see health care - health maintenance organizations
- Preschool education**, see education
- Prevention of retardation**, see handicapped persons
- Primaries**, see elections
- Prisons**, see criminal justice and corrections
- Privacy**, see information systems
- Probate**, see wills
- Probation**, see criminal justice and corrections
- Procurement**, see state and local government - purchasing
- Product safety**, see consumer protection; courts; insurance
- Property**, see domestic relations - marriage; housing, land and property; public finance and taxation
- Prosecutors**, see criminal justice and corrections
- Protected tenancy**, see aged - housing
- Public assistance** employment: Aid Recipient Employment Incentive Act, (1988) 45-46; Welfare Reform Act (Statement), (1988) 225; Family Independence Act (Statement), (1988) 226; Homeless Employment Program, (1989)

125-28; Family Transition Act, (1995) 70-82; Work-Not-Welfare Pilot Program Act, (1995) 83-97; Self-employment Assistance, (1999) 239-242

food: Food Donation Liability Legislation (Note), (1994) 70-74

homeowners: Emergency Assistance to Homeowners, (1985) 31-34; Revenue Annuity Mortgage, (1986) 40-41; Home Ownership Made Easy Act, (1991) 48-52; Lease-to-Own Housing Program Act, (1994) 165-68

housing: Low-Income Housing Tax Credit Act, (1989) 96-100; Housing Legislation (Note), (1990) 1-5; Preservation of Moderate- and Low-income Housing Act, (1990) 6-8; Lease-to-Own Housing Program Act, (1994) 165-68; Increasing Homeownership Opportunities for Police, (1998) 92-95

insurance or security funds: (1986) 187-97, 198-203

welfare: Welfare Reform Act (Statement), (1988) 225; Family Independence Act (Statement), (1988) 226; Individual Development Accounts Act, (1996) 213-18

see also: courts - public guardians; health care

Public buildings, see housing, land and property

Public debt, see public finance and taxation

Public employees, see state and local government

Public finance and taxation

bonds and notes: Agricultural Land Preservation Act (Statement), (1991) 90-92

fiscal crises: Financially Distressed Municipality Act (Statement), (1988) 193

infrastructure bank:

investments: Linked Deposit, (1986) 55-59; Agricultural Linked Deposit Act (Statement), (1988) 192; Home Ownership Made Easy Act, (1991) 48-52; Collateral Pool for Public Deposits Act, (1992) 127-39, Business Tax Relief for Biotechnology/High Technology Industries Note, (2001) 3-5

itinerant vendors: Tax Registration of Itinerant Vendors, (1985) 144-46

loans: Local Government Borrowing Supervision and Assistance, (1986) 42-47; Capital Loan Fund, (1986) 48-54; (1986) 55-59, 91-95; Agricultural Linked Deposit Act (Statement), (1988) 192; Refund Anticipation Loan Act, (1994) 90-95; Export Trade Revolving Loan Fund Act, (1994) 96-98

taxation (general): Study on Sales and Use Tax Compact and Agreement, (2000) 204-206; Tax Stamps: Cigarettes, (2003) 143

taxation (income): Economic Revitalization Tax Credit, (1987) 48-58

taxation (motor vehicles): Weight-Distance Tax, (1987) 79-91

taxation (property): Delinquent Real Property Tax Notification Act, (1988) 38-40; Intercity High Speed Passenger Rail Scenes Act (Statement), (1988) 195

taxation (sales): Sales Tax Relief for Purchasing Personal Computers, (2001) 84; Streamlined Sales Tax System for the 21st Century Model, (2001) 96-97;

see also: business and commerce; courts; transportation

Public guardian, see courts

Public utilities and public works: Retail Transmission of Electricity, (1997) 40-6

cable television: Cable Subscriber Privacy Protection Act, (1990) 134-38

construction: Utility Construction Review Act, (1991) 96-97

consumers: Utility Holding Company Regulation Act (Statement), (1988) 62; Unauthorized Charges On Utility Bills-Cramming, (2001) 104-107;

operations: Utility Holding Company Regulation Act (Statement), (1988) 62; Limited Immunity for Persons Responding to Oil Spills, (1990) 55-62; Natural Gas Deregulation (Note), (2000) 172-175; Unauthorized Charges On Utility Bills-Cramming, (2001) 104-107;

water treatment: Public Sewerage Privatization, (1987) 101-07; Distribution System Improvement Charge, (2000) 44-45;

see also: communications; conservation and the environment - water pollution; nuclear energy

