



**SUGGESTED  
STATE  
LEGISLATION  
2006  
Volume 65**

Developed by the  
Committee on Suggested State Legislation

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# Foreword

The Council of State Governments (CSG) is pleased to bring you this **2006 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 book 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.

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## **Suggested State Legislation**

### **Volume 65**

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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 28<sup>th</sup> 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](http://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.]

# Agricultural and Resource-Based Industry Development Corporation

This Act creates an Agricultural and Resource-Based Industry Development Corporation as a public corporation and instrumentality of the state to develop agricultural industries and markets; support appropriate commercialization of agricultural processes and technology; and alleviate the shortage of nontraditional capital credit available at affordable interest rates for investment in agriculture and sale of related products and services, as well as capital investment in agricultural projects by providing capital and credit within the financial means of the recipient.

The corporation is exempt from state and local taxes, as well as state laws governing procurement and personnel. It is not exempt from state ethics laws or the state Public Information Act. This corporation may receive annual funding through a state budget appropriation and may receive funds for projects included in state agency budgets. The bill's stated intent is that state funding be provided to the corporation with existing resources from the departments of agriculture, budget and management, the environment, business and economic development, and housing and community development, and other relevant state agencies. The bill further states that additional funding (beyond existing resources) may not be provided for staffing, operations, or capital needs of the corporation until the state's fiscal crisis and structural deficit are resolved. The corporation must conduct its financial affairs so that it is self-sufficient by 2020.

The bill provides the corporation with powers generally given to corporations, including the authority to issue revenue bonds (for up to 40-year terms), enter into contracts, foreclose on mortgages, make grants or provide equity investment, buy land, and purchase and sell agricultural loans, which must be fully insured. Bonds issued by the Agricultural and Resource-Based Industry Development Corporation are not backed by the full faith and credit of the state and the development corporation is solely responsible for any debts, obligations, or liabilities it incurs.

The bill broadly defines agriculture for the purpose of eligible assistance to mean commercial production, storage, processing, marketing, distribution, or export of an aquacultural, equine, floricultural, horticultural, ornamental, silvicultural, or viticultural crop. Loans provided by a lending institution can be used to finance a variety of agricultural processes, including land acquisition, soil conservation, pond construction, and building expansion or construction, as well as for the purchase of livestock, seeds, fertilizers, and pesticides.

Submitted as:

Maryland

Chapter 467 of 2004

Status: Enacted into law in 2004.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Create an Agricultural and  
2 Resource-Based Industry Development Corporation.”

3

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

5           A. “Agricultural loan” means a loan made by a lending institution to any person for the  
6 purpose of financing:

7

1. land acquisition or improvement;

8 2. agricultural, aquacultural, equine, horticultural, or silvicultural production;  
9 3. soil conservation;  
10 4. pond construction;  
11 5. irrigation;  
12 6. water well drilling;  
13 7. construction, renovation, or expansion of buildings and facilities;  
14 8. purchase of farm fixtures, livestock, or poultry; fish, crustaceans, and mollusks  
15 of any kind; seeds, plants, and trees; fertilizers; pesticides; feeds; machinery; equipment; or  
16 containers or supplies employed in the production, cultivation, harvesting, processing, storage,  
17 marketing, distribution, or export of agricultural products.

18 B. "Agriculture" means the commercial production, storage, processing, marketing,  
19 distribution, or export of an agronomic, aquacultural, equine, floricultural, horticultural,  
20 ornamental, silvicultural, or viticultural crop, including:

- 21 1. farm products;
- 22 2. livestock and livestock products;
- 23 3. poultry and poultry products;
- 24 4. milk and dairy products;
- 25 5. timber and forest products;
- 26 6. fruit and horticultural products; and
- 27 7. seafood and aquacultural products.

28 C. "Board" means the board of directors of the corporation.

29 D. "Bond" means a bond, note, renewal note, refunding bond, interim certificate,  
30 certificate of indebtedness, debenture, warrant, commercial paper, or other obligation or  
31 evidence of indebtedness authorized to be issued by the corporation under this Act.

32 E. "Corporation" means the state agricultural and resource-based industry development  
33 corporation established under this Act.

34 F. "Lending institution" means a bank, bank or trust company, federal land bank, farm  
35 credit association, bank for cooperatives, building and loan association, homestead, insurance  
36 company, investment banker, mortgage banker or company, pension or retirement fund, savings  
37 bank or savings and loan association, small business investment company, credit union, or any  
38 other financial institution authorized to do business in the state or operating under the  
39 supervision of a federal unit.

40 G. "Person" means an individual, receiver, trustee, guardian, personal representative,  
41 fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity.  
42 "Person" includes a unit of a state or of the federal government.

43 H. "Project" means a property, the acquisition, construction, reconstruction, equipping,  
44 expansion, extension, improvement, rehabilitation, or remodeling of which the board, in its sole  
45 and absolute discretion, determines by resolution will accomplish at least one of the purposes  
46 listed in this Act, whether the property, or any interest in the property:

- 47 1. is or will be used or operated for profit or not for profit;
- 48 2. is or will be located on a single site or multiple sites; or
- 49 3. may be financed by bonds, the interest on which is exempt from federal income  
50 taxation under federal law. Project includes:
  - 51 1. land or any interest in land;
  - 52 2. buildings, structures, machinery, equipment, furnishings, rail or motor vehicles,  
53 barges, and boats;
  - 54 3. real or personal property, or any combination of them, and rights related to the  
55 property, appurtenances, rights-of-way, franchises, easements, and other interests in land;
  - 56 4. land and facilities functionally related and subordinate to the project; and

57 5. patents, licenses, and other rights necessary or useful in the construction or  
58 operation of a project.

59 I. “Revenue” means the income, revenue, and other money received by the corporation  
60 from or in connection with a project. “Revenue” includes grants, rentals, rates, fees, charges for  
61 the use of the services furnished or available, and all other income inuring to the corporation.

62 I. The corporation may further define or limit the term “revenue” as applied to a  
63 particular project, financing, or other matter.

64  
65 Section 3. [*Legislative Findings.*] The [Legislature] finds that:

66 A. The state’s agricultural and resource-based industries continue to underpin the local  
67 economies of rural communities, but are increasingly under threat from national and  
68 international market competition, urban encroachment and land development pressure, and  
69 environmental and regulatory influences;

70 B. The construction and renovation of food and fiber processing and secondary  
71 manufacturing facilities often require credit and capital in amounts that far exceed the available  
72 resources of individual small producers and small businesses;

73 C. Private enterprise and existing federal and state governmental programs have not  
74 adequately addressed agricultural industry support or developmental opportunities relating to  
75 emergent value-added agricultural processing activities, new or alternative markets development,  
76 primary and secondary manufacturing, assistance for beginning farmers and producers, and  
77 financial support for environmental or technological enhancements;

78 D. While some traditional agricultural enterprises in the state may have access to  
79 markets, capital, and credit, other existing or emerging segments of the agricultural industry lack  
80 market access, capital, and credit available for investment in agriculture, for domestic and  
81 export purposes, and at interest rates within the financial means of people engaged in agricultural  
82 production and agricultural exports;

83 E. In conjunction with the financial and other challenges associated with traditional  
84 agricultural industry, there is a need to provide economic and market development assistance to  
85 those individuals who wish to start, convert, or diversify their agricultural operations, or to make  
86 improvements associated with environmental regulations and potential market opportunities; and

87 F. It is a matter of significant rural economic development importance that a state  
88 agricultural and resource-based industry development corporation be created and authorized to:

89 1. develop agricultural industries and markets;  
90 2. support appropriate commercialization of agricultural processes and  
91 technology; and

92 3. alleviate the shortage of nontraditional capital and credit available at  
93 affordable interest rates for:

94 I. investment in agriculture to promote and assist agriculture in the state;  
95 II. the sale of agricultural products, commodities, and services; and  
96 III. capital investment in agricultural projects by providing capital and  
97 credit within the financial means of people engaged in agriculture in the state.

98  
99 Section 4. [*Establishing an Agricultural and Resource-based Development Corporation.*]

100 A. There is a [insert state] Agricultural and Resource-Based Industry Development  
101 Corporation.

102 B. The corporation is:

- 103 1. a public corporation; and  
104 2. an instrumentality of the state.

105 C. The purposes of the corporation are to:



1. assist the viability of the state's diverse agricultural industry through new markets development, capital and credit enhancements, and technical and other assistance to support, create, and sustain agricultural businesses throughout the state;
2. provide financing and other assistance for product development, start-up and scale-up of food and fiber-related growing and processing operations in this state, and for technological enhancements that benefit the environment and water quality;
3. seek partnerships and leveraging opportunities with public and private for-profit and not-for-profit entities in making capital and credit assistance available to individual producers, producer cooperatives, and other agribusiness concerns operating in the state;
4. facilitate and support access to high quality technical resources for agricultural entrepreneurs by incorporating existing support infrastructure including the development of strategic partnering opportunities and business incubation;
5. foster cross-industry communication and assist other organizations in transferring to the private sector and commercializing the results and products of scientific agricultural research and development conducted by the federal government and colleges and universities; and
6. work with public and private lending and grant-making institutions to:
  - I. make low- and no-interest loans and loan guarantees available for agricultural product development, primary processing, and secondary manufacturing;
  - II. provide credit and capital to first-time farmers for land, equipment, and working capital acquisition; and
  - III. make incentives available for activities related to small farm or small landowner viability and best management practices.

Section 5. *[Board of Directors.]*

- A. There is a board of directors of the corporation.
- B. The board manages the corporation and exercises all of its corporate powers.
- C. The board consists of the following members:
  1. As ex officio members:
    - I. The [secretary of agriculture] or a [designee of the secretary] who must be a [senior-level departmental official];
    - II. The [secretary of natural resources] or a [designee of the secretary] who must be a [senior-level departmental official];
    - III. The [secretary of business and economic development] or a [designee of the secretary] who must be a [senior-level departmental official];
    - IV. The [executive director of the food center authority];
    - V. The [executive director of the rural council];
    - VI. The [director of the state cooperative extension service]; and
  2. [Eleven] people appointed by the [governor] with the advice and consent of the [Senate] as follows:
    - I. [two] agricultural producers representing at least [two] different farm commodity industries in the state;
    - II. [two] representatives from commercial lending institutions serving rural regions in the state, [one] of whom must represent a major farm credit organization operating in the state;
    - III. [one] representative of the timber and forest products industry;
    - IV. [one] representative of the aquaculture industry;
    - V. [one] representative of the commercial seafood harvesting and processing industry;

155 VI.[one] individual with knowledge and experience in the area of  
156 operating commercial food or fiber processing facilities;

157 VII. [one] individual with knowledge and experience in the area of  
158 public finance;

159 VIII. [one] individual with knowledge and experience in the area of rural  
160 economic development or agricultural marketing; and

161 IX. [one] individual with knowledge about the agricultural, forestry, or  
162 seafood industries or agritourism in the state or with substantial and relevant economic  
163 development experience.

164 D. In appointing board members under subsection (C)(2) of this section, the [governor]  
165 shall consider all of the geographic regions of the state.

166 E. A board member must be a resident of the state.

167 F. A board member serves without compensation but is entitled to reimbursement for  
168 expenses under the standard state travel regulations as provided in the state budget.

169 G. The [governor] may remove a board member for incompetence, misconduct, or  
170 failure to perform the duties of the position.

171 H. The term of a board member appointed under subsection (C)(2) of this section is  
172 [four] years.

173 I. The terms of the appointed members are staggered as required by the terms provided  
174 for the members on [date].

175 J. At the end of a term, an appointed member continues to serve until a successor is  
176 appointed and qualifies.

177 K. A member who is appointed after a term has begun serves only for the rest of the  
178 term and until a successor is appointed and qualifies.

179 L. The board shall elect a chair from among its members.

180 M. The board may act with an affirmative vote of [nine] members.

181 N. The initial terms of the [2] members of the board of directors of the agricultural and  
182 resource-based industry development corporation appointed under of this Act, expire as follows:

- 183 1. [3 members in 2008];
- 184 2. [3 members in 2007];
- 185 3. [3 members in 2006]; and
- 186 4. [2 members in 2005].

187 O. The corporation shall employ an executive director with experience and  
188 qualifications relevant to the activities and the purposes of the corporation.

189 P. The [attorney general] shall serve as legal advisor to the corporation.

190

191 Section 6. *[Powers of an Agricultural and Resource-based Development Corporation.]*

192 A. An Agricultural and Resource-based Development Corporation created under this Act  
193 may:

- 194 1. adopt bylaws;
- 195 2. adopt a seal;
- 196 3. maintain offices at a place in the state that the corporation designates;
- 197 4. apply for and accept loans, grants, or assistance in any form from federal,  
198 state, or local governments, colleges or universities, or private sources;
- 199 5. make, execute, and enter into any contracts or legal instruments;
- 200 6. sue or be sued;
- 201 7. acquire, construct, develop, manage, market, manufacture, license, sublicense,  
202 reconstruct, rehabilitate, improve, maintain, equip, lease as a lessor or as a lessee, repair, and  
203 operate any project in the state to carry out the purposes of the corporation;

204 8. acquire, purchase, hold, lease as a lessee, and use a franchise, patent, or license  
205 and real, personal, mixed, or tangible or intangible property, or any interest in property;  
206 9. sell, lease as a lessor, transfer, license, sublicense, assign, and dispose of any  
207 property or interest in property, necessary or convenient to carry out its purposes;  
208 10. acquire, directly or indirectly, by purchase, gift, or devise, land, real or  
209 personal property, rights, rights-of-way, franchises, easements, and other interests in land,  
210 including land lying under water and riparian rights, located in or outside the state as necessary  
211 or convenient to construct, improve, rehabilitate, or operate a project, on terms and at prices the  
212 corporation considers reasonable;  
213 11. fix, revise, and collect rates, rentals, fees, royalties, and charges for the use of  
214 or for services and resources provided or made available by the corporation;  
215 12. make grants to or provide equity investment financing for agricultural and  
216 resource-based businesses;  
217 13. engage any necessary accountants, engineers, financial advisors, and other  
218 consultants;  
219 14. with the approval of the [attorney general], engage any necessary lawyers;  
220 15. create, own, control, or be a member of, a corporation, limited liability  
221 company, partnership, or other entity, whether operated for profit or not for profit;  
222 16. enter into a project with a manufacturer to carry out the purposes of the  
223 corporation;  
224 17. exercise a power usually possessed by a private corporation in performing  
225 similar functions unless to do so would conflict with the laws of the state; and  
226 18. do anything necessary or convenient to carry out the powers granted by this  
227 Act.

228 B. The corporation may, subject to the rights of holders of bonds of the corporation:  
229 1. renegotiate, refinance, or foreclose on any mortgage, security interest, or lien;  
230 2. commence any action to protect or enforce any right or benefit conferred on  
231 the corporation by any law, mortgage, security interest, lien, contract, or other agreement; and  
232 3. bid for and purchase property at any foreclosure or at any other sale or  
233 otherwise acquire or take possession of any property, in which case the corporation may  
234 complete, administer, pay the principal of any interest on any obligation incurred in connection  
235 with the property, dispose of and otherwise deal with the property in any manner necessary or  
236 desirable to protect the interest of the corporation or the holders of its bonds in the property;  
237 4. procure or provide for the procurement of insurance or reinsurance against any  
238 loss in connection with its property or operations, including insurance, reinsurance, or other  
239 guarantees from any federal or state governmental unit or private insurance company for the  
240 payment of any bonds issued by the corporation, or bonds, notes or any other obligations or  
241 evidences of indebtedness issued or made by any lending institution or other entity or person, or  
242 insurance or reinsurance against loss with respect to agricultural loans, mortgages or mortgage  
243 loans, or any other type of loans, including the power to pay premiums on the insurance or  
244 reinsurance;  
245 5. insure, co-insure, reinsure, or cause to be insured, co-insured, or reinsured,  
246 agricultural loans, mortgage loans or mortgages, or any other type of loans and pay or receive  
247 premiums on the insurance, co-insurance, or reinsurance, and establish reserves for losses, and  
248 participate in the insurance, co-insurance, or reinsurance of agricultural loans, mortgage loans or  
249 mortgages, or any other type of loans with the federal or state government or any private  
250 insurance company;  
251 6. undertake and carry out or authorize the completion of studies and analyses of  
252 agricultural conditions and needs in the state and needs relating to the promotion of agricultural

industries and ways of meeting those needs, and make the studies and analyses available to the public and to the agricultural industries, and to engage in research or disseminate information on agriculture and agricultural marketing and promotion;

7. accept federal, state, or private financial or technical assistance and comply with any conditions for that assistance that are not in conflict with the intent of this Act;

8. establish and collect fees and charges in connection with its loans, deposits, insurance commitments, and services, including reimbursement of costs of issuing bonds, origination and servicing fees, and insurance premiums;

9. make loans to or deposits with lending institutions and purchase or sell agricultural loans;

10. acquire or contract to acquire from any person, by grant, purchase, or otherwise, movable or immovable property or any interest in property;

11. own, hold, clear, improve, lease, construct, or rehabilitate, and sell, invest, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber property, subject to the rights of holders of the bonds of the corporation, at public or private sale, with or without public bidding;

12. borrow money, issue bonds, and provide for the rights of the lenders or holder thereof and purchase, discount, sell, negotiate and guarantee, insure, co-insure and reinsure notes, drafts, checks, bills of exchange, acceptances, bankers' acceptances, cable transfers, letters of credit, and other evidence of indebtedness;

13. subject to the rights of holders of the bonds of the corporation, consent to any modification with respect to the rate of interest, time, payment of any installment of principal or interest, security, or any other term or condition of any loan, contract, mortgage, mortgage loan, or commitment or agreement of any kind to which the corporation is a party or beneficiary; and

14. issue revenue bonds under this Act.

C. 1. A corporation created under this Act may purchase or contract to purchase and sell or contract to sell agricultural loans made by lending institutions, at the prices and on the terms and conditions that it determines.

2. A lending institution may purchase and sell agricultural loans to the corporation in accordance with the provisions of this section.

D. 1. The corporation may make, or contract to make, loans to and deposits with lending institutions at interest rates, terms, and conditions that it determines. A lending institution may borrow funds and accept deposits from the corporation in accordance with this Act and the bylaws of the corporation.

2. The corporation shall require that all proceeds of its loans to or deposits with lending institutions, or an equivalent amount, shall be used by the lending institutions to make agricultural loans, subject to terms and conditions that the corporation may prescribe.

3. The corporation may insure and reinsure agricultural loans made by lending institutions, subject to the terms, conditions, limitations, collateral and security provisions, and reserve requirements determined by the corporation in accordance with the bylaws of the corporation.

E. Unless otherwise determined by the corporation, agricultural loans shall be insured to the amount of [100%] of the unpaid principal and interest on each loan.

F. An insured agricultural loan is in default when the holder of the loan applies to the corporation for payment of insurance on the loan stating that the loan is in default in accordance with the terms of any agreement with respect to the insurance executed in accordance with this section.

300 G. A corporation created under this Act may enter into agreements with any person,  
301 lending institution, or holder of an insured agricultural loan on terms that may be agreed on  
302 between the corporation and the person, lending institution, or holder, to:

303 1. provide for the administration, applications, and repayment of the loan; and  
304 2. establish the conditions for payment of insurance by the corporation, and the  
305 servicing, suit on, or foreclosure of the loan.

306 H. 1. Except as provided in paragraph 2. of this subsection, the aggregate value of  
307 all agricultural loans insured by a corporation created under this Act and outstanding at any one  
308 time may not exceed [20] times the total value of funds, investments, properties, and other assets  
309 of the corporation.

310 2. The aggregate value of agricultural loans insured and outstanding may be  
311 further expanded by use of federal, state, or private loan insurance, reinsurance, or guarantees of  
312 which the corporation is or shall become the beneficiary.

313 I. The corporation may provide by resolution for the issuance at one time, or in series  
314 from time to time, of revenue bonds of the corporation to finance or refinance all or a part of the  
315 costs of a project, and for other purposes of the corporation stated in this Act.

316 J. 1. The bonds shall be dated, shall bear interest at a rate or rates, and shall  
317 mature at a time or times not exceeding [40 years] from the date or dates of their respective  
318 issues, as the corporation may determine, and may be sold at the price or prices and under the  
319 terms and conditions fixed by the corporation before issuing the bonds.

320 2. The proceeds of any bonds may be placed in escrow pending application of the  
321 proceeds to the purposes for which the bonds are issued.

322 K. 1. I. The bonds may not be deemed to constitute a debt, liability, or a  
323 pledge of the full faith and credit of the state or of any political subdivision of the state other than  
324 the corporation.

325 II. The bonds shall be payable solely from the funds provided in this  
326 section.

327 2. All bonds of the corporation shall contain on their face a statement to the  
328 effect that:

329 I. Neither the state nor any political subdivision of the state other than  
330 the corporation shall be obligated to pay the bond or the interest on the bond except from  
331 revenues pledged to the bond; and

332 II. Neither the full faith and credit nor the taxing power of the state or any  
333 political subdivision of the state is pledged to the payment of the principal of or the interest on  
334 the bonds.

335 3. I. The issuance of a bond under this Act is not directly or indirectly or  
336 contingently an obligation, moral or other, of the state or any political subdivision of the state to  
337 levy or pledge any form of taxation for the bond or to make any appropriation for payment of the  
338 bond.

339 II. Nothing in this section may prevent the corporation from pledging the  
340 full faith and credit of the corporation to the payment of a bond authorized under this Act.

341 III. This section does not limit the ability of the state or a subdivision of  
342 the state to set, impose, or collect an assessment, rate, fee, or charge to pay to the corporation the  
343 cost of a project, including the principal of and interest on a bond, under an agreement between  
344 the corporation and the state or political subdivision.

345 L. The corporation shall determine:

346 1. the form of the bonds;  
347 2. the manner of executing the bonds;  
348 3. the denomination or denominations of the bonds; and

349 4. the place or places of payment of principal and interest, which may be a bank  
350 or trust company in or outside the state.

351 M. 1. The bonds shall be executed in the manner determined by the corporation.

352 2. The bonds may be executed by facsimile signature.

353 3. If any officer whose signature appears on a bond ceases to hold that office  
354 before the bonds are delivered, the signature of the officer remains valid and sufficient for all  
355 purposes, as if the officer had remained in office until delivery.

356 N. 1. All bonds issued under this section are negotiable instruments under the laws  
357 of the state.

358 2. Provision may be made for the registration of bonds.

359 O. 1. The bonds shall be sold by the corporation, at public or private sale, in a  
360 manner and for a price as the corporation may determine.

361 2. Bonds authorized under this section are exempt from [insert citation].

362 P. 1. I. The corporation may provide for the issuance of its bonds to refunding  
363 any outstanding bonds, including the payment of any redemption premium and any interest  
364 accrued or accruing to a later date of redemption, purchase, or maturity of the bonds, and, if the  
365 corporation determines it advisable, for the additional purpose of paying all or any part of the  
366 cost of a project.

367 II. Refunding bonds may be issued by the corporation for any corporate  
368 purpose, including the public purposes of realizing savings in the effective costs of debt service,  
369 directly or through a debt restructuring, or alleviating an impending or actual default, or  
370 relieving the corporation of contractual agreements which, in the opinion of the corporation,  
371 have become unreasonably onerous, impracticable, or impossible to perform.

372 III. Refunding bonds in one or more series may be issued in an amount in  
373 excess of that of the bonds to be refunded.

374 IV. Refunding bonds may be payable from:

375 a. escrowed bond proceeds;

376 b. interest, income, and profits, if any, on investments; and

377 c. any other source.

378 V. These sources may be in addition to other lawful uses and shall  
379 constitute revenues of a project under this Act.

380 2. The proceeds of bonds issued for the purpose of refunding outstanding bonds  
381 may, in the discretion of the corporation, be applied to the purchase or retirement at maturity or  
382 redemption of the outstanding bonds on any subsequent redemption date, and may, pending that  
383 application, be placed in escrow to be applied to the purchase or retirement at maturity or  
384 redemption on a date determined by the corporation.

385 3. I. Any escrowed bond proceeds, pending application, may be invested  
386 and reinvested in investments and other obligations maturing at a time or times appropriate to  
387 assure the prompt payment, as to principal, interest, and redemption premium, if any, of the  
388 outstanding bonds to be refunded.

389 II. The investment of the bond proceeds shall be:

390 a. determined by the corporation; or

391 b. if the proceeds of the bonds are being loaned by the corporation  
392 to a person, determined by the person.

393 III. The interest, income, and profits, if any, earned or realized on the  
394 investments or other obligations may also be applied to the payment of the outstanding bonds to  
395 be refunded.

396 IV. After the terms of the escrow have been fully satisfied and carried out,  
397 any balance of the proceeds and interest, income, and profits, if any, earned or realized on the

investments or other obligations may be returned to the corporation or the person being loaned the proceeds of the bonds for use in any lawful manner.

Q. 1. The portion of the proceeds of any bonds issued for the purpose of paying all or any part of the cost of a project may be invested and reinvested in investments and any other obligations maturing not later than the time or times when the proceeds will be needed for the purpose of paying all or any part of the cost of the project.

2. The investment of bond proceeds shall be determined:

I. by the corporation; or

II. if the corporation is loaning the proceeds to a person, by the person.

3. The interest, income, and profits, if any, earned or realized on the investments or other obligations may be applied to the payment of all or any part of the cost or may be used by the corporation or the person being loaned the proceeds of the bonds in any lawful manner.

R. 1. The corporation may pledge or assign all or any portion of its revenues, its rights to receive them, or moneys and securities in the funds and accounts established to secure its bonds and any lien or security interest granted or assignment made by the corporation.

2. Any pledge or assignment shall be:

I. valid and binding against any person having a claim of any kind against the corporation, in contract, tort, or otherwise, regardless of whether the person has notice; and

II. prior to the claim.

3. No resolution, trust indenture, assignment, financing agreement, or other instrument creating a lien on, security interest in, or assignment of any revenues, its rights to receive revenues or moneys and securities in the funds and accounts pledged to bonds of the corporation need be filed or recorded except in the records of the corporation.

S. 1. The corporation may:

I. lend or otherwise make available the proceeds of its bonds to any person in order to finance or refinance the costs of any project; and

II. enter into financing agreements, mortgages, and other instruments that the corporation determines to be necessary or desirable to evidence or secure the loan.

2. If any project is leased to any person, the lease may provide that the lessee or another person may or shall purchase or otherwise acquire the project for consideration, which may be nominal, as the corporation may establish:

I. on the payment of the bonds that financed or refinanced the cost of the project and interest on the bonds; or

II. on provision for payment that is satisfactory to the corporation.

T. 1. I. At the discretion of the corporation, the bonds may be secured by a trust indenture by and between the corporation and corporate trustee, which may be any trust company or bank that has the powers of a trust company in or outside the state.

II. Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants stating the duties of the corporation in relation to the custody, safeguarding, and application of all moneys.

III. A corporation or trust company incorporated under the laws of the state may:

a. Act as depository of the proceeds of the bonds or revenues; and

b. Furnish any indemnity bonds or pledge any securities that the

corporation requires.

445                   2.       I. The resolution or trust indenture may set forth the rights and remedies  
446 of the bondholders and of any trustee, and may restrict the individual right of action of  
447 bondholders.

448                               II. The corporation may provide by resolution or by the trust indenture  
449 for:

450                               a. the payment of the proceeds of the sale of the bonds and the  
451 revenues of the corporation to an officer, board, or depository that the corporation determines for  
452 their custody; and

453                               b. the method of disbursement, with safeguards and restrictions that  
454 the corporation determines.

455                               c. all expenses incurred in carrying out any trust indenture may be  
456 treated as a part of the cost of operation of the corporation.

457  
458       Section 7. [*Corporation Subject to an Audit.*] The books and records of a corporation  
459 created under this Act are subject to audit:

460       A. by the state at its discretion; and

461       B. each year by an independent auditor approved by the [office of legislative audits].  
462

463       Section 8. [*Reporting Requirements.*]

464       A. Within [90 days] after the start of each fiscal year, a corporation created under this  
465 Act shall report on its status to the [governor], the [state agricultural commission], the [state  
466 economic development commission] and to the [legislature].

467       B. The report shall state the complete operating and financial statement covering the  
468 corporation's operations and summarize the corporation's activities during the preceding fiscal  
469 year.  
470

471       Section 9. [*Tax Exemptions.*]

472       A. A corporation created under this Act is exempt from state and local taxes.

473       B. A corporation created under this Act, its board of directors, and employees are subject  
474 to [insert citations] concerning public ethics and public information.

475       C.       1. The corporation may receive annual funding through an appropriation in the  
476 state budget.

477                   2. The corporation may also receive funds for projects included in the budgets of  
478 state units.

479                   3. All unexpended and unencumbered funds appropriated to the corporation shall  
480 remain with the corporation for future uses.

481                   4. The corporation shall conduct its financial affairs in such a manner that, by the  
482 [year 2020], it shall be self-sufficient and in no further need of general operating support by the  
483 state.

484       D. The [department of agriculture], the [department of natural resources], the [department  
485 of business] and [economic development], the [state food center authority], the [state economic  
486 development corporation], the [state technology development corporation], the [rural council],  
487 and [state cooperative extension service] may provide technical and other support to the  
488 corporation.

489       E. Each unit in the executive branch of state government and each institution of higher  
490 education in the state may work with the corporation on matters relating to the unit.

491       F. Each county, municipal corporation, and regional planning and development council  
492 in the state may work with the corporation on matters relating to the political subdivision or  
493 entity.



494

495           Section 10. [*Debts, Claims, Obligations, and Liabilities of an Agricultural and Resource-*  
496 *based Development Corporation.*]

497           A. All debts, claims, obligations, and liabilities of a corporation created under this Act,  
498 whenever incurred, shall be the debts, claims, obligations, and liabilities of the corporation only  
499 and not of the state, units of state government, other state instrumentalities, or state officers or  
500 employees.

501           B. The debts, claims, obligations, and liabilities of a corporation created under this Act  
502 may not be considered a debt of the state or a pledge of its credit.

503

504           Section 11. [*Funding from Existing Resources.*]

505           A. It is the intent of the [general assembly] that state funding for a corporation created  
506 under this Act should be provided within existing resources of the [departments of agriculture],  
507 [budget and management], [business and economic development], [environment], and [housing  
508 and community development] and any other state agency determined to be appropriate by the  
509 [secretary of budget and management].

510           B. Other than existing resources, additional funding may not be provided for the  
511 staffing, operations, or capital needs of the corporation until the state's fiscal crisis and structural  
512 deficit is resolved.

513

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

515

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

517

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

# Alternative Energy Portfolio Standards

This Act provides for the sale of electric energy generated from renewable and environmentally beneficial sources, for the acquisition of electric energy generated from renewable and environmentally beneficial sources by electric distribution and supply companies and for the powers and duties of the state public utility commission.

The Act establishes a two-tiered portfolio standard to ensure that in 15 years, a percentage of all of the energy generated in the state comes from clean and efficient sources. Tier I requires a percentage of electricity sold at retail in the state to come from traditional renewable sources such as solar photovoltaic energy, wind power, low-impact hydropower, geothermal energy, biologically derived methane gas, fuel cells, biomass energy or coal-mine methane. Part of the Tier I electricity must come from solar photovoltaic cells. Tier II requires some of the electricity to be generated from waste coal, distributed generation systems, demand-side management, large-scale hydropower, municipal solid waste, generation from pulping and wood manufacturing byproducts, and integrated combined coal gasification technology.

Submitted as:

Pennsylvania

SB 1030

Status: Enacted into law in 2004.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “The Alternative Energy Portfolio  
2 Standards Act.”

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

5           A. “Alternative energy credit” means a tradable instrument that is used to establish,  
6 verify and monitor compliance with this Act. A unit of credit shall equal one megawatt hour of  
7 electricity from an alternative energy source.

8           B. “Alternative energy portfolio standards” means standards establishing that a certain  
9 amount of energy sold from alternative energy sources is included as part of the sources of  
10 electric generation by electric utilities within this state.

11           C. “Alternative energy sources” shall include the following existing and new sources for  
12 the production of electricity:

13                   (1) solar photovoltaic or other solar electric energy.

14                   (2) solar thermal energy.

15                   (3) wind power.

16                   (4) large-scale hydropower, which shall mean the production of electric power by  
17 harnessing the hydroelectric potential of moving water impoundments, including pumped storage  
18 that does not meet the requirements of low-impact hydropower under paragraph (5).

19                   (5) low-impact hydropower, consisting of any technology that produces electric  
20 power and that harnesses the hydroelectric potential of moving water impoundments, provided  
21 such incremental hydroelectric development:

22                           (i) does not adversely change existing impacts to aquatic systems;

23                           (ii) meets the certification standards established by the Low Impact  
24 Hydropower Institute and American Rivers, Inc., or their successors;

(iii) provides an adequate water flow for protection of aquatic life and for safe and effective fish passage;

(iv) protects against erosion; and

(v) protects cultural and historic resources.

(6) geothermal energy, which shall mean electricity produced by extracting hot water or steam from geothermal reserves in the earth's crust and supplied to steam turbines that drive generators to produce electricity.

(7) biomass energy, which shall mean the generation of electricity utilizing the following:

(i) organic material from a plant that is grown for the purpose of being used to produce electricity or is protected by the Federal Conservation Reserve Program (CRP) and provided further that crop production on CRP lands does not prevent achievement of the water quality protection, soil erosion prevention or wildlife enhancement purposes for which the land was primarily set aside; or

(ii) any solid nonhazardous, cellulosic waste material that is segregated from other waste materials, such as waste pallets, crates and landscape or right-of-way tree trimmings or agricultural sources, including orchard tree crops, vineyards, grain, legumes, sugar and other crop by-products or residues.

(8) biologically derived methane gas, which shall include methane from the anaerobic digestion of organic materials from yard waste, such as grass clippings and leaves, food waste, animal waste and sewage sludge. The term also includes landfill methane gas.

(9) fuel cells, which shall mean any electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion.

(10) waste coal, which shall include the combustion of waste coal in facilities in which the waste coal was disposed or abandoned prior to [July 31, 1982], or disposed of thereafter in a permitted coal refuse disposal site regardless of when disposed of, and used to generate electricity; or such other waste coal combustion meeting alternate eligibility requirements established by regulation. Facilities combusting waste coal shall use at a minimum a combined fluidized bed boiler and be outfitted with a limestone injection system and a fabric filter particulate removal system. Alternative energy credits shall be calculated based upon the proportion of waste coal utilized to produce electricity at the facility.

(11) coal mine methane, which shall mean methane gas emitting from abandoned or working coal mines.

(12) demand side management consisting of the management of customer consumption of electricity or the demand for electricity through the implementation of:

(i) energy efficiency technologies, management practices or other strategies in residential, commercial, institutional or government customers that reduce electricity consumption by those customers;

(ii) load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand; or

(iii) industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or other manufacturing by-products that are used in the direct production of electricity at the facility of a customer.

(13) distributed generation system, which shall mean the small-scale power generation of electricity and useful thermal energy.

D. "Alternative energy system" means a facility or energy system that uses a form of alternative energy source to generate electricity and delivers the electricity it generates to the

74 distribution system of an electric distribution company or to the transmission system operated by  
75 a regional transmission organization.

76 E. "Commission" means the state [public utility commission].

77 F. "Cost recovery period" means the longer of:

78 (1) the period during which competitive transition charges under [insert citation]  
79 (relating to competitive transition charge) or intangible transition charges under [insert citation]  
80 (relating to approval of transition bonds) are recovered or the period during which an electric  
81 bonds) are recovered; or

82 (2) the period during which an electric distribution company operates under a  
83 state Public Utility Commission-approved generation rate plan that has been approved prior to or  
84 within [one year of the effective date of this Act], but in no case shall the cost recovery period  
85 under this Act extend beyond [December 31, 2010].

86 G. "Customer-generator" means a nonutility owner or operator of a net metered  
87 distributed generation system with a nameplate capacity of not greater than [50 kilowatts] if  
88 installed at a residential service or not larger than [1,000 kilowatts] at other customer service  
89 locations, except for customers whose systems are above [one megawatt and up to two  
90 megawatts] who make their systems available to operate in parallel with the electric utility  
91 during grid emergencies as defined by the regional transmission organization, or where a  
92 microgrid is in place for the purpose of maintaining critical infrastructure, such as homeland  
93 security assignments, emergency services facilities, hospitals, traffic signals, wastewater  
94 treatment plants or telecommunications facilities, provided that technical rules for operating  
95 generators interconnected with facilities of an electric distribution company, electric cooperative  
96 or municipal electric system have been promulgated by the Institute of Electrical and Electronic  
97 Engineers and the state [public utility commission].

98 H. "Department" means the [department of environmental protection] of the state.

99 I. "Electric distribution company" means the term shall have the same meaning given to it  
100 in [insert citation] (relating to restructuring of electric utility industry).

101 J. "Electric generation supplier" has the same meaning given to it in [insert citation]  
102 (relating to restructuring of electric utility industry).

103 K. "Force majeure" means that upon its own initiative or upon a request of an electric  
104 distribution company or an electric generator supplier, the [state public utility commission],  
105 within [60 days], shall determine if alternative energy resources are reasonably available in the  
106 marketplace in sufficient quantities for the electric distribution companies and electric generation  
107 suppliers to meet their obligations for that reporting period under this Act. If the [commission]  
108 determines that alternative energy resources are not reasonably available in sufficient quantities  
109 in the marketplace for the electric distribution companies and electric generation suppliers to  
110 meet their obligations under this Act, then the [commission] shall modify the underlying  
111 obligation of the electric distribution company or electric generation supplier or recommend to  
112 the [general assembly] that the underlying obligation be eliminated.

113 L. "Municipal solid waste" includes energy from existing waste to energy facilities which  
114 the [Department of Environmental Protection] has determined are in compliance with current  
115 environmental standards, including, but not limited to, all applicable requirements of the Clean  
116 Air Act (69 Stat. 322,42 U.S.C. § 7401 et seq.) and associated permit restrictions, and all  
117 applicable requirements of the Act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste  
118 Management Act.

119 M. "Net metering" means measuring the difference between the electricity supplied by an  
120 electric utility and the electricity generated by a customer-generator, when the renewable energy  
121 generating system is intended primarily to offset part or all of the customer-generator's  
122 requirements for electricity.

N. "Regional transmission organization" means an entity approved by the Federal Energy Regulatory Commission (FERC) that is created to operate and manage the electrical transmission grids of the member electric transmission utilities as required under FERC Order 2000, Docket No. RM99-2-000, FERC Chapter 31.089 (1999) or any successor organization approved by the FERC.

O. "Reporting period" means the [12-month period from June 1 through May 31]. A reporting year shall be numbered according to the calendar year in which it begins and ends.

P. "Retail electric customer" has the same meaning given to it in [insert citation] (relating to restructuring of electric utility industry).

Q. "Tier I alternative energy source" means energy derived from:

- (1) solar photovoltaic energy;
- (2) wind power;
- (3) low-impact hydropower;
- (4) geothermal energy;
- (5) biologically derived methane gas;
- (6) fuel cells;
- (7) biomass energy; or
- (8) coal mine methane.

R. "Tier II alternative energy source" means energy derived from:

- (1) waste coal;
- (2) distributed generation systems;
- (3) demand-side management;
- (4) large-scale hydropower;
- (5) municipal solid waste;
- (6) generation of electricity utilizing by-products of the pulping process and wood manufacturing process including bark, wood chips, sawdust and lignin in spent pulping liquors; or
- (7) integrated combined coal gasification technology.

S. "True-up period" means the period each year from the end of the reporting year until [September 1].

### Section 3. [*Alternative Energy Portfolio Standards.*]

A. General compliance and cost recovery.

(1) From the effective date of this Act through and including the [15th year] after enactment of this Act, and each year thereafter, the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers in this state shall be comprised of electricity generated from alternative energy sources, and in the percentage amounts as described under subsections (B) and (C).

(2) Electric distribution companies and electric generation suppliers shall satisfy both requirements set forth in subsections (B) and (C); provided, however, that an electric distribution company or an electric generation supplier shall be excused from its obligations under this section to the extent that the [commission] determines that force majeure exists.

(3) All costs for:

(i) the purchase of electricity generated from alternative energy sources, including the costs of the regional transmission organization, in excess of the regional transmission organization real-time locational marginal pricing, or its successor, at the delivery point of the alternative energy source for the electrical production of the alternative energy sources; and

(ii) payments for alternative energy credits, in both cases that are voluntarily acquired by an electric distribution company during the cost recovery period on behalf of its customers shall be deferred as a regulatory asset by the electric distribution company and fully recovered, with a return on the unamortized balance, pursuant to an automatic energy adjustment clause under [insert citation] (relating to sliding scale of rates; adjustments) as a cost of generation supply [insert citation] (relating to duties of electric distribution companies), in the [first year after the expiration of its cost recovery period]. After the cost recovery period, any direct or indirect costs for the purchase by electric distribution of resources to comply with this section, including, but not limited to, the purchase of electricity generated from alternative energy sources, payments for alternative energy credits, cost of credits banked, payments to any third party administrators for performance under this Act and costs levied by a regional transmission organization to ensure that alternative energy sources are reliable, shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under [insert citation] as a cost of generation supply under [insert citation].

B. Tier I and solar photovoltaic shares.

(1) [Two years] after the effective date of this Act, at least [1.5%] of the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers in this state shall be generated from Tier I alternative energy sources. Except as provided in this section, the minimum percentage of electric energy required to be sold to retail electric customers from alternative energy sources shall increase to [2%] [three years] after the effective date of this Act. The minimum percentage of electric energy required to be sold to retail electric customers from alternative energy sources shall increase by at least [0.5%] each year so that at least [8%] of the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers in that certificated territory in the [15th year] after the effective date of this subsection is sold from Tier I alternative energy resources.

(2) Of the electric energy required to be sold from Tier I sources, the total percentage that must be sold from solar photovoltaic technologies is for:

- (i) years 1 through 4 - 0.0013%;
- (ii) years 5 through 9 - 0.0203%;
- (iii) years 10 through 14 - 0.2500%; and
- (iv) years 15 and thereafter - 0.5000%.

(3) Upon commencement of the beginning of the [6th reporting year], the [commission] shall undertake a review of the compliance by electric distribution companies and electric generation suppliers with the requirements of this Act. The review shall also include the status of alternative energy technologies within this state and the capacity to add additional alternative energy resources. The [commission] shall use the results of this review to recommend to the [legislature] additional compliance goals beyond year [15]. The [commission] shall work with the [department] in evaluating the future alternative energy resource potential.

C. Tier II share.

(1) Of the electrical energy required to be sold from alternative energy sources identified in Tier II, the percentage that must be from these technologies is for:

- (i) years 1 Through 4 - 4.2%;
- (ii) years 5 Through 9 - 6.2%;
- (iii) years 10 Through 14 - 8.2%; and
- (iv) years 15 And Thereafter - 10.0%.

D. Exemption during cost-recovery period.

(1) Compliance with subsections (A), (B) and (C) shall not be required for any electric distribution company that has not reached the end of its cost-recovery period or for electric generation supplier sales in the service territory of an electric distribution company that

has not reached the end of its cost-recovery period. At the conclusion of an electric distribution company's cost-recovery period, this exception shall no longer apply, and compliance shall be required at the percentages in effect at that time. Electric distribution companies and electric generation suppliers whose sales are exempted under this subsection and who voluntarily sell electricity generated from Tier I and Tier II sources during the cost-recovery period may bank credits consistent with subsection (E)(7).

E. Alternative energy credits.

(1) The [commission] shall establish an alternative energy credits program as needed to implement this Act. The provision of services pursuant to this section shall be exempt from the competitive procurement procedures of [insert citation] (relating to procurement).

(2) The [commission] shall approve an independent entity to serve as the [alternative energy credits program administrator]. The [administrator] shall have those powers and duties assigned by [commission] regulations. Such powers and duties shall include, but not be limited to, the following:

(i) create and administer an alternative energy credits certification, tracking and reporting program. This program should include, at a minimum, a process for qualifying alternative energy systems and determining the manner credits can be created, accounted for, transferred and retired.

(ii) submit reports to the [commission] at such times and in such manner as the [commission] shall direct.

(3) All qualifying alternative energy systems must include a qualifying meter to record the cumulative electric production to verify the advanced energy credit value. Qualifying meters will be approved by the [commission] as defined in paragraph (4).

(4) (i) An electric distribution company or electric generation supplier shall comply with the applicable requirements of this section by purchasing sufficient alternative energy credits and submitting documentation of compliance to the [program administrator].

(ii) For purposes of this subsection, one alternative energy credit shall represent one megawatt hour of qualified alternative electric generation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument and otherwise meeting the requirements of [commission] regulations and the [program administrator].

(5) The alternative energy credits program shall include provisions requiring a reporting period as defined in section 2 for all covered entities under this Act. The alternative energy credits program shall also include a true-up period as defined in section 2. The true-up period shall provide entities covered under this Act the ability to obtain the required number of alternative energy credits or to make up any shortfall of the alternative energy credits they may be required to obtain to comply with this Act. A force majeure provision shall also be provided for under the true-up period provisions.

(6) An electric distribution company and electric generation supplier may bank or place in reserve alternative energy credits produced in [one reporting year] for compliance in either or both of the [two subsequent reporting years], subject to the limitations set forth in this subsection and provided that the electric distribution company and electric generation supplier are in compliance for all previous reporting years. In addition, the electric distribution company and electric generation supplier shall demonstrate to the satisfaction of the [commission] that such credits:

(i) were in excess of the alternative energy credits needed for compliance in the year in which they were generated and that such excess credits have not previously been used for compliance under this Act;

(ii) were produced by the generation of electrical energy by alternative energy sources and sold to retail customers during the year in which they were generated; and  
(iii) have not otherwise been nor will be sold, retired, claimed or represented as part of satisfying compliance with alternative or renewable energy portfolio standards in other states.

(7) An electric distribution company or an electric generation supplier with sales that are exempted under subsection D may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the effective date of this Act. Bankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources during a reporting year which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier during the [12-month] period immediately preceding the effective date of this Act. All credits banked under this subsection shall be available for compliance with subsections B and C for no more than [two reporting years] following the conclusion of the cost-recovery period.

(8) The [commission] or its designee shall develop a registry of pertinent information regarding all available alternative energy credits, credit transactions among electric distribution companies and electric generation suppliers, the number of alternative energy credits sold or transferred and the price paid for the sale or transfer of the credits. The registry shall provide current information to electric distribution companies, electric generation suppliers and the general public on the status of alternative energy credits created, sold or transferred within this state.

(9) The [commission] may impose an administrative fee on an alternative energy credit transaction. The amount of this fee may not exceed the actual direct cost of processing the transaction by the alternative energy credits administrator. The [commission] is authorized to use up to [5%] of the alternative compliance fees generated under subsection F for administrative expenses directly associated with this Act.

(10) The [commission] shall establish regulations governing the verification and tracking of energy efficiency and demand-side management measures pursuant to this Act, which shall include benefits to all utility customer classes. When developing regulations, the [commission] must give reasonable consideration to existing and proposed regulations and rules in existence in the regional transmission organizations that manage the transmission system in any part of this state. All verified reductions shall accrue credits starting with the passage of this Act.

(11) The [commission] shall within [120 days] of the effective date of this Act develop a depreciation schedule for alternative energy credits created through demand-side management, energy efficiency and load management technologies and shall develop standards for tracking and verifying savings from energy efficiency, load management and demand-side management measures. The [commission] shall allow for a [60-day] public comment period and shall issue final standards within [30 days] of the close of the public comment period.

#### F. Alternative compliance payment.

(1) At the end of each program year, the [program administrator] shall provide a report to the [commission] and to each covered electric distribution company showing their status level of alternative energy acquisition.

(2) The [commission] shall conduct a review of each determination made under subsections B and C. If, after notice and hearing, the [commission] determines that an electric distribution company or electric generation supplier has failed to comply with subsections B and C, the [commission] shall impose an alternative compliance payment on that company or supplier.



316 (3) The alternative compliance payment, with the exception of the solar  
317 photovoltaic share compliance requirement set forth in subsection B2, shall be [\$45] times the  
318 number of additional alternative energy credits needed in order to comply with subsection B or  
319 C.

320 (4) The alternative compliance payment for the solar photovoltaic share shall be  
321 [200%] of the average market value of solar renewable energy credits sold during the reporting  
322 period within the service region of the regional transmission organization.

323 (5) The [commission] shall establish a process to provide for, at least [annually], a  
324 review of the alternative energy market within this state and the service territories of the regional  
325 transmission organizations that manage the transmission system in any part of this state. The  
326 [commission] will use the results of this study to identify any needed changes to the cost  
327 associated with the alternative compliance payment program. The [commission] may raise the  
328 cost defined in this Act. If the [commission] finds that the costs associated with alternative  
329 compliance payment program must be changed, the [commission] shall present these findings to  
330 the [legislature] for legislative enactment.

331 G. Transfer to sustainable development funds.

332 (1) Notwithstanding the provisions of [insert citation] (relating to disposition,  
333 appropriation and disbursement of assessments and fees) and [insert citation] (relating to  
334 disposition of fines and penalties), alternative compliance payments imposed pursuant to this Act  
335 shall be paid into the state's [sustainable energy funds], created under the [commission's]  
336 restructuring orders under [insert citation] (relating to restructuring of electric utility industry).  
337 Alternative compliance payments shall be paid into a [special fund] of the [state sustainable  
338 energy board], established by the [commission] under [insert citation], and made available to the  
339 [regional sustainable energy funds] under procedures and guidelines approved by the [state  
340 energy board].

341 (2) The alternative compliance payments shall be utilized solely for projects that  
342 will increase the amount of electric energy generated from alternative energy resources for  
343 purposes of compliance with subsections B and C.

344 H. Nonseverability. The provisions of subsection (A) are declared to be nonseverable. If  
345 any provision of subsection (A) is held invalid, the remaining provisions of this Act shall be  
346 void.

347  
348 Section 4. [*Portfolio Requirements in Other States.*] If an electric distribution supplier or  
349 electric generation company provider sells electricity in any other state and is subject to  
350 renewable energy portfolio requirements in that state, they shall list any such requirement and  
351 shall indicate how it satisfied those renewable energy portfolio requirements. To prevent double-  
352 counting, the electric distribution supplier or electric generation company shall not satisfy this  
353 state's alternative energy portfolio requirements using alternative energy used to satisfy another  
354 state's portfolio requirements. Energy derived only from alternative energy sources inside the  
355 geographical boundaries of this state or within the service territory of any regional transmission  
356 organization that manages the transmission system in any part of this state shall be eligible to  
357 meet the compliance requirements under this Act. Electric distribution companies and electric  
358 generation suppliers shall document that this energy was not used to satisfy another state's  
359 renewable energy portfolio standards.

360  
361 Section 5. [*Interconnection Standards for Customer-Generator Facilities.*] The  
362 [commission] shall develop technical and net metering interconnection rules for customer-  
363 generators intending to operate renewable onsite generators in parallel with the electric utility  
364 grid, consistent with rules defined in other states within the service region of the regional

transmission organization that manages the transmission system in any part of this state. The [commission] shall convene a stakeholder process to develop statewide technical and net metering rules for customer-generators. The [commission] shall develop these rules within [nine months] of the effective date of this Act.

Section 6. *[Health and Safety Standards.]* The [department] shall cooperate with the state [department of labor and industry] as necessary in developing health and safety standards, as needed, regarding facilities generating energy from alternative energy sources. The [department] shall establish appropriate and reasonable health and safety standards to ensure uniform and proper compliance with this act by owners and operators of facilities generating energy from alternative energy sources as defined in this Act.

Section 7. *[Interagency Responsibilities.]*

A. [Commission] responsibilities.

(1) The [commission] will carry out the responsibilities delineated within this Act. The [commission] also shall, in cooperation with the [department], conduct an ongoing alternative energy resources planning assessment for this state. This assessment will, at a minimum, identify current and operating alternative energy facilities, the potential to add future alternative energy generating capacity, and the conditions of the alternative energy marketplace. The assessment will identify needed methods to maintain or increase the relative competitiveness of the alternative energy market within this state.

B. [Department] responsibilities.

(1) The [department] shall ensure that all qualified alternative energy sources meet all applicable environmental standards and shall verify that an alternative energy source meets the standards set forth in section 2.

C. Cooperation between [commission] and [department].

(1) The [commission] and the [department] shall work cooperatively to monitor the performance of all aspects of this Act and will provide an annual report to the [legislature]. The report shall include at a minimum:

(i) the status of the compliance with the provisions of this Act by electric distribution companies and electric generations suppliers;

(ii) current costs of alternative energy on a per kilowatt hour basis for all alternative energy technology types;

(iii) costs associated with the alternative energy credits program under this Act, including the number of alternative compliance payments;

(iv) the status of the alternative energy marketplace within this state; and

(v) recommendations for program improvements.

Section 8. *[Rural Electric Cooperatives.]* Each rural electric cooperative operating within this state shall offer to its retail customers a voluntary program of energy efficiency and demand-side management programs, as a means to satisfy compliance with the requirements of this Act.

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

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

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

# Asbestos Tort Reform

This Act establishes minimum medical requirements for filing certain asbestos claims. It specifies a plaintiff's burden of proof in tort actions involving exposure to asbestos and establishes premises liability in relation to asbestos claims. This draft Act also prescribes the requirements for shareholder liability for asbestos claims under the doctrine of piercing the corporate veil.

Submitted as:

Ohio

Substitute House Bill 292

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 Address Asbestos Claims.”  
2  
3           Section 2. [*Legislative Findings and Intent*.]  
4           (A) The [General Assembly] makes the following statement of findings and intent:  
5               (1) Asbestos claims have created an increased amount of litigation in state and  
6 federal courts that the United States Supreme Court has characterized as “an elephant mass” of  
7 cases.  
8               (2) The current asbestos personal injury litigation system is unfair and inefficient,  
9 imposing a severe burden on litigants and taxpayers alike. A recent RAND study estimates that a  
10 total of fifty-four billion dollars have already been spent on asbestos litigation and the costs  
11 continue to mount. Compensation for asbestos claims has risen sharply since 1993. The typical  
12 claimant in an asbestos lawsuit now names sixty to seventy defendants, compared with an  
13 average of twenty named defendants two decades ago. The RAND Report also suggests that at  
14 best, only one-half of all claimants have come forward and at worst, only one-fifth have filed  
15 claims to date. Estimates of the total cost of all claims range from two hundred to two hundred  
16 sixty-five billion dollars. Tragically, plaintiffs are receiving less than forty-three cents on every  
17 dollar awarded, and sixty-five per cent of the compensation paid, thus far, has gone to claimants  
18 who are not sick.  
19               (3) The extraordinary volume of nonmalignant asbestos cases continue to strain  
20 federal and state courts.  
21               (a) Today, it is estimated that there are more than two hundred thousand  
22 active asbestos cases in courts nationwide. According to a recent RAND study, over six hundred  
23 thousand people have filed asbestos claims for asbestos-related personal injuries through the end  
24 of 2000.  
25               (4) Nationally, asbestos personal injury litigation has already contributed to the  
26 bankruptcy of more than seventy companies, including nearly all manufacturers of asbestos  
27 textile and insulation products, and the ratio of asbestos-driven bankruptcies is accelerating.  
28               (a) As stated by Linda Woggon, Vice President of Governmental Affairs  
29 of the Ohio Chamber of Commerce, a recent RAND study found that during the first ten months  
30 of 2002, fifteen companies facing significant asbestos-related liabilities filed for bankruptcy and  
31 more than sixty thousand jobs have been lost because of these bankruptcies. The RAND study

estimates that the eventual cost of asbestos litigation could reach as high as four hundred twenty-three thousand jobs.

(b) Joseph Stiglitz, Nobel award-winning economist, in “The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,” calculated that bankruptcies caused by asbestos have already resulted in the loss of up to sixty thousand jobs and that each displaced worker in the bankrupt companies will lose, on average, an estimated twenty-five thousand to fifty thousand dollars in wages over the worker’s career, and at least a quarter of the accumulated pension benefits.

(5) The [General Assembly] recognizes that the vast majority of asbestos claims [in this state] are filed by people who allege they have been exposed to asbestos and who have some physical sign of exposure to asbestos, but who do not suffer from an asbestos-related impairment. Eighty-nine per cent of asbestos claims come from people who do not have cancer. Sixty-six to ninety per cent of these non-cancer claimants are not sick. According to a Tillinghast-Towers Perrin study, ninety-four per cent of the fifty-two thousand nine hundred asbestos claims filed in 2000 concerned claimants who are not sick. As a result, the [General Assembly] recognizes that reasonable medical criteria are a necessary response to the asbestos litigation crisis in this state. Medical criteria will expedite the resolution of claims brought by those sick claimants and will ensure that resources are available for those who are currently suffering from asbestos-related illnesses and for those who may become sick in the future.

(6) The cost of compensating exposed individuals who are not sick jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases, now and in the future; threatens savings, retirement benefits, and jobs of the state’s current and retired employees; adversely affects the communities in which these defendants operate; and impairs this state’s economy.

(7) The public interest requires the deferring of claims of exposed individuals who are not sick in order to preserve, now and for the future, defendants’ ability to compensate people who develop cancer and other serious asbestos-related injuries and to safeguard the jobs, benefits, and savings of the state’s employees and the well being of the [state’s] economy.

(B) In enacting sections 3 through 10 of this Act, it is the intent of the [General Assembly] to:

(1) give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by exposure to asbestos;

(2) fully preserve the rights of claimants who were exposed to asbestos to pursue compensation should those claimants become impaired in the future as a result of such exposure;

(3) enhance the ability of the state’s judicial systems and federal judicial systems to supervise and control litigation and asbestos-related bankruptcy proceedings; and

(4) conserve the scarce resources of the defendants to allow compensation of cancer victims and others who are physically impaired by exposure to asbestos while securing the right to similar compensation for those who may suffer physical impairment in the future.

(C) The [General Assembly] hereby requests the [state Supreme Court] to adopt rules to specify procedures for venue and consolidation of asbestos claims brought pursuant to this Act.

(D) With respect to procedures for venue in regard to asbestos claims, the [General Assembly] hereby requests the [state Supreme Court] to adopt a rule that requires that an asbestos claim meet specific nexus requirements, including the requirement that the plaintiff be domiciled in [this state] or that [insert state] is the state in which the plaintiff’s exposure to asbestos is a substantial contributing factor.

(E) With respect to procedures for consolidation of asbestos claims, the [General Assembly] hereby requests the [state Supreme Court] to adopt a rule that permits consolidation of asbestos claims only with the consent of all parties, and in absence of that consent, permits a

81 court to consolidate for trial only those asbestos claims that relate to the same exposed person  
82 and members of the exposed person's household.

83 (F) It is the intent of the [General Assembly] in enacting section 9 of this Act to establish  
84 specific factors to be considered when determining whether a particular plaintiff's exposure to a  
85 particular defendant's asbestos was a substantial factor in causing the plaintiff's injury or loss.  
86 The consideration of these factors involving the plaintiff's proximity to the asbestos exposure,  
87 frequency of the exposure, or regularity of the exposure in tort actions involving exposure to  
88 asbestos is consistent with the factors listed by the court in *Lohrmann v. Pittsburgh Corning Cor.*  
89 (4th Cir. 1986), 782 F.2d 1156. The [General Assembly] by its enactment of those factors  
90 intends to clarify and define for judges and juries that evidence which is relevant to the common  
91 law requirement that plaintiff must prove proximate causation. The [General Assembly] also  
92 recognizes that the courts [of this state] generally followed the rationale of the *Lohrmann*  
93 decision in determining whether plaintiff had submitted any evidence that a particular  
94 defendant's product was a substantial cause of the plaintiff's injury in tort actions involving  
95 exposure to certain hazardous or toxic substances, and that the *Lohrmann* factors were of great  
96 assistance to the trial courts in the consideration of summary judgment motions and to juries  
97 when deciding issues of proximate causation. The [General Assembly] further recognizes that a  
98 large number of states have adopted this standard. It has also held hearings where medical  
99 evidence has been submitted indicating such a standard is medically appropriate and is  
100 scientifically sound public policy. The *Lohrmann* standard provides litigants, juries, and the  
101 courts of [this state] an objective and easily applied standard for determining whether a plaintiff  
102 has submitted evidence sufficient to sustain plaintiff's burden of proof as to proximate causation.  
103 Where specific evidence of frequency of exposure, proximity and length of exposure to a  
104 particular defendant's asbestos is lacking, summary judgment is appropriate in tort actions  
105 involving asbestos because such a plaintiff lacks any evidence of an essential element necessary  
106 to prevail. To submit a legal concept such as a "substantial factor" to a jury in these complex  
107 cases without such scientifically valid defining factors would be to invite speculation on the part  
108 of juries, something that the [General Assembly] has determined not to be in the best interests of  
109 [this state] and its courts.

110 (G) The [General Assembly] hereby requests the [state Supreme Court] to collect data  
111 regarding the number of awards made pursuant to [insert citation] to parties to civil actions in the  
112 courts of common pleas who were adversely affected by frivolous conduct as defined in [insert  
113 citation] or by the bringing of a civil action for which there was not a reasonable good faith  
114 basis.

115  
116 Section 3. [Definitions.] As used in sections 3 through 9 of this Act:

117 (A) "AMA Guides to the Evaluation of Permanent Impairment" means the American  
118 Medical Association's Guides to the Evaluation of Permanent Impairment (fifth edition 2000) as  
119 may be modified by the American Medical Association.

120 (B) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite  
121 asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or  
122 altered.

123 (C) "Asbestos claim" means any claim for damages, losses, indemnification,  
124 contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos  
125 claim" includes a claim made by or on behalf of any person who has been exposed to asbestos,  
126 or any representative, spouse, parent, child, or other relative of that person, for injury, including  
127 mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of  
128 medical monitoring or surveillance, or any other effects on the person's health that are caused by  
129 the person's exposure to asbestos.

(D) “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(E) “Board-certified internist” means a medical doctor who is currently certified by the American Board of Internal Medicine.

(F) “Board-certified occupational medicine specialist” means a medical doctor who is currently certified by the American Board of Preventive Medicine in the specialty of occupational medicine.

(G) “Board-certified oncologist” means a medical doctor who is currently certified by the American Board of Internal Medicine in the subspecialty of medical oncology.

(H) “Board-certified pathologist” means a medical doctor who is currently certified by the American Board of Pathology.

(I) “Board-certified pulmonary specialist” means a medical doctor who is currently certified by the American Board of Internal Medicine in the subspecialty of pulmonary medicine.

(J) “Certified B-reader” means an individual qualified as a “final” or “B-reader” as defined in 42 C.F.R. section 37.51(b), as amended.

(K) “Certified industrial hygienist” means an industrial hygienist who has attained the status of Diplomate of The American Academy of Industrial Hygiene subject to compliance with requirements established by the American Board of Industrial Hygiene.

(L) “Certified safety professional” means a safety professional who has met and continues to meet all requirements established by the [Board of Certified Safety Professionals] and is authorized by that board to use the certified safety professional title or the [CSP] designation.

(M) “Civil action” means all suits or claims of a civil nature in a state or federal court, whether cognizable as cases at law or in equity or admiralty. “Civil action” does not include any of the following:

(1) A civil action relating to any Workers’ Compensation law;

(2) A civil action alleging any claim or demand made against a trust established pursuant to 11 U.S.C. section 524(g);

(3) A civil action alleging any claim or demand made against a trust established pursuant to a plan of reorganization confirmed under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11.

(N) “Exposed person” means any person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos claim under section 4 of this Act.

(O) “FEV1” means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(P) “FVC” means forced vital capacity that is maximal volume of air expired with maximum effort from a position of full inspiration.

(Q) “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.

(R) “Lung cancer” means a malignant tumor in which the primary site of origin of the cancer is inside the lungs, but that term does not include mesothelioma.

(S) “Mesothelioma” means a malignant tumor with a primary site of origin in the pleura or the peritoneum, which has been diagnosed by a board-certified pathologist, using standardized and accepted criteria of microscopic morphology and appropriate staining techniques.

(T) “Nonmalignant condition” means a condition that is caused or may be caused by asbestos other than a diagnosed cancer.

(U) “Pathological evidence of asbestosis” 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 or parenchymal scarring in the presence of characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis.

