SUGGESTED STATE LEGISLATION
1993 Volume 52

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Foreword

The Council of State Governments is pleased to bring you this volume of Suggested State Legislation, the 52nd in a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this volume represents thousands of hours of work completed by the Council's Committee on Suggested State Legislation and by legislators and legislative staff across the country in the states that originated the bills.

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

September 1992
Daniel M. Sprague
Lexington, Kentucky Executive Director
The Council of State Governments
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 26 years ago in the introduction to the 28th volume of Suggested State Legislation.

For 54 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 of 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 volumes of Suggested State War Legislation and Suggested State Post-War Legislation gave way to a volume simply titled Suggested State Legislation, an annual volume of draft legislation on topics of major governmental interest.

Today, SSL Committee members represent all regions of the country and many of the major functional areas of state government. They include legislators, legislative staff and other state governmental officials who contribute their time and efforts to assisting the states in the identification of timely and innovative state legislation.

The items in this, the 54th compilation of Suggested State Legislation, represent the culmination of a year-long process in which legislation submitted by state officials from all over the country was received and reviewed by members of the SSL Committee.

During this process, members of the SSL Subcommittee on Scope and Agenda met on two separate occasions: first, in December 1993 in Phoenix, Arizona, and again, in April 1994 in Chicago, Illinois, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in August 1994 in Philadelphia, Pennsylvania, the members of the full Committee examined the proposals referred by the Subcommittee on Scope and Agenda and selected the items that appear in this volume.

Although these items are published here as suggested legislation, neither The Council of State Governments nor the SSL Committee are in the position of advocating their enactment. 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.

In fact, 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 represent a practical approach to the problem?
- Does the bill 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 logically consistent?
- Are the language and style of the bill clear and unambiguous?

All items selected for publication in the annual volume are presented in a standard format as shown in the Suggested State Legislation Style Manual and Sample Act which follow on pages xiv and xv. 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.

A "Statement," in lieu of a draftact, 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. In this volume, for example, there is a note on recent state legislative activity in the area of juvenile justice.

Although a formal solicitation of the states is conducted annually to gather legislation for consideration by the SSL Committee, state officials 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 process and review, 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:

Suggested State Legislation Program
Program Planning and Development
The Council of State Governments
3560 Iron Works Pike
P.O. Box 11910, Lexington
Kentucky 40578-1910
(606) 244-8000.
Suggested State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. This means that style is arbitrary. The style used in Suggested State Legislation produces an internally consistent publication, expressing ideas concisely and clearly. A sample act follows the discussion below.

Introductory Matter

The first item in a draft proposal is its name. This is to be followed with a brief description stating why such an act is necessary, summarizing the contents of the act, and the person or group which drafted the act.

Next is the title, enacting clause, etc. This should not be expanded since there is diversity among the states as to what must be contained in these elements.

Standardized Sections

Section 1 is the "Short Title" and states how the act may be cited, and Section 2 usually concerns itself with definitions, if necessary.

At the end of the act there are usually three sections: "Severability" (if needed), Repealer," and "Effective Date."

Form

Most sections of the act have a title, in brackets, which pinpoints the subject of the section.

One significant item which has many variations is the enumeration of paragraphs within a section. If there is only one subsection to a section, it runs into the section heading and is not enumerated. If there are two or more subsections, each subsection begins on a new line and is enumerated. The enumerations for subsections, in order, are (a), (b), (c), etc., while the enumerations for paragraphs within a subsection, in order, are (1), (i), and (A).

Often it 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.

To avoid an abundance of capitalization, which can prove distracting, most words are lower cased. For example, "director, "commissioner" and "agency" are not capitalized.

"Comment" sections are used instead of footnotes.
Sample Act
Criminal Rehabilitation Research Act

This draft act enables a state to facilitate research, including controlled experiments, in criminal sentencing and rehabilitation methods in order to determine the most effective and humane means of deterring crime and rehabilitating delinquent and criminal offenders ....

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

This draft legislation was developed by the Criminal Sentencing Project of Yale Legislative Services. A comprehensive report on Criminal Rehabilitation, including a detailed commentary to the suggested legislation, can be obtained from Yale Legislative Services, Yale Law School, New Haven, Connecticut 06520.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [state] Criminal Rehabilitation Research Act.

Section 2. [Definitions.] As used in this act:
(1) "Commission" means the [rehabilitation research commission].
(2) "Commissioner" means a member of the [rehabilitation research commission].
(3) "Offender" means a person adjudicated delinquent or convicted of a criminal offense under the laws and ordinances of the state and its political subdivisions.

* * *

Section 4. [Rehabilitation Research Commission.]
(a) A [rehabilitation research commission] is established to review, approve, and facilitate research directed at the rehabilitation of delinquent and criminal offenders and to disseminate the results of that research to correctional officials and other interested individuals and agencies.

(b) The commission shall consist of [10] members appointed by the 7 governor [with the advice and consent of the senate].

Comment: It is suggested that some commission members be ex-offenders.
Accessibility and affordability of health care continues to be a growing concern to the nation. Health care inflation has risen by double digit percentages for five consecutive years, and these increased costs have led to a decline in health insurance coverage for many individuals and families.

Over the last few years, the Committee on Suggested State Legislation has reviewed a number of complex and lengthy state approaches and reforms designed to address critical cost control and access problems of the health care system. The 1992 volume of Suggested State Legislation provided an overview of some of those state legislative enactments in Access to Health Care (Note) (pp. 1-5). In this volume, the Committee again would like to offer state policymakers a sampling of state legislative activity in the health care arena during the early 1990s. This note highlights provisions from the enactments of eight states: California, Colorado, Connecticut, Florida, Kansas, Minnesota, New York and Vermont.

Agency Creation

Florida legislation enacted in 1992 established the Agency for Health Care Administration (AHCA) [SB 2390, Chapter 92-33]. The act transfers authority for facility and professional licensure, planning and hospital budget review to the new agency effective July 1, 1992. The Vermont Health Care Authority (VHCA), a three-person full-time health care authority responsible for oversight and management of the health care system, was created in a 1992 enactment [H. 733, Act 160]. The VHCA's responsibilities include centralized planning, regulation, data collection and budgeting, and bargaining for lower insurance rates. By November 1, 1993, the Authority is expected to provide recommendations to the state legislature on how to implement a universal access plan.

