



**SUGGESTED  
STATE  
LEGISLATION  
2007  
Volume 66**

Developed by the  
Committee on Suggested State Legislation

**The Council of State Governments**  
Lexington, Kentucky

Headquarters: (859) 244-8000  
Fax: (859) 244-8001  
E-mail: [sales@csg.org](mailto:sales@csg.org)  
Internet: [www.csg.org](http://www.csg.org)



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## **The Council of State Governments**

2760 Research Park Drive  
P.O. Box 11910  
Lexington, KY 40578-1910

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The Council of State Governments  
2760 Research Park Drive • P.O. Box 11910  
Lexington, KY 40578-1910  
(859) 244-8000  
Publication Sales Order Department  
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The Council of State Governments is the premier multibranch organization forecasting policy trends for the community of states, commonwealths and territories on a national and regional basis.

CSG alerts state elected and appointed officials to emerging social, economic and political trends; offers innovative state policy responses to rapidly changing conditions; and advocates multistate problem-solving to maximize resources and competitiveness.

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### Council Offices

#### *Headquarters:*

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

#### *Eastern:*

Alan V. Sokolow, Director  
50 Broad Street, Suite 520  
New York, NY 10004  
Phone: (212) 482-2320  
FAX: (212) 482-2344  
E-mail: [csge@csg.org](mailto:csge@csg.org)

#### *Midwestern:*

Michael H. McCabe, Director  
701 E. 22<sup>nd</sup> Street, Suite 110  
Lombard, IL 60148  
Phone: (630) 925-1922  
FAX: (630) 925-1930  
E-mail: [csgm@csg.org](mailto:csgm@csg.org)

#### *Southern*

Colleen Cousineau, Director  
P.O. Box 98129  
Atlanta, GA 30359  
Phone: (404) 633-1866  
FAX: (404) 633-4896  
E-mail: [slc@csg.org](mailto:slc@csg.org)

#### *Western:*

Kent Briggs, Director  
1107 9th Street, Suite 650  
Sacramento, CA 95814  
Phone: (916) 553-4423  
FAX: (916) 446-5760  
E-mail: [csgw@csg.org](mailto:csgw@csg.org)

#### *Washington, D.C.:*

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

# Foreword

The Council of State Governments (CSG) is pleased to bring you the **2007 print edition of *Suggested State Legislation***, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this part represents many hours of work by The Council's Committee on Suggested State Legislation, CSG Policy Task Forces, and CSG staff.

The entries in this book were selected from hundreds of submissions. 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.

The Council of State Governments  
Lexington, Kentucky

Daniel M. Sprague  
Executive Director

## Staff Acknowledgments

**\*William K. Voit, Senior Project Director**

\*Lead staff on this project

Additional staff:

Nancy J. Vickers, National Program Associate

Heather Perkins, Editorial Assistant

Eric Lancaster, Data-Entry & Clerical Assistant

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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 at 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 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 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.]

# Access to Decedents' Electronic Mail Accounts

This Act requires email service providers to give estate executors and administrators access to, or copies of, a decedent's email account. The decedent must have been domiciled in the state when they died, and estate executors and administrators must present proof of their status. Email service providers need not disclose information if doing so would violate federal law. Under the Act, an email service provider is an intermediary that gives end-users the ability to send or receive email. An electronic mail account contains all email the end-user sent or received that the provider has stored or recorded in its regular course of business. It also contains other stored or recorded electronic information directly related to the email services it provided, such as billing and payment information.

Submitted as:

Connecticut

PA 05-136

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 Access to  
2 Decedents' Electronic Mail Accounts.”  
3

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

5           (1) “Electronic mail service provider” means any person who:

6                   (A) is an intermediary in sending or receiving electronic mail, and

7                   (B) provides to end-users of electronic mail services the ability to send or receive  
8 electronic mail; and

9           (2) “Electronic mail account” means:

10                   (A) all electronic mail sent or received by an end-user of electronic mail services  
11 provided by an electronic mail service provider that is stored or recorded by such electronic mail  
12 service provider in the regular course of providing such services; and

13                   (B) any other electronic information stored or recorded by such electronic mail  
14 service provider that is directly related to the electronic mail services provided to such end-user  
15 by such electronic mail service provider, including, but not limited to, billing and payment  
16 information.  
17

18           Section 3. [*Access to Decedents' Electronic Mail.*] An electronic mail service provider  
19 shall provide, to the executor or administrator of the estate of a deceased person who was  
20 domiciled in this state at the time of his or her death, access to or copies of the contents of the  
21 electronic mail account of such deceased person upon receipt by the electronic mail service  
22 provider of:

23                   (A) a written request for such access or copies made by such executor or  
24 administrator, accompanied by a copy of the death certificate and a certified copy of the  
25 certificate of appointment as executor or administrator; or

26                   (B) an order of the court of probate that by law has jurisdiction of the estate of  
27 such deceased person.  
28

29           Section 4. [*Violating Federal Law.*] Nothing in this section shall be construed to require  
30 an electronic mail service provider to disclose any information in violation of any applicable  
31 federal law.

32  
33           Section 5. [*Severability.*] [Insert severability clause.]

34  
35           Section 6. [*Repealer.*] [Insert repealer clause.]

36  
37           Section 7. [*Effective Date.*] [Insert effective date.]

# AgrAbility

This Act directs the state department of agriculture, in cooperation with the state university extension service, to contract with a non-profit provider to establish and administer a program to help disabled farmers.

Submitted as:

Illinois

Public Act 94-216

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 AgrAbility Act.”

2

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

4           (A) “AgrAbility Unlimited” means a joint program of the [state university extension and  
5 the Easter Seals] established in accordance with the AgrAbility Program established by the U.S.  
6 Department of Agriculture.

7           (B) “Department” means the Department of Agriculture.

8           (C) “Director” means the Director of Agriculture.

9           (D) “Production agriculture” has the meaning set forth in [insert citation].

10

11           Section 3. [*AgrAbility Program Established.*]

12           (A) Subject to appropriation, the Department, in cooperation with the [state university  
13 extension], shall contract with a non-profit disability service provider or other entity that assists  
14 disabled farmers, to establish and administer an AgrAbility Program to help people who are  
15 engaged in farming or an agriculture-related activity and who have been affected by disability.

16           (B) Services provided by the AgrAbility Program shall include, but are not limited to, the  
17 following:

18                   (1) a toll-free information and referral hotline;

19                   (2) the establishment of networks with local agricultural and rehabilitation  
20 professionals;

21                   (3) the coordination of community resources;

22                   (4) the establishment of networks with local agricultural and health care  
23 professionals to help identify individuals who may be eligible for assistance and to help identify  
24 the best method of providing that assistance;

25                   (5) the provision of information on and assistance regarding equipment  
26 modification;

27                   (6) job restructuring; and

28                   (7) the provision of information on and assistance regarding the development of  
29 alternative jobs.

30           (C) In order to provide these services, the AgrAbility Program shall cooperate and share  
31 resources, facilities, and employees with [AgrAbility Unlimited, the University Extension, and  
32 the Office of Rehabilitation Services of the Department of Human Services.] The costs of the  
33 program, including any related administrative expenses from the [Department], may be paid

34 from any funds specifically appropriated or otherwise available to the [Department] for that  
35 purpose. The [Department] may pay the costs of the state AgrAbility program by making grants  
36 to the operating entity, by making grants directly to service providers, by paying reimbursements  
37 for services provided, or in any other appropriate manner.

38 (D) The [Department] has the power to enter into any agreements that are necessary and  
39 appropriate for the establishment, operation, and funding of the AgrAbility Program. The  
40 [Department] may adopt any rules that it determines necessary for the establishment, operation,  
41 and funding of the AgrAbility Program.

42  
43 Section 4. *[Eligibility.]*

44 (A) To be eligible to receive assistance under this Act, an individual must meet all of the  
45 following:

- 46 (1) be a resident of this state;  
47 (2) derive at least a portion of his or her income from production agriculture;  
48 (3) be affected by a disability; and  
49 (4) meet any additional eligibility requirements set forth by the Department, in  
50 conjunction with the [University Extension].

51 (B) A [state AgrAbility Fund] is created as a special appropriated fund within the state  
52 treasury. The [Director] shall also accept and deposit into the Fund all gifts, grants, transfers, and  
53 other amounts from any legal source, public or private, that are designated for deposit into the  
54 Fund. All interest earned on moneys in the Fund shall be deposited into the Fund.

55 (C) Subject to appropriation and as directed by the [Director], money in the [state  
56 AgrAbility Fund] may be expended for the [state AgrAbility Program] and for no other purpose.  
57 No more than [15%] of the money expended in a fiscal year for the Program may be expended  
58 for administrative costs.

59  
60 Section 5. *[Reports.]* Unless otherwise required by federal law, the [state University  
61 Extension] must provide the [Department] with a copy of any report or other document that it  
62 provides to the U.S. Department of Agriculture concerning [AgrAbility Unlimited]. The non-  
63 profit disability service provider or other entity awarded a contract must annually update the  
64 [state University Extension] and the [Department] in writing on the status of the [state  
65 AgrAbility Program].

66  
67 Section 6. *[Severability.]* [Insert severability clause.]

68  
69 Section 7. *[Repealer.]* [Insert repealer clause.]

70  
71 Section 8. *[Effective Date.]* [Insert effective date.]

# Agriculture Equipment Lighting and Reflector Standards

This Act requires certain types of agricultural equipment which are manufactured after a certain date and operated on a highway in the state to have lights and reflectors that comply with the standards set by the American Society of Agricultural Engineers. The lights and reflectors are designed to help drivers recognize the size and shape of the equipment with which they must share rural roads at night, helping to prevent both accidents and close calls. The law also calls for a review by the appropriate state regulators of any updates to the slow-moving vehicle emblem standard as they are issued, and allows manufacturers to comply with subsequent lighting and marking standards as issued.

Submitted as:

Indiana

Senate Enrolled Act 89

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 Standardize Lighting  
2 Systems for Certain Types of Agricultural Equipment.”  
3

4           Section 2. [*Lighting Systems: Agricultural Equipment Manufactured after a Certain*  
5 *Date and When Operated on a Highway.*] An implement of husbandry or a farm tractor  
6 manufactured after [June 30, 2006] must be equipped with:

- 7                   (1) head lamps;
- 8                   (2) tail lamps;
- 9                   (3) work lamps;
- 10                  (4) warning lamps;
- 11                  (5) extremity lamps;
- 12                  (6) turn indicators;
- 13                  (7) rear reflectors;
- 14                  (8) front and rear conspicuity material; and
- 15                  (9) front, rear, and side retroreflective material; that comply with the standards  
16 contained in the American Society of Agricultural Engineers (ASAE) Standard S279.11 DEC01  
17 or any subsequent standards developed by ASAE at the time the vehicle was manufactured.  
18

19           Section 3. [*Rules and Regulations Concerning Slow Moving Vehicles.*]

20           (a) The state [criminal justice institute] shall adopt rules establishing standards and  
21 specifications for the design, materials, and mounting of a standard slow moving vehicle emblem  
22 for the uniform identification of slow moving vehicles.

23           (b) When adopting rules under subsection (a), the state [criminal justice institute] shall  
24 substantially adhere to the current recommendations of the American Society of Agricultural  
25 Engineers, the American National Standards Institute, and the Society of Automotive Engineers  
26 so that the slow moving vehicle emblem may be more universally recognizable and of adequate  
27 quality.

28 (c) The [state criminal justice institute] shall adopt revisions to the standards and  
29 specifications adopted as required under subsection (a) as amendments are made to the  
30 recommendations of the American Society of Agricultural Engineers, the American National  
31 Standards Institute, and the Society of Automotive Engineers regarding the slow moving vehicle  
32 emblem.

33  
34 Section 4. [*Severability*.] [Insert severability clause.]

35  
36 Section 5. [*Repealer*.] [Insert repealer clause.]

37  
38 Section 6. [*Effective Date*.] [Insert effective date.]



# An Act Concerning the Surety of Perishable Agricultural Commodities

This Act authorizes the state department of agriculture to establish a “Perishable Agricultural Commodity Surety Fund,” for the benefit of growers of perishable agricultural commodities. This dedicated fund would be capitalized by collection of an additional annual assessment, in an amount to be determined by the department, from licensed purchasers of perishable agricultural commodities. The bill modifies the amount of the bond or other authorized surety required to be filed by licensed purchasers of perishable agricultural commodities.

The legislation provides that, in the event of a default by a licensed purchaser with respect to the purchase of perishable agricultural commodities from a grower, the state secretary of agriculture will disburse monies from the fund to the grower-creditor in such manner and amounts as may be established by the department. Monies in the fund could also be used by the department to pay for administrative expenses associated with the surety program.

The bill authorizes the secretary, with the approval of the state board of agriculture, to appoint an advisory board or council to advise the secretary with respect to the creation, operation, and administration of the surety program, and to take certain other actions to help ensure the success of the program.

Finally, the bill provides that the bond or other authorized surety to be filed by a licensed purchaser of perishable agricultural commodities must be for a sum of at least \$5,000 annually in accordance with a formula to be established by the department. However, the annual maximum of any such bond or other authorized surety to be filed would not exceed \$150,000, unless a complaint had been lodged against the licensee, in which case the total amount of all sureties required to be filed by the licensee would not exceed \$300,000.

Submitted as:

New Jersey

Chapter 61

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 Surety of  
2 Perishable Agricultural Commodities.”

3  
4           Section 2. [*License.*]

5           a. A license shall not be issued unless and until the applicant has filed a good and  
6 sufficient surety bond executed in favor of the [secretary of agriculture] in the [secretary’s]  
7 official capacity, for the benefit of all growers with whom the applicant shall transact business,  
8 by a surety company duly authorized to transact business in this state in [a sum at least equal to  
9 the estimated maximum monthly value of all agricultural commodities to be purchased or  
10 received or which may have been purchased or received by the applicant from a producer or  
11 producers during the preceding 12 months], the sum of at least [\$5,000] annually in accordance  
12 with a formula established by rule or regulation adopted by the [department of agriculture]. The  
13 bond shall be executed upon a form prescribed by the [secretary] and shall be subject to the  
14 [secretary’s] approval as to form and sufficiency. The applicant may in lieu of the bond deposit

15 with the [secretary] securities approved by the [department] in an amount equal to the sum  
16 secured by the bond required to be filed as herein provided; or may, in the alternative, obtain and  
17 deposit with the [secretary] an irrevocable letter of credit to equal the amount of the bond. The  
18 securities or letters of credit so deposited with the [secretary] shall constitute a separate fund and  
19 shall be held in trust for and applied exclusively to the payment of claims arising under the  
20 provisions of this article against the licensee making such deposit for the period for which the  
21 license is issued. All proceeds from surety bonds, money, or securities shall be distributed to the  
22 grower-creditors by the [secretary] or returned to the licensee if no claims are made. The  
23 [department of agriculture] shall establish an annual maximum for all such bonds, securities, or  
24 irrevocable letters of credit which shall not exceed [\$150,000].

25 b. The [secretary] may require a licensee to file an additional surety after a hearing on  
26 any complaint lodged against the licensee, but the total amount of all sureties filed by the  
27 licensee shall not exceed [\$300,000].

28 c. (1) Each licensee shall pay, in addition to the fee required pursuant to [insert  
29 citation], an annual assessment in such amount as may be established by rule or regulation  
30 adopted by the [department of agriculture]. All monies collected from this additional assessment  
31 shall be deposited into a ["Perishable Agricultural Commodity Surety Fund"] established  
32 pursuant to paragraph (2) of this subsection. No additional assessment paid pursuant to this  
33 paragraph shall be returned or otherwise refunded to a licensee for any reason.

34 (2) The [secretary] may establish a dedicated nonlapsing, revolving fund, to be  
35 known as the ["Perishable Agricultural Commodity Surety Fund,"] for the benefit of growers  
36 selling perishable agricultural commodities to licensees. Any interest or other investment income  
37 earned from monies deposited in the fund shall accrue and be credited to the fund. The fund shall  
38 be held by the [state treasurer] and monies therefrom shall be used by the [department of  
39 agriculture] for the purposes of paragraph (3) of this section. Monies in the fund may also be  
40 used by the [department of agriculture] to pay for expenses associated with the administration of  
41 the surety program established pursuant to this subsection.

42 (3) In the event of a default by a licensee with respect to the purchase of  
43 perishable agricultural commodities from a grower, the [secretary] shall disburse monies from  
44 the fund to the grower-creditor in such manner and amounts as may be established by rule or  
45 regulation adopted by the [department of agriculture].

46 d. To implement the provisions of this section, the [secretary], with the approval of the  
47 [board of agriculture], may:

48 (1) appoint an [advisory board or council] to advise the [secretary] with respect to  
49 the creation, operation, and administration of the surety program;

50 (2) establish procedures for the creation, operation, administration, and  
51 enforcement of the surety program;

52 (3) charge fees or other assessments to cover the reasonable costs and claims  
53 associated with the surety program; and

54 (4) adopt, pursuant to [insert citation] any rules and regulations necessary to  
55 implement this section and the surety program, which rules and regulations may include, but  
56 need not be limited to, provisions concerning the investigation of claims, compliance assurance,  
57 disbursement of monies, record-keeping, and assessment of fees and penalties in addition to  
58 those established in this Act.  
59

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

61  
62 Section 4. [*Repealer*.] [Insert repealer clause.]

63  
64 Section 5. [*Effective Date*.] [Insert effective date.]

# Bone Marrow Donor Education and Leave of Absence for State Employees Donating an Organ or Bone Marrow

This Act directs the state department of health to provide information and educational materials to the public about donating marrow through the national marrow donor program. The department must seek assistance from the national marrow donor program to establish a system to distribute materials, ensure that the materials are updated periodically, and address the education and recruitment of minority populations. The Act also directs that an executive officer in charge of a state agency may grant a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow.

Submitted as:

North Dakota

Chapter 476 of 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 Provide for Bone Marrow  
2 Donor Education and Leave of Absence for State Employees Donating an Organ or Bone  
3 Marrow.”  
4

5           Section 2. [*Bone Marrow Donor Education.*] The state [department of health] shall  
6 provide information and educational materials to the public regarding bone marrow donation  
7 through the National Marrow Donor Program. The [department] shall seek assistance from the  
8 National Marrow Donor Program to establish a system to distribute materials, ensure that the  
9 materials are updated periodically, and address the education and recruitment of minority  
10 populations.  
11

12           Section 3. [*State Employee Leave for Organ or Bone Marrow Donation.*] The executive  
13 officer in charge of a state agency may grant a leave of absence, not to exceed [twenty  
14 workdays], to an employee for the purpose of donating an organ or bone marrow. An employee  
15 may request and use donated annual leave or sick leave for the purpose of donating an organ or  
16 bone marrow. If an employee requests donations of sick leave or annual leave, but does not  
17 receive the full amount needed for the donation of an organ or bone marrow, the executive  
18 officer of the state agency may grant a paid leave of absence for the remainder of the leave up to  
19 the maximum total of [twenty workdays]. The executive officer of the state agency may require  
20 verification by a physician regarding the purpose of the leave requested and information from the  
21 physician regarding the length of the leave requested. Any paid leave of absence granted under  
22 this section may not result in a loss of compensation, seniority, annual leave, sick leave, or  
23 accrued overtime for which the employee is otherwise eligible.  
24

25           Section 4. [*Severability.*] [Insert severability clause.]  
26

27           Section 5. [*Repealer.*] [Insert repealer clause.]  
28

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

# Care of Students with Diabetes in School

This bill directs public schools to train school personnel who volunteer to be trained in the administration of glucagon in an emergency and permits students to possess and self-administer diabetes medication under certain circumstances.

Submitted as:

Utah

SB 8 (Enrolled version)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act Concerning Care of Students  
2 with Diabetes in School.”

3  
4           Section 2. [*Administration of Glucagon -- Training of Volunteer School Personnel --*  
5 *Authority to Use Glucagon -- Immunity from Liability.*]

6           (1) As used in this section, “glucagon authorization” means a signed statement from a  
7 parent or guardian of a student with diabetes:

8                   (a) certifying that glucagon has been prescribed for the student;

9                   (b) requesting that the student's public school identify and train school personnel  
10 who volunteer to be trained in the administration of glucagon; and

11                   (c) authorizing the administration of glucagon in an emergency to the student in  
12 accordance with this section.

13           (2) (a) A public school shall, within a reasonable time after receiving a glucagon  
14 authorization, train [two or more] school personnel who volunteer to be trained in the  
15 administration of glucagon, with training provided by the school nurse or another qualified,  
16 licensed medical professional.

17                   (b) A public school shall allow all willing school personnel to receive training in  
18 the administration of glucagon, and the school shall assist and may not obstruct the identification  
19 or training of volunteers under this Subsection (2).

20                   (c) The state [department of health], in cooperation with the state [superintendent  
21 of public instruction], shall design a glucagon authorization form to be used by public schools in  
22 accordance with this section.

23           (3) (a) Training in the administration of glucagon shall include:

24                           (i) techniques for recognizing the symptoms that warrant the  
25 administration of glucagon;

26                           (ii) standards and procedures for the storage and use of glucagon;

27                           (iii) other emergency procedures, including calling the emergency 911  
28 number and contacting, if possible, the student's parent or guardian; and

29                           (iv) written materials covering the information required under this  
30 Subsection (3).

31                   (b) A school shall retain for reference the written materials prepared in  
32 accordance with Subsection (3)(a)(iv).

33           (4) A public school shall permit a student or school personnel to possess or store  
34 prescribed glucagon so that it will be available for administration in an emergency in accordance  
35 with this section.

(5) (a) A person who has received training in accordance with this section may administer glucagon at a school or school activity to a student with a glucagon authorization if:

(i) the student is exhibiting the symptoms that warrant the administration of glucagon; and

(ii) a licensed health care professional is not immediately available.

(b) A person who administers glucagon in accordance with Subsection (5)(a) shall direct a responsible person to call 911 and take other appropriate actions in accordance with the training materials retained under Subsection (3)(b).

(6) School personnel who provide or receive training under this section and act in good faith are not liable in any civil or criminal action for any act taken or not taken under the authority of this section with respect to the administration of glucagon.

(7) [Insert citation] does not apply to the administration of glucagon in accordance with this section.

(8) [Insert citation] does not apply to the possession and administration of glucagon in accordance with this section.

(9) The unlawful or unprofessional conduct provisions of [insert citation] do not apply to a person licensed as a health professional under [insert citation], including a nurse, physician, or pharmacist who, in good faith, trains nonlicensed volunteers to administer glucagon in accordance with this section.

### Section 3. [*Diabetes Medication – Possession – Self-Administration.*]

(1) As used in this section, "diabetes medication" means prescription or nonprescription medication used to treat diabetes, including related medical devices, supplies, and equipment used to treat diabetes.

(2) A public school shall permit a student to possess or possess and self-administer diabetes medication if:

(a) the student's parent or guardian signs a statement:

(i) authorizing the student to possess or possess and self-administer diabetes medication; and

(ii) acknowledging that the student is responsible for, and capable of, possessing or possessing and self-administering the diabetes medication; and

(b) the student's health care provider provides a written statement that states:

(i) it is medically appropriate for the student to possess or possess and self-administer diabetes medication and the student should be in possession of diabetes medication at all times; and

(ii) the name of the diabetes medication prescribed or authorized for the student's use.

(3) The state [department of health], in cooperation with the state [superintendent of public instruction], shall design forms to be used by public schools for the parental and health care provider statements described in Subsection (2).

(4) This section does not apply to the possession and self-administration of diabetes medication in accordance with this section.

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

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

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

# Clean Drinking Water Fee

This Act redirects part of the revenue from a state clean drinking water fee from the state General Fund to a State Water Plan Fund. Of the amount going to the State Water Plan Fund, 15 percent will be used to provide on-site technical assistance for public water supply systems to aid these systems in conforming to responsible management practices and complying with regulations from the U.S. Environmental Protection Agency and rules and regulations of the state department of health and environment. The remainder will be used to renovate and protect lakes which are used directly as a source of water for public water supply systems, so long as where appropriate, watershed restoration and protection practices are in place.

The state conservation commission, in coordination with the state water office, will promulgate rules and regulations establishing the project application criteria for the money used to renovate and protect public water supply lakes.

The measure establishes a dedicated funding mechanism to help small rural water systems and municipalities address changing Safe Drinking Water Act standards, lake siltation, and the taste and odor of drinking water taste.

Submitted as:

Kansas

HB 2017

Status: Enacted into law in 2005 as an amendment to another bill.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish a Clean Drinking  
2 Water Fee.”

3  
4           Section 2. [*Clean Drinking Water Fee.*]

5           (a) On and after [insert date], there is hereby imposed a clean drinking water fee at the  
6 rate of [\$.03 per 1,000 gallons of water] sold at retail by a public water supply system and  
7 delivered through mains, lines or pipes. Such fee shall be paid, administered, enforced and  
8 collected in the manner provided for by [insert citation]. The price to the consumer of water sold  
9 at retail by any such system shall not include the amount of such fee.

10           (b)   (1) A public water supply system may elect to opt out of the fee imposed by this  
11 section by notifying, before [insert date], the state [water office] and the [department of revenue]  
12 of the election to opt out. Except as provided by subsection (b)(2), such election shall be  
13 irrevocable. Such public water supply system shall continue to pay all applicable sales tax on  
14 direct and indirect purchases of tangible personal property and services purchased by such  
15 system.

16                   (2) On and after [insert date], any public water supply system that elects to opt out  
17 of the fee imposed by subsection (a) may elect to collect such fee as provided by subsection (a)  
18 and direct and indirect purchases of tangible personal property and services by such system shall  
19 be exempt from sales tax as provided by [insert citation]. Such election shall be irrevocable.

20           (c) The [director of taxation] shall remit to the [state treasurer] in accordance with [insert  
21 citation] all money received or collected from the fee imposed pursuant to this section. Upon

receipt thereof, the [state treasurer] shall deposit the entire amount in the state treasury and credit it as follows:

(1) [5/106] of such amount shall be credited to the [state highway fund] and the remainder to the [state General Fund]; and

(2) on and after [insert date], [5/106] of such amount shall be credited to the [state highway fund] and the remaining amount shall be credited to a [state water plan fund] created by [insert citation], for use as follows:

(A) not less than [15%] shall be used to provide on-site technical assistance for public water supply systems, as defined in [insert citation], to aid such systems in conforming to responsible management practices and complying with regulations of the United States Environmental Protection Agency and rules and regulations of the state [department of health and environment]; and

(B) the remainder shall be used to renovate and protect lakes which are used directly as a source of water for such public water supply systems, so long as where appropriate, watershed restoration and protection practices are planned or in place.

(d) The [state conservation commission] shall promulgate rules and regulations in coordination with the [state water office] establishing the project application evaluation criteria for the use of such moneys under subsection (c)(2)(B).

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

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

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

# Conservation of Energy and Natural Resources in the Design of State Building Projects

This Act encourages state agencies that are constructing new, or renovating existing, buildings to use either the Green Globes or Leadership in Energy and Environmental Design (LEED) sustainable building programs to assess the environmental attributes of the structure. The legislation also creates a Legislative Task Force on Sustainable Building Design and Practices to review and advise state agencies about “green” building practices.

Submitted as:

Arkansas

Act 1770 of the 2005 Regular Session

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 Promote the Conservation of  
2   Energy and Natural Resources in the Design of State Building Projects.”  
3

4           Section 2. [*Legislative Findings.*] It is found and determined by the [Legislature] that:

5           (1) State-funded building projects have a significant impact on the environment of our  
6   State, the economy, and the health and productivity of building inhabitants;

7           (2) State government currently spends approximately [seventy million dollars] annually  
8   for electricity and natural gas consumed in state buildings, and energy expenditures have been  
9   increasing at nearly [four percent (4%)] per year over the last [ten (10) years];

10          (3) It is incumbent upon this state government to lead by example to minimize energy use  
11   and environmental impact in state buildings;

12          (4) Innovations in building science, technology, and operations are available to maximize  
13   the economic utility of state-funded building projects and reduce energy costs, while achieving  
14   the best environmental performance, and while reducing adverse impacts on the environment;  
15   and

16          (5)    (A) Incorporating principles of sustainability in building design will enhance  
17   efficient management of material resources and waste, protection of health and indoor  
18   environmental quality, reduce the longer term costs of construction and operation of state-funded  
19   buildings, and promote the use of appropriate state products in the buildings.

20                (B) In recognition of the economic, energy conservation, and environmental  
21   benefits of sustainable building design, it is in the best interest of this state to initiate a process to  
22   encourage improved building practices, to provide support and information to assist state  
23   agencies in carrying out the purposes of this Act, and to continue development of best building  
24   practices through a legislative task force to evaluate and report to the [General Assembly] the  
25   progress being made under this Act.  
26

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

28          (1) “Adaptive reuse” means the modification, to accommodate a function other than its  
29   original intent, of any building site and existing inhabited structure;



30 (2) (A) “Building project” means any inhabited physical structure and project  
31 building site.

32 (B) “Building project” does not include ancillary structures or buildings with  
33 temporary occupancy such as park restrooms, pavilions, storage facilities, or similar structures.

34 (C) “Building project” includes any structure in which any individual spends  
35 more than an hour of time within the structure, such as residences, offices, visitors’ centers,  
36 classrooms, administration buildings, etc.;

37 (3) “Grant applicant” means any individual, institution, governmental jurisdiction, or  
38 other organization recognized by the granting department or agency as qualified to apply for  
39 financial assistance from any state department, agency, or office for the purpose of planning,  
40 designing, or constructing a new or rehabilitated building;

41 (4) (A) “Green Globes” means the online environmental assessment tool as  
42 developed by the Green Building Initiative as of December 2004.

43 (B) “Green Globes” allows designers, property owners, and managers to evaluate  
44 and rate buildings against best sustainable building design and practices, and integrate principles  
45 of sustainable architecture at every stage of project delivery in order to design and construct  
46 buildings that will be energy and resource efficient, achieve operational savings, and provide  
47 healthier environments in which to live and work;

48 (5) (A) “Leadership in Energy and Environmental Design” means the following  
49 building rating systems developed by the United States Green Building Council:

50 (i) LEED-NC 2.1, as it exists on January 1, 2005;

51 (ii) LEED-EB, as it exists on January 1, 2005; or

52 (iii) LEED-CI, as it exists on January 1, 2005.

53 (B) “Leadership in Energy and Environmental Design” allows designers, property  
54 owners, and managers to evaluate and rate buildings against best sustainable building design and  
55 practices, and integrate principles of sustainable architecture at every stage of project delivery in  
56 order to design and construct buildings that will be energy- and resource-efficient, achieve  
57 operational savings, and provide healthier environments in which to live and work;

58 (6) “Newly designed construction project” means any building and its building site for  
59 which a contract has been entered into beginning [July 1, 2005], to construct a building and  
60 building site improvements as outlined in Leadership in Energy and Environmental Design or  
61 Green Globes rating systems;

62 (7) “Project building site” means all property associated with a building, including the  
63 defined legal description of the property or the defined project limits;

64 (8) (A) “Project limits” means the physical boundaries of a construction project  
65 within which all construction activity must occur.

66 (B) “Project limits” includes material and equipment storage space, lay down or  
67 prefabrication space, clearing, grubbing, and drainage improvements;

68 (9) “Project team” means the persons or individuals representing the state agency or  
69 owner, professional design consultants, and building contractor, if a contractor is determined  
70 prior to design;

71 (10) “Proposed construction project” means all building construction projects in the  
72 conceptual planning stages for which a design contract has been executed after [July 1, 2005];

73 (11) “Public and private partnerships” means any private development that uses state  
74 money to assist in the planning, design, or construction of a building project, such as a building  
75 project providing economic incentives for development;

76 (12) “Public funding” means federal or state funds that are allocated for a state building  
77 project;

(13) “Rehabilitation project” means any building project involving the modification or adaptive reuse of an existing facility in which [twenty-five percent (25%)] or more of the physical structure, façade, or interior space of a facility is being changed or modified;

(14) “State agency” means all departments, offices, boards, commissions, and institutions of the state, including the [state-supported institutions of higher education];

(15) “State building project” means any inhabited physical structure and project building site in which:

(A) A state agency secures the design or construction contract; and

(B) Public funding is used in whole or in part to design or construct the project;

and

(16) “Sustainable” means that:

(A) A building integrates building materials and methods that promote environmental quality, energy conservation, economic vitality, and social benefit through the design, construction, and operation of the built environment;

(B) A building merges sound, environmentally responsible practices into [one (1)] discipline that looks at the environmental, economic, and social effects of a building or built project as a whole; and

(C) The design encompasses the following broad topics:

(i) Efficient management of energy and water resources;

(ii) Management of material resources and waste;

(iii) Protection of environmental quality;

(iv) Protection of health and indoor environmental quality;

(v) Reinforcement of natural systems; and

(vi) Integrating the design approach.

#### Section 4. [State Standards.]

(a) If a state agency decides to pursue either the Leadership in Energy and Environmental Design certification or the Green Globes certification, the standards of this section shall apply for the purpose of this state’s building projects.

(b) (1) Use of the Leadership in Energy and Environmental Design rating system shall be with the following supplemental provisions specific to this state’s building projects:

(A) Under LEED Credit EQ 4.4, [one (1) point] shall be awarded for the use of composite wood and agrifiber products if the architect or responsible party provides appropriate documentation that the products are third-party certified as meeting the American National Standards Institute standard requirements, ANSI A208.1 for Particleboard Standard and ANSI A 2808.2 for MDF, for formaldehyde emissions or contain no added urea-formaldehyde;

(B) Under LEED Credit MR 4, [one (1) point] shall be awarded when the sum of postconsumer recycled content plus [one-half (1/2)] of the preconsumer recycled content constitutes at least [ten percent (10%)] of the total value of the materials in the project. A [second point] shall be awarded if the sum of postconsumer recycled content plus [one-half (1/2)] of the preconsumer content constitutes at least [twenty percent (20%)] of the total value of the materials in the project. The valuation is to be determined by using the LEED-NC letter template;

(C) Under LEED Credit MR 6, [one (1) point] shall also be awarded for the use of renewable, bio-based materials for [five percent (5%)] of the total value of all the products used in the project that are either residuals of or products grown or harvested under a recognized sustainable management system, such as the Forest Stewardship Council, the Sustainable Forestry Initiative Program, the American Tree Farm System, the Canadian Standards Association, the Organic Trade Association, and the Association for Bamboo in

Construction. The applicable vendor's or manufacturer's certification documentation must be provided;

(D) Under LEED Credit MR 7, [one (1) point] shall also be awarded for the use of renewable, bio-based raw materials certified in accordance with [one (1) or more] premier certification programs for environmental management for [fifty percent (50%)] of the total value of all bio-based materials and products used in the project. Certification programs include, but are not limited to, the Forest Stewardship Council, the Sustainable Forestry Initiative, the American Tree Farm System, the Canadian Standards Association, the Organic Trade Association, and the Association for Bamboo in Construction. The applicable vendor's or manufacturer's certification documentation must be provided;

(E) Under LEED Innovation in Design Credit 1.1, [one (1) point] will be awarded if [five percent (5%)] or more of the mass of all building materials used are carbon sequestering bio-based products managed under a recognized sustainable management plan; and

(F) Under LEED Innovation in Design Credit 1.2, [one (1) point] will be awarded for the use of bio-based materials derived from multiple credible certified sources supported by an environmental management system certified under the International Organization for Standardization standard ISO 14001, including the Forest Stewardship Council, the Sustainable Forestry Initiative, the American Tree Farm System, the Canadian Standards Association, the Organic Trade Association, and the Association for Bamboo in Construction. The applicable vendor's or manufacturer's certification documentation must be provided.

(2) Use of the Green Globes rating system shall be with the following supplemental provision specific to this state's building projects:

(A) An additional [fifteen (15) points] shall be awarded if [five percent (5%)] or more of the mass of all building materials used are carbon sequestering wood bio-based products; and

(B) [Fifteen (15) points] will be awarded for the use of bio-based materials derived from multiple credible certified sources supported by an environmental management system certified under the International Organization for Standardization standard ISO 14001, including the Forest Stewardship Council, the Sustainable Forestry Initiative, the American Tree Farm System, the Canadian Standards Association, the Organic Trade Association, and the Association for Bamboo in Construction. The applicable vendor's or manufacturer's certification documentation must be provided.

Section 5. [*Application to State Building Projects.*] State agencies conducting or funding a public building project or rehabilitation project are encouraged to refer to and should utilize whenever possible and appropriate the Leadership in Energy and Environmental Design or Green Globes rating systems referred to in this Act.

Section 6. [*Legislative Task Force on Sustainable Building Design and Practices.*]

(a) The Legislative Task Force on Sustainable Building Design and Practices is established to:

(1) continue to review, discuss, and advise on issues related to sustainable design and practices for buildings;

(2) monitor case study projects and evaluate performance and outcomes relevant to high performance building strategies;

(3) serve as a reference for educational resources; and

(4) ask for a review of sustainable building design and practices performed by state agencies.

(b) (1) The task force shall be composed of no more than [twenty (20)] members. The number of members shall be determined by agreement between the [Chair of the Senate Interim Committee on Public Health, Welfare, and Labor and the Chair of the House Interim Committee on Public Health, Welfare, and Labor].

(2) The [Chair of the Senate Interim Committee on Public Health, Welfare, and Labor and the Chair of the House Interim Committee on Public Health, Welfare, and Labor] shall appoint the membership pursuant to procedure agreed upon by the chairs.

(3) The task force shall include members of the [General Assembly] and members of the public.

(4) The cochair of the task force shall be members of the [General Assembly]. One (1) cochair shall be a member of the [Senate] and one (1) cochair shall be a member of the [House of Representatives].

(c) The legislative members of the task force shall be entitled to mileage and per diem at the same rate as for attending other legislative committees.

(d) The task force shall receive staff support from the [Bureau of Legislative Research].

(e) The task force shall expire on [July 1, 2007], unless continued by an Act of the [General Assembly].

Section 7. [*Emergency Clause.*] It is found and determined by the [General Assembly] of this state that there is a need to incorporate energy and natural resource conservation measures into state buildings and state-funded buildings; that this Act will assist the state to provide better use of natural resources, and that this Act is immediately necessary because of the need to incorporate standards into new construction. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall become effective on [July 1, 2005].

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

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

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

# Contact Lens Consumer Protection

This Act provides that a manufacturer of contact lenses who sells, markets, or distributes contact lenses in the state shall certify by affidavit to the attorney general that the brand of lenses are made available in a commercially reasonable and nondiscriminatory manner to prescribers, entities associated with prescribers, and alternative channels of distribution. The draft requires that only certified lenses may be sold in the state. It provides for exceptions and limitations regarding the conduct of manufacturers and provides penalties for violations.

Submitted as:

Utah

SB 176 (enrolled version)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “The Contact Lens Consumer  
2 Protection Act.”

3  
4           Section 2. [*Availability of Purchase.*] It is the policy of the state that citizens who wear  
5 contact lenses pursuant to valid prescriptions should not be unreasonably denied the opportunity  
6 to purchase their contact lenses from their retailer of choice.

7  
8           Section 3. [*Definitions.*] As used in this Act:

9           (1) "Alternative channels of distribution" means any mail order company, Internet  
10 retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard to  
11 whether it is associated with a prescriber, unless the account meets the definition of a competitor  
12 as provided for in this section.

13           (2) "Competitor" means an entity that manufactures contact lenses and sells those lenses  
14 within the state in direct competition with any other manufacturer.

15           (3) "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates, successors,  
16 and assigns.

17           (4) "Prescriber" means an individual licensed or authorized to prescribe contact lenses  
18 under this Act.

19  
20           Section 4. [*Certification of Availability of Contact Lenses -- Exceptions.*]

21           (1) Beginning [July 1, 2006], a manufacturer of contact lenses doing business in the state  
22 shall certify by affidavit to the [Attorney General] those brands of contact lenses produced,  
23 marketed, distributed, or sold by the manufacturer in the state that are made available in a  
24 commercially reasonable and nondiscriminatory manner to:

25                   (a) prescribers;

26                   (b) entities associated with prescribers; and

27                   (c) alternative channels of distribution.

28           (2) Notwithstanding any other provision of law, a manufacturer shall only sell, market, or  
29 distribute lenses in this state that have been certified under Subsection (1).

30           (3) Subsections (1) and (2) do not apply to:

31                   (a) rigid gas permeable lenses;

- 32 (b) bitoric gas permeable lenses;  
33 (c) bifocal gas permeable lenses;  
34 (d) keratoconus lenses;  
35 (e) custom soft toric lenses that are manufactured for an individual patient and are  
36 not mass marketed or mass produced; and  
37 (f) custom designed lenses that are manufactured for an individual patient and are  
38 not mass marketed or mass produced.

39 (4) Any time a brand ceases to be made available after [July 1, 2006], the manufacturer  
40 shall immediately certify that fact by affidavit to the [Attorney General].  
41

42 Section 5. [*Manufacturers' Conduct.*] Nothing in Section 4 is intended to require a  
43 manufacturer to:

- 44 (1) sell to a competitor;  
45 (2) sell contact lenses to different contact lens distributors or customers at the same price;  
46 (3) open or maintain any account for a contact lens seller who is not in substantial  
47 compliance with state and federal law regarding the sale of contact lenses;  
48 (4) decide whether a low volume account with a contact lens seller is a direct account or  
49 handled through a distributor; or  
50 (5) sell to customers in all geographic areas lenses that are being test-marketed on a  
51 limited basis in one geographic area.  
52

53 Section 6. [*Penalties For Violations.*]

- 54 (1) Knowingly and intentionally violating this Act is a [class A misdemeanor].  
55 (2) The [Attorney General] may bring a civil action or seek an injunction and a civil  
56 penalty against a person, entity, or manufacturer who violates this Act.  
57

58 Section 7. [*Severability.*] [Insert severability clause.]  
59

60 Section 8. [*Repealer.*] [Insert repealer clause.]  
61

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

# Digital or Online Learning

This Act directs the state superintendent of public education to revise the definition of a full-time equivalent student to include students who receive instruction through digital programs. “Digital programs” means electronically delivered learning that occurs primarily away from the classroom. The Act gives the superintendent of public instruction the authority to adopt rules to implement programs associated with the new definition.

The new rules must include:

- defining a full-time equivalent student or part-time student under based upon a district's estimated average weekly hours of learning activity as identified in the student's learning plan, as long as the student is found, through monthly evaluation, to be making satisfactory progress;
- requiring districts providing digital or online programs to nonresident students to establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate;
- requiring the board of directors of a school district offering, or contracting under to offer, a digital program to adopt and annually review written policies for each program and program provider and to receive an annual report on its digital learning programs from its staff;
- requiring each school district offering or contracting to offer a digital program to report annually to the superintendent of public instruction on the types of programs and course offerings, and number of students participating;
  - requiring completion of a program self-evaluation;
  - requiring documentation of the district of the student's physical residence;
  - requiring that supervision, monitoring, assessment, and evaluation of the digital program be provided by certificated instructional staff;
- requiring each school district offering courses or programs to identify the ratio of certificated instructional staff to full-time equivalent students enrolled in such courses or programs; and
- requiring reliable methods to verify a student is doing his or her own work.

Submitted as:

Washington

Chapter 356 of 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 Relating to Digital or Online
- 2 Learning.”
- 3
- 4           Section 2. [*Legislative Findings*.] The [legislature] finds that digital learning courses and
- 5 programs can provide students with opportunities to study subjects that may not otherwise be
- 6 available within the students' schools, school districts, or communities. These courses can also
- 7 meet the instructional needs of students who have scheduling conflicts, students who learn best
- 8 from technology-based instructional methods, and students who have a need to enroll in schools
- 9 on a part-time basis. Digital learning courses can also meet the needs of students and families

10 seeking nontraditional learning environments. The [legislature] further finds that the state rules  
11 used by school districts to support some digital learning courses were adopted before these types  
12 of courses were created, so the rules are not well-suited to the funding and delivery of digital  
13 instruction. It is the intent of the [legislature] to clarify the funding and delivery requirements for  
14 digital learning courses.

15  
16 Section 3. [*Revising the Definition of Full-Time Equivalent Programs.*] The  
17 [superintendent of public instruction] shall revise the definition of a full-time equivalent student  
18 to include students who receive instruction through digital programs. “Digital programs” means  
19 electronically delivered learning that occurs primarily away from the classroom. The  
20 [superintendent of public instruction] has the authority to adopt rules to implement the revised  
21 definition beginning with the [biennium] for school districts claiming state funding for the  
22 programs. The rules shall include but not be limited to the following:

23 (1) defining a full-time equivalent student under [insert citation] or part-time  
24 student under [insert citation] based upon the district's estimated average weekly hours of  
25 learning activity as identified in the student's learning plan, as long as the student is found,  
26 through monthly evaluation, to be making satisfactory progress;

27 (2) requiring districts providing programs under this section to nonresident  
28 students to establish procedures that address, at a minimum, the coordination of student counting  
29 for state funding so that no student is counted for more than [one full-time equivalent] in the  
30 aggregate;

31 (3) requiring the board of directors of a school district offering, or contracting  
32 under [insert citation] to offer, a digital program to adopt and annually review written policies for  
33 each program and program provider and to receive an annual report on its digital learning  
34 programs from its staff;

35 (4) requiring each school district offering or contracting to offer a digital program  
36 to report annually to the [superintendent of public instruction] on the types of programs and  
37 course offerings, and number of students participating;

38 (5) requiring completion of a program self-evaluation;

39 (6) requiring documentation of the district of the student's physical residence;

40 (7) requiring that supervision, monitoring, assessment, and evaluation of the  
41 digital program be provided by certificated instructional staff;

42 (8) requiring each school district offering courses or programs to identify the ratio  
43 of certificated instructional staff to full-time equivalent students enrolled in such courses or  
44 programs, and to include a description of their ratio as part of the reports required under this  
45 section;

46 (9) verifying that students are doing their own work by using reliable methods  
47 such as proctored examinations or projects, web cams or other technologies (“Proctored” means  
48 directly monitored by an adult authorized by the school district);

49 (10) requiring, for each student receiving instruction in a digital program, a  
50 learning plan that includes a description of course objectives and information on the  
51 requirements a student must meet to successfully complete the program or courses;

52 (11) allowing course syllabi and other additional information to be used to meet  
53 the requirement for a learning plan;

54 (12) requiring districts to assess the educational progress of enrolled students at  
55 least annually, using, for full-time students, the state assessment for the student's grade level and  
56 using any other annual assessments required by the school district.

57 (13) requiring part-time students be assessed at least annually.



(14) directing that part-time students who are either receiving home-based instruction under [insert citation] or who are enrolled in an approved private school under [insert citation] are not required to participate in the assessments required under [insert citation].

(15) addressing how students who reside outside the geographic service area of the school district are to be assessed;

(16) requiring each student enrolled in the program to have direct personal contact with certificated instructional staff at least weekly until the student completes the course objectives or the requirements in the learning plan. (Direct personal contact is for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities. Direct personal contact may include the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication);

(17) requiring state-funded public schools or public school programs whose primary purpose is to provide digital learning programs to receive accreditation through the state accreditation program or through the regional accreditation program;

(18) requiring state-funded public schools or public school programs whose primary purpose is to provide digital learning to provide information to students and parents on whether or not the courses or programs cover:

(a) one or more of the school district's learning goals or of the state's essential academic learning requirements; or

(b) whether they permit the student to meet one or more of the state's or district's graduation requirements; and

(19) requiring a school district that provides one or more digital courses to a student to provide the parent or guardian of the student, prior to the student's enrollment, a description of any difference between home-based education as described in [insert citation] and the enrollment option selected by the student.

(20) directing that a parent or guardian shall sign documentation attesting to his or her understanding of the difference outlined in [insert citation] of this Section.

(21) requiring the documentation required in this Section be retained by the district and made available for audit.

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

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

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

# Direct Recording Electronic Voting Machines

This Act sets standards for direct recording electronic voting machines (DREs). As of July 1, 2005, DREs must, among other things:

- produce a voter-verified paper record (VVPAT) and a voting machine-generated paper record, both with an identical unique identifier that can be matched against the other;
- permit all voters to verify their selections and make changes;
- secure the secrecy of each elector's ballot; and
- ensure accessibility to blind or visually impaired people providing an audio description.

The Act also establishes procedures for elections and primaries that use DREs. The procedures require all votes to be tallied immediately following the close of the polls. If a recanvass is needed, the procedures require a manual recount of the voter-verified paper records, establishing them as the official record if the recount does not reconcile with the electronic vote tabulation. If an elector's voter-verified paper record is damaged, the voting machine-generated paper record bearing the same identifier becomes the official record.

Within five days after each election or primary, the registrars of voters must conduct a manual audit of at least two randomly selected DREs in each assembly district. If the officials are unable to reconcile the manual count with the electronic tabulation, the secretary of the state must conduct an investigation, and may order a recanvass.

Submitted as:

Connecticut

Sections 7 and 8 of Public Act 188 of 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 Regarding Direct Recording  
2       Electronic Voting Machines.”