(V) “Physical impairment” means a nonmalignant condition that meets the minimum requirements specified in division (B) of Section 4 of this Act, lung cancer of an exposed person who is a smoker that meets the minimum requirements specified in division (C) of Section 4 of this Act, or a condition of a deceased exposed person that meets the minimum requirements specified in division (D) of section 4 of this Act.

(W) “Plethysmography” means a test for determining lung volume, also known as “body plethysmography,” in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume changes.

(X) “Predicted lower limit of normal” means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA guides to the evaluation of permanent impairment.

(Y) “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.

(Z) “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 Section 4 of this Act 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.

(AA) “Radiological evidence of asbestosis” means a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as at least 1/1 on the ILO scale.

(BB) “Radiological evidence of diffuse pleural thickening” means a chest x-ray showing bilateral pleural thickening graded by a certified B-reader as at least B2 on the ILO scale and blunting of at least one costophrenic angle.

(CC) “Regular basis” means on a frequent or recurring basis.

(DD) “Smoker” means a person who has smoked the equivalent of one-pack year, as specified in the written report of a competent medical authority Sections 4 and 5 of this Act during the last [fifteen years].

(EE) “Spirometry” means the measurement of volume of air inhaled or exhaled by the lung.

(FF) “Substantial contributing factor” means both of the following:

(1) Exposure to asbestos is the predominate cause of the physical impairment alleged in the asbestos claim.

(2) A competent medical authority has determined with a reasonable degree of medical certainty that without the asbestos exposures the physical impairment of the exposed person would not have occurred.

(GG) “Substantial occupational exposure to asbestos” 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 raw asbestos fibers;

(2) Fabricated asbestos-containing products so that the person was exposed to raw asbestos fibers in the fabrication process;

(3) Altered, repaired, or otherwise worked with an asbestos-containing product in a manner that exposed the person on a regular basis to asbestos fibers;

(4) Worked in close proximity to other workers engaged in any of the activities described in division (GG)(1), (2), or (3) of this section in a manner that exposed the person on a regular basis to asbestos fibers.

(HH) “Timed gas dilution” means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of the inert and insoluble gas in the lung is then compared to the concentration of that type of gas in the spirometer.

(II) “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 people.

(JJ) “Total lung capacity” means the volume of air contained in the lungs at the end of a maximal inspiration.

(KK) “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.

(LL) “Workers’ compensation law” means [insert citation].

Section 4. [*Prohibitions to Bringing or Maintaining a Tort Action Alleging an Asbestos Claim.*]

(A) For purposes of [insert citation], “bodily injury caused by exposure to asbestos” means physical impairment of the exposed person, to which the person’s exposure to asbestos is a substantial contributing factor.

(B) No person shall bring or maintain a tort action alleging an asbestos claim based on a nonmalignant condition 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 asbestos 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 asbestos 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, asbestos fibers 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 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 all 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) Either of the following:

(i) The exposed person has asbestosis or diffuse pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse pleural thickening. The asbestosis or diffuse pleural thickening described in this division, rather than solely chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the exposed person has any of the following:

(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal;

(III) A chest x-ray showing small, irregular opacities (s,t) graded by a certified B-reader at least 2/1 on the ILO scale.

(ii) If the exposed person has a chest x-ray showing small, irregular opacities (s,t) graded by a certified B-reader as only a 1/0 on the ILO scale, then in order to establish that the exposed person has asbestosis, rather than solely chronic obstructive pulmonary disease, that is a substantial contributing factor to the exposed person's physical impairment the plaintiff must establish that the exposed person has both of the following:

(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

(C) (1) No person shall bring or maintain a tort action alleging an asbestos claim based upon lung cancer of an exposed person who is 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 asbestos is 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 the exposed person has primary lung cancer and that exposure to asbestos is a substantial contributing factor to that cancer;

(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 asbestos 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.

(c) Either of the following:

(i) Evidence of the exposed person's substantial occupational exposure to asbestos;

(ii) Evidence of the exposed person's exposure to asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information about the exposed person's occupational history and history of exposure to asbestos.

(2) If a plaintiff files a tort action that alleges an asbestos claim based upon lung cancer of an exposed person who is a smoker, alleges that the plaintiff's exposure to asbestos 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 (C)(1)(c) of this section, and alleges that the plaintiff lived with the other person for the period of time specified in division (GG) of section 3 of this Act, the plaintiff is considered as having satisfied the requirements specified in division (C)(1)(c) of this section.

(D) (1) No person shall bring or maintain a tort action alleging an asbestos claim that is based upon a wrongful death, as described in [insert citation] of an exposed person in the absence of a prima-facie showing, in the manner described in division (A) of 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 a result of a medical condition, and that the deceased person's exposure to asbestos 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 asbestos 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 deceased exposed person's first exposure to asbestos until the date of diagnosis or death of the deceased 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) Either of the following:

(i) Evidence of the deceased exposed person's substantial occupational exposure to asbestos;

(ii) Evidence of the deceased exposed person's exposure to asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific

probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information about the deceased exposed person's occupational history and history of exposure to asbestos.

(2) If a person files a tort action that alleges an asbestos claim based on a wrongful death, as described in [insert citation], of an exposed person, alleges 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 alleges that the exposed person lived with the other person for the period of time specified in division (GG) of section 3 of this Act in order to qualify as a substantial occupational exposure to asbestos, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(3) No court shall require or permit the exhumation of a decedent for the purpose of obtaining evidence to make, or to oppose, a prima-facie showing required under division (D)(1) or (2) of this section regarding a tort action of the type described in that division.

(E) No prima-facie showing is required in a tort action alleging an asbestos claim based upon mesothelioma.

(F) 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.

(G) 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 asbestos-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 decisions 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. [*Prima-facie Evidence for Alleging an Asbestos Claim in any Tort Action.*]

(A) (1) The plaintiff in any tort action who alleges an asbestos 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 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 4 of this Act. The defendant has [one hundred twenty days] from the date the specified type of prima-facie evidence 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 (Z)(1), (3), and (4) of section 3 of this Act.

(2) With respect to any asbestos claim that is pending on the effective date of this section, the plaintiff shall file the written report and supporting test results described in division (A)(1) of this section within [one hundred twenty days] following the effective date of this section. Upon motion and for good cause shown, the court may extend the [one hundred twenty-day] period described in this division.

(3) (a) For any cause of action that arises before the effective date of this section, the provisions set forth in divisions (B), (C), and (D) of section 4 of this Act are to be applied unless the court that has jurisdiction over the case finds both of the following:

(i) A substantive right of a party to the case has been impaired.

(ii) That impairment is otherwise in violation of [insert citation].

(b) If a finding under division (A)(3)(a) of this section is made by the court that has jurisdiction over the case, then the court shall determine whether the plaintiff has failed to provide sufficient evidence to support the plaintiff's cause of action or the right to relief under the law that is in effect prior to the effective date of this section.

(c) If the court that has jurisdiction of the case finds that the plaintiff has failed to provide sufficient evidence to support the plaintiff's cause of action or right to relief under division (A)(3)(b) of this section, the court shall administratively dismiss the plaintiff's claim without prejudice. 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 provides sufficient evidence to support the plaintiff's cause of action or the right to relief under the law that was in effect when the plaintiff's cause of action arose.

(B) If the defendant in an action challenges the adequacy of the prima-facie evidence of the exposed person's physical impairment as provided in division (A)(1) 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 4 of this Act. The court shall resolve the issue of whether the plaintiff has made the prima-facie showing required by division (B), (C), or (D) of section 4 of this Act 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 4 of this Act. 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 division (B), (C), or (D) of section 4 of this Act.

#### Section 6. *[Period of Limitations, Nonmalignant Condition and Future Claims for Asbestos-related Cancer.]*

(A) Notwithstanding any other provision of [state law], with respect to any asbestos 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 has a cause of action for bodily injury pursuant to [insert citation]. An asbestos claim based upon a nonmalignant condition that is filed before the cause of action for bodily injury pursuant to that section arises is preserved for purposes of the period of limitations.

(B) An asbestos claim that arises out of a nonmalignant condition shall be a distinct cause of action from an asbestos claim relating to the same exposed person that arises out of asbestos-related cancer. No damages shall be awarded for fear or risk of cancer in any tort action asserting only an asbestos claim for a nonmalignant condition.

(C) No settlement of an asbestos 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 asbestos-related cancer.

Section 7. *[Tort Actions for Asbestos Claims Brought Against a Premises Owner.]*

(A) The following apply to all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos on the premises owner's property:

(1) A premises owner is not liable for any injury to any individual resulting from asbestos exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property.

(2) If exposure to asbestos 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 asbestos and that products containing asbestos 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 asbestos 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.

(3) (a) A premises owner is presumed to be not liable for any injury to any invitee who was engaged to work with, install, or remove asbestos products 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 prove by a preponderance of the evidence that at the time of the exposure to asbestos that is alleged the premises owner had actual knowledge of the potential dangers of the asbestos products at the time of the alleged exposure that was superior to the knowledge of both the invitee and the invitee's employer.

(b) 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 asbestos 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.

(c) If exposure to asbestos is alleged to have occurred on or 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.

(B) As used in this section:

(1) "Threshold limit values" means that, for the years 1946 through 1971, the concentration of asbestos in a worker's breathing zone did not exceed the following maximum allowable exposure limits for the eight-hour time-weighted average airborne concentration:

- (a) Asbestos: five million particles per cubic foot;
- (b) Cadmium: 0.10 milligrams per cubic meter;
- (c) Chromic acid and chromates (calculated as chromic oxide): 0.10 milligrams per cubic meter;
- (d) Lead: 0.15 milligrams per cubic meter;
- (e) Manganese: 6.0 milligrams per cubic meter;
- (f) Mercury: 0.10 milligrams per cubic meter;

(g) Zinc oxide: 15.0 milligrams per cubic meter;  
(h) Chlorinated diphenyls: 1.0 milligram per cubic meter;  
(i) Chlorinated naphthalenes (trichloronaphthalene): 5.0 milligrams per cubic meter;  
(j) Chlorinated naphthalenes (pentachloronaphthalene): 0.50 milligrams per cubic meter.

(2) “Established safety standard” means that, for the years after 1971, the concentration of asbestos in the breathing zone of a 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 person is required to perform the work on the premises of the other contracting party.

(j) The individual is required to follow the order of work set by the other contracting party.

(k) The individual is required to make oral or written reports of progress to the other contracting party.

(l) The individual is paid for services on a regular basis, including hourly, weekly, or monthly.

(m) The individual’s expenses are paid for by the other contracting party.

(n) The individual’s tools and materials are furnished by the other contracting party.

(o) The individual is provided with the facilities used to perform services.

(p) The individual does not realize a profit or suffer a loss as a result of the services provided.

(q) The individual is not performing services for a number of employers at the same time.

(r) The individual does not make the same services available to the general public.

(s) The other contracting party has a right to discharge the individual.

(t) The individual has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.

Section 8. [*Bankruptcy Proceedings, Workers Compensation, Veterans' Benefits, and Wrongful Death Claims*].

(A) Nothing in sections 4 to 8 of this Act is intended to do, and nothing in any of those sections shall be interpreted to do, either of the following:

(1) Affect the rights of any party in bankruptcy proceedings;

(2) Affect the ability of any person who is able to make a showing that the person satisfies the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim or demand against that trust.

(B) Sections 3 to 8 of this Act shall not affect the scope or operation of any workers' compensation law or veterans' benefit program or the exclusive remedy of subrogation under the provisions of that law or program and shall not authorize any lawsuit that is barred by any provision of any workers' compensation law.

(C) Except as provided in division (D) of section 4 of this Act and in other provisions that relate to the application of that division and the procedures and criteria it contains, nothing in sections 4, 5, 6, and 8 of this Act, is intended, and nothing in any of those sections shall be interpreted, to affect any wrongful death claim, as described in [insert citation].

Section 9. [*Burden of Proof for any Injury or Loss from Exposure to Asbestos as a Result of a Tortious Act.*]

(A) If a plaintiff in a tort action alleges any injury or loss to person resulting from exposure to asbestos as a result of the tortious act of one or more defendants, in order to maintain a cause of action against any of those defendants based on that injury or loss, the plaintiff must prove that the conduct of that particular defendant was a substantial factor in causing the injury or loss on which the cause of action is based.

(B) A plaintiff in a tort action who alleges any injury or loss to person resulting from exposure to asbestos has the burden of proving that the plaintiff was exposed to asbestos that was manufactured, supplied, installed, or used by the defendant in the action and that the plaintiff's exposure to the defendant's asbestos was a substantial factor in causing the plaintiff's injury or loss. In determining whether exposure to a particular defendant's asbestos 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 asbestos;

(2) The proximity of the defendant's asbestos to the plaintiff when the exposure to the defendant's asbestos occurred;

(3) The frequency and length of the plaintiff's exposure to the defendant's asbestos;

(4) Any factors that mitigated or enhanced the plaintiff's exposure to asbestos.

(C) This section applies only to tort actions that allege any injury or loss to person resulting from exposure to asbestos and that are brought on or after the effective date of this section.

Section 10. [*Liability to a Covered Entity in An Asbestos Claim Under the Doctrine of Piercing the Corporate Veil.*]

(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 an asbestos 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 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 asbestos 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 asbestos 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 whose parent corporation is authorized to conduct business in this state.

(6) The person seeking to pierce the corporate veil is a resident of this state.



667 (H) As used in this section, unless the context otherwise requires:  
668 (1) “Affiliate” and “beneficial owner” have the same meanings as in [insert  
669 citation].  
670 (2) “Asbestos” has the same meaning as in section 3 of this Act.  
671 (3) “Asbestos claim” means any claim, wherever or whenever made, for damages,  
672 losses, indemnification, contribution, or other relief arising out of, based on, or in any way  
673 related to asbestos. “Asbestos claim” includes any of the following:  
674 (a) A claim made by or on behalf of any person who has been exposed to  
675 asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury,  
676 including mental or emotional injury, death, or loss to person, risk of disease or other injury,  
677 costs of medical monitoring or surveillance, or any other effects on the person’s health that are  
678 caused by the person’s exposure to asbestos;  
679 (b) A claim for damage or loss to property that is caused by the  
680 installation, presence, or removal of asbestos.  
681 (4) “Corporation” means a corporation for profit, including the following:  
682 (a) A domestic corporation that is organized under the laws of this state;  
683 (b) A foreign corporation that is organized under laws other than the laws  
684 of this state and that has had a certificate of authority to transact business in this state or has done  
685 business in this state.  
686 (5) “Covered entity” means a corporation, limited liability company, limited  
687 partnership, or any other entity organized under the laws of any jurisdiction, domestic or foreign,  
688 in which the shareholders, owners, or members are generally not responsible for the debts and  
689 obligations of the entity. Nothing in this section limits or otherwise affects the liabilities imposed  
690 on a general partner of a limited partnership.  
691 (6) “Holder” means a person who is the holder or beneficial owner of, or  
692 subscriber to, shares or any other ownership interest of a covered entity, a member of a covered  
693 entity, or an affiliate of any person who is the holder or beneficial owner of, or subscriber to,  
694 shares or any other ownership interest of a covered entity.  
695 (7) “Piercing the corporate veil” means any and all common law doctrines by  
696 which a holder may be liable for an obligation or liability of a covered entity on the basis that the  
697 holder controlled the covered entity, the holder is or was the alter ego of the covered entity, or  
698 the covered entity has been used for the purpose of actual or constructive fraud or as a sham to  
699 perpetrate a fraud or any other common law doctrine by which the covered entity is disregarded  
700 for purposes of imposing liability on a holder for the debts or obligations of that covered entity.  
701 (8) “Person” has the same meaning as in [insert citation].  
702  
703 Section 11. [*Severability*.] [Insert severability clause.]  
704  
705 Section 12. [*Repealer*.] [Insert repealer clause.]  
706  
707 Section 13. [*Effective Date*.] [Insert effective date.]

# Banning Alcohol-Without-Liquid Devices

This Act prohibits the sale, purchase, and use of devices that create alcohol vapor from a mixture of alcohol beverage and oxygen.

Submitted as:

Colorado

SB05-34

Status: Enacted into law in 2005.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Ban Alcohol-Without-  
2 Liquid Devices.”

3

4           Section 2. [*Legislative Findings.*]

5           (1)   (a) The [general assembly] hereby finds and declares that:

6                   (i) Alcohol-Without-Liquid (AWOL) devices create alcohol vapor by  
7 pouring alcohol into a diffuser capsule connected to an oxygen pipe;

8                   (ii) AWOL devices enable people to inhale or snort the alcohol vapor  
9 created from certain alcohol beverages through a tube into the nose or mouth rather than drink  
10 the alcohol beverage in its liquid form through the mouth;

11                  (iii) Alcohol vapor ingested from an AWOL device bypasses the stomach  
12 and the filtering capabilities of the liver and is absorbed through blood vessels in the nose or  
13 lungs creating a faster and more intense “high” or intoxicating effect on the brain;

14                  (iv) The popularity of AWOL devices is increasing in the nightclub and  
15 bar businesses throughout the nation; and

16                  (v) AWOL devices are being marketed as a way to become intoxicated  
17 without a hangover and as a “dieter's dream” because there are no calories associated with  
18 inhaling or snorting alcohol vapor.

19           (b) The [general assembly], therefore, determines that:

20                   (i) AWOL devices will substantially increase the economic costs of alcohol  
21 abuse in this state;

22                   (ii) AWOL devices are not conducive to the health, safety, and welfare of  
23 the citizens of this state; and

24                   (iii) The possession, sale, purchase, and use of AWOL devices in this state  
25 should be prohibited.

26           (2) For purposes of this Act, “AWOL device” means a device, machine, apparatus, or  
27 appliance that mixes an alcohol beverage with pure or diluted oxygen to produce an alcohol  
28 vapor that an individual can inhale or snort. “AWOL device” does not include an inhaler,  
29 nebulizer, atomizer, or other device that is designed and intended by the manufacturer to  
30 dispense a prescribed or over-the-counter medication.

31           (3) Except as otherwise provided in subsection (5) of this section, it is unlawful for a  
32 person to possess, purchase, sell, offer to sell, or use an AWOL device in this state. A person  
33 who violates this section shall be punished in accordance with [insert citation].

34           (4) In addition to the penalty imposed by this section, if a person that violates subsection  
35 (3) of this section is a licensee, the state or local licensing authority may suspend or revoke the  
36 license of the licensee in accordance with the provisions of [insert citation].

37 (5) (a) Subsection (3) of this section shall not apply to a hospital, as defined in [insert  
38 citation], that operates primarily for the purpose of conducting scientific research, a state  
39 institution conducting bona fide research, a private college or university, as defined in [insert  
40 citation], conducting bona fide research, or to a pharmaceutical company or biotechnology  
41 company conducting bona fide research and that complies with the provisions of this subsection  
42 (5).

43 (b) A hospital, state institution, private college or university, pharmaceutical  
44 company, or biotechnology company that possesses an AWOL device or that intends to acquire  
45 an AWOL device, shall, by [September 1, 2005], or within [thirty days] prior to the acquisition,  
46 whichever is later, file with the state [department of public health and environment] or its  
47 designee a notice of possession of AWOL device or a notice of acquisition of AWOL device, as  
48 appropriate.

49  
50 Section 3. [*Penalties.*] Any person violating any of the provisions of this Act commits a  
51 [class 2 misdemeanor] and shall be punished as provided in [insert citation].

52  
53 Section 4. [*Severability.*] [Insert severability clause.]

54  
55 Section 5. [*Repealer.*] [Insert repealer clause.]

56  
57 Section 6. [*Effective Date.*] [Insert effective date.]

# Bioscience Authority Statement

In 2004, the Kansas Legislature determined that:

- biosciences develop uses of biochemistry, molecular biology, genetics, biotechnology, bioengineering and life sciences to promote and enhance health care, veterinary medicine, agriculture, forestry, energy, pharmacy, environment and other industries in the state of Kansas;
- high-paying jobs and innovative commercial products ensue from the biosciences, which requires an educated workforce with advanced technical skills;
- the universities, colleges, nonprofit institutions and private enterprises in Kansas would be able to further educate and train scientists, health care professionals and technicians to provide a supportive environment for bioscience research, development, testing and product commercialization activities through increased targeted investments;
- manufacturing, licensing and commercialization of products derived from the biosciences would benefit the state's economy and facilitate the development of the bioscience industry and associated educational institutions in the state of Kansas;
- Kansas needs a mechanism to make the state the most desirable state in which to conduct, facilitate, support, fund and perform bioscience research, development and commercialization; to make Kansas a national leader in bioscience, to create new jobs, foster economic growth, advance scientific knowledge; and to improve the quality of life for the citizens of the state of Kansas; and
- the needs of the citizens of Kansas and the public and private entities engaged in the biosciences would be best served by an independent public authority charged with the mission of facilitating, supporting, funding and performing bioscience projects for the benefit of its citizens to promote the state's research, development and commercialization objectives.

Consequently, Kansas enacted Chapter 112 of 2004 to establish a Bioscience Authority. The purpose of the Authority is to:

- work with state universities to identify and recruit eminent and rising bioscience scholars;
- jointly employ personnel to assist or complement eminent and bioscience scholars; determine types of facilities and research;
- facilitate integrated bioscience research; and
- provide matching funds for federal grants.

The Bioscience Authority will be headquartered in the county with the highest number of bioscience employees associated with bioscience companies. The Authority will continue so long as the Authority has bonds outstanding unless adequate provisions are made for the payment or retirement of the Authority's debts or obligations.

The powers of the Authority include:

- overseeing the commercialization of bioscience intellectual property created by eminent and rising star scholars;
- owning and possessing patents, proprietary technology, and entering into contracts for commercialization of the research, and
- incurring indebtedness and entering into contracts with state development finance authority for bonding to construct state-of-the-art facilities owned by the Authority.

The secretary of revenue, the Authority, and the state board of regents will establish the number of bioscience employees associated with state universities and report annually and determine the taxation base annually for the following 15 years from the effective date of the Act. All of the incremental state taxes generated by the growth of bioscience companies and

research institutions over and above the base taxation year would go into the Fund. The baseline amount of state taxes would go to the State General Fund each year. A Bioscience Development Investment Fund would be used to fund programs and repay bonds.

A Bioscience Development Financing section creates a tax increment financing district for bioscience development. One or more bioscience development projects could occur within an established bioscience development district. The process for establishing the district would follow the tax increment financing statutes. However, no bioscience development district can be established without the approval of the Authority. The Act allows counties to establish bioscience development districts in unincorporated areas. The Act enables issuing special obligation bonds to finance bioscience development projects. The bonds are paid with ad valorem tax increments, private sources, contributions, or other financial assistance from the state and federal government.

In addition, this law creates a Bioscience Development Bond Fund that will be managed by the Authority and not be part of the state treasury. A separate account will be created for each bioscience development district (BDD) and distributions will pay for the bioscience development project costs in a BDD.

The Bioscience Tax Investment Incentive section makes additional cash resources available to start-up companies. The bill creates a Net Operating Loss (NOL) Transfer Program. The Program allows the Bioscience Authority to pay up to 50 percent of a bioscience company's state NOL during the claimed taxable year. The Program would be managed by the state department of revenue and would be capped at \$1.0 million for any one fiscal year. Bioscience R & D Voucher Program Act would establish the Bioscience R & D Fund in the state treasury. The Fund could receive state appropriations, gifts, grants, federal funds, revolving funds, and any other public or private funds. The state treasurer would disperse funds with the consent of the Bioscience Authority Chairperson. The Program requires an existing bioscience company apply to the Authority for a research voucher. After receiving a voucher, the company would then locate a researcher at a state university or college to conduct a directed research project. At least 51 percent of voucher award funds would be expended with the university in the state under contract and could not exceed 50 percent of the research cost.

The maximum voucher funds awarded could not exceed \$1.0 million, each year for two years, and not to exceed 50 percent of the research costs. The company would be required to provide a one-to-one dollar match of the project award for each year of the project. A Bioscience Research and Development Voucher Federal Fund would be established to receive any federal funding.

The Bioscience Research Matching Funds section establishes the Bioscience Research Matching Fund to be administered by the Authority. Recipients must be a university in the state and universities are encouraged to jointly apply for funds. The funds would be used to promote bioscience research and to recruit, employ, fund, and endow bioscience faculty, research positions and scientists at universities in the state. Application for the matching funds would be made to the Authority.

Under this law:

“Bioscience” means the use of compositions, methods and organisms in cellular and molecular research, development and manufacturing processes for such diverse areas as pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical instruments, biochemistry, microbiology, veterinary medicine, plant biology, agriculture, industrial, environmental, and homeland security applications of bioscience and future developments in the biosciences. Bioscience includes biotechnology and life sciences.

“Biotechnology” means those fields focusing on technological developments in such areas as molecular biology, genetic engineering, genomics, proteomics, physiomics,

nanotechnology, biodefense, biocomputing and bioinformatics and future developments associated with biotechnology.

“Bioscience company” or “bioscience companies” means a corporation, limited liability company, S corporation, partnership, registered limited liability partnership, foundation, association, nonprofit entity, sole proprietorship, business trust, person, group or other entity that is engaged in the business of bioscience in the state and has business operations in the state, including, without limitation, research, development or production directed towards developing or providing bioscience products or processes for specific commercial or public purposes and are identified by the following NAICS codes: 325411, 325412, 325413, 325414, 325193, 325199, 325311, 32532, 334516, 339111, 339112, 339113, 334510, 334517, 339115, 621511, 621512, 54171, 54138, 54194.

“Bioscience research” means any original investigation for the advancement of scientific or technological knowledge of bioscience and any activity that seeks to utilize, synthesize, or apply existing knowledge, information or resources to the resolution of a specific problem, question or issue of bioscience.

“Eminent scholar” means world-class, distinguished and established investigators recognized nationally for their research, achievements and ability to garner significant federal funding on an annual basis. Eminent scholars are recognized for their scientific knowledge and entrepreneurial spirit to enhance the innovative research that leads to economic gains. Eminent scholars are either members of or likely candidates for the National Academy of Sciences or other prominent national academic science organizations.

“Life sciences” means, without limitation, the areas of medical sciences, pharmaceutical sciences, biological sciences, zoology, botany, horticulture, ecology, toxicology, organic chemistry, physical chemistry and physiology and any future advances associated with the life sciences.

“NAICS” means the North American Industry Classification System.

“Rising star scholar” means up-and-coming distinguished investigators growing in their national reputations in their fields, who are active and demonstrate leadership in their associated professional societies, and who attract significant federal research grant support. Rising star scholars would be likely candidates for the National Academy of Sciences or other prominent national academic science organizations in the future.

Submitted as:

Kansas

Chapter 112 of 2004

Status: Enacted into law in 2004.

# Cell Phone Recycling

This Act makes it unlawful to sell, on and after July 1, 2006, a cell phone in the state to a consumer unless the retailer of that cell phone has in place, by July 1, 2006, a system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal. The law requires the state department of toxic substances control on July 1, 2007, and each July 1 thereafter, to post on its Web site an estimated state recycling rate for cell phones. This Act also requires state agencies which purchase or lease cell phones to certify that the agencies' vendors are complying with the Act.

Submitted as:

California

Chapter 891 of 2004

Status: Enacted into law in 2004.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “The Cell Phone Recycling Act.”

2

3           Section 2. [*Legislative Findings.*] The [Legislature] finds and declares all of the  
4 following:

5           (a) The purpose of this Act is to enact a comprehensive and innovative system for the  
6 reuse, recycling, and proper and legal disposal of used cell phones.

7           (b) It is the further purpose of this Act to enact a law that establishes a program that is  
8 convenient for consumers and the public to return, recycle, and ensure the safe and  
9 environmentally sound disposal of used cell phones, and providing a system that does not charge  
10 when a cell phone is returned.

11           (c) It is the intent of the [Legislature] that the cost associated with the handling,  
12 recycling, and disposal of used cell phones be the responsibility of the producers and consumers  
13 of cell phones, and not local government or their service providers, state government, or  
14 taxpayers.

15           (d) In order to reduce the likelihood of illegal disposal of hazardous materials, it is the  
16 intent of this Act to ensure that all costs associated with the proper management of used cell  
17 phones is internalized by the producers and consumers of cell phones at or before the point of  
18 purchase, and not at the point of discard.

19           (e) Manufacturers and retailers of cell phones and cell phone service providers, in  
20 working to achieve the goals and objectives of this Act, should have the flexibility to partner  
21 with each other and with those private and nonprofit business enterprises that currently provide  
22 collection and processing services to develop and promote a safe and effective used cell phone  
23 recycling system for this state.

24           (f) The producers of cell phones should reduce and, to the extent feasible, ultimately  
25 phase out the use of hazardous materials in cell phones.

26           (g) Cell phones, to the greatest extent feasible, should be designed for extended life,  
27 repair, and reuse.

28           (h) The purpose of this Act is to provide for the safe, cost-free, and convenient  
29 collection, reuse, and recycling of [100 percent] of the used cell phones discarded or offered for  
30 recycling in the state.

(i) In establishing a cost effective system for the recovery, reuse, recycling and proper disposal of used cell phones, it is the intent of the [Legislature] to encourage manufacturers, retailers and service providers to build on the retailer take-back systems initiated recently by some cell phone service providers.

(j) An estimated [5 percent] of obsolete cell phones are currently being recycled through a mechanism, whereby private sector recyclers provide retailers with a postage paid box for mailing returned cell phones to the recycler at no cost to the retailers. In some instances, the scrap value of these used phones is sufficient for the recycler to either pay the retailer or make a financial contribution on behalf of the retailer to a nonprofit charity. It is the intent of the [Legislature] that this model system be substantially expanded as a result of the enactment of this Act.

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

(a) “Cell phone” means a wireless telephone device that is designed to send or receive transmissions through a cellular radiotelephone service, as defined in Section 22.99 of Title 47 of the Code of Federal Regulations. A cell phone includes the rechargeable battery that may be connected to that cell phone. A cell phone does not include a wireless telephone device that is integrated into the electrical architecture of a motor vehicle.

(b) “Consumer” means a purchaser or owner of a cell phone. “Consumer” also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(c) “Department” means the state [Department of Toxic Substances Control].

(d) “Retailer” means a person who sells a cell phone in the state to a consumer, including a manufacturer of a cell phone who sells that cell phone directly to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer.

(e) (1) “Sell” or “sale” means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (d), “distributor” means a person who sells a cell phone to a retailer.

(f) “Used cell phone” means a cell phone that has been previously used and is made available, by a consumer, for reuse, recycling, or proper disposal.

### Section 4. *[System for Recycling and Disposing Cell Phones.]*

(a) On and after [July 1, 2006], every retailer of cell phones sold in this state shall have in place a system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal.

(b) A system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal shall, at a minimum, include all of the following elements:

(1) The take-back from the consumer of a used cell phone that the retailer sold or previously sold to the consumer, at no cost to that consumer. The retailer may require proof of purchase;

(2) The take-back of a used cell phone from a consumer who is purchasing a new cell phone from that retailer, at no cost to that consumer;



79 (3) If the retailer delivers a cell phone directly to a consumer in this state, the  
80 system provides the consumer, at the time of delivery, with a mechanism for the return of used  
81 cell phones for reuse, recycling, or proper disposal, at no cost to the consumer.

82 (4) Make information available to consumers about cell phone recycling  
83 opportunities provided by the retailer and encourage consumers to utilize those opportunities.  
84 This information may include, but is not limited to, one or more of the following:

85 (A) Signage that is prominently displayed and easily visible to the  
86 consumer.

87 (B) Written materials provided to the consumer at the time of purchase or  
88 delivery, or both.

89 (C) Reference to the cell phone recycling opportunity in retailer  
90 advertising or other promotional materials, or both.

91 (D) Direct communications with the consumer at the time of purchase.

92 (c) Paragraph (4) of subdivision (b) does not apply to a retailer that only sells prepaid  
93 cell phones and does not provide the ability for a consumer to sign a contract for cell phone  
94 service.

95 (d) On and after [July 1, 2006] it is unlawful to sell a cell phone to a consumer in this  
96 state unless the retailer of that cell phone complies with this Act.

97  
98 Section 5. [*Statewide Recycling Goals.*] On [July 1, 2007], and each [July 1], thereafter,  
99 the [department] shall post on its Web site an estimated state recycling rate for cell phones, the  
100 numerator of which shall be the estimated number of cell phones returned for recycling in this  
101 state during the previous calendar year, and the denominator of which is the number of cell  
102 phones estimated to be sold in this state during the previous calendar year.

103  
104 Section 6. [*State Agency Procurement of Cell Phones.*]

105 (a) A state agency that purchases or leases cell phones shall require each prospective  
106 bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors  
107 for the procurement, have complied with this chapter and any regulations adopted pursuant to  
108 this Act, or to demonstrate that this Act is inapplicable to all lines of business engaged in by the  
109 bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

110 (b) Failure to provide certification pursuant to this section shall render the prospective  
111 bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid  
112 on the procurement of cell phones.

113 (c) The bid solicitation documents shall specify that the prospective bidder is required to  
114 cooperate fully in providing reasonable access to its records and documents that evidence  
115 compliance with this Act.

116 (d) Any person awarded a contract by a state agency that is found to be in violation of  
117 this section is subject to the following sanctions:

118 (1) The contract shall be voided by the state agency to which the equipment,  
119 materials, or supplies were provided.

120 (2) The contractor is ineligible to bid on any state contract for a period of [three  
121 years].

122 (3) If the [Attorney General] establishes in the name of the people of this state that  
123 any money, property, or benefit was obtained by a contractor as a result of violating this section,  
124 a court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained  
125 money, property, or benefit in the interest of justice.

128           Section 7. [*Severability.*] [Insert severability clause.]  
129  
130           Section 8. [*Repealer.*] [Insert repealer clause.]  
131  
132           Section 9. [*Effective Date.*] [Insert effective date.]

# Certified Beef Program

This Act establishes a program and a fund to enable cattle raised and slaughtered in the state to qualify for the official state seal.

Submitted as:

South Dakota

SB 220 (enrolled version)

Status: Enacted into law in 2005.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Create a Certified Beef  
2 Program.”  
3

4           Section 2. [*Program Eligibility.*] Only beef products, whether live animals or finished  
5 consumer products, which have been produced by registered participants in full compliance with  
6 all the applicable requirements of this Act may be certified, identified, classified, packaged,  
7 labeled, or otherwise designated for sale inside or outside this state as [insert state] Certified  
8 Beef.  
9

10          Section 3. [*Protocols, Guidelines, and Program Requirements.*] The [secretary of the  
11 department of agriculture] may establish quality protocols, guidelines, program requirements,  
12 license fees, and license requirements and operate, supervise, and control this state’s Certified  
13 Beef Program.  
14

15          Section 4. [*Use of Certification Mark, Trademark, Service Mark, Copyright, or Label by*  
16 *the Certified Beef Program.*] The use of any certification mark, trademark, service mark,  
17 copyright, or label of the [state] Certified Beef Program shall be in accordance with the terms  
18 and conditions of a valid license issued by the [secretary]. A violation of this section is a [Class 6  
19 felony].  
20

21          Section 5. [*Exemptions to Public Record of Data Gathered Pursuant to Act.*] Any data or  
22 financial information made or received by the [secretary of agriculture] pursuant to this Act is  
23 not public record and is exempt from the provisions of [insert citation]. However, the [secretary]  
24 may provide information gathered pursuant to this Act to any government agency if the  
25 information is needed for a government sponsored animal identification tracking program or for  
26 any public health or safety reason.  
27

28          Section 6. [*Rules Pertaining to Certified Beef Program.*] The [secretary of agriculture]  
29 may by rule promulgated pursuant to [insert citation] prescribe the following:

30           (1) Qualifications or conditions for using any intellectual property right, mark, or label  
31 of the [state] Certified Beef Program;

32           (2) Reasonable fees for licenses and services of the Program, such fees to be reasonably  
33 commensurate with the cost of developing, administering, and marketing the Program;

34           (3) License application procedures, the terms and conditions of any license, and any  
35 official form the [secretary] deems necessary and appropriate;

36           (4) Methods and means of conducting inspections, keeping records, and otherwise  
37 insuring program compliance by participants in the Program; and

38 (5) Provisions to maintain the confidentiality of business information provided to the  
39 [secretary] by participants in the Program.

40  
41 Section 7. [*Enforcing this Act.*] In addition to any other remedy provided by law, the  
42 [secretary] may:

43 (1) Proceed by suit in any court of competent jurisdiction to enforce the terms and  
44 provisions of this Act and of any license issued pursuant to this Act;

45 (2) Seek injunctive relief as a part of any such suit; and

46 (3) Revoke a license for cause pursuant to [insert citation].  
47

48 Section 8. [*Consulting with other State Agencies to Administer This State's Certified Beef*  
49 *Program.*] The [secretary of agriculture] and the [secretary of tourism and state development]  
50 shall consult and cooperate, and shall exchange such services, personnel, and information as are  
51 necessary and appropriate in order to develop, administer, and market the [state] Certified Beef  
52 Program.  
53

54 Section 9. [*Certified Beef Fund.*] There is hereby created within the [state treasury] the  
55 [state] Certified Beef Fund, into which all license fees, inspection fees, and other fees or  
56 revenues paid to the state from the operation of the [state] Certified Beef Program shall be  
57 deposited. All money in the fund created by this section shall be used for the purpose of  
58 developing, administering, and marketing the [state] Certified Beef Program. Expenditures from  
59 the fund shall be appropriated through the normal budget process.  
60

61 Section 10. [*Severability.*] [Insert severability clause.]  
62

63 Section 11. [*Repealer.*] [Insert repealer clause.]  
64

65 Section 12. [*Effective Date.*] [Insert effective date.]

# Civil No-Contact Orders for the Protection of Employees from Workplace Violence

This Act creates a new procedure to allow an employer to obtain a civil no-contact order against a person who has harmed, threatened to harm, or stalked an employee of the employer. Upon a finding that the employee has been the victim of unlawful conduct, the court is authorized to issue temporary or permanent orders restraining the conduct of the perpetrator. “Unlawful conduct” is defined to include bodily injury, attempted bodily injury, stalking and communicating a threat. Permissible remedies include ordering the perpetrator not to:

- Visit, assault, molest or interfere with the employee or the employer at the workplace;
- Stalk the employee at the workplace;
- Harass, abuse or injure the employee or employer at the workplace; or
- Contact the employee or employer by any means at the workplace.

Temporary orders may be granted for up to 10 days and may be issued ex parte and after normal business hours under certain circumstances. Permanent orders may be granted for up to one year. All orders may be renewed.

Submitted as:

North Carolina

Session Law 2004-165

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 Civil No-Contact  
2 Orders for the Protection of Employees from Workplace Violence.”

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

5           (a) Civil no-contact order. - An order granted under this Act, which includes a remedy  
6 authorized by section 6 of this Act.

7           (b) Employer. - Any person or entity that employs one or more employees. Employer also  
8 includes [this State] and its political subdivisions.

9           (c) Unlawful conduct. - Unlawful conduct means the commission of one or more of the  
10 following acts upon an employee, but does not include acts of self-defense or defense of others:

11               (1) Attempting to cause bodily injury or intentionally causing bodily injury.

12               (2) Willfully, and on more than one occasion, following, being in the presence of,  
13 or otherwise harassing, as defined in [insert citation], without legal purpose and with the intent to  
14 place the employee in reasonable fear for the employee’s safety.

15               (3) Willfully threatening, orally, in writing, or by any other means, to physically  
16 injure the employee in a manner and under circumstances that would cause a reasonable person  
17 to believe that the threat is likely to be carried out and that actually causes the employee to  
18 believe that the threat will be carried out.

20 Section 3. [*Civil No-Contact Orders; Persons Protected.*] An action for a civil no-contact  
21 order may be filed as a civil action in [district court] by an employer on behalf of an employee  
22 who has suffered unlawful conduct from any individual that can reasonably be construed to be  
23 carried out, or to have been carried out, at the employee's workplace. The employee that is the  
24 subject of unlawful conduct shall be consulted prior to seeking an injunction under this Act in  
25 order to determine whether any safety concerns exist in relation to the employee's participation  
26 in the process. Employees who are targets of unlawful conduct who are unwilling to participate  
27 in the process under this Act shall not face disciplinary action based on their level of  
28 participation or cooperation.

29  
30 Section 4. [*Commencement of Action; Venue.*]

31 (a) An action for a civil no-contact order is commenced by filing a verified complaint for  
32 a civil no-contact order in any [civil district court] or by filing a motion in any existing civil  
33 action.

34 (b) A complaint or motion for a civil no-contact order shall be filed in the county where  
35 the unlawful conduct took place.

36  
37 Section 5. [*Process for Action for No-contact Order.*]

38 (a) Any action for a civil no-contact order requires that a separate summons be issued and  
39 served. The summons issued pursuant to this Act shall require the respondent to answer within  
40 [10 days] of the date of service. Attachments to the summons shall include the verified complaint  
41 for the civil no-contact order and any temporary civil no-contact order that has been issued and  
42 the notice of hearing on the temporary civil no-contact order.

43 (b) Service of the summons and attachments shall be by the sheriff by personal delivery  
44 in accordance with [insert citation], and if the respondent cannot with due diligence be served by  
45 the sheriff by personal delivery, the respondent may be served by publication by the complainant  
46 in accordance with [insert citation].

47 (c) The court may enter a civil no-contact order by default for the remedy sought in the  
48 complaint if the respondent has been served in accordance with this section and fails to answer as  
49 directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties  
50 or set by the court.

51  
52 Section 6. [*Civil No-Contact Order; Remedy.*]

53 (a) Upon a finding that the employee has suffered unlawful conduct committed by the  
54 respondent, the court may issue a temporary or permanent civil no-contact order. In determining  
55 whether or not to issue a civil no-contact order, the court shall not require physical injury to the  
56 employee or injury to the employer's property.

57 (b) The court may grant one or more of the following forms of relief in its orders under  
58 this Act:

59 (1) Order the respondent not to visit, assault, molest, or otherwise interfere with  
60 the employer or the employer's employee at the employer's workplace, or otherwise interfere  
61 with the employer's operations.

62 (2) Order the respondent to cease stalking the employer's employee at the  
63 employer's workplace.

64 (3) Order the respondent to cease harassment of the employer or the employer's  
65 employee at the employer's workplace.

66 (4) Order the respondent not to abuse or injure the employer, including the  
67 employer's property, or the employer's employee at the employer's workplace.

(5) Order the respondent not to contact by telephone, written communication, or electronic means the employer or the employer's employee at the employer's workplace.

(6) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: "A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment."

Section 7. [*Temporary Civil No-Contact Order; Court Holidays and Evenings.*]

(a) A temporary civil no-contact order may be granted ex parte, without written or oral notice to the respondent, only if both of the following are shown:

(1) It clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the complainant, or the complainant's employee before the respondent can be heard in opposition.

(2) Either one of the following:

I. The complainant certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.

II. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would like occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

(b) Every temporary civil no-contact order granted without notice shall:

(1) Be endorsed with the date and hour of issuance.

(2) Be filed immediately in the clerk's office and entered of record.

(3) Define the injury, state why it is irreparable and why the order was granted without notice.

(4) Expire by its terms within such time after entry, not to exceed [10 days].

(5) Give notice of the date of hearing on the temporary order as provided in section 9(a) of this Act.

(c) If the respondent appears in court for the hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of section 8 of this Act have been met, the court may issue a permanent order.

(d) When the court is not in session, the complainant may file a complaint for a temporary order before any judge or magistrate designated to grant relief under this Act. If the judge or [magistrate] finds that there is an immediate and present danger of abuse against the complainant or employee of the complainant and that the complainant has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order. The [chief district court judge] may designate for each county at least one judge or magistrate to be reasonably available to issue temporary civil no-contact orders when the court is not in session.

Section 8. [*Permanent Civil No-Contact Order.*] Upon a finding that the employee has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent.

Section 9. [*Duration; Extension of Orders.*]

116 (a) A temporary civil no-contact order shall be effective for not more than [10 days] as  
117 the court fixes, unless within the time so fixed the temporary civil no-contact order, for good  
118 cause shown, is extended for a like period or a longer period if the respondent consents. The  
119 reasons for the extension shall be stated in the temporary order. In case a temporary civil no-  
120 contact order is granted without notice and a motion for a permanent civil no-contact order is  
121 made, it shall be set down for hearing at the earliest possible time and takes precedence over all  
122 matters except older matters of the same character. When the motion for a permanent civil no-  
123 contact order comes on for hearing, the complainant may proceed with a motion for a permanent  
124 civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the  
125 temporary civil no-contact order. On [two days'] notice to the complainant or on such shorter  
126 notice to that party as the judge may prescribe, the respondent may appear and move its  
127 dissolution or modification. In that event the judge shall proceed to hear and determine such  
128 motion as expeditiously as the ends of justice require.

129 (b) A permanent civil no-contact order shall be effective for a fixed period of time not to  
130 exceed [one year].

131 (c) Any temporary or permanent order may be extended one or more times, as required,  
132 provided that the requirements of section 7 or section 8 of this Act, as appropriate, are satisfied.  
133 The court may renew a temporary or permanent order, including an order that previously has  
134 been renewed, upon a motion by the complainant filed before the expiration of the current order.  
135 The court may renew the order for good cause. The commission of an act of unlawful conduct by  
136 the respondent after entry of the current order is not required for an order to be renewed. If the  
137 motion for extension is uncontested and the complainant seeks no modification of the order, the  
138 order may be extended if the complainant's motion or affidavit states that there has been no  
139 material change in relevant circumstances since entry of the order and states the reason for the  
140 requested extension. Extensions may be granted only in open court and not under the provisions  
141 of section 7(d) of this Act.

142 (d) Any civil no-contact order expiring on a court holiday shall expire at the close of the  
143 [next court business day].

#### 144 145 Section 10. *[Notice of Orders.]*

146 (a) The clerk of court shall deliver on the same day that a civil no-contact order is issued  
147 a certified copy of that order to the sheriff.

148 (b) Unless the respondent was present in court when the order was issued, the sheriff  
149 shall serve that order upon the respondent and file proof of service in the manner provided for  
150 service of process in civil proceedings. If process has not yet been served upon the respondent, it  
151 shall be served with the order.

152 (c) A copy of the order shall be issued promptly to and retained by the police department  
153 of the municipality of the employer's workplace. If the employer's workplace is not located in a  
154 municipality or in a municipality with no police department, copies shall be issued promptly to  
155 and retained by the sheriff and the county police department, if any, of the county in which the  
156 employer's workplace is located.

157 (d) Any order extending, modifying, or revoking any civil no-contact order shall be  
158 recorded, issued, and served in accordance with the provisions of this Act.

#### 159 160 Section 11. *[Violation of Valid Order.]* A violation of an order entered pursuant to this 161 Act is punishable as contempt of court.

#### 162 163 Section 12. *[Employment Discrimination Unlawful.]*



164 (a) No employer shall discharge, demote, deny a promotion, or discipline an employee  
165 because the employee took reasonable time off from work to obtain or attempt to obtain relief  
166 under this Act. An employee who is absent from the workplace shall follow the employer's usual  
167 time-off policy or procedure, including advance notice to the employer, when required by the  
168 employer's usual procedures, unless an emergency prevents the employee from doing so. An  
169 employer may require documentation of any emergency that prevented the employee from  
170 complying in advance with the employer's usual time-off policy or procedure, or any other  
171 information available to the employee which supports the employee's reason for being absent  
172 from the workplace.

173 (b) The [Commissioner of Labor] shall enforce the provisions of this section, including  
174 the rules and regulations issued pursuant to the Act.  
175

176 Section 13. [*Scope of Article; Other Remedies Available.*] This Act does not expand,  
177 diminish, alter, or modify the duty of any employer to provide a safe workplace for employees  
178 and other persons. This Act does not limit the ability of an employer, employee, or victim to  
179 pursue any other civil or criminal remedy provided by law. This Act does not apply in  
180 circumstances where an employee or representative of employees is engaged in union  
181 organizing, union activity, a labor dispute, or any activity or action protected by the National  
182 Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Act is intended to change the  
183 National Labor Relations Act's preemptive regulation of legally protected activities, nor to  
184 change the right of the State and its courts to regulate activities not protected by the National  
185 Labor Relations Act.  
186

187 Section 14. [*Severability.*] [Insert severability clause.]  
188

189 Section 15. [*Repealer.*] [Insert repealer clause.]  
190

191 Section 16. [*Effective Date.*] [Insert effective date.]

# Civil No-Contact Orders for the Protection of People Who are Victims of Stalking or Nonconsensual Sexual Conduct

This Act authorizes courts to issue protective orders, similar to domestic violence orders, in situations where someone has been a victim of stalking or nonconsensual sexual conduct committed by a person with whom the victim is not in a domestic relationship. Upon a finding that the victim has suffered unlawful conduct, the court is authorized to issue temporary or permanent orders restraining the conduct of the perpetrator. “Unlawful conduct” is defined to include nonconsensual sexual conduct and stalking. “Nonconsensual sexual conduct” is defined as any intentional or knowing touching, fondling or sexual penetration by a person, directly or through clothing, of the sexual organs of another for the purpose of sexual gratification or arousal where consent is not freely given. A “victim” is defined as a person against whom unlawful conduct is committed other than in a situation where an action could be brought under the domestic violence laws.

Under this Act, the victim, or a person acting on the behalf of an incompetent victim, may bring an action. The Act allows an action under this law to be brought without paying filing fees to the clerk of court or service fees to the sheriff. If the court finds that the victim suffered unlawful conduct, the court may order the perpetrator not to visit, assault, molest or otherwise interfere with the victim, and order the perpetrator to cease stalking, harassing, abusing, injuring, or contacting the victim by telephone, written communication or electronic means. The court may also order the perpetrator to stay away from the victim including prohibitions against entering the victim’s residence, school, place of employment or other specified places at times when the victim is present. Temporary orders may be granted for up to 10 days and may be issued ex parte and after normal business hours under certain circumstances. Permanent orders may be granted for up to one year. All orders may be renewed. Violations of an order are punished as contempt of court.

Submitted as:  
North Carolina  
Session Law 2004-194  
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 Civil No-Contact  
2 Orders for the Protection of People Who are Victims of Unlawful Conduct.”

3  
4           Section 2. [*Definitions.*]

5           (a) As used in this Act:

6                   (1) Abuse. - To physically or mentally harm, harass, intimidate, or interfere with  
7 the personal liberty of another.

8                   (2) Civil no-contact order. - An order granted under this Act which includes a  
9 remedy authorized by section 6 of this Act.

10                   (3) Nonconsensual. - A lack of freely given consent.

(4) Sexual conduct. - Any intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. - The penetration, however slight, by any object into the genital or anal opening of another person's body. Evidence of emission of semen is not required to prove sexual penetration.

(6) Stalking. - Following on more than one occasion or otherwise harassing, as defined in [insert citation], another person without legal purpose with the intent to do any of the following:

I. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

II. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress.

(7) Unlawful conduct. - The commission of one or more of the following acts upon a person, but does not include acts of self-defense or defense of others:

I. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.

II. Stalking.

(8) Victim. - A person against whom an act of unlawful conduct has been committed by another person not involved in a personal relationship with the person as defined in [insert citation].

### Section 3. [*Commencement of Action; Filing Fees not Permitted; Assistance.*]

(a) An action is commenced under this Act by filing a verified complaint for a civil no-contact order in [district court] or by filing a motion in any existing civil action, by any of the following:

(1) A person who is a victim of unlawful conduct that occurs in this State.

(2) A competent adult who resides in this State on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct that occurs in this State.

(b) No court costs shall be assessed for the filing or service of the complaint, or the service of any orders.

(c) An action commenced under this Act may be filed in any county permitted under [insert citation] or where the unlawful conduct took place.

(d) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

### Section 4. [*Process for Action for No-Contact Order.*]

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Act shall require the respondent to answer within [10 days] of the date of service. Attachments to the summons shall include the complaint for the civil no-contact order, and any temporary civil no-contact order that has been issued and the notice of hearing on the temporary civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with [insert citation], and if the respondent cannot with due diligence be served by

the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with [insert citation].

(c) The court may enter a civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

Section 5. [*Hearsay Exception.*] In proceedings for an order or prosecutions for violation of an order under this Act, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution under [insert citation.]

Section 6. [*Civil No-Contact Order; Remedy.*]

(a) Upon a finding that the victim has suffered unlawful conduct committed by the respondent, the court may issue temporary or permanent civil no-contact orders as authorized in this Act. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the victim.

(b) The court may grant one or more of the following forms of relief in its orders under this Act:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent to cease stalking the victim, including at the victim's workplace.

(3) Order the respondent to cease harassment of the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: "A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment."

Section 7. [*Temporary Civil No-Contact Order; Court Holidays and Evenings.*]

(a) A temporary civil no-contact order may be granted ex parte, without evidence of service of process or notice, only if both of the following are shown:

(1) It clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the victim before the respondent can be heard in opposition.

(2) Either one of the following:

I. The complainant certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.

II. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

(b) Every temporary civil no-contact order granted without notice shall:

(1) Be endorsed with the date and hour of issuance.

- 109 (2) Be filed immediately in the clerk's office and entered of record.  
110 (3) Define the injury, state why it is irreparable and why the order was granted  
111 without notice.  
112 (4) Expire by its terms within such time after entry, not to exceed [10 days].  
113 (5) Give notice of the date of hearing on the temporary order as provided in  
114 section 9 (a) of this Act.

115 (c) If the respondent appears in court for a hearing on a temporary order, the respondent  
116 may elect to file a general appearance and testify. Any resulting order may be a temporary order,  
117 governed by this section. Notwithstanding the requirements of this section, if all requirements of  
118 [insert citation] have been met, the court may issue a permanent order.

119 (d) When the court is not in session, the complainant may file for a temporary order  
120 before any judge or magistrate designated to grant relief under this Act. If the judge or magistrate  
121 finds that there is an immediate and present danger of harm to the victim and that the  
122 requirements of subsection (a) of this section have been met, the judge or magistrate may issue a  
123 temporary civil no-contact order. The [chief district court judge] may designate for each [county]  
124 at least one judge or magistrate to be reasonably available to issue temporary civil no-contact  
125 orders when the court is not in session.  
126

127 Section 8. [*Permanent Civil No-Contact Order.*] Upon a finding that the victim has  
128 suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may  
129 issue if the court additionally finds that process was properly served on the respondent, the  
130 respondent has answered the complaint and notice of hearing was given, or the respondent is in  
131 default. No permanent civil no-contact order shall be issued without notice to the respondent.  
132

133 Section 9. [*Duration; Extension of Orders.*]

134 (a) A temporary civil no-contact order shall be effective for not more than [10 days] as  
135 the court fixes, unless within the time so fixed the temporary civil no-contact order, for good  
136 cause shown, is extended for a like period or a longer period if the respondent consents. The  
137 reasons for the extension shall be stated in the temporary order. In case a temporary civil no-  
138 contact order is granted without notice and a motion for a permanent civil no-contact order is  
139 made, it shall be set down for hearing at the earliest possible time and takes precedence over all  
140 matters except older matters of the same character. When the motion for a permanent civil no-  
141 contact order comes on for hearing, the complainant may proceed with a motion for a permanent  
142 civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the  
143 temporary civil no-contact order. On [two days'] notice to the complainant or on such shorter  
144 notice to that party as the judge may prescribe, the respondent may appear and move its  
145 dissolution or modification. In that event the judge shall proceed to hear and determine such  
146 motion as expeditiously as the ends of justice require.

147 (b) A permanent civil no-contact order shall be effective for a fixed period of time not to  
148 exceed [one year].

149 (c) Any order may be extended one or more times, as required, provided that the  
150 requirements of section 7 or section 8 of this Act, as appropriate, are satisfied. The court may  
151 renew an order, including an order that previously has been renewed, upon a motion by the  
152 complainant filed before the expiration of the current order. The court may renew the order for  
153 good cause. The commission of an act of unlawful conduct by the respondent after entry of the  
154 current order is not required for an order to be renewed. If the motion for extension is  
155 uncontested and the complainant seeks no modification of the order, the order may be extended  
156 if the complainant's motion or affidavit states that there has been no material change in relevant

157 circumstances since entry of the order and states the reason for the requested extension.  
158 Extensions may be granted only in open court and not under the provisions of [insert citation].

159 (d) Any civil no-contact order expiring on a day the court is not open for business shall  
160 expire at the close of the next court business day.

161  
162 Section 10. [*Notice of Orders.*]

163 (a) The clerk of court shall deliver on the same day that a civil no-contact order is issued,  
164 a certified copy of that order to the sheriff.

165 (b) Unless the respondent was present in court when the order was issued, the sheriff  
166 shall serve the order on the respondent and file proof of service in the manner provided for  
167 service of process in civil proceedings. If the summons has not yet been served upon the  
168 respondent, it shall be served with the order.

169 (c) A copy of the order shall be issued promptly to and retained by the police department  
170 of the municipality of the victim's residence. If the victim's residence is not located in a  
171 municipality or in a municipality with no police department, copies shall be issued promptly to  
172 and retained by the sheriff and the county police department, if any, of the county in which the  
173 victim's residence is located.

174 (d) Any order extending, modifying, or revoking any civil no-contact order shall be  
175 promptly delivered to the sheriff by the clerk and served by the sheriff in accordance with the  
176 provisions of this section.

177  
178 Section 11. [*Violation.*] A knowing violation of an order entered pursuant to this Act is  
179 punishable as contempt of court.

180  
181 Section 12. [*Remedies not Exclusive.*] The remedies provided by this Act are not  
182 exclusive but are additional to other remedies provided under law.

183  
184 Section 13. [*Severability.*] [Insert severability clause.]

185  
186 Section 14. [*Repealer.*] [Insert repealer clause.]

187  
188 Section 15. [*Effective Date.*] [Insert effective date.]

# Computer Security

This Act requires notices prior to certain software or programs being loaded onto certain computers and requires certain functions be available in certain software. The Act seems targeted toward prohibiting “hijacking” computers by which malicious software loads onto a user’s personal computer and forces the user’s browser to go to a specific Web site. The Act also seems to address a practice whereby malicious software continually reloads on a personal computer despite a user’s attempts to delete or disable such software.

Submitted as:

Georgia

SB 127 (Enrolled version)

Status: Enacted into law in 2005.

## Suggested State Legislation

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

2

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

4           (1) “Computer” means an electronic, magnetic, optical, electrochemical, or other high  
5 speed data processing device performing logical, arithmetic, or storage functions, and includes  
6 any data storage facility or communications facility directly related to or operating in  
7 conjunction with such device, but such term does not include an automated typewriter or  
8 typesetter, a portable hand-held calculator, or other similar device.

9           (2) “Disable” means, with respect to an information collection program, to permanently  
10 prevent such program from executing any of the functions described in paragraph (3) of this Act  
11 that such program is otherwise capable of executing by removing, deleting, or disabling the  
12 program unless the owner of a protected computer takes a subsequent affirmative action to  
13 enable the execution of such functions.

14           (3) “Information collection program” means computer software that:

15               (A) Collects personally identifiable information and sends such information to a  
16 person other than the owner or authorized user of the computer or uses such information to  
17 deliver advertising to or display advertising on the computer; or

18               (B) Collects information regarding the web pages accessed using the computer  
19 and uses such information to deliver advertising to or display advertising on the computer.

20           (4) “Internet” means collectively the myriad of computer and telecommunications  
21 facilities, including equipment and operating software, which comprise the interconnected world-  
22 wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or  
23 any predecessor or successor protocols to such protocol, to communicate information of all kinds  
24 by wire or radio.

25           (5) “Personally identifiable information” means the following information, to the extent  
26 only that such information allows a living individual to be identified from that information:

27               (A) First and last name of an individual;

28               (B) A home or other physical address of an individual, including street name,  
29 name of a city or town, and ZIP Code;

30               (C) An electronic mail address;

31               (D) A telephone number;

(E) A social security number, tax identification number, passport number, driver's license number, or any other government issued identification number;

(F) A credit card number;

(G) Any access code, password, or account number, other than an access code or password transmitted by an owner or authorized user of a protected computer to the intended recipient to register for, or log onto, a webpage or other Internet service or a network connection or service of a subscriber that is protected by an access code or password; and

(H) Date of birth, birth certificate number, or place of birth of an individual, except in the case of a date of birth transmitted or collected for the purpose of compliance with the law.

(6) "Protected computer" means a computer which, at the time of an alleged violation of this Act involving that computer, is located within the geographic boundaries of this state.

(7) "Web page" means a location, with respect to the World Wide Web, that has a single uniform resource locator or another single location with respect to the Internet.

### Section 3. [*Unlawful Deceptive Acts and Practices of a Protected Computer.*]

(1) It shall be an unlawful deceptive act or practice for any person who is not the owner or authorized user of a protected computer to engage in any of the following acts or practices with respect to a protected computer:

(A) Taking control of the computer by:

(i) Using such computer to send unsolicited information or material from the protected computer to others;

(ii) Diverting the Internet browser of the computer, or similar program of the computer used to access and navigate the Internet:

(a) Without authorization of the owner or authorized user of the computer; and

(b) Away from the site the user intended to view, to one or more other web pages, such that the user is prevented from viewing the content at the intended webpage, unless such diverting is otherwise authorized;

(iii) Accessing or using the modem or Internet connection or service for the computer and thereby causing damage to the computer or causing the owner or authorized user to incur unauthorized financial charges;

(iv) Using the computer as part of an activity performed by a group of computers that causes damage to another computer; or

(v) Delivering advertisements that a user of the computer cannot close without turning off the computer or closing all sessions of the Internet browser for the computer;

(vi) Modifying settings related to use of the computer or to the computer's access to or use of the Internet by altering:

(a) The webpage that appears when the owner or authorized user launches an Internet browser or similar program used to access and navigate the Internet;

(b) The default provider used to access or search the Internet, or other existing Internet connections settings;

(c) A list of bookmarks used by the computer to access web pages;

(d) Security or other settings of the computer that protect information about the owner or authorized user for the purposes of causing damage or harm to the computer or owner or user;

(vii) Collecting personally identifiable information through the use of a keystroke logging function;



(viii) Inducing the owner or authorized user to install a computer software component onto the computer, or preventing reasonable efforts to block the installation or execution of, or to disable, a computer software component by:

(a) Presenting the owner or authorized user with an option to decline installation of a software component such that, when the option is selected by the owner or authorized user, the installation nevertheless proceeds; or

(b) Causing a computer software component that the owner or authorized user has properly removed or disabled to reinstall or reactivate automatically on the computer;

(ix) Misrepresenting that installing a separate software component or providing log-in and password information is necessary for security or privacy reasons, or that installing a separate software component is necessary to open, view, or play a particular type of content;

(x) Inducing the owner or authorized user to install or execute computer software by misrepresenting the identity or authority of the person or entity providing the computer software to the owner or user;

(xi) Inducing the owner or authorized user to provide personally identifiable, password, or account information to another person:

(a) By misrepresenting the identity of the person seeking the information; or

(b) Without the authority of the intended recipient of the information;

(xii) Removing, disabling, or rendering inoperative a security, anti-spyware, or anti-virus technology installed on the computer; or

(xiii) Installing or executing on the computer one or more additional computer software components with the intent of causing a person to use such components in a way that violates any other provision of this Act.

(2) Except as otherwise provided in this Act, it shall be unlawful for any person:

(A) To transmit to a protected computer, which is not owned by such person and for which such person is not an authorized user, any information collection program, unless:

(i) Such information collection program provides notice in accordance with this Act before execution of any of the information collection functions of the program; and

(ii) Such information collection program includes the functions required under this Act; or

(B) To execute any information collection program installed on such a protected computer unless:

(i) Before execution of any of the information collection functions of the program, the owner or an authorized user of the protected computer has consented to such execution pursuant to notice in accordance with this Act; and

(ii) Such information collection program includes the functions required under this Act.