Access to Insurance

Colorado enacted legislation in 1992 [SB 4] authorizing the state to contract for or conduct a feasibility study of "Colorado Care," a universal health plan that would provide comprehensive private health insurance coverage for all state residents. The act permits the establishment of demonstration sites in several counties, but prohibits counties from enacting taxes to fund demonstrations.

In 1990, Connecticut created a nonprofit small employer health reinsurance pool under which insurers issuing health insurance after July 1, 1990 must be pool members [PA 90-134]. Pool members select a board which is charged with developing small employer health care plans and special health care plans targeting certain small employers. Small employers are defined as persons or entities engaged in a business employing no more than 25 eligible employees on 50 percent of its working days. The 1990 law requires carriers to accept all applicants for coverage in specified products and meet requirements in determining rates, and prohibits them from dropping groups because of poor claims experience. A 1991 act [PA 91-201] allows the state department of health services to award three-year grants to community-based primary care
provider organizations to expand health care access for the uninsured. The monies may be used for direct services funding, recruitment and retention of primary care clinicians through a loan repayment program, and salary subsidies. Grants also may be used for capital expenditures.

Florida's 1992 legislation [SB 2390, Chapter 92-33] is designed to ensure all of its citizens access to health care. The measure establishes a December 31, 1994, deadline by which insurers and employers must voluntarily provide affordable benefits for all workers. The act includes expanded coverage under the state's Medicaid program for persons not covered by employer plans and also allows individuals with incomes under $25,000 per year to pay for Medicaid coverage. The act calls for the development of a new plan to secure access to care. Phase One of the plan involves a voluntary program, providing all residents with access to a basic benefit package to be in place by December 1994. If the voluntary program fails to meet specified cost containment and access goals, Phase Two, a state-administered and mandated program, will be implemented. The enactment also includes a measure promoting the availability of insurance to small firms with between three and 25 employees, including development of a standard and basic plan, a reinsurance pool, and marketing standards.

Minnesota's 'HealthRight' legislation was enacted in April 1992 [HF 2800, Chapter 549]. The act includes insurance programs for small employers with between two and 29 employees, incorporating small market reforms, a reinsurance pool, a minimum benefit plan, and individual market reforms. Businesses can join a state-sponsored health insurance pool, and state-subsidized health insurance will be offered to individuals who fall below certain income levels. The law also encourages increased coverage by subsidizing premiums for the uninsured and permitting employers to purchase coverage from a state pool.

In 1991, New York lowered the low-income patient population threshold for hospitals to qualify for an adjustment in Medicaid hospital payments [Chapter 677]. The amounts of the supplemental adjustments also were increased. The 1991 budget act established a statewide managed care program for Medicaid recipients to be phased in over a five-year period. In 1992, the state enacted legislation requiring open enrollment and community rating of individual and small group health policies for 50 or fewer persons by all insurers, including health maintenance organizations (HMOs) [S. 8978, A. 12350A, Chapter 501]. A community rate is the average cost for all persons in the community who have the same or similar insurance benefits. Open enrollment has only a minimal pre-existing condition exclusion. If a person changes insurers after having had a minimum of 60 days continuous coverage, the new insurer must give up to one year's credit of coverage for any pre-existing condition treated under the old policy. The act also authorizes the superintendent of insurance to defer, reduce or reject rate premium increases for corporations that have a combined premium volume exceeding $2 billion per year if, in the superintendent's judgement, salary increases for senior management are excessive or unwarranted given the financial condition or overall performance of the corporation.

Vermont's health care reform legislation [H. 733, Act 160] was enacted in May 1992. It includes two alternative universal access designs to be developed by the Vermont Health Care Authority (VHCAC), one based on single-payer models and a second designed as a regulated multiple-payer model. The plans must be submitted to the legislature for consideration by
November 1993 and include certain features, such as putting the state's health care system on an annual budget, and portability of benefits, which prohibits an individual with a pre-existing condition from being denied coverage when changing jobs. Both plans must be implemented by October 1994. The act pools insurance purchases by public employees and eventually the pool may be expanded to include other groups.

Children's Health Insurance Coverage

In 1991, California enacted legislation establishing an "Access for Infants and Mothers" health care program [AB 99, Chapter 278]. Eligibility is limited to individuals who do not qualify for existing public or private health insurance plans, and whose household income falls below 250 percent of the federal poverty level. Participating health plans must ensure coverage of comprehensive primary care services.

In 1992, Minnesota expanded eligibility for an existing children's health plan to families whose income is below 185 percent of the poverty level [HF 2800, Chapter 549]. This program will ultimately be available on an income-related scale for all persons below 275 percent of the poverty level, with no premiums amounting to more than 12.4 percent of family income. The program will be phased in until January 1, 1994, when all residents will be eligible; however, individuals currently covered under other plans would have to be uninsured for four months and not have available employer subsidized insurance for a period of 18 months.

In 1990, New York created "Child Health Plus," which provides primary and preventive health care services for children below age 13 who are not eligible for Medicaid, and not otherwise insured for preventive services. Premiums are partially or entirely subsidized depending on family income. Insurers, corporations and health maintenance organizations (HMOs) contract to provide these policies within a given geographic area [Chapters 922 & 923].

In 1991, New York expanded Medicaid eligibility to include children from ages six through 18, provided the child was born after September 30, 1983, and family income does not exceed 100 percent of the federal poverty level for families of the same size [Chapter 472].

Vermont's program [H. 733, Act 160] extends Medicaid benefits to poor children up to the age of 18 whose family income is below 225 percent of the federal poverty level. Kansas enacted legislation in 1992 establishing a "Healthy Kids Corporation," a program offering school-based health insurance for children [HB 2913, Chapter 168].

Cost Containment

Minnesota legislation enacted in 1992 establishes statewide and regional health care commissions to set overall limits on growth in health care spending and to review any major technological purchase or capital expenditure over $500,000 [HF 2800, Chapter 549]. The act also includes restrictions on physician referrals to medical facilities in which the physicians have a financial interest. Inpatient hospital services are limited to $10,000 per year, per person.