3  
4           Section 2. [*Voting Machine Construction.*]

5           (A) A voting machine approved by the [Secretary of the State] shall be so constructed as  
6       to provide facilities for voting for the candidates of at least [nine] different parties or  
7       organizations. It shall permit voting in absolute secrecy. It shall be provided with a lock by  
8       means of which any illegal movement of the voting or registering mechanism is absolutely  
9       prevented. Such machine shall be so constructed that an elector cannot vote for a candidate or on  
10      a proposition for whom or on which he is not lawfully entitled to vote.

11          (B) It shall be so constructed as to prevent an elector from voting for more than one  
12      person for the same office, except when they are lawfully entitled to vote for more than one  
13      person for that office, and it shall afford the voter an opportunity to vote for only as many  
14      persons for that office as the voter is by law entitled to vote for, at the same time preventing their  
15      voting for the same person twice. It shall be so constructed that all votes cast will be registered or  
16      recorded by the machine.

17          (C) Notwithstanding the provisions of subsection (B) of this section, the [Secretary of the  
18      State] may approve a voting machine which requires the elector in the polls to place their ballot

19 into the recording device and which meets the voluntary performance and test standards for  
20 voting systems adopted by the Federal Election Commission on January 25, 1990, as amended  
21 from time to time, or the Election Assistance Commission pursuant to the Help America Vote  
22 Act of 2002, P.L. 107-252, 42 USC 15481-85, as amended from time to time, whichever  
23 standards are most current at the time of the [Secretary of the State's] approval, and regulations  
24 which the [Secretary of the State] may adopt in accordance with the provisions of [insert  
25 citation], provided the voting machine shall:

26 (1) Warn the elector of overvotes,

27 (2) Not record overvotes, and

28 (3) Not record more than one vote of an elector for the same person for an office.

29 (D) Any direct recording electronic voting machine approved by the [Secretary of the  
30 State] for an election or primary held on or after [insert date], shall be so constructed as to:

31 (1) (a) Contemporaneously produce an individual, permanent, paper record  
32 containing all of the elector's selections of ballot preferences for candidates and questions or  
33 proposals, if any, prior to the elector's casting a ballot, as set forth in this subsection, and

34 (b) Produce at any time after the close of the polls a voting machine  
35 generated, individual, permanent, paper record of each such elector's selections of ballot  
36 preferences for candidates and questions or proposals, if any. Both the contemporaneously  
37 produced paper record and the voting machine generated paper record of each elector's selections  
38 of ballot preferences shall include a voting machine generated unique identifier that can be  
39 matched against each other and which preserves the secrecy of the elector's ballot as set forth in  
40 subdivision (4) of this subsection;

41 (2) Provide each elector with an opportunity to verify that the contemporaneously  
42 produced, individual, permanent, paper record accurately conforms to such elector's selection of  
43 ballot preferences, as reflected on the electronic summary screen, and to hear, if desired, an  
44 audio description of such electronic summary screen, for the purpose of having an opportunity to  
45 make any corrections or changes prior to casting the ballot. If an elector makes corrections or  
46 changes prior to casting the ballot, the voting machine shall void such contemporaneously  
47 produced paper record, contemporaneously produce another paper record containing such  
48 corrections or changes and provide the elector with another opportunity to verify ballot  
49 preferences in accordance with the provisions of this subdivision. As used in this section,  
50 "electronic summary screen" means a screen generated by a direct recording electronic voting  
51 machine that displays a summary of an elector's selections of ballot preferences for candidates  
52 and questions or proposals, if any, at an election or primary;

53 (3) Provide that a ballot shall be deemed cast on the voting machine at the time  
54 that an elector's contemporaneously produced, individual, permanent, voter-verified paper  
55 record, containing all of the elector's final selections of ballot preferences, is

56 (a) deposited inside a receptacle designed to store all such paper records  
57 produced by such voting machine on the day of the election or primary, and

58 (b) the elector's selection of ballot preferences is simultaneously  
59 electronically recorded inside the voting machine for the purpose of

60 (I) being electronically tabulated immediately after the polls are  
61 closed on the day of the election or primary, and

62 (II) producing, on such other day as required under section 8 of  
63 this Act, a voting machine generated, individual, permanent, paper record of each such elector's  
64 selections of ballot preferences for candidates and questions or proposals, if any;

65 (4) Except as otherwise provided by statute, secure the secrecy of each such  
66 elector's ballot by making it impossible for any other individual to identify the elector in  
67 relationship to such elector's selection of ballot preferences at the time that the elector

68 (a) selects ballot preferences;  
69 (b) verifies the accuracy of the electronic summary screen by comparing it  
70 to the contemporaneously produced, individual, permanent, paper record or the audio description  
71 of such electronic summary screen, prior to casting a ballot;  
72 (c) makes corrections or changes by reselecting ballot preferences and  
73 verifies the accuracy of such preferences in accordance with the provisions of subdivision (2) of  
74 this subsection prior to casting a ballot; and  
75 (d) casts the ballot; and at the time that all electors' ballots are canvassed,  
76 recanvassed or otherwise tallied to produce a final count of the vote for candidates and questions  
77 or proposals, if any, whether through the electronic vote tabulation process or through the  
78 manual count process of each elector's contemporaneously produced, individual, permanent,  
79 voter-verified paper record, as set forth in [insert citation]; and  
80 (5) (a) Be accessible to blind or visually impaired persons by providing each  
81 elector, if desired by the elector, an audio description of the contemporaneously produced  
82 individual, permanent, paper record containing all of the elector's selections of ballot  
83 preferences, in addition to an audio description of the electronic summary screen.  
84 (b) Notwithstanding the provisions of subparagraph (a) of this  
85 subdivision, the [Secretary of the State] may approve an electronic voting machine that does not  
86 comply with the provisions of said subparagraph if  
87 (I) the [Secretary] determines that there are no electronic voting  
88 machines available for purchase or lease at the time of such approval that are capable of  
89 complying with said subparagraph (a),  
90 (II) the electronic voting machine complies with the provisions of  
91 subdivisions (1) to (4), inclusive, of this subsection, and  
92 (III) the person applying to the [Secretary] for approval of the  
93 electronic voting machine agrees to include a provision in any contract for the sale or lease of  
94 such voting machines that requires such person, upon notification by the [Secretary] that  
95 modifications to such machines that would bring the machines into compliance said  
96 subparagraph (a) are available, to  
97 (i) so modify any electronic voting machines previously  
98 sold or leased under such contract in order to comply with said subparagraph (a), and  
99 (ii) provide that any electronic voting machines sold or  
100 leased after receipt of such notice comply with said subparagraph (a).

101  
102 Section 3. *[Procedures for any Election or Primary on Which one or More Direct*  
103 *Recording Electronic Voting Machines are Used.]*:

104 (A) Any elector who requires assistance by reason of blindness, disability, or inability to  
105 read or write shall have the right to request assistance inside the voting booth by a person of the  
106 elector's choice in accordance with 42 USC 1973aa-6, as amended from time to time, or [insert  
107 citation].

108 (B) A canvass of the votes shall take place inside the polling place immediately following  
109 the close of the polls on the day of the election or primary in accordance with the requirements of  
110 [insert citation]. With respect to direct recording electronic voting machines, any such canvass  
111 shall be an electronic vote tabulation of all of the votes cast on each such voting machine for  
112 each candidate and question or proposal, and the moderator shall attach a printout of such  
113 electronic vote tabulation to the tally sheets. The moderator shall then add together all of the  
114 votes recorded on each voting machine in use at the polling place, whether or not such voting  
115 machines were direct recording electronic voting machines, to produce a cumulative count  
116 within the polling place of all candidates and any questions or proposals appearing on the ballot

117 in the election or primary. Any member of the public shall have a right to be present in the  
118 polling place to observe the canvass of the votes beginning as soon as the polls are declared  
119 closed by the moderator and continuing throughout the canvass of the votes of each voting  
120 machine until the final canvass of all of the votes cast on all of the voting machines in use in the  
121 polling place are added together for each candidate and question or proposal and publicly  
122 announced and declared by the moderator.

123 (C) If a recanvass of the votes is required pursuant to [insert citation], the recanvass  
124 officials shall conduct a manual tally of the individual, permanent, voter-verified, paper records  
125 contemporaneously produced by each direct recording electronic voting machine used within the  
126 geographical jurisdiction that is subject to such recanvass. The manual tally conducted for the  
127 recanvass shall be limited to the particular candidates and questions or proposals that are subject  
128 to recanvass. If the manual tabulation of such contemporaneously produced paper records does  
129 not reconcile with the electronic vote tabulation of a particular direct recording electronic voting  
130 machine or machines, such contemporaneously produced paper records shall be considered the  
131 true and correct record of each elector's vote on such electronic voting machine or machines and  
132 shall be used as the official record for purposes of declaring the official election results or for  
133 purposes of any subsequent recanvass, tally or election contest conducted pursuant to [insert  
134 citation]. If any of the contemporaneously produced individual, permanent, voter-verified paper  
135 records are found to have been damaged in such manner as they are unable to be manually tallied  
136 with respect to the ballot positions that are the subject of the recanvass, each such damaged  
137 record shall be matched against the voting machine generated, individual, permanent, paper  
138 record produced by the voting machine bearing the identical machine-generated unique identifier  
139 as the damaged record and, in such instance, shall be substituted as the official record for  
140 purposes of determining the final election results or for purposes of any subsequent recanvass,  
141 tally or election contest.

142 (D) The [Secretary of the State] may order a discrepancy recanvass of the returns of an  
143 election or a primary for a district office, a state office or the office of elector of President and  
144 Vice-President of the United States, if the [Secretary] has reason to believe that discrepancies  
145 may have occurred that could affect the outcome of the election or primary. Any such  
146 discrepancy recanvass may be conducted of the returns in any or all voting districts in

147 (1) the district in which an election or primary is held, in the case of an election or  
148 primary for a district office, or

149 (2) the state, in the case of an election or primary for a state office or the office of  
150 elector of President and Vice-President of the United States or a presidential preference primary,  
151 whichever is applicable. As used in this subdivision, "district office" and "state office" have the  
152 same meanings as provided in [insert citation].

153 (E) Not later than [five business days] after each election in which a direct recording  
154 electronic voting machine is used, the registrars of voters or their designees, representing at least  
155 [two political parties], shall conduct a manual audit of the votes recorded on at least [two] direct  
156 recording electronic voting machines used in each [assembly district]. Not later than [five  
157 business days] after a primary in which a direct recording electronic voting machine is used, the  
158 registrar of voters of the party holding the primary shall conduct such a manual audit by  
159 designating [two or more] people, one of whom may be the registrar, representing at least [two]  
160 candidates in the primary. The machines audited shall be selected in a random drawing that is  
161 announced in advance to the public and is open to the public. All direct recording electronic  
162 voting machines used within a [house district] shall have an equal chance of being selected for  
163 the audit. The [Secretary of the State] shall determine and publicly announce the method of  
164 conducting the random drawing, before the election. The manual audit shall consist of a manual  
165 tabulation of the contemporaneously produced, individual, permanent, voter-verified, paper

records produced by each voting machine subject to the audit and a comparison of such count, with respect to all candidates and any questions or proposals appearing on the ballot, with the electronic vote tabulation reported for such voting machine on the day of the election or primary. Such audit shall not be required if a recanvass has been, or will be, conducted on the voting machine. Such manual audit shall be noticed in advance and be open to public observation. A reconciliation sheet, on a form prescribed by the [Secretary of the State], that reports and compares the manual and electronic vote tabulations of each candidate and question or proposal on each such voting machine, along with any discrepancies, shall be prepared by the audit officials, signed and forthwith filed with the town clerk of the municipality and the [Secretary of the State]. If any contemporaneously produced, individual, permanent, voter-verified, paper record is found to have been damaged, the same procedures described in subdivision (C) of this section for substituting such record with the voting machine generated, individual, permanent, paper record produced by the voting machine bearing the identical machine generated unique identifier as the damaged record shall apply and be utilized by the audit officials to complete the reconciliation. The reconciliation sheet shall be open to public inspection and may be used as prima facie evidence of a discrepancy in any contest arising pursuant to [insert citation]. If the audit officials are unable to reconcile the manual count with the electronic vote tabulation and discrepancies, the [Secretary of the State] shall conduct such further investigation of the voting machine malfunction as may be necessary for the purpose of reviewing whether or not to decertify the voting machine or machines and may order a recanvass.

(F) The individual, permanent, voter-verified, paper records contemporaneously produced by any direct recording electronic voting machine in use at an election or primary held on or after the effective date of this section shall be carefully preserved and returned in their designated receptacle in accordance with the requirements of [insert citation] and may not be opened or destroyed, except during recanvass or manual audit as set forth in this section, for [one hundred eighty days] following an election or primary that does not include a federal office, or for [twenty-two months] following an election or primary involving a federal office, pursuant to 42 USC 1974, as amended from time to time.

(G) Nothing in this section shall preclude any candidate or elector from seeking additional remedies pursuant to the state statutes.

(H) After an election or primary, any voting machine may be kept locked for a period longer than that prescribed by [insert citation], if such an extended period is ordered by either a court of competent jurisdiction or the [state elections enforcement commission]. Either a [court] or said [commission] may order an audit of such voting machines to be conducted by such persons as the [court] or said [commission] may designate.

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

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

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

# Enhancing Regenerative Medicine

This Act is designed to actively foster research and therapies in the life sciences and regenerative medicine by permitting research and clinical applications involving the derivation and use of human embryonic stem cells, including research and clinical applications involving somatic cell nuclear transfer, placental and umbilical cord cells and human adult stem cells and other mechanisms to create embryonic stem cells which are consistent with the Act.

This Act permits research and clinical applications involving the derivation and use of human embryonic stem cells, including somatic cell nuclear transfer, human adult stem cells from any source, umbilical cord cells, parthenotes and placental cells. Research involving the derivation of human embryonic stem cells through the use of human genetic material, including somatic cell nuclear transfer, parthenogenesis and other asexual means as permitted shall only be conducted upon the written approval of a duly authorized institutional review board. The written approval of the institutional review board shall include a detailed description of the research, experimentation or study to be conducted and a detailed description of the research or a copy of the protocol, all of which shall be maintained as a permanent record by the board or by the hospital or institution for which the board acts.

This Act prohibits human reproductive cloning.

Submitted as:

Massachusetts

Chapter 27 of the Acts of 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 Enhance Regenerative  
2 Medicine in the State.”

3  
4           Section 2. [*Legislative Findings*.] The [legislature] finds and declares:

5           (a) human embryonic stem cell research and other research in the life sciences and  
6 regenerative medicine present a significant chance of yielding fundamental biological knowledge  
7 from which may emanate therapies to relieve, on a large scale, human suffering from disease and  
8 injury;

9           (b) the extraordinary biomedical scientists working within institutions of higher  
10 education, research institutes, hospitals, biotechnology companies and pharmaceutical companies  
11 can contribute significantly to the welfare of mankind by performing outstanding research in  
12 these fields; and

13           (c) it shall be the policy of this state to actively foster research and therapies in the life  
14 sciences and regenerative medicine by permitting research and clinical applications involving the  
15 derivation and use of human embryonic stem cells, including research and clinical applications  
16 involving somatic cell nuclear transfer, placental and umbilical cord cells and human adult stem  
17 cells and other mechanisms to create embryonic stem cells which are consistent with this  
18 chapter. It shall further be the policy of this state to prohibit human reproductive cloning.  
19

Section 3. [*Definitions.*] As used in this Act, the following words shall have the following meanings:

“Asexual,” not initiated by the union of an oocyte and a sperm.

“Commissioner,” the [commissioner of public health].

“Council,” the [biomedical research advisory council].

“Department,” the [department of public health].

“Donated to research,” when, in the absence of valuable consideration and after fulfillment of the requirements of informed consent, the person from whose cells the pre-implantation embryo has originated or will originate gives the pre-implantation embryo or cells to another person; provided, however, that the recipient shall use the extant or resultant pre-implantation embryo in biomedical research and shall not transfer the pre-implantation embryo to a uterus or uterine-like environment or nurture the pre-implantation embryo beyond [14 days of development].

“Embryo,” an organism of the species homo-sapiens whether formed by fertilization, somatic cell nuclear transfer, parthenogenesis or other means.

“Employee,” an individual who performs services for and under the control and direction of an employer for wages or other remuneration.

“Fertilization,” the process whereby the male and female gametes unite to form an embryo.

“Gametes,” a sperm or oocyte.

“Human adult stem cell,” an undifferentiated cell found in a differentiated tissue that can renew itself and differentiate to yield specialized cell types.

“Human reproductive cloning,” the asexual genetic replication of a human being by transferring a preimplantation embryo that has been created by somatic cell nuclear transfer, parthenogenesis or by other asexual means into a uterus or uterine-like environment with the purpose of creating a human fetus or a human child.

“Informed consent,” the written consent for the donation of gametes or embryos used for research conducted pursuant to this Act which complies with the requirements of a duly appointed institutional review board, acting in accordance with 45 C.F.R. 46.116 and 45 C.F.R. 46.117, as may be amended from time to time. The written consent shall be in a language understandable to the donor or patient and shall include all reasonably foreseeable risks, discomforts or benefits of the procedure to the donor or patient.

“Institution,” a corporation, association, partnership, nonprofit organization or other legal entity which conducts research authorized by this Act.

“Institutional Review Board,” a board that has a minimum of [5 members] who meet regularly to review research applying the standards of 45 CFR Part 46 or 21 CFR Parts 50 and 56, as may be amended from time to time.

“In vitro,” in an artificial environment, referring to a process or reaction occurring therein, as in a test tube or culture medium.

“In vitro fertilization,” an assisted reproduction technique in which fertilization is accomplished outside of the human body.

“Manager,” an individual to whom an institution conducting research pursuant to this Act has given the authority to direct and control the work performance of the affected employee and who has authority to take corrective action regarding a violation of a law, rule, regulation, activity or policy.

“Parthenogenesis,” the development of an egg without fertilization.

“Parthenote,” the product of egg development without fertilization.

“Person,” a natural person, corporation, association, partnership or other legal entity.

“Placental cells,” cells obtained from the placenta.



69 “Pre-implantation embryo,” an embryo formed and maintained outside of the human  
70 body whether by in vitro fertilization, somatic cell nuclear transfer, parthenogenesis or other  
71 asexual means, which has not experienced more than [14 days of development]; provided,  
72 however, that such length of time shall not include any interval in which such development has  
73 been suspended, such as through freezing.

74 “Public body,” (a) the United States Congress, a state legislature, including the general  
75 court, or a popularly elected local government body, or a member or employee thereof; (b) a  
76 federal, state or local judiciary, or a member or employee thereof, or a grand or petit jury; (c) a  
77 federal, state or local regulatory, administrative or public agency or authority or instrumentality  
78 thereof; (d) a federal, state or local law enforcement agency, prosecutorial office or police or  
79 peace officer; or (e) a division, board, bureau, office, committee or commission of any of the  
80 public bodies described in clauses (a) to (d), inclusive.

81 “Public institutional review board,” a board established pursuant to subsection (a) of  
82 section 7 that has a minimum of [5 members] who meet regularly to review research applying the  
83 standards of 45 CFR Part 46 or 21 CFR Parts 50 and 56, as may be amended from time to time.

84 “Retaliatory action,” the unlawful discharge, suspension, demotion, harassment, denial of  
85 promotion, layoff or other adverse action taken against an employee affecting the terms and  
86 conditions of employment.

87 “Somatic cell,” a nongamete cell obtained from a living or deceased human being.

88 “Somatic cell nuclear transfer,” the technique in which the nucleus of an oocyte is  
89 replaced with the nucleus of a somatic cell.

90 “Umbilical cord cells,” cells derived from an umbilical cord.

91 “Uterine-like environment,” a replicate of the uterus used for the purpose of sustaining an  
92 embryo through birth and creating a human being.

93 “Uterus,” a uterus or fallopian tube.

94 “Valuable consideration,” any consideration beyond reimbursement for reasonable costs  
95 incurred in connection with the donation, removal, processing, disposal, preservation, quality  
96 control, storage, transplantation or implantation of gametes, embryonic or cadaveric tissue.

97  
98 Section 4. [*Research and Clinical Applications Involving the Derivation and Use of*  
99 *Human Embryonic Stem Cells*].

100 (a) Research and clinical applications involving the derivation and use of human  
101 embryonic stem cells, including somatic cell nuclear transfer, human adult stem cells from any  
102 source, umbilical cord cells, parthenotes and placental cells shall be permitted.

103 (b) Research involving the derivation of human embryonic stem cells through the use of  
104 human genetic material, including somatic cell nuclear transfer, parthenogenesis and other  
105 asexual means as permitted by subsection (a) shall only be conducted upon the written approval  
106 of a duly authorized [institutional review board]. The written approval of the [institutional review  
107 board] shall include a detailed description of the research, experimentation or study to be  
108 conducted and a detailed description of the research or a copy of the protocol, all of which shall  
109 be maintained as a permanent record by the [board] or by the hospital or institution for which the  
110 [board] acts.

111  
112 Section 5. [*Disposition of Any Pre-Implantation Embryos or Gametes Remaining After In*  
113 *Vitro Fertilization Therapy*].

114 (a) A physician or other health care provider who provides a patient with in vitro  
115 fertilization therapy shall provide the patient with timely, relevant and appropriate information  
116 sufficient to allow that patient to make an informed and voluntary choice regarding the  
117 disposition of any pre-implantation embryos or gametes remaining following treatment. The

physician shall present the patient with the options of storing, donating to another person, donating for research purposes or otherwise disposing of or destroying any unused pre-implantation embryos, as appropriate. The [department] shall prescribe and provide for use by physicians and other health care providers who treat patients for infertility through in vitro or any other process where an egg is extracted from a woman the following [2 documents], in multiple languages as determined by the [department]:

(I) an informational pamphlet, describing the procedure by which an egg is extracted from the patient, including all short and long-term potential health impacts of the procedure on the patient, any drugs or devices to be used, including whether they have received approval from the United States Food and Drug Administration, the risks involved, any discomfort and side effects that may be experienced, any alternatives which the patient may have and their attendant risks and benefits, medical treatment available to the patient should complications arise, and that the particular treatment may involve currently unforeseeable risks to the patient, embryo or fetus. A physician or other health care provider treating a woman with a procedure by which an egg is intended to be extracted shall provide the patient with this pamphlet or a legible copy thereof, and provide any other treatment information which may be specific to the patient's treatment; and

(II) an informed consent form, stating that the patient has been given and has reviewed and understands the informational pamphlet, has consulted with her physician or health care provider concerning the general procedures and her specific medical situation, and understanding the procedure, process and risks, consents to proceed with the procedure or process. The informed consent form shall also contain a "Notes" section, to be completed by the physician or health care provider. This notes section shall contain any medical information, alternative procedures, medicines, devices, considerations or risks relevant to the specific patient's informed consent to proceed and shall be completed by the physician or health care provider in each case. A physician or other health care provider treating a woman by a procedure by which an egg is intended to be extracted shall provide the patient with this form or a legible copy thereof, and shall keep a signed copy of this document in the patient's medical file.

(b) No physician or other health care provider shall provide this treatment before providing the patient with both the informational pamphlet and the informed consent form and without receiving, in return, a complete and fully executed informed consent form from the patient. A physician or other health care provider shall seek such informed consent only under circumstances that provide the prospective patient reasonable opportunity to consider whether or not to receive such treatment and that minimize the possibility of coercion or undue influence. The information that is given to the patient shall be in language understandable to the patient.

Section 6. *[Public Bank for Collecting and Storing Umbilical Cord Blood and Placental Tissue Donated by Maternity Patients at Participating Hospitals.]*

(a) The [department], in partnership with the [state university medical school], shall, subject to appropriation, establish and maintain a public bank for the purpose of collecting and storing umbilical cord blood and placental tissue donated by maternity patients at participating hospitals. The bank shall make the umbilical cord blood and placental tissue available for research in accordance with section 4.

(b) Notwithstanding any general or special law to the contrary, all licensed hospitals shall inform pregnant patients under their care, not later than [30 days from the commencement of their third trimester of pregnancy], of the opportunity to donate blood and tissue extracted from the umbilical cord and placenta following delivery of a newborn child to a publicly accessible certified umbilical cord blood and placental tissue bank. Donations to research pursuant to this Act shall be made at no expense to the donor. Nothing in this section shall

prohibit a maternity patient from donating or storing blood extracted from the umbilical cord or placenta of the patient's newborn child to a private umbilical cord blood and placental tissue bank.

(c) Institutions conducting research pursuant to this Act may reach agreement with the public umbilical cord blood and placental tissue bank to acquire donated umbilical cord blood or placental tissue for the purpose of conducting research. This agreement shall provide for the payment of the estimated expenses of the collection and storage of the donated umbilical cord blood and placental tissue, as well as any reasonable administrative fees established by the public umbilical cord blood and placental tissue bank.

(d) Nothing in this section shall obligate a hospital to collect umbilical cord blood or placental tissue if, in the professional judgment of a physician licensed to practice medicine in all its branches or of a nurse, the collection would threaten the health of the mother or child.

(e) Nothing in this section shall impose a requirement upon an employee, physician, nurse, or other medical staff to the extent that blood transfer conflicts with sincerely-held religious practices or beliefs.

(f) The [department] shall establish a program to educate maternity patients with regard to the subject of cord blood banking. This program shall provide such patients with sufficient information to make an informed decision on whether or not to participate in a private or public umbilical cord blood banking program. This program shall include, but not be limited to, an explanation of the difference between public and private umbilical cord blood banking, the medical process involved in umbilical cord blood banking, the current and potential future medical uses of stored umbilical cord blood, the benefits and risks involved in banking umbilical cord blood, and the availability and cost of public or private umbilical cord blood banks.

#### Section 7. *[Public Institutional Review Board.]*

(a) The [state university medical school] shall establish and maintain, subject to appropriation, a [public institutional review board]. The [public institutional review board] shall be available on an ongoing basis to an institution having not more than [50 full-time employees] for review of that institution's experimentation, study and procedures for the purposes of conducting research pursuant to this Act.

(b) An institution may access the services of the [public institutional review board] only through a written instrument of contract. The contract shall include the payment to the [public institutional review board] of a reasonable fee, calculated pursuant to a methodology approved by the [state university medical school] to account for the costs of operating and maintaining the [public institutional review board], and the relevant portion of those costs attributable to the particular institution receiving the benefit.

#### Section 8. *[Creation or Use of Pre-Implantation Embryos in Relation to Human Embryonic Stem Cell Research to the Extent that Such Research Conflicts with the Religious Practices or Beliefs of The Employee.]*

(a) No employee shall be required to conduct scientific research, experimentation or study that involves the creation or use of pre-implantation embryos in relation to human embryonic stem cell research to the extent that such research conflicts with the sincerely-held religious practices or beliefs of the employee.

(b) An institution conducting research pursuant to this Act, or an institution or person with whom an institution conducting research pursuant to this Act has a contractual relationship, shall not take any retaliatory action against its employee because the employee:

(I) discloses or threatens to disclose to a manager or a public body an activity, policy or practice of the institution conducting research pursuant to this Act, or of another

institution conducting such research with whom the employee's institution has a contractual relationship, that the employee reasonably believes is in violation of this Act; or

(II) objects to, or refuses to participate in, any activity, policy or practice that the employee reasonably believes is in violation of this Act.

(c) The protection against retaliatory action shall not apply to the public disclosure of confidential or proprietary information, trade secrets or other confidential materials unless such confidential disclosure is made by the employee directly to and exclusively with the [office of the attorney general] or the [department]. The [department] shall not publicly disclose any such confidential information but shall submit the information to the [attorney general] forthwith.

(d) Any employee aggrieved by a violation of this section may, within [2 years], file a complaint with the [attorney general], who may bring an action in the name of the [state] against the institution alleged to have violated this section. Within [90 days] of receiving a complaint, the [attorney general] shall notify the complainant in writing as to whether he intends to bring an action in the name of the [state]. If the [attorney general] declines to bring an action based on the complaint filed, the aggrieved employee may, within [1 year], institute a civil action in the [superior court]. A party to that action may claim a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided in this Act. The court may:

(I) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violation of this section;

(II) reinstate the employee to the same position held before the retaliatory action, or to an equivalent position;

(III) reinstate full fringe benefits and seniority rights to the employee;

(IV) compensate the employee for [3 times the lost wages, benefits and other remuneration, and interest thereon]; and

(V) order payment by the institution of reasonable costs, and attorneys' fees.

(e) In any action brought by an employee under subsection (d), if the court finds the action was without basis in law or in fact, the court may award reasonable attorneys' fees and court costs to the institution.

(f) An employee shall not be assessed attorneys' fees under subsection (e) if the employee moves to dismiss the action against the institution or files for a dismissal, within a reasonable time after determining that the institution would not be found liable for damages.

(g) Nothing in this section shall diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation, or under any collective bargaining agreement or employment contract, but the institution of a private action in accordance with subsection (d) shall be deemed a waiver by the plaintiff of the rights and remedies available to him, for the actions of the institution, under any other contract, collective bargaining agreement, state law, rule or regulation or under the common law.

(h) An institution shall publicly display notices reasonably designed to inform its employees of their protection and obligations under this section, and use other appropriate means to keep its employees so informed. Each notice posted pursuant to this subsection shall include the name of the person who has been designated by the institution to receive written notification of a suspected violation of this Act.

#### Section 9. [*Human Reproductive Cloning.*]

(a) Human reproductive cloning is hereby prohibited. No person shall knowingly attempt, engage in, or assist in human reproductive cloning. No person shall knowingly purchase, sell, transfer or otherwise obtain human embryonic, gametic or cadaveric tissue for the purpose of human reproductive cloning.

(b) No person shall knowingly create an embryo by the method of fertilization with the sole intent of donating the embryo for research. Nothing in this section shall prohibit the creation of a pre-implantation embryo by somatic cell nuclear transfer, parthenogenesis or other asexual means for research purposes.

(c) No person shall knowingly and for valuable consideration purchase, sell, transfer or otherwise obtain human embryos, gametes or cadaveric tissue for research purposes. Nothing in this section shall prohibit a person from banking or donating their gametes for personal future use, or from donating their gametes to another person or from donating their gametes for research. Nothing in this Act shall prohibit or regulate the use of in vitro fertilization for reproductive purposes.

(d) A person who is found to have knowingly violated subsection (a) shall be punished by imprisonment in a jail or house of correction for [not less than 5 years nor more than 10 years or by imprisonment in the state prison for not more than 10 years or by a fine of not more than \$1,000,000]. In addition to such penalty, and at the discretion of the court, a person who is found to have knowingly violated this section and derives a personal financial profit from such violation may be ordered to [pay all or part of any such profits to the state as damages].

(e) A person who is found to have knowingly violated subsection (b) or subsection (c) shall be punished by imprisonment in a jail or house of correction for [not less than 1 year nor more than 2 years or by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$100,000].

#### Section 10. [*Biomedical Research Advisory Council*.]

(a) There shall be a [biomedical research advisory council]. The [council] shall consist of [15 members], [1 of whom shall be the secretary of health and human services, or his designee; 1 of whom shall be the commissioner of public health, or his designee; 1 of whom shall be a scientist designated by the dean of the state university medical school, who shall have experience in biomedical research in the field of cell differentiation, nuclear programming, tissue formation and regeneration, stem cell biology, developmental biology, regenerative medicine or a related field; 1 of whom shall be a physician licensed to practice in this state who shall be appointed by the governor; 1 of whom shall be designated by the dean of the state university medical school who shall have experience in medical ethics; 4 persons to be appointed by the president of the senate, 1 of whom shall be a scientist with experience in biomedical research in the field of cell differentiation, nuclear programming, tissue formation and regeneration, stem cell biology, developmental biology, regenerative medicine or a related field; 1 of whom shall be a physician licensed to practice in the commonwealth; 1 of whom shall have experience in medical ethics; and 1 of whom shall be a member of the state Bar with a background in legal issues related to biotechnology, stem cell research, in vitro fertilization or health law; 1 person to be appointed by the minority leader of the senate who shall be a member of the public; 4 persons to be appointed by the speaker of the house, 1 of whom shall be a scientist with experience in biomedical research in the field of cell differentiation, nuclear programming, tissue formation and regeneration, stem cell biology, developmental biology, regenerative medicine or a related field; 1 of whom shall be a member of the state Bar and have a background in legal issues related to biotechnology, stem cell research, in vitro fertilization or health law; 1 of whom shall be a representative of the {Biotechnology Center of Excellence Corporation}, and 1 of whom shall be a person with a background in economic development; 1 person to be appointed by the minority leader of the house who shall be a member of the public]. In making appointments pursuant to this Act the appointing authorities shall give due consideration to the ethnic and racial composition of the [council].

(b) The [council] shall make recommendations to the [general court] and the [governor] regarding proposed changes to this Act, or any other state law, or any regulations promulgated pursuant thereto, necessary to promote biotechnology in this state.

(c) The [council] shall investigate the implementation of this Act and the conduct of research, including but not limited to, issues relative to the age, race, ethnicity and insurance status of the donor. The investigation shall also include an analysis of ways to encourage disproportionately impacted populations' participation in, and benefit from, research conducted pursuant to this Act. Nothing in this section shall authorize the [council] to obtain individually identifiable patient or donor study participant information.

(d) The [council] shall submit an annual report of its findings, conclusions, proposals and recommendations as provided in subsections (b) and (c) not later than [December 31]. The report shall also include an update on the current state of pre-implantation embryo research relating to human embryonic stem cell research in this state. The report shall be submitted to the [governor, the president of the senate, the speaker of the house, the house and senate chairs of the joint committee on economic development and emerging technologies, the clerk of the senate and the clerk of the house].

(e) The [council] shall meet periodically, but not less than [twice each year]. All meetings shall be public.

(f) The [council] shall keep a public record of all meetings, votes and other business.

(g) Members of the [council] shall be appointed for terms of [3 years] or until a successor is appointed. Members shall be eligible to be reappointed and shall serve without compensation. A chairman of the council shall be elected annually from the membership. The [department] shall provide administrative support to the [council] as requested.

(h) In the event of a vacancy on the [council], the original appointing authority shall, within [60 days of the occurrence of a vacancy], appoint a new member consistent with subsection (a) to fulfill the remainder of the unexpired term.

#### Section 11. *[Regulations.]*

(a) The [department] shall enforce this Act and may adopt regulations, in a manner consistent with this Act, and with the advice of the [biomedical research advisory council], relating to the administration and enforcement of this Act; but the [department] shall not propose or implement any regulation or rule which would have the purpose or effect of inhibiting, delaying or otherwise obstructing research or clinical applications proposed or undertaken pursuant to subsection (a) or (b) of section 4. The regulations shall be consistent with the findings and declarations of the [legislature] as stated in section 2.

(b) Before the adoption, amendment or repeal of any regulation pursuant to this Act, the [department] shall hold a public hearing in accordance with this [insert citation]. Notwithstanding [insert citation], at least [90 days] before a public hearing the [department] shall:

(I) publish notice of its proposed action in at least [1 major newspaper] in the following metropolitan areas [insert areas], in at least [1 biotechnology newspaper or trade journal], in at least [1 medical journal published in the state], and in such additional newspapers or trade, industry, or professional publications as the [department] may select;

(II) notify any institution holding a certificate of registration issued pursuant to this Act;

(III) notify any person, institution or group which has filed a written request pursuant to this section for notice of any regulatory proceeding; such a request shall be renewed at least [annually], and delivering or mailing a copy of the notice to the last known address of

the person, institution or group required to be notified shall constitute sufficient notice under this section;

(IV) file a copy of the notice with the [joint committee on economic development and emerging technologies] and the [joint committee on state administration and regulatory oversight]; and

(V) file a copy of the notice with the [state secretary]. The notice required by this section shall refer to the statutory authority pursuant to which the regulatory action is predicated; and shall specify the date, time and place of the public hearing, the manner in which data, views or arguments may be submitted to the agency by any interested person, institution, or group, and the express terms or the substance of the proposed regulations.

(c) No regulation promulgated by the [department] pursuant to this Act shall be exempt from the hearing requirement or be considered an emergency regulation pursuant to [insert citation].

(d) The [joint committee on state administration and regulatory oversight of the general court], in this subsection called the [committee], shall have authority to review regulations proposed or adopted pursuant to this Act. The [committee] shall consult with the [joint committee on economic development and emerging technologies] in performing this review. The [committee] may hold public hearings concerning a proposed or existing regulation and may submit to the [department] comments concerning the merit and appropriateness of the regulations to be promulgated and an opinion whether the regulations are authorized by, and consistent with, this Act. The [department] shall respond in writing within [10 days] to the [committee's] written questions relevant to the [committee's] review of a proposed or existing regulation. The [department] shall provide to the [committee], without charge, copies of all public records in the agency's custody relating to the regulation or action in question within [10 days] of a request by the [committee]. The [committee] may issue a report with proposed changes to a proposed or existing regulation and shall transmit this report to the [department]. If the [department] does not adopt the proposed changes contained in the [committee's] report, the [department] shall notify the [committee] in writing of the reasons why it did not adopt the changes either at the time it adopts a proposed regulation or within [21 days] of receiving the [committee's] report on an existing regulation.

(e) The [superior court department of the trial court] shall have jurisdiction to consider any claim challenging the validity of a regulation issued pursuant to this section. Any institution holding a certificate of registration to conduct research pursuant to this Act, and aggrieved by a regulation promulgated by the [department], may bring a civil action presenting its claim. In any such civil action, in determining whether a preliminary injunction shall issue, the [court] shall consider any regulation that would have the effect of prohibiting or discontinuing research authorized pursuant to this Act to be an irreparable injury to the institution bringing the claim.

(f) The [department] shall issue a certificate of registration authorizing an institution to conduct human embryonic stem cell research within [30 days] after submission of an application from the applicant institution, if the institution:

(I) pays a fee of not more than [\$200] to the [department]; and

(II) provides documentation to the [department] demonstrating that the institution has an [institutional review board] or provides a copy of a contract between the institution and either a private or public institutional review board which shall review the institution's experimentation, study and procedures involving human embryonic stem cell research. Any institution which submits an application and meets the requirements for a certificate of registration pursuant to this section shall not have the certificate of registration unreasonably withheld. A certificate may be withheld if the [department] determines that the applicant institution has violated subsection (m).

(g) No research authorized pursuant to subsection (b) of section 4 shall be conducted at any institution that does not have a valid certificate of registration issued pursuant to this section.

(h) All certificates of registration issued in accordance with this section shall be valid for a term of [3 years] from the date of issuance. The [department] shall notify all holders of certificates of registration under this section at least [60 days] before the expiration of the certificate of registration. If an institution that is issued a certificate of registration under this Act makes timely and sufficient application for a renewal, its certificate of registration shall not expire until its application has been finally determined by the [department]. Before the assessment of a civil administrative penalty pursuant to this section, the [department] shall notify the holder of the certificate of registration that it has [90 days] after the date of expiration within which to submit an application for renewal during which time the [department] shall waive any applicable penalties pursuant to this subsection.

(i) An institution holding a certificate of registration shall submit an annual report to the [department] providing a summary of the research approved during each calendar year and a statement representing that the research was reviewed in accordance with this Act, if applicable.

(j) The [department] shall certify its receipt of annual reports from institutions holding a certificate of registration.

(k) The [department] shall keep an official record of the names of all institutions holding a certificate of registration and of all money received and disbursed by it. A duplicate of this record shall be open for public inspection in the [office of the state secretary].

(l) The [department] shall keep an official record of anyone convicted of violating subsection (a), (b) or (c) of section 9. The [department] shall annually send notice of the names of those violators to all institutions issued a certificate of registration. No such institution shall knowingly employ a person whom the department has identified as having been convicted of a violation of said subsection (a), (b) or (c) of said section 9.

(m) The [department] shall revoke any certificate of registration, shall not renew such certificate and shall deny any future application for a certificate of registration for any institution that knowingly and willfully permits or assists a violation of subsection (a) of section 9, whether or not the violation is committed by an employee of that institution.

(n) (1) The [department] may discipline an institution conducting research pursuant to this Act if it is determined, after an opportunity for an adjudicatory proceeding conducted pursuant to [insert citation], that the institution has:

- (I) violated subsection (b) of section 4;
- (II) violated section 5;
- (III) knowingly and willfully permitted or assisted a violation of subsection (b) or (c) of section 9;
- (IV) knowingly violated subsection (f) of this section, if applicable;
- (V) failed to submit an annual report to the [department] pursuant to subsection (i);
- (VI) employed a person identified in the annual notice by the [department] pursuant to subsection (l); or
- (VII) knowingly implemented a decision by an [institutional review board] to authorize research prohibited by this Act.

(2) The [department] may, after an opportunity for an adjudicatory proceeding conducted pursuant to [insert citation], upon determination that an institution conducting research pursuant to this Act has violated this subsection undertake the following actions:

- (I) for violating (n)(1)(III) of this subsection -- revoke or refuse to renew such certificate of registration or assess upon the holder a civil administrative penalty not to



exceed [\$250,000] and may require the holder to submit to additional oversight as a condition or retention, or future consideration of reinstatement of the certificate of registration;

(II) for violating clause (n)(1),(I), (II), (IV),(VI) or (VII)), assess upon the holder a civil administrative penalty not to exceed [\$100,000]; or

(III) for a first violation of (n)(I)(V)(1) censure a holder; and for each subsequent violation of (n)(I)(V), suspend such certificate of registration until compliance with subsection (I), and impose a civil administrative penalty, as determined by the [department] not to exceed [\$1,000].

(3) An institution sanctioned under this subsection may be subject to such other sanctions or punishment as may be provided by law. The [department] shall promulgate such rules and regulations not inconsistent with [insert citation] and this Act as necessary for the filing of charges and the conduct of proceedings.

Section 12. *[Recommendations about Proposed Regulations to Administer and Enforce this Act.]* Notwithstanding any general or special law to the contrary, the [biomedical research advisory council] established under this Act may, from time to time, make recommendations to the [commissioner of public health] about proposed regulations for the administration and enforcement of this Act.

Section 13. *[Investigating the Feasibility of Permitting Certain Companies to Use an Alternative Method to Get Approval to Conduct Embryonic Stem Cell Research.]* Notwithstanding any general or special law to the contrary, the [biomedical research advisory council] established under this Act shall investigate the feasibility of permitting companies whose stock is publicly traded to use an alternative method of approval in lieu of having to acquire the approval of an [institutional review board] before conducting embryonic stem cell research pursuant to this Act. The investigation shall include a recommendation as to whether the approval of a duly appointed [bioethical advisory board] is a suitable alternative to the approval of an [institutional review board]. The [council] shall complete its investigation, and submit its recommendations, if any, to the [joint committee on economic development and emerging technologies] not later than [insert date].

Section 14. *[Investigating the Appropriate and Suitable Manner for Disposing Pre-Implantation Embryos Which Have Been Abandoned by the People who Contributed the Genetic Material from Which the Embryos were Created.]* Notwithstanding any general or special law to the contrary, the [biomedical research advisory council] established under this Act shall investigate an appropriate and suitable manner of disposing pre-implantation embryos which have been abandoned by the people who contributed the genetic material from which the embryos were created. The investigation shall include an analysis of the feasibility of granting the [commissioner of public health], upon a declaration by a court of competent jurisdiction that the embryos have been abandoned, the authority to accept legal custody of the embryos and to provide consent to their use for purposes of biomedical research or medical care or treatment. The [council] shall complete its investigation, and submit its recommendations, if any, to the [joint committee on economic development and emerging technologies] not later than [insert date].

Section 15. *[Investigating the Optimum Method by Which a Public Placental and Umbilical Cord Blood Bank Should be Established at the {State University Medical School} or Other Appropriate Institution].* Notwithstanding any general or special law to the contrary, the [biomedical research advisory council] established under this Act shall investigate the optimum

method by which a public placental and umbilical cord blood bank should be established at the [state university medical school] or other appropriate institution. The investigation shall include an analysis of establishing a public umbilical cord blood bank for the purpose of collecting and storing umbilical cord blood and placental tissue that is donated to research by maternity patients and an analysis establishing a public umbilical cord blood bank for the collection and storage of umbilical cord blood and cells and placental tissue and cells and making the same available to the person depositing the blood or cells and their designees for individual medical research and treatment. The investigation shall also include a recommendation on an appropriate fee structure for participation in the public placental and umbilical cord blood bank. The [council] shall analyze the need for eligibility requirements to ensure equal access to the bank for all citizens of this state and the costs associated with the operation and maintenance of the public placental and umbilical cord blood bank, including the need for, and appropriateness of, public funding. Finally, the [council] shall make recommendations as to the need for regulations or protocols to govern donations to the bank and the release and use of banked cells, tissue or blood. The [council] shall report its findings, together with any proposed legislation, to the [house and senate chairs of the joint committee on economic development and emerging technologies and to the house and senate chairs of the joint committee on health care financing] not later than [insert date].

Section 16. [*Appointment of Biomedical Research Advisory Council.*] Notwithstanding any general or special law to the contrary, the members of the [biomedical research advisory council] established under this Act shall be appointed not later than [insert date]. If, as of [insert date], the [council] shall consist of fewer than [15 members], the [attorney general] shall appoint such members, not later than [insert date] so that the [council] consists of [15 members].

Section 17. [*Investigating the Optimum Method by Which a Public Institutional Review Board Should be Established at the {State University Medical School}.*] Notwithstanding any general or special law to the contrary, the [biomedical research advisory council] established under this Act shall investigate the optimum method by which a [public institutional review board] should be established at the [state university medical school]. The [council] shall report its findings, together with any proposed legislation, to the [house and senate chairs of the joint committee on economic development and emerging technologies and to the house and senate chairs of the joint committee on healthcare financing] not later than [insert date].

Section 18. [*Analyzing and Investigating the Feasibility of Establishing an Institute for Regenerative Medicine at the {State University Medical School}.*] Notwithstanding any general or special law to the contrary, the [president of the state university] or their designee, shall appoint a [commission] to analyze and investigate the feasibility of establishing an [Institute for Regenerative Medicine] at the [state university medical school]. The analysis and investigation shall include the potential cost of establishing such an institute as well as the potential scientific, economic and social benefits such an institute may have upon this state. The [commission] shall submit a final report detailing its recommendations, if any, including any proposed legislation, to the [house and senate chairs of the joint committee on economic development and emerging technologies] and to the [house and senate chairs of the joint committee on healthcare financing] not later than [insert date].

Section 19. [*Date for Establishing the Public Institutional Review Board.*] The [public institutional review board] to be established pursuant to this Act shall be established not later than [120 days] after the effective date of this Act.

556

557       Section 20. [*Deadline for Complying with this Act.*] Any institution which on the  
558 effective date of this Act is conducting human embryonic stem cell research in this state shall  
559 have [180 days from the effective date] to come into compliance with this Act.

560

561       Section 21. [*Severability.*] [Insert severability clause.]

562

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

564

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

# Family-Friendly Courts Act

This Act creates a program to provide quality family-friendly court services to families and the children of people who are attending court proceedings or related matters and to serve as a central location for the dissemination of information to families about resources and services relating to at-risk youth, employment counseling, employment training and placement, health education and counseling, financial management, education, legal counseling and referral, mediation, domestic abuse and domestic violence, fatherhood programs, and substance abuse.

Submitted as:

Colorado

SB 05-030

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 “Family-Friendly Courts Act.”

2

3           Section 2. [*Legislative Findings.*]

4

5           (a) The [general assembly] hereby finds and declares that many families experience  
6 challenges and transitions with legal ramifications that often necessitate court involvement.  
7 Frequently people attend court or visit other governmental offices for juvenile delinquency  
8 proceedings, domestic relations proceedings, protective proceedings related to domestic abuse or  
9 domestic violence, child protection proceedings, meetings with probation officers, and other  
10 matters. Many people who attend court proceedings are responsible for the care of young  
11 children. For many such people, child care issues can distract from, if not present obstacles or  
12 even barriers to, effective and complete participation in ongoing court proceedings.

13

14           (b) The [general assembly] further finds that the same people who need child care  
15 services when they participate in court proceedings may also benefit from the availability of  
16 information and resource referrals relating to certain types of services within the community,  
17 including services addressing at-risk youth, employment counseling, employment training and  
18 placement, health education and counseling, financial management, education, legal counseling  
19 and referral, mediation, domestic abuse and domestic violence, fatherhood programs, and  
20 substance abuse.

21

22           (c) The [general assembly] further finds that people who are involved in court  
23 proceedings may have additional court-ordered service needs involving their children, including,  
24 but not limited to, supervised parenting time and the transfer of the physical custody of a child  
25 from one parent to the other.

26

27           (d) The [general assembly] therefore determines and declares that the creation of family-  
28 friendly court programs is beneficial to and in the best interests of the citizens of this state. The  
29 [general assembly] further finds that the goal of such programs shall primarily be providing  
quality child care in or near courthouses to the children of people and families who attend court-  
related proceedings, but that such programs may also provide additional court-related family  
services at the facility and shall serve as a clearinghouse of information and resource referrals for  
program patrons concerning the wide variety of available services in the community, including

services that provide help to at-risk youth, educational services, health services, mental health services, substance abuse services, legal services, and domestic abuse information.