(iii) Notice in accordance with this Act with respect to an information collection program is clear and conspicuous notice in plain language that meets all of the following requirements:

(a) The notice clearly distinguishes such notice from any other information visually presented contemporaneously on the protected computer;

(b) The notice contains one of the following statements, as applicable, or a substantially similar statement:

128 (I) "This program will collect and transmit information  
129 about you. Do you accept?";  
130 (II) "This program will collect information about web pages  
131 you access and will use that information to display advertising on your computer. Do you  
132 accept?"; or  
133 (III) "This program will collect and transmit information  
134 about you and your computer use and will collect information about web pages you access and  
135 use that information to display advertising on your computer. Do you accept?";  
136 (c) The notice provides for the user:  
137 (I) To grant or deny consent by selecting an option to grant  
138 or deny such consent; and  
139 (II) To abandon or cancel the transmission or execution  
140 without granting or denying such consent;  
141 (d) The notice provides an option for the user to select to display  
142 on the computer, before granting or denying consent using the option required under this Act, a  
143 clear description of:  
144 (I) The types of information to be collected and sent, if  
145 any, by the information collection program;  
146 (II) The purpose for which such information is to be  
147 collected and sent; and  
148 (III) In the case of an information collection program that  
149 first executes any of the information collection functions of the program together with the first  
150 execution of other computer software, the identity of any such software that is an information  
151 collection program; and  
152 (e) The notice provides for concurrent display of the information  
153 required this Act and the option required under this Act until the user:  
154 (I) Grants or denies consent using the option required  
155 under this Act;  
156 (II) Abandons or cancels the transmission or execution  
157 under this Act; or  
158 (III) Selects the option required under this Act.  
159 (3) In the case in which multiple information collection programs are provided to the  
160 protected computer together, or as part of a suite of functionally related software, the notice  
161 requirements of this Act may be met by providing, before execution of any of the information  
162 collection functions of the programs, clear and conspicuous notice in plain language by means of  
163 a single notice that applies to all such information collection programs, except that such notice  
164 shall provide the option with respect to each such information collection program.  
165 (4) If an owner or authorized user has granted consent to execution of an information  
166 collection program pursuant to a notice in accordance with this Act:  
167 (A) No subsequent such notice is required, except as provided in subparagraph  
168 (B) of this paragraph; and  
169 (B) The person who transmitted the program shall provide another notice in  
170 accordance with this Act and obtain consent before such program may be used to collect or send  
171 information of a type or for a purpose that is materially different from, and outside the scope of,  
172 the type or purpose set forth in the initial or any previous notice.  
173 (5) The functions required under this Act to be included in an information collection  
174 program that executes any information collection functions with respect to a protected computer  
175 are as follows:

176 (A) Disabling function. With respect to any information collection program, a  
177 function of the program that allows a user of the program to remove the program or disable  
178 operation of the program with respect to such protected computer by a function that:

179 (i) Is easily identifiable to a user of the computer; and  
180 (ii) Can be performed without undue effort or knowledge by the user of  
181 the protected computer; and

182 (B) Identity function. With respect only to an information collection program, a  
183 function of the program that provides that each display of an advertisement directed or displayed  
184 using such information when the owner or authorized user is accessing a webpage or online  
185 location other than that of the provider of the software is accompanied by the name of the  
186 information collection program, a logogram or trademark used for the exclusive purpose of  
187 identifying the program, or a statement or other information sufficient to clearly identify the  
188 program.

189 (6) A telecommunications carrier, a provider of information service or interactive  
190 computer service, a cable operator, or a provider of transmission capability shall not be liable,  
191 criminally or civilly, under this Act to the extent that the carrier, operator, or provider:

192 (A) Transmits, routes, hosts, stores, or provides connections for an information  
193 collection program through a system or network controlled or operated by or for the carrier,  
194 operator, or provider; or

195 (B) Provides an information location tool, such as a directory, index, reference,  
196 pointer, or hypertext link, through which the owner or user of a protected computer locates an  
197 information collection program.

198  
199 Section 4. *[Exceptions.]*

200 (1) This Act shall not apply to:

201 (A) Any act taken by a law enforcement agent in the performance of official  
202 duties; or

203 (B) The transmission or execution of an information collection program in  
204 compliance with a law enforcement, investigatory, national security, or regulatory agency or  
205 department of the United States or any state in response to a request or demand made under  
206 authority granted to that agency or department, including a warrant issued under the Federal  
207 Rules of Criminal Procedure, an equivalent state warrant, a court order, or other lawful process.

208 (C) Any monitoring of or interaction with a subscriber's Internet or other network  
209 connection or service, or a protected computer, by a telecommunications carrier, cable operator,  
210 computer hardware or software provider, or provider of information service or interactive  
211 computer service, to the extent that such monitoring or interaction is for network or computer  
212 security purposes, diagnostics, technical support, or repair, or for the detection or prevention of  
213 fraudulent activities; or

214 (D) A discrete interaction with a protected computer by a provider of computer  
215 software solely to determine whether the user of the computer is authorized to use such software  
216 that occurs upon

217 (i) Initialization of the software; or  
218 (ii) An affirmative request by the owner or authorized user for an update  
219 of, addition to, or technical service for the software.

220 (2) No provider of computer software or of interactive computer service may be held  
221 liable, criminally or civilly, under this Act on account of any action voluntarily taken, or service  
222 provided, in good faith to remove or disable a program used to violate this Act that is installed on  
223 a computer of a customer of such provider, if such provider notifies the customer and obtains the  
224 consent of the customer before undertaking such action or providing such service.

(3) A manufacturer or retailer of computer equipment shall not be liable under this Act, criminally or civilly, to the extent that the manufacturer or retailer is providing third-party branded software that is installed on the equipment the manufacturer or retailer is manufacturing or selling.

(4) For the purposes of this Act, the term “employer” includes a business's officers, directors, parent corporation, subsidiaries, affiliates, and other corporate entities under common ownership or control within an enterprise.

(5) No employer may be held liable criminally or civilly under this Act on account of any actions taken:

(A) With respect to computer equipment used by its employees, contractors, subcontractors, agents, leased employees, or other staff where the employer owns, leases, or otherwise makes available, or which employer allows to be connected to the employer's network or other computer facilities; or

(B) By employees, contractors, subcontractors, agents, leased employees, or other staff who misuse an employer's computer equipment for an illegal purpose without the employer's knowledge, consent, or approval.

(6) No person shall be liable criminally or civilly under this Act when its protected computers have been used by unauthorized people to violate this Act or other laws without such person's knowledge, consent, or approval.

(7) No civil cause of action shall lie against any foreign or business in this state or its officers, employees, agents, or other people for providing computer-related records, information, facilities, or assistance to further the investigation of a criminal offense enumerated in [insert citation] to a law enforcement unit as [insert citation] or a prosecutorial office of this state when said computer-related records, information, facilities, or assistance is provided pursuant to a subpoena, search warrant, order to produce.

(8) Any business located within this state that provides electronic communication services or remote computing services as defined by [insert citation], when served with a search warrant, subpoena, notice to produce, notice of deposition, or order to disclose properly issued by another state to produce records related to investigation or trial of a criminal offense that would reveal the identity of their customers using those services, data stored by, or on behalf of, their customer, their customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications shall produce those requested records as if that search warrant, subpoena, notice, or order had been issued by a state court, provided that such business has the right to object that such compliance is unduly burdensome or oppressive.

#### Section 5. [*Penalties.*]

(1) Any person who violates this Act shall be guilty of a [felony] and, upon conviction thereof, shall be sentenced to imprisonment for [not less than one nor more than ten years] or a fine of not more than [\$3 million], or both.

(2) Any person who suffers personal, property, or economic damages by reason of a violation of this Act may initiate a civil action for and recover the greater of:

(A) [Five thousand dollars} plus expenses of litigation and reasonable attorney's fees;

(B) Liquidated damages of [\$1,000] for each violation of up to a limit of [\$2 million] per incident, plus expenses of litigation and reasonable attorney's fees; or

(C) Actual damages, plus expenses of litigation and reasonable attorney's fees.

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

274

275

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

276

277

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

# Computer Security Breaches

This Act is designed to help ensure that personal information about state residents is protected by encouraging data brokers to provide reasonable security for personal information. This bill borrows from a similar California statute which requires companies to notify residents in the event of a security breach involving personal financial data.

This bill requires an individual or a commercial entity that conducts business in the state and that owns or licenses computerized data that includes personal information to notify a resident of the state of any breach of the security of the system immediately following the discovery of a breach in the security of personal information of the state resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Notification must be made in good faith, in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

The law incorporates alternative notification procedures and in a civil action to recover damages (for example, losses due to identity theft), the award is triple the amount of actual damages plus reasonable attorney fees.

Submitted as:

Delaware

HB 116

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Address Computer Security  
2 Breaches.”

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

5           (1) “Breach of the security of the system” means the unauthorized acquisition of  
6 unencrypted computerized data that compromises the security, confidentiality, or integrity of  
7 personal information maintained by an individual or a commercial entity. Good faith acquisition  
8 of personal information by an employee or agent of an individual or a commercial entity for the  
9 purposes of the individual or the commercial entity is not a breach of the security of the system,  
10 provided that the personal information is not used or subject to further unauthorized disclosure;

11           (2) “Commercial entity” includes corporations, business trusts, estates, trusts,  
12 partnerships, limited partnerships, limited liability partnerships, limited liability companies,  
13 associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or  
14 instrumentalities, or any other legal entity, whether for profit or not-for-profit;

15           (3) “Personal information” means a resident's first name or first initial and last name in  
16 combination with any one or more of the following data elements that relate to the resident,  
17 when either the name or the data elements are not encrypted:

18                   (a) Social Security number;

19                   (b) driver's license number or state Identification Card number; or

(c) account number, or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account.

The term "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records;

(4) "Notice" means:

(a) written notice;

(b) telephonic notice;

(c) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in §7001 of Title 15 of the United States Code; or

(d) substitute notice, if the individual or the commercial entity required to provide notice demonstrates that the cost of providing notice will exceed [\$75,000], or that the affected class of state residents to be notified exceeds [100,000] residents, or that the individual or the commercial entity does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:

(I) e-mail notice if the individual or the commercial entity has e-mail addresses for the members of the affected class of state residents; and

(II) conspicuous posting of the notice on the Web site page of the individual or the commercial entity if the individual or the commercial entity maintains one; and

(III) notice to major statewide media.

### Section 3. *[Disclosure of Breach of Security of Computerized Personal Information by an Individual or a Commercial Entity.]*

(1) An individual or a commercial entity that conducts business in this state and that owns or licenses computerized data that includes personal information about a resident of this state shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused. If the investigation determines that the misuse of information about a state resident has occurred or is reasonably likely to occur, the individual or the commercial entity shall give notice as soon as possible to the affected state resident. Notice must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(2) An individual or a commercial entity that maintains computerized data that includes personal information that the individual or the commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system immediately following discovery of a breach, if misuse of personal information about a resident occurred or is reasonably likely to occur. Cooperation includes sharing with the owner or licensee information relevant to the breach.

(3) Notice required by this Act may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice required by this Act must be made in good faith, without unreasonable delay and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

### Section 4. *[Procedures Deemed in Compliance with Security Breach Requirements.]*

(1) Under this Act, an individual or a commercial entity that maintains its own notice procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of this Act is

69 deemed to be in compliance with the notice requirements of this Act if the individual or the  
70 commercial entity notifies affected state residents in accordance with its policies in the event of a  
71 breach of security of the system.

72 (2) Under this Act, an individual or a commercial entity that is regulated by state or  
73 federal law and that maintains procedures for a breach of the security of the system pursuant to  
74 the laws, rules, regulations, guidances, or guidelines established by its primary or functional state  
75 or federal regulator is deemed to be in compliance with this Act if the individual or the  
76 commercial entity notifies affected state residents in accordance with the maintained procedures  
77 when a breach occurs.

78  
79 Section 5. [*Violations.*] Pursuant to the enforcement duties and powers of the [Consumer  
80 Protection Division of the Department of Justice] under [insert citation], the [Attorney General]  
81 may bring an action in law or equity to address violations of this Act and for other relief that may  
82 be appropriate to ensure proper compliance with this Act or to recover direct economic damages  
83 resulting from a violation, or both. The provisions of this Act are not exclusive and do not relieve  
84 an individual or a commercial entity subject to this Act from compliance with all other  
85 applicable provisions of law.

86  
87 Section 6. [*Severability.*] [Insert severability clause.]

88  
89 Section 7. [*Repealer.*] [Insert repealer clause.]

90  
91 Section 8. [*Effective Date.*] [Insert effective date.]



# Consumer Credit Solicitation Protection

This Act requires a creditor or charge card company that offers credit or a charge card by mail, and that receives an acceptance to the offer that lists an address for the applicant that is different from the address where the offer of credit or a charge card was sent, to verify that the person accepting the offer is the person to whom the creditor or charge card company made the offer of credit or a charge card. The legislation enumerates ways a creditor may verify that the person accepting the offer is the same person to whom the offer was made, including phoning the person, requesting proof of identification, using a method adopted in federal regulation, or a method sufficient under the standards and practices of the industry.

This Act establishes a private right of action against a person who uses the personal identifying information of another to commit fraud-type crimes. The legislation permits a plaintiff to recover regardless of whether there was a criminal conviction. The draft allows a plaintiff to recover actual damages, punitive damages, and attorneys fees and costs.

Submitted as:

Colorado

Chapter 205 of 2004

Status: Enacted into law in 2004.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act Concerning Consumer Credit  
2 Solicitation.”

3  
4           Section 2. [*Consumer Credit Solicitation Protection.*]

5           (1) A solicitor that makes a firm offer of credit for a lender credit card or a seller credit  
6 card to a consumer by mail solicitation and receives an acceptance of that offer that lists the  
7 address of the consumer accepting the offer as different from the address to which the offer was  
8 sent shall, prior to issuing or directing issuances of the lender credit card or seller credit card,  
9 verify that the consumer accepting the offer is the same consumer to whom the offer was sent.

10          (2) As used in this section, unless the context otherwise requires:

11           (a) “Firm offer of credit” shall have the same meaning as set forth in 15 U.S.C.  
12 Sec. 1681a (l).

13           (b) “Solicitor” means the person making the offer by mail solicitation and does  
14 not include a card issuer or other creditor when that creditor or card issuer relies on an  
15 independent third party to provide the services.

16           (c) “Verify” means the use of commercially reasonable efforts to ascertain that the  
17 consumer responding to a mail solicitation is the same consumer to whom the solicitation was  
18 directed. For the purposes of this Act, a solicitor shall be deemed to verify that the consumer  
19 accepting a mail solicitation is the same consumer to whom the solicitation was directed if:

20           (i) a consumer responding at a telephone number appearing in a publicly  
21 available directory or database as the telephone number of the consumer to whom the solicitation  
22 was mailed identifies himself or herself as the consumer to whom the solicitation was mailed and  
23 acknowledges the consumer's acceptance of the solicitation; or

24           (ii) a consumer presents the solicitor, including presentation by facsimile  
25 transmission or mail, the original or a copy of one more documents, including a driver's license,  
26 social security card, passport, or any other identification document issued by a state or federal

governmental agency, that, on the face of the document or documents, appears to confirm such consumer's identity as the consumer to whom a solicitation was mailed and the consumer acknowledges acceptance of the solicitation; or

(iii) the solicitor verified, by any means adopted in federal regulations, that the consumer accepting the solicitation is the consumer to whom the solicitation was directed; or

(iv) the solicitor verified by any other means, that under the standards and practices of the industry in which the solicitor is engaged would be deemed sufficient, that the consumer accepting the solicitation as the same consumer to whom the solicitation was sent.

Section 3. [*Civil Liability for Unlawful Use of Personal Identifying Information.*]

(1) Notwithstanding any other remedies provided under this Act, a person who suffers damages as a result of a crime described in [insert citation], in which personal identifying information was used in the commission of the crime, shall have a private civil right of action against the perpetrator who committed the crime, regardless of whether the perpetrator was convicted of the crime. In such action, the plaintiff shall be entitled to actual damages, including, but not limited to damage to reputation or credit rating, punitive damages, and attorney fees and costs.

(2) For purposes of this section, "personal identifying information" means any information that may be used, alone or in conjunction with any other information, to identify a specific individual, including but not limited to: name; date of birth; social security number; personal identification number; password; pass code; official state-issued or government-issued driver's license or identification card number; government passport number; biometric data; employer, student, or military identification number; or financial transaction device as defined in [insert citation].

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

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

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

# Crime Victims Financial Recovery

This Act enables crime victims to satisfy restitution orders and civil judgments entered against their offenders from the offender's assets by providing notice of the assets to the victims and by reviving the statute of limitations for a civil action once assets are discovered.

The Act requires the following entities that knowingly contract for, pay, or agree to pay, profit from crime, or funds of an offender, to notify and submit a copy of the contract to a Crime Victims Compensation Commission, the contracting party, the State or a subdivision of the State whenever the payment or obligation to pay involves funds of an offender in excess of \$10,000 that a superintendent, sheriff, or municipal officer receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility; and the State or a subdivision of the State when it makes a payment or has an obligation to pay funds of an offender in excess of \$10,000. In all other instances where the payment or obligation to pay involves funds of an offender and the value of the funds exceeds or will exceed \$10,000, the offender who receives or will receive the funds shall give written notice to the Commission.

A person who willfully fails to provide notice is subject to an assessment in the amount of the payment or obligation to pay, to be levied after notice and opportunity to be heard, plus a civil penalty in the amount of \$1,000 or 10 percent of the obligation to pay, whichever is greater. Once collected, the assessment is to be placed in escrow for the benefit of eligible people who would be notified of their right to bring a civil action. The proceeds of the civil penalty would be remitted to a Civil Penalty and Forfeiture Fund. The Act also provides for the return to the respondent of any unclaimed funds held in escrow upon the expiration of the three-year statute of limitations period and upon final determination of all pending claims.

The Crime Victims Compensation Commission must notify all "eligible persons" of the existence of the contract. An "eligible person" means a victim of the crime for which the offender was convicted; a surviving spouse, parent, or child of a deceased victim of the crime for which the offender was convicted; or any other person dependent for the person's principal support upon a deceased victim of the crime for which the offender was convicted. However, "eligible person" does not include the offender or an accomplice to the offender.

If the eligible person has already obtained a civil judgment against the offender for damages arising out of the offense for which the offender was convicted, the eligible person may proceed to execute against those assets as provided for by current law. If the eligible person has not obtained a civil judgment, this act provides that the person has three years from the notice of the profit from crime or funds of the offender to bring a civil action for damages arising out of the offense for which the offender was convicted, even if the original statute of limitations for the cause of action has expired. The eligible person must submit a copy of the lawsuit to the Commission, which, in turn, would attempt to notify all other eligible persons of the lawsuit.

The Commission, upon receipt of notice of a contract or agreement to pay profit from crime or funds of an offender, must notify all known eligible victims of the existence of the contract or agreement.

The Commission, upon notice of the filing of a civil action, must notify all other eligible victims of the filing.

The Commission has standing and, acting on its own behalf or on behalf of all eligible persons, has the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action, including attachment, injunction, constructive trust, and receivership.

Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund.

Submitted as:

North Carolina

Session Law 2004-159

Status: Enacted into law in 2004.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “The Crime Victims Financial  
2 Recovery Assistance Act.”

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

5           (A) The [Legislature] finds that:

6                   (1) No person who commits a crime should thereafter gain monetary profit as the  
7 result of committing the crime.

8                   (2) Victims of crime have a special relationship to any profit from the crime  
9 committed against them, including the personal belongings and memorabilia of a convicted felon  
10 whose criminal actions and resulting notoriety enhance the value of those belongings and  
11 memorabilia.

12                   (3) To the extent profit from crime would not have been realized but for an  
13 offender’s commission of illegal acts, an offender does not have an equitable interest in the profit  
14 and allowing the offender to retain the profit would result in the offender’s unjust enrichment.

15           (B) The [Legislature] finds that the state has a compelling interest in ensuring that  
16 persons convicted of crimes do not profit from those crimes, and that victims of crime are  
17 compensated by those who have harmed them.

18           (C) The [Legislature] further finds that crime victims have difficulty satisfying restitution  
19 orders or civil judgments entered against their offenders because the victims often lack the  
20 expertise and resources to identify or locate assets that an offender may have.

21           (D) In order to carry out this public policy and to satisfy these compelling interests, the  
22 [Legislature] has enacted this Act to provide a mechanism by which crime victims are notified of  
23 the existence of an offender’s assets and are authorized to bring an action to recover those assets.

24  
25           Section 3. [*Definitions.*]

26           (A) As used in this Act.

27                   (1) Commission. - The Crime Victims Compensation Commission established  
28 under [insert citation].

29                   (2) Convicted. - A finding or verdict of guilty by a jury or by entry of a plea of  
30 guilty or no contest, or a finding of not guilty by reason of insanity.

31                   (3) Crime memorabilia. - Any tangible property belonging to or that belonged to  
32 an offender prior to conviction, the value of which is increased by the notoriety gained from the  
33 conviction of a felony.

34                   (4) Earned income. - Income derived from one’s own labor or through active  
35 participation in a business, as distinguished from income including dividends or investments.

36                   (5) Eligible person. - Any of the following:

37                           a. A victim of the crime for which the offender was convicted.

b. A surviving spouse, parent, or child of a deceased victim of the crime for which the offender was convicted.

c. Any other person dependent for the person's principal support upon a deceased victim of the crime for which the offender was convicted. However, 'eligible person' does not include the offender or an accomplice to the offender.

(6) Felony. - An offense defined as a felony by [this state's statutes] or United States statute that was committed in [this state] and that resulted in physical or emotional injury, or death, to another person.

(7) Funds of an offender. - All funds and property received from any source by an offender, excluding child support and earned income, where the offender:

a. Is an inmate serving a sentence with the [Department of Correction] or a prisoner confined at a local correctional facility or federal correctional institute, and includes funds that a superintendent, sheriff, or municipal official receives on behalf of an inmate or prisoner and deposits in an inmate account to the credit of the inmate or deposits in a prisoner account to the credit of the prisoner; or

b. Is not an inmate or prisoner but who is serving a sentence of probation, conditional discharge, or post-release supervision.

(8) Offender. - A person who has been convicted of a felony or that person's legal representative or assignee.

(9) Profit from crime. - Any income, assets, or property obtained through or generated from the commission of a crime for which the offender was convicted, including any income, assets, or property generated from the sale of crime memorabilia or obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of the crime, as well as any gain from the sale, conversion, or exchange of the income, assets, or property. 'Profit from crime' does not include voluntary donations or contributions to an offender used to assist in the appeal of a conviction, provided the donation or contribution is not given in exchange for something of material value.

(10) Victim. - Any natural person who suffers physical or emotional injury, or the threat of physical or emotional injury, as the result of the commission of a felony.

#### Section 4. *[Notice of Contract or Agreement to Pay.]*

##### (A) Notice to Commission.-

(1) Every person, firm, corporation, partnership, association, or other legal entity, or representative of a person, firm, corporation, partnership, association, or entity that knowingly contracts for, pays, or agrees to pay to an offender profit from crime or funds of an offender where the value or aggregate value of the payment or payments exceeds [\$10,000] shall submit to the [Commission] a copy of the contract or reduce to writing the terms of any oral agreement or obligation to pay as soon as practicable after discovering the payment or intended payment constitutes profit from crime or funds of an offender.

(2) Whenever the payment or obligation to pay involves funds of an offender that a superintendent, sheriff, or municipal officer receives or will receive on behalf of an inmate serving a sentence with the [Department of Correction] or a prisoner confined at a local correctional facility, deposits or will deposit in an inmate account to the credit of an inmate or prisoner, and the value of such funds exceeds or will exceed [ten thousand dollars], the State or subdivision of the State shall also give written notice to the [Commission].

(3) Whenever the State or a subdivision of the State makes a payment or has an obligation to pay funds of an offender and the value of such funds exceeds or will exceed [\$10,000], the State or subdivision of the State shall also give written notice to the [Commission].

(4) In all other instances where the payment or obligation to pay involves funds of an offender and the value or aggregate value of the funds exceeds or will exceed [\$10,000], the offender who receives or will receive the funds shall give written notice to the [Commission].

(B) Notice to Eligible Persons. - The [Commission] shall, upon receipt of a notice of a contract, an agreement to pay, or payment of profit from crime or funds of an offender, notify in writing by certified mail, return receipt requested, all known eligible persons where the eligible persons' names and addresses are known to the [Commission]. The [Commission] may, in its discretion, provide for additional notice as it deems necessary.

#### Section 5. *[Penalties.]*

(A) Assessment and Civil Penalty for Failure to Give Notice.- Any person or entity, other than the State, a subdivision of the State, or a person who is a superintendent, sheriff, or municipal official, who willfully fails to give notice as required by section 4 of this Act is subject to an assessment of up to the amount of the payment or obligation to pay and a civil penalty of up to [\$1,000] or [ten percent] of the payment or obligation to pay, whichever is greater.

(B) Notice and Opportunity to be Heard Required. - After providing notice and opportunity to be heard in accordance with the provisions of [insert citation], the [Commission] may order the respondent to pay the assessment and civil penalty imposed by this section.

(C) Failure to Pay. - If a respondent fails to pay the assessment and civil penalty imposed by this section within [sixty days] of being ordered to pay, the assessment and civil penalty may be recovered from the respondent by an action brought by the [attorney general], upon the request of the [Commission], in any court of competent jurisdiction.

(D) Establishment of Escrow Account. - The [Commission] shall deposit the assessment in an escrow account pending the expiration of the [three-year] statute of limitations authorized by section 6 of this Act to preserve the funds to satisfy a civil judgment in favor of an eligible person to whom the failure to give notice relates. The [Commission] shall notify any eligible person who may have a claim against the offender of the existence of the funds being held in escrow. The notice shall instruct the eligible person that the person may have a right to commence a civil action against the offender as well as any other information deemed necessary by the [Commission].

(E) Satisfaction of Judgment from Escrow Account - Upon an eligible person's presentation to the [Commission] of a civil judgment for damages arising out of the offense for which the offender was convicted, the [Commission] shall satisfy up to [one hundred percent] of that judgment, including costs and disbursements as taxed by the clerk of the court, with the escrowed fund obtained pursuant to this section, but in no event shall the amount of all judgments, costs, and disbursements satisfied from the escrowed funds exceed the amount in escrow. If more than one eligible person indicates to the [Commission] that the eligible person intends to commence or has commenced a civil action against the offender, the [Commission] shall delay satisfying any judgment, costs, and disbursements until the claims of all eligible persons are reduced to judgment. If the aggregate of all judgments, costs, and disbursement obtained exceeds the amount of escrowed funds, the amount used to partially satisfy each judgment shall be reduced to a pro rata share.

(F) Return of Unclaimed Escrowed Funds. - After the expiration of the [three-year] statute of limitations period established in section 6 of this Act, the [Commission] shall review all judgments that have been satisfied from the escrowed funds. In the event no claim was filed prior to the expiration of the [three-year] statute of limitations, the [Commission] shall return the escrowed amount to the respondent. In the event a claim or claims are pending at the expiration of the statute of limitations, the funds shall remain escrowed until the final determination of all

claims to allow the [Commission] to satisfy any judgment which may be obtained by the eligible person after which time any remaining escrowed amount shall be returned to the respondent.

(G) Remittance of Proceeds from Civil Penalty. - The [Commission] shall remit the clear proceeds of the civil penalty of up to [\$1,000] or [ten percent] of the payment or obligation to pay, whichever is greater, assessed under this section to the [Civil Penalty and Forfeiture Fund] in accordance with [insert citation].

Section 6. [*Civil Action to Recover Profits or Funds; Responsibilities of the Commission.*]

(A) Civil Action. - Notwithstanding any inconsistent provision of law with respect to the timely bringing of an action, an eligible person may, within three years of the discovery of any profit from crime or funds of an offender, bring a civil action in a court of competent jurisdiction against an offender for damages arising out of the offense for which the offender was convicted.

(B) Notice by Eligible Persons. - Upon filing an action under subsection (a) of this section, the eligible person shall give notice to the [Commission] of the filing by delivering a copy of the summons and complaint to the [Commission]. The eligible person may also give notice to the [Commission] prior to filing the action so as to allow the [Commission] to apply for any appropriate provisional remedies, which are otherwise authorized to be invoked prior to the commencement of an action.

(C) Responsibilities of Commission. - Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the eligible person prior to filing an action, the [Commission] shall immediately take action to:

(1) Notify all other known eligible persons of the filing of the civil action by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission.

(2) Provide, in its discretion, for additional notice as it deems necessary.

(3) Avoid the wasting of the assets identified in the complaint as the profit from crime or funds of an offender in any manner consistent with subsection (d) of this section.

(D) Standing; Authority to Avoid Wasting of Assets. - The [Commission] has standing and, acting on its own behalf or on behalf of all eligible people, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action brought under subsection (a) of this section, including attachment, injunction, constructive trust, and receivership. On a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

Section 7. [*Subrogation by the Crime Victims Compensation Fund.*] Claims on profit from crime or funds of an offender are subject to subrogation by the [Crime Victims Compensation Fund] pursuant to [insert citation].

Section 8. [*Conviction Overturned or Pardon Issued.*] If profit from crime is subject to a provisional remedy on behalf of eligible persons and the conviction for the criminal offense from which profit from crime is realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon of innocence for the criminal offense, those funds shall be returned to the rightful owner.

Section 9. [*Evasive Action Void.*] Any action taken by an offender, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Act shall be void as against the public policy of this State.

184

185           Section 10. [*Restitution.*]

186           (A) Notwithstanding any other provision of law, if a defendant is convicted of a criminal  
187 offense and is ordered by the court to pay restitution or restitution is imposed as a condition of  
188 probation, special probation, work release, or parole, then all applicable statutes of limitation and  
189 statutes of repose, except as established herein, are tolled for the period set forth in this  
190 subsection for purposes of any civil action brought by an aggrieved party against that defendant  
191 for damages arising out of the offense for which the defendant was convicted. Any statute of  
192 limitation or repose applicable in the civil action shall be tolled from the time of entry of the  
193 court order

194                     (1) Requiring that restitution be made,

195                     (2) Making restitution a condition of probation or special probation, or

196                     (3) Recommending that restitution be made a condition of work release or parole,  
197 and until the defendant has paid in full the amount of restitution ordered or imposed.

198           (B) Except as provided in section 6 of this Act, an action to recover damages arising out  
199 of the criminal offense shall not be commenced more than [ten years] from the last act of the  
200 defendant giving rise to the cause of action.”

201

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

203

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

205

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



# Electric Transmission Facilities: Recovering Costs for Construction and Upgrading

This Act authorizes the state corporation commission to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities those costs associated with the construction or improvement of electric transmission facilities under certain circumstances. The bill covers costs for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities would be subject to the jurisdiction of the corporation commission for implementation of the Act.

The corporation commission could approve inclusion of the specified costs in retail utility rates if the commission finds:

- That a regional transmission organization has identified the construction or upgrade as appropriate for reliability of the electric transmission system or for economic benefit to transmission owners and customers; and
- A state agency has determined that the project will provide measurable economic benefit to electric consumers in the state that would exceed anticipated project costs.
- The commission could approve recovery of project costs in retail electric rates only if those costs would not otherwise be recovered.

Comment:

This Act is reported to be the first to provide statutory authority for a public utility commission, based on a recommendation by a regional transmission organization, to assign full cost-recovery charges to all beneficiaries for an economic development-based transmission project. Economic development projects are all proposed non-system reliability transmission lines (e.g. to move low cost power to high cost areas, or to serve some types of new loads or generation). The significance of this bill is that it requires that approval of a transmission project by a regional transmission organization shall constitute a rebuttable presumption of the appropriateness of such a project, and recovery of unassigned costs for the project shall be assessed and collected from all beneficiaries.

Submitted as:

Kansas

HB 2045

Status: Enacted into law in 2005.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Cover the Cost of Building  
2 and Upgrading Electric Transmission Facilities.”

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

5           (1) “Appurtenances” means all substations, towers, poles and other structures and  
6 equipment necessary for the bulk transfer of electricity.

7           (2) “Commission” means the state [corporation commission].

8           (3) “Construction or upgrade of an electric transmission facility” means construction or  
9 upgrade of an electric line, and appurtenances with an operating voltage of 115 kilovolts or  
10 more.

11

12 Section 3. [*Criteria for Recovering Costs.*]  
13 (1) Upon application, the [commission] may authorize recovery of costs associated with  
14 the construction or upgrade of an electric transmission facility if the [commission] finds that:  
15 (A) A regional transmission organization has identified such construction or  
16 upgrade as appropriate for reliable operation of the integrated electric transmission system; or for  
17 economic benefits to transmission owners and customers; and  
18 (B) A state agency has determined that such construction or upgrade will provide  
19 measurable economic benefits to electric consumers in all or part of this state that will exceed  
20 anticipated project costs; and  
21 (2) Such costs are not being otherwise recovered.  
22 (3) The [commission] shall review an application for recovery of costs pursuant to this  
23 section in an expedited manner if the application includes evidence that expedited construction  
24 or upgrade of the electric transmission facility will result in significant, measurable economic  
25 benefits to electric consumers in this state. Recommendation or approval of construction or  
26 upgrade of an electric transmission facility by a regional transmission organization shall  
27 constitute a rebuttable presumption of the appropriateness of such construction or upgrade for  
28 system reliability or economic dispatch of power.  
29 (4) In determining whether to approve recovery of costs pursuant to this section the  
30 [commission] may consider factors such as the speed with which electric consumers in this state  
31 will benefit from the transmission facility and the long-term benefits of the transmission facility  
32 to electric consumers in this state, or both, and whether such factors outweigh other less costly  
33 options. An application for recovery of costs pursuant to this section shall include such  
34 information as the [commission] requires to weigh such factors, including, but not limited to,  
35 information regarding estimated line losses, reactive power and voltage implications and long-  
36 term economic and system reliability benefits.  
37 (5) Any recovery of costs authorized by the [commission] pursuant to this section shall  
38 be assessed against all electric public utilities, electric municipal utilities and electric cooperative  
39 utilities receiving benefits of the construction or upgrade and having retail customers in this  
40 state. Each such utility's assessment shall be based on the benefits the utility receives from the  
41 construction or upgrade. In determining allocation of benefits and costs to utilities, the  
42 [commission] may take into account funding and cost recovery mechanisms developed by  
43 regional transmission organizations and shall take into account financial payments by  
44 transmission users and approved by the Federal Energy Regulatory Commission or regional  
45 transmission organization. Each electric public utility shall recover any such assessed costs from  
46 the utility's retail customers in a manner approved by the [commission] and each electric  
47 municipal or cooperative utility shall recover such assessed costs from the utility's retail  
48 customers in a manner approved by the utility's governing body.  
49 (6) All money collected by a utility from assessments authorized by the [commission]  
50 pursuant to this section shall be paid quarterly by the utility to the transmission operator or owner  
51 designated by the [commission].  
52 (7) Notwithstanding any other provision of law to the contrary, electric municipal  
53 utilities and electric cooperative utilities shall be subject to the jurisdiction of the [commission]  
54 for the limited purpose of implementing the provisions of this section.

55  
56 Section 4. [*Severability.*] [Insert severability clause.]

57  
58 Section 5. [*Repealer.*] [Insert repealer clause.]

59  
60 Section 6. [*Effective Date.*] [Insert effective date.]

# Environmental Covenants Statement

According to the National Conference of Commissioners on Uniform State Laws, “An environmental covenant is typically used when it is necessary to clean up contaminated property to a level determined by the environmental risks posed, rather than to unrestricted use standards. While the general goal of most cleanups is to return the site to a condition where it can be safely used for any purpose, this is not always technically possible or economically practicable. When a site is not cleaned up completely, use restrictions may be used to supplement cleanup measures.”

Ohio enacted HB 516 in 2004 to establish environmental covenants. An Ohio legislative analysis of HB 516 says the Act:

- Establishes requirements for an environmental covenant, which is a servitude running with the land and arising under an environmental response project that imposes activity and use limitations with respect to real property;
- Defines an environmental response project as a plan or work performed for environmental remediation of real property or for protection of ecological features associated with real property and conducted in accordance with certain federal or state programs;
- Provides that any person, including a person that owns an interest in the real property that is the subject of an environmental covenant, may be a holder of an environmental covenant, and specifies that a holder's interest is an interest in real property;
- Requires an environmental covenant to contain specified information, including descriptions of the real property involved and the activity and use limitations, names or identities of every holder, requirements for certain notices, rights of access to the property, required signatures, and an administrative record for the environmental response project, and permits additional information, restrictions, and requirements to be included in the covenant;
- Lists the people that must be provided a copy of the environmental covenant by the applicable agency;
- Specifies that an agency is bound by any obligation that it expressly assumes in an environmental covenant and that any other person that signs the covenant is bound by the obligation that the person assumes in the covenant;
- Specifies that an otherwise effective environmental covenant is valid and enforceable even if any of specified limitations on enforcement of interests applies;
- Precludes the bill's provisions from being construed to restrict, affect, or impair any person's statutory or common law rights to enter into or record a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property that does not satisfy the bill's requirements for the contents of an environmental covenant and does not have the permission, approval, or consent of an agency, political subdivision, regulatory body, or other unit of government;
- Provides that an interest in real property at the time an environmental covenant is created or amended and that has priority under other law is not affected by the covenant unless the owner of the interest agrees to subordinate that interest to the covenant;
- Generally requires an environmental covenant and any amendment or termination of the covenant to be filed in the office of the county recorder in each county in which the real property is located and recorded in the same manner as a deed to the property;
- Provides that an environmental covenant is perpetual unless it is limited by its terms to a specific duration or is terminated by its terms upon a specific occurrence; is terminated by consent, by court action, or by foreclosure of an interest that has priority over the covenant; or is terminated or modified in an eminent domain proceeding if all of certain conditions exist;

- Generally does not permit the extinguishment, limitation, or impairment of an environmental covenant through the issuance of a tax deed, foreclosure of a tax lien, application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence or a similar doctrine, or application of the Marketable Title Law;
- Permits an environmental covenant to be amended or terminated by consent only if the amendment or termination is signed by all of the people listed in the bill, and generally provides that the assignment of an environmental covenant to a new holder is an amendment of the covenant;
- Authorizes any of specified people to seek injunctive or other equitable relief for violation of an environmental covenant;
- Provides that the environmental covenant provisions generally modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, but do not modify, limit, or supersede certain provisions of that Act;
- Provides that when necessary to protect the public health or safety, the agreement between the Director of Environmental Protection and the owner of land or a facility containing hazardous waste that specifies the clean-up measures to be performed by the Director may require the owner to enter into an environmental covenant with the Director instead requiring the owner to execute a restrictive covenant to run with the land as in current law;
- Requires the Director, prior to selling a cleaned-up facility that had contained hazardous waste and when necessary to protect public health or safety, to enter into an environmental covenant instead of requiring the Director to execute a restrictive covenant to run with the land as in current law;
- Provides that when necessary to protect public health or safety, a contract entered into by the Director and a municipal corporation, county, or township that owns a facility that had contained hazardous waste or with an owner of such a facility other than a political subdivision to provide state funding for a portion of the costs of closing the facility or abating pollution at it may require that political subdivision or other owner to enter into an environmental covenant with the Director instead of requiring the execution of a restrictive covenant as in current law;
- Expands the powers of the Director of Environmental Protection to include entering into environmental covenants under the bill and granting or accepting easements or selling property pursuant to the applicable hazardous waste provisions of the Solid, Infectious, and Hazardous Waste Law;
- Authorizes the state Fire Marshal to enter into environmental covenants to implement the underground storage tank program and corrective action program for releases from underground petroleum storage tanks;
- Provides that any restrictions on the use of real property for the owner's or operator's achievement of the Fire Marshal's standards for corrective actions for releases of petroleum must be contained in a deed or another instrument signed and acknowledged as a deed as in existing law or an environmental covenant;
- Requires that restrictions on the use of real property for the achievement of applicable standards by a person that is not the owner or operator of an underground storage tank system or by a person undertaking a voluntary action of applicable standards be contained in an environmental covenant;
- Essentially incorporates the use of environmental covenants into the structure of the Voluntary Action Program Law (VAP) and, for purposes of that Law, provides that "environmental covenant" and "activity and use limitations" have the same meanings as in the bill's provisions governing environmental covenants;

- Modifies the rulemaking authority of the Director of Environmental Protection regarding elimination or mitigation of exposure to hazardous substances or petroleum or no further action letters subject to audit priorities, modifies the types of remedial activities that may be conducted to attain applicable standards, modifies the requirements pertaining to the time frames by which the Director must issue a covenant not to sue, and modifies the Director's recordkeeping duties, to include references to "activity and use limitations" established under an environmental covenant;
- Modifies the information submitted to a certified professional for the purpose of obtaining a no further action letter by providing that if the remedy involved relies on activity and use limitations to achieve applicable standards, the information must include a demonstration that the activity and use limitations have been developed in accordance with the VAP Law and rules and are contained in a proposed environmental covenant that meets the bill's requirements;
- Adds to the general filing for record provision of the VAP Law a requirement that the person to whom a covenant not to sue for a property is issued must file for recording in the office of the county recorder of the county in which the property is located a true and accurate copy of any environmental covenant for the property proposed and executed pursuant to the bill, and specifies that a no further action letter, covenant not to sue, and environmental covenant, if any, run with the property; and
- Adds environmental covenants and specified property use restrictions that are provided for under the bill to the documents that must be kept by county recorders.

Submitted as:

Ohio

HB 516

Status: Enacted into law in 2004.

# Establishing Ownership of Property Loaned to Museums

This Act creates a process for establishing ownership of property that is loaned to museums and archives repositories and then abandoned by the original owner.

Submitted as:

Minnesota

HF 1645

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 Help Establish Ownership  
2 of Property that is Loaned to Museums and then Abandoned by the Original Owner.”

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

5           (A) “Archives repository” means a nonprofit organization or a public agency whose  
6 primary functions include selecting, preserving, and making available records of historical or  
7 enduring value, and that is open to the public on a regular basis. Archives repository does not  
8 include a public library.

9           (B) “Loan” means the placement of property with a museum or archives repository that is  
10 not accompanied by a transfer of title of the property to the museum or archives repository and  
11 for which there is some record that the owner intended to retain title to the property. Loan does  
12 not include transfers between museums, between archives repositories, or between museums and  
13 archives repositories unless the transferring institution specifically provides in writing that the  
14 transfer is a loan under this section.

15           (C) “Museum” means a nonprofit organization or a public agency that is operated  
16 primarily for the purpose of collecting, cataloging, preserving, or exhibiting property of  
17 educational, scientific, historic, cultural, or aesthetic interest and that is open to the public on a  
18 regular basis. Museum does not include a public library.

19           (D) “Property” means personal property.  
20

21           Section 3. [*Loans of Property to a Museum or Archives Repository: Ownership*  
22 *Records.*] Each museum or archives repository shall keep accurate records of all property on loan  
23 to the museum or archives repository, including the name and address of the owner, if known,  
24 and the beginning and ending date of the loan period. At the time that a person makes a loan to a  
25 museum or archives repository, the museum or archives repository shall give the owner of the  
26 property a copy of this [Act/Statute]. If a museum or archives repository is notified of a change  
27 in the ownership of any property loaned to a museum or archives repository, the museum or  
28 archives repository shall inform the new owner of the provisions of the loan agreement and shall  
29 send the new owner a copy of this [Act/Statute]. Not less than [90 days] before a museum or  
30 archives repository changes its address or dissolves, the museum or archives repository shall  
31 notify all owners of that change of address or dissolution. If a museum or archives repository  
32 becomes the owner of property under section 5 of this Act, the museum or archives repository  
33 shall maintain any records that the museum or archives repository has regarding the property for

not less than [two years] after the date on which the museum or archives repository becomes the owner of the property.

Section 4. [*Change in Address or Ownership.*] The owner of property loaned to a museum or archives repository shall provide the museum or archives repository with written notice of any change of the owner's address, of the owner's designated agent, of the designated agent's address, and of the name and address of the new owner if there is a change in the ownership of the property loaned to the museum or archives repository.

Section 5. [*Acquiring Title to Abandoned Property*]

(A) Property loaned to a museum or archives repository whose loan has an expiration date is abandoned when there has not been written contact between the owner and the museum or archives repository for at least [seven years] after that expiration date. If the loan has no expiration date, the property is abandoned when there has not been written contact between the owner and the museum or archives repository for at least [seven years] after the museum or archives repository took possession of the property.

(B) If a museum or archives repository wishes to acquire title to abandoned property, the museum or archives repository shall, not less than [60 days] after property is abandoned under part (A) of this section, send a notice by certified mail with return receipt requested to the owner's last known address. The notice shall contain all of the following:

(1) a statement that the loan is terminated and that the property is abandoned;

(2) a description of the property;

(3) a statement that the museum or archives repository will become the owner of the property if the present owner does not submit a written claim to the property to the museum or archives repository within [60 days] after receipt of the notice; and

(4) a statement that the museum or archives repository will make arrangements with the owner to return the property to the owner or dispose of the property as the owner requests if the owner submits a written claim to the property to the museum or archives repository within [60 days] after receipt of the notice.

(C) The notice required in part (B) of this section shall be substantially in the following form:

NOTICE OF ABANDONMENT OF PROPERTY

To: ..... (name of owner)  
..... (address of owner)

Please be advised that the loan agreement is terminated for the following property  
(describe the property in sufficient detail to identify the property):

.....  
.....

The above described property that you loaned to .....  
(name and address of museum or archives repository) will be considered  
abandoned by you and will become the property of .....  
..... (name of museum or archives repository) if you fail  
to submit to the museum or archives repository a written claim to the property  
within 60 days after receipt of this notice.

If you do submit a written claim to the property within 60 days after receipt of this notice, ..... (name of museum or archives repository) will arrange to return the property to you or dispose of the property as you request. The cost of returning the property to you or disposing of the property is your responsibility unless you have made other arrangements with the museum or archives repository.

..... (name of person to contact at museum or archives repository and address of museum or archives repository)

(C) If the notice sent by the museum or archives repository under this section of this Act is returned to the museum or archives repository undelivered, the museum or archives repository shall give notice of the abandoned property by publication, and the organization's Web site, if applicable, containing the following:

- (1) the name and last known address of the present owner;
- (2) a description of the property;
- (3) a statement that the property is abandoned and that the museum or archives repository will become the owner of the property if no person can prove their ownership of the property;
- (4) a statement that a person claiming ownership of the property shall notify the museum or archives repository in writing of that claim within [60 days] after publication of the last legal notice; and
- (5) the name and mailing address of the person who may be contacted at the museum or archives repository if a person wants to submit a written claim to the property.

#### Section 6. *[Claims for the Property.]*

(A) If the museum or archives repository receives a timely written claim for the property from the owner or the owner's agent in response to the notice sent under section 5 of this Act, the museum or archives repository shall return the property to the owner or dispose of the property as the owner requests. The owner shall advise the museum or archives repository in writing as to how the property shall be disposed of or returned to the owner. Costs of returning the property or disposing of the property shall be the responsibility of the owner unless the owner and the museum or archives repository have made other arrangements.

(B) If the museum or archives repository receives a timely written claim for the property from a person other than the person who loaned the property to the museum or archives repository in response to the notice sent under section 5 of this Act, the museum or archives repository shall, within [60 days] after receipt of the written claim, determine if the claim is valid. A claimant shall submit proof of ownership with the claim. If more than one person submits a timely written claim, the museum or archives repository may delay its determination of ownership until the competing claims are resolved by agreement or legal action. If the museum or archives repository determines that the claim is valid, or if the competing claims are resolved by agreement or judicial action, the museum or archives repository shall return the property to the claimant submitting the valid claim or dispose of the property as the valid claimant requests. Costs of returning the property or disposing of the property shall be the responsibility of the valid claimant.

(C) If the museum or archives repository does not receive a timely written claim to the property or if the museum or archives repository determines that no valid timely claim to the property was submitted, the museum or archives repository becomes the owner of the property.



The museum or archives repository becomes the owner of the property on the day after the period for submitting a written claim ends or on the day after the museum or archives repository determines that no valid timely written claim was submitted. The museum or archives repository owns the property free from all claims.

Section 7. [*Acquiring Title to Undocumented Property.*]

(A) Property in the possession of a museum or archives repository which the museum or archives repository has reason to believe may be on loan and, for which the museum or archives repository does not know the owner, or have any reasonable means of determining the owner, becomes the property of the museum or archives repository if no person has claimed the property within [seven years] after the museum or archives repository took possession of the property. The museum or archives repository becomes the owner of the property on the day after the [seven-year] period ends, and after following the notification process outlined in part (B) of this section, free from all claims.

(B) The museum or archives repository that wishes to acquire title to undocumented property described in part (A) of this section shall provide public notice in the manner described in section 5 of this Act.

Section 8. [*Presumption of Gift to Museum.*] Effective [August 1, 2004], property that is found in or on property controlled by the museum; is from an unknown source; and might reasonably be assumed to have been intended as a gift to the museum, is conclusively presumed to be a gift to the museum if ownership of the property is not claimed by a person within [90 days] of its discovery.

Section 9. [*Conservation of Museum Property.*]

(A) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to property on loan to the museum without the lender's permission or formal notice if action is required to protect the property on loan or other property in the custody of the museum, or the property on loan is a hazard to the health and safety of the public or the museum staff, and either:

(1) the museum is unable to reach the lender at the lender's last known address within three days before the time the museum determines action is necessary; or

(2) the lender does not respond or will not agree to the protective measures the museum recommends and does not terminate the loan and retrieve the property within three days.

(B) If a museum applies conservation measures to property under this section, or with the agreement of the lender, unless the agreement provides otherwise, the museum acquires a lien on the property in the amount of the costs incurred by the museum.

(C) The museum is not liable for injury to or loss of the property if the museum:

(1) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

(2) exercised reasonable care in the choice and application of conservation measures.

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

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

Section 12. [*Effective Date.*] [Insert effective date.]

# Gestational Surrogacy

This Act establishes consistent standards and procedural safeguards for the protection of all parties involved in a gestational surrogacy contract in the state and confirms the legal status of children born as a result of such contracts.

Submitted as:

Illinois

Public Act 093-0921

Status: Enacted into law in 2004.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “The Gestational Surrogacy Act.”

2

3           Section 2. [*Purpose.*] The purpose of this Act is to establish consistent standards and  
4 procedural safeguards for the protection of all parties involved in a gestational surrogacy contract  
5 in this State and to confirm the legal status of children born as a result of these contracts. These  
6 standards and safeguards are meant to facilitate the use of this type of reproductive contract in  
7 accord with the public policy of this State.

8

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

10           “Compensation” means payment of any valuable consideration for services in excess of  
11 reasonable medical and ancillary costs.

12           “Donor” means an individual who contributes a gamete or gametes for the purpose of in  
13 vitro fertilization or implantation in another.

14           “Gamete” means either a sperm or an egg.

15           “Gestational surrogacy” means the process by which a woman attempts to carry and give  
16 birth to a child created through in vitro fertilization using the gamete or gametes of at least one of  
17 the intended parents and to which the gestational surrogate has made no genetic contribution.

18           “Gestational surrogate” means a woman who agrees to engage in a gestational surrogacy.

19           “Gestational surrogacy contract” means a written agreement regarding gestational  
20 surrogacy.

21           “Health care provider” means a person who is duly licensed to provide health care,  
22 including all medical, psychological, or counseling professionals.

23           “Intended parent” means a person or persons who enters into a gestational surrogacy  
24 contract with a gestational surrogate pursuant to which he or she will be the legal parent of the  
25 resulting child. In the case of a married couple, any reference to an intended parent shall include  
26 both husband and wife for all purposes of this Act. This term shall include the intended mother,  
27 intended father, or both.

28           “In vitro fertilization” means all medical and laboratory procedures that are necessary to  
29 effectuate the extracorporeal fertilization of egg and sperm.

30           “Medical evaluation” means an evaluation and consultation of a physician meeting the  
31 requirements of Section 13 of this Act.

32           “Mental health evaluation” means an evaluation and consultation of a mental health  
33 professional meeting the requirements of Section 13 of this Act.

34 “Physician” means a person licensed to practice medicine in all its branches in [this  
35 state].

36 “Pre-embryo” means a fertilized egg prior to [14 days] of development.

37 “Pre-embryo transfer” means all medical and laboratory procedures that are necessary to  
38 effectuate the transfer of a pre-embryo into the uterine cavity.

39

#### 40 Section 4. [*Rights of Parentage.*]

41 (a) Except as provided in this Act, the woman who gives birth to a child is presumed to  
42 be the mother of that child for purposes of State law.

43 (b) In the case of a gestational surrogacy satisfying the requirements set forth in  
44 subsection (d) of this Section:

45 (1) the intended mother shall be the mother of the child for purposes of State law  
46 immediately upon the birth of the child;

47 (2) the intended father shall be the father of the child for purposes of State law  
48 immediately upon the birth of the child;

49 (3) the child shall be considered the legitimate child of the intended parent or  
50 parents for purposes of State law immediately upon the birth of the child;

51 (4) parental rights shall vest in the intended parent or parents immediately upon  
52 the birth of the child;

53 (5) sole custody of the child shall rest with the intended parent or parents  
54 immediately upon the birth of the child; and

55 (6) neither the gestational surrogate nor her husband, if any, shall be the parents of  
56 the child for purposes of State law immediately upon the birth of the child.

57 (c) In the case of a gestational surrogacy meeting the requirements set forth in subsection  
58 (d) of this Section, in the event of a laboratory error in which the resulting child is not genetically  
59 related to either of the intended parents, the intended parents will be the parents of the child for  
60 purposes of State law unless otherwise determined by a court of competent jurisdiction.

61 (d) The parties to a gestational surrogacy shall assume the rights and obligations of  
62 subsections (b) and (c) of this Section if:

63 (1) the gestational surrogate satisfies the eligibility requirements set forth in  
64 subsection (a) of Section 5 of this Act;

65 (2) the intended parent or parents satisfy the eligibility requirements set forth in  
66 subsection (b) of Section 5 of this Act; and

67 (3) the gestational surrogacy occurs pursuant to a gestational surrogacy contract  
68 meeting the requirements set forth in Section 6 of this Act.

69

#### 70 Section 5. [*Eligibility.*]

71 (a) A gestational surrogate shall be deemed to have satisfied the requirements of this Act  
72 if she has met the following requirements at the time the gestational surrogacy contract is  
73 executed:

74 (1) she is at least [21 years] of age;

75 (2) she has given birth to at least one child;

76 (3) she has completed a medical evaluation;

77 (4) she has completed a mental health evaluation;

78 (5) she has undergone legal consultation with independent legal counsel regarding  
79 the terms of the gestational surrogacy contract and the potential legal consequences of the  
80 gestational surrogacy; and

81 (6) she has obtained a health insurance policy that covers major medical  
82 treatments and hospitalization and the health insurance policy has a term that extends throughout

the duration of the expected pregnancy and for [8 weeks] after the birth of the child; provided, however, that the policy may be procured by the intended parents on behalf of the gestational surrogate pursuant to the gestational surrogacy contract.

(b) The intended parent or parents shall be deemed to have satisfied the requirements of this Act if he, she, or they have met the following requirements at the time the gestational surrogacy contract is executed:

(1) he, she, or they contribute at least one of the gametes resulting in a pre-embryo that the gestational surrogate will attempt to carry to term;

(2) he, she, or they have a medical need for the gestational surrogacy as evidenced by a qualified physician's affidavit attached to the gestational surrogacy contract;

(3) he, she, or they have completed a mental health evaluation; and

(4) he, she, or they have undergone legal consultation with independent legal counsel regarding the terms of the gestational surrogacy contract and the potential legal consequences of the gestational surrogacy.

Section 6. *[Requirements for a Gestational Surrogacy Contract.]*

(a) A gestational surrogacy contract shall be presumed enforceable for purposes of State law only if:

(1) it meets the contractual requirements set forth in subsection (b) of this Section; and

(2) it contains at a minimum each of the terms set forth in subsection (c) of this Section.

(b) A gestational surrogacy contract shall meet the following requirements:

(1) it shall be in writing;

(2) it shall be executed prior to the commencement of any medical procedures (other than medical or mental health evaluations necessary to determine eligibility of the parties pursuant to Section 5 of this Act) in furtherance of the gestational surrogacy:

(i) by a gestational surrogate meeting the eligibility requirements of subsection (a) of Section 5 of this Act and, if married, the gestational surrogate's husband; and

(ii) by the intended parent or parents meeting the eligibility requirements of subsection (b) of Section 5 of this Act. In the event an intended parent is married, both husband and wife must execute the gestational surrogacy contract;

(3) each of the gestational surrogate and the intended parent or parents shall have been represented by separate counsel in all matters concerning the gestational surrogacy and the gestational surrogacy contract;

(3.5) each of the gestational surrogate and the intended parent or parents shall have signed a written acknowledgement that he or she received information about the legal, financial, and contractual rights, expectations, penalties, and obligations of the surrogacy agreement;

(4) if the gestational surrogacy contract provides for the payment of compensation to the gestational surrogate, the compensation shall have been placed in escrow with an independent escrow agent prior to the gestational surrogate's commencement of any medical procedure (other than medical or mental health evaluations necessary to determine the gestational surrogate's eligibility pursuant to subsection (a) of Section 5 of this Act); and

(5) it shall be witnessed by [2] competent adults.

(c) A gestational surrogacy contract shall provide for:

(1) the express written agreement of the gestational surrogate to:

(i) undergo pre-embryo transfer and attempt to carry and give birth to the child; and

(ii) surrender custody of the child to the intended parent or parents immediately upon the birth of the child;

(2) if the gestational surrogate is married, the express agreement of her husband to:

(i) undertake the obligations imposed on the gestational surrogate pursuant to the terms of the gestational surrogacy contract;

(ii) surrender custody of the child to the intended parent or parents immediately upon the birth of the child;

(3) the right of the gestational surrogate to utilize the services of a physician of her choosing, after consultation with the intended parents, to provide her care during the pregnancy; and

(4) the express written agreement of the intended parent or parents to:

(i) accept custody of the child immediately upon his or her birth; and

(ii) assume sole responsibility for the support of the child immediately upon his or her birth.

(d) A gestational surrogacy contract shall be presumed enforceable for purposes of State law even though it contains one or more of the following provisions:

(1) the gestational surrogate's agreement to undergo all medical exams, treatments, and fetal monitoring procedures that the physician recommended for the success of the pregnancy;

(2) the gestational surrogate's agreement to abstain from any activities that the intended parent or parents or the physician reasonably believes to be harmful to the pregnancy and future health of the child, including, without limitation, smoking, drinking alcohol, using nonprescribed drugs, using prescription drugs not authorized by a physician aware of the gestational surrogate's pregnancy, exposure to radiation, or any other activities proscribed by a health care provider;

(3) the agreement of the intended parent or parents to pay the gestational surrogate reasonable compensation; and

(4) the agreement of the intended parent or parents to pay for or reimburse the gestational surrogate for reasonable expenses (including, without limitation, medical, legal, or other professional expenses) related to the gestational surrogacy and the gestational surrogacy contract.

(e) In the event that any of the requirements of this Section are not met, a court of competent jurisdiction shall determine parentage based on evidence of the parties' intent.

#### Section 7. *[Duty to Support.]*

(a) Any person who is considered to be the parent of a child pursuant to Section 4 of this Act shall be obligated to support the child.

(b) The breach of the gestational surrogacy contract by the intended parent or parents shall not relieve such intended parent or parents of the support obligations imposed by this Act.

(c) A gamete donor may be liable for child support only if he or she fails to enter into a legal agreement with the intended parent or parents in which the intended parent or parents agree to assume all rights and responsibilities for any resulting child, and the gamete donor relinquishes his or her rights to any gametes, resulting embryos, or children.

#### Section 8. *[Establishment of the Parent-Child Relationship.]*

(a) A parent-child relationship shall be established prior to the birth of a child born through gestational surrogacy if the attorneys representing both the gestational surrogate and the

intended parent or parents certify that the parties entered into a gestational surrogacy contract intended to satisfy the requirements of Section 6 of this Act with respect to the child.

(b) The attorneys' certifications required by subsection (a) of this Section shall be filed on forms prescribed by the [Department of Public Health] and in a manner consistent with the requirement of [insert citation].

Section 9. [*Immunities.*] Except as provided in this Act, no person shall be civilly or criminally liable for non-negligent actions taken pursuant to the requirements of this Act.

Section 10. [*Noncompliance.*] Noncompliance by the gestational surrogate or the intended parent or parents occurs when that party breaches a provision of the gestational surrogacy contract.

Section 11. [*Effect of Noncompliance.*]

(a) Except as otherwise provided in this Act, in the event of noncompliance with the requirements of subsection (d) of Section 4 of this Act, a court of competent jurisdiction shall determine the respective rights and obligations of the parties.

(b) There shall be no specific performance remedy available for a breach by the gestational surrogate of a gestational surrogacy contract term that requires her to be impregnated.

Section 12. [*Damages.*]

(a) Except as expressly provided in the gestational surrogacy contract, the intended parent or parents shall be entitled to all remedies available at law or equity.

(b) Except as expressly provided in the gestational surrogacy contract, the gestational surrogate shall be entitled to all remedies available at law or equity.

Section 13. [*Rulemaking.*] The [Department of Public Health] may adopt rules pertaining to the required medical and mental health evaluations for a gestational surrogacy contract. Until the [Department of Public Health] adopts such rules, medical and mental health evaluations and procedures shall be conducted in accordance with the recommended guidelines published by the American Society for Reproductive Medicine and the American College of Obstetricians and Gynecologists. The rules may adopt these guidelines or others by reference.

Section 14. [*Severability.*] If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

Section 15. [*Irrevocability.*] No action to invalidate a gestational surrogacy meeting the requirements of subsection (d) of Section 4 of this Act or to challenge the rights of parentage established pursuant to Section 4 of this Act shall be commenced after [12 months] from the date of birth of the child.

Section 16. [*Application.*] The provisions of this Act shall apply only to gestational surrogacy contracts entered into after the effective date of this Act.

Section 17. [*Establishment of Parent and Child Relationship by Consent of the Parties.*]

(a) A parent and child relationship may be established voluntarily by the signing and witnessing of a voluntary acknowledgment of parentage in accordance with the provisions of

229 this Act. The voluntary acknowledgment of parentage shall contain the social security numbers  
230 of the persons signing the voluntary acknowledgment of parentage; however, failure to include  
231 the social security numbers of the persons signing a voluntary acknowledgment of parentage  
232 does not invalidate the voluntary acknowledgment of parentage.

233 (1) A parent-child relationship may be established in the event of gestational  
234 surrogacy if all of the following conditions are met prior to the birth of the child:

235 (A) The gestational surrogate certifies that she is not the biological mother  
236 of the child, and that she is carrying the child for the intended parents.

237 (B) The husband, if any, of the gestational surrogate certifies that he is not  
238 the biological father of the child.

239 (C) The intended mother certifies that she provided or an egg donor  
240 donated the egg from which the child being carried by the gestational surrogate mother was  
241 conceived.

242 (D) The intended father certifies that he provided or a sperm donor  
243 donated the sperm from which the child being carried by the gestational surrogate mother was  
244 conceived.

245 (E) A physician licensed to practice medicine in all its branches in [this  
246 State] certifies that the child being carried by the gestational surrogate is the biological child of  
247 the intended mother and intended father, and that neither the gestational surrogate nor the  
248 gestational surrogate's husband, if any, is a biological parent of the child being carried by the  
249 gestational surrogate.

250 (F) The attorneys for the intended parents and the gestational surrogate  
251 each certifies that the parties entered into a gestational surrogacy contract intended to satisfy the  
252 requirements of Section 6 of this Act with respect to the child.

253 (G) All certifications shall be in writing and witnessed by 2 competent  
254 adults who are not the gestational surrogate, gestational surrogate's husband, if any, intended  
255 mother, or intended father. Certifications shall be on forms prescribed by the [Department of  
256 Public Health], shall be executed prior to the birth of the child, and shall be placed in the medical  
257 records of the gestational surrogate prior to the birth of the child. Copies of all certifications shall  
258 be delivered to the [Department of Public Health] prior to the birth of the child.

259 (2) Unless otherwise determined by order of the [Circuit Court], the child shall be  
260 presumed to be the child of the gestational surrogate and of the gestational surrogate's husband,  
261 if any, if all requirements of subdivision (a)(1) are not met prior to the birth of the child. This  
262 presumption may be rebutted by clear and convincing evidence. The [circuit court] may order the  
263 gestational surrogate, gestational surrogate's husband, intended mother, intended father, and  
264 child to submit to such medical examinations and testing as the court deems appropriate.