Insurance Company Reform

Under the 1992 Vermont enactment, common claims forms, uniform
procedures, and common utilization review are required for all health insurance companies operating in the state [H. 733, Act 160]. By 1993, all companies must submit plans which include implementation of integrated systems of health care delivery. In 1993, insurance companies providing individual policies must write policies based on the health status or experience of people in large geographical areas under the community rating practice. Companies must pay 70 cents in claims for every dollar collected in premiums. The act also caps increases in premiums.

Preventive Care

Florida legislation creating wellness-oriented programs, provides sovereign immunity to physicians providing free treatment to indigent patients under these programs [SB 2390, Chapter 92-33, 1992]. Vermont's 1992 rural health care initiative is designed to emphasize preventive care [H. 733, Act 160]. New York has authorized its Public Health Council to study the development of wellness incentives that insurers could use to deviate from a community rate [S. 8978, A. 12350A, 1992].

Tort Reform

Vermont's 1992 legislation [H. 733, Act 160] creates a medical claims arbitration panel to review all complaints against health care providers. The panel's decisions are binding if both parties agree or 30 days pass without an appeal. Decisions and findings can be appealed and are admissible as evidence in court.

Underserved Areas

Florida's 1992 legislation creates the state Health Corps, which is designed to attract medical, dental and nursing school students to work in underserved regions of the state [SB 2390, Chapter 92-33]. Minnesota legislation enacted during 1992 [HF 2800, Chapter 549] features grants to small, rural hospitals; establishment of a state office of rural health; and development of rural community health centers to provide care in underserved rural areas. The act also funds a physician loan forgiveness program for those willing to work in underserved areas. The goal is to increase the number of primary physicians graduating from the state's medical school by 20 percent over the next four years. Vermont's 1992 legislation [H. 733, Act 160] is designed to strengthen the state's primary care network, especially in rural areas. It provides development assistance to organized primary health care systems and requires the state's medical school to prepare recommendations for enhancing the training and retention of primary care physicians.
Drug Utilization Review Board Act

Several provisions of the federal Omnibus Budget and Reconciliation Act of 1990 (OBRA, P.L. 101-508) -- those mandating state legislative or regulatory action and/or additional state expenditures -- were noted in the Federal Mandates for State Action entry presented in the 1992 volume of Suggested State Legislation (pp. 153-159). Among the mandates was one requiring the states to provide for a Medicaid drug use review program for covered outpatient drugs, no later than January 1, 1993. The OBRA provision further requires each state to establish a drug use review board. At the time of this writing, five states (Indiana, Minnesota, New York, Tennessee and Utah) had enacted legislation establishing such boards. Similar legislation was pending in California.

The act presented below, based on the 1992 Utah legislation, establishes a 12-member board responsible for implementing the state's drug utilization review (DUR) program. The board is authorized to: oversee the implementation of a Medicaid DUR program and approve provisions of contractual agreements between the Medicaid program and any other entity that will process and review Medicaid drug claims and profiles; develop and apply standards reflecting the local physicians' practices; develop interventions and remedial strategies for physicians and pharmacists that improve the quality of care; provide written, oral or electronic reminders of patient-specific or drug-specific information, designed to ensure confidentiality; and conduct intensified reviews or monitoring of selected prescribers or pharmacists. Drug prior approval programs must meet certain conditions to be approved or implemented by the board, including requirements that no drug may be placed on prior approval for other than medical reasons. The board must hold a public hearing at least 90 days prior to placing a drug on prior approval.

Indiana, one of the other states that has already established a drug utilization review board, has adopted different provisions for the size and composition of its board, board appointments, board members' terms, and the reporting channel, as well as the length of the drug re-evaluation period. Unlike the Utah act, Indiana's legislation establishes a 10-member board that does not include a dentist, consumer representative or pharmaceutical manufacturer. Indiana's board members are appointed by the governor, are not limited by a specified number of consecutive terms, and send their annual report to the governor and state health secretary. The 1992 Indiana legislation establishes a six-month drug re-evaluation period.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Drug Utilization Review Board Act.

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

(1) "Appropriate and medically necessary" means, regarding drug prescribing, dispensing and patient usage, that it is in conformity with the criteria and standards developed in accordance with this part.

(2) "Board" means the drug utilization review board created in Section 3 of this act.

(3) "Compendia" means resources widely accepted by the medical
profession in the efficacious use of drugs, including "American Hospital
Formulary Services Drug Information," U.S. Pharmacopeia - Drug
Information," "A.M.A. Drug Evaluation," peer-reviewed medical literature,
and information provided by manufacturers of drug products.
(4) "Counseling" means the activities conducted by a pharmacist to inform
Medicaid recipients about the proper use of drugs, as required by the
board under this act.
(5) "Criteria" means those predetermined and explicitly accepted elements
used to measure drug use on an ongoing basis in order to determine if the
use is appropriate, medically necessary, and not likely to result in adverse
medical outcomes.
(6) "Drug-disease contraindications" means that the therapeutic effect of a
drug is adversely altered by the presence of another disease condition.
(7) "Drug-interactions" means that two or more drugs taken by a recipient
lead to clinically significant toxicity that is characteristic of one or any
of the drugs present, or that leads to interference with the effectiveness of
one or any of the drugs.
(8) "Drug Utilization Review" or DUR" means the program designed to
measure and assess, on a retrospective and prospective basis, the proper
use of outpatient drugs in the Medicaid program.
(9) "Intervention" means a form of communication utilized by the board
with a prescriber or pharmacist to inform about or influence prescribing or
dispensing practices.
(10) "Overutilization" or "underutilization" means the use of a drug in such
quantities that the desired therapeutic goal is not achieved.
(11) "Pharmacist" means a person licensed in this state to engage in the
practice of pharmacy under [insert citation for appropriate state statute].
(12) "Physician" means a person licensed in this state to practice medicine
and surgery under [insert citation for state medical practice act], or
osteopathic medicine under [insert citation for state osteopathic medicine
licensing act].
(13) "Prospective DUR" means that part of the drug utilization review
program that occurs before a drug is dispensed, and that is designed to
screen for potential drug therapy problems based on explicit and
predetermined criteria and standards.
(14) "Retrospective DUR" means that part of the drug utilization review
program that assesses or measures drug use based on an historical review
of drug use data against predetermined and explicit criteria and standards,
on an ongoing basis with professional input.
(15) "Standards" means the acceptable range of deviation from the criteria
that reflects local medical practice and that is tested on the Medicaid
recipient database.
(16) "SURS" means the surveillance utilization review system of the
Medicaid program.
(17) "Therapeutic appropriateness" means drug prescribing and dispensing
based on rational drug therapy that is consistent with criteria and
standards.
(18) "Therapeutic duplication" means prescribing and dispensing the same
drug or two or more drugs from the same therapeutic class where periods
of drug administration overlap and where that practice is not medically
indicated.