Section 3. [*Definitions.*] For purposes of this Act, “family-friendly court services” means child care and court-related family services provided in the courthouse or courthouse complex or in reasonable proximity to the courthouse.

Section 4. [*Provision of Family-Friendly Court Services.*] There is hereby created the [Family-Friendly Court Program]. The purpose of the program shall be to provide family-friendly court services to families and the children of people who are attending court proceedings or related matters and to serve as a central location for the dissemination of information to families about resources and services relating to at-risk youth, employment counseling, employment training and placement, health education and counseling, financial management, education, legal counseling and referral, mediation, domestic abuse and domestic violence, fatherhood programs, and substance abuse. Grants awarded pursuant to this Act shall be used to establish and maintain new family-friendly court programs in judicial districts throughout the state that do not have comparable existing programs, as well as to enhance existing family-friendly court programs.

Section 5. [*Family-Friendly Court Program Cash Fund.*]

(a) There is hereby created in the [state treasury] the [Family-Friendly Court Program Cash Fund]. The money in the [Family-Friendly Court Program Cash Fund] shall be subject to annual appropriation by the [general assembly] for the implementation of this section. The [state court administrator] is authorized to accept on behalf of the state any grants, gifts, or donations from any private or public source for the purpose of this section. All private and public funds received through grants, gifts, or donations shall be transmitted to the [state treasurer], who shall credit the same to the [Family-Friendly Court Program Cash Fund] in addition to any moneys that may be appropriated to the [Cash Fund] directly by the [general assembly]. In addition, commencing [July 1, 2002], a [one-dollar surcharge] set forth in [insert citation], shall be transmitted to the [state treasurer] who shall credit the same to the [Family-Friendly Court Program Cash Fund] created in this section. All investment earnings derived from the deposit and investment of moneys in the [Fund] shall remain in the [Fund] and shall not be transferred or revert to the [General Fund] of the state at the end of any fiscal year.

(b) All money in the [Family-Friendly Court Program Cash Fund] shall be available for grants awarded by the [state court administrator] to judicial districts seeking to implement or enhance existing family-friendly court programs and administrative costs associated with the implementation and administration of this section. The [state court administrator], subject to annual appropriation by the [general assembly], is hereby authorized to expend money appropriated to the [judicial department] from the [Family-Friendly Court Program Cash Fund] to judicial districts seeking to establish or enhance family-friendly court programs.

(c) The [state court administrator] shall announce to all judicial districts the availability of grants for the establishment and maintenance or enhancement of family-friendly court services programs in the judicial districts.

Section 6. [*Grant Applications - Duties of Judicial Districts.*]

(a) To be eligible for moneys from a [Family-Friendly Court Program Cash Fund] for the provision of family-friendly court services, a judicial district shall apply to the [state court administrator] in accordance with the timelines and guidelines adopted by the [state court administrator], using an application form provided by the [state court administrator].

(b) The [state court administrator] in determining which judicial districts may receive grant money pursuant to this section, shall consider the extent that a judicial district is responsible for:

(I) Actively recruiting qualified and skilled child care providers to provide quality child care services to families and children of individuals who are attending court proceedings or related matters;

(II) Conducting the necessary criminal history checks through the [state bureau of investigation] and hiring qualified and appropriate child care providers;

(III) Selecting and establishing a safe physical location in the courthouse or in the courthouse complex or in close reasonable proximity to the courthouse, for the provision of child care services;

(IV) When reasonably practicable in consideration of funding, staffing, and assistance from other public and private organizations, providing additional court-related family services to families and children experiencing the challenges and transitions that necessitate court involvement, including, but not limited to, supervised parenting time and transfer of the physical custody of a child from one parent to the other;

(V) Soliciting information from community-based organizations, faith communities, governmental entities, schools, community mental health centers, local nonprofit or not-for-profit agencies, local law enforcement agencies, businesses, and other community service providers about the following services and resources for the purpose of providing such information to patrons of the family-friendly court services:

(A) Youth services, including but not limited to youth mentoring services, services to prevent or reduce youth crime and violence, student dropout prevention and intervention services, and any other services that may be available in the community, the goal and purpose of which are to assist at-risk youth;

(B) Multipurpose service centers for displaced homemakers and other information to assist displaced homemakers, which information shall relate to employment counseling, employment training, employment placement, health education and counseling services, financial management services, educational services, and legal counseling and services;

(C) Information related to health insurance and health care coverage, including but not limited to the [children's basic health plan and dental health plan], established pursuant to [insert citation], and the [baby and kid care program], established pursuant to [insert citation];

(D) Substance abuse programs that are available in the community;

(E) Services and potential financial resources that may be available for victims of domestic abuse or domestic violence, including but not limited to counseling for persons who are victims of domestic abuse and their dependents, advocacy programs that assist victims in obtaining services and information, and educational services for victims of domestic violence;

(F) Fatherhood programs that are available in the community;

(G) Any other services that would be beneficial to families experiencing challenges and transition necessitating court involvement, including but not limited to family stabilization services as provided in [insert citation], and mediation services; and

(VI) Providing to people staffing the program training and ongoing support with regard to the available resources and additional referrals provided through the program at each court location.

(c) The judicial districts that are selected by the [state court administrator] to provide family-friendly court services shall be responsible for:

127 (I) Implementing a method of evaluating the effectiveness of the [Family-  
128 Friendly Court Program] and assessing the impact of the child care and informational services  
129 provided through the program; and

130 (II) Reporting [annually] to the [state court administrator] concerning the results  
131 of the judicial district's evaluation of the family-friendly court program as well as an accounting  
132 of fiscal contributions received and expenditures made by the judicial district for the  
133 implementation, administration, and maintenance of the program and such other information that  
134 the [state court administrator] may require or that the judicial district determines to be relevant  
135 and informative.

136 (d) The judicial districts that are selected by the [state court administrator] to provide  
137 family-friendly court services that provide child care services shall meet the licensing  
138 requirements for child care facilities set forth in [insert citation], and all child care licensing rules  
139 promulgated by the [state board of human services] in connection therewith.

140 (e) In addition to grants received from the [state court administrator] pursuant to this  
141 section, judicial districts implementing or enhancing existing family-friendly court programs  
142 pursuant to this section are authorized to accept any funds, grants, gifts, or donations from any  
143 private or public source for the purpose of implementing this section; except that no grant or  
144 donation shall be accepted if the conditions attached to the grant or donation require the  
145 expenditure thereof in a manner contrary to law. Any such money received by a judicial district  
146 shall be credited to the [Family-Friendly Court Program Cash Fund] for grants awarded by the  
147 [board] pursuant to this section.

148  
149 Section 7. [*Severability*.] [Insert severability clause.]  
150

151 Section 8. [*Repealer*.] [Insert repealer clause.]  
152

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

# Health Enterprise Zones

This Act enables the state commissioner of health and senior services to designate medically underserved areas as Health Enterprise Zones (HEZs) and to offer financial incentives to doctors and dentists to practice in an HEZ. Qualified primary care physicians and dentists who practice in an HEZ will be:

- allowed to deduct from their taxable income an amount of their net income from the practice that is proportional to their gross receipts from providing health care services to eligible recipients of the Medicaid program and the state FamilyCare program at their practices located in an HEZ;
- eligible to apply for low-interest loans, under a new loan program created under the bill and administered by the state Economic Development Authority, for the purposes of constructing and renovating their office spaces in an HEZ and purchasing medical equipment for use in their practices in an HEZ; and
- eligible for an exemption from taxation as real property for their qualified medical and dental offices located in an HEZ in which they provide health care services, if the municipality in which the HEZ is located adopts a resolution to that effect.

Primary care physicians and dentists who practice within five miles of an HEZ will also be allowed the gross income tax deduction and will be eligible for the loan program if at least half of their gross receipts at the practice are from providing health care services to eligible recipients of the Medicaid program and the state FamilyCare program and at least half of those eligible Medicaid and FamilyCare recipients to whom they provide services are residents of an HEZ.

Submitted as:

New Jersey

Chapter 139 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 Creating Health Enterprise  
2 Zones In Certain Municipalities.”

3  
4           Section 2. [*Designation of "Health Enterprise Zones*.] Each area that is designated by the  
5 [Commissioner of Health and Senior Services] as an underserved area pursuant to [insert  
6 citation] shall be deemed to be a “Health Enterprise Zone” for the purposes of this Act.

7  
8           Section 3. [*Tax Deduction for Qualified Receipts, Definitions*.]

9           (A) A taxpayer who is providing primary care as defined in [insert citation] at a practice  
10 that is located in a Health Enterprise Zone or a qualified practice that is located within [5 miles]  
11 of a Health Enterprise Zone; shall be allowed to deduct from the taxpayer's gross income in a  
12 taxable year an amount equal to that proportion of the taxpayer's net income deriving from that  
13 practice for the taxable year that the qualified receipts of that practice for the taxable year bear to  
14 the total amount received for services at that practice for the taxable year.



(B) For the purposes of this section; “Qualified practice” means a practice at which [50% or more] of the total amount received for services at that practice for the taxable year are qualified receipts and [50% or more] of the patients whose services are compensated by qualified receipts reside in a Health Enterprise Zone. “Qualified receipts” means amounts received for services from the Medicaid program pursuant to [insert citation], including amounts received from managed care organizations under contract with the Medicaid program, the [FamilyCare Health Coverage Program] pursuant to [insert citation], and the [Children's Health Care Coverage Program] pursuant to [insert citation] for providing health care services to eligible program recipients.

Section 4. *[Low-Interest Loans for Medical Offices in Health Enterprise Zones, Definitions.]*

(A) In consultation with the [Commissioner of Health and Senior Services], the [Executive Director of the state Economic Development Authority] shall establish and administer a program to make low-interest loans available to construct and renovate medical offices in Health Enterprise Zones and the offices of a qualified practice that is located within [5 miles] of a Health Enterprise Zone and to purchase medical equipment for use by primary care providers as defined in [insert citation] at practices located in Health Enterprise Zones or at qualified practices that are located within [5 miles] of a Health Enterprise Zone. The [executive director] shall adopt rules and regulations, pursuant to this state’s [Administrative Procedure Act], [insert citation], necessary to effectuate the purposes of this section.

(B) For the purposes of this section, “Qualified practice” means a practice at which [50%] or more of the total amount received for services at that practice for the taxable year are qualified receipts and [50%] or more of the patients whose services are compensated by qualified receipts reside in a Health Enterprise Zone. “Qualified receipts” means amounts received for services from the Medicaid program pursuant to [insert citation], including amounts received from managed care organizations under contract with the Medicaid program, the [FamilyCare Health Coverage Program] pursuant to [insert citation], and the [Children's Health Care Coverage Program] pursuant to [insert citation] for providing health care services to eligible program recipients.

Section 5. *[Resolution to Provide Property Tax Exemption for Medical Practices in Health Enterprise Zones.]* A municipality that has within its boundaries a Health Enterprise Zone may adopt a resolution that provides for an exemption from taxation as real property of that portion of a structure or building that is used to house a medical or dental primary care practice that is located in that designated area. The exemption shall be in effect for tax years that are within the period of designation as a state designated underserved area and shall be contingent upon an annual application filed by the property owner with, and approved by, the local tax assessor.

Section 6. *[Tenant Rebate to Medical Dental Practice, Administration.]*

(A) Upon the granting of an exemption from taxation as real property, an owner of the building or structure granted the exemption shall rebate to a tenant engaged in the medical or dental primary care practice an amount equal to the exemption, which may be a lump sum or rebated through discounted rental payments.

(B) The tenant engaged in the medical or dental primary care practice or the owner of the building or structure granted the exemption shall annually submit proof to the local tax assessor that the amount of the exemption was rebated to the eligible tenant. If proof satisfactory to the tax assessor is not provided in the manner that the tax assessor shall establish, the exemption

64 shall not be allowed for the tax year and the owner of the property shall refund the amount of the  
65 exemption for that tax year to the municipal tax collector.

66

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

68

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

70

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

# Intergenerational Respite Care Assisted Living Facility Pilot Program

This Act creates a pilot program to offer respite care for children and adults with disabilities and elderly adults with special needs who are currently cared for in their homes.

Submitted as:

Florida

HB1559 (enrolled version)

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 An Intergenerational  
2 Respite Care Assisted Living Facility Pilot Program.”

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

5           (1) It is the intent of the [Legislature] to establish a pilot program to:

6                   (a) Facilitate the receipt of in-home, family-based care by minors and adults with  
7 disabilities and elderly persons with special needs through respite care for up to [14 days].

8                   (b) Prevent caregiver “burnout,” in which the caregiver's health declines and he or  
9 she is unable to continue to provide care so that the only option for the person with disabilities or  
10 special needs is to receive institutional care.

11                   (c) Foster the development of intergenerational respite care assisted living  
12 facilities to temporarily care for minors and adults with disabilities and elderly persons with  
13 special needs in the same facility and to give caregivers the time they need for rejuvenation and  
14 healing.

15           (2) The [agency for health care administration] shall establish a [5-year] pilot program,  
16 which shall license an intergenerational respite care assisted living facility that will provide  
17 temporary personal, respite, and custodial care to minors and adults with disabilities and elderly  
18 persons with special needs who do not require 24-hour nursing services. The intergenerational  
19 respite care assisted living facility must:

20                   (a) Meet all applicable requirements and standards contained in [insert citation],  
21 except that, for purposes of this section, the term "resident" means a person of any age  
22 temporarily residing in and receiving care from the facility.

23                   (b) Provide respite care services for minors and adults with disabilities and elderly  
24 persons with special needs for a period of at least [24 hours] but not for more than [14  
25 consecutive days].

26                   (c) Provide a facility or facilities in which minors and adults reside in distinct and  
27 separate living units.

28                   (d) Provide a facility that has a maximum of [48 beds], is located in [insert  
29 location], and is operated by a not-for-profit entity.

30           (3) The [agency] may establish policies necessary to achieve the objectives specific to the  
31 pilot program and may adopt rules necessary to implement the program.

32 (4) After [4 years], the [agency] shall present its report on the effectiveness of the pilot  
33 program to the [President of the Senate and the Speaker of the House of Representatives] and its  
34 recommendation as to whether the [Legislature] should make the program permanent.  
35

36 Section 3. [*Severability*.] [Insert severability clause.]  
37

38 Section 4. [*Repealer*.] [Insert repealer clause.]  
39

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

# **Interstate Compact on the Placement of Children Statement**

Established in 1960, the Interstate Compact for the Placement of Children (ICPC) is the only public law in existence to ensure that children placed across state lines for foster care or adoption are placed with persons who are safe, suitable and able to provide proper care. It also fixes financial and legal responsibility and responsibility for supervision and the provision of services for the child. The compact was written before the interstate highway system, before the development of administrative law, and before the computer literally revolutionized the way we live.

Concerns about the timeliness of the ICPC process and its “overly broad” application coupled with an outdated administrative process and lack of accountability have given rise to great dissatisfaction with the ICPC from the states, outside stakeholders and Congress. In addition, as geographic boundaries are blurred by the Internet and interstate placements become a significant part of states efforts to find permanency for children, the importance of a sound legal framework for interstate placements is more critical. Finally, with the clear potential of federal legislation governing interstate placements of children, it has become critical for the states to work together and develop a sound compact as an alternative.

This new ICPC addresses the deficiencies documented in the current compact system. It narrows the types of placements covered; provides clarity regarding issues of jurisdiction and financial responsibility; provides due process for states and parties impacted by a receiving state’s decision; and a process for the development of rules that complies with the principles of the Model State Administrative Procedures Act. The revisions also provide for meaningful enforcement through a wide range of tools for the collective member states of the Interstate Commission to secure compliance including technical assistance, mediation, arbitration, and legal action. The new ICPC will allow states to preserve their sovereign authority over the interstate placement of children.

The new compact was released (April 2006) to states for legislative consideration and The Council of State Governments (CSG) adopted a policy resolution endorsing the compact and urging state adoption at its 2006 Spring Meeting.

For more information about this compact, please visit [www.csg.org](http://www.csg.org), keyword: interstate compacts or contact John Mountjoy at (859) 244-8256 or [jmountjoy@csg.org](mailto:jmountjoy@csg.org).

# Judicial Emergency Act

This Act enables an authorized judicial official to declare a judicial emergency under certain circumstances. Authorized judicial official means the chief justice of the state supreme court; the chief judge of the state court of appeals; a chief judge of a state superior court judicial circuit; or the replacement for or successor to any of these officials should such officials become incapacitated or otherwise unable to act. “Judicial emergency” means a state of emergency declared by the governor; a public health emergency as defined under state law; a local emergency as defined under state law; or such other serious emergency when, as determined by an authorized judicial official, the emergency substantially endangers or infringes upon the normal functioning of the judicial system, the ability of people to avail themselves of the judicial system, or the ability of litigants or others to have access to the courts or to meet schedules or time deadlines imposed by court order or rule, statute, or administrative rule or regulation.

Submitted as:

Georgia

HB 1450

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 “Judicial Emergency Act.”

2

3           Section 2. [*Legislative Findings.*] The [Legislature] finds that it is in the best interests of  
4 the proper functioning of the courts and, ultimately, of the people, to provide our judicial system  
5 with a means by which to adjust certain rights, deadlines, and schedules to take into account the  
6 potentially devastating effects of a judicial emergency.

7

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

9           (A) “Authorized judicial official” means any of the following officials when acting with  
10 regard to his or her respective jurisdiction:

11                   (1) The [Chief Justice of the state Supreme Court];

12                   (2) The [Chief Judge of the state Court of Appeals];

13                   (3) A [chief judge of a state superior court judicial circuit] or

14                   (4) The replacement for or successor to any of the officials set forth in  
15 subparagraphs (1) through (3) of this paragraph, as determined by the applicable rules of  
16 incapacitation and succession, should such official become incapacitated or otherwise unable to  
17 act.

18           (B) “Judicial emergency” means:

19                   (1) A state of emergency declared by the [Governor] under [insert citation];

20                   (2) A public health emergency under [insert citation];

21                   (3) A local emergency under [insert citation]; or

22                   (4) Such other serious emergency when, as determined by an authorized judicial  
23 official, the emergency substantially endangers or infringes upon the normal functioning of the  
24 judicial system, the ability of people to avail themselves of the judicial system, or the ability of

litigants or others to have access to the courts or to meet schedules or time deadlines imposed by court order or rule, statute, or administrative rule or regulation.

Section 4. [*Authority and Criteria for Declaring a Judicial Emergency.*]

(A) An authorized judicial official is authorized to declare the existence of a judicial emergency which shall be done by order either upon his or her own motion or upon motion by any interested person. The order shall state:

- (1) The identity and position of the issuing authorized judicial official;
- (2) The time, date, and place at which the order is executed;
- (3) The jurisdiction or jurisdictions affected by the order;
- (4) The nature of the emergency necessitating the order;
- (5) The period or duration of the judicial emergency; and
- (6) Any other information relevant to the suspension or restoration of court operations.

(B) An order declaring the existence of a judicial emergency shall be limited to an initial duration of not more than [30 days]; provided, however, that the order may be modified or extended for no more than [two periods] not exceeding [30 days] each. Any modification or extension of the initial order shall require information regarding the same matters set forth in subsection (A) of this section for the issuance of the initial order.

(C) In the event the circumstances underlying the judicial emergency make access to the office of a clerk of court or a courthouse impossible or impractical, the order declaring the judicial emergency shall designate another facility, which is reasonably accessible and appropriate, for the conduct of court business.

Section 5. [*Suspending or Extending Deadlines Related to Courts.*]

(A) An authorized judicial official in an order declaring a judicial emergency, or in an order modifying or extending a judicial emergency order, is authorized to suspend, toll, extend, or otherwise grant relief from deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters, including, but not limited to:

- (1) A statute of limitation;
- (2) The time within which to issue a warrant;
- (3) The time within which to try a case for which a demand for trial has been filed;
- (4) The time within which to hold a commitment hearing;
- (5) A deadline or other schedule regarding the detention of a juvenile;
- (6) The time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury;
- (7) The time within which to file a writ of habeas corpus;
- (8) The time within which discovery or any aspect thereof is to be completed;
- (9) The time within which to serve a party;
- (10) The time within which to appeal or to seek the right to appeal any order, ruling, or other determination; and
- (11) Such other legal proceedings as determined to be necessary by the authorized judicial official.

Section 6. [*Notice of Judicial Emergency.*] Upon an authorized judicial official issuing an order declaring the existence of a judicial emergency, or any modification or extension of such

an order, the authorized judicial official issuing the order, modification, or extension to the extent permitted by the circumstances underlying the judicial emergency shall:

(1) Immediately notify the [Chief Justice of the state Supreme Court] of the action;

(2) Notify and serve a copy of the order, modification, or extension on the judges and clerks of all courts sitting within the jurisdictions affected and on the clerks of the [state Court of Appeals] and the [state Supreme Court], such service to be accomplished through reasonable means to assure expeditious receipt; and

(3) Give notice of the issuance of the order, modification, or extension to the affected parties, counsel for the affected parties, and the public. Notice shall be provided by whatever means are reasonably calculated to reach the affected parties, counsel for the affected parties, and the public and may, without limitation, include mailing, publication in a newspaper of local or state-wide distribution, posting of written notices at courthouses and other public gathering sites, transmittal by facsimile or e-mail, and announcements on television, radio, and public address systems.

#### Section 7. [*Judicial Emergency: Appeals.*]

(A) Any person whose rights or interests are adversely affected by an order declaring the existence of a judicial emergency or any modification or extension of such an order shall be entitled to appeal.

(B) A notice of appeal shall be filed no later than [45 days] after the expiration of the judicial emergency order, or any modification or extension of a judicial emergency order, from which an appeal is sought. A notice of appeal shall be filed with the [clerk of a superior court] in any jurisdiction affected by the order and shall be served upon:

(1) The authorized judicial official who issued the order;

(2) The parties to any criminal proceeding or civil litigation in which the appellant is involved which would be affected by the appeal;

(3) The district attorney of the county in which the notice of appeal is filed; and

(4) All other parties in any criminal proceeding or civil litigation which would be affected by the appeal; provided, however, that service in this regard shall be accomplished by publishing notice of the filing of the appeal in the newspaper which is the legal organ for the county in which the notice of the appeal is filed.

(C) The appeal shall be heard immediately by the [state Court of Appeals] under the procedure of emergency motions. A party dissatisfied by the judgment of the [state Court of Appeals] may appeal as a matter of right to the [state Supreme Court]. Filing fees for these appeals shall be waived. All costs of court shall be borne by the state. Appeals shall be heard expeditiously.

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

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

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



# Model State Anti-Trafficking Criminal Statute

According to the U.S. Department of Justice, the centerpiece of U.S. government efforts to stop human trafficking is the Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. 106-386, signed into law on October 28, 2000. It enhanced three aspects of federal government activity to combat trafficking in persons (TIP): protection, prosecution, and prevention. The TVPA provided for a range of new protections and assistance for victims of trafficking in persons; it expanded the crimes and enhanced the penalties available to federal investigators and prosecutors pursuing traffickers; and it expanded U.S. activities internationally to prevent victims from being trafficked.

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub. L. 108-193, signed into law on December 19, 2003, reauthorized the TVPA and added responsibilities to the U.S. government's anti-trafficking portfolio. In particular, the TVPRA mandated new information campaigns to combat sex tourism, added some refinements to the federal criminal law, and created a new civil action that allows trafficking victims to sue their traffickers in federal district court.

The Civil Rights Division and the Office of Legal Policy wrote the 2004 Model State Anti-Trafficking Statute based on the TVPA and federal experience prosecuting trafficking cases, in order to provide a model for state governments to follow the lead of the federal government in combating trafficking. The U.S. Senate subsequently passed a resolution endorsing the statute and encouraging states to adopt it, and DOJ officials used the statute to urge states to join the fight against trafficking. The model statute seeks to expand anti-trafficking authority to the states in order to harness the almost one million state and local law enforcement officers who might come into contact with trafficking victims. Once states have adopted the statute, or at least their own versions of anti-trafficking laws, the total number of prosecutions nationwide will likely increase.

This model Act directs that whoever knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to forced labor or services; or benefits, financially or by receiving anything of value, from participating in human trafficking can be imprisoned for up to 15 years.

## Additional Explanatory Notes, U.S. Department of Justice

This Model Law is offered to help criminal law policymakers at the state level address the phenomenon of modern-day slavery, often termed “trafficking in persons.” In the course of researching this proposal, it became clear that many states already have laws on their books that directly address this crime problem. For instance, many trafficking-like crimes may be codified in seemingly-unrelated parts of a state code, such as the kidnapping or prostitution sections. Unfortunately, by being codified in disparate parts of the criminal code, it may unclear to prosecutors that the behaviors are trafficking in persons crimes and may be charged as such. Research into these existing state statutes revealed that they are often archaic, little-known, or underutilized, and do not necessarily reflect the current understanding of slavery and trafficking in persons.

The Thirteenth Amendment to the U.S. Constitution mandates that:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction....”

Under the Trafficking Victims Protection Act of 2000, Pub. L. 106-386 (“TVPA”), a “severe form of trafficking in persons” is defined as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

In the international arena, the United Nations Convention Against Transnational Organized Crime, supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children defines trafficking in persons as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Federal criminal provisions specific to trafficking in persons are codified at Title 18, United States Code, Chapter 77, Peonage, Slavery, and Trafficking in Persons. Some of these statutes are newly-enacted provisions of the TVPA; some of these statutes date from the Civil War era. All of these federal criminal civil rights statutes are rooted in the 13th Amendment’s guarantee of freedom. The other federal criminal civil rights statutes, such as 42 U.S.C. § 3631 (Interference with Housing Rights) and 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law), have corresponding state statutes, e.g., Indiana Code, § 22-9.5-10-1 (criminalizing interference with another’s rights) and Texas Penal Code § 39.03 (criminalizing official oppression). Such federal/state overlap allows for more prosecutions to be brought and allows local prosecutors to respond most appropriately to crime problems in their own jurisdictions. State prosecutors’ increased prosecution of racial violence cases in the last 20 years can serve as a model for increased enforcement of the U.S. Constitution’s guarantee of freedom from involuntary servitude.

Many state constitutions mirror the federal constitutional prohibition against involuntary servitude, see, e.g., Arkansas Const. Art. 2, § 27, and some states have involuntary servitude statutes on their books. See, e.g., Cal. Penal Code § 181 (Slavery, infringement of personal liberty; purchase of custody). Other states have similar statutes. North Carolina adopted a state involuntary servitude statute in the wake of several high-profile federal migrant labor prosecutions. See N.C.G.S.A. § 14-43.2. Arizona’s criminal code, for example, includes kidnaping for involuntary servitude in its kidnaping statute, A.R.S. §13-1304, and a crime of taking a child for prostitution in its prostitution statutes. A.R.S. §13-3206. It is unclear whether such statutes are well-known by police and prosecutors, and to what extent they are being used to combat trafficking in persons.

The Model Penal Code recommends creation of an involuntary servitude crime as part of its overall kidnapping chapter, MPC 212.3(b), Felonious Restraint (third degree felony for holding a person in involuntary servitude). While the U.S. Department of Justice has not surveyed the field to determine how many states adopted this proposal, Nebraska is an example of one state that has this Model Penal Code provision on the books. See Neb.Rev.St. §28-314.

Certainly, experience at the federal level indicates that more comprehensive trafficking in persons statutes are needed to address the wide range of coercive tactics that traffickers use to obtain and maintain the labor and services of their victims. The proposed Model Law seeks to provide a tool for drafting modern anti-trafficking crimes, based on the Justice Department’s

experience in investigating and litigating these cases. Additionally, there is a strong need for uniformity in definitions and concepts across state lines to minimize confusion as trafficking victims in state prosecutions begin to seek the victim protections available through the federal Departments of Health and Human Services and of Homeland Security.

States and territories interested in adopting anti-trafficking legislation should survey their existing criminal codes to determine whether they include prohibitions on involuntary servitude, kidnapping, or false imprisonment, which have simply not been brought to bear against trafficking in persons. Such a survey will assist in incorporating relevant portions of a modern anti-trafficking statute into existing law, and could result in increased use of such statutes. Bundling of appropriate statutes into a Slavery/Trafficking chapter, as in the federal criminal code, will make it more likely that such crimes are recognized and charged.

## Definitions

The heart of the concept of “trafficking in persons” is the denial of the liberty of another. Accordingly, the transportation of a person is a secondary inquiry, the apparent meaning of “trafficking” aside. Thus, the definitions section and the criminal provisions focus on the coercive nature of the service, rather than the movement of the victim or the type of underlying service.

The Act defines the following terms:

“Blackmail” is defined in a manner identical to the Model Penal Code’s Criminal Coercion statute, Section 212.5(1)(c).

“Commercial sexual activity,” tracks the definition of commercial sexual activity in the TVPA.

“Financial harm” reflects the TVPA and the UN Protocol’s inclusion of “debt bondage” as a form of trafficking in persons. In order to differentiate a debt that has the effect of coercion, as opposed to simply a bad bargain, the proposal adopts the usury laws of the relevant jurisdiction to illustrate debts that contravene public policy and may thus appropriately be considered to be coercive. On the federal level, an example of this type of law can be found at 18 U.S.C. § 892 (Making Extortionate Extension of Credit).

“Forced labor or services” is defined as those obtained or maintained through coercion, and lists the forms of coercion that would, if used to compel forced labor or services, justify a finding that the labor or service was involuntary.

“Labor” covers work activities which would, but for the coercion, be otherwise legitimate and legal. The legitimacy or legality of the work is to be determined by focusing on the job, rather than on the legal status or work authorization status of the worker.

“Maintain” builds upon the Model Penal Code’s definition of “obtain” and incorporates the principle in federal anti-slavery caselaw that a person’s initial agreement to perform a particular activity or type of service is not a waiver of any coercion aimed at keeping that person from leaving the service.

“Obtain” tracks the definition set forth at Model Penal Code’s Theft statute, Section 223.0(5)(b).

“Services,” incorporates activities that are akin to an employment relationship but are in market sectors that are not legitimate forms of “labor.” Notable in this area is commercial sexual activity, which is criminalized in almost every jurisdiction in the United States. Differentiation between “labor” and “services” makes it clear that this Model Law does not legitimize or legalize prostitution.

The notion that commercial sexual activity or concubinage can be “service” for the purposes of involuntary servitude statutes is reflected in case law. See, e.g. *Pierce v. United*

States, 146 F.2d 84, 85-86 (5th Cir. 1944) (upholding conviction for forcing women to commit "immoral acts" at roadhouse to pay off debts); *Bernal v. United States*, 241 F. 339, 341 (5th Cir. 1917) (outlining as a crime when a woman was lured to house of prostitution under false pretenses and required to serve as prostitute or maid to pay debt); and the recent prosecutions, *U.S. v. Cadena* (SD FL 1998); *U.S. v. Kwon* (D. CNMI 1999); *U.S. v. Pipkins* (ND GA 2000); and *U.S. v. Soto* (SD TX 2003). See also Neal Kumar Katyal, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YALE L.J. 791 (1993). Non-sexual forms of "service" might include rings that hold children for street begging or petty theft.

Regarding "sexually-explicit performance," a number of recent federal cases have involved persons being held in servitude for purposes of sexually-explicit performances such as "exotic dancing." Unlike prostitution, which is typically illegal and involves commercial sexual activity, sexually-explicit performance may be legal, absent any coercion. Inclusion of sexually-explicit performance in this Model Law recognizes that such activity can have an impact on victims similar to sexual abuse, and reflects federal experience in which international traffickers are increasingly placing their victims into strip clubs rather than prostitution. The proposed criminal statutes provide expanded coverage for minors who are held in sexual performance as opposed to prostitution.

The Act addresses "trafficking victim," not for the purposes of the criminal statutes so much as to provide a working definition for state and local agencies who subsequently establish or modify programs to serve victims of these crimes.

## Trafficking/Servitude Chapter

The Slavery/Trafficking crimes in the Act are arranged in a particular order that reflects the Department of Justice's experiences and understanding of the interplay between slavery/involuntary servitude and the transportation of persons for illicit purposes.

First, Involuntary Servitude, which focuses on the denial of a victim's liberty, applies to all persons held in compelled service, regardless of age, type of service, and whether they are transported or not. This approach de-links the crime from the nationality of the victim or the underlying morality of the service. All adults in coerced service are protected by this Section.

Second, a provision specific to minors in sexually-related activities sets forth a lesser standard of coercion – recognizing that sexual activities are conceptually different when minors are involved – by casting as Sexual Servitude those activities which involve minors but are not the result of coercion. This Section is the equivalent of Statutory Rape laws, which obviate the need to prove coercion when a victim is under the age of legal consent. This Section would allow for trafficking prosecutions in cases in which minors are kept in prostitution because of their circumstances but overt force is not used, such as is common in cases involving runaway U.S. citizen youth. As noted above, this provision extends the concept of proving sexual exploitation without a concomitant need to find coercion to include sexually-explicit performance and child pornography, as well as sexual acts.

Finally, Trafficking of Persons for Forced Labor or Services punishes the trade in coerced labor or services, but focuses on the recruiting, moving, and harboring for these practices. Conceptually, these actions are illegal if done for the purpose of the exploitation captured by the servitude offenses previously set forth.

(Involuntary Servitude) provides a baseline offense that is graded according to the severity of the coercion used against the victim. Rather than the federal approach, in which there are separate crimes based on the level of coercion (a function of the development of the federal anti-slavery laws over the course of almost 200 years), the proposed offense – the obtaining or maintaining another person in service through coercion – outlines different statutory maximums

for cases involving force, threats, document confiscation, blackmail, etc. For drafting purposes, jurisdictions that prefer to codify each crime separately could easily do so by referring to Appendix A, Optional Servitude Offenses, which sets the proposed crimes out in a different manner. States with guidelines sentencing may want to adopt a simple involuntary servitude statute with a 20-year statutory maximum and then incorporate gradations by level of coercion within their guidelines instead of adopting a multi-part statute or multiple servitude statutes. Such a statute is set forth in Appendix B, Alternative Servitude Offense.

Statutory maximums are provided as an illustration of a graduated approach based on the type and level of coercion used against the victim. Many jurisdictions simply designate particular levels of a crime as a Class A, B, or C Felony or as a First, Second, or Third Degree Felony, rather than assigning a specific statutory maximum within the actual offense. Statutory maximums are provided in this Model Law as an example of relative culpability. The statutory maximums should be reviewed and incorporated in keeping with the sentencing structure of the criminal code of the particular state or territory.

Each of the crimes punishes attempts as well as completed offenses. Criminalizing attempts allows prosecutors to focus on a defendant's objectively observable intent to use coercion for compulsory service rather than on a victim's subjective response to the coercion. For instance, a victim flees after a beating intended to hold her, rather than staying and submitting to the "master"; in this instance, the enslavement is attempted but not completed.

Nonetheless, by criminalizing the attempt, a prosecutor may charge the defendant with his intended enslavement instead of having to wait for the victim actually to be enslaved (or to feel coerced). Such an approach has obvious benefits from the perspective of public safety: no victim should have to remain in a dangerous situation in order for the wrong done to him or her to be prosecutable. Note that the particular attempt language in the Model Law should be reviewed to ensure that it reflects an individual state's approach to attempts.

## Penalties

The proposal's sentencing section sets forth two main concepts. First, the proposal reflects the notion that statutory maximum sentences should be increased in particularly violent instances of trafficking in persons, especially where the crime involves sexual abuse. Second, the actual sentences should reflect the time the victim was held and the various levels of injury suffered by a victim, as well as the number of victims harmed in a particular case. Additionally, gradation in sentences is appropriate among situations involving minors, especially those involving minors under the age of consent.

In the federal system these offense characteristics are incorporated into the U.S. Sentencing Guidelines, see U.S.S.G. §2H4.1, and have different effects depending on the other adjustments that are applied. Thus, the Model Law sets out offense characteristics which should be considered, but does not assign them values.

All of the offense characteristics offered for particular consideration should be reviewed and incorporated in keeping with the sentencing structure of the criminal code of a particular state or territory.

## Restitution

The proposed measure of restitution tracks the federal restitution provision of the TVPA, codified at 18 U.S.C. §1594. Mandatory restitution allows prosecutors to recover money that the victims can use to assist them in their recovery. Unlike theft cases, there is typically little identifiable out-of-pocket loss in a trafficking case – the victims themselves are the objects that

are stolen. Accordingly, this provision fixes the actual loss to the victim as either 1) the value of their services to the trafficker, or 2) the minimum wage for hours worked. The first measure of restitution, the value to the trafficker of the victim's labor or services, not only prevents the traffickers from profiting from their crime, but also avoids the unpalatable situation of assigning a wage valuation to instances of forced prostitution. The second measure of loss, the minimum wage calculation, is a handy tool in cases where victims did not receive any pay for their work, or sub-minimum wage, or in certain sex trafficking cases where the defendants hold their victims in concubinage rather than selling them as prostitutes (in which there is therefore no other identifiable measure of the value of the sexual services to the traffickers).

## Trafficking Victim Protection

Federal experience has shown that prosecution without victim protection is unworkable. At the federal level, there are a variety of benefits and services available to trafficking victims. Accordingly, this Model Law provides a mechanism through which a state could determine how well current state programs serve the needs of trafficking victims. In addition, a state may want to consider optional Model Law language regarding the incorporation of federal non-immigrant status as a basis through which certain state benefits, programs, and licenses could be accessed by alien trafficking victims.

Submitted as: U.S. Department of Justice Model State Statute

Status: The Department of Justice, Civil Rights Division, reports that as of December 2005, 13 states had enacted anti-human trafficking laws and all 13 had adopted part of this model state law.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as "An Act Relating to Criminal  
2 Consequences of Conduct that Involves Certain Trafficking of Persons and Involuntary  
3 Servitude."

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

6           (1) "Blackmail" is to be given its ordinary meaning as defined by [state blackmail statute,  
7 if any] and includes but is not limited to a threat to expose any secret tending to subject any  
8 person to hatred, contempt, or ridicule.

9           (2) "Commercial sexual activity" means any sex act on account of which anything of  
10 value is given, promised to, or received by any person.

11           (3) "Financial harm" includes credit extortion as defined by [state extortion statute, if  
12 any] , criminal violation of the usury laws as defined by [state statutes defining usury], or  
13 employment contracts that violate the Statute of Frauds as defined by [state statute of frauds].

14           (4) "Forced labor or services" means labor, as defined in paragraph (5), *infra*, or services,  
15 as defined in paragraph (8), *infra*, that are performed or provided by another person and are  
16 obtained or maintained through an actor's:

17                   (A) causing or threatening to cause serious harm to any person;

18                   (B) physically restraining or threatening to physically restrain another person;

19                   (C) abusing or threatening to abuse the law or legal process;

(D) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(E) blackmail; or

(F) causing or threatening to cause financial harm to [using financial control over] any person.

(5) "Labor" means work of economic or financial value.

(6) "Maintain" means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.

(7) "Obtain" means, in relation to labor or services, to secure performance thereof.

(8) "Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of "services" under this Section. Nothing in this provision should be construed to legitimize or legalize prostitution.

(9) "Sexually-explicit performance" means a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

(10) "Trafficking victim" means a person subjected to the practices set forth in Sections 3(1) (involuntary servitude) or 3 (2) (sexual servitude of a minor), or transported in violation of Section 3 (3) (trafficking of persons for forced labor or services).

### Section 3. [*Criminal Provisions.*]

(1) Involuntary Servitude. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services shall be punished by imprisonment as follows, subject to Section (4), infra:

(A) by causing or threatening to cause physical harm to any person, not more than 20 years;

(B) by physically restraining or threatening to physically restrain another person, not more than 15 years;

(C) by abusing or threatening to abuse the law or legal process, not more than 10 years;

(D) by knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, not more than 5 years,

(E) by using blackmail, or using or threatening to cause financial harm to [using financial control over] any person, not more than 3 years.

(2) Sexual Servitude of a Minor. Whoever knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age, knowing that the minor will engage in commercial sexual activity, sexually-explicit performance, or the production of pornography (see [relevant state statute] (defining pornography)), or causes or attempts to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography, shall be punished by imprisonment as follows, subject to the provisions of Section (4), infra:

(A) in cases involving a minor between the ages of [age of consent] and 18 years, not involving overt force or threat, for not more than 15 years;

(B) in cases in which the minor had not attained the age of [age of consent] years, not involving overt force or threat, for not more than 20 years;

(C) in cases in which the violation involved overt force or threat, for not more than 25 years.

(3) Trafficking of Persons for Forced Labor or Services. Whoever knowingly (a) recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to forced labor or services; or (b) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of Sections 3 (1) or (2) of this Act, shall, subject to the provisions of Section (4) infra, be imprisoned for not more than 15 years.

(4) Sentencing Enhancements.

(A) Statutory Maximum - Rape, Extreme Violence, and Death. If the violation of this Act involves kidnaping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life [or death].

(B) Sentencing Considerations Within Statutory Maximums.

(1) *Bodily Injury*. If, pursuant to a violation of this Act, a victim suffered bodily injury, the sentence may be enhanced as follows: (1) Bodily injury, an additional \_\_\_\_ years of imprisonment; (2) Serious Bodily Injury, an additional \_\_\_\_ years of imprisonment; (3) Permanent or Life-Threatening Bodily Injury, an additional \_\_\_\_ years of imprisonment; or (4) If death results, defendant shall be sentenced in accordance with Homicide statute for relevant level of criminal intent).

(2) *Time in Servitude*. In determining sentences within statutory maximums, the sentencing court should take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between 180 days and one year, and increased penalties for cases in which the victim was held for more than one year.

(3) *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.

(5) 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 1) the gross income or value to the defendant of the victim's labor or services or 2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and [corresponding state statutes if any].

#### Section 4. [*Trafficking Victim Protection*.]

(1) Assessment of Victim Protection Needs.

(A) The Attorney General, in consultation with the [Department of Health and Social Services] shall, no later than one year from the effective date of this statute, issue a report outlining how existing victim/witness laws and regulations respond to the needs of trafficking victims, as defined in XXX.01(8) of the Criminal Code, and suggesting areas of improvement and modification.

(B) The [Department of Health and Social Services], in consultation with the Attorney General, shall, no later than one year from the effective date of this statute, issue a report outlining how existing social service programs respond or fail to respond to the needs of trafficking victims, as defined in XXX.01(8) of the Criminal Code, and the interplay of such existing programs with federally-funded victim service programs, and suggesting areas of improvement and modification. [Such inquiry shall include, but not be limited to, the ability of state programs and licensing bodies to recognize federal T non-immigrant status for the purposes



## APPENDIX A

Optional Servitude Offenses – [This formulation would also obviate the need for Section (4)(A), statutory maximum sentences.]

### Section 3. Criminal Provisions.

#### (1) Involuntary Servitude Offenses.

(A) Involuntary Servitude. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services by causing or threatening to cause physical harm to any person shall be punished by imprisonment for not more than 20 years; but if the violation involves kidnaping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life [or death].

(B) Unlawful Restraint for Forced Labor. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services by physically restraining or threatening to physically restrain another person, shall be punished by imprisonment for not more than 15 years; but if the violation involves kidnaping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life, [or death].

(C) Legal Coercion for Forced Labor. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services by abusing or threatening to abuse the law or legal process shall be punished by imprisonment for not more than 10 years; but if the violation involves kidnaping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life, [or death].

(D) Document Servitude. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services by knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, shall be punished by imprisonment for not more than 5 years; but if the violation involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life, [or death].

(E) Debt Bondage. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services by blackmail, or by using or threatening to cause financial harm to [using financial control over] any person, shall be punished by imprisonment for not more than 3 years; but if the violation involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life, [or death].

## APPENDIX B

Alternative Servitude Offense - [Use sentencing guidelines to differentiate among levels of coercion and other aggravating factors.]

Section 3. Criminal Provisions.

(1) Involuntary Servitude. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services shall be punished by imprisonment for not more than 20 years; but if the violation involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life, [or death].

# No Child Left Behind/Implementing Federal Education Programs

This Act directs the state board of education, the state superintendent, and other state and local school officials regarding the administration and implementation of federal educational programs and specifically, the federal “No Child Left Behind Act.”

Under the Act, school officials may:

- apply for, receive, and administer funds made available through programs of the federal government;
- only expend federal funds for the purposes for which they are received and are accounted for by the state, school district, or charter school; and
- reduce or eliminate a program created with or expanded by federal funds to the extent allowed by law when federal funds for that program are subsequently reduced or eliminated.

The Act directs school officials to:

- prioritize resources, especially to resolve conflicts between federal provisions or between federal and state programs, including:
  - a. providing first priority to meeting state goals, objectives, program needs, and accountability systems as they relate to federal programs; and
  - b. providing second priority to implementing federal goals, objectives, program needs, and accountability systems that do not directly and simultaneously advance state goals, objectives, program needs, and accountability systems;
- interpret the provisions of federal programs in the best interest of students in this state;
- maximize local control and flexibility;
- minimize additional state resources that are diverted to implement federal programs beyond the federal monies that are provided to fund the programs;
- request changes to federal educational programs, especially programs that are underfunded or provide conflicts with other state or federal programs, including:
  - a. federal statutes;
  - b. federal regulations; and
  - c. other federal policies and interpretations of program provisions; and
- seek waivers from all possible federal statutes, requirements, regulations, and program provisions from federal education officials to:
  - a. maximize state flexibility in implementing program provisions; and
  - b. receive reasonable time to comply with federal program provisions.

The requirements of school officials under this Act, including the responsibility to lobby federal officials, are not intended to mandate school officials to incur costs or require the hiring of lobbyists, but are intended to be performed in the course of school officials' normal duties.

Submitted as:

Utah

HB 1001 (enrolled version)

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 Implementing Federal  
2 Programs.”

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

5           (1) “Federal programs” include:

- 6                   (a) the No Child Left Behind Act;  
7                   (b) the Individuals with Disabilities Education Act Amendments of 1997, Public  
8 Law 105-17, and subsequent amendments; and  
9                   (c) other federal educational programs.

10           (2) “No Child Left Behind Act” means the No Child Left Behind Act of 2001, 20 U.S.C.  
11 Sec. 6301 et seq.

12           (3) “School official” includes:

- 13                   (a) the state [board of education];  
14                   (b) the state [superintendent];  
15                   (c) employees of the state [board of education] and the state [superintendent];  
16                   (d) local school boards;  
17                   (e) school district [superintendents] and employees; and  
18                   (f) charter school board members, administrators, and employees.

19  
20           Section 3. [*Federal Programs -- School Official Duties.*]

21           (1) School officials may:

- 22                   (a) apply for, receive, and administer funds made available through programs of  
23 the federal government;  
24                   (b) only expend federal funds for the purposes for which they are received and are  
25 accounted for by the state, school district, or charter school; and  
26                   (c) reduce or eliminate a program created with or expanded by federal funds to the  
27 extent allowed by law when federal funds for that program are subsequently reduced or  
28 eliminated.

29           (2) School officials shall:

- 30                   (a) prioritize resources, especially to resolve conflicts between federal provisions  
31 or between federal and state programs, including:  
32                           (i) providing first priority to meeting state goals, objectives, program  
33 needs, and accountability systems as they relate to federal programs; and  
34                           (ii) providing second priority to implementing federal goals, objectives,  
35 program needs, and accountability systems that do not directly and simultaneously advance state  
36 goals, objectives, program needs, and accountability systems;  
37                   (b) interpret the provisions of federal programs in the best interest of students in  
38 this state;  
39                   (c) maximize local control and flexibility;  
40                   (d) minimize additional state resources that are diverted to implement federal  
41 programs beyond the federal monies that are provided to fund the programs;  
42                   (e) request changes to federal educational programs, especially programs that are  
43 underfunded or provide conflicts with other state or federal programs, including:  
44                           (i) federal statutes;  
45                           (ii) federal regulations; and  
46                           (iii) other federal policies and interpretations of program provisions; and

47 (f) seek waivers from all possible federal statutes, requirements, regulations, and  
48 program provisions from federal education officials to:

- 49 (i) maximize state flexibility in implementing program provisions; and
- 50 (ii) receive reasonable time to comply with federal program provisions.

51 (3) The requirements of school officials under this Act, including the responsibility to  
52 lobby federal officials, are not intended to mandate school officials to incur costs or require the  
53 hiring of lobbyists, but are intended to be performed in the course of school officials' normal  
54 duties.

55  
56 Section 4. *[No Child Left Behind -- State Implementation.]*

57 (1) (a) In accordance with the No Child Left Behind Act, including Section 9527,  
58 school officials shall determine, as applied to their responsibilities, if the No Child Left Behind  
59 Act:

60 (i) requires the state to spend state or local resources in order to comply  
61 with the No Child Left Behind Act; or

62 (ii) causes the state, local education agencies, or schools to change  
63 curriculum in order to comply.

64 (b) School officials shall request a waiver under Section 9401 of the No Child  
65 Left Behind Act of any provision of the No Child Left Behind Act that violates Section 9527.