Purchasing, see state and local government

Radiation, see nuclear energy; state and local government - emergency management

Railroads, see transportation

Rape, see crime and criminals - sexual assault

Real estate, see housing, land and property

Receiverships, see banks and financial institutions - liquidation

Records management and data collection:

Confidentiality of Genetic Tests, (1999) 36-40; Genetic Information Privacy, (1999) 107-111;

academic: Preservation of Academic Records, (1985) 96-97; Missing Children Record Flagging Act, (1988) 222-24; College and University Security Information Act, (1990) 128-31

public records: Vulnerable Adults Abuse and Exploitation Registry (Statement), (1991) 131; Criminal History Record Check for Transfer of Firearms, (1991) 132-35; Public Records Storage on Optical Disk, (1993) 128-32; Filing Liens, (1997) 51-62; Government Web Site Operators: Required Notice, (2002) 50; Biometric Technology, (2003) 20; Government Data Collection and Dissemination Practices Act: Social Security Numbers, (2004) 68

vital statistics: Missing Children Record Flagging Act, (1988) 222-24; State Vital Statistics Act (Statement of Availability), (1995) 143

see also: domestic relations - adoption

Recreation, see culture, the arts and recreation

Recycling, see conservation and the environment - refuse disposal

Refuse disposal, see conservation and the environment

Religion: Student Religious Liberty, (1999) 262-265

Relocation assistance, see housing, land and property

Reorganization, governmental, see state and local government

Ridesharing, see state and local government - employees

Right to die, see health care

Roads, see growth management; transportation

Sales practices, see consumer protection

Securities, see banks and financial institutions; public finance and taxation

Senior citizens, see aged

Sewage disposal, see public utilities and public works - water treatment

Sexual assault, see crime and criminals

Shoplifting, see crime and criminals

Smoking laws, see health care

Snowmobiles, see transportation

Solar energy, see energy

Sovereign immunity, see state and local government

Special education, see education

Spouse abuse, see crime and criminals

State bill payments, see state and local government - administration of agencies

State funding, see public finance and taxation - investments

State and local government, Federal Mandates for State Action (Note), (1997); Regulatory Reform Comparative Risk Assessment and Cost/Benefit Analysis, (1997) 63-5

administration of agencies: (1986) 65-68; Prompt Payment, (1986) 102-08; Intimidating Legislative Witnesses, (1999) 146-147; Digital State, (2000) 37-42; Private Property Ombudsman, (2000) 188-194; Unit-Cost Agency Reporting, (2001) 108-109; Access to Data Used in Promulgating Regulations, (2002) 15-16; State Reports to Legislature: Alternative Formats, (2003) 136

contracts: State Civil Rights Act, (1992) 93-95

emergency management: State Flood Hazard Area Regulation Act, (1988) 1-21; Government Mutual Aid Agreements, (1994) 65-67; Disaster Services Volunteer Leave Act, (1994) 68-69; Interstate Emergency Management Assistance Compact, (1998) 21-26; Computerized Telephone Emergency Warnings, (2001) 14-15; Alert before Disconnecting Emergency Phone Lines, (2005) 22; Notification of Presence of Wild Animals, (2005) 122-123

employee pensions: Municipal Pension Funding and Recovery (Statement), (1986) 101; Defined Contribution Plans, (1999) 41-43

employees: Ridesharing Incentives, (1985) 147-49; Direct Deposit, (1987) 181-83; State Employee Leave Transfer Program Act, (1991) 19-22; State Civil Rights Act, (1992) 93-95; Public Sector Labor Management Cooperation Act, (1994) 102-04; Prohibiting Using State Funds And Facilities To Assist, Promote or Deter Union Organizing, (2004) 120-121; Temporary Replacement of Certain Elected Officials Called for Active Duty into the Armed Forces (2004) 153

information systems: On-Line Legislative Information System Act, (1995) 148-49; Internet Privacy Policy, (2001) 45-46

local government: Summary from States and Distressed Communities Study, (1985) 149-51; State Flood Hazard Area Regulation Act, (1988) 1-21; Financially Distressed Municipality Act (Statement), (1988) 193; Local Government Transfer of Development Rights Act, (1991) 85-89; Local Government Mandate Relief Legislation (Note), (1994) 176-78; Local Government Efficiency and Cooperation Act, (1996) 161-70; Use of E-mail, (1998), Local Government Service Delivery Systems, (1999) 199-206