Section 3. [DUR Board: Creation and Membership.]
(a) There is created a [12-]member drug utilization review board
responsible for implementation of a retrospective and prospective DUR program.

(b) The members of the DUR Board shall be appointed by the [state executive director of Medicaid program], and shall each serve a [three-year] term. Persons appointed to the board may be appointed upon completion of their terms, but may not serve more than [two] consecutive terms. The membership shall be comprised of the following:

1. four physicians who are actively engaged in the practice of medicine or osteopathic medicine in this state, to be selected from a list of nominees provided by the [state medical association];
2. one physician in this state who is actively engaged in academic medicine;
3. three pharmacists who are actively practicing in retail pharmacy in this state, to be selected from a list of nominees provided by the [state pharmaceutical association];
4. one pharmacist who is actively engaged in academic pharmacy;
5. one person who shall represent consumers;
6. one person who shall represent pharmaceutical manufacturers, to be recommended by the Pharmaceutical Manufacturers Association; and
7. one dentist licensed to practice in this state under [insert citation for state dentists and dental hygienists statute], who is actively engaged in the practice of dentistry, nominated by the [state dental association].

(c) Physician and pharmacist members of the board shall have expertise in clinically appropriate prescribing and dispensing of outpatient drugs.

(d) Appointments to the board shall be made so that the terms are staggered. In making the appointments, the [state executive director of Medicaid program] shall provide for geographic balance in representation on the board.

(e) The board shall elect a chair from among its members who shall serve a [one-year] term, and [may serve consecutive terms].

Section 4. [DUR Board Responsibilities.] The board shall:

1. develop rules necessary to carry out its responsibilities as defined in this act;
2. oversee the implementation of a Medicaid retrospective and prospective DUR program in accordance with this act, including responsibility for approving provisions of contractual agreements between the Medicaid program and any other entity that will process and review Medicaid drug claims and profiles for the DUR program in accordance with this act;
3. develop and apply predetermined criteria and standards to be used in retrospective and prospective DUR, ensuring that the criteria and standards are based on the compendia, and that they are developed with professional input, in a consensus fashion, with provisions for timely revision and assessment as necessary. The DUR standards developed by the board shall reflect the local practices of physicians in order to monitor:
   (i) therapeutic appropriateness;
   (ii) overutilization or underutilization;
   (iii) therapeutic duplication;
   (iv) drug-disease contraindications;
   (v) drug-drug interactions;
   (vi) incorrect drug dosage or duration of drug treatment; and
   (g) clinical abuse and misuse;
4. develop, select, apply and assess interventions and remedial strategies
for physicians, pharmacists and recipients that are educational and not punitive in nature, in order to improve the quality of care;
(5) disseminate information to physicians and pharmacists to ensure that they are aware of the board's duties and powers;
(6) provide written, oral or electronic reminders of patient-specific or drug-specific information, designed to ensure recipient, physician and pharmacist confidentiality and suggest changes in prescribing or dispensing practices designed to improve the quality of care;
(7) utilize face-to-face discussions between experts in drug therapy and the prescriber or pharmacist who has been targeted for educational intervention;
(8) conduct intensified reviews or monitoring of selected prescribers or pharmacists;
(9) create an educational program using data provided through the DUR to provide active and ongoing educational outreach programs to improve prescribing and dispensing practices, either directly or by contract with other governmental or private entities;
(10) provide a timely evaluation of intervention to determine if those interventions have improved the quality of care;
(11) publish an annual report, subject to public comment prior to its issuance, and submit that report to the [United States Department of Health and Human Services] by [insert date] of each year. That report shall also be submitted to legislative leadership, the [state executive director of Medicaid program], the president of the [state pharmaceutical association], and the president of the [state medical association] by [insert date] of each year. The report shall include:
   (i) an overview of the activities of the board and the DUR program;
   (ii) a description of interventions used and their effectiveness, specifying whether the intervention was a result of underutilization or overutilization of drugs, without disclosing the identities of individual physicians, pharmacists or recipients;
   (iii) the costs of administering the DUR program;
   (iv) any fiscal savings resulting from the DUR program;
   (v) an overview of the fiscal impact of the DUR program to other areas of the Medicaid program such as hospitalization or long-term care costs;
   (vi) a quantifiable assessment of whether the DUR has improved the recipient's quality of care;
   (vii) a review of the total number of prescriptions, by drug therapeutic class;
   (viii) an assessment of the impact of educational programs or interventions on prescribing or dispensing practices; and
   (ix) recommendations for DUR program improvement;
(12) develop a working agreement with related boards or agencies, including the [state board of pharmacy], [physicians' licensing board], and SURS staff within the [insert agency], in order to clarify areas of responsibility for each, where those areas may overlap;
(13) establish a grievance procedure for physicians and pharmacists under this act, in accordance with [insert citation for state administrative procedures act];
(14) publish and disseminate educational information to physicians and pharmacists concerning the board and the DUR program, including information regarding:
   (i) identification and reduction of the frequency of patterns of fraud, abuse, gross overuse, inappropriate or medically unnecessary care among
physicians, pharmacists and recipients;
(ii) potential or actual severe or adverse reactions to drugs;
(iii) therapeutic appropriateness;
(iv) overutilization or underutilization;
(v) appropriate use of generics;
(vi) therapeutic duplication;
(vii) drug-disease contraindications;
(viii) drug-drug interactions;
(ix) incorrect drug dosage and duration of drug treatment;
(x) drug allergy interactions; and
(xi) clinical abuse and misuse;
(15) develop and publish, with the input of the [state board of pharmacy],
guidelines and standards to be used by pharmacists in counseling Medicaid
recipients in accordance with this act. The guidelines shall ensure that the
recipient may refuse counseling and that the refusal is to be documented
by the pharmacist. Items to be discussed as part of that counseling include:
(i) the name and description of the medication;
(ii) administration, form, duration of therapy;
(iii) special directions and precautions for use;
(iv) common severe side effects or interactions, and therapeutic
interactions, and how to avoid those occurrences;
(v) techniques for self-monitoring drug therapy;
(vi) proper storage;
(vii) prescription refill information; and
(viii) action to be taken in the event of a missed dose; and
(16) establish procedures in cooperation with the [state board of
pharmacy] for pharmacists to record information to be collected under this
act. The recorded information shall include:
(i) the name, address, age and gender of the recipient;
(ii) individual history of the recipient where significant, including
disease state, known allergies and drug reactions, and a comprehensive list of
medications and relevant devices;
(iii) the pharmacist's comments on the individual's drug therapy;
(iv) name of prescriber; and
(v) name of drug, duration of therapy, and directions for use.