66 (2) In addition to the duties described under Subsection (1), school officials shall:

67 (a) request reasonable time to comply with the provisions of the No Child Left  
68 Behind Act;

69 (b) lobby Congress for needed changes to the No Child Left Behind Act; and

70 (c) lobby federal education officials for relief from the provisions of the No Child  
71 Left Behind Act, including waivers from federal requirements, regulations, and administrative  
72 burdens.

73 (3) School officials shall lobby Congress and federal education officials for needed  
74 resolution and clarification for conflicts between the No Child Left Behind Act and the  
75 Individuals with Disabilities Education Act.

76 (4) In the case of conflicts between the No Child Left Behind Act and the Individuals  
77 with Disabilities Education Act, the parents, in conjunction with school officials, shall determine  
78 which program best meets the educational needs of the student.

79  
80 Section 5. *[Powers And Duties Generally.]*

81 (1) Each local school board shall:

82 (a) implement the core curriculum utilizing instructional materials that best  
83 correlate to the core curriculum and graduation requirements;

84 (b) administer tests, required by the state [board of education], which measure the  
85 progress of each student, and coordinate with the state [superintendent] and state [board of  
86 Education] to assess results and create plans to improve the student's progress which shall be  
87 submitted to the state [office of education] for approval;

88 (c) use progress-based assessments as part of a plan to identify schools, teachers,  
89 and students that need remediation and determine the type and amount of federal, state, and local  
90 resources to implement remediation;

91 (d) develop early warning systems for students or classes failing to make  
92 progress;

93 (e) work with the state [office of education] to establish a library of documented  
94 best practices, consistent with state and federal regulations, for use by the local districts; and

(f) implement training programs for school administrators, including basic management training, best practices in instructional methods, budget training, staff management, managing for learning results and continuous improvement, and how to help every child achieve optimal learning in core academics.

(2) Local school boards shall spend minimum school program funds for programs and activities for which the state [board of education] has established minimum standards or rules under this Act.

(3) (a) A board may purchase, sell, and make improvements on school sites, buildings, and equipment and construct, erect, and furnish school buildings.

(b) School sites or buildings may only be conveyed or sold on board resolution affirmed by at least [two-thirds] of the members.

(4) (a) A board may participate in the joint construction or operation of a school attended by children residing within the district and children residing in other districts either within or outside the state.

(b) Any agreement for the joint operation or construction of a school shall:

(i) be signed by the [president] of the board of each participating district;

(ii) include a mutually agreed upon pro rata cost; and

(iii) be filed with the state [board of education].

(5) A board may establish, locate, and maintain elementary, secondary, and applied technology schools.

(6) A board may enroll children in school who are at least [five years of age before September 2] of the year in which admission is sought.

(7) A board may establish and support school libraries.

(8) A board may collect damages for the loss, injury, or destruction of school property.

(9) A board may authorize guidance and counseling services for children and their parents or guardians prior to, during, or following enrollment of the children in schools.

(10) (a) A board may apply for, receive, and administer funds made available through programs of the federal government and shall administer and implement federal educational programs in accordance with this Act.

(b) Federal funds are not considered funds within the school district budget under [insert citation].

(c) Federal funds may only be expended for the purposes for which they are received and are accounted for by the board.

(d) A program created with or expanded by federal funds may be reduced to the extent allowed by law when federal funds for that program are subsequently reduced or eliminated.

(11) (a) A board may organize school safety patrols and adopt rules under which the patrols promote student safety.

(b) A student appointed to a safety patrol shall be at least [ten years old] and have written parental consent for the appointment.

(c) Safety patrol members may not direct vehicular traffic or be stationed in a portion of a highway intended for vehicular traffic use.

(d) Liability may not attach to a school district, its employees, officers, or agents or to a safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting the program by virtue of the organization, maintenance, or operation of a school safety patrol.

(12) (a) A board may on its own behalf, or on behalf of an educational institution for which the board is the direct governing body, accept private grants, loans, gifts, endowments, devises, or bequests that are made for educational purposes.

(b) These contributions are not subject to appropriation by the [Legislature].

(13) (a) A board may appoint and fix the compensation of a compliance officer to issue citations for violations of [insert citation].

(b) A person may not be appointed to serve as a compliance officer without the person's consent.

(c) A teacher or student may not be appointed as a compliance officer.

(14) A board shall adopt bylaws and rules for its own procedures.

(15) (a) A board shall make and enforce rules necessary for the control and management of the district schools.

(b) All board rules and policies shall be in writing, filed, and referenced for public access.

(16) A board may hold school on legal holidays other than Sundays.

(17) (a) Each board shall establish for each school year a school traffic safety committee to implement this Subsection (17).

(b) The committee shall be composed of one representative of:

- (i) the schools within the district;
- (ii) the [Parent Teachers' Association] of the schools within the district;
- (iii) the municipality or county;
- (iv) state or local law enforcement; and
- (v) state or local traffic safety engineering.

(c) The committee shall:

- (i) receive suggestions from parents, teachers, and others and recommend school traffic safety improvements, boundary changes to enhance safety, and school traffic safety program measures;
- (ii) review and submit annually to the state [department of transportation] and affected municipalities and counties a child access routing plan for each elementary, middle, and junior high school within the district;
- (iii) consult the state [safety council] and the [division of family health services] and provide training to all school children in [kindergarten through grade six], within the district, on school crossing safety and use; and
- (iv) help ensure the district's compliance with rules made by the state [department of transportation] under [insert citation].

(d) The committee may establish subcommittees as needed to assist in accomplishing its duties under Subsection (17)(c).

(e) The board shall require the school community council of each elementary, middle, and junior high school within the district to develop and submit annually to the committee a child access routing plan.

(18) (a) Each school board shall adopt and implement a comprehensive emergency response plan to prevent and combat violence in its public schools, on school grounds, on its school vehicles, and in connection with school-related activities or events.

(b) The board shall implement its plan by [July 1, 2000].

(c) The plan shall:

- (i) include prevention, intervention, and response components;
- (ii) be consistent with the student conduct and discipline policies required for school districts under [insert citation];
- (iii) require inservice training for all district and school building staff on what their roles are in the emergency response plan; and

(iv) provide for coordination with local law enforcement and other public safety representatives in preventing, intervening, and responding to violence in the areas and activities referred to in Subsection (18)(a).

(d) The state [board of education], through the state [superintendent of public instruction], shall develop comprehensive emergency response plan models that local school boards may use, where appropriate, to comply with Subsection (18)(a).

(e) Each local school board shall, by [July 1] of each year, certify to the state [board of education] that its plan has been practiced at the school level and presented to and reviewed by its teachers, administrators, students, and their parents and local law enforcement and public safety representatives.

(19) (a) Each local school board may adopt an emergency response plan for the treatment of sports-related injuries that occur during school sports practices and events.

(b) The plan may be implemented by each secondary school in the district that has a sports program for students.

(c) The plan may:

(i) include emergency personnel, emergency communication, and emergency equipment components;

(ii) require inservice training on the emergency response plan for school personnel who are involved in sports programs in the district's secondary schools; and

(iii) provide for coordination with individuals and agency representatives who:

(A) are not employees of the school district; and

(B) would be involved in providing emergency services to students injured while participating in sports events.

(d) The board, in collaboration with the schools referred to in Subsection (19)(b), may review the plan each year and make revisions when required to improve or enhance the plan.

(e) The state [board of education], through the state [superintendent of public instruction], shall provide local school boards with an emergency plan response model that local boards may use to comply with the requirements of this Subsection (19).

(20) A board shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.

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

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

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



# No Senior Left Behind Statement

This Illinois Act provides for a new program of pharmaceutical assistance to the aged and disabled, which shall be administered by the state Department of Healthcare and Family Services and the Department on Aging. The Act provides that to become a beneficiary under the new program, a person must (1) be either age 65 or older or disabled, (2) be domiciled in the state, (3) enroll with a qualified Medicare Part D Prescription Drug Plan if eligible, and (4) have a maximum household income of less than specified amounts depending on household size.

This law provides that people enrolled as of December 31, 2005, in the pharmaceutical assistance program under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act and anyone enrolled as of December 31, 2005, in the SeniorCare Medicaid waiver program operated by the state shall be automatically enrolled in the new program. It divides the new program beneficiaries into 4 "eligibility groups." It provides that the program shall cover the cost of covered prescription drugs in excess of the beneficiary co-payments (\$2 for each prescription of a generic drug and \$5 for each prescription of a brand-name drug) that are not covered by Medicare.

The law provides a new definition of "covered prescription drug" for purposes of the new program. Any person otherwise eligible for pharmaceutical assistance under the new program whose covered drugs are covered by any other public program is ineligible for assistance under the new program to the extent that the cost of those drugs is covered by the other program. This Act sets forth conditions of participation in the new program for pharmacies.

The Act amends the Senior Citizens and Disabled Persons Prescription Drug Discount Program Act. The law provides that the prescription drug discount program is for residents instead of only senior citizens and disabled people. It provides for administration of the Act by the Department of Healthcare and Family Services (successor agency to the Department of Public Aid) instead of the Department of Central Management Services.

This law changes the requirements that a proposal for administering the program must meet, including requirements that a proposal specify the amount of the discount based on the average wholesale price of the covered medications and administrative fees charged by the administering entity. The law eliminates provisions setting forth limits on the amounts paid for medications by people enrolled in the program and specifying the formula for calculating the amounts paid by the program administrator to pharmacies.

This Act provides for a program enrollment fee to be determined by the Director of Healthcare and Family Services (instead of \$25), and makes changes concerning collection of the enrollment fee. It provides that to be eligible to participate in the program, a person must be a resident of the state and must have household income equal to or less than 300% of the Federal Poverty Level.

The law eliminates a provision that any person who is eligible for pharmaceutical assistance under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act is presumed to be eligible for this program.

Submitted as:

Illinois

Public Act 094-0086

Status: Enacted into law in 2005.

# Nursing Faculty Student Loan Act

This Act establishes a loan forgiveness program designed to encourage more nurses to pursue higher education in order to teach more nursing students.

Specifically, the Act authorizes the Department of Health and Human Services Regulation and Licensure to grant annual loans of up to \$5,000 each year for up to three years to nurses who pursue master's or doctoral degrees to become nursing instructors. To qualify for a loan, a student must be a state resident, enrolled in a master's or doctoral accredited nursing program, and agree, in writing, to teach full time in an approved nursing program in the state. The loan must be used for education expenses and is forgiven at a rate of \$5,000 loaned per two years of full-time nursing instruction in the state.

If the loan recipient discontinues enrollment in the program, he or she must repay to the department 100 percent of the outstanding loan principal plus simple interest at a rate of one point below the prime interest rates as of the date the loan recipient signed the contract. If the loan recipient completes the program but fails to complete his or her teaching obligation, he or she must repay 125 percent of the outstanding loan principal plus simple interest at the rate described above. To jump-start the program, the Act authorizes the department to charge an additional fee of one dollar for each license renewal for a registered nurse or licensed practical nurse. The fee is to be credited to a Nursing Faculty Student Loan Cash Fund. Additionally, any grants, private donations, and loan repayments are to be credited to that fund for purposes of financing the loan program.

Submitted as:

Nebraska

LB 146

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 “Nursing Faculty Student Loan  
2 Act.”

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

5       (1) Approved nursing program means a program offered by a public or private  
6 postsecondary educational institution in this state which consists of courses of instruction in  
7 regularly scheduled classes leading to a master of science degree, a bachelor of science degree,  
8 an associate degree, or a diploma in nursing or for the preparation for licensure as a licensed  
9 practical nurse available to regularly enrolled undergraduate or graduate students;

10       (2) Department means the [Department of Health and Human Services Regulation and  
11 Licensure]; and

12       (3) Masters or doctoral accredited nursing program means a postgraduate nursing  
13 education program that has been accredited by a nationally recognized accrediting agency and  
14 offered by a public or private postsecondary educational institution in this state.

15  
16       Section 3. [*Qualifications.*] To qualify for a loan under this Act, a student shall  
17       (1) be a resident of this state;

- 18 (2) be enrolled in a masters or doctoral accredited nursing program, and  
19 (3) agree in writing to engage in nursing instruction in an approved nursing program.  
20

21 Section 4. [*Loans.*] Loans may be made by the [department] under this Act for  
22 educational expenses of a qualified student who agrees in writing to engage in nursing  
23 instruction in an approved nursing program for [two years] of full-time nursing instruction for  
24 each year a loan is received, with a maximum of [six years] of nursing instruction in this state in  
25 return for [three years] of loans under the Act.

26 Loans shall be subject to the following conditions:

27 (1) Loans shall be used only for educational expenses for a masters or doctoral accredited  
28 nursing program. The use of loan funds by the recipient is subject to review by the [department];

29 (2) Each loan shall be for [one academic year];

30 (3) A loan recipient shall not receive more than [five thousand dollars per academic year]  
31 and shall not receive more than [fifteen thousand dollars] under the Act;

32 (4) Loans shall be forgiven at the rate of [five thousand dollars] loaned per [two years] of  
33 full-time nursing instruction in this state;

34 (5) If a loan recipient discontinues enrollment in the masters or doctoral accredited  
35 nursing program before completing the program, he or she shall repay to the [department] [one  
36 hundred percent] of the outstanding loan principal with simple interest at a rate of [one point  
37 below the prime interest rate] as of the date the loan recipient signed the contract. Interest shall  
38 accrue as of the date the loan recipient signed the contract. Such repayment shall commence  
39 within [six months after] the date he or she discontinues enrollment and shall be completed  
40 within the number of years for which loans were awarded;

41 (6) If, after the loan recipient completes the masters or doctoral accredited nursing  
42 program and before all of his or her loans are forgiven under the Act, he or she fails to begin or  
43 ceases full-time nursing instruction pursuant to the loan agreement, he or she shall repay to the  
44 [department] [one hundred twenty-five percent of the outstanding loan principal] with simple  
45 interest at a rate of [one point below the prime interest rate] as of the date the loan recipient  
46 signed the contract. Interest shall accrue as of the date the loan recipient signed the contract.  
47 Such repayment shall commence within [six months after] the date of completion of the program  
48 or the date the loan recipient ceases full-time nursing instruction, whichever is later, and shall be  
49 completed within the number of years for which loans were awarded; and

50 (7) Institutions which offer a masters or doctoral accredited nursing program may act as  
51 agents of the department for the distribution of loans to eligible students.  
52

53 Section 5. [*Nursing Faculty Student Loan Cash Fund.*] A [Nursing Faculty Student Loan  
54 Cash Fund] (Fund) is created. The Fund shall consist of grants, private donations, fees collected  
55 pursuant to Section 6 of this Act, and loan repayments under this Act remitted by the  
56 [department] to the [State Treasurer] for credit to the Fund. The Fund shall be used to administer  
57 the Act and for loans to qualified students pursuant to the Act. The Act shall be carried out with  
58 no appropriations from the [General Fund]. Any money in the Fund available for investment  
59 shall be invested by the state investment officer pursuant to [insert citation].  
60

61 Section 6. [*Fees for License Renewal.*] Beginning [January 1, 2006, through December  
62 31, 2007], the [department of health and human services regulation and licensure] shall charge a  
63 fee of [one dollar], in addition to any other fee, for each license renewal for a registered nurse or  
64 licensed practical nurse pursuant to [insert citation]. Such fee shall be collected at the time of  
65 renewal and remitted to the [state treasurer] for credit to the Fund.  
66

67           Section 7. [*Administrative Responsibilities.*] The [department] has the administrative  
68 responsibility to track loan recipients and to develop repayment tracking and collection  
69 mechanisms. The [department] may contract for such services. When a loan has been forgiven  
70 pursuant to Section 4 of this Act, the amount forgiven may be taxable income to the loan  
71 recipient and the department shall provide notification of the amount forgiven to the loan  
72 recipient, the [department of revenue], and the Internal Revenue Service if required by the  
73 Internal Revenue Code as defined in section 49-801.01.

74  
75           Section 8. [*Reports.*] The [department] shall [annually] provide a report to the [governor  
76 and the clerk of the legislature] on the status of the program, the status of the loan recipients, and  
77 the impact of the program on the number of nursing faculty in this state. Any report which  
78 includes information about loan recipients shall exclude confidential information or any other  
79 information which specifically identifies a loan recipient.

80  
81           Section 9. [*Rules and Regulations.*] The [department], in consultation with approved  
82 nursing programs in this state, shall adopt and promulgate rules and regulations to carry out the  
83 provisions of this Act. The [department] may adopt rules that require the maximum forgiveness  
84 amount of [fifteen thousand dollars] pursuant to subdivision (3) of Section 4 of this Act be  
85 present in the Fund before each qualified student is chosen.

86  
87           Section 10. [*Severability.*] [Insert severability clause.]

88  
89           Section 11. [*Repealer.*] [Insert repealer clause.]

90  
91           Section 12. [*Effective Date.*] [Insert effective date.]

# Online Property Offenses

This Act creates the offenses of online sale of stolen property and online theft by deception, and the offense of electronic fencing.

Submitted as:

Illinois

Public Act 094-0179

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 Online Property  
2 Offenses.”

3  
4           Section 2. [*Definitions.*] In this Act:

5           (a) “Access” means to use, instruct, communicate with, store data in, retrieve or intercept  
6 data from, or otherwise utilize any services of a computer.

7           (b) “Computer” means a device that accepts, processes, stores, retrieves or outputs data,  
8 and includes but is not limited to auxiliary storage and telecommunications devices connected to  
9 computers.

10           (c) “Internet” means an interactive computer service or system or an information service,  
11 system, or access software provider that provides or enables computer access by multiple users  
12 to a computer server, and includes, but is not limited to, an information service, system, or access  
13 software provider that provides access to a network system commonly known as the Internet, or  
14 any comparable system or service and also includes, but is not limited to, a World Wide Web  
15 page, newsgroup, message board, mailing list, or chat area on any interactive computer service or  
16 system or other online service.

17           (d) “Online” means the use of any electronic or wireless device to access the Internet.

18  
19           Section 3. [*Online Sale Of Stolen Property.*] A person commits the offense of online sale  
20 of stolen property when he or she uses or accesses the Internet with the intent of selling property  
21 gained through unlawful means.

22  
23           Section 4. [*Online Theft By Deception.*] A person commits the offense of online theft by  
24 deception when he or she uses the Internet to purchase or attempt to purchase property from a  
25 seller with a mode of payment that he or she knows is fictitious, stolen, or lacking the consent of  
26 the valid account holder.

27  
28           Section 5. [*Electronic Fencing.*] A person commits the offense of electronic fencing  
29 when he or she sells stolen property using the Internet, knowing that the property was stolen. A  
30 person who unknowingly purchases stolen property over the Internet does not violate this  
31 Section.

32  
33           Section 6. [*Place of Trial.*] A person who commits the offense of online sale of stolen  
34 property, online theft by deception, or electronic fencing may be tried in any county where any

one or more elements of the offense took place, regardless of whether the element of the offense was the result of acts by the accused, the victim or by another person, and regardless of whether the defendant was ever physically present within the boundaries of the county. All objections of improper place of trial are waived by a defendant unless made before trial.

Section 7. [*Sentence.*] A violation of this Act is a [Class 4 felony] if the full retail value of the stolen property or property obtained by deception does not exceed [\$150]. A violation of this Act is a [Class 2 felony] if the full retail value of the stolen property or property obtained by deception exceeds [\$150].

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

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

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

# Parenting Coordinator

This Act directs that a court may appoint a parenting coordinator at any time during the proceedings of a child custody action involving minor children if all parties consent to the appointment. The parties may agree to limit the parenting coordinator's decision-making authority to specific issues or areas.

A court may appoint a parenting coordinator without the consent of the parties upon entry of a custody order other than an ex parte order, or upon entry of a parenting plan only if the court also makes specific findings that the action is a high-conflict case, that the appointment of the parenting coordinator is in the best interests of any minor child in the case, and that the parties are able to pay for the cost of the parenting coordinator. The order appointing a parenting coordinator shall specify the issues the parenting coordinator is directed to assist the parties in resolving and deciding. The order may also incorporate any agreement regarding the role of the parenting coordinator made by the parties. The court shall give a copy of the appointment order to the parties prior to the appointment conference.

Notwithstanding the appointment of a parenting coordinator, the court shall retain exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

Submitted as:  
North Carolina  
Session Law 2005-228  
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 Establish the Appointment  
2 of Parenting Coordinators in Domestic Child Custody Actions.”

3  
4           Section 2. [*Definitions.*] As used in this Act, the following terms mean:

5           (1) High-conflict case. – A child custody action involving minor children brought under  
6 this Act where the parties demonstrate an ongoing pattern of any of the following:

- 7                   a. excessive litigation;  
8                   b. anger and distrust;  
9                   c. verbal abuse;  
10                  d. physical aggression or threats of physical aggression;  
11                  e. difficulty communicating about and cooperating in the care of the minor  
12 children; or

13                  f. conditions that in the discretion of the court warrant the appointment of a  
14 parenting coordinator.

15           (2) Minor child. – A person who is less than [18 years of age] and who is not married or  
16 legally emancipated.

17           (3) Parenting coordinator. – An impartial person who meets the qualifications of Section  
18 5 of this Act.

19  
20           Section 3. [*Appointment Of Parenting Coordinator.*]

(a) A court may appoint a parenting coordinator at any time during the proceedings of a child custody action involving minor children brought under this Act if all parties consent to the appointment. The parties may agree to limit the parenting coordinator's decision-making authority to specific issues or areas.

(b) The court may appoint a parenting coordinator without the consent of the parties upon entry of a custody order other than an ex parte order, or upon entry of a parenting plan only if the court also makes specific findings that the action is a high-conflict case, that the appointment of the parenting coordinator is in the best interests of any minor child in the case, and that the parties are able to pay for the cost of the parenting coordinator.

(c) The order appointing a parenting coordinator shall specify the issues the parenting coordinator is directed to assist the parties in resolving and deciding. The order may also incorporate any agreement regarding the role of the parenting coordinator made by the parties under subsection (a) of this section. The court shall give a copy of the appointment order to the parties prior to the appointment conference. Notwithstanding the appointment of a parenting coordinator, the court shall retain exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

(d) The court shall select a parenting coordinator from a list maintained by the [district court]. Prior to the appointment conference, the court must complete and give to the parenting coordinator a referral form listing contact information for the parties and their attorneys, the court's findings in support of the appointment, and any agreement by the parties.

#### Section 4. [*Authority Of Parenting Coordinator.*]

(a) The authority of a parenting coordinator shall be specified in the court order appointing the parenting coordinator and shall be limited to matters that will help the parties:

- (1) identify disputed issues;
- (2) reduce misunderstandings;
- (3) clarify priorities;
- (4) explore possibilities for compromise;
- (5) develop methods of collaboration in parenting; or
- (6) comply with the court's order of custody, visitation, or guardianship.

(b) Notwithstanding subsection (a) of this section, the court may authorize a parenting coordinator to decide issues regarding the implementation of the parenting plan that are not specifically governed by the court order and which the parties are unable to resolve. The parties must comply with the parenting coordinator's decision until the court reviews the decision. The parenting coordinator, any party, or the attorney for any party may request an expedited hearing to review a parenting coordinator's decision. Only the judge presiding over the case may subpoena the parenting coordinator to appear and testify at the hearing.

(c) The parenting coordinator shall not provide any professional services or counseling to either parent or any of the minor children. The parenting coordinator shall refer financial issues to the parties' attorneys.

#### Section 5. [*Qualifications.*]

(a) To be eligible to be included on the district court's list of parenting coordinators, a person must meet all of the following requirements:

- (1) hold a masters or doctorate degree in psychology, law, social work, counseling, medicine, or a related subject area;
- (2) have at least [five years] of related professional post-degree experience;



69 (3) hold a current license in the parenting coordinator's area of practice, if  
70 applicable; or

71 (4) participate in [24 hours] of training in topics related to the developmental  
72 stages of children, the dynamics of high-conflict families, the stages and effects of divorce,  
73 problem solving techniques, mediation, and legal issues.

74 (b) In order to remain eligible as a parenting coordinator, the person must also attend  
75 parenting coordinator seminars that provide continuing education, group discussion, and peer  
76 review and support.

77  
78 Section 6. [*Appointment Conference.*]

79 (a) The parties, their attorneys, and the proposed parenting coordinator must all attend the  
80 appointment conference.

81 (b) At the time of the appointment conference, the court shall do all of the following:

82 (1) explain to the parties the parenting coordinator's role, authority, and  
83 responsibilities as specified in the appointment order and any agreement entered into by the  
84 parties;

85 (2) determine the information each party must provide to the parenting  
86 coordinator;

87 (3) determine financial arrangements for the parenting coordinator's fee to be paid  
88 by each party and authorize the parenting coordinator to charge any party separately for  
89 individual contacts made necessary by that party's behavior;

90 (4) inform the parties, their attorneys, and the parenting coordinator of the rules  
91 regarding communications among them and with the court; and

92 (5) enter the appointment order.

93 (c) The parenting coordinator and any guardians ad litem shall bring to the appointment  
94 conference all necessary releases, contracts, and consents. The parenting coordinator must also  
95 schedule the first sessions with the parties.

96  
97 Section 7. [*Fees.*]

98 (a) The parenting coordinator shall be entitled to reasonable compensation from the  
99 parties for services rendered and to a reasonable retainer. The parenting coordinator may request  
100 a hearing in the event of a fee dispute.

101 (b) The court may make the appointment of a parenting coordinator contingent upon the  
102 parties' payment of a specific fee to the parenting coordinator. The parenting coordinator shall  
103 not begin any duties until the fee has been paid.

104  
105 Section 8. [*Meetings and Communications.*] Meetings between the parenting coordinator  
106 and the parties may be informal and ex parte. Communications between the parties and the  
107 parenting coordinator are not confidential. The parenting coordinator and the court shall not  
108 engage in any ex parte communications.

109  
110 Section 9. [*Reports.*]

111 (a) The parenting coordinator shall promptly provide written notification to the court, the  
112 parties, and attorneys for the parties if the parenting coordinator makes any of the following  
113 determinations:

114 (1) the existing custody order is not in the best interests of the child; or

115 (2) the parenting coordinator is not qualified to address or resolve certain issues in  
116 the case.

(b) The court shall schedule a hearing and review the matter no later than [two weeks] following receipt of the report. The parenting coordinator shall remain involved in the case until the hearing.

(c) If the parties agree to any fundamental change in the child custody order, the parenting coordinator shall send the agreement to the parties' attorneys for preparation of a consent order.

#### Section 10. [*Parenting Coordinator Records.*]

(a) The parenting coordinator shall provide the following to the attorneys for the parties and to the parties:

(1) a written summary of the developments in the case following each meeting with the parties, and

(2) copies of any other written communications.

(b) The parenting coordinator shall maintain records of each meeting. These records may only be subpoenaed by order of the judge presiding over the case. The court must review the records in camera and may release the records to the parties and their attorneys only if the court determines release of the information contained in the records will assist the parties with the presentation of their case at trial.

#### Section 11. [*Modification or Termination of Parenting Coordinator Appointment.*]

(a) For good cause shown, the court may terminate or modify the parenting coordinator appointment upon motion of either party at the request of the parenting coordinator, upon the agreement of the parties and the parenting coordinator, or by the court on its own motion. Good cause includes any of the following:

(1) lack of reasonable progress over a significant period of time despite the best efforts of the parties and the parenting coordinator;

(2) a determination that the parties no longer need the assistance of a parenting coordinator;

(3) impairment on the part of a party that significantly interferes with the party's participation in the process; and

(4) the parenting coordinator is unable or unwilling to continue to serve.

(b) If the parties agreed to the appointment of the parenting coordinator under Subsection (a) of this section, the court may terminate or modify the appointment according to that agreement or according to a subsequent agreement by the parties.

#### Section 12. [*Parenting Coordinator Immunity.*]

A parenting coordinator shall not be liable for damages for acts or omissions of ordinary negligence arising out of that person's duties and responsibilities as a parenting coordinator. This section does not apply to actions arising out of the operation of a motor vehicle.

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

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

#### Section 15. [*Effective Date.*] [Insert effective date.]

# Permissible Use of Seclusion and Restraint

This Act clarifies when public school personnel can seclude and restrain students to manage student behavior. Generally, under the Act, school personnel can physically restrain a student to break up a fight, seize weapons, or for self-defense. School personnel can seclude a student to keep them from being harmed or harming others if the student is monitored while they are kept in seclusion.

Submitted as:  
North Carolina  
Session Law 2005-205  
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 Clarify the Permissible Use  
2 of Seclusion and Restraint in Public Schools and to Provide for Training in Management of  
3 Student Behavior.”

4  
5           Section 2. [*Permissible Use of Seclusion and Restraint.*]

6           (a) It is the policy of this state to:

7                   (1) promote safety and prevent harm to all students, staff, and visitors in the  
8 public schools;

9                   (2) treat all public school students with dignity and respect in the delivery of  
10 discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by  
11 law;

12                   (3) provide school staff with clear guidelines about what constitutes use of  
13 reasonable force permissible in this state’s public schools;

14                   (4) improve student achievement, attendance, promotion, and graduation rates by  
15 employing positive behavioral interventions to address student behavior in a positive and safe  
16 manner, and

17                   (5) promote retention of valuable teachers and other school personnel by  
18 providing appropriate training in prescribed procedures, which address student behavior in a  
19 positive and safe manner.

20           (b) The following definitions apply in this section:

21                   (1) “Assistive technology device” means any item, piece of equipment, or product  
22 system that is used to increase, maintain, or improve the functional capacities of a child with a  
23 disability.

24                   (2) “Aversive procedure” means a systematic physical or sensory intervention  
25 program for modifying the behavior of a student with a disability which causes or reasonably  
26 may be expected to cause one or more of the following:

27                           a. significant physical harm, such as tissue damage, physical illness, or  
28 death;

29                           b. serious, foreseeable long-term psychological impairment, or

30                           c. obvious repulsion on the part of observers who cannot reconcile  
31 extreme procedures with acceptable, standard practice, for example: electric shock applied to the

body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

(3) "Behavioral intervention" means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

(4) "IEP" means a student's Individualized Education Plan.

(5) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

(6) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.

(7) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

(8) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.

(9) "School personnel" means:

a. employees of a local board of education;

b. any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students; or

c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.

(10) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:

a. physically prevented from leaving by locking hardware or other means.

b. not capable of leaving due to physical or intellectual incapacity.

(11) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

(c) Physical Restraint:

(1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:

a. as reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person;

b. as reasonably needed to maintain order or prevent or break up a fight;

c. as reasonably needed for self-defense;

d. as reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior;

e. as reasonably needed to escort a student safely from one area to another.

f. if used as provided for in a student's IEP or [Section 504] plan or behavior intervention plan; or

g. as reasonably needed to prevent imminent destruction to school or another person's property.

(2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.

(3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

(d) Mechanical Restraint:

(1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:

a. when properly used as an assistive technology device included in the student's IEP or [Section 504] plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider;

b. when using seat belts or other safety restraints to secure students during transportation;

c. as reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person;

d. as reasonably needed for self-defense; or

e. as reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

(2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

(e) Seclusion:

(1) Seclusion of students by school personnel may be used in the following circumstances:

a. as reasonably needed to respond to a person in control of a weapon or other dangerous object;

b. as reasonably needed to maintain order or prevent or break up a fight;

c. as reasonably needed for self-defense;

d. as reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property; or

e. when used as specified in the student's IEP, [Section 504] plan, or behavior intervention plan, and

1. the student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times;

2. the student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or [Section 504] plan;

3. the space in which the student is confined has been approved for such use by the local education agency;

4. the space is appropriately lighted;

5. the space is appropriately ventilated and heated or cooled, and

6. the space is free of objects that unreasonably expose the student or others to harm.

(2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.

(3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

(f) Isolation. – Isolation is permitted as a behavior management technique provided that:

(1) the space used for isolation is appropriately lighted, ventilated, and heated or cooled;

(2) the duration of the isolation is reasonable in light of the purpose of the isolation;

(3) the student is reasonably monitored while in isolation;

(4) the isolation space is free of objects that unreasonably expose the student or others to harm;

(g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.

(h) Aversive Procedures. – The use of aversive procedures as defined in this section is prohibited in public schools.

(i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under [insert citation] or modifies the rules and procedures governing discipline under [insert citation].

(j) Notice, Reporting, and Documentation.

(1) Notice of procedures. – Each local [board of education] shall provide copies of this section and all local [board] policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.

(2) Notice of specified incidents:

a. School personnel shall promptly notify the principal or principal's designee of:

1. any use of aversive procedures;  
2. any prohibited use of mechanical restraint;  
3. any use of physical restraint resulting in observable physical injury to a student; or

4. any prohibited use of seclusion or seclusion that exceeds [10 minutes] or the amount of time specified on a student's behavior intervention plan.

b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.

(3) As used in subdivision (2) of this subsection, “promptly notify” means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.

(4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than [30 days] after the incident. The written incident report shall include:

a. the date, time of day, location, duration, and description of the incident and interventions;

b. the events or events that led up to the incident;

c. the nature and extent of any injury to the student, and

d. the name of a school employee the parent or guardian can contact regarding the incident.

(5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the

employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

(k) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense.

### Section 3. [*Teacher Certification Requirements.*]

(a) It is the policy of this state to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in this state. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the state [board of education], as lead agency in coordination and cooperation with the [university board of governors, the board of community colleges] and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after [three] years of teaching experience, and certificate renewal every [five] years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for [five] years after retirement.

(b) The state [board of education], as lead agency in coordination with the [board of governors of the state university] and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

(c) The state [board of education], in consultation with the [board of governors of the state university], shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect state priorities for improving student achievement.

(d) The state [board of education], in consultation with local boards of education and the [board of governors of the state university], shall reevaluate and enhance the requirements for renewal of teacher certificates. The state [board] shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The state [board] shall adopt new standards for the renewal of teacher certificates by [insert date].

(e) The standards for approval of institutions of teacher education shall require that teacher education programs for all students who do not major in special education include demonstrated competencies in the identification and education of children with learning disabilities and positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The state [board of education] shall incorporate the criteria developed in accordance with [insert citation] for assessing proposals under the [school administrator training program] into its [school administrator program] approval standards.

(f) All state institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the state [board of education]. The performance reports shall follow a common format, shall be submitted according to a plan developed by the state [board], and shall include the information required under the plan developed by the state [board].

(g) It is the policy of this state to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the [insert date] school year begins, the state [board of education] shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the [2006-2007] school year, the criteria and procedures shall include preservice training in the identification and education of children with disabilities and positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Regardless of credentials or competence, no one shall begin teaching above the [middle level of differentiation]. Skilled people who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than [five years] and shall be required to obtain certification before contracting for a [sixth year] of service with any local administrative unit in this State.

(h) It is further the policy of this state to ensure that local [boards of education] can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the [insert date] school year begins, the state [board of education] shall carefully consider a lateral entry program for school administrators to ensure that local [boards of education] will have sufficient flexibility to attract able candidates.

Section 4. [*Professional Development Plan for Training in Managing Disruptive Behavior.*] Professional development should be clearly matched to the goals and objectives of the plan. This professional development shall include a component to train appropriate school personnel in the management of disruptive or dangerous student behavior. Appropriate school personnel may include, but is not limited to, teachers, teacher assistants, school administrators, bus drivers, school resource officers, school psychologists, and school counselors. The training shall include instruction in positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. The appropriate personnel with priority for the training shall include those staff members who are most likely to be called upon to prevent or address disruptive or dangerous student behavior. Each local board of education shall include in this component of its safe school plan procedures to evaluate the effectiveness of this training in preventing or addressing disruptive or dangerous student behavior. Local boards of education are encouraged to use available sources of discretionary revenue to implement the plan to train personnel in the management of disruptive or dangerous student behavior. Local boards may only be required to implement the behavior management training component of the plan to the extent that funds have been appropriated for this purpose by the [General Assembly] or by local units of government. By [January 1, 2006], local boards of education shall amend their safe school plans to include this training component.

Section 5. [*Local [Board] Duties to Report Certain Incidents of Seclusion and Restraint.*]

In addition to the powers and duties designated in [insert citation], local [boards of education] shall have the power or duty to report certain incidents of seclusion and restraint. Local [boards of education] shall maintain a record of incidents reported under Section 2(j)(4) of this Act and shall provide this information [annually] to the state [board of education].

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

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

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



# Prevention, Diagnosis, and Treatment of Asthma

This Act includes provisions to support the prevention, diagnosis, and treatment of asthma, to attempt to reduce the one-third of those with asthma that are not diagnosed, and improve control of the disease for the 30-50% that are not receiving medications to control the disease and the 80% that are not receiving annual spirometry measurements that are key in monitoring the disease.

A key section of the bill authorizes the self-administration of asthma medication in all primary and secondary schools by students, which has been previously approved by the SSL Committee. This bill expands those provisions to include school in-service training for school staff on management of students with asthma, school policies on asthma rescue procedures, and easily accessible school records on the student's treatment plan and his/her parents' application for the student to be able to self-administer medication.

For each student, the legislation also requires that a health care practitioner has written a treatment plan for managing an acute asthma episode in the student if needed, and has certified that the student has the skills to use the asthma medication or device. Parents must complete and submit any required documentation to the school for each school year.

The Act seeks to improve care by encouraging disease management programs for chronic diseases including asthma in state-purchased health care programs. Finally, the bill requires that the department of health will develop a state asthma plan based on nationally recommended guidelines, to include strategies, costs estimates and funding sources to accomplish the plan. The plan was to be completed in 2005 and reported to the legislature and updated every two years; the plan would be implemented starting in 2006 as funding became available.

Submitted as:

Washington

Substitute Senate Bill 5841

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 the Prevention,  
2   Diagnosis, and Treatment of Asthma.”

3  
4           Section 2. [*Legislative Findings*.] The [legislature] finds that:

5           (1) Asthma is a dangerous disease that is growing in prevalence in this state. An  
6   estimated five hundred thousand residents of the state suffer from asthma. Since 1995, asthma  
7   has claimed more than five hundred lives, caused more than twenty-five thousand  
8   hospitalizations with costs of more than one hundred twelve million dollars, and resulted in  
9   seven million five hundred thousand missed school days. School nurses have identified over four  
10   thousand children with life-threatening asthma in the state's schools.

11           (2) While asthma is found among all populations, its prevalence disproportionately  
12   affects low-income and minority populations. Untreated asthma affects worker productivity and  
13   results in unnecessary absences from work. In many cases, asthma triggers present in  
14   substandard housing and poorly ventilated workplaces contribute directly to asthma.

15           (3) Although research continues into the causes and cures for asthma, national consensus  
16   has been reached on treatment guidelines. People with asthma who are being treated in

accordance with these guidelines are far more likely to control the disease than those who are not being treated and therefore are less likely to experience debilitating or life-threatening asthma episodes, less likely to be hospitalized, and less likely to need to curtail normal school or work activities. With treatment, most people with asthma are able to live normal, active lives.

(4) Up to one-third of the people with asthma have not had their disease diagnosed. Among those with diagnosed asthma, thirty to fifty percent are not receiving medicines that are needed to control the disease, and approximately eighty percent of diagnosed asthmatics are not getting yearly spirometry measurements that are a key element in monitoring the disease.

### Section 3. [*School Policies.*]

(1) The [superintendent of public instruction and the secretary of the department of health] shall develop a uniform policy for all school districts providing for the in-service training for school staff on symptoms, treatment, and monitoring of students with asthma and on the additional observations that may be needed in different situations that may arise during the school day and during school-sponsored events. The policy shall include the standards and skills that must be in place for in-service training of school staff.

(2) All school districts shall adopt policies regarding asthma rescue procedures for each school within the district.

(3) All school districts must require that each public elementary school and secondary school grant to any student in the school authorization for the self-administration of medication to treat that student's asthma or anaphylaxis, if:

(a) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

(b) the student has demonstrated to the health care practitioner, or the practitioner's designee, and a professional registered nurse at the school, the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;

(c) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(d) the student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under (c) of this subsection and other documents related to liability.

(4) An authorization granted under subsection (3) of this section must allow the student involved to possess and use his or her medication:

(a) while in school;

(b) while at a school-sponsored activity, such as a sporting event; and

(c) in transit to or from school or school-sponsored activities.

(5) An authorization granted under subsection (3) of this section:

(a) must be effective only for the same school and school year for which it is granted; and

(b) must be renewed by the parent or guardian [each subsequent school year] in accordance with this subsection.

(6) School districts must require that backup medication, if provided by a student's parent or guardian, be kept at a student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(7) School districts must require that information described in subsection (3)(c) and (d) of this section be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(8) Nothing in this section creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

#### Section 4. *[Health Care Agency Policies.]*

(1) The [authority] shall coordinate state agency efforts to develop and implement uniform policies across state purchased health care programs that will ensure prudent, cost-effective health services purchasing, maximize efficiencies in administration of state purchased health care programs, improve the quality of care provided through state purchased health care programs, and reduce administrative burdens on health care providers participating in state purchased health care programs. The policies adopted should be based, to the extent possible, upon the best available scientific and medical evidence and shall endeavor to address:

(a) methods of formal assessment, such as health technology assessment. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board;

(b) monitoring of health outcomes, adverse events, quality, and cost-effectiveness of health services;

(c) development of a common definition of medical necessity; and

(d) exploration of common strategies for disease management and demand management programs, including asthma, diabetes, heart disease, and similar common chronic diseases. Strategies to be explored include individual asthma management plans. On [January 1, 2007, and January 1, 2009], the [authority] shall issue a status report to the [legislature] summarizing any results it attains in exploring and coordinating strategies for asthma, diabetes, heart disease, and other chronic diseases.

(2) The administrator may invite health care provider organizations, carriers, other health care purchasers, and consumers to participate in efforts undertaken under this section.

(3) For the purposes of this section, "best available scientific and medical evidence" means the best available external clinical evidence derived from systematic research.

#### Section 5. *[State Asthma Plan.]*

(1) The [department], in collaboration with its public and private partners, shall design a state asthma plan, based on clinically sound criteria including nationally recognized guidelines such as those established by the national asthma education prevention partnership expert panel report guidelines for the diagnosis and management of asthma.

(2) The plan shall include recommendations in the following areas:

(a) evidence-based processes for the prevention and management of asthma;

(b) data systems that support asthma prevalence reporting, including population disparities and practice variation in the treatment of asthma;

(c) quality improvement strategies addressing the successful diagnosis and management of the disease; and

(d) cost estimates and sources of funding for plan implementation.

(3) The [department] shall submit the completed state plan to the [governor and the legislature] by [insert date]. After the initial state plan is submitted, the [department] shall provide progress reports to the [governor and the legislature] on a [biennial] basis beginning [December 1, 2007].

112 (4) The [department] shall implement the state plan recommendations made under  
113 subsection (2) of this section only to the extent that federal, state, or private funds, including  
114 grants, are available for that purpose.

115  
116 Section 6. [*Severability*.] [Insert severability clause.]

117  
118 Section 7. [*Repealer*.] [Insert repealer clause.]

119  
120 Section 8. [*Effective Date*.] [Insert effective date.]

# Reducing Racial and Ethnic Health Disparities

This Act creates a grant program under the state department of public health entitled “Reducing Racial and Ethnic Health Disparities: Closing the Gap,” to stimulate the development of community-based and neighborhood-based projects that will improve the health outcomes of racial and ethnic populations.

Submitted as:

Illinois

Public Act 094-0447

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 “Reduction of Racial and Ethnic  
2 Health Disparities Act.”

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

5           (a) The [general assembly] finds that despite state investments in health care programs,  
6 certain racial and ethnic populations in this state continue to have significantly poorer health  
7 outcomes when compared to non-Hispanic whites.

8           (b) The [general assembly] finds that local solutions to health care problems can have a  
9 dramatic and positive effect on the health status of these populations. Local governments and  
10 communities are best equipped to identify the health education, health promotion, and disease  
11 prevention needs of the racial and ethnic populations in their communities; mobilize the  
12 community to address health outcome disparities; enlist and organize local public and private  
13 resources and faith-based organizations to address these disparities; and to evaluate the  
14 effectiveness of interventions.

15           (c) The state [department of human services] has several initiatives to reduce racial and  
16 ethnic disparities in infant mortality and diabetes, and the state [department of public health] has  
17 several initiatives to address asthma; breast, cervical, prostate, and colorectal cancer; kidney  
18 disease; HIV/AIDS; hepatitis C; sexually transmitted diseases; adult and child immunizations;  
19 cardiovascular disease; and accidental injuries and violence.

20           (d) It is therefore the intent of the [general assembly] to provide funds within the counties  
21 of this state, in the form of ["Reducing Racial and Ethnic Health Disparities: Closing the Gap"]  
22 grants, to stimulate the development of community-based and neighborhood-based projects that  
23 will improve the health outcomes of racial and ethnic populations. Further, it is the intent of the  
24 [general assembly] that these programs foster the development of coordinated, collaborative, and  
25 broad-based participation by public and private entities and by faith-based organizations. Finally,  
26 it is the intent of the [general assembly] that the grant program function as a partnership between  
27 state and local governments, faith-based organizations, and private-sector health care providers,  
28 including managed care, voluntary health care resources, social service providers, and  
29 nontraditional partners.

30  
31           Section 3. [*Definitions.*] In this Act:

32           (a) “Department” means the Department of Public Health.

33           (b) “Director” means the Director of Public Health.

34  
35 Section 4. [*Grant Program.*]

36 (a) Subject to appropriations for that purpose, the [department] shall establish and  
37 administer a grant program to implement this Act.

38 (b) The [department] shall do the following:

39 (1) publicize the availability of funds and establish an application process for  
40 submitting a grant proposal;

41 (2) provide technical assistance and training, including a statewide meeting  
42 promoting best practice programs, as requested, to grant recipients;

43 (3) develop uniform data reporting requirements for the purpose of evaluating the  
44 performance of the grant recipients and demonstrating improved health outcomes;

45 (4) develop a monitoring process to evaluate progress toward meeting grant  
46 objectives; and

47 (5) coordinate with the state [department of human services] and existing  
48 community-based programs, such as chronic disease community intervention programs, cancer  
49 prevention and control programs, diabetes control programs, the [Children's Health Insurance  
50 (KidCare) Program], the HIV/AIDS program, immunization programs, and other related  
51 programs at the state and local levels, to avoid duplication of effort and promote consistency.

52 (c) The [office of minority health] within the [department] shall establish measurable  
53 outcomes to achieve the goal of reducing health disparities in the following priority areas:  
54 asthma; breast, cervical, prostate, and colorectal cancer screening; kidney disease; HIV/AIDS;  
55 hepatitis C; sexually transmitted diseases; adult and child immunizations; cardiovascular disease;  
56 and accidental injuries and violence. The [office of minority health] shall enhance current data  
57 tools to ensure a statewide assessment of the risk behaviors associated with the health disparity  
58 priority areas identified in this subsection. To the extent feasible, the [office] shall conduct the  
59 assessment so that the results may be compared to national data.

60 (d) The [director] may appoint an ad hoc advisory committee to: examine areas where  
61 public awareness, public education, research, and coordination regarding racial and ethnic health  
62 outcome disparities are lacking; consider access and transportation issues that contribute to  
63 health status disparities; and make recommendations for closing gaps in health outcomes and  
64 increasing the public's awareness and understanding of health disparities that exist between racial  
65 and ethnic populations.

66  
67 Section 5. [*Eligibility for Grant.*]

68 (a) Any person, entity, or organization within a [county] may apply for a grant under this  
69 Act and may serve as the lead agency to administer and coordinate project activities within the  
70 county and develop community partnerships necessary to implement the grant.

71 (b) People, entities, or organizations within adjoining counties with populations of [less  
72 than 100,000] may jointly submit a [multicounty] grant proposal. The proposal must clearly  
73 identify a single lead agency with respect to program accountability and administration,  
74 however.

75 (c) In addition to the grants awarded under subsections (a) and (b), up to [20%] of the  
76 funding for the grant program shall be dedicated to projects that address improving racial and  
77 ethnic health status within specific urban areas identified by the [department] in rules.

78 (d) Nothing in this Act prevents a person, entity, or organization within a [county or  
79 group of counties] from separately contracting for the provision of racial and ethnic health  
80 promotion, health awareness, and disease prevention services.

81  
82 Section 6. [*Grant Proposal Requirements.*]

83 (a) A proposal for a grant under this Act must be submitted to the [department] for  
84 review.

85 (b) A proposal for a grant must include each of the following elements.

86 (1) the purpose and objectives of the proposed project, including identification of  
87 the particular racial or ethnic disparity the project will address, including one or more of the  
88 following priority areas:

89 (A) decreasing racial and ethnic disparities in maternal and infant  
90 mortality rates;

91 (B) decreasing racial and ethnic disparities in morbidity and mortality  
92 rates relating to cancer;

93 (C) decreasing racial and ethnic disparities in morbidity and mortality  
94 rates relating to HIV/AIDS;

95 (D) decreasing racial and ethnic disparities in morbidity and mortality  
96 rates relating to cardiovascular disease;

97 (E) decreasing racial and ethnic disparities in morbidity and mortality  
98 rates relating to diabetes;

99 (F) increasing adult and child immunization rates in certain racial and  
100 ethnic populations, or

101 (G) decreasing racial and ethnic disparities in oral health care.