265 (b) Notwithstanding any other provisions of this Act, paternity established in accordance  
266 with subsection (a) has the full force and effect of a judgment entered under this Act and serves  
267 as a basis for seeking a child support order without any further proceedings to establish paternity.

268 (c) A judicial or administrative proceeding to ratify paternity established in accordance  
269 with subsection (a) is neither required nor permitted.

270 (d) A signed acknowledgment of paternity entered under this Act may be challenged in  
271 court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof  
272 upon the challenging party. Pending outcome of the challenge to the acknowledgment of  
273 paternity, the legal responsibilities of the signatories shall remain in full force and effect, except  
274 upon order of the court upon a showing of good cause.

275 (e) Once a parent and child relationship is established in accordance with subsection (a),  
276 an order for support may be established pursuant to a petition to establish an order for support by  
277 consent filed with the [clerk of the circuit court]. A copy of the properly completed

acknowledgment of parentage form shall be attached to the petition. The petition shall ask that the circuit court enter an order for support. The petition may ask that an order for visitation, custody, or guardianship be entered. The filing and appearance fees provided under the [insert citation] shall be waived for all cases in which an acknowledgment of parentage form has been properly completed by the parties and in which a petition to establish an order for support by consent has been filed with the [clerk of the circuit court]. This subsection shall not be construed to prohibit filing any petition for child support, visitation, or custody under this Act or to prevent the establishment of an administrative support order in cases involving persons receiving child support enforcement services under [insert citation].

Section 18. [*Severability*.] [Insert severability clause.]

Section 19. [*Repealer*.] [Insert repealer clause.]

Section 20. [*Effective Date*.] [Insert effective date.]



# Health Care Directives Registry

This Act:

- Authorizes the Secretary of State, subject to the availability of funding, to establish and maintain an online health care directives registry;
- Requires the registry to be accessible through a web site maintained by the Secretary of State;
- Establishes that failure to register a health care directive with the Secretary of State does not affect the validity of a health care directive;
- Stipulates filing requirements for the registry may include the following notarized or witnessed documents and any notarized or witnessed revocations of these documents:
  - A. A health care power of attorney;
  - B. A living will; or
  - C. A mental health care power of attorney.
- Stipulates that the Secretary of State is not required to review documents submitted to ensure compliance with state law;
- Requires people who submit a document for registration to provide a return address and submit any fee prescribed by the Secretary of State for the registry;
- Establishes that failure to notify the Secretary of the revocation of a document does not affect the validity of a health care directive;
- Establishes a process by which health care directives submitted are reviewed for accuracy by the people submitting them;
- Stipulates that entries may only be activated upon confirmation of accuracy;
- Requires the Secretary of State to assign registrants a unique file number and password upon receipt of a completed registration form;
- Requires the Secretary of State to provide registrants with a card that identifies their file number and password;
- Establishes that online health care directives are only accessible by entering the file number and password on the Internet web site;
- Declares health care directives are confidential and shall not be disclosed to anyone other than the person who submitted the document or the person's personal representative;
- Requires the Secretary of State to delete a document filed when the Secretary receives revocation of a document along with that document's file number and password;
- Prohibits the Secretary from using information contained in submitted documents for any other purpose;
- Requires the Secretary of State to purge documents from the registry every five years in order to eliminate documents of people who have passed away;
- Instructs the director of state department of health services to share registry of death certificates with the Secretary of State for purging purposes;
- Prohibits the legislature from appropriating or transferring general fund monies or other state monies to support, promote and maintain the registry;
- Establishes a Health Care Directives Registry Fund consisting of monies received by the Secretary for operation of the registry;
- Allows the Secretary of State to accept gifts, grants, donations, bequests and contributions to support, maintain and promote the registry;

- Requires the Secretary to use fund monies to support, promote and maintain the registry;
- Directs that the Secretary shall administer the fund, and the monies in the fund are continuously appropriated;
- Requires the State Treasurer, upon notice of the Secretary of State, to invest and divest monies in the fund; monies earned from investment shall be credited to the fund;
- Stipulates that health care providers are not required to request information from the registry about whether the patient has executed a health care directive;
- Stipulates that this Act does not affect the duty of the health care providers to provide information to a patient regarding health care directives;
- Clarifies that health care providers may access the registry for the purpose of providing care if the provider has the patient's password and file number;
- Stipulates that a health care provider who relies in good faith on a health care directive filed with the registry is immune from liability;
- Allows the Secretary, upon request of the person who submitted a document, to transmit health care directive information to the registry system of another jurisdiction; and
- Exempts the state from civil liability (except for acts of gross negligence, willful misconduct or intentional wrongdoing) for any claims or demands arising out of the administration and operation of the registry.

Submitted as:

Arizona

Chapter 219 of 2004

Status: Enacted into law in 2004.

### **Suggested State Legislation**

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish a Registry of  
2 Health Care Directives.”

3  
4           Section 2. [*Establishing a Health Care Directives Registry.*]

5           A. Subject to the availability of monies, the [secretary of state] shall establish and  
6 maintain a Health Care Directives Registry.

7           B. The registry shall be accessible through a web site maintained by the [secretary of  
8 state].

9           C. The [secretary of state] may accept gifts, grants, donations, bequests and other forms  
10 of voluntary contributions to support, promote and maintain the registry. The [legislature or the  
11 secretary of state] shall not appropriate or transfer state general fund or other state monies to  
12 support, promote and maintain the registry.

13  
14           Section 3. [*Filing Requirements.*]

15           A. A person may submit to the [secretary of state], in a form prescribed by the [secretary  
16 of state], the following documents and any revocations of these documents for registration:

17               1. a health care power of attorney.

18               2. a living will.

19               3. a mental health care power of attorney.

20  
21           B. The person who submits a document for registration pursuant to this section must  
22 provide a return address.

C. Documents submitted pursuant to this section must be notarized or witnessed as prescribed by this Act.

Section 4. *[Effect of Nonregistration or Revocation.]*

A. Failure to register a document with the [secretary of state pursuant] to this Act does not affect the validity of a health care directive.

B. Failure to notify the [secretary of state] of the revocation of a document filed pursuant to this Act does not affect the validity of a revocation that otherwise meets the requirements for a revocation pursuant to this Act.

Section 5. *[Registration; Purge of Registered Documents.]*

A. On receipt of a completed registration form, the [secretary of state] shall create a digital reproduction of the form, enter the reproduced form into the health care directives registry database and assign each registration a unique file number and password.

B. The [secretary of state] is not required to review a document to ensure that it complies with the particular statutory requirements applicable to the document.

C. After entering the reproduced document into the registry database, the [secretary of state] shall return the original document to the person who submitted the document and provide that person with a printed record of the information entered into the database under the file number and a wallet size card that contains the document's file number and a password.

D. The person who submitted the document shall review the printed record. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the [secretary of state].

E. If the person who submitted the document determines that the printed record is inaccurate, the person shall correct the information and sign and return the corrected printed record to the [secretary of state]. On receipt of a corrected printed record, the [secretary of state] shall make the proper corrections and send a corrected printed record to the person who submitted the document. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the [secretary of state's office].

F. The [secretary of state] shall activate the entry into the Health Care Directives Registry Database only after receiving a printed record marked "no corrections required."

G. The [secretary of state] shall delete a document filed with the registry pursuant to this section when the [secretary of state] receives a revocation of a document along with that document's file number and password.

H. The entry of a document pursuant to this Act does not:

1. affect the validity of the document.
2. relate to the accuracy of information contained in the document.
3. create a presumption regarding the validity of the document or the accuracy of information contained in the document.

I. The [secretary of state] shall purge a document filed with the registry on verification by the [director of the department of health services] of the death of the person who submitted the document. The [secretary of state] shall purge the registry of documents pursuant to this subsection at least once every [five years]. The [director of the department of health services] shall share its registry of death certificates with the [secretary of state] in order to conduct the document purge required by this subsection.

Section 6. *[Registry Information; Confidentiality; Transfer of Information.]*

71 A. The registry established pursuant to this Act is accessible only by entering the file  
72 number and password on the Internet web site.

73 B. Registrations, file numbers, passwords and any other information maintained by the  
74 [secretary of state] pursuant to this Act are confidential and shall not be disclosed to any person  
75 other than the person who submitted the document or the person's personal representative.

76 C. Notwithstanding subsection B, a health care provider may access the registry and  
77 receive a patient's health care directive documents for the provision of health care services by  
78 submitting the patient's file number and password.

79 D. The [secretary of state] shall use information contained in the registry only for  
80 purposes prescribed in this Act.

81 E. At the request of a person who submitted the document, the [secretary of state] may  
82 transmit the information received regarding the health care directive to the registry system of  
83 another jurisdiction as identified by the person.

84

85 Section 7. [*Liability; Limitation.*]

86 A. Except for acts of gross negligence, willful misconduct or intentional wrongdoing,  
87 this state is not subject to civil liability for any claims or demands arising out of the  
88 administration or operation of the registry established pursuant to this Act.

89 B. This Act does not require a health care provider to request from the registry  
90 information about whether a patient has executed a health care directive. A health care provider  
91 who makes good faith health care decisions in reliance on the provisions of an apparently  
92 genuine health care directive received from the registry is immune from criminal and civil  
93 liability to the same extent and under the same conditions as prescribed in [insert citation].

94 C. This Act does not affect the duty of a health care provider to provide information to a  
95 patient regarding health care directives pursuant to federal law.

96

97 Section 8. [*Health Care Directives Registry Fund.*]

98 A. The [Health Care Directives Registry Fund] is established consisting of monies  
99 received pursuant to this Act. The [secretary of state] shall administer the fund. Monies in the  
100 fund are continuously appropriated.

101 B. On notice from the [secretary of state], the [state treasurer] shall invest and divest  
102 monies in the fund as provided by [insert citation], and monies earned from investment shall be  
103 credited to the fund.

104 C. The [secretary of state] shall use fund monies to support, promote and maintain the  
105 registry.

106 D. Fund monies shall not include monies appropriated from the state [General Fund].

107

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

109

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

111

112 Section 11. [*Effective Date.*] [Insert effective date.]

# Healthy Forest Enterprise Assistance Program Statement

Arizona Chapter 326 of 2004 establishes a Healthy Forest Enterprise Assistance Program, provides sales, use and income tax incentives for qualified businesses until 2014 and allows the state to contract for electrical energy produced from biomass resources. Biomass is any organic matter, which is available on a renewable or recurring basis, including trees, plants, associated residues and plant fiber. Biomass energy can be converted to fuel, serve as a feedstock for electricity and a building block for chemicals.

The bill authorizes cities, towns and counties to adopt and periodically revise an urban-wildland interface code, makes the state forester a position separate from the state land commissioner, establishes the state urban-wildland fire safety committee and requires that the state forester identify pilot programs to promote forest health.

Specifically, this Act:

- Requires the state department of commerce (Commerce) to identify and certify to the state department of revenue (DOR), the relevant information for qualified businesses for the purposes of available tax incentives for economic enterprises that promote forest health in the state;

- Outlines requirements for a business to qualify to receive tax incentives as follows:

- A. The business must be primarily engaged in harvesting, transporting or the initial processing of forest products or biomass into a product having commercial value under the following conditions:

- B. At least one half of the forest product must be from biomass sources and half of the biomass must be from sources in the state.

- C. Qualifying equipment must be for the purposes of harvesting, transporting or the initial processing of biomass.

- D. The business operation must enhance or sustain forest health, sustain or recover watershed or improve public safety.

- E. The business must agree with Commerce to furnish information relating to the amount of tax benefits that the business receives each year.

- F. The business must enter into a Memorandum of Understanding with Commerce containing:

- I. Employment goals; and

- II. A commitment to continue in business in the state including authorization for Commerce to terminate and recapture tax benefits based on noncompliance.

- Outlines terms for a business to qualify for certification for tax incentives and provides grounds for revocation of a certificate;

- Provides transaction privilege (sales) and use tax exemptions and income tax credits for businesses that are engaged in an industry that uses, consumes, or adds value to forest products or biomass;

- Provides an exemption from the retail classification from July 1, 2004 until June 30, 2014 for any machinery or equipment that is installed or used by a qualified business for harvesting, transporting or the initial processing of forest products or biomass. The business must be qualified by Commerce at the time of purchase;

- Provides a similar exemption from use tax for machinery or equipment purchased out of state;

- Provides an exemption for machinery or equipment that is rented for at least five years instead of being purchased;
- Provides an exemption from the prime contracting classification for the construction of any building, structure, project, development or improvement that harvests, transports or provides initial processing of forest products or biomass. Construction must begin before January 1, 2010 and the contractor must be established as a qualifying business by Commerce;
- Creates a new individual and corporate income tax credit for employers, based on net increases in qualified employment positions in qualified business certified by Commerce. The amount of the credit is the lesser of:
  - A. In the first (or partial) year: one-fourth of the taxable wage or \$500.
  - B. In the second year: one-third of the taxable wage or \$1,000.
  - C. In the third year: one-half of the taxable wage or \$1,500. To qualify for the income tax credits:
    - A. The business must employ at least 10 employees.
    - B. The employee must be a resident of the state on the date of hire who has not been previously employed by the taxpayer in the past year and must be in a permanent, full-time position (at least 1,750 hours/year).
    - C. The job duties must primarily involve or directly support the harvesting, transporting or the initial processing of forest products or biomass into a product having commercial value.
    - D. The employer must offer compensation equal to or exceeding the average wage as computed by the department of economic security per county. The employer must also include health insurance and pay for at least half the cost.
    - E. An employee must have been employed at least 90 days in the first year the tax credit is taken. If the position is filled in the last 90 days of the year, it qualifies in the next tax year.
    - F. The number of qualified employment positions that are eligible for the income tax credits cannot exceed 200. The calculation for eligible employees is the lesser of:
      - G. The total number of filled qualified employment positions created or the difference between the average number of full time employees during the current tax year and the average number of full time employees during the immediately preceding tax year.
      - H. A tax credit claimed for an employment position for a qualified business cannot also be claimed under enterprise zone, defense contractor or military reuse zone credits.
- Requires that an eligible business cannot take credits for the second and third year unless they have taken credit for an employee in the first year of employment. Credits may be carried forward for five years. Co-owners of a business or partners may only claim their pro-rata share of the credit;
- Outlines requirements for continuing the credits when an ownership change takes place through purchase, reorganization, stock purchase or merger;
- Authorizes Commerce to recapture credits allowed the business, if within five taxable years after first receiving a credit the certification of qualification of a business is terminated or revoked other than for reasons beyond the control of the business;
- Adds income tax credits to the income tax credit review schedule;
- Applies tax incentives from January 1, 2005 through December 31, 2014;
- Requires the Governor to appoint and the Senate to confirm a state forester;
- Expands the duties of the state forester to:

- A. Perform all management and administrative functions prescribed by the federal government related to forestry and financial assistance and grants relating to forestry.
- B. Identify sources of information relating to forest management.
- C. Take necessary action to maximize state fire assistance grants.
- D. Conduct education and outreach in forest communities to explain the threat of wildfire to private property.
- E. Monitor forestry projects and wildfire activities.
- F. Intervene on behalf of the state and its citizens in administrative and judicial appeals and litigation that challenge governmental efforts supported by the State Forester if the State Forester determines that intervention is in the best interest of the State.
  - Establishes the state urban-wildland fire safety committee (Committee);
  - Allows the urban-wildland fire safety committee to recommend an urban-wildland interface code;
  - Authorizes cities, towns and counties to adopt and periodically revise an urban-wildland interface code consistent with the recommendations of the state urban-wildland fire safety committee;
  - Requires a city, town or county to provide notification and allow for public participation and comment when the code is adopted or modified;
  - Requires the Committee to develop recommendations for minimum standards for safeguarding life and property from wildfire and issue an annual report with recommendations to the Governor and Legislature by December 31 of each year;
  - Requires the state department of administration to develop a program to enter into contracts to purchase electrical energy produced from biomass resources under the following conditions:
    - A. The term of the initial contracts may not exceed ten years.
    - B. The contracts must contain contingency provisions if biomass does not produce enough energy.
  - Stipulates that the department of administration must make a presentation on the status of the program relating to state contracts for biomass energy to the legislature dealing with natural resources in the 2005 and 2006 legislative sessions; and
  - Requires the state forester to:
    - A. Identify potential pilot programs to promote forest health.
    - B. Identify specific public private partnerships that may be useful in promoting forest health.
    - C. Work in partnership with federal agencies to establish a pilot program.
    - D. Identify necessary steps that may be needed in conjunction with the provisions of the federal Healthy Forests Restoration Act.
    - E. Maximize state fire assistance grants by establishing timelines for use of any monies that are awarded.
    - F. Provide an interim report and a final report to the legislature and governor on progress accomplished regarding forest health, costs and recommendations for statutory changes.

Submitted as:

Arizona

Chapter 326 of 2004

Status: Enacted into law in 2004.

# High School Student Athletes and Anabolic Steroids

This Act directs organizations which organize and govern public high school interscholastic activities to establish rules requiring that, upon disclosure, a public school student athlete who uses anabolic steroids during the training period immediately preceding or during the sport season of the school athletic team on which he is a member be ineligible to participate in interscholastic athletic competition for two years, unless the steroid was prescribed by a licensed physician for a medical condition. Student use of anabolic steroids during the training period immediately preceding or during the sport season of the school is required to be reported, unless the steroid was prescribed by a licensed physician for a medical condition. The bill also requires the state board of education to suspend or revoke the administrative or teaching license of any person who knowingly and willfully with the intent to compromise the outcome of an athletic competition procures, sells, or administers anabolic steroids or causes these drugs to be procured, sold, or administered to students, or by failing to report student use of anabolic steroids.

Submitted as:

Virginia

Chapter 481

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act Relating to Ineligibility of  
2 Students to Compete in Athletic Competitions.”

3  
4           Section 2. [*Ineligibility of Students to Compete in Athletic Competitions.*] Any nonprofit  
5 corporation founded in this state that currently organizes and governs interscholastic activities  
6 among the public high schools shall develop, implement, and enforce rules requiring that a  
7 student who is a member of a school athletic team be ineligible for two school years to compete  
8 in interscholastic athletic competition, if it has been determined by the school principal and  
9 division superintendent that the student used anabolic steroids during the training period  
10 immediately preceding or during the sport season of the athletic team, unless such steroid was  
11 prescribed by a licensed physician for a medical condition.

12  
13           Section 3. [*Suspension or Revocation of License for Procuring, Selling, or Administering*  
14 *Anabolic Steroids.*]

15           A. The [Board of Education] shall suspend or revoke the administrative or teaching  
16 license it has issued to any person who knowingly and willfully with the intent to compromise  
17 the outcome of an athletic competition procures, sells, or administers anabolic steroids or causes  
18 such drugs to be procured, sold, or administered to a student who is a member of a school  
19 athletic team, or fails to report the use of such drugs by a student to the school principal and  
20 division superintendent as required by [insert citation]. Any person whose administrative or  
21 teaching license is suspended or revoked by the [Board] pursuant to this section shall be  
22 ineligible for [three school years] for employment in the public schools of this state.



23           B. Any suspension or revocation imposed in accordance with this section shall be  
24 rendered pursuant to [Board] regulations promulgated pursuant to the [state Administrative  
25 Process Act] and [insert citation] governing the licensure of teachers.

26  
27           Section 4. [*Severability*.] [Insert severability clause.]

28  
29           Section 5. [*Repealer*.] [Insert repealer clause.]

30  
31           Section 6. [*Effective Date*.] [Insert effective date.]

# Hurricane Insurance Statement

Existing Florida law required that for residential property insurance policies issued or renewed on or after May 1, 2005, any hurricane deductible must be applied on an annual basis to all hurricanes that occur during the calendar year, rather than to each hurricane. This requirement applies to both personal lines residential policies (homeowners, mobile homeowners, etc.) and commercial residential policies (condominium associations, apartment buildings, etc.). Although the premium impact on homeowners and other personal lines policies is expected to be small (about 1 to 3 percent), it is likely to be much greater for condominium association policies.

Florida Chapter 111 of 2005 provides that any annual hurricane deductible requirement would be limited to personal lines residential policies and would not apply to commercial residential policies. However, for commercial residential policies issued or renewed on or after January 1, 2006, the insurer would be required to offer the policyholder the option of: 1) a hurricane deductible that applies on an annual basis (as required for personal lines policies), and 2) a hurricane deductible that applies to each hurricane.

This Act requires insurance companies to clearly state the deductible amount for hurricane damages and allows people choose their deductible percentage. The Act prohibits insurers from dropping customers for at least 90 days after a hurricane. It also requires that the claims process begin within 14 days after the insurer is notified. The bill makes it easier for insurance companies to tap into the state's backup fund to pay claims if the companies are hit with a third storm in the same season. The bill reverses a recent court decision that said insurers had to pay the full policy amount to repair a house, even if some of the damage was caused by something such as wind that was not covered in the policy.

Specifically, this Act:

- Revises the retention of losses for which an insurer is not entitled to reimbursement from the state Hurricane Catastrophe Fund;
- Revises the allocation of funds appropriated to the state department of community affairs from the state Hurricane Catastrophe Fund for the Hurricane Loss Mitigation Program;
- Requires the department establish a low-interest loan program and pilot project for hurricane loss mitigation; authorizing contractual agreements between the department and financial institutions;
- Requires the state office of insurance regulation to submit a proposed plan to the Legislature establishing uniform rating territories to be used by insurers for residential property insurance rate filings;
- Requires further action of the Legislature to implement the plan;
- Limits the recoupment by an insurer in its rates of the reimbursement premium it pays to the state Hurricane Catastrophe Fund;
- Redefines language restricting the admissibility and relevance in rate proceedings of findings of the state Commission on Hurricane Loss Projection Methodology;
- Lowers the percentage amount of a rate filing based on a computer model which requires a public hearing;
- Requires residential property insurers and rating and advisory organizations to report hurricane loss data for development of a public hurricane model for hurricane loss projections;
- Authorizes a Citizens Property Insurance Corporation to issue bonds and incur indebtedness for certain purposes;
- Creates a Market Accountability Advisory Committee to assist the corporation for certain purposes;

- Establishes a pilot program specifying nonapplication of certain policy requirements in a county lacking reasonable degrees of competition for certain policies under certain circumstances; requiring the commission to adopt rules;
- Prohibits insurers from canceling or nonrenewing residential property insurance policies under certain emergency circumstances; providing exceptions; providing notice requirements;
- Requires insurers to provide personal lines property insurance policyholders with a checklist of items contained in policies;
- Authorizes the Financial Services Commission to adopt rules; prescribing elements to be contained in the checklist;
- Requires the checklist and outline of insurance coverage to be sent with each renewal; clarifying that homeowners' insurance includes mobile homeowners', dwelling, and condominium unit owners' insurance for purposes of the outline of coverage;
- Increases the maximum allowable hurricane deductible for personal lines and certain commercial lines residential policies; requiring insurers to offer specified hurricane deductibles for such policies;
- Requires insurers to provide written notice explaining hurricane deductible options for such policies;
- Provides for computation and display of the dollar value of hurricane deductibles;
- Requires insurers to compute and display actual dollar values of certain riders for certain policies;
- Provides that the requirement for a hurricane deductible to apply on an annual basis applies to personal lines residential property insurance policies;
- Requires insurers that provide commercial residential property insurance to offer alternative hurricane deductibles that apply on an annual basis or to each hurricane;
- Requires insurers to offer coverage for additional costs of repair due to laws and ordinances; Requires insurers to pay the replacement cost for a loss insured on that basis, whether or not the insured replaces or repairs the dwelling or property;
- Requires certain homeowner's insurance policies to contain a specified statement; providing intent; and
- Limits an insurer's liability to certain loss covered by a covered peril.

Submitted as:

Florida

CS for SB1486 (Enrolled version)/Chapter 2005 - 111

Status: Enacted into law in 2005.

# Immigration Assistance Services

New York enacted A07137 into law in 2004. A07137 is reported to be the first to establish standards for immigration consultants. A press release from New York Governor Pataki's office reports "Throughout the State, immigration consultants often are also notaries licensed by the State to witness signatures on legal documents. However, in Spanish-speaking areas, they often call themselves 'notarios,' which is the Spanish word for 'expert attorney.' In enforcing this new law, State officials will be determining whether it will be legal for notaries to call themselves 'notarios'. This new law will protect immigrants from being exploited by establishing tough new standards and protections to effectively regulate the activities of those who would try and take advantage of them."

In addition, the press release states that New York A07137 "will complement a new educational initiative Governor Pataki unveiled in April of 2004 to help protect immigrants from scam artists posing as immigration consultants. The new program, which is a joint initiative between the New York State Consumer Protection Board and the Governor's Citizenship Unit, is an educational campaign designed to raise awareness among immigrant communities about scam artists who prey on immigrants trying to obtain citizenship."

The SSL draft Act in this volume is based on New York A07137. This draft Act defines "Immigration Assistance Services" and establishes regulations for people and organizations that provide such services for a fee. For example, the Act prohibits immigration service providers from providing such services to a customer without a contract that the customer can understand. The Act enables customers to break such contracts within 3 days of signing such contracts and to get back any money that the customers have paid on the contract. This Act also requires immigration assistance providers to post signs that explain that the assistance provider is not an attorney or the individual providing assistance under this contract is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation before the federal Bureau of Citizenship and Immigration services, the federal Department of Labor, the Department of State or any immigration authorities. It also requires a separate sign that lists the fees the provider charges for immigration services.

Submitted as:

New York

A07137

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 Immigration  
2 Assistance Services."

3

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

5           1. "Immigrant assistance service" means providing assistance, for a fee or other  
6 compensation, to persons who have, or plan to, come to the United States from a foreign country,  
7 or their representatives, in relation to any proceeding, filing or action affecting the non-  
8 immigrant, immigrant or citizenship status of a person which arises under the immigration and  
9 nationality law, executive order or presidential proclamation, or which arises under actions or

regulations of the United States Bureau of Citizenship and Immigration Services, the United States Department of Labor, or the United States Department of State.

2. "Provider" means any person, including but not limited to a corporation, partnership, limited liability company, sole proprietorship or natural person, that provides immigrant assistance services, but shall not include:

a. Any person duly admitted to practice law in this state and any person working directly under the supervision of the person admitted;

b. Any not-for-profit tax exempt organization that provides immigrant assistance without a fee or other payment from individuals or at nominal fees as defined by the federal board of immigration appeals, and the employees of such organization when acting within the scope of such employment;

c. Any organization recognized by the Federal Board of Immigration Appeals that provides services via representatives accredited by such board to appear before the Bureau of Citizenship and Immigration Services and/or Executive Office for Immigration Review, that does not charge a fee or charges nominal fees as defined by the Board of Immigration Appeals; or

d. Any authorized agency under [insert citation] and the employees of such organization when acting within the scope of such employment.

Section 3. [*Immigrant Assistance Service Contracts*.] No immigrant assistance service shall be provided until the customer has executed a written contract with the provider who will provide such services. The contract shall be in a language understood by the customer, either alone or with the assistance of an available interpreter, and, if that language is not English, an English language version of the contract must also be provided. A copy of the contract shall be provided to the customer upon the customer's execution of the contract. The customer has the right to cancel the contract within [three business days] after his or her execution of the contract, without fee or penalty. The right to cancel the contract within [three days] without payment of any fee may be waived when services must be provided immediately to avoid a forfeiture of eligibility or other loss of rights or privileges, and the customer furnishes the provider with a separate dated and signed statement, by the customer or his or her representative, describing the need for services to be provided within [three days] and expressly acknowledging and waiving the right to cancel the contract within [three days]. The contract may be cancelled at any time after execution. If the contract is cancelled after [three days], or within [three days] if the right to cancel without fee has been waived, the provider may retain fees for services rendered, and any additional amounts actually expended on behalf of the customer. All other amounts must be returned to the customer within [fifteen days] after cancellation. The written contract shall be in plain language, in at least [twelve point type] and shall include the following:

a. The name, address and telephone number of the provider.

b. Itemization of all services to be provided to the customer, as well as the fees and costs to be charged to the customer.

c. A statement that original documents required to be submitted in connection with an application made to the federal bureau of citizenship and immigration services or for other certifications, benefits or services provided by government may not be retained by the immigrant assistance service provider for any reason, including payment of fees or costs.

d. A statement that the provider shall give the customer a copy of each document filed with a governmental entity.

e. A statement that the customer is not required to obtain supporting documents through the immigrant assistance service provider, but may obtain such documents himself or herself.

f. The statement: “You have three (3) business days to cancel this contract. Notice of cancellation must be in writing, signed by you and mailed by registered or certified United States mail to (specify address). If you cancel this contract within three days, you will get back your documents and any fees that you paid”.

g. A statement that the immigration services provider has financial surety in effect for the benefit of any customer in the event that the customer is owed a refund, or is damaged by the actions of the provider, together with the name, address and telephone number of the surety.

h. The statement: “The individual providing assistance to you under this contract is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation to you before the Bureau of Citizenship and Immigration Services, the Department of Labor, the Department of State or any immigration authorities and may not give legal advice or accept fees for legal advice.”

i. The statement: “The individual providing assistance to you under this contract is prohibited from disclosing any information or filing any forms or documents with immigration or other authorities without your knowledge and consent.”

j. The statement: “A copy of all forms completed and documents accompanying the forms shall be kept by the service provider for three years. A copy of the customer’s file shall be provided to the client on demand and without fee.”

Section 4. [*Posting of Signs.*] Every provider shall post signs, at every location where such provider meets with customers, setting forth information in English and in every other language in which the person provides or offers to provide immigrant assistance. There shall be a separate sign for each language, and each shall be posted in a location where it will be visible to customers.

a. One sign shall be at least [eleven inches by seventeen inches], and shall contain the following in not less than [sixty point type]:

“The individual providing assistance to you under this contact is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation to you before the Bureau of Citizenship and Immigration Services, the Department of Labor, the Department of State or any immigration authorities and may not give legal advice or accept fees for legal advice.”

b. A separate sign shall be posed in a location visible to customers in conspicuous size type and which contains the schedule of fees for services offered and the statement: “You may cancel any contract within 3 business days and get back your documents and any money you paid.”

Section 5. [*Notice in Advertisements.*] Every provider who advertises immigrant assistance services, whether by signs, pamphlets, newspapers, or any other written communication shall post or otherwise include with such advertisement a notice in the language in which the advertisement appears. This notice shall be of a conspicuous size and shall state:

“The individual providing assistance to you is not an attorney licensed to practice law or accredited by the Board of Immigration Appeals to provide representation to you before the Bureau of Citizenship and Immigration Services, the Department of Labor, the Department of State or any immigration authorities and may not give legal advice or accept fees for legal advice.”

Section 6. [*Prohibited Acts.*] No provider shall:

- a. Give legal advice, or otherwise engage in the practice of law.
- b. Assume, use or advertise the title of lawyer or attorney at law, or equivalent terms in the English language or any other language, or represent or advertise other titles or credentials, including but not limited to “notary public,” “accredited representative of the board of immigration appeals” or “immigration consultant,” that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public licensed by the [secretary of state] may use the term “notary public.”
- c. State or imply that the person can or will obtain special favors from or has special influence with the Bureau of Citizenship and Immigration Services or any other governmental entity, or threaten to report the client to immigration or other authorities or undermine in any way the client’s immigration status or attempt to secure lawful status.
- d. Demand or retain any fees or compensation for services not performed, or costs that are not actually incurred.
- e. Advise, direct or permit a customer to answer questions on a government document, or in a discussion with a government official, in a specific way where the provider knows or has reasonable cause to believe that the answers are false or misleading.
- f. Disclose any information to, or file any forms or documents with, immigration or other authorities without the knowledge or consent of the customer.
- g. Fail to provide customers with copies of documents filed with a governmental entity or refuse to return original documents supplied by, prepared on behalf of, or paid for by the customer, upon the request of the customer, or upon termination of the contract. Original documents must be returned promptly upon request and upon cancellation of the contract, even if there is a fee dispute between the immigration assistance service provider and the customer.
- g. Make any misrepresentation or false statement, directly or indirectly.
- h. Make any guarantee or promise to a customer, unless there is a basis in fact for such representation, and the guarantee or promise is in writing.
- i. Represent that a fee may be charged, or charge a fee for the distribution, provision or submission of an official document or form issued or promulgated by a state or federal governmental entity, or for a referral of the customer to another person or entity that is qualified to provide services or assistance which the immigrant assistance service provider will not provide.

Section 7. [*Retention of Documents.*] Every provider shall retain copies of all documents prepared or obtained in connection with a customer’s request for assistance for a period of [three years] after a written contract is executed by the provider and the customer, whether or not such contract is subsequently cancelled.

Section 8. [*Surety Requirement.*] Every provider shall maintain in full force and effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of [the state], in the principal amount of [fifty thousand dollars]; provided, however, that every provider that receives in excess of [two hundred fifty thousand dollars] in total fees and other compensation for providing immigrant assistance service during any [twelve-month period] shall maintain in full force and effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of [the state], in the principal amount of [twenty percent] of such total fees and compensation. Such surety shall be for the benefit of any customer who does not receive a refund of fees from the provider to which he or she is entitled, or is otherwise injured by the provider.

156 The [attorney general] on behalf of the customer or the customer in his or her own name, may  
157 maintain an action against the provider and the surety.

158  
159 Section 9. [*Enforcement.*] Upon any violation of this Act, an application may be made by  
160 the [attorney general] in the name of the people of the state to a court having jurisdiction to issue  
161 an injunction, and upon notice to the respondent of not fewer than [five days], to enjoin and  
162 restrain the continuance of the violation. If it shall appear to the satisfaction of the [court or  
163 justice] that the defendant has, in fact, violated this Act, an injunction may be issued by such  
164 court or justice, enjoining and restraining any further violation, without requiring proof that any  
165 person has, in fact, been injured or damaged thereby. In any such proceeding, the court may  
166 make allowances to the [attorney general] as provided in [insert citation]. Whenever the court  
167 shall determine that a violation of this Act has occurred, the court may impose a civil penalty of  
168 not more than [seven thousand five hundred dollars] for each violation.

169  
170 Section 10. [*Violations.*] Any violation of any provision of this Act shall be a [Class A  
171 Misdemeanor, and upon conviction the court may order as part of the sentence imposed  
172 restitution or reparation to the victim of the crime pursuant to [insert citation].

173  
174 Section 11. [*Other Remedies.*] The civil and criminal remedies set forth in this Act shall  
175 not preclude any individual or entity or government authority from seeking relief under any other  
176 statutory or common law right to relief.

177  
178 Section 12. [*Severability.*] [Insert severability clause.]

179  
180 Section 13. [*Repealer.*] [Insert repealer clause.]

181  
182 Section 14. [*Effective Date.*] [Insert effective date.]



# Income Tax Deduction for Donating a Human Organ

This Act permits a living person or their dependent who donates one of their human organs for transplant to another person to subtract up to \$10,000 from their federal adjusted gross income as reported on their state income tax, and to claim a deduction for related, unreimbursed expenses for travel, lodging and lost wages. The Act defines “human organ” as all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow.

This SSL draft Act is based on Wisconsin Act 119 of 2003. Wisconsin’s law is reported to be the first of its kind.

Submitted as:

Wisconsin

2003 Act 119

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 Create an Individual Income  
2 Tax Subtraction for People Who Donate or Whose Dependents Donate, a Human Organ.”  
3

4           Section 2. [*Subtraction from Federal Adjusted Gross Income as Reported on State*  
5 *Income Tax for Donating a Human Organ.*]

6           (A) Subject to the conditions in this paragraph, an individual may subtract up to  
7 [\$10,000] from federal adjusted gross income if he or she, or his or her dependent who is  
8 claimed under section 151 (c) of the Internal Revenue Code, while living, donates one or more of  
9 his or her human organs to another human being for human organ transplantation, as defined in  
10 [insert citation], except that in this paragraph, “human organ” means all or part of a liver,  
11 pancreas, kidney, intestine, lung, or bone marrow. A subtract modification that is claimed under  
12 this paragraph may be claimed in the taxable year in which the human organ transplantation  
13 occurs.

14           (B) An individual may claim the subtract modification under subdivision (A) of this  
15 section only once, and the subtract modification may be claimed for only the following  
16 unreimbursed expenses that are incurred by the claimant and related to the claimant’s organ  
17 donation:

18                   a. Travel expenses.

19                   b. Lodging expenses.

20                   c. Lost wages.

21           (C) The subtract modification under subdivision (A) may not be claimed by a part-year  
22 resident or a nonresident of this state.

23           (D) This section first applies to taxable years beginning on [January 1] of the year in  
24 which this Act takes effect, except that if this Act takes effect after [July 31], this section of this  
25 Act first applies to taxable years beginning on [January 1] of the year following the year in  
26 which this Act takes effect.  
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.]

# Inspection of Reconstructed, Modified And Specially Constructed Vehicles

This Act requires that all reconstructed, modified and specially constructed vehicles undergo an enhanced safety inspection. It also establishes a specialized vehicle compliance inspection advisory panel to make recommendations concerning procedures and requirements for specialized vehicle compliance inspections.

Submitted as:

Pennsylvania

HB 2066

Status: Enacted into law in 2004.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Address Inspecting  
2 Reconstructed, Modified and Specially Constructed Vehicles.”

3  
4           Section 2. [*Definitions.*]

5           (a) As used in this Act:

- 6                   (1) Reconstructed vehicles are those described under [insert citation];  
7                   (2) Modified vehicles are those described under [insert citation];  
8                   (3) Specially constructed vehicles are those described under [insert citation]; and  
9                   (4) A reconstructed vehicle inspection station is a station that performs the  
10 functions as defined under [insert citation].

11  
12           Section 3. [*Inspecting Reconstructed, Modified and Specially Constructed Vehicles.*]

13           (a) The [department] shall establish a [Specialized Vehicle Compliance Inspection  
14 Advisory Panel] to oversee and make recommendations concerning establishment of procedures  
15 and requirements for inspecting reconstructed, modified and specially constructed vehicles. The  
16 panel shall consist of the following:

- 17                   (1) The [secretary or his designee] who shall serve as Chairman.  
18                   (2) The [chairman and minority chairman of the Transportation Committee of the  
19 Senate] and the [chairman and minority chairman of the Transportation Committee of the  
20 House of Representatives or their designees].  
21                   (3) A representative of the [office of Attorney General].  
22                   (4) A vehicle salvage dealer selected by the [department].  
23                   (5) A licensed vehicle dealer who reconstructs or modifies vehicles.  
24                   (6) A member of the alliance of automotive service providers.  
25                   (7) A member of the state automotive association.  
26                   (8) A member of the state independent automotive dealers association.  
27                   (9) A certified mechanic who performs vehicle inspections.  
28                   (10) A certified collision repair technician who performs vehicle reconstruction.

29           (b) The panel shall:

- 30                   (1) Establish a system of privately owned reconstructed vehicle inspection  
31 stations staffed by specially trained people to inspect for compliance with vehicle regulations.

(2) Promote highway safety and consumer confidence through specialized inspections.

(3) Diminish fraud and use of stolen vehicles and parts in vehicle rebuilds.

(4) Improve the titling process for reconstructed, modified and specially constructed vehicles.

(c) Nothing shall prevent the chairman or members of the committee from enlisting cooperation from professionals outside of the panel members or from holding hearings or taking testimony on issues relating to the reconstructed vehicle process.

(d) The [department] shall issue a "Certificate of Appointment for Enhanced Vehicle Safety Inspection" for reconstructed vehicle, modified or specially constructed inspection stations.

(e) All reconstructed, modified and specially constructed vehicles shall undergo an enhanced vehicle safety inspection as specified in this Act and as deemed appropriate by the advisory panel created under this Act.

(f) After the effective date of this Act, no reconstructed, modified or specially constructed vehicle may be operated on the highway until it has successfully passed an inspection at a reconstructed vehicle inspection station pursuant to this Act.

#### Section 4. *[Liability for Inspecting Reconstructed, Modified and Specially Constructed Vehicles.]*

(a) An inspection conducted pursuant to this Act relating to reconstructed, modified and specially constructed vehicles shall not be construed as a guaranty of the safety of any vehicle and neither the official inspection station issuing the certificate of inspection nor the official inspection mechanic performing the inspection shall be liable to the owner or occupants of any inspected vehicle for any damages caused by the failure or malfunction of that vehicle or to the owner or occupants of any vehicle involved in an accident with that inspected vehicle or to any pedestrian injured in the accident unless it can be shown by a preponderance of the evidence that the failure was caused by the negligence of the inspection station or mechanic.

(b) An official inspection mechanic in the course of his duties relating to the road test portion of an official vehicle safety inspection shall not be cited by law enforcement personnel for any violation relating to vehicle equipment. This provision does not preclude an official inspection mechanic from being cited by law enforcement personnel for moving violations committed during the road test portion of an official vehicle safety inspection.

#### Section 5. *[State Replacement Vehicle Identification Number Plate for Reconstructed, Modified and Specially Constructed Vehicles.]*

(a) The [department] may assign a state replacement vehicle identification number plate for a reconstructed, modified, specially constructed, or theft recovery vehicle brought into the state from another state.

(b) The state replacement vehicle identification number plate shall be immediately placed in a uniform manner on the driver's side inside door post or as designated by the [department] on the vehicle.

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

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

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

# Long-Term Care Partnership Program

This Act directs the state department of health to disregard or not count benefits from certain long term care insurance policies as assets under the state Medicaid program.

Submitted as:

Idaho

HB658 (Enrolled Version)

Status: Enacted into law in 2004.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “The Long-Term Care Partnership  
2 Program.”

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

5           (1) “Asset disregard” means the total assets an individual can own and maintain under  
6 Medicaid and still qualify for benefits at the time the individual applies for benefits:

7               (a) If the individual is a beneficiary of a Long-Term Care Partnership Program  
8 approved policy; and

9               (b) Has exhausted the benefits of the policy.

10           (2) “Department” means the state [department of health and welfare].

11           (3) “Long-Term Care Partnership program approved policy” means a long-term care  
12 insurance policy which is approved by the state [department of insurance] and is provided  
13 through state approved long-term care insurers through the Long-Term Care Partnership  
14 Program.

15           (4) “Medicaid” means the Federal Medical Assistance Program established under Title  
16 XIX of the Social Security Act.

17  
18           Section 3. [*Long-Term Care Partnership Program.*]

19           (1) This Act hereby establishes a Long-Term Care Partnership Program, to be  
20 administered by the [department] with the assistance of the [department of insurance]. The Long-  
21 Term Care Partnership Program shall:

22               (a) Provide incentives for people to insure against the costs of providing for their  
23 long-term care needs;

24               (b) Provide a mechanism for people to qualify for coverage of the cost of their  
25 long term care needs under Medicaid without first being required to substantially exhaust their  
26 resources;

27               (c) Provide counseling services to people who are planning for their long-term  
28 care needs; and

29               (d) Alleviate the financial burden on the state's medical assistance program by  
30 encouraging the pursuit of private initiatives.

31           (2) Upon exhausting benefits under a Long-Term Care Partnership Program policy,  
32 certain resources of an individual, as described in subsection (3) of this section, shall not be  
33 considered by the [department] as a determination of any of the following:

34               (a) Eligibility for Medicaid;

35               (b) Amount of any Medicaid payment; or

36               (c) Any subsequent recovery by the state of a payment for medical services.

37 (3) The [department] shall promulgate necessary rules and amendments to the state plan  
38 to allow for asset disregard. To provide asset disregard, for purchasers of a Long-Term Care  
39 Partnership Program policy, the [department] shall count insurance benefits paid under the policy  
40 toward asset disregard to the extent the payments are for covered services under the Long-Term  
41 Care Partnership Program policy.

42  
43 Section 4. [*Eligibility.*]

44 (1) An individual who is a beneficiary of a Long-Term Care Partnership Program policy  
45 is eligible for assistance under Medicaid using the asset disregard under Section 3 of this Act.

46 (2) If the Long-Term Care Partnership Program is discontinued, an individual who  
47 purchased a Long-Term Care Partnership Policy prior to the date the Program is discontinued  
48 shall be eligible to receive asset disregard.

49 (3) The [department] may enter into reciprocal agreements with other states to extend the  
50 asset disregard to residents of the state who purchased long-term care policies in another state  
51 which has a substantially similar asset disregard program to the program under Section 3 of this  
52 Act.

53  
54 Section 5. [*Administration.*] The [department] and the state [department of insurance] are  
55 authorized to adopt rules to implement the provisions of this Act for its administration.

56  
57 Section 6. [*Notice.*]

58 (1) A long-term care insurance policy issued after the effective date of this Act shall  
59 contain a notice provision to the consumer detailing in plain language the current law pertaining  
60 to asset disregard and asset tests.

61 (2) The notice to the consumer under subsection (1) of this section shall be developed by  
62 the [director of the department of insurance].

63  
64 Section 7. [*Severability.*] [Insert severability clause.]

65  
66 Section 8. [*Repealer.*] [Insert repealer clause.]

67  
68 Section 9. [*Effective Date.*] [Insert effective date.]

# Medicaid Enrollees and Kidney Diseases

This Act provides that Medicaid enrollees who are eligible for services and who have a diagnosis of diabetes or hypertension, or who have a family history of kidney disease, shall be evaluated for kidney disease through routine clinical laboratory assessments of kidney function.

The Act provides that an enrollee in Medicaid who is eligible for services shall be classified as a chronic kidney patient when they have been diagnosed with diabetes or hypertension, or have a family history of kidney disease and have received a diagnosis of kidney disease.

This Act provides that the diagnostic criteria, which define chronic kidney disease (CKD) should be any generally recognized clinical practice guidelines which identify chronic kidney disease or its complications based on the presence of kidney damage and level of kidney function.

The legislation provides that patients receiving Medicaid benefits who are at risk for chronic kidney disease will be tracked regarding appropriate diagnostic testing in keeping with the state's Medicaid program's disease management program. It directs that Medicaid providers will be educated and disease management strategies implemented in order to increase the rate of evaluation and treatment for chronic kidney disease according to accepted practice guidelines including:

- Managing risk factors, which prolong kidney function or delay progression to kidney replacement therapy;
- Managing risk factors for bone disease and cardiovascular disease associated with chronic kidney disease;
- Improving nutritional status of chronic kidney disease patients, and
- Correcting anemia associated with chronic kidney disease.

Submitted as:

Louisiana

Act 124

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Mandate that Medicaid  
2 Enrollees be Evaluated for Kidney Diseases.”

3  
4           Section 2. [*Chronic Kidney Disease; Evaluation; Classification; Criteria; Healthcare  
5 Coverage.*]

6           A. Any enrollee in Medicaid who is eligible for services and who has a diagnosis of  
7 diabetes or hypertension or who has a family history of kidney disease, shall be evaluated for  
8 kidney disease through routine clinical laboratory assessments of kidney function.

9           B. Any enrollee in Medicaid who is eligible for services and who has been diagnosed  
10 with diabetes or hypertension or who has a family history of kidney disease, and who has  
11 received a diagnosis of kidney disease shall be classified as a chronic kidney patient.

12 C. The diagnostic criteria which define chronic kidney disease (CKD) should be  
13 generally recognized clinical practice guidelines, which identify chronic kidney disease or its  
14 complications based on the presence of kidney damage and level of kidney function.

15 D. In keeping with the [Department of Health and Hospitals] Medicaid disease  
16 management program, patients receiving Medicaid benefits who are at risk for chronic kidney  
17 disease will be tracked regarding appropriate diagnostic testing. Medicaid providers will be  
18 educated and disease management strategies implemented in order to increase the rate of  
19 evaluation and treatment for chronic kidney disease according to accepted practice guidelines  
20 including:

21 (1) Managing risk factors, which prolong kidney function or delay progression to  
22 kidney replacement therapy;

23 (2) Managing risk factors for bone disease and cardiovascular disease associated  
24 with chronic kidney disease;

25 (3) Improving nutritional status of chronic kidney disease patients, or

26 (4) Correcting anemia associated with chronic kidney disease.  
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.]

# Medicaid Fairness Act

This Act is designed to ensure the fair treatment of health care providers who treat Medicaid patients. Under the Act, the state department of human services may not recoup from providers for technical deficiencies if the providers can substantiate through other documentation that the services were provided and that the technical deficiency did not adversely affect the patient. A technical deficiency in complying with federal statutes shall not result in recoupment unless it is specifically mandated by federal statute or regulation, the state can illustrate that the recoup will result in the loss of federal matching funds or other penalty.

Provider administrative appeals are allowed and it is emphasized that the right of appeal is to be liberally construed and not limited through technical and procedural arguments by the department of human services. In response to an adverse decision a provider may appeal on behalf of the recipient, or on their own behalf, or both. A Medicaid recipient may attend a hearing related to his or her care, but his or participation is not mandatory for provider appeals. If an administrative appeal is filed by both provider and recipient concerning the same subject matter the appeals may be consolidated. If the department of human services makes an adverse decision in a Medicaid case and the provider files an appeal they must deliver to the provider a copy of the file on the matter so that the provider will have time to prepare for the appeal.

Explanations for adverse decisions are required. Each denial or deficiency that the department of human services makes against a Medicaid provider shall be prepared in writing and shall specify the exact nature of the adverse decision, the specific statutory provision violated and the facts and grounds constituting the elements of the violation.

A provider may rebill at an alternative level that would have been appropriate according to the department of human services' basis for denial instead of complete denial if the provider is absent fraud or a pattern of abuse and provided the care being billed was furnished by a legally qualified and authorized provider in the area. The right of the provider to re-bill at an alternative level does not waive the provider's or recipient's right to appeal the denial of the original claim. The department of human services may not retroactively recoup or deny a claim from a provider if the department previously authorized the Medicaid care unless the retroactive review establishes that the previous authorization was based on a misconception or omission that would have altered the level of care that was authorized; likewise if previous care was authorized based on conditions that later changed, rendering the Medicaid care medically unnecessary. Recoupments based upon lack of medical necessity shall not include payments for any medical care what was delivered before the change of circumstances that rendered the care medically unnecessary.

Submitted as:

Arkansas

Act 1758

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as the “Medicaid Fairness Act.”

2

3           Section 2. [*Legislative Findings And Intent.*]

4           (a) The [General Assembly] finds that:



(1) Health care providers who serve Medicaid recipients are an indispensable and vital link in serving this state's needy citizens;

(2) The [Department of Human Services] already has in place various provisions to:

(A) Ensure the protection and respect for the rights of Medicaid recipients; and

(B) Sanction errant Medicaid providers when necessary.

(b) The [General Assembly] intends this Act to ensure that the [Department] and its outside contractors treat providers with fairness and due process.

### Section 3. *[Definitions.]*

(a) As used in this Act:

(1) "Adverse decision" means any decision by the [Department of Human Services] or its reviewers or contractors that adversely affects a Medicaid provider or recipient in regard to receipt of and payment for Medicaid claims and services, including, but not limited to decisions as to:

(A) Appropriate level of care or coding;

(B) Medical necessity;

(C) Prior authorization;

(D) Concurrent reviews;

(E) Retrospective reviews;

(F) Least restrictive setting;

(G) Desk audits;

(H) Field audits and onsite audits; and

(I) Inspections;

(2) "Appeal" means an appeal under the state Administrative Procedure Act;

(3) "Claim" means a request for payment of services or for prior, concurrent, or retrospective authorization to provide services;

(4) "Concurrent review" or "concurrent authorization" means a review to determine whether a specified recipient currently receiving specific services may continue to receive services;

(5) "Denial" means denial or partial denial of a claim;

(6) "Department" means:

(A) The [Department of Human Services];

(B) All the divisions and programs of the [Department of Human Services], including the state Medicaid program; and

(C) All the [Department of Human Service's] contractors, fiscal agents, and other designees and agents;

(7) "Medicaid" means the medical assistance program under Title XIX of the Social Security Act that is operated by the [state Department of Human Services], including contractors, fiscal agents, and all other designees and agents.

(8) "Person" means any individual, company, firm, organization, association, corporation, or other legal entity;

(9) "Primary care physician" means a physician whom the [Department] has designated as responsible for the referral or management, or both, of a Medicaid recipient's health care;

(10) "Prior authorization" means the approval by the state Medicaid program for specified services for a specified Medicaid recipient before the requested services may be performed and before payment will be made by the state Medicaid program;

54 (11) "Provider" means a person enrolled to provide health or medical care  
55 services or goods authorized under the state Medicaid program;

56 (12) "Recoupment" means any action or attempt by the [Department] to recover  
57 or collect Medicaid payments already made to a provider with respect to a claim by:

- 58 (A) Reducing other payments currently owed to the provider;  
59 (B) Withholding or setting off the amount against current or future  
60 payments to the provider;  
61 (C) Demanding payment back from a provider for a claim already paid; or  
62 (D) Reducing or affecting in any other manner the future claim payments  
63 to the provider;

64 (13) "Retrospective review" means the review of services or practice patterns  
65 after payment, including, but not limited to:

- 66 (A) Utilization reviews;  
67 (B) Medical necessity reviews;  
68 (C) Professional reviews;  
69 (D) Field audits and onsite audits; and  
70 (E) Desk audits;

71 (14) "Reviewer" means any person, including, but not limited to, reviewers,  
72 auditors, inspectors, and surveyors that in reviewing a provider or a provider's provision of  
73 services and goods performs review actions, including, but not limited to:

- 74 (A) Reviews for quality;  
75 (B) Quantity;  
76 (C) Utilization;  
77 (D) Practice patterns;  
78 (E) Medical necessity;  
79 (F) Peer review; and  
80 (G) Compliance with Medicaid standards; and

81 (15) (A) "Technical deficiency" means an error or omission in documentation  
82 by a provider that does not affect direct patient care of the recipient.

- 83 (B) "Technical deficiency" does not include:  
84 (i) Lack of medical necessity or failure to document medical  
85 necessity in a manner that meets professionally recognized applicable standards of care;  
86 (ii) Failure to provide care of a quality that meets professionally  
87 recognized local standards of care;  
88 (iii) Failure to obtain prior or concurrent authorization if required  
89 by regulation;  
90 (iv) Fraud;  
91 (v) A pattern of abusive billing;  
92 (vi) A pattern of noncompliance; or  
93 (vii) A gross and flagrant violation.

94  
95 Section 4. *[Technical Deficiencies.]*

96 (a) The [Department of Human Services] may not recoup from providers for technical  
97 deficiencies if the provider can substantiate through other documentation that the services or  
98 goods were provided and that the technical deficiency did not adversely affect the direct patient  
99 care of the recipient.

100 (b) A technical deficiency in complying with a requirement in federal statutes or  
101 regulations shall not result in a recoupment unless:

- 102 (1) The recoupment is specifically mandated by federal statute or regulation; or

(2) The state can show that failure to recoup will result in a loss of federal matching funds or other penalty against the state.

(c) This section does not preclude a corrective action plan or other nonmonetary measure in response to technical deficiencies.

(d) (1) If a provider fails to comply with a corrective action plan for a pattern of non-compliance with technical requirements, then appropriate monetary penalties may be imposed if permitted by law.

(2) However, the [Department] first must be clear as to what the technical requirements are by providing clear communication in writing, or a promulgated rule where required.

#### Section 5. [*Provider Administrative Appeals Allowed.*]

(a) The [General Assembly] finds it necessary to:

(1) Clarify its intent that providers have the right to administrative appeals; and

(2) Emphasize that this right of appeal is to be liberally construed and not limited through technical or procedural arguments by the [Department of Human Services].

(b) (1) In response to an adverse decision, a provider may appeal on behalf of the recipient or on its own behalf, or both, under the [state Administrative Procedure Act], regardless of whether the provider is an individual or a corporation.

(2) The provider may appear:

(A) In person or through a corporate representative; or

(B) With prior notice to the Department, through legal counsel.

(3) (A) A Medicaid recipient may attend any hearing related to his or her care, but the [Department] may not make his or her participation a requirement for provider appeals.

(B) The [Department] may compel the recipient's presence via subpoena, but failure of the recipient to appear shall not preclude the provider appeal.

(c) A provider does not have standing to appeal a nonpayment decision if the provider has not furnished any service for which payment has been denied.

(d) Providers, like Medicaid recipients, have standing to appeal to circuit court unfavorable administrative decisions under the [state Administrative Procedure Act].

(e) If an administrative appeal is filed by both provider and recipient concerning the same subject matter, then the [Department] may consolidate the appeals.

(f) This Act shall apply to all pending and subsequent appeals that have not been finally resolved at the administrative or judicial level as of the effective date of this Act.

Section 6. [*Explanations for Adverse Decisions Required.*] Each denial or other deficiency that the [Department of Human Services] makes against a Medicaid provider shall be prepared in writing and shall specify:

(1) The exact nature of the adverse decision;

(2) The statutory provision or specific rule alleged to have been violated; and

(3) The specific facts and grounds constituting the elements of the violation.

#### Section 7. [*Rebiling at an Alternate Level Instead of Complete Denial.*]

(a) (1) Absent fraud or a pattern of abuse, and provided the care being billed was furnished by a provider legally qualified and authorized to deliver the care, if a provider's claim is denied then the provider shall be entitled to rebill at the level that would have been appropriate according to the [Department of Human Service's] basis for denial.

(2) A referral from a primary care physician or other condition met prior to the claim denial shall not be reimposed.

(b) The denial notice from the [Department] shall explain the reason for the denial under and specify the level of care that it deems appropriate based on the documentation submitted.

(c) A provider's decision to rebill at the alternate level does not waive the provider's or recipient's right to appeal the denial of the original claim.

(d) Nothing prevents the [Department] from reviewing the claim for reasons unrelated to level of care and taking action that may be warranted by the review, subject to other provisions of law.

Section 8. [*Prior Authorizations -- Retrospective Reviews.*] The [Department of Human Services] may not retrospectively recoup or deny a claim from a provider if the [Department] previously authorized the Medicaid care, unless:

(1) The retrospective review establishes that:

(A) The previous authorization was based upon misrepresentation by act or omission; and

(B) If the true facts had been known the specific level of care would not have been authorized; or

(2) (A) The previous authorization was based upon conditions that later changed, thereby rendering the Medicaid care medically unnecessary.

(B) Recoupments based upon lack of medical necessity shall not include payments for any Medicaid care that was delivered before the change of circumstances that rendered the care medically unnecessary.

Section 9. [*Medical Necessity.*] There is a presumption in favor of the medical judgment of the attending physician in determining medical necessity of treatment.

Section 10. [*Promulgation before Enforcement.*]

(a) The [Department of Human Services] may not use state policies, guidelines, manuals, or other such criteria in enforcement actions against providers unless the criteria have been promulgated.

(b) Nothing in this section requires or authorizes the [Department] to attempt to promulgate standards of care that physicians use in determining medical necessity or rendering medical decisions, diagnoses, or treatment.

(c) Medicaid contractors may not use a different provider manual than the Medicaid Provider Manual promulgated for each service category.

Section 11. [*Records.*]

(a) If the [Department of Human Services] makes an adverse decision in a Medicaid case and a provider then lodges an administrative appeal, the [Department] shall deliver to the provider well in advance of the appeal its file on the matter so that the provider will have time to prepare for the appeal.

(b) The file shall include the records of any utilization review contractor or other agent, subject to any other federal or state law regarding confidentiality restrictions.

Section 12. [*Copies.*] Providers shall be required to supply records at their own cost to the [Department of Human Services] no more than [once].

Section 13. [*Notices.*] When the [Department of Human Services] sends letters or other forms of notices with deadlines to providers or recipients, the deadline shall not begin to run before the [next business day following the date of the postmark on the envelope], the facsimile

transmission confirmation sheet, or the electronic record confirmation, unless otherwise required by federal statute or regulation.

Section 14. *[Deadlines.]*

(a) The [Department of Human Services] may not issue a claim denial or demand for recoupment to providers for missing a deadline if the [Department] or its contractor contributed to the delay or the delay was reasonable under the circumstances, including, but not limited to:

- (1) Intervening weekends or holidays;
- (2) Lack of cooperation by third parties;
- (3) Natural disasters; or
- (4) Other extenuating circumstances.

(b) This section is subject to good faith on the part of the provider.

Section 15. *[Hospital Claims.]*

(a) When more than [1 hospital] provides services to a recipient and the amount of claims exceeds the recipient's benefit limit, then the hospitals are entitled to reimbursement based on the earliest date of service.

(b) If the claims have been paid by Medicaid contrary to this provision, and voluntary coordination among the hospitals involved does not resolve the matter, then the hospitals shall resort to mediation or arbitration at the hospitals' expense.

(c) The [Department of Human Services] may promulgate rules to implement this section.

Section 16. *[Severability.]* [Insert severability clause.]

Section 17. *[Repealer.]* [Insert repealer clause.]

Section 18. *[Effective Date.]* [Insert effective date.]

# Methamphetamine Remediation and Restitution Note

The following Note was prepared by the National Apartment Association and National Multi Housing Council.

\*\*\*

In recent years, all types of real property owners have encountered a growing problem on their properties: illegal “clandestine laboratories” that produce methamphetamine. It is estimated that for each pound of meth manufactured, five to seven pounds of chemical waste is produced. Following the discovery of a meth lab, law enforcement officials will typically confiscate or dispose of all drug-manufacturing equipment and chemicals found at the site. This process is usually conducted by a hazardous waste contractor and is largely funded through government grant programs and other state resources. However, after this bulk removal of chemicals and hazardous waste is completed, residual contamination of the property, including sinks, drains, ventilation systems, carpets, furniture and window coverings remains to be dealt with. Although this contamination may be imperceptible to the naked eye, even trace amounts of meth-related chemicals can pose serious health risks. The property owner or manager is responsible for assessing the property and conducting any necessary secondary decontamination.

Moreover, most property owners would not be aware that an illegal meth lab had operated on their property absent law enforcement action. Clandestine meth labs are highly mobile, and manufacturers are learning to hide the telltale signs of meth production through various means, including the use of new and reportedly odorless recipes. Listed below are examples of recent legislation that addresses the unique concerns of the real estate industry in combating and recovering from illegal methamphetamine production.

## Property Assessment and Remediation Timeframe

Most meth cleanup statutes do not impose time restrictions on a property owner’s ability to obtain a meth remediation contractor and complete any necessary property remediation. These statutes recognize that cleanup may be hampered and substantially delayed by circumstances out of the property owner’s control such as law enforcement activities on the property, the unavailability of a qualified remediation professional in the geographic area, and other site specific factors including the extent of the property decontamination required. Instead, these statutes place restrictions on the use and transfer of the property until it is properly remediated.

*Idaho Code Sec. 6-2606 - [Upon notification pursuant to this act], the residential property owner shall meet the cleanup standards established by the department. The residential property shall remain vacant from the time the residential property owner is notified ... of the clandestine drug laboratory until such time as the residential property owner has received a certificate issued by the department evidencing that the cleanup standards have been met.*

*Hawaii Revised Statutes Sec. 322-2 - Whenever any such nuisance...is found on private property, the dept. of health shall cause notice to be given to the owner to remove and abate...within such reasonable time as the department may deem proper.”*

## Right of Appeal

A right of appeal provision is used to ensure that property owners have a legal recourse if a property has been wrongfully deemed contaminated by a public authority.

*Alaska Stat. Sec. 46.03.550 (a) – “A property shall be determined to be fit for use if . . . a court has held that the determination that the property was an illegal drug manufacturing site was not made in compliance with [the law]. In the appeal, the burden of proving preponderance of the evidence...is on the primary law enforcement agency that conducted the investigation.”*

*Oregon Revised Statutes Sec. 453.876 - “The owner may appeal the determination [of fitness], to the agency that made the determination, within 30 working days after the determination, pursuant to rules of the agency, or to circuit court. The appeal to the agency is not a contested case...The question on appeal is limited to whether the site is an illegal drug manufacturing site.”*

*Tennessee Code Ann. 68-212-503(c) - A property owner may file a petition requesting that the court order the quarantine of property be lifted for one of the following reasons: a) that the property was wrongfully quarantined; or b) that the property has been properly cleaned, all hazardous materials removed and that it is now safe for human use but the law enforcement agency who imposed the quarantine refuses to lift it.*

*Washington Revised Code Sec. 64.44.030 - “The owner...may file an appeal on any order issued by the local health board or officer within 30 days from the date of service of the order with the appeals commission.”*

### Cleanup Alternatives

Numerous meth cleanup statutes identify alternatives to property cleanup, such as demolition and the sale or transfer of the property. These statutes recognize that under certain circumstances, remediation of a meth contaminated property may not be feasible due to heavy contamination or the high cleanup cost in relation to the property’s value.