Section 5. [Confidentiality of Records.]
(a) Information obtained under this act shall be treated as confidential or
controlled information under [insert citation for state's government records
access management act].
(b) The board shall establish procedures insuring that the information
described in Section 4(16) of this act is held confidential by the
pharmacist, being provided to the physician only upon request.
(c) The board shall adopt and implement procedures designed to ensure
the confidentiality of all information collected, stored, retrieved, assessed
or analyzed by the board, staff to the board, or contractors to the DUR
program, that identifies individual physicians, pharmacists or recipients.
The board may have access to identifying information for purposes of
carrying out intervention activities, but that identifying information may
not be released to anyone other than a member of the board. The board
may release cumulative nonidentifying information for research purposes.

Section 6. [Drug Prior Approval Program.] Any drug prior approval
program approved or implemented by the board shall meet the following
conditions:
(1) no drug may be placed on prior approval for other than medical reasons;
(2) the board shall hold a public hearing at least [90] days prior to placing a drug on prior approval;
(3) the board shall provide evidence that placing a drug class on prior approval will not impede quality of recipient care and that the drug class is subject to clinical abuse or misuse;
(4) no later than [nine] months after any drug class is placed on prior approval, it shall be reconsidered;
(5) the program shall provide [either telephone or fax approval or denial at least Monday through Friday, within 24 hours after receipt of the prior approval request];
(6) the program shall provide for the dispensing of at least a [72]-hour supply of the drug in an emergency situation or on weekends;
(7) the program may not be applied to prevent acceptable medical use for appropriate off-label indications; and
(8) any drug class placed on prior approval shall receive a majority vote by the board for that placement, after meeting the requirements described in paragraphs (1) through (7) of this section.

Section 7. [Advisory Committees.] The board may establish advisory committees to assist it in carrying out its duties under this act.

Section 8. [Retrospective and Prospective DUR.]
(a) The board, in cooperation with the [insert agency], shall include in its state plan the creation and implementation of a retrospective and prospective DUR program for Medicaid outpatient drugs to ensure that prescriptions are appropriate, medically necessary and not likely to result in adverse medical outcomes.
(b) The retrospective and prospective DUR program shall be operated under guidelines established by the board under subsections (c) and (d) of this section.
(c) The retrospective DUR program shall be based on guidelines established by the board, using the mechanized drug claims processing and information retrieval system to analyze claims data in order to:
(1) identify patterns of fraud, abuse, gross overuse and inappropriate or medically unnecessary care; and
(2) assess data on drug use against explicit predetermined standards that are based on the compendia and other sources for the purpose of monitoring:
(i) therapeutic appropriateness;
(ii) overutilization or underutilization;
(iii) therapeutic duplication;
(iv) drug-disease contraindications;
(v) drug-drug interactions;
(vi) incorrect drug dosage or duration of drug treatment; and
(vii) clinical abuse and misuse.
(d) The prospective DUR program shall be based on guidelines established by the board and shall provide that, before a prescription is filled or delivered, a review will be conducted by the pharmacist at the point of sale to screen for potential drug therapy problems resulting from:
(1) therapeutic duplication;
(2) drug-drug interactions;
(3) incorrect dosage or duration of treatment;
(4) drug-allergy interactions; and
(5) clinical abuse or misuse.
(e) In conducting the prospective DUR, a pharmacist may not alter the prescribed outpatient drug therapy without the consent of the prescribing physician. This section does not affect the ability of a pharmacist to substitute a generic equivalent.

Section 9. [Penalties.] Any person who violates the confidentiality provisions of this act is guilty of [insert penalty].

Section 10. [Immunity.] There is no liability on the part of, and no cause of action of any nature arises against any member of the board, its agents, or employees for any action or omission by them in effecting the provisions of this act.

Section 11. [Effective Date.] [Insert effective date.]
Sterile Needle and Syringe Exchange Program Act

In 1990, the state of Hawaii established a two-year pilot program for the exchange of sterile needles and syringes among intravenous drug users. The pilot was designed to combat the spread of infectious and communicable diseases, such as HIV, the hepatitis B virus, and other life-threatening blood-borne diseases. The sharing of injection equipment, combined with unsafe sexual practices, is a major cause of HIV transmission. The HIV infection rate among intravenous drug users in the state had risen above 10 percent. The needle exchange pilot program was designed to encourage intravenous drug users to seek treatment, and the state legislature determined that the program must be continued to prevent the spread of HIV infection among those users and their family members. The act appearing here is based on the 1992 legislation continuing the program.

The program provides injection drug users with referrals to appropriate health and social services. It provides a one-to-one exchange, whereby participants receive one sterile needle and syringe unit for each used one. The program also educates participants about the dangers of contracting HIV infection through needle-sharing and offers substance abuse treatment referral and counseling services. It does not, however, provide participants with immunity from prosecution, and the program may be discontinued by the director of the state health department upon determination that it is not serving its intended purpose, presents a risk to public health, safety or welfare, or is no longer needed.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Sterile Needle and Syringe Exchange Act.