102 (2) identify the program's target population;

103 (3) define the program's relevance of the target population;

104 (3) outline methods for obtaining baseline health status data and assessment of  
105 community health needs;

106 (4) outline mechanisms for mobilizing community resources and gaining local  
107 commitment;

108 (5) develop and implement health promotion and disease prevention  
109 interventions;

110 (6) devise mechanisms and strategies for evaluating the project's objectives,  
111 procedures, and outcomes;

112 (7) a proposed work plan, including a timeline for implementing the project; and

113 (8) outline the likelihood that project activities will occur and continue in the  
114 absence of funding.

115 (c) The [department] shall give priority to proposals that:

116 (1) represent areas with the greatest documented racial and ethnic health status  
117 disparities;

118 (2) exceed the minimum local contribution requirements specified in Section 7;

119 (3) demonstrate broad-based local support and commitment from entities  
120 representing racial and ethnic populations, including non-Hispanic whites. Indicators of support  
121 and commitment may include agreements to participate in the program, letters of endorsement,  
122 letters of commitment, interagency agreements, or other forms of support;

123 (4) demonstrate a high degree of participation by the health care community in  
124 clinical preventive service activities and community-based health promotion and disease  
125 prevention interventions;

126 (5) have been submitted from counties with a high proportion of residents living  
127 in poverty and with poor health status indicators;

128 (6) demonstrate a coordinated community approach to addressing racial and  
129 ethnic health issues within existing publicly financed health care programs;

130 (7) incorporate intervention mechanisms that have a high probability of improving  
131 the targeted population's health status, and

(8) demonstrate a commitment to quality management in all aspects of project administration and implementation.

Section 7. *[Grant Awards.]*

(a) The [department] may award one or more grants in a [county] or in [a group of adjoining counties] from which a [multicounty] grant proposal is submitted. The [department] may award an [urban area grant] under subsection (c) of Section 5 in a [county] or [group of adjoining counties] that are also receiving a grant award under subsection (a) or (b) of Section 5 of this Act.

(b) Units of local government may provide matching grants to supplement those made by the [department].

(c) The amount of the grant award shall be based on the [county or urban area]'s population, or on the combined population in [a group of adjoining counties] from which a [multicounty] application is submitted, and on other factors, as determined by the [department] in rules.

(d) The [department] shall begin disseminating grant awards no later than [January 1, 2007].

(e) The [department] shall fund a grant under this Act for [one year] and may renew the grant [annually] upon application to and approval by the [department], subject to the achievement of quality standards, objectives, and outcomes and to the availability of funds.

Section 8. *[Continued Operation of Programs to Reduce Racial and Ethnic Disparities in Infant Mortality and Diabetes.]* Subject to the amounts appropriated for that purpose, the state [department of human services] shall continue to operate programs to reduce racial and ethnic disparities in infant mortality and diabetes.

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

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

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



# Regarding the Protection of Documents Possessed by the Fish and Game Administration that Contains Personal Information of the Public

This Act provides for the protection of game and fish department records of personal information obtained from the public records of sensitive biological areas. The following records, regardless of form or characteristic, of or relating to the state game and fish department are exempt:

- A record that would identify the name, address or electronic mail address of an individual participating in a wildlife harvest survey;
- A record that would identify population distributions or locations of pallid sturgeon, bighorn sheep, moose, elk, eagles, sage grouse, prairie chickens, and any species of wildlife listed as threatened or endangered under the federal Endangered Species Act; and
- Telemetry radio frequencies or global positioning system coordinates of monitored species denning sites, nest locations of raptors, and the specific location of wildlife capture sites used for wildlife research/management.

Submitted as:

North Dakota

HB 1100

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 Provide for Protection of  
2 Game and Fish Department Records of Personal Information Obtained from the Public and  
3 Records of Sensitive Biological Data.”  
4

5           Section 2. [*Protection of Personal Information of the Public.*] The following records,  
6 regardless of form or characteristic, of or relating to the [game and fish department] are exempt  
7 under [insert citation]:

8                   A. A record that would identify the name, address, or electronic mail  
9 address of an individual participating in a wildlife harvest survey.

10                   B. A record that would identify population distributions or locations of  
11 pallid sturgeon, bighorn sheep, moose, elk, eagles, sage grouse, prairie chickens, and any species  
12 of wildlife listed as threatened or endangered under the federal Endangered Species Act of 1973  
13 [Pub. L. 93-205; 87 Stat. 884; 16 U.S.C. 1531 et seq.], as amended.

14                   C. Telemetry radio frequencies or global positioning system coordinates  
15 of monitored species, denning sites, nest locations of raptors, and the specific location of wildlife  
16 capture sites used for wildlife research or management.  
17

18           Section 3. [*Severability.*] [Insert severability clause.]  
19

20           Section 4. [*Repealer.*] [Insert repealer clause.]  
21

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

# Regarding the Revocation/Denial of an Elder's Driver's License Based on Statements Made by Their Treating Physicians

This Act directs that the state division of driver's licensing may not issue or renew a driver's license to a person when the division has received a written statement from a licensed treating physician or optometrist stating that the person is not capable of safely operating a motor vehicle. The licensed treating physician or optometrist may request an examination by the division. The division can also require an individual to submit to a reexamination when the division staff believe an individual is unsafe or otherwise unqualified to be licensed. Upon the conclusion of the examination or the refusal to be examined the division may cancel the driver's license.

Submitted as:

Wyoming

HB 0059 / Enrolled Act No. 41

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 Establish Procedures to  
2 Revoke Driver Licenses."

3  
4           Section 2. [*Authority of State Driver License Division to Cancel License or Permit.*] The  
5 [division] may cancel any driver's license or instruction permit upon determining that the  
6 licensee or permittee was not entitled to the license or permit, that the licensee or permittee failed  
7 to give the required or correct information in his application, or that the license or permit has  
8 been altered, or upon receipt of a written statement from a licensed treating physician or  
9 optometrist stating that the licensee or permittee is not capable of safely operating a motor  
10 vehicle. The licensed treating physician or optometrist may request an examination by the  
11 division under [insert citation].

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

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

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

# Regulating Data Recorders in Vehicles

This Act prescribes the ownership of information recorded by an event data recorder in motor vehicles and prohibits the use of the data without written permission of the owner of the vehicle.

Submitted as:

Arkansas

SB 51

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 Prescribe the Ownership of  
2 Information Recorded by an Event Data Recorder in Motor Vehicles and to Prohibit the Use of  
3 the Data Without Written Permission of the Owner of the Vehicle.”  
4

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

6           (1) “Authorized representative” means a person who is the attorney-in-fact for an owner  
7 or a person who has been appointed the administrator or personal representative of the estate of  
8 the owner;

9           (2) “Motor vehicle event data recorder” means a factory-installed feature in a motor  
10 vehicle that does one or more of the following:

11               (A) Records, stores, transmits, or dispenses any of the following information for  
12 the purpose of retrieval after a crash:

- 13                       (i) Vehicle speed;  
14                       (ii) Vehicle direction;  
15                       (iii) Vehicle location;  
16                       (iv) Steering performance; or  
17                       (v) Seatbelt restraint status;

18               (B) Has the capacity to transmit information concerning a crash in which the  
19 motor vehicle has been involved to a central communications system when a crash occurs; or

20               (C) Includes a sensing and diagnostic module, restraint control module, electronic  
21 throttle control, or other similar component;

22           (3) “Owner” means a person or entity:

- 23                       (A) In whose name a motor vehicle is registered or titled;  
24                       (B) Who leases a motor vehicle for at least [three months];  
25                       (C) Who is entitled to possession of the motor vehicle as the purchaser under a  
26 security agreement; or  
27                       (D) Who is the authorized representative of the owner.  
28

29           Section 3. [*Notice to Motor Vehicle Owners.*]

30           (1) At the time of new vehicle purchase by a consumer from a dealership, an owner of a  
31 motor vehicle shall be given written notice by the seller or manufacturer that includes the  
32 following:

- 33                       (A) The presence of the motor vehicle event data recorder in the motor vehicle;  
34                       (B) The type of motor vehicle event data recorder in the motor vehicle; and

(C) The type of data that is recorded, stored, or transmitted on the motor vehicle event data recorder.

Section 4. *[Ownership, Consent, and Use of Data on a Motor Vehicle Data Recorder.]*

(1) Except as specifically provided under this section, the data on a motor vehicle event data recorder:

(A) Is private;

(B) Is exclusively owned by the owner of the motor vehicle; and

(C) Shall not be retrieved or used by another person or entity.

(2) If a motor vehicle is owned by [one] owner, then the owner of a motor vehicle may provide written consent in the form of a release signed by the owner that authorizes a person or entity to retrieve or use the data.

(3) If a motor vehicle is owned by more than [one] person or entity and if [all] owners agree to release the data, then [all] owners must consent in writing by signing a release to authorize a person or entity to retrieve or use the data.

(4) A release to a person or entity under this subsection shall be limited to permission for data collection and compilation only and shall not authorize the release of information that identifies the owner of the vehicle.

(5) If a motor vehicle is equipped with a motor vehicle event data recorder and is involved in an accident in this state, the owner of the motor vehicle at the time the data is created shall own and retain exclusive ownership rights to the data.

(6) The ownership of the data shall not pass to a lienholder or to an insurer because the lienholder or insurer succeeds in ownership to the vehicle as a result of the accident.

(7) The data shall not be used by a lienholder or an insurer for any reason without a written consent in the form of a release signed by the owner of the motor vehicle at the time of the accident that authorizes the lienholder or insurer to retrieve or use the data.

(8) A lienholder or insurer shall not make the owner's consent to the retrieval or use of the data conditioned upon the payment or settlement of an obligation or claim; however, the insured is required to comply with all policy provisions including any provision that requires the insured to cooperate with the insurer.

(9) An insurer or lessor of a motor vehicle shall not require an owner to provide written permission for the access or retrieval of information from a motor vehicle event data recorder as a condition of the policy or lease.

(10) Except as specifically provided under this section, the data from a motor vehicle event data recorder shall only be produced without the consent of the owner at the time of the accident if:

(A) A court of competent jurisdiction in the state orders the production of the data;

(B) A law enforcement officer obtains the data based on probable cause of an offense under the laws of this state; or

(C) A law enforcement officer, a firefighter, or an emergency medical services provider obtains the data in the course of responding to or investigating an emergency involving physical injury or the risk of physical injury to any person.

(11) The [State Highway and Transportation Department] may retrieve data from a motor vehicle event data recorder if the data is used for the following purposes:

(A) Preclearing weigh stations;

(B) Automating driver records of duty status as authorized by the United States Department of Transportation;

83 (C) Replacing handwritten reports for any fuel tax reporting or other mileage  
84 reporting purpose; or

85 (D) Complying with a state or federal law.

86 (12) To protect the public health, welfare, and safety, the following exceptions shall be  
87 allowed regarding the retrieval of data from a motor vehicle event data recorder:

88 (A) To determine the need or facilitate emergency medical care for the driver or  
89 passenger of a motor vehicle that is involved in a motor vehicle crash or other emergency,  
90 including obtaining data from a company that provides subscription services to the owners of  
91 motor vehicles for in-vehicle safety and security communications systems;

92 (B) To facilitate medical research of the human body's reaction to motor vehicle  
93 crashes if:

94 (i) The identity of the owner or driver is not disclosed in connection with  
95 the retrieved data; and

96 (ii) The last four digits of the vehicle identification number are not  
97 disclosed; or

98 (iii) To diagnose, service, or repair a motor vehicle.

99 (13) Notwithstanding any other provision of this section, the use of data from a motor  
100 vehicle event data recorder shall not be permitted into evidence in a civil or criminal matter  
101 pending before a court in this state unless it is shown to be relevant and reliable pursuant to the  
102 state [Rules of Evidence].  
103

104 Section 5. [*Disclosing Capabilities of Motor Vehicle Event Data Recorders and*  
105 *Subscription Service Agreements.*]

106 (1) If a motor vehicle is equipped with a motor vehicle event data recorder that is capable  
107 of recording, storing, transmitting, or dispensing information as described in this section and that  
108 capability is part of a subscription service, the fact that the information may be recorded, stored,  
109 transmitted or dispensed shall be disclosed in the subscription agreement.

110 (2) Subsections 4(1),(2),(3),(4), and (12) shall not apply to subscription services that meet  
111 the requirements of this subsection.  
112

113 Section 6. [*Severability.*] [Insert severability clause.]  
114

115 Section 7. [*Repealer.*] [Insert repealer clause.]  
116

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

# Regulating Data Recorders in Vehicles

This Act requires manufacturers of new motor vehicles sold or leased in the state that are equipped with one or more recording devices, commonly referred to as “event data recorders (EDR)” or “sensing and diagnostic modules (SDM),” to disclose that fact in the owner’s manual for the vehicle. The Act also prohibits specified data that is recorded on a recording device from being downloaded or otherwise retrieved by a person other than the registered owner of the motor vehicle, except under specified circumstances. The bill requires a subscription service agreement to disclose that specified information may be recorded or transmitted as part of the subscription service. This Act applies to all motor vehicles manufactured on or after July 1, 2004.

Submitted as:

California

Chapter 427 of 2003

Status: Enacted into law in 2003.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Address Disclosing Event  
2 Data Recorders and Sensing and Diagnostic Modules in Motor Vehicles.”

3  
4           Section 2. [*Disclosing Event Data Recorders and Diagnostic Modules in Motor*  
5 *Vehicles.*]

6           (a) A manufacturer of a new motor vehicle sold or leased in this state, which is equipped  
7 with one or more recording devices commonly referred to as “event data recorders (EDR)” or  
8 “sensing and diagnostic modules (SDM),” shall disclose that fact in the owner’s manual for the  
9 vehicle.

10          (b) As used in this section, “recording device” means a device that is installed by the  
11 manufacturer of the vehicle and does one or more of the following, for the purpose of retrieving  
12 data after an accident:

13               (1) Records how fast and in which direction the motor vehicle is traveling.

14               (2) Records a history of where the motor vehicle travels.

15               (3) Records steering performance.

16               (4) Records brake performance, including, but not limited to, whether brakes were  
17 applied before an accident.

18               (5) Records the driver’s seatbelt status.

19               (6) Has the ability to transmit information concerning an accident in which the  
20 motor vehicle has been involved to a central communications system when an accident occurs.

21          (c) Data described in subdivision (b) that is recorded on a recording device may not be  
22 downloaded or otherwise retrieved by a person other than the registered owner of the motor  
23 vehicle, except under one of the following circumstances:

24               (1) The registered owner of the motor vehicle consents to the retrieval of the  
25 information.

26               (2) In response to an order of a court having jurisdiction to issue the order.

27 (3) For the purpose of improving motor vehicle safety, including for medical  
28 research of the human body's reaction to motor vehicle accidents, and the identity of the  
29 registered owner or driver is not disclosed in connection with that retrieved data. The disclosure  
30 of the vehicle identification number (VIN) for the purpose of improving vehicle safety, including  
31 for medical research of the human body's reaction to motor vehicle accidents, does not constitute  
32 the disclosure of the identity of the registered owner or driver.

33 (4) The data is retrieved by a licensed new motor vehicle dealer, or by an  
34 automotive technician as defined in [insert citation], for the purpose of diagnosing, servicing, or  
35 repairing the motor vehicle.

36 (d) A person authorized to download or otherwise retrieve data from a recording device  
37 pursuant to paragraph (3) of subdivision (c), may not release that data, except to share the data  
38 among the motor vehicle safety and medical research communities, to advance motor vehicle  
39 safety, and only if the identity of the registered owner or driver is not disclosed.

40 (e) (1) If a motor vehicle is equipped with a recording device that is capable of  
41 recording or transmitting information as described in paragraph (2) or (6) of subdivision (b) and  
42 that capability is part of a subscription service, the fact that the information may be recorded or  
43 transmitted shall be disclosed in the subscription service agreement.

44 (2) Subdivision (c) does not apply to subscription services meeting the  
45 requirements of paragraph (1).

46 (f) This section applies to all motor vehicles manufactured on or after [July 1, 2004].  
47

48 Section 3. [*Severability.*] [Insert severability clause.]  
49

50 Section 4. [*Repealer.*] [Insert repealer clause.]  
51

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

# (Regulating) Event Recording Devices in Motor Vehicles

This Act requires disclosure of the existence of certain event recording devices in motor vehicles under certain circumstances and restricts the use of information retrieved from an event data recording device under certain circumstances.

Submitted as:

Nevada

AB 315

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 Require Disclosing Event  
2 Recording Devices in Motor Vehicles.”

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

5           (1) “Event recording device” means a device which is installed by the manufacturer of a  
6 motor vehicle and which, for the purposes of retrieving data after an accident involving the  
7 motor vehicle:

- 8                   (a) Records the direction and rate of speed at which the motor vehicle travels;  
9                   (b) Records a history of where the motor vehicle travels;  
10                  (c) Records steering performance;  
11                  (d) Records brake performance, including, without limitation, whether the brakes  
12 were applied before an accident;  
13                  (e) Records the status of the driver’s safety belt; or  
14                  (f) If an accident involving the motor vehicle occurs, is able to transmit  
15 information concerning the accident to a central communications system.

16           (2) “Garage” has the meaning ascribed to it in [insert citation].

17           (3) “New vehicle dealer” has the meaning ascribed to it [insert citation].

18           (4) “Owner” means:

- 19                   (a) A person having all the incidents of ownership, including the legal title of the  
20 motor vehicle, whether or not he lends, rents or creates a security interest in the motor vehicle;  
21                   (b) A person entitled to possession of the motor vehicle as the purchaser under a  
22 security agreement; or  
23                   (c) A person entitled to possession of the motor vehicle as a lessee pursuant to a  
24 lease agreement if the term of the lease is more than [3 months].  
25

26           Section 3. [*Disclosing Information About Event Recording Devices in Motor Vehicles*].

27           (1) A manufacturer of a new motor vehicle which is sold or leased in this state and which  
28 is equipped with an event recording device shall disclose that fact in the owner’s manual for the  
29 vehicle. The disclosure must include, if applicable, a statement that the event recording device:

- 30                   (a) Records the direction and rate of speed at which the motor vehicle travels;  
31                   (b) Records a history of where the motor vehicle travels;  
32                   (c) Records steering performance;



33 (d) Records brake performance, including, without limitation, whether the brakes  
34 were applied before an accident;

35 (e) Records the status of the driver's safety belt; and

36 (f) If an accident involving the motor vehicle occurs, is able to transmit  
37 information concerning the accident to a central communications system.

38 (2) Except as otherwise provided in this section, data recorded by an event recording  
39 device may not be downloaded or otherwise retrieved by a person other than the registered  
40 owner of the vehicle. Data recorded by an event recording device may be downloaded or  
41 otherwise retrieved by a person other than the registered owner of the vehicle:

42 (a) If the registered owner of the vehicle consents to the retrieval of the data;

43 (b) Pursuant to the order of a court of competent jurisdiction;

44 (c) If the data is retrieved for the purpose of conducting research to improve  
45 motor vehicle safety, including, without limitation, conducting medical research to determine the  
46 reaction of a human body to motor vehicle accidents, provided that the identity of the registered  
47 owner or driver is not disclosed in connection with the retrieval of that data. The disclosure of a  
48 vehicle identification number pursuant to this paragraph does not constitute the disclosure of the  
49 identity of the registered owner or driver of the vehicle;

50 (d) If the data is retrieved by a new vehicle dealer or a garageman to diagnose,  
51 service or repair the motor vehicle; and

52 (e) Pursuant to an agreement for subscription services for which disclosure  
53 required by subsection 4 has been made.

54 (3) A person who retrieves data from an event recording device pursuant to subsection 2  
55 (c) shall not disclose that data to any person other than a person who is conducting research as  
56 specified in that subsection.

57 (4) If a motor vehicle is equipped with an event recording device that is able to record or  
58 transmit any information described in this Act and that ability is part of a subscription service for  
59 the motor vehicle, the fact that the information may be recorded or transmitted must be disclosed  
60 in the agreement for the subscription service.

61 (5) Any person who violates the provisions of this section is guilty of a misdemeanor.

62  
63 Section 4. The provisions of this Act apply to all motor vehicles that are manufactured on  
64 or after [January 1, 2006].

65  
66 Section 5. [*Severability.*] [Insert severability clause.]

67  
68 Section 6. [*Repealer.*] [Insert repealer clause.]

69  
70 Section 7. [*Effective Date.*] [Insert effective date.]

# **(Regulating) Motor Vehicle Data Recording Devices**

This Act establishes requirements for disclosing and removing “black box” recording devices that are placed in motor vehicles to record information such as the speed of the vehicle, safety belt use, and accident data. The Act directs that a manufacturer of a new motor vehicle sold or leased in this state which is equipped with a recording device commonly referred to as an event data recorder shall disclose by model year 2007 the presence, capacity, and capabilities of the event data recorder in the owner's manual for the vehicle. A motor vehicle dealer shall include within the purchase contract in a clear and conspicuous manner information on the possibility of a recording device.

Submitted as:  
North Dakota  
Chapter 440 of 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 Address Motor Vehicle  
2 Recording Devices.”

3  
4           Section 2. [*Recording Devices On Motor Vehicles - Disclosure - Removal.*]

5           A. A manufacturer of a new motor vehicle sold or leased in this state which is equipped  
6 with a recording device commonly referred to as an event data recorder shall disclose by [model  
7 year 2007] the presence, capacity, and capabilities of the event data recorder in the owner's  
8 manual for the vehicle. A motor vehicle dealer shall include within the purchase contract in a  
9 clear and conspicuous manner information on the possibility of a recording device. As used in  
10 this section, an event data recorder means a feature that is installed by the manufacturer of the  
11 vehicle and does any of the following for the purpose of retrieving data:

12                 I. Records the speed of the vehicle and the direction the motor vehicle is  
13 traveling;

14                 II. Records vehicle location data;

15                 III. Records steering performance;

16                 IV. Records brake performance, including whether brakes were applied before an  
17 accident;

18                 V. Records the driver's safety belt status; or

19                 VI. Has the ability to transmit information concerning an accident in which the  
20 vehicle has been involved to a central communications system when an accident occurs.

21           B. Data recorded on an event data recorder may not be downloaded or otherwise retrieved  
22 by a person other than the owner of the motor vehicle at the time the data is recorded, or through  
23 consent by the owner's agent or legal representative, except under any of the following  
24 circumstances:

25                 I. The data is retrieved for the purpose of improving motor vehicle safety,  
26 including for medical research of the human body's reaction to motor vehicle accidents, and the  
27 identity of the registered owner or driver is not disclosed in connection with that retrieved data.

28 II. The disclosure of the vehicle identification number, with the last four digits  
29 deleted, for the purpose of improving vehicle safety, including for medical research of the human  
30 body's reaction to motor vehicle accidents, does not constitute the disclosure of the identity of  
31 the registered owner or driver.

32 III. A person authorized to download or otherwise retrieve data from a recording  
33 device under this subdivision may not release that data, except to share the data among the motor  
34 vehicle safety and medical research communities to advance motor vehicle safety, and only if the  
35 identity of the registered owner or driver is not disclosed.

36 IV. The data is retrieved by a licensed motor vehicle dealer or by an automotive  
37 technician for the purpose of diagnosing, servicing, or repairing the motor vehicle.

38 V. By stipulation of the parties to the proceeding or by order of the court.

39 C. "Owner" means a person having all the incidents of ownership, including the legal title  
40 of a vehicle regardless of whether the person lends, rents, or creates a security interest in the  
41 vehicle; a person entitled to the possession of a vehicle as the purchaser under a security  
42 agreement; or the person entitled to possession of the vehicle as lessee pursuant to a written lease  
43 agreement, if the agreement at inception is for a period in excess of [three months].

44 D. A person, including a service or data processor operating on behalf of the person,  
45 authorized to download or otherwise retrieve data from an event data recorder pursuant to  
46 subsection (B) of this section may not release that data except for the purposes of motor vehicle  
47 safety and medical communities to advance motor vehicle safety, security, or traffic  
48 management; or to a data processor solely for the purposes permitted by this subsection and only  
49 if the identity of the owner or driver of the vehicle is not disclosed.

50 E. If a motor vehicle is equipped with a recording device that is capable of recording or  
51 transmitting information relating to vehicle location data or concerning an accident to a central  
52 communications system and that capability is part of a subscription service, the fact that the  
53 information may be recorded or transmitted must be disclosed in the terms and conditions of the  
54 subscription service. Subsection (B) of this Section does not apply to a subscription service the  
55 meets the requirements of this subsection.

56 F. An insurer may not require as a condition of insurability consent of the owner for  
57 access to data that may be stored within an event data recorder and may not use data retrieved  
58 with the owners consent before or after an accident for the purpose of rate assessment.

59  
60 Section 3. [*Application.*] This Act applies to all motor vehicles manufactured after [July  
61 31, 2005].

62  
63 Section 4. [*Severability.*] [Insert severability clause.]

64  
65 Section 5. [*Repealer.*] [Insert repealer clause.]

66  
67 Section 6. [*Effective Date.*] [Insert effective date.]

# Regulating Data Recorders in Vehicles

Event data recorders (EDRs) are commonly known as “black boxes” for the car and essentially perform the same function as a black box in an airplane. Initially these recording devices were meant to record the deployment of car air bags. However, EDRs now have the capability of recording speed, seat belt use, braking habits, the position of the gas pedal, the use of headlights, and the force of a collision.

Although EDRs have proven useful in diagnostic accident scenes, car black boxes do raise privacy concerns as most drivers do not know that these devices are currently in their vehicles and information retrieved from black boxes is now being used to prosecute drivers both civilly and criminally. Consumers have a right to know whether a vehicle they have purchased contains a device that will record their every action.

This Act requires sellers and lessors of vehicles to disclose to buyers and lessees the presence of an EDR. The Act also requires that a person, other than the owner of the vehicle, seeking to retrieve the information contained in the EDR obtain either the owner's consent or a court order.

Submitted as:

Texas

HB 160

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 Motor Vehicles  
2       Equipped with Recording Devices.”

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

5           (1) “Owner” means a person who:

6                   (A) has all the incidents of ownership of a motor vehicle, including legal title,  
7       regardless of whether the person lends, rents, or creates a security interest in the vehicle;

8                   (B) is entitled to possession of a motor vehicle as a purchaser under a security  
9       agreement; or

10                   (C) is entitled to possession of a motor vehicle as a lessee under a written lease  
11       agreement if the agreement is for a period of not less than three months.

12           (2) “Recording device” means a feature that is installed by the manufacturer in a motor  
13       vehicle and that does any of the following for the purpose of retrieving information from the  
14       vehicle after an accident in which the vehicle has been involved:

15                   (A) records the speed and direction the vehicle is traveling;

16                   (B) records vehicle location data;

17                   (C) records steering performance;

18                   (D) records brake performance, including information on whether brakes were  
19       applied before an accident;

20                   (E) records the driver’s safety belt status; or

21                   (F) transmits information concerning the accident to a central communications  
22       system when the accident occurs.

(3) A manufacturer of a new motor vehicle that is sold or leased in this state and that is equipped with a recording device shall disclose that fact in the owner's manual of the vehicle.

(4) Information recorded or transmitted by a recording device may not be retrieved by a person other than the owner of the motor vehicle in which the recording device is installed except:

(A) on court order;

(B) with the consent of the owner for any purpose, including for the purpose of diagnosing, servicing, or repairing the motor vehicle;

(C) for the purpose of improving motor vehicle safety, including for medical research on the human body's reaction to motor vehicle accidents, if the identity of the owner or driver of the vehicle is not disclosed in connection with the retrieved information; or

(D) for the purpose of determining the need for or facilitating emergency medical response in the event of a motor vehicle accident.

(5) For information recorded or transmitted by a recording device described by this section, a court order may be obtained only after a showing that:

(A) retrieval of the information is necessary to protect the public safety; or

(B) the information is evidence of an offense or constitutes evidence that a particular person committed an offense.

(6) Disclosure of a motor vehicle's vehicle identification number with the last six digits deleted or redacted is not disclosure of the identity of the owner or driver and retrieved information may be disclosed only:

(A) For the purposes of motor vehicle safety and medical research communities to advance the purposes described in this section; or

(B) To a data processor solely for the purposes described in this section.

(7) If a recording device is used as part of a subscription service, the subscription service agreement must disclose that the device may record or transmit information as described by this section. Subsection 4 of this section does not apply to a subscription service under this subsection.

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

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

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

# Regulating Diesel Engine Emissions

This Act establishes requirements for specific types of vehicles and off-road equipment powered by diesel engines that will reduce significantly the amount of fine particle diesel emissions from these diesel vehicles and equipment and will diminish the exposure of school children to these harmful emissions.

The Act provides for stricter enforcement of idling standards for all motor vehicles, and imposes stricter requirements and stricter enforcement for school bus idling. Further, the bill establishes a Diesel Risk Mitigation Fund for the reimbursement of the cost of retrofits required pursuant to the bill. This fund would receive constitutionally dedicated moneys for this purpose.

Under the Act, no owner of regulated vehicles or regulated equipment will be required to comply with the provisions of the bill concerning the retrofitting of vehicles and equipment unless the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the fund for the year in which the requirement to install the retrofit devices is imposed. Also, owners of regulated vehicles or regulated equipment cannot be required to comply with the retrofit provisions of the bill unless the state Department of Environmental Protection (DEP) certifies that there are sufficient moneys in the fund in a given year to cover the costs of the retrofits and their installation required in that year. Under the bill the DEP is authorized to determine that sufficient moneys are in the fund to cover the costs of some of the retrofits and their installation that are required in that year, and if the State Treasurer has made the other required certification, the DEP may determine which retrofits can be funded, require those retrofits, and certify that sufficient moneys are in the fund to reimburse the cost of those retrofits and their installation.

Specifically, the Act requires:

- The retrofitting of all diesel school buses used to transport children in primary and secondary schools in the state with closed crankcase technology designed to reduce fine particle diesel emissions in the cabin of the school bus;
- The use of best available retrofit technologies, including retrofitting, on publicly owned diesel solid waste vehicles, privately owned diesel solid waste vehicles under public contract, publicly owned on-road diesel vehicles and off-road diesel equipment, and all diesel commercial buses;
- The DEP to study emissions reduction technology for diesel school buses, and determine if further retrofitting of school buses is indicated by the results of the study;
- Certain warranties and assurances from manufacturers of best available retrofit technologies to ensure against damage to regulated vehicles and regulated equipment and pay for any damage that may be caused;
- The adoption of rules and regulations by the DEP, no less stringent than the restrictions on idling under DEP rules and regulations in effect on the effective date of the bill, concerning the idling of school buses and the development of policies and procedures by the DEP, in consultation with the Department of Education, school districts and school administrators, to achieve compliance with those rules and regulations;
- Enforcement of school bus idling violations against the school district serviced by the school bus operated in violation of the idling restrictions;
- Increased penalties of \$250 to \$1,000 per day, per vehicle for violations of any motor vehicle idling restrictions, except that no penalties may be assessed against the driver of a school bus who is not the owner of the school bus; and

- A determination by DEP of whether supplies of ultra-low sulfur diesel fuel would be sufficient to avoid certain problems in the fuel markets before only ultra-low sulfur diesel fuel is required to be sold in the State.

This bill requires that the regulated school buses have the closed crankcase technology installed no later than two years after the date of enactment, unless the required funding certifications are not made, in which case, the requirement should be met within the two years after the certification. During that time, the DEP will study the health issues involved with school bus emissions and, if the results of the study warrant further retrofit requirements, the bill authorizes the DEP to establish and impose those requirements.

The bill requires the owners of regulated vehicles or regulated equipment to use the best available retrofit technologies in or on their regulated vehicles or regulated equipment as provided in DEP regulations, or submit plans proposing alternatives for the use of best available retrofit technologies in or on the vehicles and equipment that they own. The DEP is required to adopt rules and regulations no later than 270 days after the effective date of the act. The DEP will prescribe the level of fine particle emissions reduction for each type of regulated vehicle or piece of regulated equipment, but an owner could request and negotiate alternatives with the DEP to attain compliance.

The bill defines "best available retrofit technology" to include particle filters, diesel oxidation catalysts, flow through filters, and other retrofit devices, modified diesel fuel and other special fuels; "best available retrofit technology" cannot include repowering of a vehicle or equipment. The bill requires that the United States Environmental Protection Agency or the state Air Resources Board must have designated the technology as a verified technology.

The bill requires each owner of a regulated vehicle or regulated equipment to submit an inventory of all diesel vehicles and equipment owned, operated, or leased by the owner, and either a notice of intent to follow the requirements prescribed by DEP regulation or a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan. A combined fleet retrofit plan allows several owners to coordinate compliance together, and a fleet averaging plan allows an owner to attain reductions by implementing alternative measures and retrofitting vehicles and equipment that may not be designated to get a certain amount of reduction from across the owner's fleet.

The timing of these submittals shall be as follows:

- For regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted by the DEP pursuant to the bill;
- For regulated commercial buses owned and operated by the state Transit Corporation, no later than one year after the effective date of the rules and regulations;
- For private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations; and
- For publicly owned regulated vehicles and regulated equipment other than regulated solid waste vehicles or regulated commercial buses, no later than two years after the effective date of the rules and regulations.

Under the bill, no owner of a private regulated commercial bus is required to make the submittals before a public transit agency does, and the public agency must have begun retrofitting its buses and using those retrofits at least six months before any owner of a private regulated commercial bus is required to retrofit a bus.

After the submittals are made and any plans receive final approval, the owners of regulated vehicles or regulated equipment would receive compliance forms for each vehicle or piece of equipment required to use best available retrofit technologies. After any required installations were made, the compliance form will be completed, a copy of it will remain with the vehicle or piece of equipment at all times thereafter, and copies will be submitted to the DEP and

the State Treasurer. The installation of any required retrofit devices as part of this use of best available retrofit technologies will be confirmed at an inspection of the regulated vehicle under state motor vehicle inspection programs currently in effect under current law, or, for regulated off-road equipment, through the submittal of a compliance form issued by the DEP.

Under the bill the State Treasurer, in consultation with DEP, will administer reimbursements for the cost of complying with these requirements in accordance with the procedures and requirements established by the State Treasurer and the DEP pursuant to the bill. However, the bill provides for 100% of retrofit device and installation costs be covered.

Finally, the bill amends current law to allow for retrofitting of vehicles to be required, and establishes civil and civil administrative penalties of not more than \$5,000 for violations of the Act.

Submitted as:

New Jersey

Chapter 219 of 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 Concerning Regulation of Fine  
2 Particle Emissions from Certain Vehicles and Equipment.”

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

5           1. The [Legislature] finds and declares that the emissions of fine particles into the air  
6 pose an extraordinary health risk to the people of the state; that exhaust emissions from diesel-  
7 powered vehicles and equipment contribute substantially to the fine particle problem, and pose  
8 both cardiovascular and cancer risks; that the United States Environmental Protection Agency  
9 has classified diesel exhaust as likely to be carcinogenic to humans by inhalation at  
10 environmental exposures; that the United States Environmental Protection Agency has also  
11 identified diesel particle matter and diesel exhaust organic gases as a mobile source air toxic; that  
12 studies repeatedly have found links between exposure to fine particles and health effects,  
13 including premature death and increased incidents of asthma, allergies, and other breathing  
14 disorders; and that these studies include the examination of the health impacts of the exposure to  
15 diesel emissions for school children riding diesel-powered school buses.

16           2. The [Legislature] further finds and declares that, although some new diesel-powered  
17 vehicles and equipment operate more cleanly and may contribute less to air quality problems  
18 than their predecessors, diesel-powered trucks, buses, and off-road equipment tend to remain in  
19 service as long as 20 years or more; that, among these types of vehicles and equipment, diesel  
20 commercial buses and diesel solid waste vehicles operate in significant numbers in urban areas  
21 of the State where the reduction of fine particle diesel emissions should be prioritized because  
22 fine particle diesel emissions are at the highest concentrations in these areas; that the emissions  
23 from diesel school buses directly impact the health of school children throughout the State; that  
24 unless emissions from some on-road diesel-powered vehicles and off-road diesel-powered  
25 equipment currently operating in the State are controlled, all on-road diesel-powered vehicles  
26 and off-road diesel-powered equipment will continue to emit high levels of fine particles and  
27 contribute to air pollution in the State for many years to come; that filters and other devices and  
28 cleaner burning fuels are available to reduce emissions from older diesel vehicles and equipment;



that retrofitting certain diesel-powered vehicles and equipment with emissions reducing devices, operating these vehicles and equipment on cleaner burning fuel, or both, could significantly improve air quality; that although such requirements impose costs, the costs are relatively small when compared with the costs of the vehicles or equipment they update or the cost of the impact on the public health from the air pollution that the requirements abate; that by exercising discretion in the types of vehicles and equipment and the matching of technologies to vehicles and equipment, the cost of installing and using pollution-reducing devices and fuels can be minimized and the air pollution reduction and public health benefits can be maximized; and that the [Department of Environmental Protection] has estimated that targeting reductions of fine particles from these vehicles and equipment could remove 315 tons per year from the ambient air in the State and could prevent more than 150 premature deaths.

3. The [Legislature] therefore determines that it is of vital importance to the health of the people of the State to begin to reduce significantly fine particle emissions and exposure of school children to these emissions; and that this start can be most effectively and economically accomplished by requiring the use of the best available retrofit technologies for the reduction of fine particle emissions in diesel-powered commercial buses, school buses, solid waste vehicles, and publicly owned on-road vehicles and off-road equipment.

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

“Best available retrofit technology” means the equipment, retrofit device, or fuel, or any combination thereof, designated by the United States Environmental Protection Agency as a verified technology for diesel retrofit programs, or by the California Air Resources Board as a verified technology for diesel emissions control, for use on or in specific makes, model years, types, and classes of on-road diesel vehicles or off-road diesel equipment, and that, as determined by the [Department of Environmental Protection], may be used on or in regulated vehicles or regulated equipment, at a reasonable cost, to achieve substantial reduction of fine particle diesel emissions.

“Best available retrofit technology” may include, but is not limited to, particle filters, diesel oxidation catalysts, flow through filters, and modified diesel fuel, provided that these diesel retrofit devices and diesel emissions control strategies are verified technologies according to the United States Environmental Protection Agency or the California Air Resources Board.

“Best available retrofit technology” shall include only those retrofit devices and fuel for which the retrofit device manufacturer or fuel manufacturer agrees, in a manner determined appropriate by the department, that the installation and use of the retrofit device or the use of the special fuel would not jeopardize the original engine warranty in effect at the time of the installation or the commencement of use of the retrofit device or fuel, and for which the retrofit device manufacturer or fuel manufacturer has provided a warranty pursuant to the rules and regulations adopted pursuant to [insert citation].

“Best available retrofit technology” shall not include repowering of any vehicle or piece of equipment, or the use of ultra-low sulfur diesel fuel;

“Commission” means the state [Motor Vehicle Commission];

“Compliance form” means a form used for ascertaining compliance with the provisions of [insert citation] or eligibility for reimbursement of costs associated therewith, and issued pursuant to [insert citation];

“Constitutionally dedicated moneys” mean moneys dedicated pursuant to [insert citation],

“Department” means the [Department of Environmental Protection];

“Diesel commercial bus” means a diesel bus as defined pursuant to [insert citation], except that “diesel commercial bus” shall include only diesel commercial buses with a gross vehicle weight rating in excess of 14,000 pounds, and shall not include school buses;

78 “Diesel engine” means an internal combustion engine with compression ignition using  
79 diesel fuel, including the fuel injection system but excluding the exhaust system;

80 “Diesel Risk Mitigation Fund” or “fund” means the fund established pursuant to [insert  
81 citation];

82 “Diesel solid waste vehicle” means any on-road diesel vehicle with a gross vehicle  
83 weight rating in excess of 14,000 pounds that is used for the purposes of collecting or  
84 transporting residential or commercial solid waste, including vehicles powered by a diesel engine  
85 used for transporting waste containers, including, but not necessarily limited to, open boxes,  
86 dumpsters or compactors, which may be removed from the tractor. “Diesel solid waste vehicle”  
87 shall include solid waste cabs and solid waste single-unit vehicles;

88 “Fine particle” means a particle emitted directly into the atmosphere from exhaust  
89 produced by the combustion of diesel fuel and having an aerodynamic diameter of 2.5  
90 micrometers or less;

91 “Fine particle diesel emissions” means emissions of fine particles from an on-road diesel  
92 vehicle or from off-road diesel equipment;

93 “Fleet” means one or more on-road diesel vehicles or pieces of off-road diesel  
94 equipment;

95 “Off-road diesel equipment” means any equipment or vehicle, other than a diesel  
96 construction truck, powered by a diesel engine that is used primarily for construction, loading,  
97 and other offroad purposes and, when in use, is not commonly operated on a roadway except  
98 when used for roadway construction and repair, including, but not necessarily limited to, rollers,  
99 scrapers, excavators, rubber tire loaders, crawler/dozers, and off-highway trucks. “Off-road  
100 diesel equipment” shall include equipment and vehicles that are not used primarily for  
101 transportation and are considered off-road equipment and vehicles but, for the purposes of  
102 moving the equipment and vehicles from place to place on the roadways of the State, are  
103 required to have “in-transit” plates issued by this state. “Off-road diesel equipment” shall not  
104 include any non-mobile equipment, such as a generator or pump, and shall not include boats or  
105 trains;

106 “On-road diesel vehicle” means any vehicle, other than a private passenger automobile,  
107 that is powered by a diesel engine and operated on the roadways of the State, and shall include,  
108 but need not be limited to, diesel buses, diesel-powered motor vehicles, and heavy-duty diesel  
109 trucks as defined pursuant to [insert citation];

110 “Owner” means any person, the State, or any political subdivision thereof, that owns any  
111 onroad diesel vehicle or off-road diesel equipment subject to the provisions of [insert citation];

112 “Private regulated commercial bus” means any diesel commercial bus as defined under  
113 [insert citation];

114 “Public regulated commercial bus” means any diesel commercial bus owned and  
115 operated by [state Transit Corporation];

116 “Regulated commercial bus” means any diesel commercial bus registered and operating  
117 in the State;

118 “Regulated equipment” means any regulated off-road diesel equipment or any piece of  
119 offroad diesel equipment that is required to use best available retrofit technology pursuant to an  
120 approved fleet averaging plan;

121 “Regulated off-road diesel equipment” means any off-road diesel equipment operating in  
122 the State that is owned by the State or any political subdivision thereof, or a county or  
123 municipality, or any political subdivision thereof;

124 “Regulated on-road diesel vehicle” means any on-road diesel vehicle registered in the  
125 State that is owned by the State or any political subdivision thereof, a county or municipality, or  
126 any political subdivision thereof;

“Regulated school bus” means a school bus powered by a diesel engine, and owned by a school district, nonpublic school, or school bus contractor who has entered into a contract with a school district or a nonpublic school to transport children to and from a primary or secondary school in the State, that was originally designed to carry 10 or more passengers, and is in service on or after [insert date];

“Regulated solid waste vehicle” means any diesel solid waste vehicle registered in the State that is owned by the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, or that is owned by a person who has entered into a contract in effect on or after [insert date], with the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, to provide solid waste services;

“Regulated vehicle” means any regulated commercial bus, regulated on-road diesel vehicle, regulated solid waste vehicle, or any regulated school bus required to comply with any requirements pursuant to this Act from model year 2006 or a preceding model year and registered in the State, or any on-road diesel vehicle registered in the State that is required to use best available retrofit technology pursuant to an approved fleet averaging plan;

“Retrofit device” means a best available retrofit technology that is an after-market apparatus installed on an on-road diesel vehicle or on a piece of off-road diesel equipment;

“School bus” means a school bus as defined under [insert citation];

“Technology” means any equipment, device, or fuel used alone or in combination to achieve the reductions in emissions required for best available retrofit technology; and

“Ultra-low sulfur diesel fuel” means diesel fuel that the United States Environmental Protection Agency designates or defines as ultra-low sulfur diesel fuel.

#### Section 4. *[DEP Rules, Regulations.]*

a. The state [Department of Environmental Protection], no later than [270 days] after the effective date of this Act, shall adopt rules and regulations necessary to implement the provisions of this Act.

b. The rules and regulations adopted pursuant to subsection a. of this section shall include, but need not be limited to:

(1) the designation of the required reduction in fine particle diesel emissions and choices of the best available retrofit technologies available to owners of regulated vehicles or regulated equipment to meet the required reduction for each make, model or type of regulated vehicles or regulated equipment, including, but not limited to, the description of the hierarchy and levels of best available retrofit technologies as they correspond to the emissions reductions anticipated from the use of each best available retrofit technology, and the requirements for implementing the use of best available retrofit technologies by any owner of regulated vehicles or regulated equipment who elects not to submit a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan pursuant to this Act;

(2) guidelines and requirements for developing fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans, and any supplements or modifications thereto, including, but not limited to:

(i) a description of the components that, at a minimum, are to be included in a fleet retrofit plan;

(ii) guidelines for use by owners of regulated vehicles or regulated equipment concerning how to develop an inventory of regulated vehicles or regulated equipment, prepare the required fleet retrofit plan, and determine the technology required for each vehicle or piece of equipment;

174 (iv) the choices of the best available retrofit technologies available to  
175 owners of regulated vehicles or regulated equipment for each make, model or type of regulated  
176 vehicle or regulated equipment to achieve reductions in fine particle emissions;

177 (v) information on how to select the specific best available retrofit  
178 technologies and ensure the fleet retrofit plan, combined fleet plan, or fleet averaging plan  
179 requirements are met;

180 (vi) procedures and provisions for the review and approval, and  
181 enforcement of fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans for  
182 regulated vehicles or regulated equipment; and

183 (vii) provisions ensuring, in the implementation requirements for fleet  
184 retrofit plans, combined fleet plans, or fleet averaging plans, due consideration of the efforts of  
185 owners of regulated vehicles or regulated equipment who voluntarily retrofit regulated vehicles  
186 or regulated equipment prior to the required submittal of a fleet retrofit plan, combined fleet  
187 retrofit plan, or fleet averaging plan;

188 (3) the procedures for contacting the department with questions about the  
189 requirements of, and compliance with, the provisions of this Act, and for obtaining any technical  
190 guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, or fleet  
191 averaging plans;

192 (4) in consultation with the [Department of Education, the Department of Health  
193 and Human Services, the state Motor Vehicle Commission, and the Department of Law and  
194 Public Safety], provisions concerning the idling and queuing of school buses and enforcement of  
195 violations thereof, in accordance with this Act and no less stringent than restrictions on idling  
196 pursuant to department rules and regulations in effect on the effective date of this Act; and

197 (5) any requirements or guidelines concerning the installation of closed crankcase  
198 technology in regulated school buses or compliance with the provisions of this Act;

199 (6) warranty provisions for best available retrofit technologies and their  
200 installation and use on regulated vehicles or regulated equipment; and

201 (7) any other provisions the department determines necessary for the  
202 implementation of this Act.

203 c. No provision of the rules and regulations adopted pursuant to subsection a. of this  
204 section may:

205 (1) designate any other types, makes, models, or classes of vehicles or equipment  
206 as regulated vehicles or regulated equipment other than regulated vehicles and regulated  
207 equipment as defined in this Act;

208 (2) require the installation and use of a retrofit device on a private regulated  
209 commercial bus earlier than [180 days] after the owners of public regulated commercial buses  
210 have been required to install and have begun to use best available retrofit technologies that are  
211 retrofit devices on public regulated commercial buses;

212 (3) require the installation or use of a retrofit device on a regulated vehicle or  
213 piece of regulated equipment unless:

214 (i) the [state treasurer] certifies that the constitutionally dedicated moneys  
215 have been deposited in a [Diesel Risk Mitigation Fund] for that year; and

216 (ii) the [Department of Environmental Protection] certifies that sufficient  
217 moneys are available in the fund to pay for the cost of purchase and installation of the retrofit  
218 device required to be installed or used in that given year, by rule or regulation or by a provision  
219 of a plan submitted pursuant to this Act. Provided that the [State Treasurer] has issued the  
220 certification required under this Act, the [Department] may determine the amount of moneys  
221 available in the fund for that year, require the purchase and installation of those retrofit devices  
222 in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are

available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

d. The rules and regulations adopted pursuant to this section shall at a minimum require that:

(1) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment the full repair and replacement cost of the best available retrofit technology, including parts and labor, if the best available retrofit technology fails to perform as verified;

(2) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment, if the installation or use of the best available retrofit technology damages the engine or the engine components of the regulated vehicle or piece of regulated equipment, the repair or replacement of engine components to return the engine components of the regulated vehicle or piece of regulated equipment to the condition they were in prior to damage caused by the best available retrofit technology;

(3) the manufacturers of best available retrofit technology authorize installers of best available retrofit technology other than fuel as authorized installers of the best available retrofit technology; and

(4) only authorized installers of best available retrofit technology install best available retrofit technology other than fuel.

e. The specific provisions of these requirements and the specific provisions of any warranty may be established by the department through rules and regulations adopted pursuant to this Act or under separate rules and regulations adopted pursuant to the state ["Administrative Procedure Act,"] including but not limited to, the period of time during which a warranty would be in effect.