*Colorado Revised Statutes Sec. 25-18.5-103 - “Upon notification. . . of an illegal drug lab located on a property. . . the property owner. . .shall meet the cleanup standards established...except that a property owner may, at his or her option, elect instead to demolish the contaminated property.”*

*Alaska Stat. Sec. 46.03.510(b )- Property covered by [this act] may be transferred or sold if full written disclosure is made to the prospective transferee or purchaser that the property has been determined to be an illegal drug manufacturing site [and not] fit for use. The disclosure is not considered to be part of the transfer or sale document, however, and may not be recorded.*

### Notice and Disclosure to residents (current and future)/Registration of Property

Many meth cleanup statutes include notice and disclosure provisions, which serve to identify a meth contaminated property to current occupants or visitors, as well as future parties in interest. The following notice and disclosure requirements apply only while a property is in fact contaminated, and are limited to the actual dwelling or unit contaminated in the case of apartment or other multifamily buildings. An owner may sell or transfer the property so long as full disclosure is communicated. Further, if a property is remediated according to law, disclosure is no longer required and the property is removed from all government registries and databases.

*Alaska Stat. Sec. 46.03.500(d) - For purposes of posting of the notice to the occupants and users of the property required by this subsection, the posting shall be made, for property that is (2)*

*other than a single family dwelling, at the door of the unit that is the site that constitutes the illegal drug manufacturing site.*

*Alaska Stat. Sec. 46.03.510(b) - Full, written disclosure must be provided to a potential buyer or renter as long as the property is considered unfit for use. The disclosure is not considered to be part of the transfer or sale document and may not be recorded.*

*Alaska Stat. Sec. 46.03.550(b) - “The department shall maintain a list of properties for which the department has received notice...When the department determines...that a property on the list is fit for use, the department shall remove the property from the list and notify the owner...that the property is fit for use.”*

*Arizona Revised Statutes Sec. 12-1000(D) - Once remediation is complete and the remediation firm has submitted the appropriate documentation, the property owner no longer is required to disclose and may transfer or sell the property.*

*Nevada Revised Statutes Sec. 40.770. 1- “[T]he fact that the property is or has been the site [involving the manufacturing of meth] is not material to a transaction [for sale or lease] if all materials and substances involving meth have been removed from or remediated on the property by a [certified entity] or the property has been deemed safe for habitation by a governmental entity.”*

*Oregon Revised Statutes Sec. 453.870(1) - If full written disclosure (as required by administrative agency) is given to buyer or renter, the property may be rented sold or transferred.*

*Oregon Revised Statutes Sec 453.885(3) - Upon receipt of certification that the property is fit and a request by the property owner to remove the property from the state registry of unfit properties, the administrative agency shall cause the property to be removed from the list.*

### Restrictions and Rights to Entry

These provisions establish when and under what authority state officials may enter the private property, and preserve a party in interests’ right to access a contaminated property.

*Oregon Revised Statutes. Sec. 453.873 - State officials with appropriate credentials and warrant may enter and inspect, at reasonable times/on reasonable grounds/in a reasonable manner, a property known to have been used as an illegal drug manufacturing site.*

*Arizona Revised Statutes Sec. 12-1000(A)(4) - Any notice posted to identify a meth contaminated property shall state that it is unlawful for any person other than the owner, landlord or manager to enter the residually contaminated portion of the property.*

### Owner Immunity

Numerous statutes provide a future liability waiver for civil claims brought against a property owner arising after an effective cleanup.



*Colorado Revised Statutes Sec. 25-18.5-103(2) - “Once a property owner has met the cleanup standards and documentation requirements or has demolished the property ... [the property owner shall be immune] from a suit for alleged health-based civil actions brought by any future owner, renter, [occupant] or neighbor.”*

*Idaho Code Sec. 6-2607 - Once a residential property meets the cleanup standards established [pursuant to this chapter], the residential property owner and any representative or agent of the residential property owner shall be immune from civil actions involving health claims brought by any future owner, renter or other person who occupies the residential property, and by any neighbor of such residential property.*

### Uniform Cleanup Procedures

A growing number of meth cleanup and remediation statutes establish uniform policies and procedures for meth lab assessment and remediation and prevent variation according to individual locality. These statutes establish standards to ensure the property is properly remediated and acceptable for habitation. Several states direct the relevant administrative agencies to develop uniform cleanup standards and methods.

<i>Alaska</i>	<i>Alaska Stat.</i>	<i>46.03.520 et al.</i>
<i>Arizona</i>	<i>Rev. Stat.</i>	<i>12-1000</i>
<i>Arkansas</i>	<i>Code Ann.</i>	<i>20-7-132</i>
<i>Colorado</i>	<i>CRS</i>	<i>25-18.5-102</i>
<i>Michigan</i>	<i>MCL</i>	<i>125.485a(4)</i>
<i>Minnesota</i>	<i>HB 1,</i>	<i>Chapter 136 (2005)</i>
<i>Missouri</i>	<i>R.S.Mo.</i>	<i>640.040</i>
<i>North Carolina</i>	<i>N.C. Gen. Stat.</i>	<i>130A-285</i>
<i>Utah</i>	<i>Utah Code Ann.</i>	<i>19-6-906.</i>

### Certification

Many statutes require the use of state licensed or otherwise certified meth remediation professionals. These statutes often establish licensing or certification standards for meth remediation contractors. Such requirements are used to protect property owners from negligent or malicious treatment by inexperienced contractors who may recommend a variety of unproven, unnecessary or costly decontamination strategies.

*Arizona Revised Statutes 12-1000(c) - “The owner of the real property shall remediate the residually contaminated portion of the real property by retaining a registered drug laboratory site remediation firm pursuant” to law. Title 32 Chapter 1 outlines the specifics for approved remediation firms.*

*Montana 2005 HB 60 Sec. (4) (Signed by Governor May 28, 2005) - The Dept. of Environmental Quality “is authorized to establish by rule minimum standards for the training and certification of contractors and their employees who are to perform the assessment or remediation of inhabitable property contaminated by meth residues.” The section outlines that the department may train, test or approve courses, establish rules for certification of contractors and reciprocity.*

*Oregon Revised Statutes Secs. 453.885 – 897 - For a property to be certified as fit for use it must be remediated by a state licensed contractor. The statute outlines that the administrative department establish testing, training and licensing.*

*Washington Revised Code Secs. 64.44.050 – 64.44.060 - Property owners must use authorized contractors (unless otherwise instructed by local health officers). The state will certify contractors and offers reciprocity to out-of-state contractors.*

### Remediation Standard

It is well recognized that difficulties and uncertainties exist relating to the testing for and evaluation of concentrations of meth-related chemicals and their health effects. Some state studies, as well as proposed federal research, are directed toward identifying health-based remediation standards. Until then, states must act to establish defined remediation and decontamination parameters, while remaining receptive to new research and technology.

*Montana Ch. 461- Montana is the only state which codifies the decontamination standard for meth. This standard, 0.1 mg/100 cm<sup>2</sup>, has been adopted by several states in the rulemaking process. Washington State was the first to select this standard, and admittedly, it is not a health-based standard for a “safe” level of decontamination. Rather, state officials have reported that the standard was chosen as a conservative and protective limit. That being said, all other state legislation directs administrative agencies to determine the standard. The industry would like to see state legislation that, while determining a standard, allows for future changes once a nationally-accepted standard is decided upon.*

*Alaska Stat. Sec. 46.03.530 - The Department of Public Safety annually submits a list of substances and the Department of Environmental Conservation sets the limits for risk of harm for each substance.*

*Arkansas Code Ann. Sec. 20-7-132(c) - The [dept of health] guidelines [for cleanup] shall be reviewed and updated annually.*

### Restitution

In many states the destruction from a meth lab is considered a nuisance and the owner is responsible for all cleanup costs. Restitution for cleanup and other costs should be shouldered by the perpetrator and be imposed in the course of related criminal proceedings, not during a separate civil action. Restitution and state or local cleanup monies should be available to private property owners.

*Arizona Revised Statutes. Ann. Sec. 12-1000(I) - “A person who operates a clandestine drug laboratory and who is not the owner of the real property shall pay restitution to the owner of the real property for all costs that the owner incurred to remediate the property.”*

*North Dakota Century Code Sec. 12.1-32-08(1) - The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, ... shall order that the defendant make restitution ... Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before*

*contamination and to any other person that has incurred costs in decontaminating the property.*

*Iowa Code Ann. Secs. 124C.1 to 124C.2 - The Commissioner of Public Safety will collect all costs incurred in cleanup of a clandestine lab site from the person having control over the site. "Person having control over a clandestine laboratory site," is defined such that a property owner unaware of the presence of a meth lab is not included. A perpetrator is liable to the state for all reasonable costs incurred to evacuate people from areas threatened by the lab site; and reasonable damages for the injury to, destruction of, or loss of natural resources resulting from the lab site, including the costs of assessing the injury, destruction, or loss.*

### Property Restrictions

This provision requires that the party responsible for contamination satisfy all lease and contract obligations to the owner.

*Alaska Stat. Sec. 46.03.510 - The unfit determination does not void a lease or rental agreement between the property owner and the person who caused the property to be contaminated and determined unfit for use.*

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### Oregon

According to Oregon legislative staff, Oregon passed two bills in its 2005 legislative session to address methamphetamines: HB 2485 (2005 Oregon Laws Chapter 706) and SB 907 (2005 Oregon Laws Chapter 708). HB 2485 addresses precursor substances on a variety of levels, including making pseudoephedrine a schedule III controlled substance.

Section 1 of HB 2485 clarifies that a meth lab site that has not been decontaminated and certified fit for use within 180 of its designation by the appropriate governmental agency is subject to nuisance and abatement actions under ORS 155.555. Prior law addressed places involving manufacture, deliver and possession of drugs as subject to the same sorts of actions, but it been applied inconsistently when it comes to abandoned and contaminated meth lab sites.

Section 6 of HB 2485 criminalizes possession or disposal of meth manufacturing waste, and Section 8 criminalizes distribution of precursors and other items with the intent to facilitate manufacture of meth.

Section 11 of HB 2485 amends ORS 475.973, which is our current 9 gram limit, deleting the 9g limit and replacing it with an order to the state Board of Pharmacy to classify pseudoephedrine and other precursors that are no longer widely available as schedule III controlled substances. Under the administrative rules of the Pharmacy Board, a schedule III drug requires a prescription which may be completed by phone and may be renewed automatically up to 5 times within 6 months. Because pseudoephedrine will no longer be available over the counter (i.e. w/o a prescription) there is no gram limit set because it would be unlawful to possess any amount of a prescription drug without a valid prescription under ORS 475.992.

Section 12 of HB 2485 requires the Board to implement the classification no later than July 1, 2006.

Section 13 states the law that is in effect as to pseudoephedrine until the Board's rule making it a schedule III drug becomes effective. Thus, until then the 9 g limit, which is deleted in section 11, still applies. This is to avoid an anomalous period between the passage of HB 2485

and the Pharmacy Board rules becoming effective where it would be legal to possess any amount of pseudoephedrine.

Section 13a creates a defense against possessing pseudoephedrine without a prescription (once the board's rules go into effect) if the drug was purchased lawfully (like in another state or within Oregon before the effective date of the rule change), if the person possesses less than 6 grams, and if the possession was indicative of medicinal use.

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#### Compilation of State Efforts to Regulate Ephedrine/Pseudoephedrine

The following tables list state efforts to regulate ephedrine and pseudoephedrine. The CSG Committee on Suggested State Legislation thanks Stephanie Bishop, Research Associate, Virginia Division of Legislative Services, for compiling these tables.

	Schedule V	Pharmacist	Single transaction qty. limit	24-hour qty. limit	7-day qty. limit	30-day qty. limit	Packing	Display	Sign log	I.D.	Age	Records	Suspicious transactions reported	Reporting immunity	Training Immunity	Sales Immunity	Post state law	Child Endangerment	Cleanup Laws
Alabama			2 pkgs/9 grams of e/p			6g	x	x	x	x	18 or older	x	x						
Alaska																		x	x
Arizona			3 pkgs/9 grams of e/p, norpseudoephedrine, phenylpropanolamine									x	x					x	x
Arkansas	x	x	3 pkgs/ea. Pkg. no more than 3 g of e/p			5g e/9g p	x		x	x	18 or older	x	x					x	x
California			3 pkgs/9g of p															x	x
Colorado			3 pkgs of e/p, or phenylpropanolamine				x											x	x
Connecticut--none																			
Delaware		x				9g of e/p		x											
District of Columbia--none																			
Florida			3 pkgs/9g of e/p, or phenylpropanolamine					x										x	
Georgia			3 pkgs/9g of p				x	x		x		x			x			x	x
Hawaii			3 pkgs/9g of p					x				x	x						x
Idaho																			x
Illinois			2 pkgs./ea. Pkg. no more than 3 g of p					x										x	x
Indiana			3g of e/p		3g of e/p		x	x	x	x	18 or older	x	x					x	x
Iowa	x	x	2 pkgs of e/p	1 pkg of p		7.5g of p		x	x	x		x		x			x	x	x
Kansas	x	x			4 pkgs of e/p			x	x	x			x					x	x
Kentucky		x	3 pkgs of e/p			9 g of e/p		x	x	x	18 or older	x						x	x
Louisiana			3 pkgs/9g of e/p, or phenylpropanolamine			3 pkgs/9g of e/p		x	x	x		x							
Maine		x	3 pkgs of e/p/ea. Pkg no more than 3g of p				x	x		x		x	x	x					
Maryland--none																			
Massachusetts--none																			
Michigan			2 pkgs of e/p					x	x	x	18 or older	x					x	x	x
Minnesota	x	x	2 pkgs/6g of e/p/ea. Pkg no more than 3g of p				x	x	x		18 or older		x	x				x	x
Mississippi			2 pkgs/6g of e/p/ea. Pkg no more than 3g og p			9g of e/p	x	x		x		x			x				
Missouri	x	x	2 pkgs/6g of e/p or phenylpropanolamine			9g of e/p		x		x	18 or older	x			x			x	x
Montana		x				9g of e/p		x	x	x		x		x				x	x
Nebraska	x			1440 mg of p or			x	x	x	x	18 or older							x	
Nevada																		x	x
New Hampshire--none																			

	Schedule V	Pharmacist	Single transaction qty. limit	24-hour qty. limit	7-day qty. limit	30-day qty. limit	Packing	Display	Sign log	I.D.	Age	Records	Suspicious transactions reported	Reporting immunity	Training Immunity	Sales Immunity	Post state law	Child Endangerment	Cleanup Laws
New Jersey--none																			
New Mexico--none																			
New York--none																			
North Carolina																		x	x
North Dakota			2 pkgs of e/p/ea. Pkg. no more than 2 g of p				x	x	x	x	18 or older				x			x	x
Ohio																		x	x
Oklahoma	x	x				9g of p			x	x		x						x	x
Oregon		x	3 pkgs/9g of e/p			9g of p		x		x		x	x					x	x
Pennsylvania																			x
Rhode Island--none																			
South Carolina--none																			
South Dakota			2 pkgs of e/p					x								x	x	x	
Tennessee		x				3 pkgs/9g of e/p		x	x	x		x							x
Texas			2 pkgs/6g of e/p or norpseudoephedrine					x	x	x		x		x				x	
Utah										x		x						x	x
Vermont																		x	
Virginia																		x	x
Washington			2 pkgs/ea. Pkg no more than 3g of e/p	3 pkgs/ea.				x	x	x	18 or older	x	x				x	x	x
West Virginia	x	x				3 pkgs/9g of e/p		x	x	x	18 or older	x						x	
Wisconsin	x	x				7.5g of p				x	18 or older	x							
Wyoming			2 pkgs of e/p/ea. Pkg. no more than 3g of p				x	x		x								x	

	Alabama	Arizona	Arkansas	California (Health & Safety Code)	Colorado	Delaware (Title 16)	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Michigan	Minnesota
<b>Schedule V</b>			5-64-212										124.212	65-4113					152.02
<b>Pharmacist</b>			5-64-1103			4740								65-1643	2005 SB63 Section 218A		32 MRSA Section 13796		152.02
<b>Single transaction</b>	20-2-190	13-3404.01	5-64-1103	11100	18-18-412.8		893-1495	16-13-30.3	329		2005 P.A. 94-0556	35-48-4-14.7	126.23A		2005 SB63 Section 218A	40-962.1.2	32 MRSA Section 13796	333.17766f	152.02
<b>24-hour</b>													126.23A						
<b>7-day</b>												35-48-4-14.7		65-1643					
<b>30-day</b>	20-2-190		5-64-1103			4740							124.12 & 126.23A		2005 SB63 Section 218A	40-962.1.2			152.02
<b>Packaging</b>	20-2-190		5-64-1103		18-18-412.8			16-13-30.3			2005 P.A. 94-0556						32 MRSA Section 13796		152.02
<b>Display</b>	20-2-190	32-1971				4740	893-1495	16-13-30.3	329			35-48-4-14.7	126.23A	65-1643		40-962.1.2	32 MRSA Section 13796	333.17766e	152.02
<b>Sign log</b>	20-2-190		5-64-1103			4740						35-48-4-14.7	126.23A	65-1643	2005 SB63 Section 218A	40-962.1.2		333.17766f	152.02
<b>I.D.</b>	20-2-190		5-64-1103			4740						35-48-4-14.7	124-212 & 126.23A	65-1643	2005 SB63 Section 218A	40-962.1.2	32 MRSA Section 13795	333.17766e	152.02
<b>Age</b>	20-2-190		5-64-1103			4740						35-48-4-14.7			2005 SB63 Section 218A			333.17766f	152.02
<b>Records</b>	20-2-190	13-3404	5-64-1103						329-61 & 329-63			35-48-4-14.7	126.23A		2005 SB63 Section 218A	40-962.1.2	32 MRSA Section 13795	333.17766e	
<b>Report Suspicious Transactions</b>	20-2-190	13-3404	5-64-1006									35-48-4-14.7					32 MRSA Section 13795		152.02
<b>Reporting Immunity</b>											2005 P.A. 94-0556	10-11-8-7	126.23A				32 MRSA Section 13795		152.02
<b>Training Immunity</b>								16-13-30.3											
<b>Sales Immunity</b>																			
<b>Post state law</b>													126.23A					333.17766f	
<b>Child endangerment</b>		13-604.01	5-27-230	11379.6 & 11.379.7			893.13	16-5-73			2005 P.A. 94-0556	35-48-4-14.5	124.401D	21-3608A	2005 SB63 Section 218A			333.7401c	152.0275
<b>Cleanup</b>		12-1000	20-7-132 & 5-64-401	11647	25-18.5-102 & 18.5-103	25-			712-1240.6	6-2604 thru 6-2608	2005 P.A. 94-0556	35-48-4-17			218A.1438				152.137

	Mississippi	Missouri	Montana	Nebraska	North Carolina	North Dakota	Oklahoma	Oregon	Pennsylvania	South Dakota	Tennessee	Texas (Health & Safety Code)	Virginia	Washington	West Virginia	Wisconsin	Wyoming
<b>Schedule V</b>		195.017					63 O.S. 2001 Section 2-212								60A-2-212	961.22	
<b>Pharmacist</b>		195.017	50-32-502				63 O.S. 2001 Section 2-212				39-17-431			69.43.110		961.23	
<b>Single transaction</b>	41-29-315				90-113.53	19-03.4-08				34-20D-1		486.014		69.43.110			35-7-1059
<b>24-hour</b>				28-456										69.43.110			
<b>7-day</b>																	
<b>30-day</b>	41-29-315	195.417	50-32-501		90-113.53		63 O.S. Section 2-212				39-17-431					961.23	
<b>Packaging</b>		195.418		28-456	90-113.53	19-03.4-08											35-7-1059
<b>Display</b>	41-29-315	195.017	50-32-502	28-456	90-113.53	19-03.4-08				34-20D-3	39-17-431	486.013		2005 Ch. 388 HB2266 69.43	60A-10-5		35-7-1059
<b>Sign log</b>		195.017	50-32-502		90-113.53		63 O.S. Section 212	2			39-17-431	486.014		69.43.010	60A-10-5		
<b>I.D.</b>	41-29-315	195.017	50-32-502	28-456	90-113.53	19-03.4-08	63 O.S. Section 2-212				39-17-431	486.014		2005 Ch. 388 HB2266 69.43	60A-10-5	961.23	
<b>Age</b>		195.017		28-456	90-113.53	19-03.4-08						486.014		2005 Ch. 388 HB2266 69.43	60A-10-5	961.23	
<b>Records</b>	41-29-315	195.017	50-32-502		90-113.53	19-03.4-08					39-17-431	486.014		69.43.010	60A-10-4	961.235	
<b>Report Suspicious Transactions</b>																	
<b>Reporting Immunity</b>			2005 Ch. 572 SB287		90-113.57							468.004					
<b>Training Immunity</b>																	
<b>Sales Immunity</b>										34-20D-6							
<b>Post state law</b>					90-113.54					34-20D-5				69.43.160			
<b>Child endangerment</b>	41-29-313	568-045		28-457	15A-1340.16		21 O.S. Section 852.1	419B.502	780-113	26-8A-2	37-1-102	486.102	18.2-248.02	9A.42.100	60A-10-12		
<b>Cleanup</b>			2005 Ch. 461 HB60			12.1-32-08							18.2-248	69.50.440			6-4-405



### **ABBREVIATIONS:**

**e/p** = ephedrine/pseudoephedrine

**p** = pseudoephedrine

### **CATEGORY HEADINGS:**

**Schedule V**--less potential for abuse than schedule IV, recognized medical uses, minor incidence of drug addiction, physical, or psychological withdrawal dependence. These are sometimes available without a medical prescription.

**Pharmacist**--must be sold by licensed pharmacist or technician or by cashier with approval from pharmacist

**Single transaction qty. limit**--only the amount listed may be sold during one single transaction

**24-hour, 7- and 30-day qty. limits**--only the amount listed may be sold in the allotted time frame

**Packing**--states have imposed certain packaging restrictions, most commonly that ephedrine and pseudoephedrine products must be sold in blister packs

**Display**--guidelines on the manner pseudoephedrine products must be displayed in stores, most commonly behind the counter, in locked display case, under camera surveillance, and/or certain distances from cashier line-of-sight

**Sign log, I.D., Age**--purchaser must sign a written or electronic log, present government-issued identification, and/or show proof of age

**Records**--sellers must keep records of pseudoephedrine sales

**Suspicious transactions reported**--sellers are required to report any sales that seem suspicious due to quantity sold, recurrence of buyer, etc.

**Reporting immunity**--any seller who in good faith reports a suspicious sale of a pseudoephedrine product receives immunity

**Training immunity**--any seller who has undergone training in the dangers of improper pseudoephedrine use will receive immunity from any damage that results in the sale

**Sales immunity**--any seller receives immunity from any damage that results in the sale

**Post state law**--retailers are required to post the appropriate statute(s) outlining their respective precursor law(s)

**Child Endangerment**--states have imposed certain penalties on offenders when a child/children is/are found in the vicinity of methamphetamine production or use, most commonly creating a felony charge, increased prison terms, and/or redefining child abuse or endangerment statutes

**Cleanup Laws**--states have statutes that aid in the cleanup of clandestine laboratory sites, such as restitution laws and/or funding for state agencies and/or task forces to aid in the cleanup

# Notary Publics/Accredited Immigration Representatives

According to a press release from Illinois Governor Rod Blagojevich's office, "Though 'notario' translates to 'notary' in English, the literal Spanish translation of 'notario' is 'attorney.' In many cases, so-called 'notarios' provide legal advice, analysis or legal judgment to many Spanish speakers even though they are not attorneys, and not licensed to provide such advice." Illinois enacted Public Act 093-1001 in 2004 to address the problem. The draft in this SSL volume is based on Illinois' law.

This SSL draft prohibits a person whose prior notary commission was suspended, canceled, or revoked from receiving another commission. The Act exempts notaries who are accredited immigration representatives from the requirement that non-English advertisements of service include a notice that the notary is not an attorney. It applies the notice requirement to other identifying articles, such as letterhead and business cards. This Act prohibits the literal translation of various English terms that may imply the notary is an attorney. It prohibits a notary from accepting fees for immigration advice or assistance. The Act also permits recovery of prohibited fees through compensatory damages and permits punitive damages of 3 times the amount of the fees.

The Act provides that no notary public who is not an attorney or an accredited representative shall provide or accept payment in exchange for any assistance that requires legal analysis, legal judgment, or interpretation of the law. It provides that the \$1,000 fine imposed for violation of the immigration services notice requirement shall apply only if the violation is not subject to penalties under the state Notary Public Act.

Submitted as:

Illinois

Public Act 093-1001

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 Notaries Public."

2

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

4           (a) The terms "notary public" and "notary" are used interchangeably to mean any  
5 individual appointed and commissioned to perform notarial acts.

6           (b) "Notarization" means the performance of a notarial act.

7           (c) "Accredited immigration representative" means a not-for-profit organization  
8 recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of  
9 those organizations accredited under 8 C.F.R. 292.2(d).

10

11           Section 3. [*Application.*] Every applicant for appointment and commission as a notary  
12 shall complete an application form furnished by the [Secretary of State] to be filed with the  
13 [Secretary of State], stating:

14           (a) the applicant's official name, which contains his or her last name and at least the  
15 initial of the first name;

(b) the county in which the applicant resides or, if the applicant is a resident of a state bordering [this state], the county in [this state] in which that person's principal place of work or principal place of business is located;

(c) the applicant's residence address and business address, if any, or any address at which an applicant will use a notary public commission to receive fees;

(d) that the applicant has resided in [this state] for [30 days] preceding the application or that the applicant who is a resident of a state bordering [this state] has worked or maintained a business in [this state] for [30 days] preceding the application;

(e) that the applicant is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(f) that the applicant is at least [18 years] of age;

(g) that the applicant is able to read and write the English language;

(h) that the applicant has never been the holder of a notary public appointment that was revoked or suspended during the past [10 years];

(i) that the applicant has not been convicted of a felony; and

(j) any other information the [Secretary of State] deems necessary.

32

#### Section 4. *[Notice.]*

(a) Every notary public who is not an attorney or an accredited immigration representative who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following: notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN [insert state] AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If such advertisement is by radio or television, the statement may be modified but must include substantially the same message. A notary public shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the role of the notary public, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the word "notario" is prohibited under this provision. Failure to follow the procedures in this Section shall result in a fine of [\$1,000] for each written violation. The second violation shall result in suspension of notary authorization. The third violation shall result in permanent revocation of the commission of notary public. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(b) All notaries public required to comply with the provisions of subsection (a) shall prominently post at their place of business as recorded with the [Secretary of State] pursuant to this Act a schedule of fees established by law which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which notary services were solicited and shall contain the disavowal of legal representation required above in subsection (a), unless such notice of disavowal is already prominently posted.

(c) No notary public, agency or any other person who is not an attorney shall represent, hold themselves out or advertise that they are experts on immigration matters or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law unless they are a designated entity as defined pursuant to Section 245a.1 of Part 245a of the Code of Federal Regulations (8 CFR 245a.1) or an entity accredited by the Board of Immigration Appeals.

(d) Any person who aids, abets or otherwise induces another person to give false information concerning immigration status shall be guilty of a [Class A misdemeanor] for a first offense and a [Class 3 felony] for a second or subsequent offense committed within [5 years] of a previous conviction for the same offense. Any notary public who violates the provisions of this Section shall be guilty of official misconduct and subject to fine or imprisonment. Nothing in this Section shall preclude any consumer of notary public services from pursuing other civil remedies available under the law.

(e) No notary public who is not an attorney or an accredited representative shall accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(f) Violation of subsection (e) is a business offense punishable by a fine of [3 times] the amount received for services, or [\$1,001] minimum, and restitution of the amount paid to the consumer. Nothing in this Section shall be construed to preempt nor preclude additional appropriate civil remedies or criminal charges available under law.

(g) If a notary public of this State is convicted of [2 or more] business offenses involving a violation of this Act within a [12-month] period while commissioned, or of [3 or more] business offenses involving a violation of this Act within a [5-year] period regardless of being commissioned, the [Secretary] shall automatically revoke the notary public commission of that person on the date that the person's most recent business offense conviction is entered as a final judgment.

#### Section 5. [*Maximum Fee.*]

(a) Except as provided in subsection (b) of this Section, the maximum fee in this State is [\$1.00] for any notarial act performed.

(b) Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration forms shall be limited to the following:

(1) [\$10] per form completion;

(2) [\$10] per page for the translation of a non-English language into English where such translation is required for immigration forms;

(3) [\$1] for notarizing;

(4) [\$3] to execute any procedures necessary to obtain a document required to complete immigration forms; and

(5) A maximum of [\$75] for one complete application.

Fees authorized under this subsection shall not include application fees required to be submitted with immigration applications. Any person who violates the provisions of this subsection shall be guilty of a [Class A misdemeanor] for a first offense and a [Class 3 felony] for a second or subsequent offense committed within [5 years] of a previous conviction for the same offense.

(c) Upon his own information or upon complaint of any person, the [Attorney General] or any [State's Attorney], or their designee, may maintain an action for injunctive relief in the court against any notary public or any other person who violates the provisions of subsection (b) of this Section. These remedies are in addition to, and not in substitution for, other available remedies. If the [Attorney General] or any [State's Attorney fails] to bring an action as provided pursuant to this subsection within [90 days] of receipt of a complaint, any person may file a civil action to enforce the provisions of this subsection and maintain an action for injunctive relief.

(d) All notaries public must provide receipts and keep records for fees accepted for services provided. Failure to provide receipts and keep records that can be presented as evidence of no wrongdoing shall be construed as a presumptive admission of allegations raised in complaints against the notary for violations related to accepting prohibited fees.

Section 6. [*Immigration Services.*] As used in this Section:

(a) (1) “Immigration matter” means any proceeding, filing, or action affecting the nonimmigrant, immigrant or citizenship status of any person that arises under immigration and naturalization law, executive order or presidential proclamation of the United States or any foreign country, or that arises under action of the United States Citizenship and Immigration Services, the United States Department of Labor, or the United States Department of State.

(2) “Immigration assistance service” means any information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(3) “Compensation” means money, property, services, promise of payment, or anything else of value.

(4) “Employed by” means that a person is on the payroll of the employer and the employer deducts from the employee’s paycheck social security and withholding taxes, or receives compensation from the employer on a commission basis or as an independent contractor.

(5) “Reasonable costs” means actual costs or, if actual costs cannot be calculated, reasonably estimated costs of such things as photocopying, telephone calls, document requests, and filing fees for immigration forms, and other nominal costs incidental to assistance in an immigration matter.

(b) The [General Assembly] finds and declares that private individuals who assist persons with immigration matters have a significant impact on the ability of their clients to reside and work within the United States and to establish and maintain stable families and business relationships. The [General Assembly] further finds that that assistance and its impact also have a significant effect on the cultural, social, and economic life of [this state] and thereby substantially affect the public interest. It is the intent of the [General Assembly] to establish rules of practice and conduct for those individuals to promote honesty and fair dealing with residents and to preserve public confidence.

(c) The following people are exempt from this Section, provided they prove the exemption by a preponderance of the evidence:

(1) An attorney licensed to practice law in any state or territory of the United States, or of any foreign country when authorized by the [state Supreme Court], to the extent the attorney renders immigration assistance service in the course of his or her practice as an attorney.

(2) A legal intern, as described by the rules of the [state Supreme Court], employed by and under the direct supervision of a licensed attorney and rendering immigration assistance service in the course of the intern’s employment.

(3) A not-for-profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of those organizations accredited under 8 C.F.R.292.2(d).

(4) Any organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such advice or assistance is provided. Nothing in this Section shall regulate any business to the extent that such regulation is prohibited or preempted by State or federal law. All other persons providing or offering to provide immigration assistance service shall be subject to this Section.

(d) Any person who provides or offers to provide immigration assistance service may perform only the following services:

(1) Completing a government agency form, requested by the customer and appropriate to the customer's needs, only if the completion of that form does not involve a legal judgment for that particular matter.

(2) Transcribing responses to a government agency form which is related to an immigration matter, but not advising a customer as to his or her answers on those forms.

(3) Translating information on forms to a customer and translating the customer's answers to questions posed on those forms.

(4) Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms.

(5) Translating documents from a foreign language into English.

(6) Notarizing signatures on government agency forms, if the person performing the service is a notary public of [this state].

(7) Making referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter.

(8) Preparing or arranging for the preparation of photographs and fingerprints.

(9) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results.

(10) Conducting English language and civics courses.

(11) Other services that the [Attorney General] determines by rule may be appropriately performed by such persons in light of the purposes of this Section.

Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration forms shall be limited to the maximum fees set forth in subsections (a) and (b) of Section 5 of this Act. No person subject to this Act shall charge fees directly or indirectly for referring an individual to an attorney or for any immigration matter not authorized by this Act, provided that a person may charge a fee for notarizing documents as permitted by the this Act.

(e) Any person performing such services shall register with the [Attorney General] and submit verification of malpractice insurance or of a surety bond.

(f) Except as provided otherwise in this subsection, before providing any assistance in an immigration matter a person shall provide the customer with a written contract that includes the following:

(1) An explanation of the services to be performed.

(2) Identification of all compensation and costs to be charged to the customer for the services to be performed.

(3) A statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the person for any purpose, including payment of compensation or costs. This subsection does not apply to a not-for-profit organization that provides advice or assistance in immigration matters to clients without charge beyond a reasonable fee to reimburse the organization's or clinic's reasonable costs relating to providing immigration services to that client.

(g) Any person who provides or offers immigration assistance service and is not exempted from this Section, shall post signs at his or her place of business, setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least [11 inches by 17 inches], and shall contain the following:

(1) The statement "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(2) The statement “I AM NOT ACCREDITED TO REPRESENT YOU BEFORE THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE AND THE IMMIGRATION BOARD OF APPEALS.”

(3) The fee schedule.

(4) The statement that “YOU MAY CANCEL ANY CONTRACT WITHIN 3 WORKING DAYS AND GET YOUR MONEY BACK FOR SERVICES NOT PERFORMED.”

(5) Additional information the [Attorney General] may require by rule.

(h) Every person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN [insert state] AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.” If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(i) Any person who provides or offers immigration assistance service and is not exempted from this Section shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the word “notario” is prohibited under this provision.

(j) If not subject to penalties under subsection (a) of Section 4 of this Act, violations of this subsection shall result in a fine of [\$1,000]. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(k) The written contract shall be in both English and in the language of the customer.

(l) A copy of the contract shall be provided to the customer upon the customer’s execution of the contract.

(m) A customer has the right to rescind a contract within [72 hours] after his or her signing of the contract.

(n) Any documents identified in Paragraph (3) of Subsection (f) of this Section shall be returned upon demand of the customer.

(o) No person engaged in providing immigration services who is not exempted under this Section shall do any of the following:

(1) Make any statement that the person can or will obtain special favors from or has special influence with the United States Immigration and Naturalization Service or any other government agency.

(2) Retain any compensation for service not performed.

(3) Accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(4) Refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer.

(5) Represent or advertise, in connection with the provision assistance in immigration matters, other titles of credentials, including but not limited to “notary public” or “immigration consultant,” that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public appointed by the [Secretary of State] may use the term “notary public” if the

use is accompanied by the statement that the person is not an attorney; the term “notary public” may not be translated to another language; for example “notario” is prohibited.

(6) Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(7) Make any misrepresentation of false statement, directly or indirectly, to influence, persuade, or induce patronage.

(p) Any person who violates any provision of this Section, or the rules and regulations issued under this Section, shall be guilty of a [Class A misdemeanor] for a first offense and a [Class 3 felony] for a second or subsequent offense committed within [5 years] of a previous conviction for the same offense. Upon his own information or upon the complaint of any person, the [Attorney General] or any [State’s Attorney], or a municipality with a population of more than [1,000,000], may maintain an action for injunctive relief and also seek a civil penalty not exceeding [\$50,000] in the [circuit court] against any person who violates any provision of this Section. These remedies are in addition to, and not in substitution for, other available remedies. If the [Attorney General] or any [State’s Attorney] or a municipality with a population of more than 1,000,000 fails to bring an action as provided under this Section any person may file a civil action to enforce the provisions of this Act and maintain an action for injunctive relief, for compensatory damages to recover prohibited fees, or for such additional relief as may be appropriate to deter, prevent, or compensate for the violation. In order to deter violations of this Section, courts shall not require a showing of the traditional elements for equitable relief. A prevailing plaintiff may be awarded [3 times] the prohibited fees or a minimum of [\$1,000] in punitive damages, attorney’s fees, and costs of bringing an action under this Section. It is the express intention of the [General Assembly] that remedies for violation of this Section be cumulative.

(q) No unit of local government, including any home rule unit, shall have the authority to regulate immigration assistance services unless such regulations are at least as stringent as those contained in this Act. It is declared to be the law of this State, pursuant to [insert citation], that this Act is a limitation on the authority of a home rule unit to exercise powers concurrently with the State. The limitations of this Section do not apply to a home rule unit that has, prior to the effective date of this amendatory Act, adopted an ordinance regulating immigration assistance services.

(r) This Section is severable under [insert citation].

(s) The [Attorney General] shall issue rules not inconsistent with this Section for the implementation, administration, and enforcement of this Section by [insert date]. The rules may provide for the following:

(1) The content, print size, and print style of the signs required under subsection (g) of this section of this Act. Print sizes and styles may vary from language to language.

(2) Standard forms for use in the administration of this Section.

(3) Any additional requirements deemed necessary.

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

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

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



# Notice before Relocating a Child Not Living with Both Legal Parents

This Act directs that if an existing custody order or other enforceable agreement does not expressly govern the relocation of the principal residence of a child, a parent who intends to change his or her principal residence shall provide reasonable written notice by certified mail or admission of service to the other legal parent of the child. Reasonable notice is notice that is given at least forty-five days before relocation or a shorter period if reasonable under the specific facts giving rise to the relocation. Proof of the notice shall be filed with the court of record unless notice is waived by the court.

Submitted as:  
South Dakota  
Chapter 173 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 To Require Notice Before  
2 Relocating A Child Not Living With Both Legal Parents.”

3  
4           Section 2. [*Notice from Parent about Relocating the Principal Residence of a Child in the*  
5 *Parent’s Custody.*]

6           (a) If an existing custody order or other enforceable agreement does not expressly govern  
7 the relocation of the principal residence of a child, a parent who intends to change his or her  
8 principal residence shall, provide reasonable written notice by certified mail or admission of  
9 service to the other legal parent of the child. Reasonable notice is notice that is given at least  
10 [forty-five days] before relocation or a shorter period if reasonable under the specific facts giving  
11 rise to the relocation. Proof of the notice shall be filed with the court of record unless notice is  
12 waived by the court. No notice need be provided pursuant to this section if:

13               (1) The relocation results in the child moving closer to the noncustodial parent; or  
14               (2) The relocation is within the boundaries of the child’s current school district; or  
15               (3) There is an existing valid protection order in favor of the child or the custodial  
16 parent against the noncustodial parent; or

17               (4) Within the preceding [twelve months], the nonrelocating parent has been  
18 convicted of violation of a protection order, criminal assault, child abuse, or other domestic  
19 violence and either the child or the custodial parent was the victim of the crime or violation.

20           (b) The notice required in part (a) of this section of this Act shall contain the following:

21               (1) The address and telephone number, if known, of the new residence;  
22               (2) The purpose for relocating;  
23               (3) Why the relocation is in the best interest of the child; and  
24               (4) The relocating party’s proposed visitation plan for the nonrelocating parent  
25 upon relocation.

26  
27           Section 3. [*Hearings Resulting from Notice of Request to Relocate the Principal*  
28 *Residence of a Child.*] At the request of the nonrelocating parent, made within [thirty days] of the

29 notice of relocation, the court shall hold a hearing on the relocation. If no request for hearing is  
30 made within [thirty days] of notice, the relocation is presumed to be consented to by the  
31 nonrelocating parent.

32

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

34

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

36

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

# Obtaining Identity by Electronic Fraud

This Act creates a new criminal offense known as “obtaining identity by electronic fraud.” It defines obtaining identity by electronic fraud as knowingly and willfully soliciting, requesting or taking any action by means of a fraudulent electronic communication with intent to obtain the personal identifying information of another.

“Fraudulent electronic communication” means a communication by a person that is an electronic mail message, web site or any other use of the Internet that contains fraudulent, false, fictitious or misleading information that depicts or includes the name, logo, web site address, email address, postal address, telephone number or any other identifying information of a business, organization or state agency, to which the person has no legitimate claim of right.

Submitted as:

New Mexico

Chapter 178

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act Creating a New Criminal  
2 Offense Known as Obtaining Identity by Electronic Fraud.”

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

5           A. “Fraudulent electronic communication” means a communication by a person that is an  
6 electronic mail message, web site or any other use of the internet that contains fraudulent, false,  
7 fictitious or misleading information that depicts or includes the name, logo, web site address,  
8 email address, postal address, telephone number or any other identifying information of a  
9 business, organization or state agency, to which the person has no legitimate claim of right; and

10          B. “Personal identifying information” means information that alone or in conjunction  
11 with other information identifies a person, including the person's name, address, telephone  
12 number, driver's license number, social security number, place of employment, maiden name of  
13 the person's mother, demand deposit account number, checking or savings account number,  
14 credit card or debit card number, personal identification number, passwords or any other  
15 numbers or information that can be used to access a person's financial resources.

16  
17          Section 3. [*Theft of Identity and Obtaining Identity by Electronic Fraud.*]

18          A. Theft of identity consists of willfully obtaining, recording or transferring personal  
19 identifying information of another person without the authorization or consent of that person and  
20 with the intent to defraud that person or another.

21          B. Obtaining identity by electronic fraud consists of knowingly and willfully soliciting,  
22 requesting or taking any action by means of a fraudulent electronic communication with intent to  
23 obtain the personal identifying information of another.

24          C. Whoever commits theft of identity is guilty of a [fourth degree felony].

25          D. Whoever commits obtaining identity by electronic fraud is guilty of a [fourth degree  
26 felony].

27 E. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other  
28 provision of the law when the conduct also constitutes a violation of that other provision.

29 F. In a prosecution brought pursuant to this section, the theft of identity or obtaining  
30 identity by electronic fraud shall be considered to have been committed in the county:

31 (1) where the person whose identifying information was appropriated, obtained or  
32 sought resided at the time of the offense; or

33 (2) in which any part of the offense took place, regardless of whether the  
34 defendant was ever actually present in the county.

35 G. A person found guilty of theft of identity or of obtaining identity by electronic fraud  
36 shall, in addition to any other punishment, be ordered to make restitution for any financial loss  
37 sustained by a person injured as the direct result of the offense. In addition to out-of-pocket  
38 costs, restitution may include payment for costs, including attorney fees, incurred by that person  
39 in clearing the person's credit history or credit rating or costs incurred in connection with a civil  
40 or administrative proceeding to satisfy a debt, lien, judgment or other obligation of that person  
41 arising as a result of the offense.

42 H. The sentencing court shall issue written findings of fact and may issue orders as are  
43 necessary to correct a public record that contains false information as a result of the theft of  
44 identity or of obtaining identity by electronic fraud.

45  
46 Section 4. [*Severability*.] [Insert severability clause.]

47  
48 Section 5. [*Repealer*.] [Insert repealer clause.]

49  
50 Section 6. [*Effective Date*.] [Insert effective date.]

# Office of State Trade Representative

This Act creates the office of state trade representative in the office of the governor. The state trade representative shall:

- Work with the department of community, trade, and economic development, the department of agriculture, and other appropriate state agencies, and within the agencies' existing resources, to review and analyze proposed and enacted international trade agreements and provide an assessment of the impact of the proposed or enacted agreement on businesses and firms;
- Provide input office of the United States trade representative concerning the development of international trade, commodity, and direct investment policies that reflect the concerns of the state;
- Serve as liaison to the legislature on matters of trade policy oversight including, but not limited to, updates to the legislature regarding the status of trade negotiations, trade litigation, and the impacts of trade policy on state businesses;
- Work with the international trade division of the department of community, trade, and economic development and the international marketing program of the state department of agriculture to develop a statewide strategy designed to increase the export of state goods and services, particularly goods and services from small and medium-sized businesses; and
- Conduct other activities the governor deems necessary to promote international trade and foreign investment within the state.

Submitted as:

Washington

Chapter 346 of 2003

Status: Enacted into law in 2003.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Create the Office of State  
2 Trade Representative.”

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

5           (1) The [legislature] finds that:

6               (a) The expansion of international trade is vital to the overall growth of the [state]  
7 economy;

8               (b) The North American Free Trade Agreement (NAFTA) and the General  
9 Agreement on Tariffs and Trade (GATT) highlight the increased importance of international  
10 trade opportunities to the United States and this state;

11               (d) The passage of NAFTA and GATT will have a major impact on the state's  
12 [agriculture, aerospace, computer software, and textiles and apparel sectors];

13               (e) There is a need to strengthen and coordinate the state's activities in promoting  
14 and developing its [agricultural, manufacturing, and service industries] overseas, especially for  
15 small and medium-sized businesses, and minority and women-owned business enterprises; and

16               (f) The importance of having a coherent vision for advancing the state's interest in  
17 the global economy has rarely been so consequential as it is now.

18           (2) The [legislature] declares that the purpose of the [office of state trade representative] is  
19 to:

- 20 (a) Strengthen and expand the state's activities in marketing its goods and services  
21 overseas;
- 22 (b) Review and analyze proposed international trade agreements to assess their  
23 impact on goods and services produced by businesses throughout the state; and
- 24 (c) Inform the [legislature] about ongoing trade negotiations, trade development,  
25 and the possible impacts on the state economy.

26  
27 Section 3. [*Office of State Trade Representative Created.*]

28 (1) The [office of the state trade representative] is created in the [office of the governor].  
29 The [office of the state trade representative] shall serve as the state's official liaison with foreign  
30 governments on trade matters.

31 (2) The [office of the state trade representative] may accept or request grants or gifts from  
32 citizens and other private sources to be used to defray the costs of appropriate hosting of foreign  
33 dignitaries, including appropriate gift-giving and reciprocal gift-giving, or other activities of the  
34 office. The office shall open and maintain a bank account into which it shall deposit all money  
35 received under this section. Such money and the interest accruing thereon shall not constitute  
36 public funds, shall be kept segregated and apart from funds of the state, and shall not be subject  
37 to appropriation or allotment by the state or subject to [insert citation]

38 (3) The office shall:

39 (a) Work with the [department of community, trade, and economic development],  
40 the [department of agriculture], and other appropriate state agencies to review and analyze  
41 proposed and enacted international trade agreements and provide an assessment of the impact of  
42 the proposed or enacted agreement on companies doing business in this state;

43 (b) Provide input to the Office of the United States Trade Representative in the  
44 development of international trade, commodity, and direct investment policies that reflect the  
45 concerns of this state;

46 (c) Serve as liaison to the [legislature] on matters of trade policy oversight  
47 including, but not limited to, updates to the [legislature] regarding the status of trade  
48 negotiations, trade litigation, and the impacts of trade policy on state businesses;

49 (d) Work with the [international trade division of the department of community,  
50 trade, and economic development] and the [international marketing program of the state  
51 department of agriculture] to develop a statewide strategy designed to increase the export of  
52 goods and services produced in this state, and particularly goods and services from small and  
53 medium-sized businesses; and

54 (e) Conduct other activities the [governor] deems necessary to promote  
55 international trade and foreign investment within the state.

56  
57 Section 4. [*Severability.*] [Insert severability clause.]

58  
59 Section 5. [*Repealer.*] [Insert repealer clause.]

60  
61 Section 6. [*Effective Date.*] [Insert effective date.]

# Older Adult Services

This Act is designed to transform the state older adult services system into a primarily home and community-based system, taking into account the continuing need for 24-hour skilled nursing care and congregate housing with services. It encompasses the housing, health, financial and other supportive older adult services.

Submitted as:

Illinois

Public Act 93-1031

Status: Enacted into law in 2004.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “The Older Adult Services Act.”

2

3           Section 2. [*Purpose.*] The purpose of this Act is to transform [this state’s] comprehensive  
4 system of older adult services from a primarily facility-based service delivery system to  
5 primarily a home-based and community-based system, taking into account the continuing need  
6 for 24-hour skilled nursing care and congregate housing with services. Such restructuring shall  
7 encompass the provision of housing, health, financial, and supportive older adult services. It is  
8 envisioned that this restructuring will promote the development, availability, and accessibility of  
9 a comprehensive, affordable, and sustainable service delivery system that places a high priority  
10 on home-based and community-based services. Such restructuring will encompass all aspects of  
11 the delivery system regardless of the setting in which the service is provided.

12

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

14           “Advisory Committee” means the [Older Adult Services Advisory Committee].

15           “Certified nursing home” means any nursing home licensed under the [insert citation]  
16 and certified under Title XIX of the Social Security Act to participate as a vendor in the medical  
17 assistance program under [insert citation].

18           “Comprehensive case management” means the assessment of needs and preferences of an  
19 older adult at the direction of the older adult or the older adult’s designated representative and  
20 the arrangement, coordination, and monitoring of an optimum package of services to meet the  
21 needs of the older adult.

22           “Consumer-directed” means decisions made by an informed older adult from available  
23 services and care options, which may range from independently making all decisions and  
24 managing services directly to limited participation in decision-making, based upon the functional  
25 and cognitive level of the older adult.

26           “Coordinated point of entry” means an integrated access point where consumers receive  
27 information and assistance, assessment of needs, care planning, referral, assistance in completing  
28 applications, authorization of services where permitted, and follow-up to ensure that referrals and  
29 services are accessed.

30           “Department” means the [Department on Aging], in collaboration with the departments  
31 of [Public Health and Public Aid] and other relevant agencies and in consultation with the  
32 Advisory Committee, except as otherwise provided.

33 “Departments” means the [Department on Aging], the [departments of Public Health and  
34 Public Aid], and other relevant agencies in collaboration with each other and in consultation with  
35 the [Advisory Committee], except as otherwise provided.

36 “Family caregiver” means an adult family member or another individual who is an  
37 uncompensated provider of home-based or community-based care to an older adult.

38 “Health services” means activities that promote, maintain, improve, or restore mental or  
39 physical health or that are palliative in nature.

40 “Older adult” means a person age [60] or older and, if appropriate, the person’s family  
41 caregiver.

42 “Person-centered” means a process that builds upon an older adult’s strengths and  
43 capacities to engage in activities that promote community life and that reflect the older adult’s  
44 preferences, choices, and abilities, to the extent practicable.

45 “Priority service area” means an area identified by the [Departments] as being less-served  
46 with respect to the availability of and access to older adult services in [this state]. The  
47 [Departments] shall determine by rule the criteria and standards used to designate such areas.

48 “Priority service plan” means the plan developed pursuant to Section 5 of this Act.

49 “Provider” means any supplier of services under this Act.

50 “Residential setting” means the place where an older adult lives.

51 “Restructuring” means the transformation of [this state’s] comprehensive system of older  
52 adult services from funding primarily a facility-based service delivery system to primarily a  
53 home-based and community-based system, taking into account the continuing need for 24-hour  
54 skilled nursing care and congregate housing with services.

55 “Services” means the range of housing, health, financial, and supportive services, other  
56 than acute health care services, that are delivered to an older adult with functional or cognitive  
57 limitations, or socialization needs, who requires assistance to perform activities of daily living,  
58 regardless of the residential setting in which the services are delivered.

59 “Supportive services” means non-medical assistance given over a period of time to an  
60 older adult that is needed to compensate for the older adult’s functional or cognitive limitations,  
61 or socialization needs, or those services designed to restore, improve, or maintain the older  
62 adult’s functional or cognitive abilities.

63  
64 Section 4. *[Designation of Lead Agency; Annual Report.]*

65 (a) The [Department on Aging] shall be the lead agency for: the provision of services to  
66 older adults and their family caregivers; restructuring [this state’s] service delivery system for  
67 older adults; and the implementation of this Act, except where otherwise provided. The  
68 [Department on Aging] shall collaborate with the [departments of Public Health and Public Aid]  
69 and any other relevant agencies, and shall consult with the [Advisory Committee], in all aspects  
70 of these duties, except as otherwise provided in this Act.

71 (b) The [Departments] shall promulgate rules to implement this Act pursuant to [insert  
72 citation].

73 (c) On [January 1, 2006], and each [January 1 thereafter], the [Department] shall issue a  
74 report to the [General Assembly] on progress made in complying with this Act, impediments  
75 thereto, recommendations of the [Advisory Committee], and any recommendations for  
76 legislative changes necessary to implement this Act. To the extent practicable, all reports  
77 required by this Act shall be consolidated into a single report.

78  
79 Section 5. *[Priority Service Areas; Service Expansion.]*

80 (a) The requirements of this Section are subject to the availability of funding.



(b) The [Department] shall expand older adult services that promote independence and permit older adults to remain in their own homes and communities. Priority shall be given to both the expansion of services and the development of new services in priority service areas.

(c) Inventory of services. The [Department] shall develop and maintain an inventory and assessment of the types and quantities of public older adult services and, to the extent possible, privately provided older adult services, including the unduplicated count, location, and characteristics of individuals served by each facility, program, or service and the resources supporting those services.

(d) Priority service areas. The [Departments] shall assess the current and projected need for older adult services throughout the State, analyze the results of the inventory, and identify priority service areas, which shall serve as the basis for a priority service plan to be filed with the [Governor] and the [General Assembly] no later than [July 1, 2006], and every [5 years] thereafter.

(e) Moneys appropriated by the [General Assembly] for the purpose of this Section, receipts from donations, grants, fees, or taxes that may accrue from any public or private sources to the [Department] for the purpose of this Section, and savings attributable to the nursing home conversion program as calculated in subsection (h) shall be deposited into the [Department on Aging State Projects Fund]. Interest earned by those moneys in the [Fund] shall be credited to the [Fund].

(f) Moneys described in subsection (e) from the [Department on Aging State Projects Fund] shall be used for older adult services, regardless of where the older adult receives the service, with priority given to both the expansion of services and the development of new services in priority service areas. Fundable services shall include:

(1) Housing, health services, and supportive services:

(A) adult day care;

(B) adult day care for persons with Alzheimer's disease and related disorders;

(C) activities of daily living;

(D) care-related supplies and equipment;

(E) case management;

(F) community reintegration;

(G) companion;

(H) congregate meals;

(I) counseling and education;

(J) elder abuse prevention and intervention;

(K) emergency response and monitoring;

(L) environmental modifications;

(M) family caregiver support;

(N) financial;

(O) home delivered meals;

(P) homemaker;

(Q) home health;

(R) hospice;

(S) laundry;

(T) long-term care ombudsman;

(U) medication reminders;

(V) money management;

(W) nutrition services;

(X) personal care;

(Y) respite care;  
(Z) residential care;  
(AA) senior benefits outreach;  
(BB) senior centers;  
(CC) services provided under the [insert citation], or sheltered care services that meet the requirements of the [insert citation];  
(DD) telemedicine devices to monitor recipients in their own homes as an alternative to hospital care, nursing home care, or home visits;  
(EE) training for direct family caregivers;  
(FF) transition;  
(GG) transportation;  
(HH) wellness and fitness programs; and  
(II) other programs designed to assist older adults to remain independent and receive services in the most integrated residential setting possible for that person.

(2) Older Adult Services Demonstration Grants, pursuant to subsection (l) of this Section.

(g) Older Adult Services Demonstration Grants. The [Department] shall establish a program of demonstration grants to assist in the restructuring of the delivery system for older adult services and provide funding for innovative service delivery models and system change and integration initiatives. The [Department] shall prescribe, by rule, the grant application process. At a minimum, every application must include:

- (1) The type of grant sought;
- (2) A description of the project;
- (3) The objective of the project;
- (4) The likelihood of the project meeting identified needs;
- (5) The plan for financing, administration, and evaluation of the project;
- (6) The timetable for implementation;
- (7) The roles and capabilities of responsible individuals and organizations;
- (8) Documentation of collaboration with other service providers, local community government leaders, and other stakeholders, other providers, and any other stakeholders in the community;
- (9) Documentation of community support for the project, including support by other service providers, local community government leaders, and other stakeholders;
- (10) The total budget for the project;
- (11) The financial condition of the applicant; and
- (12) Any other application requirements that may be established by the [Department] by rule.

(h) Each project may include provisions for a designated staff person who is responsible for the development of the project and recruitment of providers.

(i) Projects may include, but are not limited to: adult family foster care; family adult day care; assisted living in a supervised apartment; personal services in a subsidized housing project; evening and weekend home care coverage; small incentive grants to attract new providers; money following the person; cash and counseling; managed long-term care; and at least one respite care project that establishes a local coordinated network of volunteer and paid respite workers, coordinates assignment of respite workers to caregivers and older adults, ensures the health and safety of the older adult, provides training for caregivers, and ensures that support groups are available in the community.

(j) A demonstration project funded in whole or in part by an Older Adult Services Demonstration Grant is exempt from the requirements of [insert citation]. To the extent

applicable, however, for the purpose of maintaining the statewide inventory authorized by the [insert citation], the [Department] shall send to the [Health Facilities Planning Board] a copy of each grant award made under this subsection (g).

(k) The [Department], in collaboration with the [Departments of Public Health and Public Aid], shall evaluate the effectiveness of the projects receiving grants under this Section.

(l) No later than [July 1] of each year, the [Department of Public Health] shall provide information to the [Department of Public Aid] to enable the [Department of Public Aid] to [annually] document and verify the savings attributable to the nursing home conversion program for the previous fiscal year to estimate an annual amount of such savings that may be appropriated to the [Department on Aging State Projects Fund] and notify the [General Assembly], the [Department on Aging], the [Department of Human Services], and the [Advisory Committee] of the savings no later than [October 1] of the same fiscal year.

Section 6. [*Older Adult Services Restructuring.*] No later than [January 1, 2005], the [Department] shall commence the process of restructuring the older adult services delivery system. Priority shall be given to both the expansion of services and the development of new services in priority service areas. Subject to the availability of funding, the restructuring shall include, but not be limited to, the following:

(1) Planning. The [Department] shall develop a plan to restructure the State's service delivery system for older adults. The plan shall include a schedule for the implementation of the initiatives outlined in this Act and all other initiatives identified by the participating agencies to fulfill the purposes of this Act. Financing for older adult services shall be based on the principle that "money follows the individual." The plan shall also identify potential impediments to delivery system restructuring and include any known regulatory or statutory barriers.

(2) Comprehensive case management. The [Department] shall implement a statewide system of holistic comprehensive case management. The system shall include the identification and implementation of a universal, comprehensive assessment tool to be used statewide to determine the level of functional, cognitive, socialization, and financial needs of older adults. This tool shall be supported by an electronic intake, assessment, and care planning system linked to a central location. "Comprehensive case management" includes services and coordination such as (i) comprehensive assessment of the older adult (including the physical, functional, cognitive, psycho-social, and social needs of the individual); (ii) development and implementation of a service plan with the older adult to mobilize the formal and family resources and services identified in the assessment to meet the needs of the older adult, including coordination of the resources and services with any other plans that exist for various formal services, such as hospital discharge plans, and with the information and assistance services; (iii) coordination and monitoring of formal and family service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided; (iv) periodic reassessment and revision of the status of the older adult with the older adult or, if necessary, the older adult's designated representative; and (v) in accordance with the wishes of the older adult, advocacy on behalf of the older adult for needed services or resources.

(3) Coordinated point of entry. The [Department] shall implement and publicize a statewide coordinated point of entry using a uniform name, identity, logo, and toll-free number.

(4) Public web site. The [Department] shall develop a public web site that provides links to available services, resources, and reference materials concerning caregiving, diseases, and best practices for use by professionals, older adults, and family caregivers.

(5) Expansion of older adult services. The [Department] shall expand older adult services that promote independence and permit older adults to remain in their own homes and communities.

(6) Consumer-directed home and community-based services. The [Department] shall expand the range of service options available to permit older adults to exercise maximum choice and control over their care.

(7) Comprehensive delivery system. The [Department] shall expand opportunities for older adults to receive services in systems that integrate acute and chronic care.

(8) Enhanced transition and follow-up services. The [Department] shall implement a program of transition from one residential setting to another and follow-up services, regardless of residential setting, pursuant to rules with respect to (i) resident eligibility, (ii) assessment of the resident's health, cognitive, social, and financial needs, (iii) development of transition plans, and (iv) the level of services that must be available before transitioning a resident from one setting to another.

(9) Family caregiver support. The [Department] shall develop strategies for public and private financing of services that supplement and support family caregivers.

(10) Quality standards and quality improvement. The [Department] shall establish a core set of uniform quality standards for all providers that focus on outcomes and take into consideration consumer choice and satisfaction, and the [Department] shall require each provider to implement a continuous quality improvement process to address consumer issues. The continuous quality improvement process must benchmark performance, be person-centered and data-driven, and focus on consumer satisfaction.

(11) Workforce. The [Department] shall develop strategies to attract and retain a qualified and stable worker pool, provide living wages and benefits, and create a work environment that is conducive to long-term employment and career development. Resources such as grants, education, and promotion of career opportunities may be used.

(12) Coordination of services. The [Department] shall identify methods to better coordinate service networks to maximize resources and minimize duplication of services and ease of application.

(13) Barriers to services. The [Department] shall identify barriers to the provision, availability, and accessibility of services and shall implement a plan to address those barriers. The plan shall: (i) identify barriers, including but not limited to, statutory and regulatory complexity, reimbursement issues, payment issues, and labor force issues; (ii) recommend changes to State or federal laws or administrative rules or regulations; (iii) recommend application for federal waivers to improve efficiency and reduce cost and paperwork; (iv) develop innovative service delivery models; and (v) recommend application for federal or private service grants.

(14) Reimbursement and funding. The [Department] shall investigate and evaluate costs and payments by defining costs to implement a uniform, audited provider cost reporting system to be considered by all [Departments] in establishing payments. To the extent possible, multiple cost reporting mandates shall not be imposed.

(15) Medicaid nursing home cost containment and Medicare utilization. The [Department of Public Aid], in collaboration with the [Department on Aging and the Department of Public Health] and in consultation with the [Advisory Committee], shall propose a plan to contain Medicaid nursing home costs and maximize Medicare utilization. The plan must not impair the ability of an older adult to choose among available services. The plan shall include, but not be limited to, (i) techniques to maximize the use of the most cost-effective services without sacrificing quality and (ii) methods to identify and serve older adults in need of minimal

services to remain independent, but who are likely to develop a need for more extensive services in the absence of those minimal services.

(16) Bed reduction. The [Department of Public Health] shall implement a nursing home conversion program to reduce the number of Medicaid-certified nursing home beds in areas with excess beds. The [Department of Public Aid] shall investigate changes to the Medicaid nursing facility reimbursement system in order to reduce beds. Such changes may include, but are not limited to, incentive payments that will enable facilities to adjust to the restructuring and expansion of services required by the Older Adult Services Act, including adjustments for the voluntary closure or layaway of nursing home beds certified under Title XIX of the federal Social Security Act. Any savings shall be reallocated to fund home-based or community-based older adult services pursuant to Section 5 of this Act.

(17) Financing. The [Department] shall investigate and evaluate financing options for older adult services and shall make recommendations in the report required by Section 4 concerning the feasibility of these financing arrangements. These arrangements shall include, but are not limited to:

- (A) private long-term care insurance coverage for older adult services;
- (B) enhancement of federal long-term care financing initiatives;
- (C) employer benefit programs such as medical savings accounts for long-term care;
- (D) individual and family cost-sharing options;
- (E) strategies to reduce reliance on government programs;
- (F) fraudulent asset divestiture and financial planning prevention; and
- (G) methods to supplement and support family and community caregiving.

(18) Older Adult Services Demonstration Grants. The [Department] shall implement a program of demonstration grants that will assist in the restructuring of the older adult services delivery system, and shall provide funding for innovative service delivery models and system change and integration initiatives pursuant to subsection (g) of Section 5.

(19) Bed Need Methodology Update. For the purposes of determining areas with excess beds, the [Departments] shall provide information and assistance to the [Health Facilities Planning Board] to update the [Bed Need Methodology for Long-Term Care] to update the assumptions used to establish the methodology to make them consistent with modern older adult services.