Section 2. [Definitions.] As used in this act:
(1) "Department" means the [state department of health].
(2) "Director" means the [state director of health.]
(3) "Participant" means an injection drug user who exchanges a sterile needle and syringe unit pursuant to the program established in Section 3 of this act.
(4) "Program" means the sterile needle and syringe exchange program established in Section 3 of this act.

Section 3. [Establishment of Program.] The [state director of health] may establish a sterile needle and syringe exchange program. The program shall be administered by the [director] or the [director]'s designees. The [director] is authorized to designate private providers of service to operate the program.

Section 4. [Operation of the Program.] The program shall be operated for the purpose of:
(1) Preventing the transmission of the human immunodeficiency virus, the hepatitis B virus, and other blood borne diseases; and
(2) Providing injection drug users with referrals to appropriate health and social services.

(b) The program shall provide for maximum security of exchange sites
and equipment, including a full accounting of the number of needles and syringes in use, the number in storage, and any other measure that may be required to control the use and dispersal of sterile needles and syringes; provided that a participant may exchange used needles and syringes at any exchange site if more than one site is available.

(c) The program shall provide for a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one.

(d) The program shall provide procedures for the screening of participants to prevent non-injection drug users from participating in the program.

(e) The [department] shall keep records to identify and authorize persons employed by the [department] or its designees to have access to needles, syringes, or the program's records.

(f) The program shall include services to:

(1) Educate the participant about the dangers of contracting HIV infection through needle-sharing practices; and
(2) Offer substance abuse treatment referral and counseling services to all participants.

(g) The program shall compile research data on behavioral changes, enrollment in drug abuse treatment, counseling and education programs, disease transmission, and other information that may be relevant and useful to assist in the planning and evaluation of efforts to combat the spread of blood borne diseases.

Section 5. [Criminal Liability.]

(a) Exchanges under the sterile needle and syringe exchange program shall not constitute an offense under [insert citation for appropriate state statute] for the participant or for the employees of the [department] or its designees.

(b) Nothing in this act provides immunity from prosecution to any person for violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled substances, dangerous drugs, detrimental drugs, or harmful drugs. Nothing in this act provides immunity from prosecution to any person for violation of [insert citations for appropriate state statutes].

Section 6. [Program Oversight Committee.] The [director] shall appoint a sterile needle exchange program oversight committee to provide assistance and advice in the oversight of the program. The committee shall meet periodically with the [director] to monitor the progress and effectiveness of the program and to examine available data compiled by the program.

Section 7. [Reports.] The [department], on or before [insert date] of each year, shall submit a report to the oversight committee. The report shall include:

(1) Information as to the number of participants served and the number of needles and syringes distributed;
(2) A demographic profile of the participants served, including but not limited to: age, sex, ethnicity, area of residence, occupation, types of drugs used, length of drug use, and frequency of injection;
(3) Impact of the program on needle and syringe sharing and other high risk behavior;
(4) Data on participants regarding HIV testing, counseling, drug treatment, and other social services, including referrals for HIV testing and
counseling and for drug abuse treatment;
(5) Impact on the transmission of HIV infection among injection drug users;
(6) Impact on behaviors that caused participants to be at risk for HIV transmission such as frequency of drug use and needle sharing;
(7) An assessment of the cost-effectiveness of the program versus direct and indirect costs of HIV infection; and
(8) Information on the percentage of persons served through treatment programs for injection drug users funded through the [department] that were attributed to needle exchange referrals.

The report shall address the strengths and weaknesses of the program, the advisability of its continuation, amendments to the law, if appropriate, and other matters that may be helpful to the oversight committee in evaluating the program's efficacy.

Section 8. [Termination of the Program.] The [director] may terminate the program at any time if the program does not serve its intended purpose, presents a risk to the public health, safety, or welfare, or is no longer necessary.

Section 9. [Funding for Program.] [Insert funding mechanism, appropriations amounts, etc.]

Section 10. [Effective Date.] [Insert effective date.]
Malpractice Insurance for Retired Volunteer Physicians Act

This act, based on 1992 Washington legislation, authorizes the state department of health to purchase and maintain liability insurance for retired physicians who provide primary care, without compensation, to low-income persons at public health and community clinics. The department may contract with an insurer to provide the coverage, but the insurer may refuse to cover the physician for claims experience or other appropriate reasons. The state is immune from liability for malpractice claims against clinics or physicians, and claims based on the performance of official acts within its responsibilities. Physicians must be currently licensed as retirees and must limit practice to primary non-invasive care procedures.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Malpractice Insurance for Retired Volunteer Physicians Act.

Section 2. [Definitions.] As used in this act:
(1) "Department" means the [state department of health].
(2) "Compensation," as used in Section 4 of this act, means any remuneration of value to a participating physician for services provided by the physician, but shall not be construed to include any nominal copayments charged by the clinic, nor reimbursement of related expenses of a participating physician authorized by the clinic in advance of being incurred.

Section 3. [Establishment of Program.] (a) The department may establish a program to purchase and maintain liability malpractice insurance for retired physicians who provide primary health care services at community clinics. The following conditions apply to the program:
(1) Primary health care services shall be provided at community clinics that are public or private tax-exempt corporations;
(2) Primary health care services provided at the clinics shall be offered to low-income patients based on their ability to pay;
(3) Retired physicians providing health care services shall not receive compensation for their services; and
(4) The department shall contract only with a liability insurer authorized to offer liability malpractice insurance in the state.
(b) This section and Section 4 of this act shall not be interpreted to require a liability insurer to provide coverage to a physician should the insurer determine that coverage should not be offered to a physician because of past claims experience or for other appropriate reasons.
(c) The state and its employees who operate the program shall be immune from any civil or criminal action involving claims against clinics or physicians that provided health care services under this section and Section 4 of this act. This protection or immunity shall not extend to any clinic or physician participating in the program.
(d) The department may monitor the claims experience of retired physicians covered by liability insurers contracting with the department.
(e) The department may provide liability insurance under this act only to
the extent funds are provided for this purpose by the legislature.