#### Section 5. *[State Department of Environmental Protection to Consult When Developing Rules, Regulations Concerning Diesel Commercial Buses.]*

a. The [Department of Environmental Protection] shall consult with the [state Motor Vehicle Commission and the state Transit Corporation] when developing the provisions of the rules and regulations to be adopted pursuant to this Act concerning diesel commercial buses. No later than [60 days] before any proposed rules or regulations are filed for publication in the state Register, the [Department of Environmental Protection] shall submit for comment to any rules or regulations concerning diesel commercial buses proposed for adoption pursuant to this Act.

b. The [Department of Environmental Protection], wherever possible, shall incorporate into requirements imposed on the [state Transit Corporation] the use of improved pollution control or fuels other than conventional diesel fuel used by the [state Transit Corporation], but may require additional controls or fuel use for diesel commercial buses operated by, or under contract to, the [state Transit Corporation]. The [Department of Environmental Protection] shall give due consideration to the efforts and actions of the [state Transit Corporation] for any reduction of fine particle diesel emissions that it has achieved by the installation of retrofit equipment on on-road diesel vehicles in its fleet or the use of special fuels by its fleet to use prior to the submittal of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan required pursuant to this Act.

Section 6. *[Public Outreach Program to Owners of Affected Vehicles, Equipment.]* The [Department of Environmental Protection] shall develop and implement, in consultation with the [Motor Vehicle Commission], a public outreach program to notify and inform the owners of regulated vehicles or regulated equipment affected by the provisions of this Act. In developing and implementing the public outreach program, the [Department] shall make every effort to

reach those owners that can be identified with the information that is available to the [department] and through other state agencies or departments, but the [Department] shall not be responsible for notifying and informing owners that could not be identified, and not the [Motor Vehicle Commission] nor any other state agency or department shall be required to identify every owner.

Section 7. *[Closed Crankcase Technology for Regulated School Buses.]*

a. No later than [two years] after the effective date of this Act or [two years] after the date on or by which both certifications required in this subsection have been made, whichever is later, every owner of a regulated school bus shall have installed on the regulated school bus closed crankcase technology as specified by the rules and regulations adopted pursuant to this Act. No owner of a regulated school bus shall be required to install closed crankcase technology pursuant to this subsection unless:

(1) the [State Treasurer] certifies in each of the [two years] after the effective date of this Act that the constitutionally dedicated moneys have been deposited in the [Diesel Risk Mitigation Fund]; and

(2) the [Department of Environmental Protection] certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the closed crankcase technology required pursuant to this Act in that [two-year period]. Provided that the [State Treasurer] has issued the certification for that year, the [Department] may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

b. The [Department of Environmental Protection] shall provide, and each owner of a regulated school bus shall obtain from the [Department], a compliance form for each regulated school bus. The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of the closed crankcase technology to verify compliance with the requirements of subsection a. of this section and to seek reimbursement for the cost of the closed crankcase technology. The compliance form shall include the cost of any retrofit device installed as part of the closed crankcase technology and any cost associated with the installation of the closed crankcase technology. After the installation of the closed crankcase technology on a regulated school bus, a copy of the completed compliance form shall be kept on each regulated school bus at all times.

c. The [Department] shall review the submitted compliance forms and forward them to the [State Treasurer]. The [State Treasurer] shall reimburse each owner of a regulated school bus the cost of any retrofit device installed as part of the closed crankcase technology requirement and any cost associated with the installation of the closed crankcase technology indicated on the compliance form, in accordance with the provisions of this Act.

d. The [Department of Environmental Protection] shall provide any training necessary to implement the provisions of this section for any employees of, or persons contracted or licensed by, the [Motor Vehicle Commission], as determined necessary by the [Chief Administrator of the Motor Vehicle Commission].

e. The [Department of Environmental Protection and the Motor Vehicle Commission] shall adopt jointly, pursuant to the state ["Administrative Procedure Act,"] rules and regulations concerning the installation of the crankcase technology required pursuant to this section and establishing the inspection requirements and procedures for verification of compliance with the crankcase technology requirement established pursuant to this section, the use of the compliance

form in any inspection or as part of the inspection procedures and verification of compliance, any training necessary for any employees of, or persons contracted or licensed by, the [Motor Vehicle Commission], and the extent of that training to be provided by the [Department of Environmental Protection], and in what manner that training shall be provided.

f. If for any reason, the owner of the regulated school bus is unable to comply with the requirements specified in this section, the owner shall notify the [Department], as soon as practicable, of the inability to comply. The [Department] shall resolve the situation with the owner as soon as practicable, and the [Department] shall issue any necessary documentation and other information to the owner of the regulated school bus.

Section 8. *[Study to Identify, Quantify Sources of Fine Particles in Cabin of Regulated School Buses.]*

a. Within [two years] after the effective date of this Act, the [Department of Environmental Protection] shall complete a study to identify and quantify the sources of fine particles present in the cabin of a regulated school bus. The study shall:

(1) evaluate the relative contribution of emissions from both the crankcase and the tailpipe to in-cabin levels of fine particles; and

(2) evaluate the feasibility of requiring, and the environmental and health benefits of the reduction of fine particle levels from school bus tailpipe emissions through the use of additional retrofit devices.

b. If the [Department of Environmental Protection] finds as a result of the study that technologically feasible reductions in tailpipe emissions would significantly reduce the health risks associated with exposure of children to fine particles in the cabin of a standard school bus, the [Department] may require the use of additional best available retrofit technologies in or on regulated school buses. If the [Department] makes such a finding pursuant to the study, the [Department] shall adopt, pursuant to the [“Administrative Procedure Act,”] rules and regulations establishing:

(1) the best available retrofit technologies that regulated school buses shall be required to use, according to type, class, and other identifying vehicle information as designated by the [department] in these rules and regulations; and

(2) the requirements for submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan that are consistent with the requirements and provisions of this Act and the requirements for implementing the use of best available retrofit technologies for any owner who elects not to submit such a plan. No use of additional best available retrofit technologies in or on regulated school buses may be required pursuant to this subsection for regulated school buses scheduled to be in service for less than [two years] on or after the date of notification pursuant to this Act. No provision of the rules and regulations may require an owner of a regulated school bus to make a submittal to the [Department] except as provided by this section.

c. No owner of a regulated school bus shall be required to install or use a retrofit device on a regulated school bus as required pursuant to the rules and regulations adopted pursuant to this Act or pursuant to any part of a plan submitted pursuant to this Act unless:

(1) the [State Treasurer] certifies that the constitutionally dedicated moneys have been deposited in the [Diesel Risk Mitigation Fund] for that year; and

(2) the [Department of Environmental Protection] certifies that sufficient moneys are available in the fund to pay for the cost of purchase and installation of the retrofit device required to be used by rule or regulation or by a provision of a plan submitted pursuant to this Act in that given year. Provided that the [State Treasurer] has issued the certification required under this Act for that year, the [Department] may determine the amount of moneys available in

the fund for that year, require the purchase and installation of those retrofit devices in those regulated school buses for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated school buses.

d. The [Department of Environmental Protection] shall notify each owner of a regulated school bus of the adoption of the rules and regulations pursuant to this section and the provisions of those rules and regulations. In establishing additional requirements pursuant to this section, the [Department] shall require the compliance of regulated school buses before the compliance of other vehicles and equipment required to use best available retrofit technologies pursuant to this Act. The [State Treasurer] shall prioritize the use of dedicated moneys in the [Diesel Risk Mitigation Fund] to allow for regulated school bus compliance with the provisions of this section, and shall prioritize payments made from the fund for regulated school buses complying with these additional requirements.

e. If rules and regulations are adopted pursuant to this section, each owner of a regulated school bus shall submit to the [Department of Environmental Protection]:

(1) an inventory of the diesel-powered school buses that are owned by the owner;  
(2) notice by the owner that the owner shall comply with the requirements of this Act through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to this section, or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; and

(3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to this Act, if the owner has elected to do so. The owner shall make these submittals no later than [180 days] after the effective date of the rules and regulations adopted pursuant to this section, or the date on or by which both certifications required pursuant to this section have been made, whichever is later.

f. No later than [180 days] after the date of the submittals and notice pursuant to this section, the [Department of Environmental Protection] shall review, approve, and resolve any discrepancies concerning any submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and shall issue final approval of the submitted plan. Any supplements or modifications to the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to this subsection shall be made pursuant to this Act.

g. The [Department] shall provide a one-page compliance form to each owner of a regulated school bus that submits a notice to comply with this section for each regulated school bus required to use best available retrofit technologies. The compliance form shall be similar to the compliance form issued pursuant to this Act and shall be consistent with the provisions of this Act. The [Department] shall issue with the compliance form a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or other vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle. The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the [Department] as soon as practicable after the installation of, or commencement of the use of, the best available retrofit technologies required pursuant to the rules and regulations adopted pursuant to this section. The [Department] shall review the compliance forms submitted and shall forward them to the [State Treasurer], who shall reimburse each owner of a regulated school bus the cost of any retrofit device and the costs associated with the installation thereof, in accordance with the provisions of this Act.

#### Section 9. *[Rules and Regulations Relative to Idling School Buses.]*



a. The rules and regulations adopted pursuant to this Act shall be consistent with any rules and regulations adopted pursuant to the [insert citation] concerning the idling of vehicles powered by diesel engines, shall be no less stringent than the restrictions on idling pursuant to [department] rules and regulations in effect on the date of enactment of this Act, and shall provide for the same penalties to be enforced for school bus idling as are enforced for the idling of other motor vehicles pursuant to section this Act, except that:

(1) a warning shall be issued to the driver of the school bus operated in violation of these provisions, to the school district if the school district is not the owner of the school bus, and the principal or administrator of the school serviced by the school bus operated in violation of these provisions, for the first violation;

(2) for a first violation, a notice of violation shall be issued to, and the appropriate penalty imposed on, the owner of the school bus operated in violation of these provisions; and

(3) subsequent violations shall be enforced against the owner of the school bus operated in violation of these provisions, if other than the school district, and the school district serviced by the school bus operated in violation of these provisions. No penalties may be assessed against any driver of any school bus that is operated in violation of the rules and regulations adopted pursuant to this Act.

b. The [Department of Environmental Protection] shall consult with the [Department of Education], individual school districts and school administrators concerning the issue of school bus idling, and develop and assist with the implementation of policies and procedures to achieve compliance with the rules and regulations adopted pursuant to this Act.

c. The [Department of Law and Public Safety], in consultation with local law enforcement, the [Department of Education, the Department of Environmental Protection, and the state Motor Vehicle Commission], shall adopt any rules or regulations necessary to facilitate and ensure the enforcement of the rules and regulations adopted pursuant to [insert citation].

#### Section 10. *[Submissions to DEP by Owner of Regulated Vehicle, Equipment.]*

a. Except as otherwise provided for in this section, any owner of a regulated vehicle or regulated equipment shall submit to the [Department of Environmental Protection]:

(1) an inventory of all on-road diesel vehicles and off-road diesel equipment owned, operated, or leased by the owner;

(2) notice by the owner that the owner shall comply with the requirements of this Act through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to this Act, or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; and

(3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to this Act, if the owner has elected to do so.

b. Each owner of a regulated vehicle or regulated equipment shall make the submittals required pursuant to subsection a. in accordance with the following schedule:

(1) for regulated solid waste vehicles, no later than [180 days] after the effective date of the rules and regulations adopted pursuant to this Act;

(2) for public regulated commercial buses, no later than [one year] after the effective date of the rules and regulations adopted pursuant to this Act;

(3) for private regulated commercial buses, no later than [one year and 180 days] after the effective date of the rules and regulations adopted pursuant to this Act; and

468 (4) for regulated on-road diesel vehicles and regulated equipment other than  
469 regulated solid waste vehicles and regulated commercial buses, no later than [two years] after the  
470 effective date of the rules and regulations adopted pursuant to this Act.

471 c. No owner of a private regulated commercial bus shall be required to make any  
472 submittal pursuant to subsection b. of this section until the owners of public regulated  
473 commercial buses have made their submittals required pursuant to that subsection, and no  
474 installation and use of a retrofit device on a private regulated commercial bus may be required  
475 earlier than [180 days] after the owners of public regulated commercial buses have been required  
476 to install and have begun the use of retrofit devices on public regulated commercial buses.

477 d. The owner of regulated vehicles or regulated equipment who commences operation of  
478 a fleet after the effective date of the rules and regulations adopted pursuant to this Act shall make  
479 the submittals required pursuant to subsection a. of this section within [180 days] after the date  
480 on which they began operations, or the date provided in subsection b. of this section, whichever  
481 is later.

482 e. The owner of regulated vehicles or regulated equipment may coordinate or combine  
483 the development of a fleet retrofit plan with the development of a fleet retrofit plan of any other  
484 owner, or a group of owners, of regulated vehicles or regulated equipment, and with the guidance  
485 of the [Department of Environmental Protection] submit a combined fleet retrofit plan.

486 f. The fleet retrofit plan submitted pursuant to subsection a. of this section shall include a  
487 description by the owner of the best available retrofit technology and the specific regulated  
488 vehicle or piece of regulated equipment on which the specific best available retrofit technology  
489 would be used, as determined by the owner pursuant to the rules and regulations adopted  
490 pursuant to this Act.

491 g. If the owner of regulated vehicles or regulated equipment determines that the best  
492 available retrofit technology as required under the rules and regulations adopted pursuant to this  
493 Act is not feasible for a specific regulated vehicle or pieces of regulated equipment, the owner  
494 may document this determination in the fleet retrofit plan and request the use of another level of  
495 best available retrofit technology to meet the requirement for that specific regulated vehicle or  
496 piece of regulated equipment, or provide documentation as to why the owner cannot use the best  
497 available retrofit technology that is required. The owner may also propose and negotiate an  
498 enforceable commitment to:

499 (1) retire the regulated vehicle or piece of regulated equipment and replace it with  
500 a vehicle or piece of equipment certified to fine particle emission levels at or below the emission  
501 levels that would have been achieved by the use of the required best available retrofit  
502 technology; or

503 (2) replace the engine of the vehicle or the equipment with an engine certified to  
504 that fine particle emissions level.

505 h. The owner of [75 or more] regulated vehicles or pieces of regulated equipment, or any  
506 group of owners who elect to develop a combined fleet retrofit plan pursuant to subsection d. of  
507 this section under which [75 or more] regulated vehicles or pieces of regulated equipment would  
508 be regulated, may propose to the [Department of Environmental Protection] a fleet averaging  
509 plan, in lieu of a fleet retrofit plan or a combined fleet retrofit plan, for the fleet or fleets affected.  
510 The owner or owners may propose a fleet averaging plan provided that the total net percent  
511 reductions in fine particle emissions under the proposed fleet averaging plan are equivalent to the  
512 estimated reductions in fine particle emissions that would have been achieved by the owner if a  
513 fleet retrofit plan were submitted and implemented for the regulated vehicles or regulated  
514 equipment, or both, or by the owners if the owners had submitted and implemented a combined  
515 fleet retrofit plan for their regulated vehicles or regulated equipment, or both, as calculated  
516 pursuant to the provisions of the rules and regulations adopted pursuant to this Act. The owner or

group of owners may propose achieving fine particle emissions reductions from any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment owned by the owner or group of owners, or the retirement of any of those vehicles or equipment, and shall submit the proposed fleet averaging plan to the [Department] as required by the rules and regulations adopted pursuant to this Act.

i. A fleet averaging plan proposed pursuant to subsection g. of this section that proposes the use of retrofit devices on any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment shall include:

(1) a description by the owner of the best available retrofit technology and the specific vehicle or equipment on which the specific best available retrofit technology would be used, the specific vehicle or equipment to be retired, and how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on the specific vehicles or equipment; and

(2) other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to this Act.

j. The [Department of Environmental Protection] shall give due consideration in the application of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan requirements to any efforts or actions by owners of regulated vehicles or regulated equipment who voluntarily retrofit, retire, or repower vehicles or equipment prior to the adoption of rules and regulations pursuant to this Act, and may modify any of the requirements of this section for such an owner in order to provide such due consideration.

k. The [Department of Environmental Protection] shall provide any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans required pursuant to this section and any revisions, supplements, or modifications thereto required pursuant to this Act.

l. No owner of regulated vehicles or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or regulated equipment as required pursuant to the rules and regulations adopted pursuant to this Act or under a plan submitted pursuant to this section in any year unless the [State Treasurer] certifies for that year that the constitutionally dedicated moneys have been deposited in the [Diesel Risk Mitigation Fund] and the [Department of Environmental Protection] certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by rule and regulation or under an approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan or supplement or modification thereto, as applicable, by an owner in that year. Provided that the [State Treasurer] has issued the certification that the constitutionally dedicated moneys have been deposited in the [Fund] for that year, the [Department] may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

#### Section 11. *[Approval of Fleet Retrofit Plans.]*

a. The [Department] shall review, and approve or disapprove all parts of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to this Act. The [Department] may approve or disapprove any fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan in part, and:

(1) may direct the owner to comply with the approved part or parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan, as applicable, prior to

final approval of other parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan; or

(2) in the case of a fleet averaging plan, may determine that the owner or the group of owners cannot comply with the requirements of this Act by implementing the proposed fleet averaging plan, and may require the owner to submit a fleet retrofit plan, or the group of owners of the fleets to submit a combined fleet retrofit plan or individual fleet retrofit plans. Any determination made, or requirement established, pursuant to paragraph (2) of this subsection shall be made in writing and shall be provided in writing to each owner affected by the determination or requirement.

b. If the [Department] exercises its authority under paragraph (2) of subsection a. of this section, the [Department] shall issue a modified timetable for submittal of a fleet retrofit plan for the regulated vehicles or regulated equipment, a combined fleet retrofit plan for the group of owners, or individual fleet retrofit plans for the owners in the group. The [Department] may require the submittal of these plans no earlier than [180 days] after the date of the determination pursuant to paragraph (2) of subsection a. of this section, or the date on or by which both of the certifications required pursuant to this Act have been made, whichever is later. The [Department] shall review, approve or disapprove any fleet retrofit plan or combined fleet retrofit plan submitted in accordance with this modified timetable.

c. Whenever the [Department] disapproves a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or a part thereof, the [Department] shall provide a detailed explanation to the owner indicating the deficiencies of the disapproved fleet retrofit plan, disapproved combined fleet retrofit plan, or the disapproved fleet averaging plan, or part thereof, and the recommendations of the [Department] to correct the deficiencies.

d. During the review process or prior to final approval of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part thereof in question, the [Department] may contact and enter into negotiations with the owner to resolve discrepancies between the rules and regulations adopted pursuant to this Act, the submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and any requests by the owner for alternatives pursuant to this Act.

e. The owner or a group of owners whose fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, is disapproved by the [Department] shall make the recommended revisions to the disapproved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the disapproved part thereof, within [60 days] after the receipt of the disapproval notification from the [department], and shall submit to the [Department] the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, or the final revised part thereof that had been disapproved and revised. If the [Department] does not take further action within [30 days] after receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, the final fleet averaging plan, or the final revised part that had been disapproved, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part that had been disapproved and revised, shall be considered approved and in effect. If the [Department] finds within [30 days] after the receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, that the owner has not complied with the recommended revisions, the [Department] may take further action to require compliance with this subsection, but the plan shall be in effect as of the date of the close of the [30-day period] following the submittal of the final revised plan, or part thereof.

f. Upon the date of final approval of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, the owner shall be subject to the provisions of the fleet retrofit plan, combined fleet retrofit plan, fleet averaging plan, or that part thereof, and shall be

required to comply with these provisions on or after the final approval date or the date on or by which both certifications required pursuant to this Act have been made, whichever is later.

Section 12. *[Anniversary Date of Plans, Submissions Required from Owner.]*

a. The date on which all parts of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan have been approved and are in effect shall serve as the anniversary date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval for the purposes of this subsection. On each [annual] anniversary of the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or [90 days] after the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or the approval of the most recent supplement or modification thereto, as applicable, whichever is later, each owner of regulated vehicles or regulated equipment shall submit a supplement to the fleet retrofit plan or combined fleet retrofit plan, or a modification of the fleet averaging plan, as applicable, indicating any changes to the fleet that have been made.

b. A supplement submitted pursuant to subsection a. of this section shall include:

(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner added or removed from the fleet since the submission of the fleet retrofit plan or combined fleet retrofit plan, or the last supplement thereto; and

(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used.

c. A modification to a fleet averaging plan submitted pursuant to subsection a. of this section shall include:

(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner or removed from the fleet since the submission of the fleet averaging plan or the last modification, thereto;

(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used that was not described in the fleet averaging plan or the last modification thereto; and

(3) a description of how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on specific regulated vehicles and other on-road diesel vehicles, or on specific regulated equipment and other off-road diesel equipment, and other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to this Act.

d. The [Department] shall review, and approve or disapprove all parts of the supplement or the modification no later than one year after its submittal date. The [Department] may approve or disapprove any supplement or modification to any plan in part, and require the owner of the regulated vehicles or regulated equipment to comply with the approved part or parts of the supplement or modification prior to final approval of other parts of the supplement or the modification.

e. Whenever the [Department] disapproves a supplement to a fleet retrofit plan, combined fleet retrofit plan, or a modification to a fleet averaging plan, or a part thereof, the [Department] shall provide a detailed explanation to the owner or operator of the fleet indicating the deficiencies of the disapproved supplement or modification, or part thereof, and the recommendations of the [Department] to correct the deficiencies. The owner or a group of owners who receive disapproval of a supplement to a fleet retrofit plan or combined fleet retrofit plan, or of a modification to a fleet averaging plan, or a part thereof, shall make the recommended revisions to the supplement or the modification within [60 days] after the receipt

of the disapproval notification from the [Department], and submit the final revised supplement or modification, or the revised part that had been disapproved, to the [Department]. If the [Department] does not take further action within [30 days] after receipt of the final revised supplement or modification, or the revised part that had been disapproved, the revised supplement to the fleet retrofit plan or combined fleet retrofit plan, or modification to the fleet averaging plan, or the revised part that had been disapproved shall be considered approved and in effect. If the [Department] finds within [30 days] after the receipt of the final revised supplement or modification or the final revised part that had been disapproved, that the owner has not complied with the recommended revisions, the [Department] may take further action to require compliance with this subsection, but the supplement or modification shall be in effect as of the date of the close of the [30-day period] after the receipt of the final revised supplement or modification.

f. Upon the date of final approval of the applicable part, and the date the final supplement or modification is in effect, the owner shall be subject to the provisions of the fleet retrofit plan or combined fleet retrofit plan, and the supplement thereto, or the fleet averaging plan and the modification thereto, except as may otherwise be provided pursuant to subsection e. of this section.

g. No owner of a regulated vehicle or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or piece of regulated equipment as required pursuant to a supplement to a fleet retrofit plan or combined fleet retrofit plan, or a modification to a fleet averaging plan or, any part of such a supplement or a modification, in any year unless the [State Treasurer] certifies for that year that the constitutionally dedicated moneys have been deposited in the [Diesel Risk Mitigation Fund], and the [Department of Environmental Protection] certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by an owner by rule or regulation or by the supplement to a fleet retrofit plan or combined fleet retrofit plan or the modification to a fleet averaging plan in that year. Provided that the [State Treasurer] has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the [Department] may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

Section 13. *[Inapplicability Relative to Vehicles, Equipment Meeting Federal Standard.]* Notwithstanding the provisions of this Act, or any rule or regulation adopted pursuant thereto, to the contrary, no best available retrofit technology shall be required by the [department] to be used on any regulated on-road diesel vehicle manufactured and certified to meet a federal standard of 0.01 grams per brake-horsepower-hour of fine particle emissions, or on any regulated off-road diesel equipment manufactured and certified to meet a federal standard of 0.015 grams per brake-horsepower-hour of fine particle emissions.

Section 14. *[Voluntary Repowering, Replacing, or Rebuilding of Equipment.]* Notwithstanding the provisions of this Act, or any rule or regulation adopted pursuant thereto, to the contrary, no owner of any on-road diesel vehicle or piece of off-road diesel equipment may be required by the [Department] to repower any on-road diesel vehicle or piece of off-road diesel equipment, or to replace or rebuild an engine in any onroad diesel vehicle or piece of off-road diesel equipment, unless the owner has voluntarily agreed to do so. The owner of any on-road diesel vehicle or piece of off-road diesel equipment may repower the on-road diesel vehicle or

piece of off-road diesel equipment, or replace or rebuild its engine, to comply with the requirements of this Act.

Section 15. [*Record Listing for Each Regulated Vehicle, Piece of Equipment.*]

a. Each owner of regulated vehicles or regulated equipment shall keep, at the place of business of the owner a record listing for each regulated vehicle or piece of regulated equipment the following identifying information and records for the regulated vehicle or piece of regulated equipment:

(1) the compliance form issued for each regulated vehicle or piece of regulated equipment provided pursuant to this Act or any other document for the verification of compliance that may be issued or required pursuant to this Act;

(2) maintenance records for the emissions control system or best available retrofit technology;

(3) the records of the [two most recent calendar years] of fuel purchases for each vehicle or piece of regulated equipment required to use modified fuel or fuel additives pursuant to rules and regulations adopted pursuant to this Act, or the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or approved supplement or approved modification thereto, as applicable;

(4) the original, approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, any exemption requests, and approvals or disapprovals of the requests, plans, supplements, or modifications, as applicable; and

(5) any other documentation pertinent to fleet averaging plans that may be otherwise required under rules or regulations adopted pursuant to this Act. The [Department of Environmental Protection] shall have the authority to inspect these records upon request. The [Department of Environmental Protection] may call upon the [Superintendent of State Police and the State Police] to assist with inspections pursuant to this subsection if necessary.

b. The owner of the fleet shall keep on each regulated vehicle or piece of regulated equipment, and on each vehicle or piece of equipment that is required to use best available retrofit technologies pursuant to an approved fleet averaging plan, or modification thereto, the current, updated compliance form issued pursuant to this Act, and a copy thereof with the records required pursuant to subsection a. of this section.

Section 16. [*Labeling of Retrofit Devices.*] Each retrofit device that is installed in this state shall be labeled with a legible and durable label affixed to the device. The label shall provide a unique identification number to be matched to the specific retrofit device and the specific vehicle required to use the retrofit device. No retrofit device may be sold or installed for use in this state unless it complies with the requirements of this section.

Section 17. [*Compliance Forms for Regulated Equipment.*]

a. The [Department of Environmental Protection] shall develop and issue to each owner of regulated equipment compliance forms for the regulated equipment no later than [180 days] after the submittal of a notice to comply or [180 days] after the date of the final approval of the fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable. The compliance form shall include a section for providing the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment.

b. As soon as practicable after the required best available retrofit technologies have been installed on the regulated equipment, the owner of regulated equipment shall complete the compliance form, retain a copy of the owner's records, and return it to the [Department of

Environmental Protection]. Thereafter, a current copy of the completed compliance form shall be kept on each piece of regulated equipment at all times.

c. Each owner of regulated equipment seeking reimbursement for the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment shall submit a copy of the completed compliance form to the [Department of Environmental Protection]. The [Department] shall review the submitted compliance form and forward it to the [State Treasurer], who shall reimburse the owner the costs indicated on the completed compliance form.

Section 18. *[Issuance of One-Page Compliance Forms.]*

a. No later than [180 days] after the date on which the owner of regulated vehicles or regulated equipment submits a notice to comply pursuant to this Act, the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect, the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect, or the date on which any supplement to the fleet retrofit plan or the combined fleet retrofit plan, or modification to the fleet averaging plan is in effect, the [Department] shall issue to the owner of a regulated vehicle or piece of regulated equipment a one-page compliance form for each regulated vehicle or piece of regulated equipment required to use best available retrofit technologies pursuant to the approved fleet retrofit plan or combined fleet retrofit plan, or the approved supplement thereto. In the case of an approved fleet averaging plan, the [Department] shall also issue a one page compliance form for each regulated vehicle, piece of regulated equipment, and other onroad diesel vehicle or piece of off-road diesel equipment that is required to use best available retrofit technologies pursuant to the approved fleet averaging plan, or the approved modification thereto.

b. The compliance form issued by the [Department of Environmental Protection] shall be no longer than one page and shall have printed on the form:

(1) the name and business address of the owner of the regulated vehicle or piece of regulated equipment;

(2) the vehicle identification number for the regulated vehicle or the serial number for the piece of regulated equipment that is required to use best available retrofit technologies, or the approved fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan;

(3) a description of the best available retrofit technologies that may be used by the specific regulated vehicle or piece of regulated equipment and the requirement under the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan;

(4) a description of the best available retrofit technology required for the vehicle or piece of equipment pursuant to the rules and regulations, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as the case may be;

(5) an identified space for the label number for a required retrofit device to be entered into the form;

(6) an identified space for the owner responsible for the submittal of the notice to comply by rules and regulations or the submittal and update of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan to certify that any required retrofit devices have been installed, and the date of that compliance;

(7) an identified space for the examiner of the regulated vehicle to certify that the vehicle identification number that appears on the form corresponds to the vehicle on which the required retrofit device has been installed, and that the label identification number on the required retrofit device corresponds to the label identification number entered on the form of the regulated on-road diesel vehicle or other on-road diesel vehicle on which the required retrofit device has been installed; and



(8) an identified space for the owner to record the cost of the retrofit device and its installation.

c. The [Department of Environmental Protection] shall issue with the forms sent to the owner of the fleet a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or another vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle.

Section 19. [*Retaining Form on Vehicle, Piece of Equipment; Record Copies.*]

a. Upon receipt of the compliance form for a vehicle or piece of equipment required to use best available retrofit technology, an approved fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable, the owner of the vehicle or piece of equipment shall retain the form on the vehicle or piece of equipment for which it was issued, and a copy of the current form in the business records of the owner, at all times.

b. As soon as practicable after the requirement to implement the use of best available retrofit technologies for a specific vehicle or piece of equipment as provided in department rules and regulations, the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, or supplement or modification thereto, as applicable, has been complied with, the owner shall complete the appropriate portion of the form provided pursuant to this Act. The owner shall:

(1) indicate the choice of best available retrofit technology that has been used to fulfill the requirement;

(2) enter into the identified space on the compliance form the label identification number for any retrofit device that has been installed on the regulated vehicle or regulated equipment;

(3) certify that the requirement on the form has been met for the regulated vehicle or piece of regulated equipment whose vehicle identification number or serial number, as applicable is printed on the form; and

(4) provide and certify the date that the installation was done or compliance began on the compliance form.

c. For any regulated vehicle that is not required to be inspected under the periodic inspection program established pursuant to [insert citation], the owner shall have the regulated vehicle inspected by a diesel emissions inspection center licensed pursuant to [insert citation] for the presence of the required retrofit device and compliance with the requirement described on the compliance form issued pursuant to this Act as soon as practicable after the requirements of subsection b. of this section have been met for the regulated vehicle.

d. For any regulated vehicle that is subject to inspection under the periodic inspection program pursuant to [insert citation], the owner, after complying with the provisions of subsection b. of this section, shall have the regulated vehicle inspected for compliance with the requirement printed on the form at the next annual periodic inspection scheduled for the vehicle, or as soon as practicable after complying with the provisions of subsection b. of this section. No provision of this subsection shall be construed as requiring the owner to have any vehicle subject to a periodic inspection to have that vehicle registered at any scheduled periodic inspection.

e. A diesel emissions inspection center licensed pursuant to [insert citation] shall inspect any regulated vehicle presented to it for inspection for compliance with the requirement on the form issued for the regulated vehicle. The person performing the inspection shall verify the presence of the required retrofit device, the match of the label identification number on the form with the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number on the

form to the label identification number on the retrofit device on the vehicle, and the correct vehicle identification number on the form. No provision of this subsection shall be construed to require the diesel emissions inspection center to verify the functioning or the correct installation of the retrofit device, or to test for the level of emissions reduction attributed to the use of the retrofit device.

f. If the owner of the regulated vehicle is a licensed diesel inspection center or is otherwise authorized to self-inspect the vehicles owned by the owner, the owner may perform the inspection and provide the certification required pursuant to subsections d. and e. of this section.

g. Only one inspection per vehicle is required pursuant to this section.

Section 20. [*Rules, Regulations Relative to One-Time Confirmation of Compliance With Plans.*]

a. No later than [two years] after the effective date of this Act, the state [Motor Vehicle Commission] shall adopt, any rules or regulations necessary for the provision of a one-time confirmation of compliance with approved regulated fleet retrofit plans, combined fleet retrofit plans, or fleet averaging plans, or supplements or modifications thereto, as applicable. As necessary, the [state Motor Vehicle Commission] shall provide for the inspection of regulated vehicles, including, but not limited to, the inspection of regulated vehicles that were not required to be inspected on the date of enactment of this Act, and the verification of compliance and completion of the compliance form by examiners, mechanics, technicians, or other knowledgeable persons involved in the maintenance and repair of the regulated vehicles.

b. The [Commission] shall include, in its inspection of a diesel commercial bus pursuant to [insert citation], an inspection of any regulated commercial bus required to install a retrofit device pursuant to a regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, after the retrofit device has been installed, to determine that the installation of the required best available retrofit technology has occurred as required pursuant to the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan for the diesel commercial bus being inspected, or shall provide for such an inspection at a separate time requested by the owner, operator, or lessee of the regulated fleet of which the diesel commercial bus is a part. This inspection is required to be performed only once and after the required retrofit device has been installed. The owner, operator, or lessee of the regulated fleet containing the diesel commercial buses shall notify the [state Motor Vehicle Commission] that the required installation has been done for the diesel commercial bus being inspected as required pursuant to this subsection.

c. The owner of a regulated vehicle subject to inspection pursuant to subsection a. or subsection b. of this section shall present to the person performing the inspection the form for the regulated vehicle. The person performing the inspection pursuant to subsection a. or subsection b. of this section shall check for the presence of the required retrofit device, the match of the label identification number in the form and or the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number to the form for the vehicle with the vehicle identification number on the form.

d. The [Department of Environmental Protection] shall provide any training necessary to implement the provisions of this section for any employees of, or persons contracted or licensed by, the [state Motor Vehicle Commission], as determined necessary by the [Chief Administrator of the state Motor Vehicle Commission].

e. No provision of this section shall be construed to require the [state Motor Vehicle Commission] to verify the functioning of the retrofit device, or its correct installation, or to test

the function of the retrofit device for any level of emissions reduction attributed to the use of the retrofit device.

Section 21. [*Alternative Approach for Reimbursement of Cost for Retrofit Devices.*]

a. The [Department of Environmental Protection] may develop an alternative approach for reimbursement of the provisions of this Act affecting the reimbursement of owners of regulated vehicles or regulated equipment for the costs associated with the purchase and installation of retrofit devices if the [Department] determines that an alternative approach is feasible, cost-effective, and efficient. The alternative approach may include, but shall not be limited to, directly reimbursing the entity performing the actual installation of the retrofit device in lieu of reimbursing the owner of the regulated vehicle or regulated equipment. If the [department] determines that an alternative approach is feasible, cost-effective, and efficient and chooses to implement the alternative approach, the [Department] shall establish and implement the alternative approach pursuant to rules and regulations adopted pursuant to the state ["Administrative Procedure Act."] No such rule or regulation may modify any procedure performed by, or any responsibility or requirement imposed on, the [state Motor Vehicle Commission], its employees, or any persons licensed or contracted by the [state Motor Vehicle Commission], unless the rule or regulation is adopted jointly by the [state Motor Vehicle Commission and the state Department of Environmental Protection] pursuant to the state ["Administrative Procedure Act."]

b. No entity performing the actual installation of a retrofit device who is reimbursed for the costs associated with the purchase and installation of retrofit devices pursuant to rules and regulations adopted pursuant to subsection a. of this section may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to this Act. No state agency, department, or political subdivision thereof may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to this Act if entities performing the actual installation of a retrofit device are reimbursed for the costs pursuant to rules and regulations adopted pursuant to subsection a. of this section.

Section 22. [*Joint Rules, Regulations Relative to Training.*] The [Department of Environmental Protection] and the [state Motor Vehicle Commission] shall adopt jointly rules and regulations providing for the training with respect to emissions testing and inspection required for persons who inspect or reinspect a vehicle pursuant to the periodic inspection program or the roadside inspection program established pursuant to this Act, or who repair any vehicle because of its failure of emissions testing under the periodic inspection program or roadside inspection program, including, but not limited to, the extent of the training, standards with respect to emissions testing and inspection for the training and certification of mechanics employed for the purposes of inspecting vehicles under the periodic inspection program or the roadside inspection program, or for the repair of vehicles that fail inspections under the periodic inspection program and the roadside enforcement program, and the training to meet these standards, including but not limited to, the length, convenience and affordability to the trainee, and the cost, if any of that training.

Section 23. [*Consultation to Ensure Coordination Between Agencies When Adopting Rules, Regulations.*] The [state Motor Vehicle Commission] shall consult with the [Department of Environmental Protection] and the [Department of Law and Public Safety] when adopting rules and regulations pursuant to this Act to ensure the proper coordination between the periodic

inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of this Act.

Section 24. [*Ultra-Low Sulfur Diesel Fuel Required On-Road.*]

a. No on-road diesel vehicle may operate in the State using any fuel other than ultra-low sulfur diesel fuel, on or after [October 15, 2006], or the date set by the United States Environmental Protection Agency as the retail compliance date for the sale of ultra-low sulfur diesel for use in on-road diesel vehicles pursuant to federal law and regulation.

b. No sooner than [July 15, 2006], and following a public hearing held by the [Department of Environmental Protection] on the availability of ultra-low sulfur diesel fuel in the state, the [Department] shall determine and issue a written notice of its determination as to whether sufficient supplies of ultra-low sulfur diesel fuel are available in the state to require only ultra-low sulfur diesel fuel to be sold in the state on and after [January 15, 2007], without significant disruption of, or significant price increases in, the wholesale and retail fuel market. If the department determines that supplies would be sufficient, no diesel fuel other than ultra-low sulfur diesel fuel may be sold in the state on or after the [180th day] after the date on which the [Department] issues a written determination that supplies would be sufficient, or three months after the retail compliance date for the sale of ultra-low sulfur diesel fuel for use in on-road diesel vehicles implemented by the United States Environmental Protection Agency, whichever is later.

c. If the [Department] determines that sufficient supplies are not available pursuant to subsection b. of this section, the requirement to sell only ultra-low sulfur diesel fuel in the state shall take effect only [180 days] after the [Department] issues a written determination that the supplies are sufficient.

d. The [Department of Environmental Protection], in consultation with the [Department of Law and Public Safety, the Department of Labor and Workforce Development, and the Attorney General], shall adopt rules and regulations necessary for the implementation of this section.

Section 25. [*Inapplicability Relative to Farm Vehicles, Equipment.*] No provision of this Act shall be construed to apply to any vehicle or equipment used on, or in the course of the operation of, a farm or to any vehicle or equipment used for any agricultural purposes.

Section 26. [*Violations, Penalties.*]

a. Whenever the [Commissioner of Environmental Protection] finds that a person has violated a provision of this Act, or any rule or regulation adopted pursuant thereto, the [Commissioner] may:

(1) Levy a civil administrative penalty in accordance with subsection b. of this section; or

(2) Bring an action for a civil penalty in accordance with subsection c. of this section.

b. Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies prescribed in this section or by any other applicable law.

c. The [Commissioner] is authorized to assess a civil administrative penalty of not more than [\$5,000] for each violation of this Act, or any rule or regulation adopted pursuant thereto. In adopting rules and regulations establishing the amount of any penalty to be assessed, the [Commissioner] may take into account the type, seriousness, and duration of the violation and the economic benefits from the violation gained by the violator. No assessment shall be levied

pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall:

(1) identify the section of the law, rule, regulation, approval, or authorization violated;

(2) recite the facts alleged to constitute a violation;

(3) state the amount of the civil penalties to be imposed; and

(4) affirm the rights of the alleged violator to a hearing.

d. The ordered party shall have [20 days] from receipt of the notice within which to deliver to the [commissioner] a written request for a hearing. After the hearing and upon finding that a violation has occurred, the [commissioner] may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the [20-day] period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative penalty is in addition to all other enforcement provisions in this Act and in any other applicable law, rule, or regulation, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the [Commissioner] upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

e. A person who violates any provisions of this Act or any rule or regulation adopted pursuant thereto, or who fails to pay a civil administrative penalty in full pursuant to subsection b. of this section, shall be subject, upon order of a court, to a civil penalty for such violation of not more than [\$5,000]. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the [insert citation]. In addition to any penalties, costs or interest charges, a court may assess against the violator the amount of actual economic benefit accruing to the violator from the violation. The [Superior Court] and the [municipal court] shall have jurisdiction to enforce the provisions of [insert citation] in connection with the provisions of this Act.

f. Any person who knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this Act shall be in violation of this Act, and shall be subject to the penalties assessed pursuant to subsections b. and c. of this section.

#### Section 27. *[Diesel Risk Mitigation Fund.]*

a. There is established in the [Department of the Treasury] a special, nonlapsing fund to be known as the [Diesel Risk Mitigation Fund.] The fund shall be administered by the [State Treasurer] and shall be credited with:

(1) constitutionally dedicated moneys;

(2) such moneys as are appropriated by the [Legislature]; and

(3) any return on investment of moneys deposited in the fund.

b. Moneys in the fund may be used by the [Department of the Treasury] solely for:

(1) reimbursements to owners of regulated vehicles or regulated equipment to reimburse the cost of required retrofit devices and the installation thereof;

(2) the administrative costs incurred by the [Department of Environmental Protection] to implement the provisions of this Act up to [\$900,000 per year]; and

(3) the administrative costs incurred by the [state Motor Vehicle Commission] to implement the provisions of this Act up to [\$250,000 per year].

c. No moneys in the fund may be made available for any costs associated with requirements imposed by this Act unless the [State Treasurer] certifies that the constitutionally

dedicated moneys have been deposited in the fund in that year. If the moneys provided for the administrative costs of the [state Motor Vehicle Commission] are not required by the commission in a given year because they exceed the amount of the administrative costs of the commission in that year, the [State Treasurer] shall provide those moneys unexpended for that purpose to the [Department of Environmental Protection] for administrative costs, provided that the administrative costs paid from the constitutionally dedicated moneys deposited in the fund do not exceed [\$1,150,000].

d. Any owner of a regulated vehicle or piece of regulated equipment is eligible for reimbursement from the fund. A county, municipality, or an authority as defined in [insert citation] must comply with the this Act and may anticipate in its annual budget or any amendments or supplements thereto those sums to be reimbursed from the fund for the costs of retrofit devices and their installation that are required to be used in or on any regulated vehicle or piece of regulated equipment in a given year in which the county, municipality, or authority incurs the cost. The costs of retrofit devices and their installation shall be considered an amount to be received from state funds in reimbursement for local expenditures and therefore exempt from the limitation on local budgets imposed pursuant to [insert citation].

Section 28. *[Allocation of Moneys in Fund, Application for Reimbursement.]*

a. Moneys in the fund shall be allocated and used to provide reimbursement to the owners of regulated vehicles or regulated equipment for [100%] of the costs of the purchase and installation of the retrofit device pursuant to this Act, other than fuel.

b. The owner or operator of a regulated vehicle or piece of regulated equipment seeking the reimbursement authorized in subsection a. of this section shall file an application on a form to be developed by the [State Treasurer] and the [Department of Environmental Protection], with the [Department], with the documentation required by the [Department] and the [State Treasurer] pursuant this Act. Neither the [State Treasurer] nor the [Department of Environmental Protection] may charge an application fee.

c. Upon a determination that an application for reimbursement meets all established criteria for an award from the fund, the [Department of Environmental Protection] and the [State Treasurer] shall approve the application. Upon the [Department] approval of an application for reimbursement from the fund, the [State Treasurer] shall award the reimbursement to an owner upon the availability of sufficient moneys in the fund. If moneys in the fund are not sufficient at any point to fund all applications for reimbursement that have been approved by the [State Treasurer], the [State Treasurer] shall award reimbursement to approved owners based upon the date of approval of the application.

Section 29. *[Rules, Regulations Relative to Filing Requirements for Reimbursement.]*

a. The [State Treasurer] shall adopt, in consultation with the [Department of Environmental Protection] rules and regulations:

(1) establishing the filing requirements for a complete application for reimbursement from the fund; and

(2) to require an owner:

(i) to submit documentation or other information demonstrating that the retrofit device has been purchased and installed on a regulated vehicle, which shall include the vehicle identification number of the vehicle, or on regulated equipment the serial number;

(ii) to submit documentation of the actual costs incurred for the purchase of the retrofit device required to be installed, the nature and scope of work performed to install the retrofit device, and the actual costs incurred to install the technology;

(iii) to submit a certification that the owner has not engaged in any of the conduct described in subsection a. of section 31 of this Act;

(iv) to submit a certification that the retrofit device installed on a regulated vehicle or regulated equipment is in conformance with rules and regulations of the [Department of Environmental Protection]; and

(v) to provide access at reasonable times to the regulated vehicles or regulated equipment to determine compliance with the terms and conditions of the reimbursement award.

b. In establishing requirements for applications for reimbursement, the [State Treasurer]:  
(1) may not impose conditions that interfere with the everyday normal operations of an owner's business activities, except to the extent necessary to ensure the owner has complied with the provisions of this Act;

(2) shall strive to minimize the complexity and costs to owners of complying with such requirements; and

(3) shall expeditiously process all applications in accordance with a schedule established, in consultation with the [Department of Environmental Protection], for the review and the taking of final action within [30 days] after the receipt of the completed application.

### Section 30. *[Denial of Application for Reimbursement.]*

a. The [State Treasurer] may deny an application for reimbursement from the fund, and any reimbursement from the fund may be recoverable by the [State Treasurer], upon a finding that:

(1) the owner of a regulated vehicle or regulated equipment failed to commence or complete the purchase or installation of best available retrofit technology on the vehicle or equipment for which an application for reimbursement was filed in accordance with the applicable rules and regulations; or

(2) the owner of a regulated vehicle or regulated equipment provided false information or withheld information on an application that would render the owner ineligible for reimbursement from the fund, that resulted in the owner receiving a larger reimbursement than the owner would otherwise be eligible, or that resulted in payments from the fund in excess of the actual costs incurred by the owner or the amount to which the owner is legally eligible.

b. Nothing in this section shall be construed to require the [State Treasurer], the [Department of Environmental Protection], or any other state agency or department, to undertake an investigation or make any findings concerning the conduct described in subsection a. of this section.

Section 31. *[Standards and Requirements for Control of Air Contaminants, Motor Vehicles Without Air Pollution Control Devices.]* Except as otherwise required pursuant to this Act or other laws, codes, rules, and regulations concerning motor vehicles registered in the State, the codes, rules and regulations shall establish standards and requirements for control of air contaminants which can reasonably be attained by properly functioning motor vehicles without the addition of any air pollution control devices, systems, or engine modifications provided such vehicles were not manufactured with pollution control devices, systems or engine modifications in accordance with the "Motor Vehicle Air Pollution Control Act" (77 Stat. 392, 42 U.S.C. s.1857), the federal "Clean Air Act," (42 U.S.C. s.7401 et seq.), and any subsequent federal laws controlling air contaminants from motor vehicles.

### Section 32. *[Air Pollution Penalty.]*

a. Any person who operates a motor vehicle or owns a motor vehicle, other than a school

bus, which the person permits to idle in violation of rules and regulations, or to be operated upon the public highways of the State when the motor vehicle is emitting smoke and other air contaminants in excess of standards adopted by the [Department of Environmental Protection] shall be liable to a penalty of not less than [\$250 nor more than \$1,000 per day, per vehicle], which shall be enforced in accordance with the provisions of this Act.

b. The owner of any school bus that is operated or is permitted to idle in violation of rules and regulations adopted pursuant to the [Department of Environmental Protection] pursuant to any applicable rules and regulations adopted pursuant to this Act shall be liable for a penalty of not less than [\$250 nor more than \$1,000 per day, per vehicle], which shall be enforced in accordance with the [insert citation] except that no penalty may be assessed against any driver of a school bus who is not the owner of the school bus.

c. The provisions of this section shall not apply to a motor vehicle idling in traffic, or a motor vehicle other than a school bus idling in a queue of motor vehicles, that are intermittently motionless and moving because the progress of the motor vehicles in the traffic or the queue has been stopped or slowed by the congestion of traffic on the roadway or other conditions over which the driver of the idling motor vehicle has no control.

Section 33. [*Provision of State Police Officers.*] The [Superintendent of the State Police], in consultation with and subject to the approval of the [Attorney General], shall provide [State Police] officers to assist the commission in conducting the roadside enforcement program and the pilot roadside enforcement program. The [State Police officers] shall have authority to direct diesel buses, heavy-duty diesel trucks, or other diesel-powered motor vehicles from the roadway for the purpose of inspection, and shall perform other police duties necessary for or helpful to the implementation of the programs. The [State Police officers] shall maintain records of these inspections and shall forward the information concerning the number of inspections, and the type of violations and the number of each type of violation to the [Department of Environmental Protection].

Section 34. [*Severability.*] [Insert severability clause.]