#### Section 7. *[Nursing Home Conversion Program.]*

(a) The [Department of Public Health], in collaboration with the [Department on Aging and the Department of Public Aid], shall establish a nursing home conversion program. Start-up grants, pursuant to subsections (l) and (m) of this Section, shall be made available to nursing homes as appropriations permit as an incentive to reduce certified beds, retrofit, and retool operations to meet new service delivery expectations and demands.

(b) Grant moneys shall be made available for capital and other costs related to:

(1) the conversion of all or a part of a nursing home to an assisted living establishment or a special program or unit for persons with Alzheimer's disease or related disorders licensed under the [insert citation] or a supportive living facility established under [insert citation]

(2) the conversion of multi-resident bedrooms in the facility into single-occupancy rooms; and

(3) the development of any of the services identified in a priority service plan that can be provided by a nursing home within the confines of a nursing home or transportation

322 services. Grantees shall be required to provide a minimum of a [20 percent] match toward the  
323 total cost of the project.

324 (c) Nothing in this Act shall prohibit the co-location of services or the development of  
325 multifunctional centers under subsection (f) of Section e of this Act, including a nursing home  
326 offering community-based services or a community provider establishing a residential facility.

327 (d) A certified nursing home with at least [50 percent] of its resident population having  
328 their care paid for by the Medicaid program is eligible to apply for a grant under this Section.

329 (e) Any nursing home receiving a grant under this Section shall reduce the number of  
330 certified nursing home beds by a number equal to or greater than the number of beds being  
331 converted for one or more of the permitted uses under item (1) or (2) of subsection (b). The  
332 nursing home shall retain the Certificate of Need for its nursing and sheltered care beds that were  
333 converted for [15 years]. If the beds are reinstated by the provider or its successor in interest, the  
334 provider shall pay to the fund from which the grant was awarded, on an amortized basis, the  
335 amount of the grant. The Department shall establish, by rule, the bed reduction methodology for  
336 nursing homes that receive a grant pursuant to item (3) of subsection (b).

337 (f) Any nursing home receiving a grant under this Section shall agree that, for a minimum  
338 of [10 years] after the date that the grant is awarded, a minimum of [50 percent] of the nursing  
339 home's resident population shall have their care paid for by the Medicaid program. If the nursing  
340 home provider or its successor in interest ceases to comply with the requirement set forth in this  
341 subsection, the provider shall pay to the fund from which the grant was awarded, on an  
342 amortized basis, the amount of the grant.

343 (g) Before awarding grants, the [Department of Public Health] shall seek  
344 recommendations from the [Department on Aging and the Department of Public Aid]. The  
345 [Department of Public Health] shall attempt to balance the distribution of grants among  
346 geographic regions, and among small and large nursing homes. The [Department of Public  
347 Health] shall develop, by rule, the criteria for the award of grants based upon the following  
348 factors:

- 349 (1) the unique needs of older adults (including those with moderate and low  
350 incomes), caregivers, and providers in the geographic area of the State the grantee seeks to serve;  
351 (2) whether the grantee proposes to provide services in a priority service area;  
352 (3) the extent to which the conversion or transition will result in the reduction of  
353 certified nursing home beds in an area with excess beds;  
354 (4) the compliance history of the nursing home; and  
355 (5) any other relevant factors identified by the [Department], including standards  
356 of need.

- 357 (h) A conversion funded in whole or in part by a grant under this Section must not:  
358 (1) diminish or reduce the quality of services available to nursing home residents;  
359 (2) force any nursing home resident to involuntarily accept home-based or  
360 community-based services instead of nursing home services;  
361 (3) diminish or reduce the supply and distribution of nursing home services in any  
362 community below the level of need, as defined by the [Department] by rule; or  
363 (4) cause undue hardship on any person who requires nursing home care.

364 (i) The [Department] shall prescribe, by rule, the grant application process. At a  
365 minimum, every application must include:

- 366 (1) the type of grant sought;  
367 (2) a description of the project;  
368 (3) the objective of the project;  
369 (4) the likelihood of the project meeting identified needs;  
370 (5) the plan for financing, administration, and evaluation of the project;

(6) the timetable for implementation;  
(7) the roles and capabilities of responsible individuals and organizations;  
(8) documentation of collaboration with other service providers, local community government leaders, and other stakeholders, other providers, and any other stakeholders in the community;  
(9) documentation of community support for the project, including support by other service providers, local community government leaders, and other stakeholders;  
(10) the total budget for the project;  
(11) the financial condition of the applicant; and  
(12) any other application requirements that may be established by the [Department] by rule.

(j) A conversion project funded in whole or in part by a grant under this Section is exempt from the requirements of [insert citation]. The [Department of Public Health], however, shall send to the [Health Facilities Planning Board] a copy of each grant award made under this Section.

(k) Applications for grants are public information, except that nursing home financial condition and any proprietary data shall be classified as nonpublic data.

(l) The [Department of Public Health] may award grants from the [Long Term Care Civil Money Penalties Fund] established under Section 1919(h)(2)(A)(ii) of the Social Security Act and 42 CFR 488.422(g) if the award meets federal requirements.

#### Section 8. *[Older Adult Services Advisory Committee.]*

(a) The [Older Adult Services Advisory Committee] is created to advise the [directors of Aging, Public Aid, and Public Health] on all matters related to this Act and the delivery of services to older adults in general.

(b) The [Advisory Committee] shall be comprised of the following:

(1) The [Director of Aging] or his or her designee, who shall serve as chair and shall be an ex officio and nonvoting member.

(2) The [Director of Public Aid] and the [Director of Public Health] or their designees, who shall serve as vice-chairs and shall be ex officio and nonvoting members.

(3) One representative each of the [Governor's Office, the Department of Public Aid, the Department of Public Health, the Department of Veterans' Affairs, the Department of Human Services, the Department of Insurance, the Department of Commerce and Economic Opportunity, the Department on Aging, the Department on Aging's State Long Term Care Ombudsman, the Housing Finance Authority, and the Housing Development Authority], each of whom shall be selected by his or her respective director and shall be an ex officio and nonvoting member.

(4) [Thirty-two] members appointed by the [Director of Aging] in collaboration with the [directors of Public Health and Public Aid], and selected from the recommendations of statewide associations and organizations, as follows:

(A) [One] member representing the [Area Agencies on Aging];

(B) [Four] members representing nursing homes or licensed assisted living establishments;

(C) [One] member representing home health agencies;

(D) [One] member representing case management services;

(E) [One] member representing statewide senior center associations;

(F) [One] member representing [Community Care Program homemaker services];

(G) [One] member representing [Community Care Program adult day services];

(H) [One] member representing nutrition project directors;

(I) [One] member representing hospice programs;

(J) [One] member representing individuals with Alzheimer's disease and related dementias;

(K) [Two] members representing statewide trade or labor unions;

(L) [One] advanced practice nurse with experience in gerontological nursing;

(M) [One] physician specializing in gerontology;

(N) [One] member representing regional long-term care ombudsmen;

(O) [One] member representing township officials;

(P) [One] member representing municipalities;

(Q) [One] member representing county officials;

(R) [One] member representing the parish nurse movement;

(S) [One] member representing pharmacists;

(T) [Two] members representing statewide organizations engaging in advocacy or legal representation on behalf of the senior population;

(U) [Two] family caregivers;

(V) [Two] citizen members over the age of [60];

(W) [One] citizen with knowledge in the area of gerontology research or health care law;

(X) [One] representative of health care facilities licensed under the [Hospital Licensing Act]; and

(Y) [One] representative of primary care service providers.

(c) Voting members of the [Advisory Committee] shall serve for a term of [3 years] or until a replacement is named. All members shall be appointed no later than [January 1, 2005]. Of the initial appointees, as determined by lot, [10 members shall serve a term of one year]; [10 shall serve for a term of 2 years]; and [12 shall serve for a term of 3 years]. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of that term. [The Advisory Committee] shall meet at least quarterly and may meet more frequently at the call of the Chair. A simple majority of those appointed shall constitute a quorum. The affirmative vote of a majority of those present and voting shall be necessary for [Advisory Committee] action. Members of the [Advisory Committee] shall receive no compensation for their services.

(d) The [Advisory Committee] shall have an [Executive Committee] comprised of the [Chair, the Vice Chairs, and up to 15 members of the Advisory Committee appointed by the Chair] who have demonstrated expertise in developing, implementing, or coordinating the system restructuring initiatives defined in Section 6 of this Act. The [Executive Committee] shall have responsibility to oversee and structure the operations of the [Advisory Committee] and to create and appoint necessary subcommittees and subcommittee members.

(e) The [Advisory Committee] shall study and make recommendations related to the implementation of this Act, including but not limited to system restructuring initiatives as defined in Section 6 of this Act or otherwise related to this Act.

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

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

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



# Parent-Child Relationship Protection

Keeping in touch with one's children after a divorce can be hard for any parent. That can be further complicated when the custodial parent and child relocate. At least two states, Alabama and South Dakota, enacted laws to address the latter.

Alabama enacted HB157 in 2003. According to the Alabama Family Rights Association, Alabama's law was compiled from an amalgamation of statutes in Florida, Georgia, Illinois, Missouri and Tennessee. Applicable citations from Florida, Georgia and Tennessee are listed below.

## Florida

The 2004 Florida Statutes

61.13 Custody and support of children; visitation rights; power of court in making orders.—

(d) No presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent.

### Title XLIII DOMESTIC RELATIONS Chapter 744

#### GUARDIANSHIP

744.2025 Change of ward's residence.--

(1) PRIOR COURT APPROVAL REQUIRED.--A guardian who has power pursuant to this chapter to determine the residence of the ward may not, without court approval, change the residence of the ward from this state to another, or from one county of this state to another county of this state, unless such county is adjacent to the county of the ward's current residence. Any guardian who wishes to remove the ward from the ward's current county of residence to another county which is not adjacent to the ward's current county of residence must obtain court approval prior to removal of the ward. In granting its approval, the court shall, at a minimum, consider the reason for such relocation and the longevity of such relocation.

(2) IMMEDIATE COURT NOTIFICATION REQUIRED.--Any guardian who wishes to remove the ward from the ward's current county of residence to another county adjacent to the ward's county of residence shall notify the court having jurisdiction of the guardianship within 15 days after relocation of the ward. Such notice shall state the compelling reasons for relocation of the ward and how long the guardian expects the ward to remain in such other county.

## Georgia

§19-9-1.

(c) (2) In any case in which visitation rights have been provided to the noncustodial parent and the court orders that the custodial parent provide notice of a change in address of the place for pickup and delivery of the child for visitation, the custodial parent shall notify the noncustodial parent, in writing, of any change in such address. Such written notification shall

provide a street address or other description of the new location for pickup and delivery so that the noncustodial parent may exercise such parent's visitation rights.

(3) Except where otherwise provided by court order, in any case under this subsection in which a parent changes his or her residence, he or she must give notification of such change to the other parent and, if the parent changing residence is the custodial parent, to any other person granted visitation rights under this title or a court order. Such notification shall be given at least 30 days prior to the anticipated change of residence and shall include the full address of the new residence.

## **Tennessee**

### **36-6-108. Parental relocation.**

(a) If a parent who is spending intervals of time with a child desires to relocate outside the state or more than one hundred (100) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

- (1) Statement of intent to move;
- (2) Location of proposed new residence;
- (3) Reasons for proposed relocation; and
- (4) Statement that the other parent may file a petition in opposition to the move

within thirty (30) days of receipt of the notice.

(b) Unless the parents can agree on a new visitation schedule, the relocating parent shall file a petition seeking to alter visitation. The court shall consider all relevant factors, including those factors enumerated within subsection (d). The court shall also consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(c) If the parents are actually spending substantially equal intervals of time with the child and the relocating parent seeks to move with the child, the other parent may, within thirty (30) days of receipt of notice, file a petition in opposition to removal of the child. No presumption in favor of or against the request to relocate with the child shall arise. The court shall determine whether or not to permit relocation of the child based upon the best interests of the child. The court shall consider all relevant factors including the following where applicable:

- (1) The extent to which visitation rights have been allowed and exercised;
- (2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;
- (3) The love, affection and emotional ties existing between the parents and child;
- (4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;
- (5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
- (6) The stability of the family unit of the parents;
- (7) The mental and physical health of the parents;
- (8) The home, school and community record of the child;

(9) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;

(10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

(d) If the parents are not actually spending substantially equal intervals of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child, the other parent may, within thirty (30) days of receipt of the notice, file a petition in opposition to removal of the child. The other parent may not attempt to relocate with the child unless expressly authorized to do so by the court pursuant to a change of custody or primary custodial responsibility. The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:

(1) The relocation does not have a reasonable purpose;

(2) The relocation would pose a threat of specific and serious harm to the child which outweighs the threat of harm to the child of a change of custody; or

(3) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

Specific and serious harm to the child includes, but is not limited to, the following:

(1) If a parent wishes to take a child with a serious medical problem to an area where no adequate treatment is readily available;

(2) If a parent wishes to take a child with specific educational requirements to an area with no acceptable education facilities;

(3) If a parent wishes to relocate and take up residence with a person with a history of child or domestic abuse or who is currently abusing alcohol or other drugs;

(4) If the child relies on the parent not relocating who provides emotional support, nurturing and development such that removal would result in severe emotional detriment to the child;

(5) If the custodial parent is emotionally disturbed or dependent such that the custodial parent is not capable of adequately parenting the child in the absence of support systems currently in place in this state, and such support system is not available at the proposed relocation site; or

(6) If the proposed relocation is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, which does not have an adequately functioning legal system or which otherwise presents a substantial risk of specific and serious harm to the child.

(e) If the court finds one (1) or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child. If the court finds it is not in the best interests of the child to relocate as defined herein, but the parent with whom the child resides the majority of the time elects to relocate, the court shall make a custody determination and shall consider all relevant factors including the following where applicable:

(1) The extent to which visitation rights have been allowed and exercised;

(2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;

(3) The love, affection and emotional ties existing between the parents and child;

(4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;

(5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(6) The stability of the family unit of the parents;

(7) The mental and physical health of the parents;

(8) The home, school and community record of the child;

(9) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;

(10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

The court shall consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(f) Nothing in this section shall prohibit either parent from petitioning the court at any time to address issues, (such as, but not limited to visitation), other than a change of custody related to the move. In the event no petition in opposition to a proposed relocation is filed within thirty (30) days of receipt of the notice, the parent proposing to relocate with the child shall be permitted to do so.

(g) It is the legislative intent that the gender of the parent who seeks to relocate for the reason of career, educational, professional, or job opportunities, or otherwise, shall not be a factor in favor or against the relocation of such parent with the child.

The draft Act in this SSL volume is based on Alabama's law. This draft SSL Act requires that notification be provided to a parent when the principal residence of a person entitled to custody of or visitation with a child or of a child is to be changed. It provides for procedures to object to the relocation of a child and/or to modify the custody of and visitation with a child when the principal residence of a child is changed and requires that the parent who is relocating has the initial burden of proof.

Submitted as:

Alabama

HB 157 (enrolled version)

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 Parent-Child Relationship  
2 Protection Act."  
3

Section 2. [*Definitions.*] As used in this Act, the following words and phrases shall have the following meanings, unless the context requires a different definition:

(1) “Change of Principal Residence.” A change of the residence of a child whose custody has been determined by a prior court order, whether or not accompanied by a change of the residence of a person entitled to custody of the child, with the intent that such change shall be permanent in nature and not amounting to a temporary absence of the child from his or her principal residence.

(2) “Child.” A minor child as defined by [insert citation]. As used in this Act, the term may include the singular and the plural.

(3) “Child Custody Determination.” A judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) “Commencement.” The filing of the first pleading in a proceeding.

(5) “Court.” An entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(6) “Modification.” A child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(7) “Person Entitled to Custody or Visitation.” A person so entitled to physical custody of a child as defined by [insert citation], or visitation with respect to a child by virtue of a child custody determination as defined by [insert citation].

(8) “Principal Residence of a Child.” Any of the following:

a. The residence designated by a court to be the primary residence of the child.

b. In the absence of a determination by a court, the residence at which the parents of a child whose change of principal residence is at issue have expressly agreed that the child will primarily reside.

c. In the absence of a determination by a court or an express agreement between the parents of a child whose change of principal residence is at issue, the residence, if any, at which the child lived with the child’s parents, a parent, or a person acting as a parent, for at least [six consecutive months] or, in the case of a child less than [six months] old, the residence at which the child lived from birth with the child’s parents, a parent, or a person acting as a parent. Periods of temporary absence from such residence are counted as part of the period of residence.

(9) “Person Acting as a Parent.” A person, other than a parent, who has physical custody of the child or has had physical custody for a period of [six consecutive months], including any temporary absence, within [one year] immediately before the commencement of a child custody proceeding and has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(10) “Physical Custody.” The physical care and supervision of a child.

(11) “Relocate” or “Relocation.” A change in the principal residence of a child for a period of [45 days or more]. The term does not include a temporary absence from the primary residence, or an absence necessary to escape domestic violence.

Section 3. [*General Provisions Concerning Applicability to Custody and Visitation Orders.*]

(a) Except as provided otherwise by this Act, the provisions of this Act apply to all orders determining custody of or visitation with a child whether such order issued before or after

the effective date of this Act. To the extent that a provision of this Act conflicts with an existing order determining custody of or visitation with a child or other enforceable agreement, this Act does not apply to alter or amend the terms of such order or agreement which address the rights of the parties or the child with regard to change in the primary residence of a child. Any person entitled to the legal or physical custody of or visitation with a child may commence an action for modification to incorporate the provisions of this Act into an existing order determining the custody of or visitation with a child. Except as provided in subsection (c) of Section 6 of this Act, the provisions of this Act shall not apply to a person who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a non-voluntary order from the government.

(b) The provisions of Sections 11 to 17 of this Act, inclusive, shall not apply to a change of principal residence of a child to a residence which is [60 miles or less] from the residence of a non-relocating parent who is entitled to custody of or visitation with the child or if the change or proposed change results in the child residing nearer to the non-relocating parent than before the change or proposed change, unless such change in the principal residence of a child results in the child living in a different state.

Section 4. [*Notice of Proposed Changes in Principal Residence.*] Except as provided by Section 8, a person who has the right to establish the principal residence of the child shall provide notice to every other person entitled to custody of or visitation with a child of a proposed change of the child's principal residence as required by subsection (b) of Section 6.

Section 5. [*Notice of Intended Changes in Principal Residence.*] Except as provided by Section 8, a person entitled to custody of or visitation with a child shall provide notice to every other person entitled to custody of or visitation with a child of an intended change in his or her principal residence as required by subsection (b) of Section 6 of this Act.

Section 6. [*Requirements of Notice.*]

(a) When a notice is required by either Section 4 or Section 5 of this Act, except as provided by Section 8 of this Act, the notice of a proposed change of principal residence of a child or the notice of an intended or proposed change of the principal residence of an adult as provided in this Act must be given by certified mail to the last known address of the person or persons entitled to notification under this Act not later than the [45th day] before the date of the intended change of the principal residence of a child or the [10th day] after the date such information required to be furnished by subsection (b) becomes known, if the person did not know and could not reasonably have known the information in sufficient time to comply with the [45-day] notice, and it is not reasonably possible to extend the time for change of principal residence of the child.

(b) Except as provided by Section 8, all of the following information, if available, must be included with the notice of intended change of principal residence of a child:

- (1) The intended new residence, including the specific street address, if known.
- (2) The mailing address, if not the same as the street address.
- (3) The telephone number or numbers at such residence, if known.
- (4) If applicable, the name, address, and telephone number of the school to be attended by the child, if known.
- (5) The date of the intended change of principal residence of a child.
- (6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.

(7) A proposal for a revised schedule of custody of or visitation with a child, if any.

(8) A warning to the non-relocating person that an objection to the relocation must be made within [30 days] of receipt of the notice or the relocation will be permitted.

(c) A person entitled to custody of a child who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a non-voluntary order of the government shall provide notice of change of principal residence of a child to the persons entitled to custody of or visitation with a child with the information set forth in subsection (b) of Section 6 except that such notice need not contain a warning to the non-relocating person as provided in subdivision (8) of subsection (b) that an objection to the relocation must be made within [30 days] or the relocation will be permitted.

(d) A person required to give notice of a proposed change of principal residence of a child under this section has a continuing duty to provide the information required by this section as that information becomes known. Such information should be provided by certified mail to the last known address to the person or persons entitled to such notice within [10 days] of the date such information becomes known.

Section 7. [*Inclusion in Child Custody Determinations.*] After the effective date of this Act, every child custody determination shall include the following language:

“State law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this order, you must provide the following information to each other person who has custody or visitation rights under this decree as follows:

1. The intended new residence, including the specific street address, if known.
2. The mailing address, if not the same as the street address.
3. The telephone number or numbers at such residence, if known.
4. If applicable, the name, address, and telephone number of the school to be attended by the child, if known.
5. The date of the intended change of principal residence of a child.
6. A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.
7. A proposal for a revised schedule of custody of or visitation with a child, if any.
8. Unless you are a member of the Armed Forces of the United States of America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within [30 days] of receipt of the notice or the relocation will be permitted.

You must give notice by certified mail of the proposed change of principal residence on or before the [45th day] before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a [45-day] notice, you must give such notice by certified mail not later than the [10th day] after the date that you obtain such information.

149 Your failure to notify other parties entitled to notice of your intent to change the  
150 principal residence of a child may be taken into account in a modification of the custody of or  
151 visitation with the child.

152 If you, as the non-relocating party, do not commence an action seeking a temporary or  
153 permanent order to prevent the change of principal residence of a child within [30 days] after  
154 receipt of notice of the intent to change the principal residence of the child, the change of  
155 principal residence is authorized.”  
156

157 Section 8. [*Confidentiality.*]

158 (a) In order to protect the identifying information of persons at risk from the effects of  
159 domestic violence or abuse, on a finding by the court that the health, safety, or liberty of a person  
160 or a child would be unreasonably put at risk by the disclosure of the identifying information  
161 required by Section 4 or Section 5 in conjunction with a proposed change of principal residence  
162 of a child or change of principal residence of a person having custody of or rights of visitation  
163 with a child, the court may order any or all of the following:

164 (1) The specific residence address and telephone number of a child or the person  
165 having custody of or rights of visitation with a child and other identifying information shall not  
166 be disclosed in the pleadings, other documents filed in the proceeding, or in any order issued by  
167 the court, except for in camera disclosures.

168 (2) The notice requirements provided by this Act may be waived to the extent  
169 necessary to protect confidentiality and the health, safety, or liberty of a person or a child.

170 (3) Any other remedial action that the court considers necessary to facilitate the  
171 legitimate needs of the parties and the interests of the child.

172 (b) If appropriate, the court may conduct an ex parte hearing under subsection (a) of this  
173 section. Issuance of a final order of protection under [insert citation]; a conviction for domestic  
174 violence pursuant to [insert citation]; or an award of custody of the child pursuant to [insert  
175 citation], shall be considered prima facie evidence that the health, safety, or liberty of a person or  
176 a child would be unreasonably put at risk by the disclosure of identifying information or by  
177 compliance with the notice requirements of this Act.  
178

179 Section 9. [*Failure to Provide Notice or Information.*]

180 (a) Except as provided in Section 8, if a person required to give notice as required by  
181 Section 4 or Section 5 shall fail to provide the notice or the information required by subsection  
182 (b) of Section 6, the court shall consider the failure to provide such notice or information as a  
183 factor: in making its determination regarding the change of principal residence of a child; in  
184 determining whether custody or visitation should be modified; for ordering the return of the child  
185 to the former residence of the child if the change of principal residence of a child has taken place  
186 without notice; for meriting a deviation from the child support guidelines; in awarding increased  
187 transportation and communication expenses with the child; and in considering whether the  
188 person seeking to change the principal residence of a child may be ordered to pay reasonable  
189 costs and attorney’s fees incurred by the person objecting to the change.

190 (b) Additionally, the court may make a finding of contempt of court if a party willfully  
191 and intentionally violates the notice requirement of an order issued by any court pursuant to  
192 Section 7 and may impose the sanctions authorized by law or rule of court for disobedience of a  
193 court order.  
194

195 Section 10. [*Temporary or Permanent Order Proceedings.*] The person entitled to  
196 determine the principal residence of a child may change the principal residence of a child after  
197 providing notice as provided herein unless a person entitled to notice files a proceeding seeking a



temporary or permanent order to prevent the change of principal residence of a child within [30 days] after receipt of such notice.

Section 11. [*Objections.*]

(a) A person entitled to custody of or visitation with a child may commence a proceeding objecting to a proposed change of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

(b) A non-parent entitled to visitation with a child may commence a proceeding to obtain a revised schedule of visitation, but may not object to the proposed change of principal residence of a child or seek a temporary or permanent order to prevent the change.

(c) A proceeding filed under this section must be filed within [30 days] of receipt of notice of a proposed change of principal residence of a child, except that the court may extend or waive the time for commencing such action upon a showing of good cause, excusable neglect, or that the notice required by subsection (b) of Section 6 is defective or insufficient upon which to base an action under this Act.

(d) Except as otherwise specifically provided in this Act, the [state Rules of Civil Procedure] shall apply to all proceedings under this Act.

Section 12. [*Provisions for Granting Temporary Orders.*]

(a) Where the ends of justice dictate, the court may grant a temporary order restraining the change of principal residence of a child or ordering return of a child to the former residence of the child if a change of principal residence has previously taken place without compliance with this Act, and may consider among other factors, any of the following:

(1) The notice required by this Act was not provided in a timely manner.

(2) The notice required by this Act was not accurate or did not contain sufficient information upon which a person receiving the notice could base an objection.

(3) The child already has been relocated without notice, agreement of the parties, or prior court approval.

(4) The likelihood that on final hearing the court will not approve the change of the principal residence of the child.

(b) The court may grant a temporary order permitting the change of principal residence of a child and providing for a revised schedule for temporary visitation with a child pending a final hearing if the court finds that the required notice of a proposed change of principal residence of a child as provided in this Act was provided in a timely manner, contained sufficient and accurate information and if the court finds from an examination of the evidence presented at a hearing for temporary relief that there is a likelihood that on final hearing the court will approve the change of the principal residence of the child.

(c) If the court has issued a temporary order authorizing a party to change the principal residence of a child before final judgment is issued, the court may not give weight to the temporary change of principal residence as a factor in reaching its final decision.

Section 13. [*Court Considerations.*]

(a) Upon the entry of a temporary order or upon final judgment permitting the change of principal residence of a child, a court may consider a proposed change of principal residence of a child as a factor to support a change of custody of the child. In determining whether a proposed or actual change of principal residence of a minor child should cause a change in custody of that child, a court shall take into account all factors affecting the child, including, but not limited to, the following:

(1) The nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate with the child and with the non-relocating person, siblings, and other significant persons or institutions in the child's life.

(2) The age, developmental stage, needs of the child, and the likely impact the change of principal residence of a child will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

(3) The increase in travel time for the child created by the change in principal residence of the child or a person entitled to custody of or visitation with the child.

(4) The availability and cost of alternate means of communication between the child and the non-relocating party.

(5) The feasibility of preserving the relationship between the non-relocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.

(6) The preference of the child, taking into consideration the age and maturity of the child.

(7) The degree to which a change or proposed change of the principal residence of the child will result in uprooting the child as compared to the degree to which a modification of the custody of the child will result in uprooting the child.

(8) The extent to which custody and visitation rights have been allowed and exercised.

(9) Whether there is an established pattern of conduct of the person seeking to change the principal residence of a child, either to promote or thwart the relationship of the child and the non-relocating person.

(10) Whether the person seeking to change the principal residence of a child, once out of the jurisdiction, is likely to comply with any new visitation arrangement and the disposition of that person to foster a joint parenting arrangement with the non-relocating party.

(11) Whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the change of principal residence of the child and the child, including, but not limited to, financial or emotional benefit or educational opportunities.

(12) Whether or not a support system is available in the area of the proposed new residence of the child, especially in the event of an emergency or disability to the person having custody of the child.

(13) Whether or not the proposed new residence of a child is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, which does not have an adequately functioning legal system or which otherwise presents a substantial risk of specific and serious harm to the child.

(14) The stability of the family unit of the persons entitled to custody of and visitation with a child.

(15) The reasons of each person for seeking or opposing a change of principal residence of a child.

(16) Evidence relating to a history of domestic violence or child abuse.

(17) Any other factor that in the opinion of the court is material to the general issue or otherwise provided by law.

(b) The court making a determination of such issue shall enter an order granting the objection to the change or proposed change of principal residence of a child, denying the objection to the change or proposed change of principal residence of a child, or any other appropriate relief based upon the facts of the case.

(c) The court, in approving a change of principal residence of a child, shall order contact between the child and the non-relocating party and telephone access sufficient to assure that the

child has frequent, continuing, and meaningful contact with the non-relocating party and shall equitably apportion transportation costs of the child for visitation based upon the facts of the case.

(d) The court, in approving a change of principal residence of a child, may consider the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(e) The court, in approving a change of principal residence of a child, may retain jurisdiction of the parties and of the child in order to:

(1) Supervise the transition caused by the change of principal residence of the child;

(2) Ensure compliance with the orders of the court regarding continued access to the child by the non-relocating party;

(3) Ensure the cooperation of the relocating party in fostering the parent-child relationship between the child and the non-relocating party; and

(4) Protect the relocating party and the child from risk of harm.

Section 14. [*Rebuttable Presumption.*] In proceedings under this Act unless there has been a determination that the party objecting to the change of the principal residence of the child has been found to have committed domestic violence or child abuse, there shall be a rebuttable presumption that a change of principal residence of a child is not in the best interest of the child. The party seeking a change of principal residence of a child shall have the initial burden of proof on the issue. If that burden of proof is met, the burden of proof shifts to the non-relocating party.

Section 15. [*Security of Final Custody and Visitation.*] If on final hearing the change of principal residence of a child is permitted, the court may require the person seeking to change the principal residence of a child to provide reasonable security guaranteeing that the custody of and visitation with the child will not be interrupted or obstructed by the relocating party.

#### Section 16. [*Sanctions.*]

(a) Where a party commences an action without good cause or for the purpose of harassing or causing unnecessary financial or emotional hardships to the other party, after notice and a reasonable opportunity to respond, the court may impose sanctions on a person proposing a change of principal residence of the child or objecting to a proposed change of principal residence of a child if it determines that the proposal was made or the objection was filed based upon any of the following:

(1) To harass a person or to cause unnecessary delay or needless increase in the cost of litigation.

(2) Without being warranted by existing law or based on frivolous argument.

(3) Based on allegations and other factual contentions, which had no evidentiary support nor, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.

(4) Designed to elicit or discover or lead to the discovery of information protected by Section 8.

(b) Sanctions imposed under this section shall be limited to those that are sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a non-monetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the

other party of some or all of the reasonable costs, attorney's fees, and expenses incurred as a direct result of the violation.

Section 17. [*Petitions for Divorce or Dissolution.*] If the issue of change of principal residence of a child is presented in a petition for divorce or dissolution of a marriage or other petition to determine custody of or visitation with a child, the court shall consider, among other evidence, the factors set forth in Sections 12 and 13 in making its initial determination.

Section 18. [*Expenses.*] The court may award any party necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings.

Section 19. [*Relocation of Residence Outside This State.*]

(a) In those instances where the change of principal residence of a child results in the relocation of a child to a residence outside this state, the provisions of [insert citation], shall apply to actions commenced under this Act.

(b) Where the parties have been awarded joint custody, joint legal custody or joint physical custody of a child as defined in [insert citation], and at least one parent having joint custody, joint legal custody, or joint physical custody of a child continues to maintain a principal residence in this state, the child shall have a significant connection with this state and a court in fashioning its judgments, orders, or decrees may retain continuing jurisdiction under [insert citation], even though the child's principal residence after the relocation is outside this state.

(c) In a proceeding commenced to modify, interpret, or enforce a final decree under this Act, where jurisdiction exists under this section or otherwise as provided by law and where only one person having joint custody, joint legal custody, or joint physical custody of a child continues to maintain a principal residence in this state, notwithstanding any law to the contrary, venue of all proceedings under this Act is changed so that venue will lie either in the original [circuit court] rendering the final decree or in the [circuit court] of the [county] where that person having joint custody, joint legal custody, or joint physical custody has resided for a period of at least [three consecutive years] immediately preceding the commencement of an action under this Act. The person having joint custody, joint legal custody, or joint physical custody who continues to maintain a principal residence in this state shall be able to choose the particular venue as herein provided, regardless of which party files the petition or other action.

Section 20. [*Appeals.*] An appeal may be taken from a final order in a proceeding under this act in accordance with state law. Unless the court enters a temporary order under Section 12, the court may not stay an order enjoining a change in principal residence of a child pending appeal.

Section 21. [*Severability.*] [Insert severability clause.]

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

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

# Pharmacy Practice

This Act comprehensively updates and also expands the laws governing the practice of pharmacy in the state, by individual pharmacists, retail pharmacies, and health care systems in the state. It requires out-of-state pharmacies doing business in this State to register with the state, and meet certain other public safety and consumer-oriented requirements. Perhaps most significantly, the Act expands the authorized practice of pharmacy to include collaborative drug therapy management, a cooperative agreement between a doctor and a pharmacist, with the patient's consent, in which the pharmacist may take a more active role in the management of the patient's prescription drug therapy than is currently permissible. The bill also codifies the role of the pharmacist technician and defines the activities that may be performed by pharmacy technicians.

Submitted as:

New Jersey

Chapter 280

Status: Enacted into law in 2004.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be known and may be cited as “The Pharmacy  
2 Practice Act.”

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

5           a. The practice of pharmacy in this State is declared a health care professional practice  
6 affecting the public health, safety and welfare and is subject to regulation and control in the  
7 public interest. It is further declared to be a matter of public interest and concern that the practice  
8 of pharmacy merits and receives the confidence of the public and that only qualified persons be  
9 permitted to engage in the practice of pharmacy in this State. This Act shall be liberally  
10 construed to carry out these objectives and purposes.

11           b. It is the purpose of this Act to promote, preserve and protect the public health, safety  
12 and welfare by and through the effective control and regulation of the practice of pharmacy, the  
13 licensure of pharmacists and the permitting, control and regulation of all pharmacy practice sites  
14 in this State that engage in the practice of pharmacy.

15  
16           Section 3. [*Definitions Relative to Pharmacists.*] As used in this Act:

17           “Administer” means the direct application of a drug to the body of a patient or research  
18 subject by subcutaneous, intramuscular or intradermal injection, inhalation or ingestion by a  
19 pharmacist engaged in collaborative practice or in accordance with regulations jointly  
20 promulgated by the [board] and the [State Board of Medical Examiners].

21           “Automated medication device” means a discrete unit that performs specific drug  
22 dispensing operations.

23           “Automated medication system” means any process that performs operations or  
24 activities, other than compounding or administration, relative to the storage, packaging,  
25 dispensing and distribution of medications and which collects, controls and maintains all  
26 transaction information.

27 “Board of Pharmacy” or “board” means the [State Board of Pharmacy].

28 “Certification” means a certification awarded by a recognized non-government specialty

29 organization to signify that a pharmacist has met predetermined qualifications and to signify to

30 the public that the pharmacist is competent to practice in the designated specialty.

31 “Collaborative drug therapy management” means a written protocol directed on a

32 voluntary basis by a patient’s physician, with the patient’s consent, that is between a patient’s

33 physician who is treating the patient for a specific disease and a pharmacist for cooperative

34 management of a patient’s drug, biological and device-related health care needs, which shall be

35 conducted in accordance with regulations jointly promulgated by the [board] and the [State

36 Board of Medical Examiners] and shall only include the collecting, analyzing and monitoring of

37 patient data; ordering or performing of laboratory tests based on the standing orders of a

38 physician as set forth in the written protocol; ordering of clinical tests based on the standing

39 orders of a physician as set forth in the written protocol, provided those laboratory tests are

40 granted waived status in accordance with the provisions of the [insert citation], and are for the

41 treatment of a disease state identified jointly by the board and the [State Board of Medical

42 Examiners] as subject to collaborative drug therapy management; modifying, continuing or

43 discontinuing drug or device therapy; and therapeutic drug monitoring with appropriate

44 modification to dose, dosage regimen, dosage forms or route of administration. The

45 interpretation of clinical or laboratory tests under a written protocol may only be performed by a

46 pharmacist in direct consultation with a physician.

47 “Compounding” means the preparation, mixing, assembling, packaging or labeling of a

48 drug or device as the result of a practitioner’s prescription or initiative based on the relationship

49 of the practitioner or patient with the pharmacist in the course of professional practice or for the

50 purpose of, or incident to, research, teaching or chemical analysis and not for sale or dispensing.

51 Compounding also includes the preparation of drugs or devices in anticipation of prescription

52 drug orders based on routine, regularly observed prescribing patterns. Nothing in this Act is

53 meant to limit a prescriber’s ability under pre-existing law to order a compounded medication for

54 use in the prescriber’s practice, as permitted by State and federal law.

55 “Confidential information” means information that is identifiable as to the patient

56 involved that a pharmacist accesses, transmits or maintains in a patient’s record or which is

57 communicated to or by the patient as part of patient counseling.

58 “Credentialing” means the process by which an approved academic institution awards a

59 certificate to signify that the credentialed pharmacist has completed the required courses,

60 examinations or both, that indicate advanced knowledge of a particular area of pharmacy.

61 “Deliver” or “delivery” means the actual, constructive or attempted transfer of a drug or

62 device from one person to another, whether or not for consideration.

63 “Device” means an instrument, apparatus, implement, machine, contrivance, implant or

64 other similar or related article, including any component part or accessory, which is required

65 under federal law to bear the label “RX Only.”

66 “Dispense” or “dispensing” means the procedure entailing the interpretation of a

67 practitioner’s prescription order for a drug, biological or device, and pursuant to that order the

68 proper selection, measuring, compounding, labeling and packaging in a proper container for

69 subsequent administration to, or use by, a patient.

70 “Dosage form” means the physical formulation or medium in which the product is

71 intended, manufactured and made available for use, including, but not limited to: tablets,

72 capsules, oral solutions, aerosols, inhalers, gels, lotions, creams, ointments, transdermals and

73 suppositories, and the particular form of the above which utilizes a specific technology or

74 mechanism to control, enhance or direct the release, targeting, systemic absorption or other

75 delivery of a dosage regimen in the body.

76 “Drug or medication” means articles recognized as drugs in any official compendium, or  
77 supplement thereto, designated from time to time by the board for use in the diagnosis, cure,  
78 mitigation, treatment or prevention of disease in humans or other animals; articles intended for  
79 use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other  
80 animals; articles intended to affect the structure or any function of the body of humans or other  
81 animals, except that a food, dietary ingredient or dietary supplement, as those terms are defined  
82 in 21 U.S.C.s.321, is not a drug solely because the label or the labeling contains such a claim;  
83 and articles intended for use as a component of and articles specified in this definition of “drug  
84 or medication.”

85 “Drug utilization review” includes, but is not limited to, the following activities:

86 (1) Evaluation of prescription drug orders and patient records for known allergies,  
87 rational therapy-contraindications, appropriate dose and route of administration and appropriate  
88 directions for use;

89 (2) Evaluation of prescription drug orders and patient records for duplication of  
90 therapy;

91 (3) Evaluation of prescription drug orders and patient records for interactions  
92 between drug-drug, drug-food, drug-disease and adverse drug reactions; and

93 (4) Evaluation of prescription drug orders and patient records for proper  
94 utilization, including over- or under-utilization, and optimum therapeutic outcomes.

95 “Extern” means any person who is in the [fifth or sixth year] of college or the [third or  
96 fourth professional year], at an accredited school or college of pharmacy approved by the  
97 [board], who is assigned to a training site for the purpose of acquiring accredited practical  
98 experience under the supervision of the school or college at which the person is enrolled.

99 “Electronic means” means any electronic or digital transmission format, including  
100 facsimile or computer generated messaging.

101 “Immediate supervision” means a level of control which assures that the pharmacist is  
102 physically present at the pharmacy practice site and has the responsibility for accuracy and safety  
103 with respect to the actions of pharmacy technicians, interns and externs.

104 “Intern” means any person who has graduated from an accredited school or college of  
105 pharmacy approved by the [board], or if a foreign pharmacy graduate, any person who has met  
106 all of the requirements of the [board], and who is being trained by an approved preceptor for the  
107 purpose of acquiring accredited practical experience and who has first registered for that purpose  
108 with the [board].

109 “Labeling” means the process of preparing and affixing a label to any drug container,  
110 exclusive however, of the labeling by a manufacturer, packer or distributor of a non-prescription  
111 drug or commercially packaged legend drug or device.

112 “Licensure” means the process by which the [board] grants permission to an individual  
113 to engage in the practice of pharmacy upon finding that the applicant has attained the degree of  
114 competency necessary to ensure that the public health, safety and welfare will be protected.

115 “Medication error” means a preventable event that may cause or lead to inappropriate  
116 use of a medication or patient harm while the medication is in the control of the practitioner,  
117 patient or consumer.

118 “Medication order” means a prescription for a specific patient in an institutional setting.

119 “Modifying” means to change a specific drug, the dosage, or route of delivery of a drug  
120 currently being administered for an existing diagnosis pursuant to a collaborative drug therapy  
121 management.

122 “Non-prescription drug or device” means a drug or device which may be obtained  
123 without a prescription and which is labeled for consumer use in accordance with the  
124 requirements of the laws and rules of this State and the federal government.

125 “Permit” means the authorization granted by the [board] to a site to engage in the  
126 practice of pharmacy.

127 “Person” means an individual, corporation, partnership, association or any other legal  
128 entity including government.

129 “Pharmaceutical care” means the provision by a pharmacist of drug therapy review and  
130 other related patient care services intended to achieve positive outcomes related to the treatment,  
131 cure or prevention of a disease; control, elimination or reduction of a patient’s symptoms; or  
132 arresting or slowing of a disease process as defined by the rules and regulations of the [board].

133 “Pharmacist” means an individual currently licensed by this State to engage in the  
134 practice of pharmacy.

135 “Pharmacist-in-charge” means a pharmacist who accepts responsibility for the operation  
136 of a pharmacy practice site in conformance with all laws and rules pertinent to the practice of  
137 pharmacy and the distribution of drugs.

138 “Pharmacist in collaborative practice” means a pharmacist engaged in the collaborative  
139 drug therapy management of a patient’s drug, biological and device-related health care needs  
140 pursuant to a written protocol, in collaboration with a licensed physician and in accordance with  
141 the regulations jointly promulgated by the [board] and the [State Board of Medical Examiners].

142 “Pharmacy practice site” means any place in this State where drugs are dispensed or  
143 pharmaceutical care is provided by a licensed pharmacist, but shall not include a medical office  
144 under the control of a licensed physician.

145 “Pharmacy technician” means an individual working in a pharmacy practice site who,  
146 under the immediate supervision of a pharmacist, assists in pharmacy activities as permitted by  
147 this section of this Act and the rules and regulations of the [board] that do not require the  
148 professional judgment of a pharmacist.

149 “Practice of pharmacy” means a health care service by a pharmacist that includes:  
150 compounding, dispensing and labeling of drugs, biologicals, radio pharmaceuticals or devices;  
151 overseeing automated medication systems; interpreting and evaluating prescriptions;  
152 administering and distributing drugs, biologicals and devices; maintaining prescription drug  
153 records; advising and consulting on the therapeutic values, content, hazards and uses of drugs,  
154 biologicals and devices; managing and monitoring drug therapy; collecting, analyzing and  
155 monitoring patient data; performing drug utilization reviews; storing prescription drugs and  
156 devices; supervising technicians, interns and externs; and such other acts, services, operations or  
157 transactions necessary, or incidental to, providing pharmaceutical care and education. In  
158 accordance with written guidelines or protocols established with a licensed physician, the  
159 “practice of pharmacy” also includes collaborative drug therapy management including  
160 modifying, continuing or discontinuing drug or device therapy; ordering or performing of  
161 laboratory tests under collaborative drug therapy management; and ordering clinical tests,  
162 excluding laboratory tests, unless those tests are part of collaborative drug therapy management.

163 “Practitioner” means an individual currently licensed, registered or otherwise authorized  
164 by the jurisdiction in which the individual practices to administer or prescribe drugs in the course  
165 of professional practice.

166 “Preceptor” means an individual who is a pharmacist, meets the qualifications under the  
167 rules and regulations of the [board], and participates in the instructional training of pharmacy  
168 interns and externs.

169 “Prescription” means a lawful order of a practitioner for a drug, a device or diagnostic  
170 agent for a specific patient.

171 “Prescription drug” or “legend drug” means a drug which, under federal law, is required  
172 to be labeled prior to being delivered to the pharmacist, with either of the following statements:  
173 “Rx Only” or “Caution: Federal law restricts this drug to use by, or on the order of, a licensed



veterinarian” or is required by any applicable federal or state law, rule or regulation to be dispensed pursuant to a prescription drug order or is restricted to use by a practitioner only.

“Registration” means the process of making a list or being enrolled in an existing list.

“Therapeutic interchange” means the substitution and dispensing of a drug chemically dissimilar from the prescription drug originally prescribed.

#### Section 4. *[Powers, Duties, Authority of Board.]*

The [board] shall enforce the provisions of this Act. The [board] shall have all of the duties, powers and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers and authority as it may be granted from time to time by applicable law.

#### Section 5. *[Board Membership, Terms, Vacancies.]*

a. The [board] shall consist of [eleven members], [two] of whom shall be public members and one of whom shall be a [State executive department] member appointed pursuant to the provisions of [insert citation]. Each of the remaining [eight] members shall be pharmacists. Each pharmacist member shall have at least [five years] of experience in the practice of pharmacy in this State after licensure, and shall at the time of appointment and throughout their tenure: be currently licensed and in good standing to engage in the practice of pharmacy in this State, and be actively engaged in the practice of pharmacy in this State.

b. The [Governor] shall appoint the members of the [board]. Every State professional pharmacy association may send to the [Governor] the names of pharmacists having the qualifications required by this section, whom the [Governor] may appoint to fill any vacancy occurring in the [board]. In appointing members to the [board] to fill vacancies of members who engage in the practice of pharmacy, the [Governor] shall appoint members so that the membership of the [board] includes, at all times, at least [one pharmacist] employed by a chain drug retailer who owns or operates [seven] or more pharmacy practice sites, [one pharmacist] who is employed by a health care system and [one pharmacist] who owns a pharmacy practice site in this State.

c. Except for the members first appointed, members of the [board] shall be appointed for a term of [five years], except that members of the [board] who are appointed to fill vacancies which occur prior to the expiration of a former member’s full term shall serve the unexpired portion of that term. The terms of the members of the [board] shall be staggered, so that the terms of no more than [three] members shall expire in any year. Each member shall serve until a successor is appointed and qualified. The present members of the [board] appointed pursuant to [insert citation] shall serve the balance of their terms. Any present [board] member appointed initially for a term of less than [five years] shall be eligible to serve for [two additional] full terms. No member of the [board] shall serve more than [two consecutive] full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this subsection.

d. The [Governor] may remove a member of the [board] after a hearing for misconduct, incompetency, neglect of duty or for any other sufficient cause.

#### Section 6. *[Election of Officers.]*

a. The [board] shall annually elect from among its members a [president] and [vice-president].

b. The position of [executive director] shall be held by a pharmacist licensed in this State. The [executive director] shall be responsible for the performance of the administrative functions of the [board] and those other duties that the [board] may direct.

Section 7. [*Compensation.*] Each member of the [board] shall receive compensation pursuant to [insert citation] of [\$150] per day for each day on which the member is engaged in performance of the official duties of the [board], and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of those official duties.

Section 8. [*Board Meetings.*] The [board] shall meet at least [once] every month to transact its business. The [board] shall meet at those additional times that it may determine. Additional meetings may be called by the [president of the board] or by [two-thirds] of the members of the [board].

Section 9. [*Rules, Regulations; Joint Rules.*] The [board] shall make, adopt, amend and repeal those rules and regulations necessary for the proper administration and enforcement of this act. Those rules and regulations shall be promulgated in accordance with the [insert citation]. Rules pertaining to collaborative drug therapy management and administration of drugs by pharmacists shall be jointly promulgated by the board and the [State Board of Medical Examiners].

Section 10. [*Responsibilities of Board.*]

a. The [board] shall be responsible for the control and regulation of the practice of pharmacy in this State including, but not limited to, the following:

(1) The licensing by examination or by license transfer of applicants who are qualified to engage in the practice of pharmacy under the provisions of this Act;

(2) The renewal of licenses to engage in the practice of pharmacy;

(3) The establishment and enforcement of professional standards and rules of conduct of pharmacists engaged in the practice of pharmacy;

(4) The establishment of requirements for pharmacists to engage in collaborative practice;

(5) The establishment of requirements jointly promulgated with the [State Board of Medical Examiners] for pharmacists to administer drugs directly to patients;

(6) The enforcement of those provisions of this Act relating to the conduct or competence of pharmacists practicing in this State, and the suspension, revocation, failure to renew or restriction of licenses to engage in the practice of pharmacy pursuant to the provisions of [insert citation];

(7) The regulation of pharmacy practiced through any technological means;

(8) The regulation and control of automated medication systems and automated medication devices within or outside of pharmacy practice sites;

(9) The right to seize any drugs and devices found by the [board] to constitute an imminent danger to the public health and welfare;

(10) The establishment of minimum specifications for record keeping, prescription and patient profile record maintenance, pharmacy practice sites including, but not limited to, the physical premises, technical equipment, environment, supplies, personnel and procedures for the storage, compounding and dispensing of drugs or devices, and for the monitoring of drug therapy;

(11) The inspection of any pharmacy practice site at all reasonable hours for the purpose of determining if any provisions of the laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The [board], its officers, inspectors and representatives shall cooperate with all agencies charged with the enforcement of the laws of the

United States, of this State, and of all other states relating to drugs, devices and the practice of pharmacy;

(12) The inspection of prescription files and the prescription records of a pharmacy and the removal from the files and taking possession of any original prescription, providing that the authorized agent removing or taking possession of an original prescription shall place in the file from which it was removed a copy certified by that person to be a true copy of the original prescription removed; provided further, that the original copy shall be returned by the [board] to the file from which it was removed after it has served the purpose for which it was removed;

(13) The establishment of requirements for patient counseling, patient profiles and drug utilization reviews;

(14) The establishment of regulations to protect the health and safety of pharmacy patients; and

(15) The prescribing or changing of the fees for examinations, certifications, licensures, renewals and other services performed pursuant to [insert citation] and this Act.

b. The [board] shall have those other duties, powers and authority as may be necessary to the enforcement of this Act and to the enforcement of rules and regulations of the [board], which may include, but not be limited to, the following:

(1) The determination and issuance of standards, recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this State, and the specifications and enforcement of requirements for practical training, including internships;

(2) The registration of externs, interns, pharmacy preceptors and pharmacy technicians;

(3) The regulation of the training, qualifications and conduct of applicants, externs, interns, pharmacy preceptors and pharmacy technicians;

(4) The collection of professional demographic data;

(5) The joining with those professional organizations and associations organized to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public or whose activities assist and facilitate the work of the [board];

(6) The establishment of a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care;

(7) The engagement in activities to educate consumers, to assist them in obtaining information necessary to make decisions about medication issues;

(8) The establishment of standards for the continuing education of registered pharmacists;

(9) The establishment of rules and regulations for extraordinary emergency situations that interfere with the ability to practice under the current rules and regulations;

(10) The establishment of guidelines for [board] approved pilot programs. The guidelines shall be complied with to implement a program that may not be presently acknowledged in this act or its rules or regulations; and

(11) The assurance that any credentialing or certification of a pharmacist is not misleading to the public.

c. (1) The [board] may place under seal all drugs, biologicals, radio pharmaceuticals or devices that are owned by or in the possession, custody or control of a licensee or permit holder at the time his license or permit is suspended or revoked or at the time the board refused to renew his license. Except as otherwise provided in this section, drugs, biologicals, radio pharmaceuticals or devices that are sealed pursuant to this paragraph shall not be disposed of until appeal rights under the [insert citation] have expired, or an appeal filed pursuant to that act

has been determined. The court, involved in an appeal filed pursuant to the [insert citation], may order the [board], during the pendency of the appeal, to sell sealed drugs, biologicals and radio pharmaceuticals that are perishable. The proceeds of a sale shall be deposited with the court.

(2) Notwithstanding any provisions of this Act to the contrary, whenever a duly authorized representative of the [board] finds, or has probable cause to believe, that any drug or device is outdated, adulterated or misbranded within the meaning of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C.s.301 et seq., the representative shall affix to that drug or device a tag or other appropriate marking giving notice that the article is or is suspected of being outdated, adulterated or misbranded, had been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until provision for removing or disposal is given by the [board], its agent or the court. No person shall remove or dispose of an embargoed drug or device by sale or otherwise without the permission of the [board] or its agent or, after summary proceedings have been instituted, without permission of the court.

(3) When a drug or device detained or embargoed under paragraph (2) of this subsection c. of this section has been declared by the representative to be outdated, adulterated or misbranded, the [board] shall, as soon as practical thereafter, petition the judge of the court in which jurisdiction the article is detained or embargoed for an order for condemnation of that article. If the judge determines that this drug or device so detained or embargoed is not adulterated, outdated or misbranded, the [board] shall direct the immediate removal of the tag or other marking.

(4) If the court finds that a detained or embargoed drug or device is adulterated, outdated or misbranded, that drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a [board] representative and all court costs and fees, storage and other proper expenses shall be borne by the owner of that drug or device. When the outdateding, adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after the costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that the drug or device be delivered to the owner thereof for labeling or processing under the supervision of a board representative. Expense of that supervision shall be paid by the owner. The bond shall be returned to the owner of the drug or device on representation to the court by the [board] that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

d. Except as otherwise provided to the contrary, the [board] shall exercise all of its duties, powers and authority in accordance with the [insert citation].

#### Section 11. [*Licensure Required For Pharmacist.*]

a. Except as otherwise provided in this Act, it shall be unlawful for any individual to engage in the practice of pharmacy unless currently licensed to practice under the provisions of this Act.

b. The provisions of this Act shall not apply to the sale of any drug by a manufacturer or wholesaler or pharmacy to each other or to a physician, dentist, veterinarian or other person licensed to prescribe such drugs in their professional practice.

c. Practitioners authorized under the laws of this State to compound drugs and to dispense drugs directly to their patients in the practice of their respective professions shall meet the standards established by their respective licensing boards with respect to storage, handling, security, counseling, labeling, packing and record keeping requirements for the dispensing of drugs, or if no such standards exist, the same storage, handling, security, counseling, labeling, packaging and record keeping requirements for the dispensing of drugs applicable to pharmacists.

Section 12. [*Application For License; Requirements.*] To obtain a license to engage in the practice of pharmacy, the applicant shall:

- (1) Have submitted a written application in the form prescribed by the [board];
- (2) Have attained the age of [18 years];
- (3) Be of good moral character;
- (4) Have graduated and received a professional degree from a college or school of pharmacy that has been approved by the [board];
- (5) Have completed an internship or other program that has been approved by the [board], or demonstrated to the [board's] satisfaction experience in the practice of pharmacy which meets or exceeds the minimum internship requirements of the [board];
- (6) Have successfully passed an examination or examinations as determined by the [board]; and
- (7) Have paid the fees specified by the [board] for the examination and any related materials, and have paid for the issuance of the license.

Section 13. [*Examination for Licensure.*] The examination for licensure shall measure the competence of the applicant to engage in the practice of pharmacy. The [board] may employ, cooperate and contract with any organization or consultant in the preparation and grading of an examination, but shall retain the sole discretion and responsibility for determining which applicants have successfully passed the examination.

Section 14. [*Practical Experience, Requirements.*]

a. All applicants for licensure by examination shall obtain practical experience in the practice of pharmacy under terms and conditions determined by the [board].

b. The [board] may establish licensure requirements for interns and standards for internship, or any other experiential program necessary to qualify an applicant for the licensure examination, and shall also determine the qualifications of preceptors used in practical experience programs.

Section 15. [*Licensure for Pharmacist Currently Licensed in Another Jurisdiction.*]

a. In order for a pharmacist currently licensed in another jurisdiction to obtain a license as a pharmacist by license transfer in this State, an applicant shall:

- (1) Have submitted a written application in the form prescribed by the [board];
- (2) Have attained the age of [18 years];
- (3) Have good moral character;
- (4) Have engaged in the practice of pharmacy for a period of at least [1,000 hours] within the last [two years] or have met, immediately prior to application, the internship requirements of this State within the [one-year] period immediately preceding the date of application;
- (5) Have presented to the [board] proof of initial licensure by examination and proof that the license is in good standing;
- (6) Have presented to the [board] proof that any other license granted to the applicant by any other state has not been suspended, revoked or otherwise restricted for any reason except nonrenewal or for the failure to obtain the required continuing education credits in any state where the applicant is currently licensed but not engaged in the practice of pharmacy;
- (7) Have paid the fees specified by the [board];
- (8) Have graduated and received a professional degree from a college or school of pharmacy approved by the [board]; and

(9) Have met any other requirements as established by the [board] by regulation.  
b. No applicant shall be eligible for license transfer unless the applicant holds a current valid license in a state that grants licensure transfer to pharmacists duly licensed by examination in this State.

c. In order for a pharmacist applicant with a pharmacy degree from a foreign country or a college of pharmacy not approved by the [board] to obtain a license as a pharmacist, that applicant shall meet those requirements as established by the [board] by regulation.

#### Section 16. *[Continuing Pharmacy Education.]*

a. The [board] shall require each person registered as a pharmacist, as a condition for [biennial] renewal certification, to complete continuing pharmacy education during each [biennial] period immediately preceding the date of renewal and submit proof thereof to the [board].

b. The [board] shall:

(1) Establish standards for continuing pharmacy education, including the number of credits, the subject matter and content of courses of study, the selection of instructors and the type of continuing education credits required of a registered pharmacist as a condition of [biennial] registration;

(2) Approve educational programs offering credit towards continuing pharmacy education requirements; and

(3) Approve other equivalent educational programs, including, but not limited to, home study courses, and establish procedures for the issuance of credit upon satisfactory proof of the completion of these programs. In the case of continuing education courses and programs, each hour of instruction shall be equivalent to [one credit].

c. (1) The [board] shall only approve programs that are provided on a nondiscriminatory basis. The [board] shall permit any pharmacy association or organization offering a continuing pharmacy education program approved by the [board] pursuant to subsection b. of this section to impose a reasonable differential in registration fees for courses upon registered pharmacists who are not members of that pharmacy association or organization. The [board] may approve programs held within or outside the State.

(2) In no event shall the [board] grant credits for, or approve as, a component of a continuing education program:

(a) participation in a routine business portion of a meeting of a pharmacy association or organization; or

(b) any presentation that is offered to sell a product or promote a business enterprise.

d. (1) The [board] may, in its discretion, waive requirements for continuing education on an individual basis for reasons of hardship, such as illness or disability, retirement of the registration certificate, or any other good cause.

(2) The [board] shall not require completion of continuing education credits for an initial renewal of registration.

(3) If a pharmacist completes a number of continuing education credit hours in excess of the number required for a biennial period, the [board] may allow, by rule or regulation, credits to be carried over to satisfy the pharmacist's continuing education requirement for the next [biennial] renewal period, but shall not be applicable thereafter.

#### Section 17. *[Use of {State} Prescription Blanks.]*

a. A practitioner practicing in this State shall use non-reproducible, non-erasable safety paper [state] Prescription Blanks bearing that practitioner's license number whenever the

practitioner issues prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items. The prescription blanks shall be secured from a vendor approved by the [Division of Consumer Affairs in the Department of Law and Public Safety].

b. A licensed practitioner practicing in this State shall maintain a record of the receipt of [state] Prescription Blanks. The practitioner shall notify the [Office of Drug Control in the Division of Consumer Affairs] as soon as possible but no later than [72 hours] of being made aware that any [state] Prescription Blank in the practitioner's possession has been stolen. Upon receipt of notification, the [Office of Drug Control] shall take appropriate action, including notification to the [Department of Human Services] and the [Attorney General].

Section 18. *[Health Care Facility Prescriptions.]*

a. Prescriptions issued by a health care facility licensed pursuant to [insert citation] shall be written on non-reproducible, non-erasable safety paper [state] Prescription Blanks. The prescription blanks shall be secured from a vendor approved by the [Division of Consumer Affairs in the Department of Law and Public Safety]. The [state] Prescription Blanks shall bear the unique provider number assigned to that health care facility for the issuing of prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items.

b. A health care facility shall maintain a record of the receipt of [state] Prescription Blanks. The health care facility shall notify the [Office of Drug Control in the Division of Consumer Affairs] as soon as possible but no later than [72 hours] of being made aware that any [state] Prescription Blank in the facility's possession has been stolen. Upon receipt of notification, the [Office of Drug Control] shall take appropriate action including notification to the [Department of Human Services] and the [Attorney General].

Section 19. *[Requirements for Prescription to be Filled.]* A prescription issued by a practitioner or health care facility licensed in [this State] shall not be filled by a pharmacist unless the prescription is issued on a [state] Prescription Blank bearing the practitioner's license number or the unique provider number assigned to a health care facility.

Section 20. *[Transmission of Prescription by Telephone, Electronic Means, CDS Requirements.]*

a. Nothing contained in this Act shall preclude a practitioner from transmitting to a pharmacist by telephone or electronic means a prescription, as otherwise authorized by law, if that practitioner provides the practitioner's Drug Enforcement Administration registration number and the practitioner's license number, or any other federally identified number, as appropriate, to the pharmacist at the time the practitioner transmits the prescription.

b. Except as may be otherwise permitted by law, no prescription for any Schedule II controlled dangerous substance shall be given or transmitted to pharmacists, in any other manner, than in writing signed by the practitioner giving or transmitting the same, nor shall such prescription be renewed or refilled. The requirement in this subsection that a prescription for any controlled dangerous substance be given or transmitted to pharmacists in writing signed by the practitioner shall not apply to a prescription for a Schedule II drug if that prescription is transmitted or prepared in compliance with federal and State regulations.

Section 21. *[Format for {State} Prescription Blanks.]* The [Division of Consumer Affairs in the Department of Law and Public Safety] shall establish the format for uniform, non-reproducible, non-erasable safety paper prescription blanks, to be known as [state] Prescription Blanks, which format shall include an identifiable logo or symbol that will appear on all prescription blanks. The [division] shall approve a sufficient number of vendors to ensure

production of an adequate supply of [state] Prescription Blanks for practitioners and health care facilities statewide.

Section 22. [*Different Dosage Form, Conditions.*] A pharmacist may dispense a prescription in a different dosage form than originally prescribed if the pharmacist notifies the prescriber no later than [48 hours] following the dispensing of the prescription, provided the dosage form dispensed has the appropriate drug release rate.

Section 23. [*Requirements for Collaborative Practice.*]

a. In establishing requirements for pharmacists to engage in collaborative practice as provided in paragraph (4) of subsection a. of section 10 of this Act, the [board] shall include in these requirements, but not be limited to, provisions that any written protocol between a physician and pharmacist:

(1) is agreed to by both the physician and the pharmacist with the consent of the patient;

(2) identifies, by name and title, each physician and each pharmacist who is permitted to participate in a patient's collaborative drug therapy management;

(3) specifies the functions and responsibilities the pharmacist will be performing;

(4) is available at the practice sites of the pharmacist and physician and made available at each site to the patient;

(5) is initiated and utilized at the sole discretion of the physician for a specific patient;

(6) may be terminated at any time by either party by written documentation;

(7) establishes when physician notification is required, the physician chart update interval, and an appropriate time frame within which the pharmacist must notify the physician of any change in dose, duration or frequency of medication prescribed;

(8) remains in effect for a period not to exceed [two years] upon the conclusion of which, or sooner, the parties shall review the protocol and make a determination as to its renewal, modification or termination; and

(9) establish the means by which the patient will be advised of the right to elect to participate in and withdraw from the collaborative drug therapy management.

Section 24. [*Collaborative Drug Therapy Management.*]

a. Each collaborative drug therapy management shall be between a single patient's specific physician and the patient's pharmacist or pharmacy and address that patient's specific condition, disease or diseases.

b. No collaborative drug therapy management shall include, without the prior consent of the patient and the patient's physician who has signed the protocol, therapeutic interchange at the time of dispensing, provided that written confirmation of this prior consent, which may be by electronic means, shall be obtained pursuant to record keeping guidelines to be established by regulation jointly promulgated by the [board] and the [State Board of Medical Examiners].