pay equity: Pay Equity for State Employees, (1985) 147-49

pensions: Direct Deposit, (1987) 181-83

police: Hate Crime Reporting Act, (1990) 132-33; Criminal History Record Check for Transfer of Firearms, (1991) 132-35; Computerized Telephone Emergency Warnings, (2001) 14-15; Racial Profiling and Traffic Stop Statistics; (2001) 76-79

productivity: Telecommuting Incentives, (2002) 129

purchasing: Model Procurement Code for State and Local Government (Statement), (1986) 102-08; State Fleet Alternative Fuels Act, (1992) 87-89; Targeted Group Small Business Procurement Program, (1993) 98-107; Unsolicited Proposals for Private/Public Initiatives, (2004) 166-170

risk management: State Risk Management, (1987) 92-100

urban: Urban Neighborhood Redevelopment, (1987) 42-47
see also: intergovernmental relations; records management and data collection

State-federal relations, see intergovernmental relations

Statistics, see records management and data collection

Takeover legislation, see business and commerce - corporate acquisitions

Taxation, see public finance and taxation

Telephones, see communications

Television, see communications

Timesharing agreements, see housing, land and property - real estate transactions

Tort liability and negligence, see courts

Tourism, see culture, the arts and recreation

Toxic substances, see hazardous materials and waste

Trade regulation, see business and commerce; consumer protection

Traffic laws, see transportation

Transportation: State Transportation Infrastructure Banks (Note), (1999) 260-261

airports: Small Airport Zoning Regulation and Restriction, (1985) 28-30; State Aviation Development Act (Statement), (1988) 194

boats and boating: (1986) 131-33; Uniform Boat Titling, (1987) 108-14; Security Interest in Boats Act, (1993) 138-42

electric personal assistive mobility devices: Electric Personal Assistive Mobility Devices, (2003) 49

licenses and licensing: All Terrain Vehicle Registration, (1987) 115-26; Motorcycle Rider Education Act, (1988) 196-99; License Plate Impoundment for Repeat DWI Violations, (1989) 42-45

motor vehicles: All-Terrain Vehicle Registration, (1987) 115-26; Motorcycle Rider Education Act, (1988) 196-99; License Plate Impoundment for Repeat DWI Violations, (1989) 42-45; All-Terrain Vehicles (Statement), (1989) 101-02; Automobile Theft and Fraud Legislation (Note), (1991) 108-14; Motor Vehicle Theft Prevention Act, (1992) 149-52; Repurchased Automobile Act, (1993) 108; Motor Vehicle Liability Insurance Enforcement Act, (1994) 169-71; Drivers License Revocation and Ignition Interlock Devices, (1997) 66-71; Motor Vehicles - Weight Limits - Review of Bills Establishing Exceptions, (1997) 72-4; Airbag Safety and Anti-Theft, (1998) 61-66

railroads: Intercity High Speed Passenger Rail Service Act (Statement), (1988) 195; Railroad Trespassing Act, (1996) 174-75

ridesharing:

taxation: Weight-Distance Tax, (1987) 79-91; Intercity High Speed Passenger Rail Service Act (Statement), (1988) 195

traffic laws: Highway and Street Intersection Safety Act, (1996) 100-02

see also: insurance - motor vehicles

Unemployment insurance, see labor

Unfair trade practices, see business and commerce

Unions, see labor

Universities, see education

Urban development, see growth management

Veterans, see health care - treatment

Victims' rights, see criminal justice and correction

Vital statistics, see records management and data collection

Volunteer services: Act to Remove Barriers to Coordinating Human Service Transportation, (1981) 142-46; Volunteer Service Credit Act, (1989) 129-34; Home Care Volunteer Program for Maternal and Child Health, (1992) 28-29; State Volunteer Service Act (Statement), (1992) 106-07; Adopt-A-Park Program Act, (1993) 74-75; Government Mutual Aid Agreements, (1994) 65-67; Disaster Services Volunteer Leave Act, (1994) 68-69; Food Donation Liability Legislation (Note), (1994) 70-74; Adopt-A-River Program Act, (1995) 61-62; Liability of Donated Labor, (2002) 76; Good Samaritan Volunteer Firefighters' Assistance, (2004) 66-67; Volunteer Advocates for Seniors, (2005) 172-174

Voting, see elections

Waste disposal, see conservation and the environment

Water pollution, see conservation and the environment

Water treatment, see public utilities and public works

Weapons, see guns, firearms and other weapons

Welfare, see public assistance

Wetlands, see conservation and the environment

Wills, see domestic relations - marital property

Work release, see criminal justice and correction

Workers' compensation, see labor

Zoning, see growth management

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