Section 35. [*Repealer.*] [Insert repealer clause.]

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



# Relating to Animal Identification Program Records

This Act provides that records relating to premises and animal identification must remain open with the exclusion of the following:

- Any information collected, created, or maintained by the state veterinarian or the state stockmen's association regarding premises or animal identification;
- The name and address of the owner of the premises or of any animals identified under the Act;
- The name and address of the lessee of any premises or of any animals identified under the Act.

The Act directs that the state veterinarian may not release any information designated as confidential with the exceptions of:

- Written consent of every person identified or identifiable by the information;
- In accordance with federal law for the purpose of a national animal identification program;
- To any state or federal agency for the purposes of disease control and animal disease trace-back;
- To the attorney general and any other law enforcement agency pursuing a criminal investigation; or
- Pursuant to an order issued by a court.

This Act does not prevent the exchange of information between the state veterinarian and the stockmen's association in the state.

Submitted as:

North Dakota

HB 1448

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 Animal  
2 Identification Program Records."

3  
4           Section 2. [*Premises and Animal Identification Program - Open Records - Exception*.]

5           1. Except as provided in subsection 2, the following information is confidential and not  
6 subject to the open records requirements of [insert citation]:

7               a. Any information created, collected, or maintained by the [state veterinarian] or  
8 the [state stockmen's association] regarding premises or animal identification;

9               b. The name and address of the owner of the premises or of any animals identified  
10 under this Act; and

11               c. The name and address of the lessee of any premises or of any animals identified  
12 under this Act.

13           2. The [state veterinarian] may not release any information designated as confidential  
14 under subsection 1 except:

15               a. Upon the written consent of every person identified or identifiable by the  
16 information;

17                   b. In accordance with federal law for the purpose of a national animal  
18 identification program;

19                   c. To any state or federal agency for the purposes of animal disease control and  
20 animal disease traceback;

21                   d. To the [attorney general] and any other law enforcement agency pursuing a  
22 criminal investigation; or

23                   e. Pursuant to an order issued by a court upon a showing of good cause.

24                3. This section does not preclude the exchange of information between the [state  
25 veterinarian] and the [state stockmen's association].

26                4. A violation of this section is subject to [insert citation].

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.]

# Requiring Hospitals to Report Charges for Certain Diagnostic-Related Groups

This Act directs that certain hospitals report annually to the state department of health the charges for the twenty-five most common inpatient diagnostic-related groups for which there are at least ten cases rendered by the hospital during the twelve months preceding the report. The Act directs state department of health to promulgate rules to provide for the reporting of charges by hospitals.

Submitted as:

South Dakota

SB 169

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 Hospitals to Report  
2 the Charges for Certain Diagnostic-Related Groups.”

3  
4           Section 2. [*Reporting Charges for Inpatient Diagnostic-Related Groups.*] Any hospital  
5 licensed pursuant to [insert citation] shall report annually to the [Department of Health] the  
6 charges for the [twenty-five] most common inpatient diagnostic-related groups for which there  
7 are at least [ten cases] rendered by the hospital during the [twelve months] preceding the report.  
8 The [Department of Health] shall promulgate rules to provide for the reporting of charges by  
9 hospitals. The rules shall include:

10                   (1) The method for hospitals to report charges to the [department];

11                   (2) Standards that provide for the validity and comparability of charge reports;

12 and

13                   (3) The format for making charge reports available to the public.

14  
15           Section 3. [*Posting Hospital Charges on Department of Health Web Site.*] The  
16 [Department of Health] shall make available the hospital charge reports required by this Act on  
17 its web site. The charge reports shall include disclaimers regarding factors, including case  
18 severity ratings and individual patient variations, which may affect actual charges to a patient for  
19 services rendered. Upon request, the [department] shall provide the charge reports by first class  
20 mail.

21  
22           Section 4. [*Definition – Charge.*] For the purposes of this Act, the term “charge,” is that  
23 amount that a hospital would expect to charge for an inpatient diagnostic-related group. Any  
24 charge that is required by this Act to be reported to the public shall be the median charge for all  
25 cases of the diagnostic-related group occurring in the [twelve months] preceding the report.

26  
27           Section 5. [*Severability.*] [Insert severability clause.]

28  
29           Section 6. [*Repealer.*] [Insert repealer clause.]

30  
31           Section 7. [*Effective Date.*] [Insert effective date.]

# Risk-Based Capital for Health Organizations

This Act:

- establishes risk-based capital requirements for health organizations;
- establishes a minimum standard of valuation for health insurance, and
- enacts model regulations of the National Association of Insurance Commissioners that regulates loss revenue certifications and disclosure of information to certain investigatory entities.

Submitted as:

Minnesota

Chapter 285 of 2004

Status: Enacted into law in 2004.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish Risk-Based Capital Requirements for Health Organizations.”

### Article I

#### Risk-Based Capital for Health Organizations

Section 1. [*Definitions.*] As used in this Article I:

(A) [Adjusted RBC Report.] “Adjusted RBC report” means an RBC report which has been adjusted by the [commissioner] in accordance with section 2 of this Article I.

(B) [Commissioner.] “Commissioner” means the [commissioner who regulates the health organization].

(C) [Corrective Order.] “Corrective order” means an order issued by the [commissioner] specifying corrective actions which the [commissioner] has determined are required.

(D) [Domestic Health Organization.] “Domestic health organization” means a health organization domiciled in this state.

(E) [Foreign Health Organization.] “Foreign health organization” means a health organization that is licensed to do business in this state but is not domiciled in this state.

(F) [NAIC] “NAIC” means the National Association of Insurance Commissioners.

(G) [Health Organization.] “Health organization” means an entity licensed under [insert citation]. This definition does not include an organization that is licensed or regulated as either a life and health insurer or a property and casualty insurer that is otherwise subject to either the life or property and casualty risk-based capital requirements.

(H) [RBC Instructions.] “RBC instructions” means the RBC report including risk-based capital instructions adopted by the NAIC, as these RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(I) [RBC Level.] “RBC level” means a health organization's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) “company action level RBC” means, with respect to any health organization, the product of 2.0 and its authorized control level RBC;

(2) “regulatory action level RBC” means the product of 1.5 and its authorized control level RBC;

(3) “authorized control level RBC” means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) “mandatory control level RBC” means the product of .70 and the authorized control level RBC.

(J) [RBC Plan.] “RBC plan” means a comprehensive financial plan containing the elements specified in section 2 of this Article. If the [commissioner] rejects the RBC plan, and it is revised by the health organization, with or without the [commissioner's] recommendation, the plan must be called the “revised RBC plan.”

(K) [RBC Report.] “RBC report” means the report required in section 2 of this Article.

(L) [Total Adjusted Capital.] “Total adjusted capital” means the sum of:

(1) a health organization's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed; and

(2) such other items, if any, as the RBC instructions may provide.

## Section 2. *[RBC Reports.]*

(A) [Submissions.] A domestic health organization shall, on or before each [April 1], prepare and submit to the [commissioner] a report of its RBC levels as of the [end of the calendar year just ended], in a form and containing the information required by the RBC instructions. In addition, a domestic health organization shall file its RBC report:

(1) with the NAIC in accordance with the RBC instructions; and

(2) with the [insurance commissioner in any state in which the health organization is authorized to do business], if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:

(i) [15 days] from the receipt of notice to file its RBC report with that state; or

(ii) the filing date.

(B) [Determination.] A health organization's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take the following into account, and may adjust for the covariance between, determined in each case by applying the factors in the manner set forth in the RBC instructions:

(1) asset risk;

(2) credit risk;

(3) underwriting risk; and

(4) all other business risks and such other relevant risks as are set forth in the RBC instructions.

(C) [Adjusted Report.] If a domestic health organization files an RBC report that in the judgment of the [commissioner] is inaccurate, then the [commissioner] shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice must contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an “adjusted RBC report.”

## Section 3. *[Company Action Level Event.]*

(A) [Definition.] “Company action level event” means the following events:

(1) the filing of an RBC report by a health organization that indicates that the health organization's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(2) notification by the [commissioner] to the health organization of an adjusted RBC report that indicates an event in clause (1), provided the health organization does not challenge the adjusted RBC report under section 7 of this Article, or

(3) if, pursuant to section 7 of this Article, a health organization challenges an adjusted RBC report that indicates the event in clause (1), the notification by the [commissioner] to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge.

(B) [RBC Plan Required.] In the event of a company action level event, the health organization shall prepare and submit to the [commissioner] an RBC plan that:

(1) identifies the conditions that contribute to the company action level event;

(2) contains proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;

(3) provides projections of the health organization's financial results in the current year and at least the [two succeeding years], both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) identifies the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and

(5) identifies the quality of, and problems associated with, the health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(C) [RBC Plan Submission.] The RBC plan must be submitted:

(1) within [45 days] of the Company Action Level Event; or

(2) if the health organization challenges an adjusted RBC report pursuant to section 7 of this Article, within [45 days] after notification to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge.

(D) [RBC Plan Implementation.] Within [60 days] after the submission by a health organization of an RBC plan to the [commissioner], the [commissioner] shall notify the health organization whether the RBC plan must be implemented or is, in the judgment of the [commissioner], unsatisfactory. If the [commissioner] determines the RBC plan is unsatisfactory, the notification to the health organization must set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the [commissioner]. Upon notification from the [commissioner], the health organization shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the [commissioner], and shall submit the revised RBC plan to the [commissioner]:

(1) within [45 days] after the notification from the [commissioner]; or

(2) if the health organization challenges the notification from the [commissioner] under section 7 of this Article, within [45 days] after a notification to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge.

(E) [Unsatisfactory Plan.] In the event of a notification by the [commissioner] to a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the [commissioner] may, at the [commissioner's] discretion, subject to the health organization's right

to a hearing under section 7 of this Article, specify in the notification that the notification constitutes a regulatory action level event.

(F) [Additional Filing.] Every domestic health organization that files an RBC plan or revised RBC plan with the [commissioner] shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health organization is authorized to do business if:

(1) the state has an RBC provision substantially similar in section 8, subdivision 1 of this Article; and

(2) the insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) [15 days] after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under subdivisions (C) and (D) of this section.

#### Section 4. *[Regulatory Action Level Event.]*

(A) [Definition.] "Regulatory action level event" means, with respect to a health organization, any of the following events:

(1) the filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(2) notification by the [commissioner] to a health organization of an adjusted RBC report that indicates the event in clause (1), provided the health organization does not challenge the adjusted RBC report under section 7 of this Article;

(3) if, pursuant to section 7 of this Article, the health organization challenges an adjusted RBC report that indicates the event in clause (1), the notification by the [commissioner] to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge;

(4) the failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the [commissioner] and has cured the failure within [ten days] after the filing date;

(5) the failure of the health organization to submit an RBC plan to the [commissioner] within the time period set forth in section 3(3) of this Article;

(6) notification by the [commissioner] to the health organization that:

(i) the RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the [commissioner], unsatisfactory; and

(ii) notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the determination under section 7 of this Article;

(7) if, pursuant to section 7 of this Article, the health organization challenges a determination by the [commissioner] under clause (6), the notification by the [commissioner] to the health organization that the [commissioner] has, after a hearing, rejected the challenge;

(8) notification by the [commissioner] to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the [commissioner] has so stated in the notification, provided the health organization has not challenged the determination under section 1; or

(9) if, pursuant to section 7 of this Article, the health organization challenges a determination by the [commissioner] under clause (8), the notification by the [commissioner] to the health organization that the commissioner has, after a hearing, rejected the challenge.

(B) [Commissioner's Duties.] In the event of a regulatory action level event the [commissioner] shall:

(1) require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) perform any examination or analysis the commissioner considers necessary of the assets, liabilities, and operations of the health organization, including a review of its RBC plan or revised RBC plan; and

(3) after the examination or analysis, issue a corrective order specifying the corrective actions the commissioner determines are required.

(C) [Corrective Actions.] In determining corrective actions, the [commissioner] may take into account factors the [commissioner] considers relevant with respect to the health organization based upon the [commissioner's] examination or analysis of the assets, liabilities, and operations of the health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan must be submitted:

(1) within [45 days] after the occurrence of the regulatory action level event;

(2) if the health organization challenges an adjusted RBC report pursuant to section 7 of this Article and the challenge is not frivolous in the judgment of the [commissioner] within [45 days] after the notification to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge; or

(3) if the health organization challenges a revised RBC plan pursuant to section 7 of this Article and the challenge is not frivolous in the judgment of the [commissioner], within [45 days] after the notification to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge.

(D) [Consultants.] The [commissioner] may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the [commissioner] to review the health organization's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations, including contractual relationships, of the health organization and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to consultants must be borne by the affected health organization or such other party as directed by the [commissioner].

#### Section 5. [*Authorized Control Level Event.*]

(A) [Definition.] "Authorized control level event" means any of the following events:

(1) the filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(2) the notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in clause (1), provided the health organization does not challenge the adjusted RBC report under section 7 of this Article;

(3) if, pursuant to section 7 of this Article, the health organization challenges an adjusted RBC report that indicates the event in clause (1), notification by the [commissioner] to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge;



(4) the failure of the health organization to respond, in a manner satisfactory to the [commissioner], to a corrective order, provided the health organization has not challenged the corrective order under section 7 of this Article; or

(5) if the health organization has challenged a corrective order under section 7 of the Article and the [commissioner] has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the [commissioner], to the corrective order subsequent to rejection or modification by the [commissioner].

(B) [Commissioner's Duties.] In the event of an authorized control level event with respect to a health organization, the [commissioner] shall:

(1) take such actions as are required under section 7 of this Article regarding a health organization with respect to which a regulatory action level event has occurred; or

(2) if the [commissioner] considers it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under [insert citation]. In the event the [commissioner] takes such actions, the authorized control level event is considered sufficient grounds for the [commissioner] to take action under [insert citation], and the [commissioner] shall have the rights, powers, and duties with respect to the health organization as are set forth in [insert citation]. In the event the [commissioner] takes actions under this clause pursuant to an adjusted RBC report, the health organization is entitled to the protections afforded health organizations under [insert citation] pertaining to summary proceedings.

#### Section 6. *[Mandatory Control Level Event.]*

(A) [Definition.] "Mandatory control level event" means any of the following events:

(1) the filing of an RBC report which indicates that the health organization's total adjusted capital is less than its mandatory control level RBC;

(2) notification by the [commissioner] to the health organization of an adjusted RBC report that indicates the event in clause (1), provided the health organization does not challenge the adjusted RBC report under section 7; or

(3) if, pursuant to section 7, the health organization challenges an adjusted RBC report that indicates the event in clause (1), notification by the [commissioner] to the health organization that the [commissioner] has, after a hearing, rejected the health organization's challenge.

(B) [Commissioner's Duties.]

(1) In the event of a mandatory control level event, the [commissioner] shall take such actions as are necessary to place the health organization under regulatory control under [insert citation]. In that event, the mandatory control level event is considered sufficient grounds for the [commissioner] to take action under [insert citation], and the [commissioner] shall have the rights, powers, and duties with respect to the health organization as are set forth in section [insert citation]. If the [commissioner] takes actions pursuant to an adjusted RBC report, the health organization is entitled to the protections of [insert citation] pertaining to summary proceedings.

(2) The [commissioner] may forego action for up to [90 days] after the mandatory control level event if the [commissioner] finds there is a reasonable expectation that the mandatory control level event may be eliminated within the [90-day] period.

Section 7. *[Hearings.]* Upon the occurrence of any of the following events, the health organization has the right to a confidential departmental hearing, on a record, at which the health

organization may challenge any determination or action by the [commissioner]. The health organization shall notify the [commissioner] of its request for a hearing within [five days] after the notification by the [commissioner] under clause (1), (2), (3), or (4). Upon receipt of the health organization's request for a hearing, the [commissioner] shall set a date for the hearing, which must be [no less than ten nor more than 30 days] after the date of the health organization's request. The events include:

(1) notification to a health organization by the [commissioner] of an adjusted RBC report;

(2) notification to a health organization by the [commissioner] that:

(i) the health organization's RBC plan or revised RBC plan is unsatisfactory; and

(ii) notification constitutes a regulatory action level event with respect to the health organization;

(3) notification to a health organization by the [commissioner] that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization in accordance with its RBC plan or revised RBC plan; or

(4) notification to a health organization by the [commissioner] of a corrective order with respect to the health organization.

#### Section 8. *[Access to and Use of RBC Information.]*

(A) [Confidentiality; Prohibition on Announcements.] Regarding confidentiality and prohibitions on announcements, see [insert citation].

(B) [Prohibition for Rate Making or Premium Setting.] The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the [commissioner] in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the [commissioner] for rate making nor considered or introduced as evidence in any rate proceeding nor used by the [commissioner] to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

#### Section 9. *[Supplemental Provisions.]*

(A) [Effect.] Sections 1 through Section 12 of this Article are supplemental to any other provisions of the laws of this state, and must not preclude or limit any other powers or duties of the [commissioner] under such laws, including, but not limited to [insert citation].

(B) [Exemption.] The [commissioner] may exempt from the application of sections 1 through 12 of this Article a domestic health organization that:

(1) writes direct business only in this state;

(2) assumes no reinsurance in [excess of five percent] of direct premium written; and

(3) writes direct annual premiums for comprehensive medical business of [\$2,000,000 or less].

#### Section 10. *[Foreign Health Organizations.]*

(A) [RBC Report.]

(1) A foreign health organization shall, upon the written request of the [commissioner], submit to the [commissioner] an RBC report as of the end of the calendar year just ended the later of:

(i) the date an RBC report would be required to be filed by a domestic health organization under sections 1 through 12 of this Article; or

(ii) [15 days] after the request is received by the foreign health organization.

(2) A foreign health organization shall, at the written request of the [commissioner], promptly submit to the [commissioner] a copy of any RBC plan that is filed with the insurance [commissioner] of any other state.

(B) [RBC Plan.] In the event of a company action level event, regulatory action level event, or authorized control level event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization or, if no RBC statute is in force in that state, under sections 1 to 12 of this Article, if the insurance [commissioner] of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that state, under section 3 of this Article, the [commissioner] may require the foreign health organization to file an RBC plan with the [commissioner]. In such event, the failure of the foreign health organization to file an RBC plan with the [commissioner] shall be grounds to order the health organization to cease and desist from writing new insurance business in this state. This section does not limit the [commissioner]'s authority to require a foreign insurer to file a copy of the risk-based capital plan submitted to the [commissioner] in the state of domicile.

(C) [Liquidation of Property.] In the event of a mandatory control level event with respect to a foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the [commissioner] may make application to the [district court] permitted under [insert citation] with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Section 11. *[Immunity.]* There is no liability on the part of, and no cause of action arises against, the [commissioner] or the department or its employees or agents for any action taken by them in the performance of their powers and duties under sections 1 to 12 of this Article.

Section 12. *[Notices.]* All notices by the [commissioner] to a health organization that may result in regulatory action under sections 1 to 12 of this Article are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission are effective upon the health organization's receipt of notice.

## Article II

### Minimum Standard of Valuation for Health Insurance

#### Section 1. *[Purpose and Scope.]*

(A) [Applicability.] Sections 1 to 9 of this Article apply to all individual and group accident and health insurance coverages as defined in [insert citation], including single premium credit disability insurance. Other credit insurance is not subject to sections 1 to 9 of this Article of this Act.

(B) [Adequacy of Reserves.] When an insurer determines that adequacy of its health insurance reserves requires reserves in excess of the minimum standards specified in sections 1 to 9 of this Article, the increased reserves must be held and must be considered the minimum reserves for that insurer.

(C) [Gross Premium Valuation.] With respect to any block of contracts, or with respect to an insurer's health business as a whole, a prospective gross premium valuation is the ultimate test of reserve adequacy as of a given valuation date. The prospective gross premium valuation must take into account, for contracts in force, in a claims status, or in a continuation of benefits status on the valuation date, the present value as of the valuation date of all expected benefits unpaid, all expected expenses unpaid, and all unearned or expected premiums, adjusted for future premium increases reasonably expected to be put into effect. The prospective gross premium valuation must be performed whenever a significant doubt exists as to reserve adequacy with respect to any major block of contracts, or with respect to the insurer's health business as a whole. In the event inadequacy is found to exist, immediate loss recognition must be made and the reserves restored to adequacy. Adequate reserves, inclusive of claim, premium, and contract reserves, if any, must be held with respect to all contracts, regardless of whether contract reserves are required for such contracts under sections 1 to 9 of this Article.

(D) [Minimum Reserves Exceed Reserve Requirements.] Whenever minimum reserves, as defined in sections 1 to 9 of this Article, exceed reserve requirements as determined by a prospective gross premium valuation, such minimum reserves remain the minimum requirement under sections 1 to 9 of this Article.

## Section 2. [*Glossary of Technical Terms Used.*]

(A) [Scope.] As used in sections 1 to 9 of this Article:

(B) [Annual Claim Cost.] "Annual claim cost" means the net annual cost per unit of benefit before the addition of expenses, including claim settlement expenses, and a margin for profit or contingencies. For example, the annual claim cost for a \$100 monthly disability benefit, for a maximum disability benefit period of one year, with an elimination period of one week, with respect to a male at age 35, in a certain occupation might be \$12, while the gross premium for this benefit might be \$18. The additional \$6 would cover expenses and profit or contingencies.

(C) [Claims Accrued.] "Claims accrued" means that portion of claims incurred on or prior to the valuation date which result in liability of the insurer for the payment of benefits for medical services which have been rendered on or before the valuation date, and for the payment of benefits for days of hospitalization and days of disability which have occurred on or prior to the valuation date, which the insurer has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for "accrued" benefits. A claim reserve, which represents an estimate of this accrued claim liability, must be established.

(D) [Claims Reported.] "Claims reported" means when an insurer has been informed that a claim has been incurred, if the date reported is on or before the valuation date, the claim is considered as a reported claim for annual statement purposes.

(E) [Claims Unaccrued.] "Claims unaccrued" means that portion of claims incurred on or before the valuation date which result in liability of the insurer for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of visibility occurring after the valuation date. This liability is sometimes referred to as a liability for unaccrued benefits. A claim reserve, which represents an estimate of the unaccrued claim payments expected to be made (which may or may not be discounted with interest) must be established.

415 (F) [Claims Unreported.] “Claims unreported” means when an insurer has not been  
416 informed, on or before the valuation date, concerning a claim that has been incurred on or prior  
417 to the valuation date, the claim is considered as an unreported claim for annual statement  
418 purposes.

419 (G) [Date of Disablement.] “Date of disablement” means the earliest date the insured is  
420 considered as being disabled under the definition of disability in the contract, based on a doctor’s  
421 evaluation or other evidence. Normally this date will coincide with the start of any elimination  
422 period.

423 (H) [Elimination Period.] “Elimination period” means a specified number of days, weeks,  
424 or months starting at the beginning of each period of loss, during which no benefits are payable.

425 (I) [Gross Premium.] “Gross premium” means the amount of premium charged by the  
426 insurer. It includes the net premium (based on claim-cost) for the risk, together with any loading  
427 for expenses, profit, or contingencies.

428 (J) [Group Insurance.] “Group insurance” means the term group insurance includes  
429 blanket insurance and franchise insurance and any other forms of group insurance.

430 (K) [Level Premium.] “Level premium” means a premium calculated to remain  
431 unchanged throughout either the lifetime of the policy, or for some shorter projected period of  
432 years. The premium need not be guaranteed; in which case, although it is calculated to remain  
433 level, it may be changed if any of the assumptions on which it was based are revised at a later  
434 time. Generally, the annual claim costs are expected to increase each year and the insurer, instead  
435 of charging premiums that correspondingly increase each year, charges a premium calculated to  
436 remain level for a period of years or for the lifetime of the contract. In this case, the benefit  
437 portion of the premium is more than needed to provide for the cost of benefits during the earlier  
438 years of the policy and less than the actual cost in the later years. The building of a prospective  
439 contract reserve is a natural result of level premiums.

440 (L) [Long-Term Care Insurance.] “Long-term care insurance” means a qualified long-  
441 term care insurance policy or rider as defined in [insert citation] and a nonqualified long-term  
442 insurance policy or rider as defined in [insert citation].

443 (M) [Modal Premium.] “Modal premium” refers to the premium paid on a contract based  
444 on a premium term which could be annual, semiannual, quarterly, monthly, or weekly. Thus if  
445 the annual premium is \$100 and if, instead, monthly premiums of \$9 are paid then the modal  
446 premium is \$9.

447 (N) [Negative Reserve.] “Negative reserve” means normally the terminal reserve is a  
448 positive value. However, if the values of the benefits are decreasing with advancing age or  
449 duration it could be a negative value, called a negative reserve.

450 (O) [Preliminary term reserve method.] “Preliminary term reserve method” means that  
451 under this method of valuation the valuation net premium for each year falling within the  
452 preliminary term period is exactly sufficient to cover the expected incurred claims of that year,  
453 so that the terminal reserves will be zero at the end of the year. As of the end of the preliminary  
454 term period, a new constant valuation net premium (or stream of changing valuation premiums)  
455 becomes applicable such that the present value of all such premiums is equal to the present value  
456 of all claims expected to be incurred following the end of the preliminary term period.

457 (P) [Present Value of Amounts Not Yet Due on Claims.] “Present value of amounts not  
458 yet due on claims” means the reserve for “claims unaccrued” which may be discounted at  
459 interest.

460 (Q) [Rating Block.] “Rating block” means a grouping of contracts determined by the  
461 valuation actuary based on common characteristics, such as a policy form or forms having  
462 similar benefit designs.

(R) [Reserve.] “Reserve” includes all items of benefit liability, whether in the nature of incurred claim liability or in the nature of contract liability relating to future periods of coverage, and whether the liability is accrued or unaccrued. An insurer under its contracts promises benefits, which result in:

(1) claims which have been incurred, that is, for which the insurer has become obligated to make payment, on or prior to the valuation date. On these claims, payments expected to be made after the valuation date for accrued and unaccrued benefits are liabilities of the insurer which should be provided for by establishing claim reserves; or

(2) claims which are expected to be incurred after the valuation date. Any present liability of the insurer for these future claims should be provided for by the establishment of contract reserves and unearned premium reserves.

(S) [Terminal Reserve.] “Terminal reserve” means the reserve at the end of a contract year, and is defined as the present value of benefits expected to be incurred after that contract year minus the present value of future valuation net premiums.

(T) [Unearned Premium Reserve.] “Unearned premium reserve” means that portion of the premium paid or due to the insurer which is applicable to the period of coverage extending beyond the valuation date. Thus if an annual premium of \$120 was paid on November 1, \$20 would be earned as of December 31 and the remaining \$100 would be unearned. The unearned premium reserve could be on a gross basis as in this example, or on a valuation net premium basis.

(U) [Valuation Net Modal Premium.] “Valuation net modal premium” means the modal fraction of the valuation net annual premium that corresponds to the gross modal premium in effect on any contract to which contract reserves apply. Thus if the mode of payment in effect is quarterly, the valuation net modal premium is the quarterly equivalent of the valuation net annual premium.

### Section 3. [*Categories of Reserves.*]

(A) The following sections set forth minimum standards for three categories of health insurance reserves:

(1) section 4 of this Article, claim reserves;

(2) section 5 of this Article, premium reserves; and

(3) section 6 of this Article, contract reserves.

Adequacy of an insurer's health insurance reserves is to be determined on the basis of all three categories combined. However, sections 1 to 9 of this Article emphasize the importance of determining appropriate reserves for each of the three categories separately.

### Section 4. [*Claim Reserves.*]

(A) [Generally.]

(1) Claim reserves are required for all incurred but unpaid claims on all health insurance policies.

(2) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of all incurred but unpaid claims.

(3) Claim reserves for prior valuation years are to be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of any residual unpaid liability.

(B) [Minimum Standards for Claim Reserves for Disability Income.]

(1) The maximum interest rate for claim reserves is specified in section 9 of this Article.

(2) Minimum standards with respect to morbidity are those specified in section 9 of this Article, except that, at the option of the insurer:

(i) for claims with a duration from date of disablement of less than [two years], reserves may be based on the insurer's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities; and

(ii) for group disability income claims with a duration from date of disablement of [more than two years but less than five years], reserves may, with the approval of the [commissioner], be based on the insurer's experience for which the insurer maintains underwriting and claim administration control. The request for approval of a plan of modification to the reserve basis must include:

- (a) an analysis of the credibility of the experience;
- (b) a description of how all of the insurer's experience is proposed to be used in setting reserves;
- (c) a description and quantification of the margins to be included;
- (d) a summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement;
- (e) a copy of the approval of the proposed plan of modification by the [commissioner] of the state of domicile; and
- (f) any other information deemed necessary by the [commissioner].

(3) For contracts with an elimination period, the duration of disablement must be measured as dating from the time that benefits would have begun to accrue had there been no elimination period.

(C ) [Minimum Standards for Claims Reserves for All Other Benefits.]

(1) The maximum interest rate for claim reserves is specified in section 9 of this Article.

(2) The reserve must be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(D) [Claim Reserve Methods Generally.] A generally accepted actuarial reserving method or other reasonable method if the method is approved by the [commissioner] before the statement date, or a combination of methods as described in this section, may be used to estimate all claim liabilities. The methods used for estimating liabilities generally may be aggregate methods, or various reserve items may be separately valued. Approximations based on groupings and averages may also be employed. Adequacy of the claim reserves, however, must be determined in the aggregate.

## Section 5. *[Premium Reserves.]*

(A) [Generally.]

(1) Unearned premium reserves are required for all contracts with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.

(2) If premiums due and unpaid are carried as an asset, the premiums must be treated as premiums in force, subject to unearned premium reserve determination. The value of unpaid commissions, premium taxes, and the cost of collection associated with due and unpaid premiums must be carried as an offsetting liability.

(3) The gross premiums paid in advance for a period of coverage beginning after the next premium due date which follows the date of valuation may be appropriately discounted to the valuation date and must be held either as a separate liability or as an addition to the unearned premium reserve which would otherwise be required as a minimum.

(B) [Minimum Standards for Unearned Premium Reserves.]

(1) The minimum unearned premium reserve with respect to a contract is the pro rata unearned modal premium that applies to the premium period beyond the valuation date, with the premium determined on the basis of:

(i) the valuation net modal premium on the contract reserve basis applying to the contract; or

(ii) the gross modal premium for the contract if no contract reserve applies.

(2) However, in no event may the sum of the unearned premium and contract reserves for all contracts of the insurer subject to contract reserve requirements be less than the gross modal unearned premium reserve on all such contracts, as of the date of valuation. The reserve must never be less than the expected claims for the period beyond the valuation date represented by the unearned premium reserve, to the extent not provided for elsewhere.

(C) [Premium Reserve Methods Generally.] The insurer may employ suitable approximations and estimates, including, but not limited to, groupings, averages, and aggregate estimation, in computing premium reserves. Approximations or estimates should be tested periodically to determine the continuing adequacy and reliability.

#### Section 6. [*Contract Reserves Required.*]

(A) Contract reserves are required, unless otherwise specified in paragraph (B) for:

(1) all individual and group contracts with which level premiums are used; or

(2) all individual and group contracts with respect to which, due to the gross premium pricing structure at issue, the value of the future benefits at any time exceeds the value of any appropriate future valuation net premiums at that time. This evaluation may be applied on a rating block basis if the total premiums for the block were developed to support the total risk assumed and expected expenses for the block each year, and a qualified actuary certifies the premium development. The actuary must state in the certification that premiums for the rating block were developed such that each year's premium was intended to cover that year's costs without any prefunding. If the premium is also intended to recover costs for any prior years, the actuary must also disclose the reasons for and magnitude of the recovery. The values specified in this clause must be determined on the basis specified in section 7 of this Article, subdivisions (A) to (D).

(B) Contracts not requiring a contract reserve are:

(1) contracts that cannot be continued after [one year] from issue; or

(2) contracts already in force on the effective date of sections 1 to 9 of this Article for which no contract reserve was required under the immediately preceding standards.

(C) The contract reserve is in addition to claim reserves and premium reserves.

(D) The methods and procedures for contract reserves must be consistent with those for claim reserves for a contract, or else appropriate adjustment must be made when necessary to assure provision for the aggregate liability. The definition of the date of incurral must be the same in both determinations.

#### Section 7. [*Minimum Standards for Contract Reserves.*]

(A) [Basis.]

(1) Minimum standards with respect to morbidity are those set forth in section 9 of this Article. Valuation net premiums used under each contract must have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of insured, contract duration, and period for which gross premiums have been calculated. Contracts for which tabular morbidity standards are not specified in section 9 of this Article must be valued using tables established for reserve purposes by a qualified actuary and acceptable to the



[commissioner]. The morbidity tables must contain a pattern of incurred claims cost that reflects the underlying morbidity and must not be constructed for the primary purpose of minimizing reserves.

(2) The maximum interest rate is specified in section 9 of this Article.

(3) Termination rates used in the computation of reserves must be on the basis of a mortality table as specified in section 9 of this Article except as noted in clauses (i) to (iii):

(i) under contracts for which premium rates are not guaranteed, and where the effects of insurer underwriting are specifically used by policy duration in the valuation morbidity standard or for return of premium or other deferred cash benefits, total termination rates may be used at ages and durations where these exceed specified mortality table rates, but not in excess of the lesser of:

(a) [80 percent] of the total termination rate used in the calculation of the gross premiums; or

(b) [eight percent];

(ii) for long-term care individual policies or group certificates issued after [January 1, 1997], the contract reserve may be established on a basis of separate:

(a) mortality as specified in section 9 of this Article; and

(b) terminations other than mortality, where the terminations are not to exceed:

(I) for policy years [one through four], the lesser of [80 percent] of the voluntary lapse rate used in the calculation of gross premiums and [eight percent];

(II) for policy years [five and later], the lesser of [100 percent] of the voluntary lapse rate used in the calculation of gross premiums and [four percent];

(iii) where a morbidity standard specified in section 9 of this Article is on an aggregate basis, the morbidity standard may be adjusted to reflect the effect of insurer underwriting by policy duration. The adjustments must be appropriate to the underwriting and be acceptable to the [commissioner].

(B) [Reserve Method.]

(1) For insurance, except long-term care and return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated on the [two-year] full preliminary term method; that is, under which the terminal reserve is [zero] at the first and also the second contract anniversary.

(2) For long-term care insurance, the minimum reserve is the reserve calculated as follows:

(i) for individual policies and group certificates issued on or before [December 31, 1991], reserves calculated on the [two-year] full preliminary term methods;

(ii) for individual policies and group certificates issued on or after [January 1, 1992], reserves calculated on the [one-year] full preliminary term method.

(3) For return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated as follows:

(i) on the [one-year] preliminary term method if the benefits are provided at any time before the [20th anniversary];

(ii) on the [two-year] preliminary term method if the benefits are only provided on or after the [20th anniversary]. The preliminary term method may be applied only in relation to the date of issue of a contract. Reserve adjustments introduced later, as a result of rate increases, revisions in assumptions, for example projected inflation rates, or for other reasons, are to be applied immediately as of the effective date of adoption of the adjusted basis.

656 (C) [Negative Reserves.] Negative reserves on any benefit may be offset against positive  
657 reserves for other benefits in the same contract, but the total contract reserve with respect to all  
658 benefits combined may not be less than zero.

659 (D) [Nonforfeiture Benefits for Long-Term Care Insurance.] The contract reserve on a  
660 policy basis must not be less than the net single premium for the nonforfeiture benefits at the  
661 appropriate policy duration, where the net single premium is computed according to the  
662 specifications in this section. While the consideration for nonforfeiture benefits in this section is  
663 specific to long-term care insurance, similar consideration may be applicable for other lines of  
664 business.

665 (E) [Alternative Valuation Methods and Assumptions.] Provided the contract reserve on  
666 all contracts to which an alternative method or basis is applied is not less in the aggregate than  
667 the amount determined according to the applicable standards specified in this section, an insurer  
668 may use any reasonable assumptions as to interest rates, termination and mortality rates, and  
669 rates of morbidity or other contingency. Also, subject to the preceding condition, the insurer may  
670 employ methods other than the methods stated in this section in determining a sound value of its  
671 liabilities under such contracts, including, but not limited to, the following: the net level  
672 premium method; the [one-year] full preliminary term method; prospective valuation on the basis  
673 of actual gross premiums with reasonable allowance for future expenses; the use of  
674 approximations such as those involving age groupings, groupings of several years of issue,  
675 average amounts of indemnity, and grouping of similar contract forms; the computation of the  
676 reserve for one contract benefit as a percentage of, or by other relation to, the aggregate contract  
677 reserves exclusive of the benefit or benefits so valued; and the use of a composite annual claim  
678 cost for all or any combination of the benefits included in the contracts valued.

679 (F) [Test for Adequacy and Reasonableness of Contract Reserves.] Annually, an  
680 appropriate review must be made of the insurer's prospective contract liabilities on contracts  
681 valued by tabular reserves, to determine the continuing adequacy and reasonableness of the  
682 tabular reserves giving consideration to future gross premiums. The insurer shall make  
683 appropriate increments to such tabular reserves if such tests indicate that the basis of such  
684 reserves is no longer adequate; subject, however, to the minimum standards of section 7,  
685 subdivisions (A) to (D). In the event a company has a contract or a group of related similar  
686 contracts for which future gross premiums will be restricted by contract, department rule, or for  
687 other reasons, such that the future gross premiums reduced by expenses for administration,  
688 commissions, and taxes will be insufficient to cover future claims, the company shall establish  
689 contract reserves for such shortfall in the aggregate.

690  
691 Section 8. [Reinsurance.] Increases to or credits against reserves carried, arising because  
692 of reinsurance assumed or reinsurance ceded, must be determined in a manner consistent with  
693 sections 1 to 9 of this Article and with all applicable provisions of the reinsurance contracts  
694 which affect the insurer's liabilities.

695  
696 Section 9. [Specific Standards for Morbidity, Interest, And Mortality.]

697 (A) [Morbidity.] Minimum morbidity standards for valuation of specified individual  
698 contract health insurance benefits are as follows:

699 (1) Disability Income Benefits Due to Accident or Sickness.

700 (a) Contract Reserves: Contracts issued on or after [January 1, 2004]:

701 (i) The 1985 Commissioner's Individual Disability Tables A  
702 (85CIDA); or

703 (ii) The 1985 Commissioner's Individual Disability Tables B  
704 (85CIDB). Each insurer shall elect, with respect to all individual contracts issued in any one

statement year, whether it will use Tables A or Tables B as the minimum standard. The insurer may, however, elect to use the other tables with respect to any subsequent statement year.

(b) Claim Reserves: For claims incurred on or after [January 1, 2004]:  
The 1985 Commissioner's Individual Disability Table A (85CIDA) with claim termination rates multiplied by the following adjustment factors:

Duration		Adjustment Factor	Adjusted Termination Rates*
Week	1	0.366	0.04831
	2	0.366	0.04172
	3	0.366	0.04063
	4	0.366	0.04355
	5	0.365	0.04088
	6	0.365	0.04271
	7	0.365	0.04380
	8	0.365	0.04344
	9	0.370	0.04292
	10	0.370	0.04107
	11	0.370	0.03848
	12	0.370	0.03478
	13	0.370	0.03034
Month	4	0.391	0.08758
	5	0.371	0.07346
	6	0.435	0.07531
	7	0.500	0.07245
	8	0.564	0.06655
	9	0.613	0.05520
	10	0.663	0.04705
	11	0.712	0.04486
	12	0.756	0.04309
	13	0.800	0.04080
	14	0.844	0.03882
	15	0.888	0.03730
	16	0.932	0.03448
	17	0.976	0.03026
	18	1.020	0.02856
	19	1.049	0.02518
	20	1.078	0.02264
Year	21	1.107	0.02104
	22	1.136	0.01932
	23	1.165	0.01865
	24	1.195	0.01792
	3	1.369	0.16839
	4	1.204	0.10114
	5	1.199	0.07434
	6 and later	1.000	**

\*The adjusted termination rates derived from the application of the adjustment factors to the DTS Valuation Table termination rates shown in exhibits 3a, 3b, 3c, 4, and 5 (Transactions of the

Society of Actuaries (TSA) XXXVII, pages 457-463) is displayed. The adjustment factors for age, elimination period, class, sex, and cause displayed in exhibits 3a, 3b, 3c, and 4 should be applied to the adjusted termination rates shown in this table.

\*\*Applicable DTS Valuation Table duration rate from exhibits 3c and 4 (TSA XXXVII, pages 462-463). The 85CIDA table so adjusted for the computation of claim reserves shall be known as 85CIDC (The 1985 Commissioner's Individual Disability Table C).

(2) Hospital Benefits, Surgical Benefits, and Maternity Benefits (Scheduled benefits or fixed time period benefits only).

(a) Contract Reserves. Contracts issued on or after [January 1, 1982]: The 1974 Medical Expense Tables, Table A, Transactions of the Society of Actuaries, Volume XXX, page 63. Refer to the paper (in the same volume, page 9) to which this table is appended, including its discussions, for methods of adjustment for benefits not directly valued in Table A: "Development of the 1974 Medical Expense Benefits," Houghton and Wolf.

(b) Claim Reserves: No specific standard. See (6).

(3) Cancer Expense Benefits (Scheduled benefits or fixed time period benefits only).

(a) Contract Reserves: Contracts issued on or after [January 1, 2004]: The 1985 NAIC Cancer Claim Cost Tables.

(b) Claim Reserves: No specific standard. See (6).

(4) Accidental Death Benefits.

(a) Contract Reserves: Contracts issued on or after [January 1, 2004]: The 1959 Accidental Death Benefits Table.

(b) Claim Reserves: Actual amount incurred.

(5) Single Premium Credit Disability.

(a) Contract Reserves:

(i) For contracts issued on or after [January 1, 2004]:

(I) For plans having less than a [30-day elimination period], the 1985 Commissioners Individual Disability Table A (85CIDA) with claim incidence rates increased by [12 percent].

(II) For plans having a [30-day and greater] elimination period, the 85CIDA for a [14-day] elimination period with the adjustment in item (I).

(b) Claim Reserves: Claim reserves are to be determined as provided in section 4 of this Article.

(6) Other Individual Contract Benefits.

(a) Contract Reserves: For all other individual contract benefits, morbidity assumptions are to be determined as provided in section 6 of this Article.

(b) Claim Reserves: For all benefits other than disability, claim reserves are to be determined as provided in section 4 of this Article.

(B) Minimum morbidity standards for valuation of specified group contract health insurance benefits are as follows:

(1) Disability Income Benefits Due to Accident or Sickness.

(a) Contract Reserves: Contracts issued on or after [January 1, 2004]: The 1987 Commissioners Group Disability Income Table (87CGDT).

(b) Claim Reserves: For claims incurred on or after [January 1, 2004]: The 1987 Commissioners Group Disability Income Table (87CGDT);

(2) Single Premium Credit Disability

(a) Contract Reserves:

(i) For contracts issued on or after [January 1, 2004]:

(I) For plans having less than a [30-day] elimination period, the 1985 Commissioners Individual Disability Table A (85CIDA) with claim incidence rates increased by [12 percent].

(II) For plans having a [30-day and greater] elimination period, the 85CIDA for a [14-day] elimination period with the adjustment in item (I).

(b) Claim Reserves: Claim reserves are to be determined as provided in section 4 of this Article.

(3) Other Group Contract Benefits.

(a) Contract Reserves: For all other group contract benefits, morbidity assumptions are to be determined as provided in section 6 of this Article.

(b) Claim Reserves: For all benefits other than disability, claim reserves are to be determined as provided in section 4 of this Article.

(C) [Interest.]

(1) For contract reserves the maximum interest rate is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the health insurance contract.

(2) For claim reserves on policies that require contract reserves, the maximum interest rate is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the claim incurred date.

(3) For claim reserves on policies not requiring contract reserves, the maximum interest rate is the maximum rate permitted by law in the valuation of single premium immediate annuities issued on the same date as the claim incurred date, reduced by [100 basis points].

(D) [Mortality.]

(1) For individual long-term care insurance policies or group long-term care insurance certificates issued on or after [January 1, 2004], the mortality basis used must be the 1983 Group Annuity Mortality Table without projection.

(2) Other mortality tables adopted by the NAIC and adopted by the [commissioner] may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the [commissioner]. The request for approval must include the proposed mortality table and the reason that the standard specified in subsection (1) is inappropriate.

(3) For single premium credit insurance using the 85CIDA table, no separate mortality must be assumed.

### Article III Miscellaneous

#### Section 1. *[Loss Reserve Certification.]*

(A) [Loss Reserve Certification.]

(1) Each domestic company engaged in providing the types of coverage described in [insert citation], must have its loss reserves certified by a qualified actuary. The company must file the certification with the [commissioner] within [30 days] of completion of the certification, but not later than [June 1]. The actuary providing the certification may be an employee of the company but the [commissioner] may still require an independent actuarial certification as described in subdivision 1. This subdivision does not apply to township mutual companies, or to other domestic insurers having less than [\$1,000,000 of premiums written in any year] and fewer than [1,000 policyholders]. The [commissioner] may allow an exception to the stand alone certification where it can be demonstrated that a company in a group has a pooling or 100 percent reinsurance agreement used in a group which substantially affects the solvency and

integrity of the reserves of the company, or where it is only the parent company of a group which is licensed to do business in this state. If these circumstances exist, the company may file a written request with the [commissioner] for an exception. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "In my opinion, the reserves described in this certification are consistent with reserves computed in accordance with standards and principles established by the Actuarial Standards Board and are fairly stated."

(2) Each foreign company engaged in providing the types of coverage described in [insert citation], required by this section to file an annual audited financial report, whose total net earned premium for [Schedule P, Part 1A to Part 1H plus Part 1R, (Schedule P, Part 1A to Part 1H plus Part 1R, Column 4, current year premiums earned, from the company's most currently filed annual statement) is equal to one-third or more of the company's total net earned premium (Underwriting and Investment Exhibit, Part 2, Column 4, total line, of the annual statement)] must have a reserve certification by a qualified actuary at least every three years. In the year that the certification is due, the company must file the certification with the [commissioner] within [30 days] of completion of the certification, but not later than [June 1]. The actuary providing the certification may be an employee of the company. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement:

*"The loss reserves and loss expense reserves have been examined and found to be calculated in accordance with generally accepted actuarial principles and practices and are fairly stated."*

Section 2. *[Risk-Based Capital Requirement.]* A service plan corporation is subject to regulation of its financial solvency under Article I of this Act.

Section 3. *[Application Review.]* Upon receipt of an application for a certificate of authority, the [commissioner] of health shall determine whether the applicant for a certificate of authority has:

(1) demonstrated the willingness and potential ability to assure that health care services will be provided in such a manner as to enhance and assure both the availability and accessibility of adequate personnel and facilities;

(2) arrangements for an ongoing evaluation of the quality of health care;

(3) a procedure to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the quality, availability and accessibility of its services, and such other matters as may be reasonably required by regulation of the [commissioner] of health;

(4) reasonable provisions for emergency and out of area health care services;

(5) demonstrated that it is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the [commissioner] of health shall require the amount of initial net worth required in [insert citation], compliance with the risk-based capital standards under Article I of this Act, the deposit required in [insert citation], and in addition shall consider:

(a) the financial soundness of its arrangements for health care services and the proposed schedule of charges used in connection therewith;

(b) arrangements which will guarantee for a reasonable period of time the continued availability or payment of the cost of health care services in the event of discontinuance of the health maintenance organization; and

901 (c) agreements with providers for the provision of health care services;  
902 (6) demonstrated that it will assume full financial risk on a prospective basis for  
903 the provision of comprehensive health maintenance services, including hospital care; provided,  
904 however, that the requirement in this paragraph shall not prohibit the following:

905 (a) a health maintenance organization from obtaining insurance or making  
906 other arrangements

907 (i) for the cost of providing to any enrollee comprehensive health  
908 maintenance services, the aggregate value of which exceeds [\$5,000] in any year,

909 (ii) for the cost of providing comprehensive health care services to  
910 its members on a nonelective emergency basis, or while they are outside the area served by the  
911 organization, or

912 (iii) for not more than [95 percent] of the amount by which the  
913 health maintenance organization's costs for any of its fiscal years exceed [105 percent] of its  
914 income for such fiscal years; and

915 (b) a health maintenance organization from having a provision in a group  
916 health maintenance contract allowing an adjustment of premiums paid based upon the actual  
917 health services utilization of the enrollees covered under the contract, except that at no time  
918 during the life of the contract shall the contract holder fully self-insure the financial risk of health  
919 care services delivered under the contract. Risk sharing arrangements shall be subject to the  
920 requirements of [insert citation];

921 (7) demonstrated that it has made provisions for and adopted a conflict of interest  
922 policy applicable to all members of the board of directors and the principal officers of the health  
923 maintenance organization. The conflict of interest policy shall include the procedures described  
924 in [insert citation]. However, the [commissioner] is not precluded from finding that a particular  
925 transaction is an unreasonable expense as described in [insert citation] even if the directors  
926 follow the required procedures; and otherwise met the requirements of sections [insert citation].