Section 25. [*Administration of Prescription Medication Directly to Patient, Immunizations.*]

a. No pharmacist shall administer a prescription medication directly to a patient without appropriate education or certification, as determined by the [board] in accordance with the requirements set forth in the rules jointly promulgated by the [board] and the [State Board of Medical Examiners]. Such medication shall only be for the treatment of a disease for which a nationally certified program is in effect, or as determined by the [board], and only if utilized for



the treatment of that disease for which the medication is prescribed or indicated or for which the collaborative drug therapy management permits.

b. Notwithstanding any law, rule or regulation to the contrary, other than for pediatric immunizations, a pharmacist may administer drugs in immunization programs and programs sponsored by governmental agencies that are not patient specific provided the pharmacist is appropriately educated and qualified, as determined by the [board] in accordance with the requirements set forth in the rules jointly promulgated by the [board] and the [State Board of Medical Examiners].

Section 26. [*Inapplicability Relative to Collaborative Drug Therapy Management in Hospitals.*] The provisions of this Act regulating collaborative drug therapy management shall not apply to any pharmacist practicing in a hospital, provided that prescribing within these institutions takes place under the guidance of a pharmacy and therapeutics committee in accordance with procedures as determined by regulations jointly promulgated by the [board] and the [State Board of Medical Examiners].

Section 27. [*Refusal of Application for Examination, Suspension, Revocation of Certificate; Procedure.*]

a. In addition to the provisions of [insert citation], the [board] may refuse an application for examination or may suspend or revoke the certificate of a licensed pharmacist upon proof satisfactory to the [board] that such licensed pharmacist is guilty of grossly unprofessional conduct and the following acts are hereby declared to constitute grossly unprofessional conduct for the purpose of this Act:

(1) Paying rebates or entering into an agreement for payment of rebates to any physician, dentist or other person for the recommending of the services of any person.

(2) The providing or causing to be provided to a physician, dentist, veterinarian or other person authorized to prescribe, prescription blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.

(3) The claiming of professional superiority in the compounding or filling of prescriptions or in any manner implying professional superiority which may reduce public confidence in the ability, character or integrity of other pharmacists.

(4) Fostering the interest of one group of patients at the expense of another which compromises the quality or extent of professional services or facilities made available.

(5) The distribution of premiums or rebates of any kind whatsoever in connection with the sale of drugs and medications provided, however, that trading stamps and similar devices shall not be considered to be rebates for the purposes of this act and provided further that discounts, premiums and rebates may be provided in connection with the sale of drugs and medications to any person who is [60 years] of age or older.

(6) Advertising of prescription drug prices in a manner inconsistent with rules and regulations promulgated by the [Director of the Division of Consumer Affairs], except that no advertising of any drug or substance shall be authorized unless the [Commissioner of Health and Senior Services] shall have determined that the advertising is not harmful to public health, safety and welfare.

(7) Engaging in activities beyond the scope of a collaborative drug therapy management agreement.

b. Before a certificate shall be refused, suspended or revoked, the accused person shall be furnished with a copy of the complaint and given a hearing before the [board]. Any person whose certificate is so suspended or revoked shall be deemed an unlicensed person during the period of such suspension or revocation, and as those shall be subject to the penalties prescribed

in this act, but that person may, at the discretion of the [board], have his certificate reinstated at any time without an examination, upon application to the [board]. Any person to whom a certificate shall be denied by the board or whose certificate shall be suspended or revoked by the [board] shall have the right to review that action by appeal to the [Appellate Division of the Superior Court] in lieu of prerogative writ.

Section 28. [*Drug Utilization Review, Requirements.*]

a. A pharmacist shall conduct a drug utilization review before each new medication is dispensed or delivered to a patient.

b. A pharmacist shall conduct a prospective drug utilization review in accordance with the provisions of this section before refilling a prescription or medication order to the extent he deems appropriate in his professional judgment.

c. A pharmacist shall exercise independent professional judgment as to whether or not to dispense or refill a prescription or medication order. In determining to dispense or refill a prescription or medication order, the decision of the pharmacist shall not be arbitrary but shall be based on professional experience, knowledge or available reference materials.

Section 29. [*Provision of Counseling on New Prescriptions.*] A pharmacist or his designee shall offer to provide counseling to any person who presents a new prescription in a manner as determined pursuant to criteria established by the [board].

Section 30. [*Patient Profile System.*]

a. A patient profile system shall be maintained by all pharmacies for persons for whom medications are dispensed. The patient profile record system shall enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

b. The following information generated or transferred to the individual pharmacy practice site shall be recorded in the patient profile system:

(1) The family and the first name of the person for whom the medication is intended (the patient);

(2) The street address and telephone number of the patient;

(3) Indication of the patient's age, birth date or age group (infant, child, adult) and gender;

(4) The height, weight and other patient specific criteria for those medications that are height or weight dose dependent;

(5) The original or refill date the medication is dispensed and the initials of the dispensing pharmacist, if those initials and date are not recorded on the original prescription or in any other record approved by the board;

(6) The number or designation identifying the prescription;

(7) The practitioner's name;

(8) The name, strength and quantity of the drug dispensed;

(9) The individual history, if significant, including known allergies and drug reactions, known diagnosed disease states and a comprehensive list of medications and relevant devices; and

(10) Any additional comments relevant to the patient's drug use, which may include any failure to accept the pharmacist's offer to counsel.

c. The information obtained shall be recorded in the patient's manual or electronic profile, or in the prescription signature log, or in any other system of records, and may be considered by the pharmacist in the exercise of his professional judgment concerning both the

offer to counsel and content of counseling. The absence of any record of a failure to accept the pharmacist's offer to counsel shall be presumed to signify that the offer was accepted and that the counseling was provided.

Section 31. [*Issuance of Permit for Pharmacy Practice Sites.*]

a. All pharmacy practice sites in this State, which engage in the practice of pharmacy in [this State], shall be issued a permit by the [board], and shall annually renew their permit with the [board]. If operations are conducted at more than one location, each location shall be issued a permit by the [board] for the dispensing of medicine.

b. The [board] may determine by rule or regulation the permit classifications of all pharmacy practice sites issued a permit under this Act, and establish minimum standards for pharmacy practice sites.

c. The [board] shall establish by rule or regulation the criteria which each site shall meet to qualify for a permit in each classification. The [board] may issue permits with varying restrictions to pharmacy practice sites if the [board] deems it necessary.

d. Each holder of a pharmacy practice site permit shall ensure that a licensed pharmacist be immediately available on the premises to provide pharmacy services at all times the pharmacy practice site is open.

e. Each pharmacy practice site shall have a pharmacist-in-charge. The pharmacist-in-charge and the owner of a pharmacy practice site shall be responsible for any violation of any laws or regulations pertaining to the practice of pharmacy.

f. The [board] may enter into agreements with other states or with third parties for the purpose of exchanging information concerning the granting of permits and the inspection of pharmacy practice sites located in this State and those located outside this State.

g. The [board] may deny, suspend, revoke, restrict or refuse to renew a permit for a pharmacy practice site that does not comply with the provisions of this act or any rule or regulation promulgated pursuant to this Act.

Section 32. [*Permit Application Procedures.*]

a. The [board] shall specify by rule or regulation the permit application procedures to be followed, including, but not limited to, the specification of forms to be used, the time and place the application is to be made and the fees to be charged.

b. Applicants for a permit to operate a pharmacy practice site within this State shall file with the board a verified application containing the information that the board requires of the applicant relative to the qualifications for the specific permit.

c. The [board] shall specify, by rule or regulation, minimum standards for any pharmacy practice site within this State. Pharmacy practice sites located in [this State] shall be operated at all times under the immediate supervision of a pharmacist licensed to practice in this State.

d. Permits issued by the [board] pursuant to this Act shall not be transferable or assignable without the approval of the [board].

Section 33. [*Licensure Required for Use of Certain Terms.*]

No person shall carry on, conduct or transact business under a name which contains as a part thereof the words "pharmacist," "pharmacy," "apothecary," "apothecary shop," "druggist," "drug" or any word or words of similar or like import, or in any manner by advertisement, circular, poster, sign or otherwise describe or refer to the place of business by the terms "pharmacy," "apothecary," "apothecary shop," "chemist's shop," "drug store," "drugs" or any word or words of similar or like import unless the place of business is a currently licensed pharmacy practice site operated or managed at all times by a pharmacist.

Section 34. [*Sale of Non-Prescription Drugs, Devices Unaffected.*] This Act shall not prohibit, restrict or otherwise interfere with the sale of non-prescription drugs and devices at places other than a pharmacy practice site or by persons in this State who are not licensed pharmacists.

Section 35. [*Registration of Out-Of-State Pharmacies; Requirements.*]

a. Any pharmacy located in another state which ships, mails, distributes or delivers in any manner, legend drugs or devices pursuant to a prescription into this State, shall register with the [board] and provide the [board] with the following information:

(1) The location, names and titles of all principal corporate officers of the pharmacy. A report containing this information shall be made on an annual basis and within [30 days] after any change of office or corporate officer; and

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the [board] pursuant to this section. As a prerequisite to registering with the [board], the pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located. The annual registration fee shall be established by the [board] and shall not exceed [\$500] annually.

b. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than [six days per week], and for a minimum of [40 hours per week], provide a toll-free telephone service to facilitate communication between patients in this State and a pharmacist at a pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this State.

Section 36. [*Report of Certain Occurrences.*]

a. All licensed pharmacy practice sites shall report to the [board] the occurrences of any of the following:

(1) Closing of the pharmacy practice site;

(2) Change of ownership, location, interior site design, permit classification or pharmacist-in-charge of the pharmacy practice site;

(3) Any significant theft or loss of legend drugs or devices;

(4) Disasters, accidents, any theft, destruction or loss of records required to be maintained by State or federal law;

(5) Any pharmacy malpractice liability insurance claim settlement, judgment or arbitration award in excess of [\$10,000] to which an owner, an employee of, or the pharmacy practice site itself is a party; and

(6) Any and all other matters and occurrences as the [board] may require by rule or regulation.

b. The manner, time and content of the notification shall be prescribed by rule or regulation by the [board].

Section 37. [*Permit Required for Operation of Pharmacy Practice Site.*]

a. No pharmacy practice site shall operate until it has been issued a permit by the [board].

b. The [board] may suspend, revoke, deny, restrict or refuse to renew the permit of any pharmacy practice site on any of the following grounds:

- (1) Findings by the [board] that any conduct of the permit holder or applicant violates any federal, State or local laws or regulations relating to the practice of pharmacy;
- (2) A conviction of the permit holder or applicant under federal, State or local laws for a crime of moral turpitude or a crime that relates adversely to the practice of pharmacy;
- (3) Materially false or fraudulent information contained within any application made to the board or in any application relating to drug or device prescribing, dispensing or administration;
- (4) Suspension or revocation by federal, State or local government of any license or permit relating to the practice of pharmacy currently or previously held by the applicant or permit holder;
- (5) Utilizing a permit to obtain remuneration by fraud, misrepresentation or deception;
- (6) Dealing with drugs or devices that are known or should have been known as stolen drugs or devices;
- (7) Purchasing or receiving of a drug or device by a permit holder or for use at a pharmacy practice site from a source that is not licensed under the laws of the State, except where otherwise provided;
- (8) Intensive and ongoing failure to provide additional personnel, automation and technology as is necessary to ensure that the licensed pharmacist on duty has sufficient time to utilize the professional's knowledge and training and to competently perform the functions of a licensed pharmacist as required by law; or
- (9) Violation of any of the provisions of the [state controlled substance Act] by the applicant, permit holder or occurring at the pharmacy practice site; or
- c. Reinstatement of a permit that has been suspended or restricted by the [board] may be granted in accordance with the procedures specified by the [board].

Section 38. [*Compliance With Federal Law, Standards.*] Pharmacists and pharmacies shall comply with the provisions of the federal Standards of Practice of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

Section 39. [*Immunity from Civil Damages for Reports of Alleged Misconduct.*] A person who in good faith and without malice provides to the [board] any information concerning any act by a pharmacist licensed by the [board] which the person has reasonable cause to believe involves misconduct that may be subject to disciplinary action by the [board], or any information relating to such conduct requested by the [board] in the exercise of its statutory responsibilities or which may be required by statute, shall not be liable for civil damages in any cause of action arising out of the provision of such information or services.

Section 40. [*Currently Licensed Pharmacists, Practice Sites.*]

a. Any person who is licensed in this State as a pharmacist on the effective date of this act may continue to practice under his current license until its expiration, and to obtain a license under this Act without examination upon payment of a fee.

b. Any site with a permit in this State as a pharmacy practice site on the effective date of this Act may continue to operate under its current permit until its expiration.

Section 41. [*Prior Regulations Unaffected.*] This Act shall not affect the orders, rules and regulations regarding the practice of pharmacy made or promulgated by the [board] created pursuant to [insert citation] prior to the effective date of this Act.

Section 42. [*Pharmacy Technicians, Conditions.*]

a. Pharmacy technicians may assist a licensed pharmacist in performing the following tasks:

- (1) Retrieval of prescription files, patient files and profiles and other records, as determined by the [board], pertaining to the practice of pharmacy;
- (2) Data entry;
- (3) Label preparation; and
- (4) Counting, weighing, measuring, pouring and compounding of prescription medication or stock legend drugs and controlled substances, including the filling of an automated medication system.

b. Pharmacy technicians may accept authorization from a patient for a prescription refill, or from a physician or the physician's agent for a prescription renewal, provided that the prescription remains unchanged. As used in this section, "prescription refill" means the dispensing of medications pursuant to a prescriber's authorization provided on the original prescription and "prescription renewal" means the dispensing of medications pursuant to a practitioner's authorization to fill an existing prescription that has no refills remaining.

c. Pharmacy technicians shall not:

- (1) Receive new verbal prescriptions;
- (2) Interpret a prescription or medication order for therapeutic acceptability and appropriateness;
- (3) Verify dosage and directions;
- (4) Engage in prospective drug review;
- (5) Provide patient counseling;
- (6) Monitor prescription usage;
- (7) Override computer alerts without first notifying the pharmacist;
- (8) Transfer prescriptions from one pharmacy to another pharmacy; or
- (9) Violate patient confidentiality.

d. Except as provided in subsection e. of this section, a pharmacist shall not supervise more than [two] pharmacy technicians.

e. A pharmacy that wishes to employ a licensed pharmacist to pharmacy technician ratio greater than established in accordance with subsection d. of this section, shall:

(1) Establish written job descriptions, task protocols and policies and procedures that pertain to the duties performed by the pharmacy technician;

(2) Ensure and document that each pharmacy technician pass the National Pharmacy Technician Certification Examination or a [board] approved certification program and fulfill the requirements to maintain this status, or complete a program which includes a testing component and which has been approved by the [board] as satisfying the criteria as set forth in subsection f. of this section;

(3) Ensure that each pharmacy technician is knowledgeable in the established job descriptions, task protocols and policies and procedures in the pharmacy setting in which the technician is to perform his duties;

(4) Ensure that the duties assigned to any pharmacy technician do not exceed the established job descriptions, task protocols and policies and procedures;

(5) Ensure that each pharmacy technician receives in-service training before the pharmacy technician assumes his responsibilities and maintain documentation thereof;

(6) Require and maintain on site a signed patient confidentiality statement from each technician;

(7) Provide immediate personal supervision; and

(8) Provide the [board], upon request, with a copy of the established job descriptions, task protocols and policies and procedures for all pharmacy technician duties.

f. If the pharmacist to pharmacy technician ratio is greater than the ratio established in accordance with the provisions of subsection d. of this section, the pharmacy shall maintain a policy and procedure manual with regard to pharmacy technicians, which shall include the following:

- (1) Supervision by a pharmacist;
- (2) Confidentiality safeguards of patient information;
- (3) Minimum qualifications;
- (4) Documentation of in-service education or ongoing training and demonstration of competency, specific to practice site and job function;
- (5) General duties and responsibilities of pharmacy technicians;
- (6) Retrieval of prescription files, patient files, patient profile information and other records pertaining to the practice of pharmacy;
- (7) Functions related to prescription processing;
- (8) Functions related to prescription legend drug and controlled dangerous substance ordering and inventory control;
- (9) Prescription refill and renewal authorization;
- (10) Procedures dealing with documentation and records required for controlled dangerous substance and prescription legend drugs;
- (11) Procedures dealing with medication errors;
- (12) Pharmacy technician functions related to automated systems;
- (13) Functions that may not be performed by pharmacy technicians; and
- (14) A form signed by the pharmacy technician which verifies that the manual has been reviewed by the technician.

g. The pharmacist in charge shall review the policy and procedure manual at least every [two years] and, if necessary, amend the manual as needed. Documentation of the review shall be made available to the [board] upon request.

h. Pharmacy technicians shall wear an identification tag, which shall include at least their first name, the first initial of their last name and title.

i. On pharmacy permit renewal applications, the pharmacy shall list the name and address of all pharmacy technicians which it currently employs.

j. When pharmacy technicians are engaged in any activities permitted in accordance with the provisions of this section, the licensed pharmacists on site shall be responsible for these activities.

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

Section 44. [*Repealer*.] [Insert repealer clause.]

Section 45. [*Effective Date*.] [Insert effective date.]

# Post-Commitment Community Placement

This Act directs that following the commitment of a sexually dangerous individual, the state may conduct a risk management assessment of the committed individual for the purpose of determining whether the individual may be treated safely in the community on an outpatient basis. This can only be done pursuant to a court order and the individual must comply with the following stipulations;

- Participation and compliance with a specific course of treatment;
- Submission to electronic monitoring and any other appropriate supervision;
- Prohibition of the individual changing places of residency or leaving the state without prior authorization of the court;
- Establishment of safety zones, and compliance by the committed individual with those safety zones;
- The committed individual notify the court within twenty-four hours of any change in the individual's status that affects proper treatment or supervision;
- Contact with victims is prohibited independent of a supervised treatment plan, and
- Any other restriction or requirement deemed necessary by the court to assure public safety and proper treatment of the committed individual.

Submitted as:

North Dakota

HB 1057

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Address Post-Commitment  
2 Community Placement of Sexually Dangerous People.”

3  
4           Section 2. [*Post-Commitment Community Placement -Penalty.*]

5           1. Following commitment of a sexually dangerous individual, the [executive director of  
6 the department of public safety] may conduct a risk management assessment of the committed  
7 individual for the purpose of determining whether the individual may be treated safely in the  
8 community on an outpatient basis. The [executive director] may place a committed individual in  
9 the community for treatment on an outpatient basis only pursuant to a court order. The [executive  
10 director] may petition the court at any time for community placement. The [executive director]  
11 shall give the [state's attorney of the county of community placement] notice of any petition for  
12 community placement the [executive director] files with the court. Before the petition is granted,  
13 the [state's attorney] has the right to be heard by the court. The [state's attorney] may waive this  
14 right. At any hearing held pursuant to a petition by the [executive director] for the community  
15 placement of a committed individual, the burden of proof required of the [executive director] is a  
16 preponderance of the evidence. The court's order of community placement must contain  
17 appropriate restrictions and requirements for the committed individual, including:

- 18                   a. Participation and compliance with a specific course of treatment;  
19                   b. Submission to electronic monitoring and any other appropriate supervision;



20 c. Prohibition of the individual changing place of residency or leaving the state  
21 without prior authorization of the court;  
22 d. Establishment of safety zones, and compliance by the committed individual  
23 with those safety zones;  
24 e. A requirement that the committed individual notify the court within [twenty-  
25 four hours] of any change in the individual's status that affects proper treatment or supervision;  
26 f. Contact with victims is prohibited independent of a supervised treatment plan;  
27 and  
28 g. Any other restriction or requirement deemed necessary by the court to assure  
29 public safety and proper treatment of the committed individual.

30 2. Violation by a committed individual of a court order issued pursuant to this section is a  
31 [class C felony].

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

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

36 Section 5. [*Effective Date*.] [Insert effective date.]  
37

# Prohibiting the Use of a Cell Phone by a Person Who Only Holds a Driver's Instruction Permit

This Act prohibits a person driving under an instruction permit from using a cellular phone or other mobile communication device while driving. Under the Act, a violation would be considered a "secondary" offense and law enforcement officers would be prohibited from citing a driver for using a cellular phone while driving unless the driver was stopped for another alleged violation. The bill also provides exceptions for reporting emergencies.

Submitted as:

Colorado

HB 05-1137

Status: Enacted into law in 2005.

## 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 the Use of Mobile Communication Devices by Permitted Drivers in Motor Vehicles."  
3

4           Section 2. [*Definitions.*]

5           (1) As used in this section, unless the context otherwise requires:

6               (a) "Emergency" means a situation in which a person:

7                       (i) Has reason to fear for such person's life or safety, or believes that a  
8 criminal act may be perpetrated against such person or another person requiring the use of a  
9 mobile communication device while the car is moving; or

10                      (ii) Reports a fire, a traffic accident in which one or more injuries are  
11 apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is  
12 driving in a reckless, careless, or otherwise unsafe manner.

13               (b) Mobile communication device" means a cellular telephone or other device that  
14 enables a person in a motor vehicle to transmit and receive audio signals to and from a person or  
15 audio recording device located outside the motor vehicle.

16           (2) No person who holds a temporary instruction permit or a minor's instruction permit  
17 pursuant to [insert citation] shall use a mobile communication device while operating a motor  
18 vehicle. This section shall not apply to a person who is using the mobile communication device:

19               (a) To contact a public safety entity;

20               (b) While the vehicle is lawfully parked; or

21               (c) During an emergency.

22           (3) Any person who operates a motor vehicle in violation of this section commits a  
23 [Class A traffic infraction] as defined in [insert citation].

24           (4) An operator of a motor vehicle shall not be cited for a violation of this section unless  
25 such operator was stopped by a law enforcement officer for an alleged violation of other than a  
26 violation 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.]

# Privacy and Genetic Testing

This Act makes it illegal to perform DNA analysis on a sample, retain a DNA sample or the results of a DNA analysis, or disclose the results of a DNA analysis unless the person has first obtained the informed and written consent of the person, or the person's legal guardian or authorized representative, for the collection, analysis, retention, or disclosure. A DNA sample and the results of a DNA analysis performed on the sample are the exclusive property of the person sampled or analyzed.

The prohibitions of this section do not apply to DNA samples collected and analyses conducted for law enforcement purposes, including the identification of perpetrators and the investigation of crimes and the identification of missing or unidentified persons or deceased individuals, for determining paternity, or to perform newborn screenings required by state and federal law or for the purpose of emergency medical treatment.

A person may revoke or amend their informed and written consent at any time. A person may bring a civil action against a person who collects a DNA sample from the person, performs a DNA analysis on a sample, retains a DNA sample or the results of a DNA analysis, or discloses the results of a DNA analysis in violation of this Act. In addition to the actual damages suffered by the person, a person violating this chapter shall be liable to the person for damages in the amount of \$5,000 or, if the violation resulted in profit or monetary gain to the violator, \$100,000.

Submitted as:

Alaska

SB 217

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 Address Genetic Privacy  
2 and Genetic Testing.”

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

5           (a) “DNA” means deoxyribonucleic acid, including mitochondrial DNA, complementary  
6 DNA, and DNA derived from ribonucleic acid;

7           (b) “DNA analysis” means DNA or genetic typing and testing to determine the presence  
8 or absence of genetic characteristics in an individual, including tests of nucleic acids or  
9 chromosomes in order to diagnose or identify a genetic characteristic; “DNA analysis” does not  
10 include a routine physical measurement, a test for drugs, alcohol, cholesterol, or the human  
11 immunodeficiency virus, a chemical, blood, or urine analysis, or any other diagnostic test that is  
12 widely accepted and in use in clinical practice;

13           (c) “Genetic characteristic” includes a gene, chromosome, or alteration of a gene or  
14 chromosome that may be tested to determine the existence or risk of a disease, disorder, trait,  
15 propensity, or syndrome, or to identify an individual or a blood relative. “Genetic characteristic”  
16 does not include family history or a genetically transmitted characteristic whose existence or  
17 identity is determined other than through a genetic test.

18

Section 3. [*Genetic Privacy, Genetic Testing.*]

(a) Except as provided in (b) of this section,

(1) A person may not collect a DNA sample from a person, perform a DNA analysis on a sample, retain a DNA sample or the results of a DNA analysis, or disclose the results of a DNA analysis unless the person has first obtained the informed and written consent of the person, or the person's legal guardian or authorized representative, for the collection, analysis, retention, or disclosure;

(2) A DNA sample and the results of a DNA analysis performed on the sample are the exclusive property of the person sampled or analyzed.

(b) The prohibitions of (a) of this section do not apply to DNA samples collected and analyses conducted:

(1) The [Department of Public Safety DNA Registration System];

(2) For a law enforcement purpose, including the identification of perpetrators and the investigation of crimes and the identification of missing or unidentified persons or deceased individuals;

(3) For determining paternity;

(4) To screen newborns as required by state or federal law, and

(5) For the purpose of emergency medical treatment.

(c) A general authorization for the release of medical records or medical information may not be construed as the informed and written consent required by this section. The [Department of Health and Social Services] may by regulation adopt a uniform informed and written consent form to assist persons in meeting the requirements of this section. A person using that uniform informed and written consent is exempt from civil or criminal liability for actions taken under the consent form. A person may revoke or amend their informed and written consent at any time.

Section 4. [*Private Right of Action.*] A person may bring a civil action against a person who collects a DNA sample from the person, performs a DNA analysis on a sample, retains a DNA sample or the results of a DNA analysis, or discloses the results of a DNA analysis in violation of this Act. In addition to the actual damages suffered by the person, a person violating this Act shall be liable to the person for damages in the amount of [\$5,000] or, if the violation resulted in profit or monetary gain to the violator, [\$100,000].

Section 5. [*Criminal Penalty.*]

(a) A person commits the crime of unlawful DNA collection, analysis, retention, or disclosure if the person knowingly collects a DNA sample from a person, performs a DNA analysis on a sample, retains a DNA sample or the results of a DNA analysis, or discloses the results of a DNA analysis in violation of this Act.

(b) In this section, “knowingly” has the meaning given in [insert citation].

(c) Unlawful DNA collection, analysis, retention, or disclosure is a [class A misdemeanor].

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

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

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

# Public School Academic Facilities Program

This Act provides a system of state oversight of public school academic facilities so that school districts have academic facilities that support the opportunity for each public school student in the state to have an adequate education. Specifically, this Act directs the state division of public school academic facilities and transportation to develop a comprehensive Public School Academic Facilities Program that includes the following components:

- An Academic Facilities Master Plan Program that establishes process by which each school district develops and submits a facilities master plan for review and approval by the division and the division develops a comprehensive state master for managing state financial participation in local academic facilities projects across the state;
- An Academic Facilities Custodial, Maintenance, Repair, and Renovation Manual that contains uniform standards to direct custodial, maintenance, repair, and renovation activities in public school academic facilities;
- A Public School Academic Facility Manual that contains uniform standards to guide the planning, design, and construction of new support of academic facilities in each of the school districts in the state;
- A Public School Academic Equipment Manual that contains uniform standards for technology systems, instructional materials, and related academic equipment determined to be necessary for a public school to provide an adequate education as defined in state law; and
- An Academic Facilities Distress Program to assist school districts that are unable to conserve and protect their academic facilities in accordance with this Act.

Submitted as:

Arkansas

Act 1426

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act may be cited as “The “Public School Academic  
2 Facilities Program Act.”

3  
4           Section 2. [*Intent*.]

5           (a) The [General Assembly] recognizes that:

6                   (1) Intelligence and virtue are the safeguards of liberty and the bulwark of a free  
7 and good government;

8                   (2) The state should provide constitutionally appropriate public school academic  
9 facilities for the education of each similarly situated child in the public schools of this state,  
10 regardless of where that child resides within the state;

11                  (3) The state should require all public school academic facilities to meet  
12 applicable facilities standards established by this Act;

13                  (4) It is important to provide that all public school students are educated in  
14 facilities that are suitable for teaching in accordance with:

15                           (A) Standards for accreditation adopted by the [State Board of Education];

16                           (B) Curriculum frameworks adopted by the [state board]; and

(C) Technology systems, instructional materials, and related academic equipment necessary to provide the adequate education explicated in this section; and

(5) The state should require school districts to conserve and protect their academic facilities in such a manner that the academic facilities remain adequate.

(b) It is the intent of this Act to provide a system of state oversight of public school academic facilities so that school districts have academic facilities that support the opportunity for each public school student in the state to have an adequate education.

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

(a) “Academic facility” means a building or space, including related areas such as the physical plant and grounds, where public school students receive instruction that is an integral part of an adequate education as described in [insert citation]. A public school building or space, including related areas such as the physical plant and grounds, used for an extracurricular activity or an organized physical activity course as defined in [insert citation] shall not be considered an academic facility for the purposes of this Act to the extent that the building, space, or related area is used for extracurricular activities or organized physical activities courses, except for physical educational training and instruction under [insert citation]. Buildings or spaces, including related areas such as the physical plant and grounds, used for pre-kindergarten education shall not be considered academic facilities for purposes of this Act. District administration buildings and spaces, including related areas such as the physical plant and grounds, shall not be considered academic facilities for the purpose of this Act;

(b) “Annexation” means the joining of an affected school district or part of the school district with a receiving district under [insert citation];

(c) “Consolidation” means the joining of [two] or more school districts or parts of the districts to create a new single school district under [insert citation];

(d) “Custodial activities” means routine and renovation cleaning activities related to daily operations and upkeep of academic facilities, including related supervisory and management activities;

(e) “Facilities distress status” means a public school district determined by the [Division of Public School Academic Facilities and Transportation] as being in academic facilities distress status under this Act;

(f) “Facilities improvement plan” means a remedial plan developed by a school district for a public school or school district identified as being in academic facilities distress that supplements the school district’s facilities master plan by:

(1) Identifying specific interventions and actions the public school or school district will undertake in order to correct deficient areas of practice with regard to custodial, maintenance, repair, and renovation activities in the school district; and

(2) Describing how the school district will remedy those areas in which the school district is experiencing facilities distress, including the designation of the time period by which the school district will correct all deficiencies that placed the school district in facilities distress status;

(g) “Facilities master plan” means a [ten-year plan] developed by a school district that contains current enrollment projections and details the school district’s strategy for maintaining, repairing, renovating, and improving through new construction or otherwise the school district’s academic facilities and equipment;

(h) “Foundation funding” shall have the same meaning as in [insert citation];

(i) “Local resources” means any moneys lawfully generated by a school district for the purpose of funding the school district’s share of financial participation in any academic facilities project for which a school district is eligible to receive state financial participation under

priorities established by the [Division of Public School Academic Facilities and Transportation];

(j) “Maintenance, repair, and renovation” means any activity or improvement to an academic facility and, if necessary, related areas, such as the physical plant and grounds, that:

(1) Maintains, conserves, or protects the state of condition or efficiency of the academic facility; or

(2) Brings the state of condition or efficiency of the academic facility up to the facility’s original condition of completeness or efficiency;

(k) (1) “New construction” means any improvement to an academic facility and, if necessary, related areas, such as the physical plant and grounds, that brings the state of condition or efficiency of the academic facility to a state of condition or efficiency better than the academic facility’s original condition of completeness or efficiency;

(l) “New construction” includes additions to existing academic facilities and new academic facilities;

(m) “Project” means an undertaking in which a school district engages in:

(1) Maintenance, repair, and renovation activities with regard to an academic facility;

(2) New construction of an academic facility; or

(3) Any combination of maintenance, repair, and renovation and new construction activities with regard to an academic facility;

(n) “Reconstitution” means the reorganization of the administrative unit or the governing school board of a school district, including, but not limited to, the replacement or removal of a current superintendent, the removal or replacement of a current school board, or both;

(o) “School district” means a geographic area with an elected board of directors that qualifies as a taxing unit for purposes of ad valorem property taxes under [insert citation] and which board conducts the daily affairs of public schools under the supervisory authority vested in it by the [insert citation]; and

(p) “Space utilization” means the number of gross square feet per student in a public school academic facility adjusted for academic program, school enrollment, grade configuration, and type of public school in accordance with rules promulgated by the [Commission for Public School Academic Facilities and Transportation].

#### Section 4. *[Public School Academic Facilities Program.]*

(a) The [Division of Public School Academic Facilities and Transportation] shall develop a comprehensive Public School Academic Facilities Program that includes the following components:

(1) An Academic Facilities Master Plan Program that establishes a process by which:

(A) Each school district develops and submits a facilities master plan for review and approval by the [division]; and

(B) The [division] develops a comprehensive state master plan for managing state financial participation in local academic facilities projects across the state;

(2) An Academic Facilities Custodial, Maintenance, Repair, and Renovation Manual that contains uniform standards to direct custodial, maintenance, repair, and renovation activities in public school academic facilities;

(3) A Public School Academic Facility Manual that contains uniform standards to guide the planning, design, and construction of new public school academic facilities and additions to existing public school academic facilities;

(4) A Public School Academic Equipment Manual that contains uniform standards for technology systems, instructional materials, and related academic equipment

determined to be necessary for a public school to provide an adequate education as defined in [insert citation]; and

(5) An Academic Facilities Distress Program to assist school districts that are unable to conserve and protect their academic facilities in accordance with this Act and rules adopted by the [Commission for Public School Academic Facilities and Transportation].

(b) The [Commission for Public School Academic Facilities and Transportation] shall promulgate rules necessary to administer the Public School Academic Facilities Program, all its component and related programs, and the provisions of this Act, which shall promote the intent and purposes of this Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state.

Section 5. [*Academic Facilities Master Plan Program - Purpose.*] The purposes of the Academic Facilities Master Plan Program and this section are to:

(1) Establish a mechanism for state supervision of school district activities impacting academic facilities and equipment;

(2) Develop and continually update information critical to identifying academic facilities needs at the local level and across the state; and

(3) Allow the state to manage state financial participation in eligible local academic facilities projects.

Section 6. [*Academic Facilities Master Plan Program - School Districts.*]

(a) The Academic Facilities Master Plan Program shall require each school district to:

(1) Develop a [ten-year] districtwide facilities master plan that shall be approved by the school district's board of directors for submission to and approval by the [Division of Public School Academic Facilities and Transportation];

(2) Base its facilities master plan on the provisions of the Public School Academic Facility Manual as adopted by the [Commission for Public School Academic Facilities and Transportation] and on priorities indicated by statewide assessment and other pertinent data specific to the needs of the school district with regard to academic facilities and equipment;

(3) Present a draft of the school district's facilities master plan in a public hearing in the same locality as the school district and take public comments;

(4) Submit evidence of the school district's insurance coverage to the [division] by [July 1, 2006], including coverage amounts, types of coverage, identification of buildings covered, policy renewal dates, and all riders;

(5) Submit the school district's facilities master plan with a summary of comments made at public hearing to the [division] by [February 1 of each even-numbered year]; and

(6) Submit a report to the [division] by [February 1 of each odd-numbered year] that includes a description of all projects completed in the school district since the submission of the school district's most recent facilities master plan, the school district's current enrollment projections, new or continuing needs of the school district with regard to academic facilities and equipment, and an accounting of any changes in the school district's insurance coverage from the most recent submission.

(b) A facilities master plan shall include, at a minimum, the following:

(1) A current inventory of all academic facilities, technology systems, instructional materials, and related academic equipment in the school district;

(2) A schedule of custodial activities for each academic facility used by a school district;

(3) A schedule of maintenance, repair, and renovation activities for each



academic facility used by a school district;

(4) Documentation that describes preventive maintenance work for each academic facility and identifies the completion date of the work;

(5) Annual expenditures of the school district for all custodial, maintenance, repair, and renovation activities in the school district;

(6) A projected replacement schedule for major building systems in each academic facility;

(7) The school district's plan for caring for and maintaining technology systems, instructional materials, and related academic equipment in each academic facility;

(8) A projected replacement schedule for technology systems, instructional materials, and related academic equipment;

(9) Identification of issues with regard to facility and program access to individuals with disabilities and, if necessary, proposed methods for improving access;

(10) Identification of committed projects within the school district that includes, as applicable, a breakdown of the portion of each project between maintenance, repair, and renovation and new construction;

(11) Annual expenditures of the school district for capital outlay;

(12) A description of planned new construction projects with cost estimates for each academic facility within the school district and needs prioritized as follows:

(A) (i) Immediate needs that the school district intends to address within [three] years following the submission of the facilities master plan.

(ii) A school district shall separate the immediate needs described in the master plan submitted by [insert date] into [two] categories as follows:

(aa) Immediate needs that the school district intends to address during the period from [July 1, 2006 through June 30, 2007]; and

(bb) Immediate needs that the school district intends to address during the [2007-2009] biennium.

(13) Short-term needs that the school district intends to address within the [four] to [six] years following the submission of the facilities master plan; and

(14) Long-term needs that the school district intends to address within the [seven] to [ten] years following the submission of the facilities master plan; and

(15) Evidence of the school district's insurance coverage, including coverage amounts, types of coverage, identification of buildings covered, policy renewal dates, and all riders.

(c) The [division] shall establish procedures and timelines for a school district to submit a preliminary facilities master plan or a master plan outline to the [division] before the submission of the school district's final facilities master plan. The preliminary master plan or master plan outline shall form the basis for a consultation meeting between representatives of the district and members of the [division]. As soon as practicable after submission of the preliminary master plan or master plan outline, the [division] shall hold the consultation meeting with the school district to:

(1) Assure understanding of the general goals of this Act and the criteria by which projects will be evaluated;

(2) Discuss ways the facilities master plan may be structured to meet the goals of this Act;

(3) Assist districts to prepare accurate budgets and reasonable project schedules; and

(4) Provide for efficiency and productivity in the approval process for local academic facilities projects and state financial participation in local projects.

(d) (1) The [division] shall review and approve a school district's facilities master plan no later than [May 1, 2006] with regard to academic facilities projects for which a school district intends to apply for state financial participation during [fiscal year 2006-2007]. The [division] shall notify a school district no later than [July 1, 2006] that the school district's application for state financial participation during [fiscal year 2006-2007] in an eligible new construction project has been approved.

(2) Except as provided in subsection (d)(1) of this section, the [division] shall review and approve a school district's facilities master plan no later than [September 1 of each even-numbered year] and shall notify a school district no later than [May 1 of each odd-numbered year] that the school district's application for state financial participation during the upcoming biennium in an eligible new construction project has been approved.

Section 7. [*Academic Facilities Master Plan Program - State Plan.*] The [Division of Public School Academic Facilities and Transportation] shall develop a comprehensive state master plan for managing state financial participation in local academic facilities projects across the state. The state academic facilities master plan shall include:

(1) A list of committed projects for public school academic facilities for the upcoming fiscal year categorized by program and method of state financial participation;

(2) The total estimated cost of each committed project and the estimated amount of state financial participation; and

(3) A [four-year rolling forecast] of planned new construction projects related to public school academic facilities.

Section 8. [*Custodial, Maintenance, Repair, and Renovation Manual.*]

(a) The purposes of the Facilities Custodial, Maintenance, Repair, and Renovation Manual and this section are to:

(1) Provide for the long-term conservation and protection of public school academic facilities;

(2) Eliminate the deterioration of existing and future public school academic facilities;

(3) Provide a safe and healthy environment for students, teachers, administrators, and staff of the public schools; and

(4) Provide for the efficient use of state and local funds in support of academic facilities in each of the school districts in this state.

(b) (1) The Facilities Custodial, Maintenance, Repair, and Renovation Manual shall contain standards for custodial operations related to academic facilities.

(2) Standards for custodial operations in academic facilities shall include the following:

(A) The required contents of a custodial care plan;

(B) A suggested schedule for routine care and renovation cleaning;

(C) Levels of personnel necessary to perform custodial operations;

(D) Training criteria for the use and storage of supplies and equipment, with emphasis given to chemical right-to-know, indoor air quality, and other applicable standards;

(E) Supplies and equipment necessary to perform custodial operations, including space standards for the proper storage of supplies and equipment;

(F) In-service training opportunities for custodial personnel;

(G) Designation of routine duties; and

(H) Designation of renovation cleaning duties.

(c) (1) The Facilities Custodial, Maintenance, Repair, and Renovation Manual shall contain standards for maintenance, repair, and renovation activities related to academic facilities.

(2) Standards for maintenance, repair, and renovation activities shall include the following:

- (A) The required contents of a preventive maintenance plan, which shall include guidelines for:
  - (i) Scheduling preventive maintenance activities for academic facilities; and
  - (ii) Preparing and retaining documentation that describes preventive maintenance work related to academic facilities and identifies the completion date of the work;
- (B) Development and implementation of a work-request system to allow others to inform a public school's maintenance department of needs and to allow the responsible person to prioritize responses;
- (C) Levels of personnel necessary to perform maintenance operations;
- (D) Training criteria for maintenance personnel with regard to school policies, safety procedures, use of specialized equipment, compliance with federal, state, county, and municipal laws and regulations impacting academic facilities and equipment, and other applicable areas;
- (E) In-service training opportunities for maintenance personnel;
- (F) Inspection, cleaning, servicing, and repair of heating, ventilation, and air-conditioning systems;
- (G) Inspection and repair of electrical systems;
- (H) Inspection and repair of hot water boilers and heaters;
- (I) Inspection and repair of fire alarms;
- (J) Inspection and repair and servicing of fire sprinkler systems;
- (K) Inspection and repair of fire extinguishers and kitchen hood vent suppression systems;
- (L) Inspection and repair of emergency lighting and exit light fixtures;
- (M) Inspection and repair of elevators and wheelchair lifts;
- (N) Inspection and repair of plumbing;
- (O) Inspection and repair of roofs;
- (P) Inspection and repair of stairwell areas;
- (Q) Inspection and repair of interior and exterior lighting;
- (R) Inspection and repair of doors and windows;
- (S) Inspection and repair of floor coverings;
- (T) Inspection and repair of masonry and concrete buildings' exteriors;
- (U) Inspection and repair of interior and exterior finishes;
- (V) Inspection and repair of kitchen equipment;
- (W) Maintenance of a pest control program;
- (X) Inspection and repair of sidewalks, driveways, parking areas, and paved play areas;
- (Y) Inspection and repair of parking lots, handicap parking spaces, driveways, fire and emergency vehicle zones, and bus and car loading and unloading areas;
- (Z) Inspection of playground equipment; and
- (AA) Grounds maintenance.

(d) (1) Beginning with the [2005-2006 school year], each school district shall dedicate [nine percent] of its foundation funding exclusively to payment of utilities and custodial, maintenance, repair, and renovation activities and related personnel costs. If any

amount of the dedicated [nine percent] is unspent at the end of the school district's fiscal year, the funds shall carry over and the school district shall transfer the remaining amount into an academic facilities escrow account to be released only upon approval by the [Division of Public School Academic Facilities and Transportation] for use in conjunction with a local academic facilities project.

(2) A school district is not required to use funds in its academic facilities escrow account for new construction projects. New construction projects shall be funded by local resources, which may include funds in the school district's academic facilities escrow account if approved by the [division]. In addition, new construction projects may be eligible for state financial participation.

Section 9. [*Public School Academic Facility Manual.*]

(a) The Public School Academic Facility Manual shall contain uniform standards to guide the planning, design, and construction of new public school academic facilities and additions to existing public school academic facilities.

(b) Design and construction standards shall include provisions addressing the following areas:

(1) Planning concepts related to current educational best practices, special education, workforce development, and program and design capacity;

(2) Organizational, facility, program, and service issues, including grade configuration, school size, and class size;

(3) Site selection, including guidelines about site size and site amenities, such as site access, grading, drainage, drives, parking, walks, fencing, exterior security provisions, exterior lighting, mechanical yards, electrical yards, site furnishings, play fields, playgrounds, and landscaping;

(4) Standards for size and quantity of instruction and support spaces;

(5) Program space guidelines, including necessary features, loose furnishings, finishes related to identified programs and services;

(6) Design standards and guidelines regarding the quality of materials and systems for the following building systems:

(A) Fire and safety;

(B) Roofing;

(C) Structural;

(D) Heating, ventilation, and air conditioning;

(E) Plumbing;

(F) Electrical;

(G) Exterior;

(H) Interior;

(I) Technology; and

(J) Specialties, including equipment and furnishings; and

(K) Repair and construction cost guidelines.

(c) The manual shall also include provisions addressing the following:

(1) (A) A process by which a school district may apply for a variance from applicable academic facility standards upon presenting evidence of:

(i) The existence of conditions that make compliance with applicable standards impractical or unreasonably burdensome; and

(ii) Other conditions determined by the [Division of Public School Academic Facilities and Transportation] as warranting a variance from applicable public school academic facility standards.

(B) The variance provision shall address minimum standards for academic facilities that are reasonably expected to close or be replaced within [three] years;

(2) Review and approval of all plans and designs for major building systems related to new construction of academic facilities prior to preparation of final bid or other applicable procurement documents;

(3) Site inspections of all major building and design systems at appropriate stages of construction;

(4) Contingency plans for review and inspection by the [division] if appropriate state, local, or other officials are unable or unwilling to complete an appropriate plan review or site inspection;

(5) Oversight by the [division] of a project for which the school district does not use the services of an architect; and

(6) The short-term temporary use of premanufactured portable buildings.

(d) The [division] shall review and update the Public School Academic Facility Manual on an annual basis.

#### Section 10. [*Public School Academic Equipment Manual.*]

(a) The Public School Academic Equipment Manual shall contain uniform standards for technology systems, instructional materials, and related academic equipment determined to be necessary for a public school to provide an adequate education as [insert citation].

(b) (1) The standards for technology systems, instructional materials, and related academic equipment shall address the following areas:

(A) Science and Mathematics;

(B) Library Media Center;

(C) English and Language Arts;

(D) Foreign Language;

(E) Social Studies;

(F) Health Education and Physical Education;

(G) Art;

(H) Music;

(I) Guidance and Health Services; and

(J) Workforce education.

(2) The standards shall account for variations in a school district's use of and need for technology systems, instructional materials, and related academic equipment, such as size of school district, grade configuration of schools with the district, number of course offerings available, and enrollment levels.

(3) The standards shall establish a method for creating, maintaining, and updating an inventory of public school academic equipment, including, without limitation, technology systems, instructional materials, and related academic equipment.

#### Section 11. [*Academic Facilities Distress Program.*]

(a) The [Division of Public School Academic Facilities and Transportation] shall identify a public school or school district as being in academic facilities distress if the [division] determines that the public school or school district has engaged in actions or inactions that result in any of the following:

(1) Any act or violation determined by the [division] to jeopardize any academic facility used by a public school or school district, including, but not limited to:

(A) Material failure to properly maintain academic facilities in accordance with this Act and rules adopted by the [Commission for Public School Academic Facilities and

Transportation];

(B) Material violation of local, state, or federal fire, health, or safety code provisions or laws;

(C) Material violation of applicable building code provisions or law;

(D) Material failure to provide timely and accurate facilities master plans to the [division];

(E) Material failure to comply with state law governing purchasing or bid requirements in relation to academic facilities projects; or

(F) Material default on any school district debt obligation; or

(2) Any other condition of an academic facility or facilities in a public school or school district that is determined by the [division] to have a detrimental impact on educational services provided by that public school or school district.

(b) The [division] shall provide written notice, via certified mail, return receipt requested, to the president of the school board and the superintendent of the public school or school district identified as being in facilities distress.

(c) (1) A public school or school district identified as being in facilities distress shall develop a facilities improvement plan within [thirty days] from the date of receipt of the notice and promptly submit the facilities improvement plan to the [division] for review and approval.

(2) A public school or school district shall review and revise its facilities improvement plan on a periodic basis as determined by the [division] and submit the updated facilities improvement plan to the [division] in order for the [division] to determine whether the public school or school district is correcting its deficient areas of practice regarding academic facilities.

(3) A school district shall use facilities improvement plans as necessary to supplement and update its facilities master plan.

(d) When a school district is identified by the [division] to be in facilities distress, the [division] may:

(1) (A) Provide on-site technical evaluation and assistance and make recommendations to the district superintendent regarding the care and maintenance of any academic facility in the district.

(B) Any school district identified as being in facilities distress status shall accept on-site technical evaluation and assistance from the [division].

(C) The recommendations of the [division] are binding on the district, the superintendent, and the school board;

(2) Require the superintendent to relinquish all administrative authority with respect to the school district;

(3) (A) Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the [Director of the Division of Public School Academic Facilities and Transportation].

(B) The [division] may direct the school district to compensate from school district funds the individual appointed to operate the school district;

(4) Suspend or remove all of the current board of directors and call for the election of a new school board for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;

(5) Require the school district to operate without a local school board under the supervision of the local superintendent or an individual or panel appointed by the director of the [division];

(6) Return the administration of the school district to the former board or place the

administration of the school district in a newly elected school board;

(7) Require school district staff and employees to attend training in areas of concern for the public school or school district;

(8) (A) Require a school district to cease immediately all expenditures related to activities not described as part of an adequate education in [insert citation] and place money that would have been spent on the activities into an academic facilities escrow account to be released only upon approval by the [division] for use in conjunction with a local academic facilities project.

(B) School districts shall include a clause addressing this contingency in all contracts with personnel who are involved with activities not described as part of an adequate education;

(9) Notify the public school or school district in writing that the deficiencies regarding academic facilities shall be corrected within a time period designated by the [division];

(10) (A) Petition the [state board] at any time for the consolidation, annexation, or reconstitution of a school district in facilities distress or take other appropriate action as allowed by this Act in order to secure and protect the best interest of the educational resources of the state or to provide for the best interests of students in the school district.

(B) The [state board] may approve the petition or take other appropriate action as allowed by this [Act].

(C) The [state board] shall consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in facilities distress within [two consecutive school years] of receipt of notice of identification of facilities distress status by the [division]. A school district may appeal the action of the [state board] to the [Commission for Public School Academic Facilities and Transportation] in accordance with procedures developed by the [state board]. The [commission] may reverse the action of the [state board] if the [commission] finds that the school district could not remove itself from facilities distress due to impossibility caused by external forces beyond the school district's control; and

(11) Take any other action allowed by law that is deemed necessary to assist a public school or school district in removing criteria of facilities distress.

(e) No school district identified by the [division] as being in facilities distress may incur any debt without the prior written approval of the [commission].

(f) A public school or school district in facilities distress may petition the [commission] for removal from facilities distress status only after the [division] has certified in writing that the public school or school district has corrected all criteria for being classified as in facilities distress and has complied with all [division] recommendations and requirements for removal from facilities distress.

(g) The [division] shall submit a written evaluation on the status of each school district in facilities distress to the [commission] and the [state board] at least once every [six months].

#### Section 12. *[Facilities Distress - Student Transfers.]*

(a) Any student attending a public school district classified as being in facilities distress shall automatically be eligible and entitled under [insert citation] to transfer to another geographically contiguous school district not in facilities distress during the time period that a district is classified as being in facilities distress. The student is not required to file a petition by [July 1] but shall meet all other requirements and conditions of the [insert citation].

(b) The resident district shall pay the cost of transporting the student from the resident district to the nonresident district.

(c) The nonresident district shall count the student for average daily membership purposes.

507  
508 Section 13. *[Inspections.]*

509 (a) The [Division of Public School Academic Facilities and Transportation] shall  
510 conduct random unannounced on-site inspections of all academic facilities that have been funded  
511 wholly or in part by moneys from the state to ensure compliance with the school district's  
512 facilities master plan and, if applicable, the school district's facilities improvement plan in order  
513 to preserve the integrity of and extend the useful life of public school academic facilities and  
514 equipment across the state.

515 (b) The [division] shall submit reports regarding its on-site inspections of academic  
516 facilities to the [Commission for Public School Academic Facilities and Transportation] within  
517 [thirty days] of completion of the on-site inspections.

518 (c) Based on the [division's] on-site inspection or notification by the [division] to the  
519 [commission] that the changes or additions to a school district's facilities master plan or facilities  
520 improvement plan required by the [division] have not been implemented within the time period  
521 prescribed by the [division], the [commission] shall restrict the use of the necessary funds or  
522 otherwise allocate funds from moneys appropriated by the [General Assembly].  
523

524 Section 14. *[Appealing Determinations of the Division of Public School Academic*  
525 *Facilities and Transportation.]*

526 (a) A school district may appeal any determination of the [Division of Public School  
527 Academic Facilities and Transportation] under this Act to the [Commission for Public School  
528 Academic Facilities and Transportation] in accordance with procedures developed by the  
529 [commission].

530 (b) All decisions of the [Commission for Public School Academic Facilities and  
531 Transportation] resulting from a school district's appeal of a [division] determination under this  
532 Act shall be final and shall not be subject to further appeal or request for rehearing to the  
533 [commission] or petition for judicial review under [insert citation].  
534

535 Section 15. *[Standards for School Construction.]*

536 (a) The [State Board of Education] shall establish reasonable minimum standards for  
537 schoolhouse construction, and standards may be revised from time to time as educational  
538 problems and methods of procedure develop and change.

539 (b) The standards shall include review and approval by all appropriate and applicable  
540 state agencies, boards, and local officials for compliance with, including, but not limited to, the  
541 following:

- 542 (1) State Plumbing Code, [insert citation];  
543 (2) State Heating, Ventilation, Air Conditioning, and Refrigeration (HVACR)  
544 Code, [insert citation];  
545 (3) State Fire Prevention Act, [insert citation];  
546 (4) State Seismic Code, [insert citation];  
547 (5) The Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. Part  
548 36, Appx. A;  
549 (6) State Architectural Act, [insert citation];  
550 (7) State Professional Engineers Act, [insert citation], and  
551 (8) State Public Works Act, [insert citation],

552 (c) As used in this section and in section 16 of this Act, "schoolhouse" means any  
553 elementary or secondary school district facility that will be used for administrative, educational,  
554 or physical education purposes.

555 (d) This section shall be repealed as of the effective date of the Public School Academic



Facility Manual as adopted by the [Commission for Public School Academic Facilities and Transportation].

Section 16. *[Approval of Building Plans.]*

(a) No new schoolhouse shall be built except in accordance with the plan finally approved by the [Commission for Public School Academic Facilities and Transportation] for all projects where the [commission] requires its approval.

(b) Where so required by the [commission], a copy of approved plans and specifications of all new schoolhouses or additions shall be filed with and approved by the [commission] before construction shall be commenced.

(c) (1) A copy of final construction documents shall be submitted to the [Architectural Section of the State Building Authority] for review in regard to compliance with the [Americans with Disabilities Act Accessibility Guidelines].

(2) All review comments received from the [State Building Authority] shall be in writing.

(3) Corrected construction documents shall be received and approved by [State Building Authority].

(4) No project shall be released for bidding or construction until the requirements of section 15 of this Act and this section are met.

(d) Review and approval of plans under this section or otherwise shall not be a guarantee of state financial participation in any public school academic facilities project.

Section 17. *[Facilities.]*

(a) Physical aspects and specifications for buildings, classrooms, and other facilities for, or likely to be used by, children with disabilities shall be approved by a designee of the [Division of Public School Academic Facilities and Transportation] or a designee.

(b) A The [division] or a designee of the [division] is required to review plans for public school construction or remodeling which are designed for children with disabilities to ensure accessibility and usefulness for that purpose.

Section 18. *[Severability.]* [Insert severability clause.]

Section 19. *[Repealer.]* [Insert repealer clause.]

Section 20. *[Effective Date.]* [Insert effective date.]

# Registering Livestock Premises

This Act generally requires anyone who keeps any livestock, regardless of number, to register the premises where the livestock are kept with the state Department of Agriculture, Trade and Consumer Protection (DATCP). The Act defines “livestock” as bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, and any other animal that the DATCP identifies by rule. Registrants must provide their name and business address, the location where the registrant keeps livestock, the type of livestock, and the type of livestock operation.

Under the Act, the DATCP assigns and maintains a code to each location which complies with U.S. Department of Agriculture standards. The Act specifies that in general, registrant information is not a public record subject to disclosure under the open records law.

Submitted as:

Wisconsin

2003 Act 229

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 Registration of  
2 Livestock Premises.”

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

5           (a) “Livestock” means bovine animals, equine animals, goats, poultry, sheep, swine,  
6 farm-raised deer, and any other kind of animal that the [department] identifies by rule for the  
7 purposes of this Act.

8           (b) “Department” means [Department of Agriculture, Trade and Consumer Protection.]  
9

10          Section 3. [*Livestock Premises Registration.*]

11          (a) A person shall register under par. (c) on a form provided by the [department] and  
12 shall provide all of the following information:

13               1. The registrant’s legal name and any trade names under which the registrant  
14 keeps livestock in this state.

15               2. The registrant’s business address.

16               3. The address of each location at which the registrant keeps livestock in this  
17 state.

18               4. The type of livestock kept at each location under subsection 3 of this section  
19 and the type of livestock operation, using standards and guidelines from the national animal  
20 identification plan developed by the animal and plant health inspection service of the federal  
21 department of agriculture, to the extent practicable.

22          (b) Except as provided under subsection (d) of this section, no person may do any of the  
23 following at a location in this state unless that person registers that location with the  
24 [department]:

25               1. Keep any bovine animals, equine animals, goats, sheep, swine, poultry, or  
26 farm-raised deer.

27 2. Keep any other kind of livestock that the [department] identifies by rule.

28 (c) A person to whom this section applies may comply with this section as part of the  
29 registration process under [insert citation] or the licensing process under [insert citation].

30 (d) The [department] may promulgate rules specifying exemptions from subsection (a) of  
31 this section, including exemptions based on the number or type of livestock kept by a person or  
32 on the type of locations where a person keeps livestock.

33  
34 Section 4. [*Premises Code.*]

35 (a) The [department] shall assign a unique identification code to each location registered  
36 under Section 3 (a) of this Act.

37 (b) The [department] shall use a uniform system to assign codes that is reasonably  
38 designed to facilitate animal health and disease control, interstate consistency, and interstate  
39 commerce. The [department] shall use a system that complies with any applicable standards  
40 established by the animal and plant health inspection service of the federal department of  
41 agriculture. The [department] shall use premises codes that are federally allocated for premises in  
42 this state.

43 (c) The [department] shall establish and maintain an electronic data base related to  
44 livestock premises in this state. The [department] shall include in the data base the premises code  
45 assigned to each location under par. (a) and the registration information under this section that is  
46 associated with that premises code. The [department] may include in the data base global  
47 positioning system coordinates and other information that the [department] considers  
48 appropriate.

49  
50 Section 5. [*Confidentiality.*]

51 (a) Information that a person is required to provide to the [department] under Section 3 of  
52 this Act is not subject to public inspection under [insert citation]. Except as provided in pars. (b)  
53 and (c) of this section, the [department] may not disclose information provided under Section 3  
54 of this Act to any other person or agency.

55 (b) Paragraph (a) does not apply to information that a person is required to provide to the  
56 [department] under other laws.

57 (c) The [department] may disclose information that a registrant provides under Section 3  
58 of this Act to any of the following:

59 1. A person to whom the registrant authorizes disclosure.

60 2. The animal and plant health inspection service of the federal department of  
61 agriculture, if the animal and plant health inspection service agrees not to disclose the  
62 information except in situations in which the [department] is authorized to disclose the  
63 information under subdivision 1 or 4 of paragraph (c).

64 3. Any agent of the [department] under Section 8 of this Act.

65 4. Another person or agency if the [department] believes that the release is  
66 necessary to prevent or control disease or to protect public health, safety, or welfare. The  
67 [department] may disclose information under this subdivision subject to any confidentiality  
68 requirements that the [department] determines are appropriate under the circumstances.

69 (d) Any agent of the [department] under Section 8 of this Act may not disclose  
70 information provided under Section 3 of this Act except to a person to whom the registrant or the  
71 [department] authorizes disclosure.

72  
73 Section 6. [*Funding.*] The [department] shall seek federal funding for the administration  
74 of this section.

76           Section 7. [*Rules.*] The [department] may promulgate rules for the administration of this  
77 section. The [department] shall promulgate rules to govern the release of aggregate information  
78 under this section by the [department].  
79

80           Section 8. [*Contract Agent.*] The [department] may contract with an agent to administer  
81 the registration program under this section on behalf of the [department]. The [department] may  
82 not authorize an agent to release aggregate information under this section.  
83

84           Section 9. [*Nonstatutory Provisions: Funding Proposal.*] The [state department of  
85 agriculture, trade and consumer protection] shall include in its budget request under [insert  
86 citation] for the [2005–07 biennial] budget bill a proposal for funding the program, as created by  
87 this Act.  
88

89           Section 10. [*Severability.*] [Insert severability clause.]  
90

91           Section 11. [*Repealer.*] [Insert repealer clause.]  
92

93           Section 12. [*Effective Date.*] [Insert effective date.]

# Regulating Selling, Storing or Distributing Seeds: Preempting Local Control

The production of seed crops has been, and is still today, a vital part of agriculture. Currently, some political subdivisions below the state level have been considering regulating the planting, sale, storage or distribution of varieties of seed. Such regulations conflict with existing state and federal law and are often not based on the principles of good science. This legislation makes clear that the regulation of seed will be done by the state to ensure consistency statewide. The regulation does not interfere with local zoning ordinances on the location of seed handling facilities.

Submitted as:

Idaho

HB 401

Status: Enacted into law in 2005.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Preempt Political  
2 Subdivisions from Regulating Selling, Storing or Distributing Seeds.”

3  
4           Section 2. [*Statewide Jurisdiction and Preemption.*]

5           (1) This Act and its provisions are of statewide concern and occupy the whole field of  
6 regulation regarding the registration, labeling, sale, storage, transportation, distribution,  
7 notification of use, use of seeds, and planting of seeds to the exclusion of all local ordinances or  
8 regulations.

9           (2) Except as otherwise specifically provided in this Act, no ordinance or regulation of  
10 any political subdivision may prohibit or in any way attempt to regulate any matter relating to the  
11 registration, labeling, sale, storage, transportation, distribution, notification of use, use of seeds,  
12 or planting of seeds.

13           (3) The provisions of subsection (2) of this section shall not preempt county or city local  
14 zoning ordinances governing the physical location or siting of seed facilities.

15  
16           Section 3. [*Severability.*] [Insert severability clause.]

17  
18           Section 4. [*Repealer.*] [Insert repealer clause.]

19  
20           Section 5. [*Effective Date.*] [Insert effective date.]

# Relating to Pharmaceutical Assistance Programs and Pharmaceutical Discount Purchasing Cards

This Act directs the state Commissioner of Health and the state Commissioner of the Department for the Aging to develop a single application form for citizens to use to seek eligibility for various pharmaceutical assistance programs and pharmaceutical discount purchasing cards. The Commissioners must obtain copies of the application forms used by such pharmaceutical assistance programs and pharmaceutical discount purchasing cards in the state, compile a list of the various information required to complete such application forms, identify common elements, and analyze the forms for readability and simplicity. Upon completion of this analysis, the Commissioners must then design a single, concise application form that is logically formatted, written in clear and easily comprehensible language, and covers any and all data that may be required to obtain eligibility for any such pharmaceutical assistance program or pharmaceutical discount purchasing card. Upon completion of the design for the single concise application form for pharmaceutical assistance programs and pharmaceutical discount purchasing cards in the state, the Commissioners must place such application form on their respective departments' websites and cooperate with the programs and pharmaceutical companies to encourage the use of the design throughout the state. In order to perform the duties provided in the new subsection, the Commissioners may appoint an advisory task force of stakeholders to assist them in this endeavor.

Submitted as:

Virginia

Chapter 318, 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 Concerning Pharmaceutical  
2 Assistance Programs and Pharmaceutical Discount Purchasing Cards.”

3  
4           Section 2. [*Alternative Means of Disseminating Information*.]

5           A. The [Commissioner] shall create links from the [Department of Health’s] website to  
6 the [Department for the Aging’s] website and its affiliated sites pertaining to pharmaceutical  
7 assistance programs and pharmaceutical discount purchasing cards. The [Commissioner of the  
8 Department for the Aging] shall cooperate with the [Commissioner of Health] by ensuring that  
9 such information is available on the [department for the Aging’s] website.

10           B. The [Commissioner] shall ensure that all clinical sites administered by local health  
11 departments are provided with adequate information concerning the services of the [Department  
12 for the Aging], including, but not limited to, its toll-free telephone number and its website  
13 information on pharmaceutical assistance programs and pharmaceutical discount purchasing  
14 cards.