Section 4. [Conditions for Participation.] The department may establish by rule the conditions of participation in the liability insurance program by retired physicians at clinics utilizing retired physicians for the purposes of this section and Section 3 of this act. These conditions shall include, but not be limited to, the following:

1. The participating physician associated with the clinic shall hold a valid license to practice medicine and surgery in this state and otherwise be in conformity with current requirements for licensure as a retired physician, including continuing education requirements;

2. The participating physician shall limit the scope of practice in the clinic to primary care. Primary care shall be limited to noninvasive procedures and shall not include obstetrical care, or any specialized care and treatment. Noninvasive procedures include injections, suturing of minor lacerations, and incisions of boils or superficial abscesses;

3. The provision of liability insurance coverage shall not extend to acts outside the scope of rendering medical services pursuant to this section and Section 3 of this act;

4. The participating physician shall limit the provision of health care services to low-income persons provided that clinics may, but are not required to, provide means tests for eligibility as a condition for obtaining health care services;

5. The participating physician shall not accept compensation for providing health care services from patients served pursuant to this section and Section 3 of this act, nor from clinics serving these patients.

6. The use of mediation or arbitration for resolving questions of potential liability may be used, however any mediation or arbitration agreement format shall be expressed in terms clear enough for a person with a [sixth]-grade level of education to understand, and on a form no longer than [one] page in length.

Section 5. [Effective Date.] [Insert effective date.]
Disclosure of Health Care Records Act

This act, based on 1991 Washington legislation, declares that a patient's health care information may not be disclosed by health care providers without the patient's consent. The patient's consent need not be expressly required where the information is being referred to another health care provider who is treating the patient or to another person who needs health information for health education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider.

Information may also be disclosed to any person if the health care provider believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient, for bona fide research purposes where the patient is not identified, for audit purposes, or for law enforcement purposes. However, disclosure to family members, to previous health providers, or for routine directory information purposes cannot be made when the patient objects.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Disclosure of Health Care Records Act.

Section 2. [Legislative Findings.] The legislature finds that:
(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care or other interests.
(2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.
(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.
(4) Persons other than health care providers obtain, use and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.
(5) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules and procedures governing the use and disclosure of health care information.

Section 3. [Definitions.] As used in this act:
(1) "Audit" means an assessment, evaluation, determination or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:
   (i) Statutory, regulatory, fiscal, medical or scientific standards;
   (ii) A private or public program of payments to a health care provider;
or

(iii) Requirements for licensing, accreditation or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(4) "Health care" means any care, service or procedure provided by a health care provider:

(i) To diagnose, treat or maintain a patient's physical or mental condition; or

(ii) That affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identified or can readily be associated with the identity of a patient and directly relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, registered or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means any board, committee or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(12) "Reasonable fee" means the charges for duplicating or searching the record specified in [insert citation for appropriate state statutes]. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

Section 4. [Disclosure by Health Care Provider.] Except as authorized in Section 7 of this act, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

Health care providers or facilities shall chart all disclosures, except to third-party health care payors, or health care information, such chartings to become part of the health care information.
Section 5. [Patient Authorization to Health Care Provider for Disclosure.]
(a) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under Section 11 of this act.
(b) A health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.
(c) To be valid, a disclosure authorization to a health care provider shall:
   (1) Be in writing, dated and signed by the patient;
   (2) Identify the nature of the information to be disclosed;
   (3) Identify the name, address and institutional affiliation of the person to whom the information is to be disclosed;
   (4) Identify the provider who is to make the disclosure; and
   (5) Identify the patient.
(d) Except as provided by this act, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.
(e) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made. This requirement shall not apply to disclosures to third-party health care payors.
(f) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to future health care that the patient receives more than [90] days after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form.
(g) Except for authorization to provide information to third-party health care payors, an authorization in effect on the effective date of this act remains valid for [six] months after the effective date of this act unless an earlier date is specified or it is revoked under Section 6 of this act. Health care information disclosed under such an authorization is otherwise subject to this act. An authorization written after the effective date of this act becomes invalid after the expiration date contained in the authorization, which may not exceed [90] days. If the authorization does not contain an expiration date, it expires [90] days after it is signed.

Section 6. [Patient's Revocation of Authorization for Disclosure.] A patient may revoke in writing a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosure made in good-faith reliance on an authorization if the health care provider had no actual notice of the revocation of the authorization.

Section 7. [Disclosure Without Patient's Authorization.]
(a) A health care provider may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:
   (1) To a person who the provider reasonably believes is providing health
care to the patient;

(2) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review or administrative, legal, financial or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and the health care provider reasonably believes that the person:
   (i) Will not use or disclose the health care information for any other purpose; and
   (ii) Will take appropriate steps to protect the health care information;

(3) To any other health care provider reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider in writing not to make the disclosure;

(4) To any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this act on the part of the provider to so disclose;

(5) Oral, and made to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider in writing not to make the disclosure;

(6) To a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(7) For use in a research project that an institutional review board has determined:
   (i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;
   (ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;
   (iii) Contains reasonable safeguards to protect the information from redisclosure;
   (iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and
   (v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(8) To a person who obtains information for purposes of an audit, if that person agrees in writing to:
   (i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and
   (ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(9) To an official of a penal or other custodial institution in which the patient is detained;

(10) To provide directory information, unless the patient has instructed the health care provider not to make the disclosure.

(b) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:
(1) To federal, state or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(2) To federal, state or local law enforcement authorities to the extent the health care provider is required by law;

(3) Pursuant to compulsory process in accordance with Section 8 of this act.

(c) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record application, retention, and security policies that are consistent with this act.

Section 8. [Compulsory Process.]
(a) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than [14] days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(b) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (a) of this section if the requestor has not complied with the requirements of subsection (a) of this section. In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health care provider shall disclose the information in accordance with this act. In the case of compliance, the request for discovery or compulsory process shall be made of part of the patient record.

(c) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection or defense existing under other law or rule of evidence or procedure.