927  
928 Section 4. [*Required Deposit.*] Each health maintenance organization shall deposit with  
929 any organization or trustee acceptable to the [commissioner] through which a custodial or  
930 controlled account is utilized, bankable funds in the amount required in this section. The  
931 [commissioner] may allow a health maintenance organization's deposit requirement to be funded  
932 by an organization approved by the [commissioner].

933  
934 Section 5. [*Definition.*] If a health maintenance organization offers supplemental benefits  
935 as described in [insert citation], "expenses" does not include any expenses attributable to the  
936 supplemental benefit.

937  
938 Section 6. [*Initial Net Worth Requirement.*] Beginning organizations shall maintain net  
939 worth of at least [8-1/3 percent of the sum of all expenses expected to be incurred in the 12  
940 months following the date the certificate of authority is granted, or \$1,500,000,] whichever is  
941 greater.

942  
943 Section 7. [*Solvency.*] A community integrated service network is exempt from the  
944 deposit, reserve, and solvency requirements specified in sections 4 and 5 of this Article and  
945 [insert citation] and shall comply instead with sections [insert citation]. To the extent that there  
946 are analogous definitions or procedures in [insert citation] or in rules promulgated thereunder,  
947 the [commissioner] shall follow those existing provisions rather than adopting a contrary  
948 approach or interpretation.

950 Section 8. [*Applicability.*] For purposes of sections [insert citation], the terms defined in  
951 this section have the meanings given. Other terms used in those sections have the meanings  
952 given in sections 4 and 5 of this Article and [insert citation].  
953

954 Section 9. [*Guaranteeing Organization.*]

955 (A) [*Use of Guaranteeing Organization.*]

956 (1) A community network may satisfy its net worth and deposit requirements, in  
957 whole or in part, through the use of [one] or more guaranteeing organizations, with the approval  
958 of the [commissioner], under the conditions permitted in this section. If the guaranteeing  
959 organization is used only to satisfy the deposit requirement, the requirements of this section do  
960 not apply to the guaranteeing organization.

961 (2) For purposes of this section, a “guaranteeing organization” means an  
962 organization that has agreed to assume the responsibility for the obligation of the community  
963 network's net worth requirement.

964 (3) Governmental entities, such as counties, may serve as guaranteeing  
965 organizations subject to the requirements of this section.

966 (B) [*Responsibilities of Guaranteeing Organization.*] Upon an order of rehabilitation or  
967 liquidation, a guaranteeing organization shall transfer funds to the [commissioner] in the amount  
968 necessary to satisfy the net worth requirement.

969 (C) [*Requirements for a Guaranteeing Organization.*]

970 (1) A community network's net worth requirement may be guaranteed provided  
971 that the guaranteeing organization:

972 (a) transfers into a restricted asset account cash or securities permitted by  
973 [insert citation] in an amount necessary to satisfy the net worth requirement. Restricted asset  
974 accounts shall be considered admitted assets for the purpose of determining whether a  
975 guaranteeing organization is maintaining sufficient net worth. Permitted securities shall not be  
976 transferred to the restricted asset account in excess of the limits applied to the community  
977 network, unless approved by the [commissioner] in advance;

978 (b) designates the restricted asset account specifically for the purpose of  
979 funding the community network's net worth requirement;

980 (c) maintains positive working capital subsequent to establishing the  
981 restricted asset account, if applicable;

982 (d) maintains net worth, retained earnings, or surplus in an amount in  
983 excess of the amount of the restricted asset account, if applicable, and allows the guaranteeing  
984 organization:

985 (i) to remain a solvent business organization, which shall be  
986 evaluated on the basis of the guaranteeing organization's continued ability to meet its maturing  
987 obligations without selling substantially all its operating assets and paying debts when due; and

988 (ii) to be in compliance with any state or federal statutory net  
989 worth, surplus, or reserve requirements applicable to that organization or lesser requirements  
990 agreed to by the [commissioner]; and

991 (e) fulfills requirements of clauses (a) to (d) by [April 1] of each year.

992 (2) The [commissioner] may require the guaranteeing organization to complete  
993 the requirements of (C) (1) more frequently if the amount necessary to satisfy the net worth  
994 requirement increases during the year.

995 (D) [*Exceptions to Requirements.*] When a guaranteeing organization is a governmental  
996 entity, section 9 (C) of this Article III is not applicable. The [commissioner] may consider factors  
997 which provide evidence that the governmental entity is a financially reliable guaranteeing  
998 organization. Similarly, when a guaranteeing organization is a state-licensed health maintenance



organization, health service plan corporation, or insurer, subdivision (C)(1), paragraphs a and b are not applicable.

(E) [Amounts Needed To Meet Net Worth Requirements.] The amount necessary for a guaranteeing organization to satisfy the community network's net worth requirement is the lesser of an amount needed to bring the community network's net worth to the amount required by [insert citation]; or an amount agreed to by the guaranteeing organization.

(F) [Consolidated Calculations For Guaranteed Community Networks.]

(1) If a guaranteeing organization guarantees one or more community networks, the guaranteeing organization may calculate the amount necessary to satisfy the community networks' net worth requirements on a consolidated basis.

(2) Liabilities of the community network to the guaranteeing organization must be subordinated in the same manner as preferred ownership claims under section [insert citation].

(G) [Agreement Between Guaranteeing Organization And Community Network.] A written agreement between the guaranteeing organization and the community network must include the [commissioner] as a party and include the following provisions:

(1) any or all of the funds needed to satisfy the community network's net worth requirement shall be transferred, unconditionally and upon demand, according to subdivision 2;

(2) the arrangement shall not terminate for any reason without the [commissioner] being notified of the termination at least nine months in advance. The arrangement may terminate earlier if net worth requirements will be satisfied under other arrangements, as approved by the [commissioner];

(3) the guaranteeing organization shall pay or reimburse the [commissioner] for all costs and expenses, including reasonable attorney fees and costs, incurred by the [commissioner] in connection with the protection, defense, or enforcement of the guarantee;

(4) the guaranteeing organization shall waive all defenses and claims it may have or the community network may have pertaining to the guarantee including, but not limited to, waiver, release, res judicata, statute of frauds, lack of authority, usury, illegality;

(5) the guaranteeing organization waives present demand for payment, notice of dishonor or nonpayment and protest, and the [commissioner] shall not be required to first resort for payment to other sources or other means before enforcing the guarantee;

(6) the guarantee may not be waived, modified, amended, terminated, released, or otherwise changed except as provided by the guarantee agreement, and as provided by applicable statutes;

(7) the guaranteeing organization waives its rights under the Federal Bankruptcy Code, United States Code, title 11, section 303, to initiate involuntary proceedings against the community network and agrees to submit to the jurisdiction of the [commissioner] and state courts in any rehabilitation or liquidation of the community network;

(8) the guarantee shall be governed by and construed and enforced according to the laws of this state; and

(9) the guarantee must be approved by the [commissioner].

(H) [Submission of Guaranteeing Organization's Financial Statements.] The community network shall submit to the [commissioner] the guaranteeing organization's audited financial statements annually by [April 1] or at a different date if agreed to by the [commissioner]. The community network shall also provide other relevant financial information regarding a guaranteeing organization as may be requested by the [commissioner].

(I) [Performance as Guaranteeing Organization Voluntary.] No provider may be compelled to serve as a guaranteeing organization.

(J) [Guarantor Status in Rehabilitation or Liquidation.] Any or all of the funds in excess of the amounts needed to satisfy the community network's obligations as of the date of an order

of liquidation or rehabilitation shall be returned to the guaranteeing organization in the same manner as preferred ownership claims under [insert citation].

## Article IV Securities Regulation Technical Changes

### Section 1. *[Authorized Disclosures of Information and Data.]*

(A) [Authorized Disclosures of Information and Data.] The [commissioner] may release and disclose any active or inactive investigative information and data to any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 when necessary for the requesting agency in initiating, furthering, or completing an investigation.

(B) The [commissioner] may release any active or inactive investigative data relating to the conduct of the business of insurance to the [Office of the Comptroller of the Currency or the Office of Thrift Supervision] in order to facilitate the initiation, furtherance, or completion of the investigation.

Section 2. [Confidentiality of Information.] The [commissioner] may not be required to divulge any information obtained in the course of the supervision of insurance companies, or the examination of insurance companies, including examination-related correspondence and workpapers, until the examination report is finally accepted and issued by the [commissioner], and then only in the form of the final public report of examinations. Nothing contained in this subdivision prevents or shall be construed as prohibiting the [commissioner] from disclosing the content of this information to the insurance department of another state, the National Association of Insurance Commissioners, or any national securities association registered under the Securities Exchange Act of 1934, if the recipient of the information agrees in writing to hold it as nonpublic data as defined in section 13.02, in a manner consistent with this subdivision. This subdivision does not apply to the extent the [commissioner] is required or permitted by law, or ordered by a court of law to testify or produce evidence in a civil or criminal proceeding. For purposes of this subdivision, a subpoena is not an order of a court of law.

### Section 3. *[Examination Report; Foreign And Domestic Companies.]*

(A) [Examination Report; Foreign And Domestic Companies.] The [commissioner] shall make a full and true report of every examination conducted pursuant to this chapter, which shall include:

(1) a statement of findings of fact relating to the financial status and other matters ascertained from the books, papers, records, documents, and other evidence obtained by investigation and examination or ascertained from the testimony of officers, agents, or other persons examined under oath concerning the business, affairs, assets, obligations, ability to fulfill obligations, and compliance with all the provisions of the law of the company, applicant, organization, or person subject to this chapter and

(2) a summary of important points noted in the report, conclusions, recommendations and suggestions as may reasonably be warranted from the facts so ascertained in the examinations. The report of examination shall be verified by the oath of the examiner in charge thereof, and shall be prima facie evidence in any action or proceedings in the name of the state against the company, applicant, organization, or person upon the facts stated therein.

(B) [Verified Written Report of Examination.] No later than [60 days] following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department

shall transmit the report to the company examined, together with a notice which provides the company examined with a reasonable opportunity of not more than [30 days] to make a written submission or rebuttal with respect to matters contained in the examination report.

(C) [Review Written Report of Examination.] Within [30 days] of the end of the period allowed for the receipt of written submissions or rebuttals, the [commissioner] shall fully consider and review the report, together with the written submissions or rebuttals and the relevant portions of the examiner's workpapers and enter an order:

(1) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule, or prior order of the [commissioner], the [commissioner] may order the company to take any action the [commissioner] considers necessary and appropriate to cure the violation;

(2) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile the report as required under paragraph (B); or

(3) calling for an investigatory hearing with no less than [20 days]' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(D) [Orders to be Accompanied by Applicable Material.]

(1) All orders entered under paragraph (C), clause (1), must be accompanied by findings and conclusions resulting from the [commissioner]'s consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. The order is a final administrative decision and may be appealed as provided under [insert citation]. The order must be served upon the company by certified mail, together with a copy of the adopted examination report. Within [30 days] of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) A hearing conducted under paragraph (C), clause (3), by the [commissioner] or authorized representative, must be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the [commissioner]'s review of relevant workpapers or by the written submission or rebuttal of the company. Within [20 days] of the conclusion of the hearing, the [commissioner] shall enter an order as required under paragraph (C), clause (1).

(3) The [commissioner] shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously. Discovery by the company is limited to the examiner's workpapers which tend to substantiate assertions in a written submission or rebuttal. The [commissioner] or the [commissioner]'s representative may issue subpoenas for the attendance of witnesses or the production of documents considered relevant to the investigation whether under the control of the department, the company, or other persons. The documents produced must be included in the record. Testimony taken by the [commissioner] or the [commissioner]'s representative must be under oath and preserved for the record. This section does not require the department to disclose information or records which would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

(4) The hearing must proceed with the [commissioner] or the [commissioner]'s representative posing questions to the people subpoenaed. Thereafter, the company and the [department] may present testimony relevant to the investigation. Cross-examination may be conducted only by the [commissioner] or the [commissioner]'s representative. The company and the [department] shall be permitted to make closing statements and may be represented by counsel of their choice.

1146 (E) [Confidentiality of Examination Report.]

1147 (1) Upon the adoption of the examination report under paragraph (C), clause (1),  
1148 the [commissioner] shall continue to hold the content of the examination report as private and  
1149 confidential information for a period of [30 days] except as otherwise provided in paragraph (B).  
1150 Thereafter, the [commissioner] may open the report for public inspection if a court of competent  
1151 jurisdiction has not stayed its publication.

1152 (2) Nothing contained in this subdivision prevents or shall be construed as  
1153 prohibiting the [commissioner] from disclosing the content of an examination report, preliminary  
1154 examination report or results, or any matter relating to the reports, to the [commerce department]  
1155 or the insurance department of another state or country, or to law enforcement officials of this or  
1156 another state or agency of the federal government at any time, if the agency or office receiving  
1157 the report or matters relating to the report agrees in writing to hold it confidential and in a  
1158 manner consistent with this subdivision.

1159 (3) If the [commissioner] determines that regulatory action is appropriate as a  
1160 result of an examination, the [commissioner] may initiate proceedings or actions as provided by  
1161 law.

1162 (F) [Confidentiality of Documents Related to Examination.] All working papers, recorded  
1163 information, documents and copies thereof produced by, obtained by, or disclosed to the  
1164 [commissioner] or any other person in the course of an examination made under this subdivision  
1165 must be given confidential treatment and are not subject to subpoena and may not be made  
1166 public by the [commissioner] or any other person, except to the extent provided in paragraph (E).  
1167 Access may also be granted to the National Association of Insurance Commissioners and any  
1168 national securities association registered under the Securities Exchange Act of 1934. The parties  
1169 must agree in writing prior to receiving the information to provide to it the same confidential  
1170 treatment as required by this section, unless the prior written consent of the company to which it  
1171 pertains has been obtained.

1172  
1173 Section 4. *[Severability.]* [Insert severability clause.]

1174  
1175 Section 5. *[Repealer.]* [Insert repealer clause.]

1176  
1177 Section 6. *[Effective Date.]* [Insert effective date.]

# Service Charges and Fees on Gift Certificates

This Act directs that a person may not charge additional monthly or annual service or maintenance fees on a gift certificate. Under the Act, a person may not limit the time for redemption of a gift certificate to a date before six years after the date of purchase of the gift certificate, place an expiration date on a gift certificate before six years after the date of purchase of the gift certificate, or include on a gift certificate any statement suggesting that an expiration or redemption date may apply to a gift certificate.

Submitted as:  
North Dakota  
Chapter 446 of 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 Address Gift Certificate  
2       Expiration And Fees.”

3  
4       Section 2. [*Definitions.*] As used in this Act:  
5       “Gift certificate” means a record evidencing a promise, made for monetary consideration,  
6       by the seller or issuer of the record that goods or services will be provided to the owner of the  
7       record to the value shown in the record. The term includes a record that contains a  
8       microprocessor chip, magnetic strip, or other means of storage of information that is prefunded  
9       and for which the value is decreased upon each use; a gift card; an electronic gift card; an online  
10      gift account; a stored-value card; a store card; a prepaid telephone card; or a similar record or  
11      card. The term does not include a general-use prepaid card issued by a prepaid card issuer,  
12      including a plastic card or other electronic payment device that is usable at multiple, unaffiliated  
13      merchants or service providers or at an automatic teller machine, and purchased or loaded on a  
14      prepaid basis; a general-use prepaid card issued by a prepaid card issuer and purchased by a  
15      person that is not an individual; or a debit card linked to a deposit account.  
16

17      Section 3. [*Expiration Dates and Service Fees.*] A person may not charge additional  
18      monthly or annual service or maintenance fees on a gift certificate. A person may not limit the  
19      time for redemption of a gift certificate to a date before [six years after the date of purchase of  
20      the gift certificate], place an expiration date on a gift certificate before [six years after the date of  
21      purchase of the gift certificate], or include on a gift certificate any statement suggesting that an  
22      expiration or redemption date, except as permitted in this section, may apply to a gift certificate.  
23      This section does not apply to a gift certificate distributed to a consumer pursuant to an awards,  
24      loyalty, or promotional program without any money or other thing of value being given in  
25      exchange for the gift certificate by the consumer. Any restriction or limitation on such gift  
26      certificate must be disclosed to the consumer, in writing, at the time the gift certificate is  
27      distributed to the consumer.  
28

29      Section 4. [*Enforcement Powers, Remedies, and Penalties.*] The [attorney general] shall  
30      enforce this Act. In enforcing this Act, the [attorney general] has all the powers provided in this

31 Act or [insert citation] and may seek all remedies in this Act or [insert citation]. A violation of  
32 this Act constitutes a violation of [insert citation]. The remedies, duties, prohibitions, and  
33 penalties of this Act are not exclusive and are in addition to all other causes of action, remedies,  
34 and penalties as otherwise provided by state law.

35  
36 Section 5. [*Severability*.] [Insert severability clause.]

37  
38 Section 6. [*Repealer*.] [Insert repealer clause.]

39  
40 Section 7. [*Effective Date*.] [Insert effective date.]

# Telecommunications Deregulation Note

## Idaho

Idaho HB 0224 of 2005 permits regulated telephone companies operating in the state to transition into a technologically and competitively neutral communications market environment and away from a state-created monopoly regulatory environment, created by the state in 1913. Changes in federal and state law eliminated the monopoly status of the state's regulated telephone companies by opening the previously protected territories to all competitors and mandating "network-sharing" with their unregulated competitors. In addition, the digital revolution has made possible the dramatic growth in wireless usage, the steady increase in cable telephony, the rise of Voice over Internet Protocol (VoIP) services, and the explosion of electronic messaging, none of which are regulated by the state.

This legislation will allow regulated telephone companies operating in the state to forego the former monopoly based regulation, and, following a transition period of up to five years, be a full participant in the competitive communications marketplace. The legislation also addresses the following consumer issues: During a transition period of up to five years, the legislation caps basic local exchange rates at the maximum rate set by for regulated companies within the state during the overall transition period, with an annual cap not exceeding an amount equal to 10% of the company rate in effect at the time of the election to come under the provisions of the Act. The legislation prohibits rural rate increases above the rate established in the company's most populous urban area, thus giving the rural customer the benefit of the competition that now exists and will continue to grow, in the urban areas.

This provision does not end with the conclusion of the transition period. The bill guarantees that a customer will always have the option of "plain old telephone service" (POTS), without having to take package plans or services the customer does not want. It also provides customer remedy for unauthorized third-party service provider billings on customer telephone bill and provides the Public Utilities Commission with continuing authority over basic local exchange service quality standards, billing practices and procedures, and customer notice and customer-relations rules.

## Iowa

Iowa House File 277, which was enacted in 2005, concerns the deregulation of communications services. Provisions of the Act include considering market forces, eliminating accounting plan requirements, establishing antitrust procedures and remedies, eliminating reporting requirements, eliminating the state broadband initiative and providing a penalty.

## Missouri

Missouri SB 237 of 2005 adds cable television to the list of utilities allowed access to the Department of Transportation's right of way corridor. The Act modifies the definition of "competitive telecommunications service" to include the services which have been classified as such. The Act modifies the commission's approval process for service offerings in a sub-exchange. The Act states that telecommunication services may be offered in a sub-exchange unless the Public Service Commission (PSC) finds that doing so is contrary to the public interest; a change from the current law which states that such approval shall be based upon clear and convincing evidence. The Act authorizes customer-specific pricing for business customers only.

It shall be offered on an equal basis for both incumbent and alternative local exchange companies and for inter-exchange telecommunications companies. The Act adds business services in an exchange where basic local services offered to business customers have been declared competitive under the circumstances where customer-specific pricing has been authorized.

The Act allows telecommunications companies to offer discounted rates or special promotions to existing customers as well as new or former customers. The Act allows incumbent and alternative local exchange companies to offer packages of services - which is defined in this Act as more than one telecommunications service or one or more telecommunication service combined with one or more non telecommunication service – and that such packages shall not be subject to price cap or rate of return regulations, provided that each service offered in the package is available on its own, apart from the package, still subject to rate of return or price cap regulations.

The Act states that any rate, charge, toll or rental for telecommunication service that does not exceed the maximum allowable price shall be deemed to be just, reasonable and lawful. The Act adds to the provisions that allow small incumbent local exchange companies to be regulated under the price cap provisions by including situations where two or more wireless providers are providing service in any part of the company's service area. The Act allows an incumbent local exchange company to change the rates of service so long as they are consistent with subsections.

The Act allows an incumbent local exchange company to change the rates of service so long as they are consistent with subsections. The Act changes the standards by which services are classified as competitive. The Act states that any service offered to business and residential customers other than exchange access service, shall be classified as competitive if there are two non-affiliated entities in addition to the incumbent local exchange company (ILEC) providing basic local service to both business and residential customers within that exchange. The Act clarifies that wireless providers shall be considered as entities providing basic local services, provided that only one such non-affiliated provider shall be considered as providing said service within an exchange. The Act states that any entity providing local voice service over facilities in which it or one of its affiliates have an ownership shall be considered as a basic local service provider; regardless of whether or not that entity is regulated by the PSC. A provider of local voice service that requires the use of a third party, unaffiliated broadband network for origination of such service shall not be considered a basic service provider. Local voice service has been defined in the Act; two-way voice service capable of receiving calls from a provider of basic local telecommunication service. The Act defines broadband network as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction. The Act states that companies only offering prepaid services, or only reselling telecommunications service, shall not be considered entities providing basic local service. The Act provides a time frame of thirty days from the request under which the commission shall determine whether the requisite number of companies are providing the services required and if so, approve tariffs as competitive.

The Act allows ILECs to petition the commission for a competitive classification determination separate from the determination found when the requisite number of providers are supplying service in an exchange. This process allows an ILEC to use competition from any entity providing voice service using another company's facilities to do so, as the basis for the petition. This would allow, in certain circumstances, resellers to be considered in this petition process - this is different than the competitive classification determination found when the requisite number of providers are supplying service in an exchange, where resellers are not considered in the competition equation. The determination for competition here utilizes a more subjective investigation by the commission and provides more time for the commission to make



a determination; sixty days. The Act also directs the commission to maintain records of regulated providers of local voice service; the commission shall utilize these records when making a determination on any such petition.

If the services of an incumbent local exchange company are determined to be competitive, the company may thereafter adjust its rates upon filing tariffs which shall become effective within the timelines identified in Section 392.500. The commission is authorized to review the services which have been classified as competitive at least every two years, or when an ILEC increases the rates for basic local services in an exchange which has been declared competitive. The purpose for the review is to determine if the competitive conditions continue to exist in the exchange. The maximum annual increase for non basic telecommunications services of an ILEC has been changed with the Act; the maximum allowable increase is now five percent rather than eight. The Act provides a mechanism by which the Public Service Commission shall measure the rates for basic local telecommunications service; the measure shall come at the time of the effective date of the Act, two years after that date, and five years after the effective date of the Act.

## **Texas**

Texas SB 5 of 2005 relates to furthering competition in the communications industry. The Act provides fair, just and reasonable rates and adequate and efficient services, and the governing body of a municipality has exclusive original jurisdiction over the rates, operations and services of an electric utility in areas in the municipality, subject to limitation imposed in this Act.

The governing body of the municipality shall not have jurisdiction over the BPL (Broadband Power Lines) system, BPL services, telecommunications using BPL services, or the rates operations or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, wholly or partly, to the construction, maintenance, or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities.

The legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

The legislature finds that access to quality, high speed broadband services is important to this state. BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services. The legislature further finds that BPL development in Texas is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services.

Consistent with the goal of increasing options for telecommunications in this state, the legislature finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities, to own or operate all or a portion of such BPL systems. The purpose of this Act is to provide the appropriate framework to support the deployment of BPL.

The legislature finds that an electric utility may choose to implement BPL under the procedures set forth in this Act, but is not required to do so. The electric utility shall have the

right to decide, in its sole discretion, whether to implement BPL and may not be penalized for deciding to implement or not to implement BPL.

This Act applies to an electric utility whether or not the electric utility is offering customer choice. If there is a conflict between the specific provisions of this Act and any other provisions of state law, the provisions of this Act control.

No provision of the Act shall impose an obligation on an electric utility to implement BPL, to provide broadband services, or to allow others to install BPL facilities or use the electric utility's facilities for the provision of broadband services.

# Transaction Scan Devices

This Act enables retailers to use “electronic transaction scanning devices” to read and use information on drivers’ licenses and identification cards to help verify the age of people who buy alcohol and tobacco products. But the Act prohibits retailers from selling or otherwise disseminating such information to a third party for any purpose, including any marketing, advertising, or promotional activities.

Submitted as:

Texas

SB 1465

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 the Use of Certain  
2 Electronically Readable Information on a Driver’s License or Identification Certificate to  
3 Comply with Certain Alcohol and Tobacco Related Laws.”

4  
5           Section 2. [*Using Certain Electronically Readable Information.*]

6           (a) As used in this Act, “transaction scan device” means a device capable of deciphering  
7 electronically readable information on a driver’s license, commercial driver’s license, or  
8 identification certificate.

9           (b) A person may access electronically readable information on a driver’s license,  
10 commercial driver’s license, or identification certificate for the purpose of complying with  
11 [insert citation].

12           (c) The information accessed under this Act may be obtained by court order or on proper  
13 request by the comptroller, a law enforcement officer, or a law enforcement agency.

14           (d) Information accessed under this Act may not be sold or otherwise disseminated to a  
15 third party for any purpose, including any marketing, advertising, or promotional activities.

16           (e) A person who violates this section commits an offense. An offense under this section  
17 is a [Class A misdemeanor].

18           (f) It is an affirmative defense to prosecution that:

19               (1) a transaction scan device identified a license or certificate as valid and the  
20 defendant accessed the information and relied on the results in good faith; or

21               (2) if the defendant is the owner of a store in which cigarettes or tobacco products  
22 are sold at retail, the offense occurs in connection with a sale by an employee of the owner, and  
23 the owner had provided the employee with:

24                       (i) a transaction scan device in working condition; and

25                       (ii) adequate training in the use of the transaction scan device.

26           (g) It is an affirmative defense to prosecution for an offense having as an element the age  
27 of a person, that:

28               (1) a transaction scan device identified a license or certificate as valid and the  
29 defendant accessed the information and relied on the results in good faith; or  
30

31 (2) if the defendant is the owner of a store in which alcoholic beverages are sold  
32 at retail, the offense occurs in connection with a sale by an employee of the owner, and the  
33 owner had provided the employee with:

34 (i) a transaction scan device in working condition; and

35 (ii) adequate training in the use of the transaction scan device.

36 (h) This Act does not apply to:

37 (1) an officer or employee of a department who accesses or uses the information  
38 obtained under this Act for law enforcement or government purposes;

39 (2) a peace officer, as defined by [insert citation] acting in the officer's official  
40 capacity;

41 (3) a licensed deputy, as defined by [insert citation], issuing a license, stamp, tag,  
42 permit, or other similar item through use of a point-of-sale system under [insert citation]; or

43 (4) a person acting as authorized by [insert citation],

44 (5) a person who accesses electronically readable information under [insert  
45 citation] that identifies a driver's license or identification certificate as invalid.

46 (i) This Act applies only to an offense committed on or after the effective date of this Act.

47 (j) An offense committed before the effective date of this Act is covered by the law in  
48 effect when the offense was committed, and the former law is continued in effect for that  
49 purpose.

50  
51 Section 3. [*Severability*.] [Insert severability clause.]

52  
53 Section 4. [*Repealer*.] [Insert repealer clause.]

54  
55 Section 5. [*Effective Date*.] [Insert effective date.]

# Transmission Authority

This Act creates a state-owned authority to facilitate developing electric power lines and substations.

Submitted as:

North Dakota

Chapter 406 of 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 Provide For A State  
2   Transmission Authority.”

3  
4           Section 2. [*State Transmission Authority.*] There is created a [state transmission  
5   authority], which shall be governed by the state [industrial commission].

6  
7           Section 3. [*Definitions.*] As used in this Act:

8           A. “Authority” means the [industrial commission] acting as the [state transmission  
9   authority].

10          B. “Commission” means the [industrial commission] as defined under [insert citation].

11          C. “Notice of intent” means the notice to the [authority] indicating willingness to  
12   construct transmission facilities contemplated by the [authority] or to provide services fulfilling  
13   the need for such transmission facilities.

14          D. “Project area” means the geographic area in which construction of a transmission  
15   facility contemplated by the [authority] is likely to occur.

16          E. “Transmission facilities” means electric transmission lines and substations, and related  
17   structures, equipment, rights of way, and works of public improvement, located within and  
18   outside this state, excluding electric generating facilities.

19  
20          Section 4. [*Purposes.*] The [state transmission authority] is created to diversify and  
21   expand the state economy by facilitating development of transmission facilities to support the  
22   production, transportation, and utilization of [insert state] electric energy.

23  
24          Section 5. [*Powers.*] The [authority] has all powers necessary to carry out the purposes of  
25   this Act, including the power to:

26          A. make grants or loans and to provide other forms of financial assistance as necessary or  
27   appropriate for the purposes of this Act;

28          B. make and execute contracts and all other instruments necessary or convenient for the  
29   performance of its powers and functions under this Act;

30          C. borrow money and issue evidences of indebtedness as provided in this Act;

31          D. receive and accept aid, grants, or contributions of money or other things of value from  
32   any source, including aid, grants, or contributions from any department, agency, or  
33   instrumentality of the United States, subject to the conditions upon which the aid, grants, or  
34   contributions are made and consistent with the provisions of this Act;

35 E. issue and sell evidences of indebtedness in an amount or amounts as the [authority]  
36 may determine, but not to exceed [eight hundred million dollars], plus costs of issuance, credit  
37 enhancement, and any reserve funds required by agreements with or for the benefit of holders of  
38 the evidences of indebtedness for the purposes for which the [authority] is created under this Act,  
39 provided that the amount of any refinancing shall not be counted toward such [eight hundred  
40 million dollar] limitation to the extent it does not exceed the outstanding amount of the  
41 obligations being refinanced;

42 F. refund and refinance its evidences of indebtedness;

43 G. make and execute interest rate exchange contracts;

44 H. enter lease-sale contracts;

45 I. pledge any and all revenues derived by the [authority] under this Act or from a  
46 transmission facility, service, or activity funded under this Act to secure payment or redemption  
47 of the evidences of indebtedness;

48 J. to the extent and for the period of time necessary for the accomplishment of the  
49 purposes for which the [authority] was created, plan, finance, develop, acquire, own in whole or  
50 in part, lease, rent, and dispose of transmission facilities;

51 K. enter contracts to construct, maintain, and operate transmission facilities;

52 L. consult with the [public service commission], regional organizations, and any other  
53 relevant state or federal authority as necessary and establish reasonable fees, rates, tariffs, or  
54 other charges for transmission facilities and all services rendered by the [authority];

55 M. lease, rent, and dispose of transmission facilities owned pursuant to this Act;

56 N. investigate, plan, prioritize, and propose corridors of the transmission of electricity;

57 O. participate in and join regional transmission organizations; and

58 P. do any and all things necessary or expedient for the purposes of the [authority]  
59 provided in this Act.

60

61 Section 6. [*Coordinating Planning Transmission Facilities and Notice.*]

62 A. The [authority] shall coordinate its plans for transmission facilities with regional  
63 organizations having transmission planning responsibilities for the project area.

64 B. Before exercising its powers to construct transmission facilities granted to it in this  
65 Act, the [authority] shall publish in a newspaper of general circulation in this state and in a  
66 newspaper in the project area, a notice describing the need for transmission facilities  
67 contemplated by the [authority]. Anyone willing to construct the transmission facilities or furnish  
68 services to satisfy the needs described in the notice have a period of [one hundred eighty days]  
69 from the date of last publication of the notice within which to deliver to the [authority] a notice  
70 of intent. After receipt of a notice of intent, the [authority] may not exercise its powers to  
71 construct transmission facilities unless the [authority] finds that exercising its [authority] would  
72 be in the public interest. In making such a finding the [authority] shall consider factors including  
73 economic impact to the state, economic feasibility, technical performance, reliability, past  
74 performance and the likelihood of successful completion and ongoing operation.

75 C. The [authority] may require a person giving a notice of intent to provide a bond and to  
76 submit a plan for completion of the transmission facilities or commencement of services within a  
77 period of time acceptable to the [authority]. If no person submits an adequate plan or bond as  
78 required by the [authority], the [authority] may proceed with contracting for construction of the  
79 facility described in the [authority's] published notice.

80

81 Section 7. [*Authority May Participate Upon Request.*] The [authority] may participate in  
82 a transmission facility through financing, planning, joint ownership, or other arrangements at the  
83 request of a person giving a notice of intent.

84  
85 Section 8. *[Evidences of Indebtedness.]*

86 A. Evidences of indebtedness of the [authority] must be authorized by resolution of the  
87 [industrial commission] and may be issued in one or more series and must bear such date or  
88 dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in  
89 such denomination or denominations, be in such form, either coupon or registered, carry such  
90 conversion or registration privileges, have such rank or priority, be executed in such manner, be  
91 payable from such sources in such medium of payment at such place or places within or without  
92 the state, and be subject to such terms of redemption, with or without premium, as such  
93 resolution or resolutions may provide. Evidences of indebtedness of the [authority] are to mature  
94 not more than [forty years] from the date of issue. Evidences of indebtedness of the [authority]  
95 may be sold at such time or times and at such price or prices as the authority determines.

96 B. Evidences of indebtedness and grants, loans, or other forms of financial assistance  
97 issued by the [authority] are payable solely from:

98 1. revenues that may be received by the [authority] from transmission facilities,  
99 services, or activities funded under this Act with the proceeds of the [authority's] evidences of  
100 indebtedness, subject only to prior payment of the reasonable and necessary expenses of  
101 operating and maintaining such transmission facilities except depreciation.

102 2. amounts received by the [authority] under loans authorized under this Act.

103 3. revenues received by the [authority] under this Act from any source other than  
104 general tax revenues.

105 C. The evidences of indebtedness are not subject to taxation by the state or any of its  
106 political subdivisions and do not constitute a debt of this state within the meaning of any  
107 statutory or constitutional provision and must contain a statement to that effect on their face.

108 D. The [authority] may establish and maintain a reserve fund for evidences of  
109 indebtedness issued under this Act.

110 E. There must be deposited in the reserve fund:

111 1. all moneys appropriated by the [legislative assembly] to the [authority] for the  
112 purpose of the reserve fund.

113 2. all proceeds of evidences of indebtedness issued under this Act required to be  
114 deposited in the reserve fund by the terms of any contract between the [authority] and the holders  
115 of its evidences of indebtedness or any resolution of the [authority].

116 3. any lawfully available moneys of the [authority] which it may determine to  
117 deposit in the reserve fund.

118 4. any moneys from any other source made available to the [authority] for deposit  
119 in the reserve fund or any contractual right to the receipt of moneys by the [authority] for the  
120 purpose of the fund, including a letter of credit, surety bond, or similar instrument.

121 F. The [authority] must include in a [biennial] request to the [office of the budget] the  
122 amount, if any, necessary to restore any reserve fund established under this section to an amount  
123 equal to the amount required to be deposited in the fund by the terms of any contract or  
124 resolution approved by the [commission].

125 G. Any pledge of revenue made by the [industrial commission] as security for the  
126 [authority's] evidences of indebtedness is valid and binding from time to time when the pledge is  
127 made. The revenues or other moneys so pledged and thereafter received by the [authority] are  
128 immediately subject to the lien of any such pledge without any physical delivery thereof or  
129 further act, and the lien of any such pledge is valid and binding as against all parties having  
130 claims of any kind in tort, contract or otherwise against the [authority], regardless of whether  
131 such parties have notice thereof. Neither the resolution nor any other instrument by which a  
132 pledge is created need be filed or recorded, except in the records of the [authority].

H. The [authority] is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this Act, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

I. After issuance, all evidences of indebtedness of the [authority] are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the [authority].

J. When the [authority] has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the [authority] shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those furnished to the [authority] itself, in the amounts and at the rates as are fully sufficient at all times to:

1. pay the expenses of operating and maintaining the transmission facilities;
2. provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
3. provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

#### Section 9. *[Public Service Commission Jurisdiction and Consultation.]*

A. The [authority] and the transmission facilities built under this Act, until sold or disposed of by the [authority], are exempt from the provisions of [insert citation]. Upon sale or disposal by the [authority], transmission facilities built under this Act are subject to the provisions of [insert citation].

B. The [authority] shall consult with the [public service commission] with respect to the rates charged by the [authority] for use of its transmission facilities and such rates must thereafter be considered just and reasonable in proceedings before the [public service commission] pursuant to [insert citation].

C. The [authority] shall conduct its activities in consultation with transmission providers, wind interests, the [Lignite Research Council], and other people having relevant expertise.

Section 10. *[Bonds as Legal Investments.]* The bonds of the [authority] are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the [authority]. The [state investment board] may invest in bonds of the [authority] in an amount specified by the [state investment board].

#### Section 11. *[Disposal of Transmission Facilities.]*

A. Before becoming an owner or partial owner of a transmission facility, the [authority] shall develop a plan identifying:

1. the public purposes of the [authority's] ownership;



181                   2. conditions that would make the [authority's] ownership no longer necessary for  
182 accomplishing those public purposes; and

183                   3. a plan to divest the [authority's] ownership interest as soon as economically  
184 prudent once those conditions occur.

185                B. For transmission facilities that are leased to another entity by the [authority], at the end  
186 of the lease, absent default by the lessee, the [authority] shall convey its interest in the  
187 transmission facilities to the lessee.

188                C. For transmission facilities that are owned by the [authority] without a lessee, the  
189 [authority] shall divest itself of ownership as soon as economically prudent in accordance with  
190 the divestiture plan developed pursuant to subsection A.

191  
192                Section 12. [*Exemption from Property Taxes.*] Transmission facilities built under sections  
193 1 through 11 of this Act are exempt from property taxes for a period determined by the  
194 [authority] not to exceed the first [five taxable years] of operation; after this initial period,  
195 transmission lines of [two hundred thirty kilovolts] or larger and the transmission lines'  
196 associated transmission substations remain exempt from property taxes but are subject to a per  
197 mile tax at the full per mile rate and subject to the same manner of imposition and allocation as  
198 the per mile tax imposed by [insert citation] without application of the discounts provided in that  
199 subsection.

200  
201                Section 13. [*Biennial Report to Legislative Council.*] The [authority] shall deliver a  
202 written report on its activities to the [legislative council] each [biennium].

203  
204                Section 14. [*Severability.*] [Insert severability clause.]

205  
206                Section 15. [*Repealer.*] [Insert repealer clause.]

207  
208                Section 16. [*Effective Date.*] [Insert effective date.]

# Vehicle Rental Agreements: Electronic Surveillance Technology

This Act prohibits a rental company that uses electronic surveillance technology in its rental vehicles from using, accessing, or obtaining information relating to the renter's use of the rental vehicle that was obtained using that technology, as specified. The bill also requires a rental company to obtain a renter's express authorization before using or disclosing to others information about the renter's use of the vehicle, and would make other conforming changes to those provisions.

Submitted as:

California

Chapter 317 of 2004

Status: Enacted into law in 2004.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1           Section 1. [*Definitions.*]
- 2           (a) As used in this Act:
- 3               (1) "Rental company" means any person or entity in the business of renting
- 4           passenger vehicles to the public.
- 5               (2) "Renter" means any person in any manner obligated under a contract for the
- 6           lease or hire of a passenger vehicle from a rental company for a period of less than [30 days].
- 7               (3) "Authorized driver" means:
- 8                   (A) the renter,
- 9                   (B) the renter's spouse if that person is a licensed driver and satisfies the
- 10          rental company's minimum age requirement,
- 11                   (C) the renter's employer or coworker if they are engaged in business
- 12          activity with the renter, are licensed drivers, and satisfy the rental company's minimum age
- 13          requirement, and
- 14                   (D) any person expressly listed by the rental company on the renter's
- 15          contract as an authorized driver.
- 16               (4) "Electronic surveillance technology" means a technological method or
- 17          system used to observe, monitor, or collect information, including telematics, Global Positioning
- 18          System (GPS), wireless technology, or location-based technologies. "Electronic surveillance
- 19          technology" does not include event data recorders (EDR), sensing and diagnostic modules
- 20          (SDM), or other systems that are used either:
- 21                   (A) for the purpose of identifying, diagnosing, or monitoring functions
- 22          related to the potential need to repair, service, or perform maintenance on the rental vehicle.
- 23                   (B) as part of the vehicle's airbag sensing and diagnostic system in order
- 24          to capture safety systems-related data for retrieval after a crash has occurred or in the event that
- 25          the collision sensors are activated to prepare the decision making computer to make the
- 26          determination to deploy or not to deploy the airbag.
- 27               (5) "Passenger vehicle" means a passenger vehicle as defined in [insert citation].
- 28

29           Section 2. *[Accessing Information from a Rental Vehicle that is Obtained Using*  
30 *Electronic Surveillance Technology.]*

31           (a) A rental company may not use, access, or obtain any information relating to the  
32 renter's use of the rental vehicle that was obtained using electronic surveillance technology,  
33 except in the following circumstances:

34           (1) (A) when the equipment is used by the rental company only for the  
35 purpose of locating a stolen, abandoned, or missing rental vehicle after [one] of the following:

36                       (i) the renter or law enforcement has informed the rental company  
37 that the vehicle has been stolen, abandoned, or missing.

38                       (ii) the rental vehicle has not been returned following [one week]  
39 after the contracted return date, or by [one week] following the end of an extension of that return  
40 date.

41                       (iii) the rental company discovers the rental vehicle has been stolen  
42 or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a  
43 stolen vehicle report, unless law enforcement has already informed the rental company that the  
44 vehicle has been stolen, abandoned, or is missing.

45           (B) If electronic surveillance technology is activated pursuant to  
46 subparagraph (A) of paragraph (1), a rental company shall maintain a record, in either electronic  
47 or written form, of information relevant to the activation of such technology. That information  
48 shall include the rental agreement, including the return date, and the date and time the electronic  
49 surveillance technology was activated. The record shall also include, if relevant, a record of any  
50 written or other communication with the renter, including communications regarding extensions  
51 of the rental, police reports, or other written communication with law enforcement officials. The  
52 record shall be maintained for a period of at least [12 months] from the time the record is created  
53 and shall be made available upon the renter's request. The rental company shall maintain and  
54 furnish any explanatory codes necessary to read the record. A rental company shall not be  
55 required to maintain a record if electronic surveillance technology is activated to recover a rental  
56 vehicle that is stolen or missing at a time other than during a rental period.

57           (2) In response to a specific request from law enforcement pursuant to a subpoena  
58 or search warrant.

59           (3) Nothing in this subdivision prohibits a rental company from equipping rental  
60 vehicles with GPS based technology that provides navigation assistance to the occupants of the  
61 rental vehicle, if the rental company does not use, access, or obtain any information relating to  
62 the renter's use of the rental vehicle that was obtained using that technology, except for the  
63 purposes of discovering or repairing a defect in the technology and the information may then be  
64 used only for that purpose.

65           (4) Nothing in this subdivision prohibits a rental company from equipping rental  
66 vehicles with electronic surveillance technology that allows for the remote locking or unlocking  
67 of the vehicle at the request of the renter, if the rental company does not use, access, or obtain  
68 any information relating to the renter's use of the rental vehicle that was obtained using that  
69 technology, except as necessary to lock or unlock the vehicle.

70           (5) Nothing in this subdivision prohibits a rental company from equipping rental  
71 vehicles with electronic surveillance technology that allows the company to provide roadside  
72 assistance, such as towing, flat tire or fuel services, at the request of the renter, if the rental  
73 company does not use, access or obtain any information relating to the renter's use of the rental  
74 vehicle that was obtained using that technology except as necessary to provide the requested  
75 roadside assistance.

76           (6) Nothing in this subdivision prohibits a rental company from obtaining,  
77 accessing, or using information from electronic surveillance technology for the sole purpose of

determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(b) A rental company may not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

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

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

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

# Vital Records Fraud

This Act establishes the crimes of vital records fraud. Specifically, this Act establishes the crime of vital records fraud related to birth, death, marriage, and divorce certificates as a felony.

Submitted as:

Kansas

Substitute for HB 2087

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 Vital Records  
2   Fraud.”

3  
4           Section 2. [*Vital Records Fraud.*]

5           (a) A person commits vital records fraud related to birth, death, marriage and divorce  
6   certificates when they:

7               (1) willfully and knowingly supply false information intending that the  
8   information be used to obtain a certified copy of a vital record;

9               (2) make, counterfeit, alter, amend or mutilate any certified copy of a vital record  
10   without lawful authority and with the intent to deceive;

11              (3) willfully and knowingly obtain, possess, use, sell or furnish or attempt to  
12   obtain, possess or furnish to another for any purpose of deception a certified copy of a vital  
13   record.

14           (b) The prohibitions in subsections (a) and (b) do not apply to:

15               (1) a person less than [21 years of age] who uses the identification document of  
16   another person to acquire an alcoholic beverage;

17               (2) a person less than [18 years of age] who uses the identification documents of  
18   another person to acquire:

19                   (A) cigarettes or tobacco products, as defined in [insert citation];

20                   (B) a periodical, videotape or other communication medium that contains  
21   or depicts nudity;

22                   (C) admittance to a performance, live or film, that prohibits the attendance  
23   of the person based on age; or

24                   (D) an item that is prohibited by law for use or consumption by such  
25   person.

26           (c) Vital records fraud is a [felony].

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.]

# Workers Compensation Small Claims Procedure

This Act establishes a small claims procedure for medical expense claims not exceeding eight thousand dollars. The procedure may only be used for a medical expense claim incurred after the department has held a hearing and has adjudicated the underlying injury as compensable or after the department has approved an agreement as to compensation or a memorandum of payment for permanent partial disability.

Submitted as:

South Dakota

HB 1165 (enrolled version)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish a Workers  
2 Compensation Small Claims Procedure.”

3  
4           Section 2. [*Establishing Procedure.*] The [department] shall establish a small claims  
5 procedure for medical expense claims [not exceeding eight thousand dollars]. The procedure  
6 may only be used for a medical expense claim incurred after the [department] has held a hearing  
7 and has adjudicated the underlying injury as compensable or after the [department] has approved  
8 an agreement as to compensation or a memorandum of payment for permanent partial disability.  
9

10          Section 3. [*Rules.*] The [department] shall, by rules promulgated pursuant to [insert  
11 citation], provide for the manner in which the disputed claims shall be presented and the forms  
12 required from the claimant and from employers.  
13

14          Section 4. [*Initiating Claims.*] Any claimant pursuant to this Act shall initiate a claim by  
15 completing a form provided by the [department].  
16

17          Section 5. [*Notice.*] The [department] shall send notice to the party claimed against by  
18 registered or certified mail, return receipt.  
19

20          Section 6. [*Counterclaims.*] Any party claimed against may assert any setoff or  
21 counterclaim that is within the jurisdiction of the [department].  
22

23          Section 7. [*Hearings.*] The [department] shall conduct the hearings in accordance with  
24 [insert citation]. The department shall expedite any hearing to the extent possible.  
25

26          Section 8. [*Evidence.*] Any medical record, correspondence, medical bill, and expert  
27 report and correspondence is admissible as evidence. Nothing in this Act precludes an employer  
28 or insurer from obtaining an examination pursuant to [insert citation].  
29

30          Section 9. [*Medical Release and Records.*] Upon the request of any party claimed against,  
31 the claimant shall provide an executed medical release in a form prescribed by the department,

32 sufficiently in advance of the hearing to allow the party claimed against to obtain such medical  
33 records as it deems appropriate. Any party shall disclose to the other party any medical record  
34 that is within the party's possession and is relevant to the claim in dispute.  
35

36 Section 10. [*Appeals.*] Within [fifteen days] after receiving the decision by the  
37 [department], any party may appeal the decision to the [secretary of labor]. The [secretary of  
38 labor] may on the [secretary's] own motion affirm, modify, or set aside any decision on the basis  
39 of the evidence previously submitted in the case or the secretary may direct the taking of  
40 additional evidence. The [secretary] shall promptly notify the interested parties of the  
41 [secretary's] findings and decision. Any decision of the [secretary] is the final decision of the  
42 [department]. Any final decision of the [department] may be appealed as provided in [insert  
43 citation].  
44

45 Section 11. [*Representation.*] Any claimant in any proceeding before the [department]  
46 may be represented by counsel or other duly authorized agent, but no such counsel or agent may  
47 either charge or receive for such services more than an amount approved by the [department]. An  
48 employer or insurer, including a corporate employer or insurer, may be represented before the  
49 [department] by counsel, an employee, or a corporate officer.  
50

51 Section 12. [*Findings.*] Any finding of fact, conclusion of law, decision, or final order  
52 made in a small claims proceeding may not be used as evidence in any separate or subsequent  
53 action or proceeding between anyone in any tribunal, agency, or court of this state or the United  
54 States, regardless of whether the prior action was between the same or related parties or involved  
55 the same facts.  
56

57 Section 13. [*Severability.*] [Insert severability clause.]  
58

59 Section 14. [*Repealer.*] [Insert repealer clause.]  
60

61 Section 15. [*Effective Date.*] [Insert effective date.]

# Cumulative Index

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