15           C. The [Commissioner of Health and the Commissioner of the Department for the Aging]  
16 shall coordinate the dissemination of information to the public regarding any pharmaceutical  
17 discount purchasing card programs while maintaining a neutral posture regarding such programs.  
18 In addition, with such funds as may be made available, the [Commissioner of Health and the

Commissioner of the Department for the Aging] shall disseminate information to the public concerning recent congressional actions relating to pharmaceutical benefits to be provided under the Medicare program and how such benefits may help senior citizens with the costs of pharmaceutical benefits.

D. The [Commissioner] shall establish a toll-free telephone number, to be administered by the [Department of Health], which shall provide recorded information concerning services available from the [Department for the Aging], the [state Agencies on Aging], and other appropriate organizations for senior citizens.

E. The [Commissioner of Health and the Commissioner of the [Department for the Aging] shall develop a strategy, in coordination with the [state Agencies on Aging] and other private and nonprofit organizations, for disseminating information to the public concerning the availability of pharmaceutical assistance programs and for training senior citizen volunteers to assist in completing applications for pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

Section 3. [*Application Forms.*] In addition to the responsibilities set forth in Section 2 of this Act, the [Commissioner of Health and the Commissioner of the Department for the Aging] shall encourage pharmaceutical manufacturers to include application forms for pharmaceutical discount purchasing card programs on their respective websites in a format capable of being downloaded and printed by consumers. When practicable, the website maintained by the [Department for the Aging] shall include direct links to such forms.

Section 4. [*Feasibility and Standards for Developing a Single Application Form.*]

A. The [Commissioner of Health and the Commissioner of the Department for the Aging] shall report to the [Governor] and [General Assembly] by [October 30, 2004], on the feasibility of developing a single application form for residents of this state to use to seek eligibility for the [nearly 50] pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

B. In determining feasibility, the [Commissioners] shall obtain copies of the application forms used by such pharmaceutical assistance programs and pharmaceutical discount purchasing cards in this state. [Commissioners] should review and analyze such forms, and their analysis should include but not be limited to:

(1) compiling a list of the various information required to complete such application forms;

(2) identifying common elements; and

(3) analyzing the forms for readability and simplicity.

C. Upon completion of this analysis, the [Commissioners] shall assess the feasibility of designing a single, concise application form that is logically formatted, written in clear and easily comprehensible language, and covers any and all data that may be required to obtain eligibility for any such pharmaceutical assistance program or pharmaceutical discount purchasing card.

D. To assist them in completing the responsibilities set forth in subsections A and B of this section, the [Commissioners] may appoint an advisory task force of stakeholders.

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

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

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

# Shielded Outdoor Lighting

The purpose of this Act is to conserve energy and preserve the environment through the regulation of outdoor lighting fixtures. The Act directs that no public funds shall be used to install an outdoor lighting fixture unless it is shielded and no state funds shall be used for the installation of a shielded or unshielded mercury vapor outdoor lighting fixture. It requires the state department of environmental quality to promulgate regulations prohibiting any person or entity from knowingly placing or disposing of lights containing mercury in a landfill after January 1, 2008. It requires electric public utilities in the state to offer a shielded lighting service option.

Submitted as:

Arkansas

Act 1963 (2005)

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Encourage the Use of  
2   Shielded Outdoor Lighting.”

3  
4           Section 2. [*Purpose.*] The purpose of this Act is to conserve energy and preserve the  
5   environment through the regulation of outdoor lighting fixtures.

6  
7           Section 3. [*Definitions.*] As used in this Act:

8           (a) “Outdoor lighting fixture” means an automatically-controlled, outdoor artificial  
9   illuminating device, whether permanent or portable, used for illumination or advertisement,  
10   including searchlights, spotlights, and floodlights, whether for architectural lighting, parking lot  
11   lighting, landscape lighting, billboards, or street lighting; and

12          (b) “Shielded” means a fixture that is covered in a manner that light rays emitted by the  
13   fixture, either directly from the lamp or indirectly from the fixture, are projected below a  
14   horizontal plane running through the lowest point on the fixture where light is emitted.

15  
16          Section 4. [*Shielding: Prohibitions, Exemptions.*]

17          (a) After [January 1, 2006]:

18                  (1)       (A) No public funds shall be used to install an outdoor lighting fixture  
19   unless it is shielded.

20                          (B) The provisions of subdivision (a)(1) of this section shall not apply to  
21   a municipally owned utility if the municipal employee responsible for procurement determines  
22   that the cost of acquiring a shielded outdoor lighting fixture will be more expensive than the  
23   alternative after comparing:

24                                  (i) The cost of the fixtures; and

25                                  (ii) The projected energy cost of the operation of the fixtures;

26                          (C) No state funds shall be used for the installation of a shield or  
27   unshielded mercury vapor outdoor lighting fixture.



(2) The [Department of Environmental Quality] shall promulgate regulations prohibiting any person or entity from knowingly placing or disposing of lights containing mercury in a landfill after [January 1, 2008].

(3) (A) Each electric public utility shall offer a shielded lighting service option.

(B) Not later than [January 1, 2006], each electric public utility shall file an application with the [Public Service Commission] to establish a schedule of rates and charges for the provision of a shielded lighting service option to the utility's customers.

(C) The [Public Service Commission] shall require each electric public utility to inform its customers of the availability of the shielded lighting service.

(b) This Act does not apply to acquisitions of:

(1) Incandescent outdoor lighting fixtures of one hundred fifty watts (150W) or less or other light sources of seventy watts (70W) or less;

(2) Outdoor lighting fixtures on advertisement signs on interstate or federal primary highways;

(3) (A) Outdoor lighting fixtures existing and legally installed before the effective date of this Act.

(B) However, if an existing outdoor lighting fixture exempted from the provisions of this Act under subdivision (b)(3)(A) of this section needs to be replaced, the acquisition of the replacement outdoor lighting fixture shall be subject to the provisions of this Act;

(4) Navigational lighting systems at airports or other lighting necessary for aircraft safety; and

(5) Outdoor lighting fixtures that are necessary for worker safety at farms, ranches, dairies, or feedlots or industrial, mining, or oil and gas facilities.

Section 5. [*Penalties.*] Violations of this Act are punishable by a warning for a first offense and a fine of [twenty-five dollars] minus the replacement cost for each offending outdoor lighting fixture for a second or subsequent offense or for an offense that continues for [thirty calendar days] from the date of the warning.

Section 6. [*Enforcement.*] This Act may be enforced by a town, city, or county of this state by seeking injunctive relief in a court of competent jurisdiction.

Section 7. [*Provisions Supplemental.*] The provisions of this Act are cumulative and supplemental and shall not apply within a town, city, or county of this state that by ordinance has adopted provisions restricting light pollution that are equal to or more stringent than the provisions of this Act.

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

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

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

# Slam Spam

This Act creates a new crime of initiation of deceptive commercial e-mail. The Act directs that any person who initiates a commercial e-mail that the person knew or should have known to be false or misleading that is sent from, passes through, or is received by a protected computer shall be guilty of the crime of initiation of deceptive commercial e-mail. This Act seems to be directed at the practice of a company or person surreptitiously using another company's commercial computer server to send or forward fraudulent electronic mail.

Submitted as:

Georgia

SB 62 (Enrolled version)

Status: Enacted into law in 2005.

## Suggested State Legislation

1           Section 1. [*Short Title.*] This Act may be cited as the “Slam Spam Act.”

2

3           Section 2. [*Legislative Findings.*]

4           (1) The [legislature] finds and declares that electronic mail has become an important and  
5 popular means of communication, relied on by millions of people on a daily basis for personal  
6 and commercial purposes. The low cost and global reach of electronic mail make it convenient  
7 and efficient. Electronic mail serves as a catalyst for economic development and frictionless  
8 commerce.

9           (2) The [legislature] further finds that the convenience and efficiency of electronic mail  
10 is threatened by an ever-increasing glut of deceptive commercial electronic mail. The senders of  
11 these electronic messages engage in a variety of fraudulent and deceptive practices to hide their  
12 identities, to disguise the true source of their electronic mail, and to evade the criminal and civil  
13 consequences of their actions. Deceptive commercial electronic mail imposes costs upon its  
14 ultimate recipients who are forced to receive, review, and delete unwanted messages and upon  
15 the electronic mail service providers forced to carry the messages.

16           (3) The [legislature] further finds that our state has a paramount interest in protecting its  
17 businesses and citizens from the deleterious effects of deceptive commercial electronic mail,  
18 including the impermissible shifting of cost and economic burden that results from the false and  
19 fraudulent nature of deceptive commercial electronic mail. This state's enforcement of this  
20 interest imposes no additional burden upon the senders of such electronic mail in relation to the  
21 laws of any other state, in that such enforcement requires nothing more than the senders'  
22 forbearance from active deception.

23

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

25           (1) “Advertiser” means a person or entity that advertises through the use of commercial  
26 e-mail.

27           (2) “Automatic technical process” means the actions performed by an e-mail service  
28 provider's or telecommunications carrier's computers or computer network while acting as an  
29 intermediary between the sender and the recipient of an e-mail.

30           (3) “Commercial e-mail” means any e-mail message initiated for the purpose of  
31 advertising or promoting the lease, sale, rental, gift, offer, or other disposition of any property,  
32 services, or extension of credit.

33 (4) "Computer" means an electronic, magnetic, hydraulic, electrochemical, or organic  
34 device or group of devices which, pursuant to a computer program, to human instruction, or to  
35 permanent instructions contained in the device or group of devices, can automatically perform  
36 computer operations with or on computer data and can communicate the results to another  
37 computer or to a person. The term includes any connected or directly related device, equipment,  
38 or facility which enables the computer to store, retrieve, or communicate computer programs,  
39 computer data, or the results of computer operations to or from a person, another computer, or  
40 another device. This term specifically includes, but is not limited to, mail servers and e-mail  
41 networks. This term does not include a device that is not used to communicate with or to  
42 manipulate any other computer.

43 (5) "Computer network" means a set of related, remotely connected computers and any  
44 communications facilities with the function and purpose of transmitting data among them  
45 through the communications facilities.

46 (6) "Computer operation" means computing, classifying, transmitting, receiving,  
47 retrieving, originating, switching, storing, displaying, manifesting, measuring, detecting,  
48 recording, reproducing, handling, or utilizing any form of data for business, scientific, control, or  
49 other purposes.

50 (7) "Computer program" means one or more statements or instructions composed and  
51 structured in a form acceptable to a computer that, when executed by a computer in actual or  
52 modified form, cause the computer to perform one or more computer operations. The term  
53 'computer program' shall include all associated procedures and documentation, whether or not  
54 such procedures and documentation are in human readable form.

55 (8) "Data" includes any representation of information, intelligence, or data in any fixed  
56 medium, including documentation, computer printouts, magnetic storage media, punched cards,  
57 storage in a computer, or transmission by a computer network.

58 (9) "Direct consent" means that the recipient has expressly consented to receive e-mail  
59 advertisements from the advertiser or initiator, either in response to a clear and conspicuous  
60 request for direct consent or at the recipient's own initiative.

61 (10) "Domain" means any alphanumeric designation which is registered with or assigned  
62 by any domain name registrar, domain name registry, or other domain name registration  
63 authority as Act of an electronic address on the Internet.

64 (11) "Domain owner" means, in relation to an e-mail address, the actual owner at the  
65 time an e-mail is received at that address of a domain that appears in or comprises a portion of  
66 the e-mail address. The registrant of a domain is presumed to be the actual owner of that domain.

67 (12) "Electronic communication" means any transfer of signs, signals, writing, images,  
68 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,  
69 electromagnetic, photo-electronic, or photo-optical system that affects interstate or foreign  
70 commerce, but does not include:

71 (A) Any wire or oral communication;

72 (B) Any communication made through a tone-only paging device;

73 (C) Any communication from a tracking device; or

74 (D) Electronic funds transfer information stored by a financial institution in a  
75 communications system used for the electronic storage and transfer of funds.

76 (13) "Electronic communication service" means any service which provides to its users  
77 the ability to send or receive wire or electronic communications.

78 (14) "Electronic communications system" means any wire, radio, electromagnetic,  
79 photo-electronic, photo-optical, or facilities for the transmission of wire or electronic  
80 communications, and any computer facilities or related electronic equipment for the electronic  
81 storage of such communications.

82 (15) "Electronic means" is any device or apparatus which can be used to intercept a wire,  
83 oral, or electronic communication other than:

84 (A) Any telephone or telegraph instrument, equipment, or facility, or any  
85 component thereof,

86 (i) Furnished to the subscriber or user by a provider of electronic  
87 communication service in the ordinary course of its business and used by the subscriber or user  
88 in the ordinary course of its business or furnished by such subscriber or user for connection to  
89 the facilities of such service and used in the ordinary course of its business; or

90 (ii) Used by a provider of electronic communication service in the  
91 ordinary course of its business or by an investigative or law enforcement officer in the ordinary  
92 course of his or her duties; or

93 (B) A hearing aid or similar device being used to correct subnormal hearing to  
94 better than normal.

95 (16) "E-mail" means an electronic message that is sent to an e-mail address and  
96 transmitted between two or more telecommunications devices, computers, or electronic devices  
97 capable of receiving electronic messages, whether or not the message is converted to hard copy  
98 format after receipt, viewed upon transmission, or stored for later retrieval. The term includes  
99 electronic messages that are transmitted through a local, regional, or global computer network.

100 (17) "E-mail address" means a destination, commonly expressed as a string of  
101 characters, to which e-mail can be sent or delivered. An e-mail address consists of a user name or  
102 mailbox, the "@" symbol, and reference to a domain.

103 (18) "E-mail service provider" means any person, including an Internet service provider,  
104 that is an intermediary in sending or receiving e-mail or that provides to end-users of the e-mail  
105 service the ability to send or receive e-mail.

106 (19) "Electronic storage" means:

107 (A) Any temporary, intermediate storage of wire or electronic communication  
108 incidental to its electronic transmission; and

109 (B) Any storage of such communication by an electronic communication service  
110 for purposes of backup protection of such communication.

111 (20) "False or misleading," when used in relation to a commercial e-mail, means that:

112 (A) The header information includes an originating or intermediate e-mail  
113 address, domain name, or Internet protocol address which was obtained by means of false or  
114 fraudulent pretenses or representations;

115 (B) The header information fails to accurately identify the computer used to  
116 initiate the e-mail;

117 (C) The subject line of the e-mail is intended to mislead a recipient about a  
118 material fact regarding the content or subject matter of the e-mail;

119 (D) The header information is altered or modified in a manner that impedes or  
120 precludes the recipient of the e-mail or an e-mail service provider from identifying, locating, or  
121 contacting the person who initiated the e-mail;

122 (E) The header information or content of the commercial e-mail, without  
123 authorization and with intent to mislead, references a personal name, entity name, trade name,  
124 mark, domain, address, phone number, or other personally identifying information belonging to a  
125 third party in such manner as would cause a recipient to believe that the third party authorized,  
126 endorsed, sponsored, sent, or was otherwise involved in the transmission of the commercial e-  
127 mail;

128 (F) The header information or content of the commercial e-mail contains false or  
129 fraudulent information regarding the identity, location, or means of contacting the initiator of the  
130 commercial e-mail; or

(G) The commercial e-mail falsely or erroneously states or represents that the transmission of the e-mail was authorized on the basis of:

(i) The recipient's prior direct consent to receive the commercial e-mail; or

(ii) A preexisting or current business relationship between the recipient and either the initiator or advertiser.

(21) "Financial instruments" includes any check, draft, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction-authorizing mechanism, or marketable security, or any computer representation thereof.

(22) "Header information" means those portions of an e-mail message which designate or otherwise identify:

(A) The sender;

(B) All recipients;

(C) An alternative return e-mail address, if any; and

(D) The names or Internet protocol addresses of the computers, systems, or other means used to send, transmit, rotate or receive the e-mail message. The term does not include either the subject line or the content of an e-mail message.

(23) "Incident" means the contemporaneous initiation in violation of this Act of one or more commercial e-mails containing substantially similar content.

(24) "Initiate" or "initiator" means to transmit or cause to be transmitted a commercial e-mail, but does not include the routine transmission of the commercial e-mail through the network or system of a telecommunications utility or an e-mail service provider.

(25) "Internet protocol address" means the unique numerical address assigned to and used to identify a specific computer or computer network that is directly connected to the Internet.

(26) "Law enforcement unit" means any law enforcement officer charged with the duty of enforcing the criminal laws and ordinances of the state or of the counties or municipalities of the state who is employed by and compensated by the state or any county or municipality of the state or who is elected and compensated on a fee basis. The term shall include, but not be limited to, members of the state [department of public safety, municipal police, county police, sheriffs, deputy sheriffs], and agents and investigators of the state [Bureau of Investigation].

(27) "Minor" means any person under the age of [18 years].

(28) "Person" means a person as defined by [insert citation] and specifically includes any limited liability company, trust, joint venture, or other legally cognizable entity.

(29) "Preexisting or current business relationship," as used in connection with the sending of a commercial e-mail, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser.

(30) "Protected computer" means any computer that, at the time of an alleged violation of any provision of this Act involving that computer, was located within the geographic boundaries of this state.

(31) "Property" includes computers, computer networks, computer programs, data, financial instruments, and services.

(32) "Recipient" means any addressee of a commercial e-mail advertisement. If an addressee of a commercial e-mail has one or more e-mail addresses to which a commercial e-mail is sent, the addressee shall be deemed to be a separate recipient for each e-mail address to which the e-mail is sent.

(33) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(34) "Routine transmission" means the forwarding, routing, relaying, handling, or storing of an e-mail message through an automatic technical process. The term shall not include the sending, or the knowing participation in the sending, of commercial e-mail advertisements.

(35) "Services" includes computer time or services or data processing services.

(36) "Use" includes causing or attempting to cause:

(A) A computer or computer network to perform or to stop performing computer operations;

(B) The obstruction, interruption, malfunction, or denial of the use of a computer, computer network, computer program, or data; or

(C) A person to put false information into a computer.

(37) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner to verify that a computer, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by unauthorized use.

(38) "Without authority" includes the use of a computer or computer network in a manner that exceeds any right or permission granted by the owner of the computer or computer network.

#### Section 4. [*Crime of Deceptive Commercial E-mail, Penalties and Venue.*]

(1) Any person who initiates a commercial e-mail that the person knew or should have known to be false or misleading that is sent from, passes through, or is received by a protected computer shall be guilty of the crime of initiation of deceptive commercial e-mail.

(2) Any person convicted of a violation of this Section shall be guilty of a [misdemeanor] and punished by a fine of not more than [\$1,000] or by imprisonment of [not more than 12 months], or both, except:

(A) Where the volume of commercial e-mail transmitted exceeded [10,000 attempted recipients in any 24 hour period];

(B) Where the volume of commercial e-mail transmitted exceeded [100,000 attempted recipients in any 30 day period];

(C) Where the volume of commercial e-mail transmitted exceeded [one million attempted recipients in any one-year period];

(D) Where the revenue generated from a specific commercial e-mail exceeded [\$1,000];

(E) Where the total revenue generated from all commercial e-mail transmitted to any e-mail service provider or its subscribers exceeded [\$50,000]; or

(F) Where any person knowingly hires, employs, uses, or permits any minor to assist in the transmission of commercial e-mail in violation of this Act, the person shall be guilty of a [felony] and punished by a fine of not more than [\$50,000] or by imprisonment of not more than [five years], or both.

(3) For the second conviction under this Section within a [five-year period], as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the person shall be guilty of a [felony] and punished by a fine of not more than [\$50,000] or by imprisonment of not more than [five years], or both. For the purpose of this subsection, the term "conviction" shall include a plea of nolo contendere.

(4) For the purpose of venue under this Act, any violation of this Act shall be considered to have been committed:

(A) In the county of the principal place of business in this state of the owner of an involved protected computer, computer network, or part thereof;

(B) In any county in which any person alleged to have violated any provision of this Act had control or possession of any proceeds of the violation or of any books, records, documents, or property which were used in furtherance of the violation;

(C) In any county in which any act was performed in furtherance of any transaction which violated this Act; and

(D) In any county from which, to which, or through which any use of an involved protected computer or computer network was made, whether by wires, electromagnetic waves, microwaves, or any other means of communication.

(5) The [Attorney General] shall have concurrent jurisdiction with the [district attorneys and solicitors-general] to conduct the criminal prosecution of violations of this Act.

Section 5. *[Standing to Assert a Civil Action for Violations of this Act.]*

(1) The following people shall have standing to assert a civil action under this Act:

(A) Any e-mail service provider whose protected computer was used to send, receive, or transmit an e-mail that was sent in violation of this Act; and

(B) A domain owner of any e-mail address to which a deceptive commercial e-mail is sent in violation of this Act, provided that the domain owner also owns a protected computer at which the e-mail was received.

(2) Any person who has standing and who suffers personal, property, or economic damage by reason of a violation of any provision of this Act may initiate a civil action for and recover the greater of:

(A) [Five thousand dollars] plus expenses of litigation and reasonable attorney's fees;

(B) Liquidated damages of [\$1,000] for each offending commercial e-mail, up to a limit of [\$2 million] per incident, plus expenses of litigation and reasonable attorney's fees; or

(C) Actual damages, plus expenses of litigation and reasonable attorney's fees.

(3) Any crime committed in violation of this Act shall be considered a separate offense.

(4) The provisions of this Act shall not be construed as limiting or precluding the application of any other provision of law which applies to any transaction or course of conduct which violates this Act.

(5) Nothing in this Act shall be construed to limit or restrict the adoption, implementation, or enforcement by an e-mail service provider or Internet service provider of a policy of declining to transmit, receive, route, relay, handle, or store certain types of e-mail.

(6) There shall be no cause of action under this Act against an e-mail service provider on the basis of its routine transmission of any commercial e-mail over its computer network.

Section 6. *[Investigations about Violations of this Act].*

(1) In any investigation of a violation of this Act involving the use of a computer in furtherance of the Act, the [Attorney General] or any [district attorney] shall have the power to administer oaths; to call any party to testify under oath at such investigation; to require the attendance of witnesses and the production of books, records, and papers; and to take the depositions of witnesses.

(2) The [Attorney General] or any such [district attorney] is authorized to issue a subpoena for any witness or a subpoena to compel the production of any books, records, or papers.

(3) In case of refusal to obey a subpoena issued under this section to any person and upon application by the [Attorney General] or [district attorney], the [superior court] in whose jurisdiction the witness is to appear or in which the books, records, or papers are to be produced may issue to that person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

(4) Any law enforcement unit, the [Attorney General], or any [district attorney] who is conducting an investigation of a violation of this Act involving the use of a computer in furtherance of the Act may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication that is in electronic storage in an electronic communications system for [180 days] or less pursuant to a search warrant issued under the provisions of [insert citation] by a court with jurisdiction over the offense under investigation. Such court may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than [180 days] as set forth in this Act.

(5) (A) Any law enforcement unit, the [Attorney General], or any [district attorney] may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service, exclusive of the contents of communications, only when any law enforcement unit, the [Attorney General], or any [district attorney]:

(i) Obtains a search warrant as provided in [insert citation]

(ii) Obtains a court order for such disclosure under this section; or

(iii) Has the consent of the subscriber or customer to such disclosure.

(6) A provider of electronic communication service or remote computing service shall disclose to any law enforcement unit, the [Attorney General], or any [district attorney] the:

(A) Name;

(B) Address;

(C) Local and long distance telephone connection records, or records of session times and durations;

(D) Length of service, including the start date, and types of service utilized;

(E) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) Means and source of payment for such service, including any credit card or bank account number of a subscriber to or customer of such service when any law enforcement unit, the [Attorney General], or any [district attorney] uses a subpoena authorized by this Act or a grand jury or trial subpoena when any law enforcement unit, the [Attorney General], or any [district attorney] complies with this Act.

(7) Any law enforcement unit, the [Attorney General], or any [district attorney] receiving records or information under this Act shall not be required to provide notice to a subscriber or customer. A provider of electronic communication service or remote computing service shall not disclose to a subscriber or customer the existence of any search warrant or subpoena issued pursuant to this Act nor shall a provider of electronic communication service or remote computing service disclose to a subscriber or customer that any records have been requested by or disclosed to any law enforcement unit, the [Attorney General], or any [district attorney] pursuant to this Act.

(8) A court order for disclosure issued pursuant to this Act may be issued by any [superior court] with jurisdiction over the offense under investigation and shall only issue such court order for disclosure if any law enforcement unit, the [Attorney General], or any [district attorney] offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of an electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. A court issuing an order pursuant to this Act, on a motion made promptly by a provider of electronic communication service or remote computing service, may quash or modify such order, if compliance with such order would be unduly burdensome or oppressive on such provider.



326 (9) (A) Any records supplied pursuant to this Act shall be accompanied by the  
327 affidavit of the custodian or other qualified witness, stating in substance each of the following:

328 (A) The affiant is the duly authorized custodian of the records or other qualified  
329 witness and has authority to certify the records;

330 (B) The copy is a true copy of all the records described in the subpoena, court  
331 order, or search warrant and the records were delivered to the attorney or the attorney's  
332 representative;

333 (C) The records were prepared by the personnel of the business in the ordinary  
334 course of business at or near the time of the act, condition, or event;

335 (D) The sources of information and method and time of preparation were such as  
336 to indicate its trustworthiness;

337 (E) The identity of the records; and

338 (F) A description of the mode of preparation of the records.

339 (10) If the business has none or only part of the records described, the custodian or other  
340 qualified witness shall so state in the affidavit.

341 (11) If the original records would be admissible in evidence if the custodian or other  
342 qualified witness had been present and testified to the matters stated in the affidavit, the copy of  
343 the records shall be admissible in evidence. When more than [one person] has knowledge of the  
344 facts, more than [one affidavit] shall be attached to the records produced.

345 (12) No later than [30 days] prior to trial, a party intending to offer such evidence  
346 produced in compliance with this subsection shall provide written notice of such intentions to the  
347 opposing party or parties. A motion opposing the admission of such evidence shall be filed  
348 within [ten days] of the filing of such notice, and the court shall hold a hearing and rule on such  
349 motion no later than [ten days] prior to trial. Failure of a party to file such motion opposing  
350 admission prior to trial shall constitute a waiver of objection to such records and affidavit.  
351 However, the court, for good cause shown, may grant relief from such waiver.

352

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

354

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

356

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

# Spyware

This Act:

- Prohibits certain uses of pop-up advertisements;
- Prohibits the purchase of pop-up advertisements that violate the Act under certain circumstances; and
- Provides for the permissive removal of certain software.

Submitted as:

Utah

H.B. 104 (enrolled version)

Status: Enacted into law in 2005.

## Suggested State Legislation

- 1           Section 1. [*Short Title.*] The Act may be cited as the “Spyware Control Act.”  
2
- 3           Section 2. [*Definitions.*] As used in this Act:  
4           (A) “Cookie” means a text file:  
5                (1) that is placed on a computer by:  
6                   (a) an interactive computer service;  
7                   (b) an Internet website; or  
8                   (c) a third party acting on behalf of:  
9                       (i) an interactive computer service; or  
10                      (ii) an Internet website; and  
11                (2) the function of which is to record information that can be read or recognized  
12 when the user of the computer later accesses a particular:  
13                   (a) Internet website;  
14                   (b) online location; or  
15                   (c) online service.  
16           (B) “Division” means the state [Division of Consumer Protection] in the state  
17 [Department of Commerce].  
18           (C) “Interactive computer service” means any information service, system, or access  
19 software provider that provides or enables computer access by multiple users to a computer  
20 server, including:  
21                (1) an Internet or online service provider; or  
22                (2) a service or system providing access to the Internet, including a system  
23 operated by a library or educational institution.  
24           (D) “Internet” is as defined in the Internet Tax Freedom Act, Pub. L. No. 105-277.  
25           (E) “Internet or online service provider” means an interactive computer service that  
26 provides software or other material that enables a person to:  
27                (1) transmit, receive, display, forward, cache, search, subset, organize, reorganize,  
28 or translate content;  
29                (2) select or analyze content; or  
30                (3) allow or disallow content.  
31           (F) “Mark” means a registered trademark, registered service mark, or registered domain  
32 name in an Internet website address that is owned, licensed, or lawfully used by a person doing  
33 business in this state.

34 (G) (1) "Spyware" means software on the computer of a user who resides in this state  
35 that:

36 (a) collects information about an Internet website at the time the Internet  
37 website is being viewed in this state, unless the Internet website is the Internet website of the  
38 person who provides the software; and

39 (b) uses the information described in subsection (G)(1)(a)  
40 contemporaneously to display pop-up advertising on the computer.

41 (2) "Spyware" does not include:

42 (a) an Internet website;

43 (b) a service operated by an Internet or online service provider accessed  
44 by a user;

45 (c) software designed and installed primarily to:

46 (i) prevent, diagnose, or resolve technical difficulties;

47 (ii) detect or prevent fraudulent activities; or

48 (iii) protect the security of the user's computer from unauthorized  
49 access or alteration;

50 (d) software or data that reports information to an Internet website  
51 previously stored by the Internet website on the user's computer, including cookies;

52 (e) software that provides the user with the capability to search the  
53 Internet; or

54 (f) software installed with the consent of a user whose primary purpose is  
55 to prevent access to certain Internet content.

56 (H) "Pop-up advertising" means material:

57 (1) offering for sale or advertising the availability or quality of a commercial  
58 property, good, or service; and

59 (2) that is displayed:

60 (a) separate from an Internet website;

61 (b) as a result of a user accessing an Internet website;

62 (c) in a manner that covers paid advertising or other content on an Internet  
63 website in a way that interferes with the user's ability to view the advertising or other content  
64 that the user attempted to originally access; and

65 (d) without the authority of the operator of the Internet website.

66 (I) "User" means the owner or authorized user of a computer.

67  
68 Section 3. [*Prohibited Conduct.*]

69 (A) A person may not display a pop-up advertisement by means of spyware if the pop-  
70 up advertisement:

71 (1) is displayed in response to a specific mark; or

72 (2) is displayed in response to a specific Internet website address;

73 (3) constitutes infringement of a registered trademark under federal or state law;

74 and

75 (4) is purchased or acquired by a person other than:

76 (a) the mark owner;

77 (b) a licensee of the mark;

78 (c) an authorized agent of the owner of the mark;

79 (d) an authorized user of the mark;

80 (e) a person advertising the lawful sale, lease, or transfer of products  
81 bearing the mark through a secondary marketplace for the sale of goods or services; or

(f) a person engaged in a fair or otherwise permissible use of a trademark or service mark under applicable trademark law.

(B) (1) A person using spyware to display a pop-up advertisement under Subsection (A) is not guilty of violating this Act if:

(a) the person requests information about the user's state of residence before sending the spyware or displaying a pop-up advertisement to the user after [May 2, 2005]; and

(b) the user indicates a residence outside this state.

(C) A person purchasing or acquiring advertising is not guilty of violating this Act if the person reasonably determines that the person delivering a pop-up advertisement by use of spyware under Subsection (A) has complied with Subsection (B)(1).

(D) A person requesting information about a user's state of residence under Subsection (B)(1) may not prompt, ask, or otherwise encourage a user to indicate a residence outside this state.

(E) No action may be brought under this Act, for the use of a mark or Internet website address that constitutes a fair or otherwise permissible use of the mark or Internet website address under federal or state law.

#### Section 4. *[Permissive Removal of Potentially Harmful Software.]*

(A) If a provider of computer software or an interactive computer service provides prior notice to a user with whom the provider has an established business relationship, that provider is not liable under the law of this state, or a political subdivision of this state, for identifying, removing, or disabling, preventing installation of a program on the user's computer that is used to, or that the provider reasonably or in good faith believes will likely be used to:

(1) violate a provision of this Act; or

(2) to engage in surreptitious collection of information concerning the user's use of the computer without the consent of the owner of the computer, except that no notice is required for:

(a) preventing the installation of a program; or

(b) in the case of an enterprise network, removing, disabling, or preventing the installation of a program on the computer of an employee.

#### Section 5. *[Private Action.]*

(A) An action for a violation of this Act may be brought by

(1) the [attorney general]; or

(2) a mark owner who:

(a) does business in this state; and

(b) is directly and adversely affected by a violation of this Act.

(B) In an action under Subsection (A), a person may:

(1) obtain an injunction against committing any further violation of this chapter; and

(2) subject to Subsection (3), recover the greater of:

(a) actual damages; or

(b) up to [\$500] for each occurrence resulting in the display of an advertisement prohibited by this Act.

(C) In an action under Subsection (A), a court may:

(1) increase the damages up to [three times] the damages allowed by Subsection (B)(2)(b) if the court finds that the defendant willfully or knowingly violated this Act; and

(2) award costs and reasonable attorney fees to a prevailing party.

131 (D) For purposes of this section, a separate violation occurs for each individual  
132 occurrence that results in the display of an advertisement described in this Act .

133 (E) An action may be brought against a person who purchases or acquires advertising  
134 described in this Act if:

135 (1) the person against whom the action is brought receives actual notice from a  
136 mark owner of an alleged violation;

137 (2) the notice required contains a detailed explanation of the alleged violation;  
138 and

139 (3) the person against whom the action is brought fails to take reasonable steps to  
140 stop the violation.

141 (F) (1) At the time of commencement of an action for a violation of this Act, the  
142 person filing the action shall serve a copy of any summons and complaint upon any person  
143 against whom an action is brought.

144 (2) A person against whom an action may be brought under this Act may  
145 intervene in an action for a violation in accordance with [insert citation] or Rule 24(c) of the  
146 Federal Rules of Civil Procedure.

147  
148 Section 6. [*Limitations on Actions.*]

149 (A) A person may not bring an action for a violation of this Act against a person other  
150 than:

151 (1) a person who displays a pop-up advertisement by means of spyware in  
152 violation of this Act; or

153 (2) a person who purchases or acquires an advertisement in violation of this Act.

154 (B) A person may not bring a class action under this Act.

155 (C) This Act does not preclude any person accused of violating this Act from asserting  
156 any fair use or other defense that is available to people alleged to have engaged in trademark  
157 infringement.

158  
159 Section 7. [*Severability.*] [Insert severability clause.]

160  
161 Section 8. [*Repealer.*] [Insert repealer clause.]

162  
163 Section 9. [*Effective Date.*] [Insert effective date.]

# Standards of Care for Hemophilia Home Care

In 2004, the New Jersey Department of Health & Senior Services (DHSS) completed implementation of a new “Standards of Care in Hemophilia Homecare Law” that was passed in 2000 (Senate Bill 786) at the urging of the Hemophilia Association of New Jersey (HANJ).

The new standards resulted from problems with the quality of hemophilia care being provided by home care companies (HCCs) in New Jersey that were identified by HANJ. Most of the problems with the quality of treatment being received by people with hemophilia were the result of insurers and payers that forced people with hemophilia to switch to HCCs with whom the insurers and payers have exclusive contracts. Often times, the new HCC that the individual with hemophilia was required to use was unfamiliar with hemophilia care, needs, and complications. Patients were required to leave HCCs that they dealt with for years with little or no time to appeal the decision. More specifically; the HCCs:

- Placed limitations on choice of hemophilia therapy and the amount of factor that an individual with hemophilia was allowed to store at home;
- Did not make ancillary supplies (i.e., needles and syringes) available;
- Did not provide factor therapies to people with hemophilia in a timely manner;
- Did not provide medically necessary preventative devices, disposal of medical waste, or nursing care; and
- Did not have trained staff to help clients with third party reimbursement issues.

Under the new standards, New Jersey now requires all insurance carriers (including individual and group health insurers, small employer plans, hospital, medical, and health services corporations, and health maintenance organizations) that provide coverage for the home treatment of hemophilia to contract with home care providers that comply with certain minimum Standards of Care (SOC) developed by the Department of Health & Senior Services in consultation with HANJ.

These Standards of Care include, but are not limited to:

- Prohibitions on substitution of blood products without prior approval of the attending physician;
- The ability to provide all brands of clotting factor products and all needed ancillary supplies;
- The ability to deliver prescribed blood products within three hours for emergent situations and maintain 24-hour on-call service to accommodate this requirement;
- Demonstrated experience with and knowledge of bleeding disorders and the management thereof;
- Demonstrated record keeping ability, and the ability to expedite product recall notifications;
- The ability to assist covered persons in obtaining third party reimbursement; and
- Providing for the proper removal and disposal of hazardous waste pursuant to State and federal law.

New Jersey also requires the state Department of Health and Senior Services to compile a list of providers who meet the minimum standards and to make the list available to insurance carriers and their policy holders. Insurers must now provide payment for laboratory services at all hemophilia treatment centers regardless of whether or not the laboratory is a participating provider with the insurer.

The draft Act in this SSL volume is based on New Jersey law.

Submitted as:  
New Jersey  
Chapter 121 of 2000  
Status: Enacted into law in 2000.

## **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act Concerning Health Care  
2 Coverage for Treatment of Hemophilia.”

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

5           a. “Blood Product” includes, but is not limited to, Factor VIII, Factor IX and  
6 cryoprecipitate; and

7           b. “Blood Infusion Equipment” includes, but is not limited to, syringes and needles.  
8

9           Section 3. [*Home Treatment For Bleeding Episodes Associated With Hemophilia:*  
10 *Required Coverage.*]

11           a. A carrier which offers a managed care plan that provides benefits or health care  
12 services, as applicable, for the home treatment of bleeding episodes associated with hemophilia,  
13 including the purchase of blood products and blood infusion equipment, shall comply with the  
14 provisions of this section. For the purpose of providing home treatment services for bleeding  
15 episodes associated with hemophilia, the carrier shall be required to contract with, and  
16 exclusively use, providers that comply with standards adopted by regulation of the [state  
17 Department of Health and Senior Services] in consultation with the [Hemophilia Association of  
18 this state]. At a minimum, the standards shall require that each provider:

19                   (1) provide services pursuant to a prescription from the covered person’s  
20 attending physician and not make any substitutions of blood products without prior approval of  
21 the attending physician;

22                   (2) provide all brands of clotting factor products in low, medium and high-assay  
23 range levels to execute treatment regimens as prescribed by a covered person’s attending  
24 physician, and all needed ancillary supplies for the treatment or prevention of bleeding episodes,  
25 including, but not limited to, needles, syringes and cold compression packs;

26                   (3) have the ability to deliver prescribed blood products, medications and nursing  
27 services within [three hours] after receipt of a prescription for an emergent situation, and  
28 maintain 24-hour on-call service to accommodate this requirement;

29                   (4) demonstrate experience with and knowledge of bleeding disorders and the  
30 management thereof;

31                   (5) demonstrate the ability for appropriate and necessary record keeping and  
32 documentation, including the ability to expedite product recall or notification systems and the  
33 ability to assist covered persons in obtaining third party reimbursement;

34                   (6) provide for proper removal and disposal of hazardous waste pursuant to State  
35 and federal law;

36                   (7) provide covered persons with a written copy of the agency’s policy regarding  
37 discontinuation of services related to loss of health benefits plan coverage or inability to pay; and

38                   (8) provide covered persons, upon request, with information about the expected  
39 costs for medications and services provided by the agency that are not otherwise covered by the  
40 covered person’s health benefits plan.

b. The [Department of Health and Senior Services] shall compile a list of providers who meet the minimum standards established pursuant to this section and shall make the list available to carriers and covered persons, upon request.

c. The [Department of Health and Senior Services], pursuant to [insert citation], shall adopt regulations to carry out the provisions of this section.

Section 4. [*Clinical Laboratory Services At Outpatient Regional Hemophilia Care Center: Required Coverage.*]

a. A carrier which offers a managed care plan shall provide payment for services to the clinical laboratory at a hospital with a State-designated outpatient regional hemophilia care center regardless of whether the hospital's clinical laboratory is a participating provider in the managed care plan, if the covered person's attending physician determines that use of the hospital's clinical laboratory is necessary because:

(1) the results of laboratory tests are medically necessary immediately or sooner than the normal return time for the carrier's participating clinical laboratory; or

(2) accurate test results need to be determined by closely supervised procedures in venipuncture and laboratory techniques in controlled environments that cannot be achieved by the carrier's participating clinical laboratory.

b. The carrier shall pay the hospital's clinical laboratory for the laboratory services at the same rate it would pay a participating clinical laboratory for comparable services.

c. The carrier shall retain the right to review all services provided pursuant to this section for medical necessity.

d. The [state Department of Health and Senior Services], pursuant to [insert citation], shall adopt regulations to carry out the provisions of this section.

Section 5. [*Coverage for Hemophilia by Individual Health Insurers.*] Notwithstanding the provisions of [insert citation] to the contrary, no policy shall be delivered, issued, executed or renewed on or after the effective date of this Act unless the policy meets the requirements of Sections 3 and 4 of this Act and the regulations adopted thereto. The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

Section 6. [*Coverage for Hemophilia Services by Group Health Insurers.*] Notwithstanding the provisions of [insert citation] to the contrary, no policy shall be delivered, issued, executed or renewed on or after the effective date of this Act unless the policy meets the requirements of Sections 3 and 4 of this Act and the regulations adopted thereto. The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

Section 7. [*Coverage for Hemophilia Services by Small Employer Plan.*] Notwithstanding the provisions of [insert citation] to the contrary, no policy or contract shall be delivered, issued, executed or renewed on or after the effective date of this Act unless the policy or contract meets the requirements of Sections 3 and 4 of this Act and the regulations adopted thereto. The provisions of this section shall apply to all policies or contracts in which the carrier has reserved the right to change the premium.

Section 8. [*Coverage for Hemophilia Services by Individual Health Policy.*] Notwithstanding the provisions of [insert citation] to the contrary, no policy or contract shall be delivered, issued, executed or renewed on or after the effective date of this Act unless the policy or contract meets the requirements of Sections 3 and 4 of this Act and the regulations adopted



thereto. The provisions of this section shall apply to all policies or contracts in which the carrier has reserved the right to change the premium.

Section 9. [*Coverage for Hemophilia Services by Hospital Service Corporations.*] Notwithstanding the provisions of [insert citation] to the contrary, no individual or group contract shall be delivered, issued, executed or renewed on or after the effective date of this Act unless the contract meets the requirements of Sections 3 and 4 of this Act and the regulations adopted thereto. The provisions of this section shall apply to all contracts in which the hospital service corporation has reserved the right to change the premium.

Section 10. [*Coverage for Hemophilia Services by Medical Services Corporation.*] Notwithstanding the provisions of [insert citation] to the contrary, no individual or group contract shall be delivered, issued, executed or renewed on or after the effective date of this Act unless the contract meets the requirements of Sections 3 and 4 of this Act and the regulations adopted thereto. The provisions of this section shall apply to all contracts in which the medical service corporation has reserved the right to change the premium.

Section 11. [*Coverage for Hemophilia Services by Health Service Corporation.*] Notwithstanding the provisions of [insert citation] to the contrary, no individual or group contract shall be delivered, issued, executed or renewed on or after the effective date of this Act unless the contract meets the requirements of Sections 3 and 4 of this Act and the regulations adopted thereto. The provisions of this section shall apply to all contracts in which the health service corporation has reserved the right to change the premium.

Section 12. [*Coverage for Hemophilia Services by HMO.*] Notwithstanding the provisions of [insert citation] to the contrary, a certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued on or after the effective date of this Act unless the health maintenance organization meets the requirements of Sections 3 and 4 of this Act and the regulations adopted thereto. The provisions of this section shall apply to all enrollee agreements in which the health maintenance organization has reserved the right to change the schedule of charges.

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

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

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

# Traffic Control Signal Preemption Devices

This Act makes it illegal to sell, possess, or use in a motor vehicle devices which change a traffic light to green or extend the duration of an already green traffic light. Exemptions are made for certain vehicles responding to emergencies.

Submitted as:

Delaware

SB 220

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 Traffic Signal  
2 Control Preemption Devices.”

3  
4           Section 2. [*Definitions.*] As used in this Act, “traffic control signal preemption device”  
5 means any device that emits a pulse of light or other signal that, when received by a detector  
6 attached to a traffic control signal, changes that traffic control signal to a green light or, if the  
7 traffic control signal is already green, extends the duration of the green light.  
8

9           Section 3. [*Installation of Devices.*] Except as provided in section 5 of this Act, a traffic  
10 control signal preemption device may not be installed on a motor vehicle, may not be transported  
11 in the passenger compartment of a motor vehicle, and may not be operated by the driver or  
12 passenger of a motor vehicle. Violation of this subsection is an unclassified misdemeanor and  
13 upon arrest the device shall be seized and those convicted shall forfeit the traffic control signal  
14 preemption device and shall also be fined not less than [\$250] nor more than [\$750] and/or be  
15 sentenced to up to [3 months] incarceration at [Level V].  
16

17           Section 4. [*Sales of Devices.*] A retailer or manufacturer may not sell a traffic control  
18 signal preemption device to any person or entity for any intended use other than operation as  
19 permitted under section 5 of this Act. Violation of this section is a [Class A misdemeanor].  
20

21           Section 5. [*Exemptions for Certain Vehicles.*] Installation of a traffic control signal  
22 preemption device is permitted on the following vehicles, and operation of the device is  
23 permitted as follows:

24           (1) Law enforcement vehicles of [state, county, or local authorities], when responding to  
25 a bona fide emergency, when used in combination with flashing lights.

26           (2) Vehicles of [local fire departments and State or federal firefighting vehicles], when  
27 responding to a bona fide emergency, when used in combination with flashing lights.

28           (3) Vehicles that are designed and used exclusively as [ambulances, paramedic or rescue  
29 vehicles], when responding to a bona fide emergency, when used in combination with flashing  
30 lights.

31           (4) Vehicles that are equipped and used exclusively as [organ transport vehicles], when  
32 the transportation is declared an emergency by a [member of the transplant team or a

representative of the organ procurement organization], when used in combination with flashing lights.

(5) Vehicles of the [state emergency management agency] when responding to a bona fide emergency, when used in combination with flashing lights.

This section does not prohibit use by motorcycles of devices designed to allow traffic control signal systems to recognize or detect motorcycles.

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

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

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

# Trafficking People and Involuntary Servitude

A legislative staff analysis about Arizona SB 1372, which became law in 2005, declares:

\*\*\*

“According to the United Nations Office on Drugs and Crime (UNODC), people smuggling and people trafficking are similar in some respects, but there are several important differences. Those who are smuggled have consented to be smuggled. Trafficking victims, according to the UNODC, “have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.” Another major difference, according to the UNODC, “is that smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.”

The United States Department of State estimates last year 600,000 to 800,000 persons were trafficked across transnational borders and 14,500 to 17,500 persons were trafficked into the United States. Additionally, the estimated total number of persons trafficked both transnationally and intra-country is between 2 and 4 million. Approximately 80 percent of trafficked persons consist of women and girls, and 70 percent of them are trafficked for sexual exploitation. According to a White House Press Release, human trafficking is one of the largest and fastest-growing sources of money for organized crime. Sex tourism, which occurs when a person visits another country to engage in a commercial sex act, is an estimated billion-dollar a year business.

According to the Protection Project, a human rights research institute, between 1990 and 2000, at least 38 separate instances of trafficking were documented in the United States, involving at least 5,500 women. U.S. law enforcement has documented girls being trafficked for sexual exploitation in Chicago, Los Angeles, Maryland, Georgia, California, New Jersey and Florida. Between 2001 and March 2004, at least 150 traffickers were charged, of which 79 included sex trafficking allegations. Convictions or guilty pleas resulted in 77 cases, and 59 of those defendants were found guilty of sex trafficking charges.

There are at least 10,000 forced laborers working in the United States, with operations concentrated in California, Florida, New York and Texas, and with some activity in Arizona, according to a Human Rights Center study.

The United States Senate passed a bipartisan Senate Resolution (S.Res. 414) (2004) urging all states to adopt anti-human trafficking legislation similar to the Department of Justice’s Model State Anti-Trafficking Criminal Statute, released this summer.”

\*\*\*

This draft Act, which is based upon Illinois law, creates the offenses of involuntary servitude, sexual servitude of a minor, and trafficking of people for forced labor and services. The Act also mandates restitution for committing such offenses. The law provides that the state Attorney General, in cooperation with the state office of the courts, state's attorneys, circuit court officials, the state department of human services, and the department of public aid shall ensure that victims of trafficking or involuntary servitude are referred to appropriate social services, federal and State public benefits programs, victim protection services and immigration assistance services, where applicable. The bill provides that state's attorneys shall refer an immigrant victim to the state attorney general for certification that the individual is a victim of trafficking or involuntary servitude so that the individual can qualify for a special immigrant visa and can have access to available federal benefits. The bill also directs the Attorney General, within 6 months

after the effective date of this Act, to determine and issue a report on how existing social services, public aid programs and victim protecting laws and rules respond to the needs of victims of trafficking and involuntary servitude.

Submitted as:

Illinois

HB1469 / Public Act 094-0009

Status: Enacted into law in 2005.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Address Trafficking  
2 People and Involuntary Servitude.”

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

5           (1) “Intimidation” has the meaning prescribed in [insert citation].

6           (2) “Commercial sexual activity” means any sex act on account of which anything of  
7 value is given, promised to, or received by any person.

8           (3) “Financial harm” includes intimidation that brings about financial loss, criminal usury,  
9 or employment contracts that violate [insert citation].

10          (4) “Forced labor or services” means labor or services that are performed or provided by  
11 another person and are obtained or maintained through:

12           (A) any scheme, plan, or pattern intending to cause or threatening to cause serious  
13 harm to any person;

14           (B) an actor's physically restraining or threatening to physically restrain another  
15 person;

16           (C) an actor's abusing or threatening to abuse the law or legal process;

17           (D) an actor's knowingly destroying, concealing, removing, confiscating, or  
18 possessing any actual or purported passport or other immigration document, or any other actual  
19 or purported government identification document, of another person;

20           (E) an actor's blackmail; or

21           (F) an actor's causing or threatening to cause financial harm to or exerting  
22 financial control over any person.

23          (5) “Labor” means work of economic or financial value.

24          (6) “Maintain” means, in relation to labor or services, to secure continued performance  
25 thereof, regardless of any initial agreement on the part of the victim to perform such type of  
26 service.

27          (7) “Obtain” means, in relation to labor or services, to secure performance thereof.

28          (8) “Services” means a relationship between a person and the actor in which the person  
29 performs activities under the supervision of or for the benefit of the actor. Commercial sexual  
30 activity and sexually-explicit performances are forms of “services” under this Section. Nothing  
31 in this provision should be construed to legitimize or legalize prostitution.

32          (9) “Sexually-explicit performance” means a live, recorded, broadcast (including over the  
33 Internet) or public act or show intended to arouse or satisfy the sexual desires or appeal to the  
34 prurient interests of patrons.

35          (10) “Trafficking victim” means a person subjected to the practices set forth in Section 3  
36 of this Act.

37  
38 Section 3. [*Criminal Provisions.*]

39 (a) Involuntary servitude. Whoever knowingly subjects, attempts to subject, or engages in  
40 a conspiracy to subject another person to forced labor or services shall be punished as follows,  
41 subject to subsection (d)

42 (1) by causing or threatening to cause physical harm to any person, is guilty of a  
43 [Class X felony];

44 (2) by physically restraining or threatening to physically restrain another person,  
45 is guilty of a [Class 1 felony];

46 (3) by abusing or threatening to abuse the law or legal process, is guilty of a  
47 [Class 2 felony];

48 (4) by knowingly destroying, concealing, removing, confiscating or possessing  
49 any actual or purported passport or other immigration document, or any other actual or purported  
50 government identification document, of another person, is guilty of a [Class 3 felony];

51 (5) by using intimidation, or using or threatening to cause financial harm to or by  
52 exerting financial control over any person, is guilty of a [Class 4 felony].

53 (b) Involuntary servitude of a minor. Whoever knowingly recruits, entices, harbors,  
54 transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or  
55 obtain by any means, another person under [18 years of age], knowing that the minor will engage  
56 in commercial sexual activity, a sexually-explicit performance, or the production of  
57 pornography, or causes or attempts to cause a minor to engage in commercial sexual activity, a  
58 sexually-explicit performance, or the production of pornography, shall be punished as follows,  
59 subject to the provisions of subsection (d):

60 (1) In cases involving a minor between the ages of [17 and 18 years], not  
61 involving overt force or threat, the defendant is guilty of a [Class 1 felony].

62 (2) In cases in which the minor had not attained the age of [17 years], not  
63 involving overt force or threat, the defendant is guilty of a [Class X felony].

64 (3) In cases in which the violation involved overt force or threat, the defendant is  
65 guilty of a [Class X felony].

66 (c) Trafficking of persons for forced labor or services. Whoever knowingly:

67 (1) recruits, entices, harbors, transports, provides, or obtains by any means, or  
68 attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person,  
69 intending or knowing that the person will be subjected to forced labor or services; or

70 (2) benefits, financially or by receiving anything of value, from participation in a  
71 venture which has engaged in an act described in violation of paragraphs (a) or (b) of this  
72 Section, subject to the provisions of subsection (d), is guilty of a [Class 1 felony].

73 (d) Sentencing enhancements.

74 (1) Statutory maximum; sexual assault and extreme violence. If the violation of  
75 this Act involves kidnapping or an attempt to kidnap, aggravated criminal sexual assault or the  
76 attempt to commit aggravated criminal sexual assault, or an attempt to commit first degree  
77 murder, the defendant is guilty of a [Class X felony].

78 (2) Sentencing considerations within statutory maximums.

79 (A) Bodily injury. If, pursuant to a violation of this Act, a victim suffered  
80 bodily injury, the defendant may be sentenced to an extended term sentence under [insert  
81 citation]. The sentencing court must take into account the time in which the victim was held in  
82 servitude, with increased penalties for cases in which the victim was held for between [180 days  
83 and one year], and increased penalties for cases in which the victim was held for more than [one  
84 year].

(B) Number of victims. In determining sentences within statutory maximums, the sentencing court should take into account the number of victims, and may provide for substantially-increased sentences in cases involving more than [10 victims].

(e) Restitution. Restitution is mandatory under this Act. In addition to any other amount of loss identified, the court shall order restitution including the greater of the gross income or value to the defendant of the victim's labor or services or the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) or the Minimum Wage Law, whichever is greater.

(f) Trafficking victim services. Subject to the availability of funds, the [Department of Human Services] may provide or fund emergency services and assistance to people who are victims of one or more offenses defined in this Act.

#### Section 4. [*Forfeitures.*]

(a) A person who commits the offense of involuntary servitude, involuntary servitude of a minor, or trafficking of people for forced labor or services under this Act shall forfeit to this state any profits or proceeds and any interest or property he or she has acquired or maintained in violation of this Act that the sentencing court determines, after a forfeiture hearing, to have been acquired or maintained as a result of maintaining a person in involuntary servitude or participating in trafficking in persons for forced labor or services.

(b) The court shall, upon petition by the [Attorney General] or [State's Attorney] at any time following sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this Section. At the forfeiture hearing the people shall have the burden of establishing, by a preponderance of the evidence, that property or property interests are subject to forfeiture under this Section.

(c) In any action brought by the people of this state under this Section, wherein any restraining order, injunction, or prohibition or any other action in connection with any property or interest subject to forfeiture under this Section is sought, the [circuit court] presiding over the trial of the person or persons charged with involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services shall first determine whether there is probable cause to believe that the person or persons so charged have committed the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services and whether the property or interest is subject to forfeiture pursuant to this Section. In order to make such a determination, prior to entering any such order, [the court] shall conduct a hearing without a jury, wherein the People shall establish that there is probable cause that the person or persons so charged have committed the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services and probable cause that any property or interest may be subject to forfeiture pursuant to this Section. The hearing may be conducted simultaneously with a preliminary hearing, if the prosecution is commenced by information or complaint, or by motion of the People, at any stage in the proceedings. [The court] may accept a finding of probable cause at a preliminary hearing following the filing of an information charging the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services or the return of an indictment by a grand jury charging the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services as sufficient evidence of probable cause as provided in item of this subsection. Upon such a finding, the [circuit court] shall enter such restraining order, injunction or prohibition, or shall take such other action in connection with any such property or other interest subject to forfeiture, as is necessary to ensure that such property is not removed from the jurisdiction of [the court], concealed, destroyed, or otherwise disposed of by the owner of that property or interest prior to a forfeiture hearing under this Section. The [Attorney General

or State's Attorney] shall file a certified copy of the restraining order, injunction, or other prohibition with the recorder of deeds or registrar of titles of each county where any such property of the defendant may be located. No such injunction, restraining order, or other prohibition shall affect the rights of any bona fide purchaser, mortgagee, judgment creditor, or other lien holder arising prior to the date of such filing. [The court] may, at any time, upon verified petition by the defendant or an innocent owner or innocent bona fide third party lien holder who neither had knowledge of, nor consented to, the illegal act or omission, conduct a hearing to release all or portions of any such property or interest that [the court] previously determined to be subject to forfeiture or subject to any restraining order, injunction, or prohibition or other action. [The court] may release such property to the defendant or innocent owner or innocent bona fide third party lien holder who neither had knowledge of, nor consented to, the illegal act or omission for good cause shown and within the sound discretion of [the court].

(d) Upon conviction of a person of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services, [the court] shall authorize the [Attorney General] to seize all property or other interest declared forfeited under this Section upon such terms and conditions as [the court] shall deem proper.

(e) All monies forfeited and the sale proceeds of all other property forfeited and seized under this Section shall be distributed as follows:

(1) [one-half] shall be divided equally among all state agencies and units of local government whose officers or employees conducted the investigation that resulted in the forfeiture; and

(2) [one-half] shall be deposited into a [Violent Crime Victims Assistance Fund] and targeted to services for victims of the offenses of involuntary servitude, involuntary servitude of a minor, and trafficking of persons for forced labor or services.

Section 5. [*Certification.*] The [Attorney General, State's Attorneys], or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this Act has begun and the individual who is a likely victim of a crime described in this Act is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims of a crime described in this Act who are under [18 years of age]. This certification shall be made available to the victim and his or her designated legal representative.

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

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

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



# Unauthorized Entry of a Critical Infrastructure

This Act establishes penalties for knowingly entering an enclosed critical infrastructure without authorization. The Act defines critical infrastructure as chemical manufacturing facilities, refineries, electrical power generating facilities, water intake structures and water treatment facilities, natural gas transmission compressor stations, LNG terminals and storage facilities, and transportation facilities, such as ports, railroad switching yards, and trucking terminals.

Submitted as:

Louisiana

Act 157

Status: Enacted into law, 2004 regular session.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act Concerning Unauthorized  
2 Entry of a Critical Infrastructure.”

3  
4           Section 2. [*Unauthorized Entry of a Critical Infrastructure.*] As used in this Act,  
5 “unauthorized entry of a critical infrastructure” is the intentional entry by a person without  
6 authority into any structure or onto any premises, belonging to another, that constitutes in whole  
7 or in part a critical infrastructure that is completely enclosed by any type of physical barrier,  
8 including but not limited to:

9                   (1) chemical manufacturing facilities;  
10                  (2) refineries;  
11                  (3) electrical power generating facilities;  
12                  (4) water intake structures and water treatment facilities;  
13                  (5) natural gas transmission compressor stations;  
14                  (6) LNG terminals and storage facilities; and  
15                  (7) transportation facilities, such as ports, railroad switching yards, and trucking  
16 terminals.

17  
18           Section 3. [*Penalties.*]

19           a. Whoever commits the crime of unauthorized entry of a critical infrastructure shall be  
20 fined not more than [\$1,000] or imprisoned with or without hard labor for not more than [six]  
21 years, or both.

22           b. Nothing in this Section shall be construed to prevent lawful assembly and peaceful  
23 and orderly petition for the redress of grievances, including but not limited to any labor dispute  
24 between any employer and its employee.

25  
26           Section 4. [*Severability.*] [Insert severability clause.]

27  
28           Section 5. [*Repealer.*] [Insert repealer clause.]

29  
30           Section 6. [*Effective Date.*] [Insert effective date.]

# Wireless Privacy

This Act prohibits wireless telephone companies from publishing the names and telephone numbers of the companies' wireless telephone customers in a publicly accessible wireless telephone database without the express consent of the customers. It prohibits those companies from charging subscribers a fee for not listing the subscribers' numbers in such a database.

Submitted as:

Georgia

House Committee on Public Utilities and Telecommunications substitute to SB 46

Status: Enacted into law in 2005.

## Suggested State Legislation

Section 1. [*Short Title.*] This Act may be cited as “An Act to Protect the Privacy of Wireless Telephone Subscribers.”

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

(A) “Service supplier” means a person or entity who provides wireless service to a telephone subscriber.

(B) “Traditional telephone directory” means a telephone directory, in any format, containing a majority of the landline telephone numbers for the given geographic coverage area for that directory.

(C) “Wireless service” means “commercial mobile service” as defined under Section 332(D) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 157, et seq.), regulations of the Federal Communications Commission, and the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and includes real-time, two-way interconnected voice service which is provided over networks which utilize intelligent switching capability and offer seamless handoff to customers. The term does not include one-way signaling service, data transmission service, non-local radio access line service, or a private telecommunications service.

(D) “Wireless telephone database” means any collection of telephone numbers that identifies the names and telephone numbers of multiple subscribers of one or more service suppliers.

Section 3. [*Criteria for Including Names and Numbers of Subscribers in Any Wireless Telephone Database.*]

(A) A service supplier or any direct or indirect affiliate or agent of a service supplier providing the name and dialing number of a subscriber for inclusion in any wireless telephone database which is or will be made publicly available shall not include the dialing number of any wireless service subscriber without first obtaining the express consent of that subscriber.

(B) The subscriber's consent shall meet all of the following requirements:

(1) It shall be recorded in oral, electronic, or written form;

(2) It shall be:

(a) A separate document that is not attached to any other document or if it is within another document shall be in a separate section of the document that includes the disclosure;

(b) A separate screen or if it is within another screen shall be in a separate section of the screen that includes the disclosure; or

(c) A sound recording of a discrete verbal confirmation;

(3) It shall be unambiguous and conspicuously disclose that the subscriber is consenting to have the subscriber's dialing number sold or licensed as part of a publicly accessible wireless telephone database; and

(4) The service supplier must disclose in an unambiguous and conspicuous manner to the wireless customer that upon consent:

(a) the customer is agreeing to have his or her wireless number accessed by anyone who utilizes the wireless telephone database; and

(b) if the customer has a rate plan that charges the customer for usage, that calls received as a result, unsolicited or otherwise, will be applied against the subscriber's planned minutes.

(C) A subscriber who provides express consent pursuant to subsection (B) of this section may revoke that consent at any time. A service supplier shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed [60 days].

(D) A subscriber shall not be charged for making the choice to not be listed in a publicly accessible wireless telephone database.

(E) This section does not apply to the provision of telephone numbers to the following parties for the purposes indicated; provided, however, that such parties shall use such telephone numbers solely for the purposes indicated and shall not transfer such telephone numbers to any third party:

(1) Any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in this paragraph;

(2) A lawful process issued under state or federal law;

(3) A service supplier providing service between service areas for the provision to the subscriber of telephone service between service areas, or third parties for the limited purpose of providing collection and billing services for the service supplier;

(4) A service supplier to effectuate a subscriber's assigned telephone number from the subscribers existing service supplier to a new service supplier;

(5) The [commission]; or

(6) A traditional telephone directory publisher, for the purposes of publishing a directory in any format, so long as the information was published before the effective date of this Act.

(F) Subsequent to the effective date of this Act, a traditional telephone directory publisher must obtain the wireless subscriber's recorded oral, electronic, or written consent for the wireless subscriber's name and wireless dialing number to be published in a traditional telephone directory.

(G) No service supplier shall sell or otherwise provide a list of wireless numbers to any telemarketer except that such numbers may be provided to a telemarketer affiliated with the service supplier for the sole purpose of facilitating communication by or on behalf of the service supplier as permitted under [insert citation].

(H) Every deliberate violation of this Act is grounds for a civil suit by the aggrieved subscriber against the service supplier responsible for the violation.

84 (I) No service supplier shall be subject to criminal or civil liability for the release of  
85 customer information as authorized by this Act.

86  
87 Section 4. [*Severability*.] [Insert severability clause.]

88  
89 Section 5. [*Repealer*.] [Insert repealer clause.]

90  
91 Section 6. [*Effective Date*.] [Insert effective date.]

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