Section 9. [Certification of Record.] Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with [insert citation for appropriate state statute]. No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

(1) The identity of the patient;
(2) The kind of health care information involved;
(3) The identity of the person to whom the information is being furnished;
(4) The identity of the health care provider or facility furnishing the information;
(5) The number of pages of the health care information;
(6) The date on which the health care information is furnished; and
(7) That the certification is to fulfill and meet the requirements of this section.
Section 10. [Requirements and Procedures for Patient's Examination and Copying.]
(a) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than [15] working days after receiving the request shall:
(1) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;
(2) Inform the patient if the information does not exist or cannot be found;
(3) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;
(4) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than [21] working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or
(5) Deny the request, in whole or in part, under Section 11 of this act and inform the patient.
(b) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

Section 11. [Denial of Examination and Copying.]
(a) Subject to any conflicting requirement in the public disclosure act, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:
(1) Knowledge of the health care information would be injurious to the health of the patient;
(2) Knowledge of the health care information could reasonably be expected to lead to the patient’s identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;
(3) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;
(4) The health care information was compiled and is used solely for litigation, quality assurance, peer review or administrative purposes; or
(5) Access to the health care information is otherwise prohibited by law.
(b) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (a) of this section from information for which access cannot be denied and permit the patient to examine or copy that disclosed information.
(c) If a health care provider denies a patient’s request for examination
and copying, in whole or in part, under subsection (a)(1) or (a)(3) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected.

Section 12. [Request for Correction or Amendment.]
(a) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under Section 10 of this act.
(b) As promptly as required under the circumstances, but no later than [10] days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:
   (1) Make the requested correction or amendment and inform the patient of the action;
   (2) Inform the patient if the record no longer exists or cannot be found;
   (3) If the health care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;
   (4) If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than [21] days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or
   (5) Inform the patient in writing of the provider's refusal to correct or amend the record as requested and the patient's right to add a statement of disagreement.

Section 13. [Procedure for Adding Correction or Amendment or Statement of Disagreement.]
(a) In making a correction or amendment, the health care provider shall:
   (1) Add the amending information as a part of the health record; and
   (2) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.
(b) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:
   (1) Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and
   (2) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

Section 14. [Content and Dissemination of Notice.]
(a) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

**NOTICE**

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at............"

(b) The health care provider shall place a copy of the notice of information practices in a conspicuous place in the health care facility, on a consent form or with a billing or other notice provided to the patient.

Section 15. [Health Care Representatives.]
(a) A person authorized to consent to health care for another may exercise the rights of that person under thisact to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this act as to information pertaining to health care to which the minor is lawfully consented. In cases where parental consent is required, a health care provider may rely, without incurring any civil or criminal liability for such reliance, on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:
   (1) The parents are married, unmarried or separated at the time of the representation;
   (2) The consenting parent is, or is not, a custodial parent of the minor;
   (3) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to [insert citation for appropriate state statute].
(b) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

Section 16. [Representative of Deceased Patient.] A personal representative of a deceased patient may exercise all of the deceased patient's rights under this act. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this act may be exercised by persons who would have been authorized to make health care decisions for the deceased patient when the patient was living under [insert citation for appropriate state statute].

Section 17. [Duty to Adopt Security Safeguards.] A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

Section 18. [Retention of Record.] A health care provider shall maintain a record of existing health care information for at least [one] year following receipt of an authorization to disclose that health care information under Section 6 of this act, and during the pendency of a request for examination
and copying under Section 10 of this act or a request for correction or amendment under Section 12 of this act.

Section 19. [Civil Remedies.]
(a) A person who has complied with this act may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this act.
(b) The court may order the health care provider or other person to comply with this act. Such relief may include actual damages, but shall not include consequential or incidental damages. The court shall award reasonable attorneys' fees and all other expenses reasonably incurred to the prevailing party.
(c) Any action under this act is barred unless the action is commenced within [two] years after the cause of action is discovered.
(d) A violation of this act shall not be deemed a violation of the [insert citation for state consumer protection statute].

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

Section 21. [Effective Date.] [Insert effective date.]
Blood Safety Act

With growing public concern about the safety of the nation's blood supply, largely as a result of the AIDS crisis, measures have been adopted to inform surgery patients about the advantages and risks associated with all blood transfusion options.

This act, based on 1991 New Jersey legislation, requires that if a blood transfusion is likely to be necessary during surgery, a physician or surgeon must inform the patient of blood transfusion options -- that is, autologous, designated or homologous transfusions.

An autologous blood transfusion is a transfusion of the patient's own blood that has been donated prior to surgery and stored for use by the patient at a later date. A designated blood transfusion is a transfusion of blood that was donated by another person specifically for use by the patient. A homologous blood transfusion is a transfusion of blood donated by an individual at a blood bank, for use by any patient with a matching blood type.

The physician or surgeon must further note on the patient's medical record that all transfusion options have been explained to the patient prior to surgery. A physician or surgeon is exempt from the provisions of the act if medical contraindications exist or the surgery is performed on an emergency basis.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Blood Safety Act.

Section 2. [Informing Patients of Options.]
(a) Whenever a blood transfusion may be necessary during a surgical procedure, a physician or surgeon shall inform the surgery patient, prior to performing the surgical procedure, of the options of receiving autologous blood transfusions, designated blood transfusions or homologous blood transfusions.
(b) The physician or surgeon who will perform the surgery shall note on the patient's medical record that the patient was advised of the opportunity to receive an autologous, designated blood or homologous blood transfusion, if a transfusion becomes necessary.
(c) The physician or surgeon who will perform the surgery shall not be required to provide his patient with an explanation of the transfusion options pursuant to this section, if medical contraindications exist or the surgery is performed on an emergency basis.
(d) If there are no medical contraindications or the surgery is not performed on an emergency basis, the physician or surgeon shall allow adequate time, prior to surgery, for pre-donation to occur. If the patient waives the option to pre-donate blood, the physician or surgeon shall not incur any liability for his failure to allow the pre-donation to occur.

Section 3. [Blood Banks.]
(a) A health care facility which performs a transfusion shall be required to accept autologous or designated blood for a potential transfusion to a
patient, if the blood is received from a blood bank licensed by the [state
department of health], and has been tested and prepared in accordance
with standards approved by the [department].

(b) A health care facility which accepts autologous or designated blood
and similar blood components shall pay a service fee to the blood bank
which provides the blood or blood components equal to the price it is
charged for homologous blood or blood components.

(c) A blood bank which collects autologous or designated blood shall
inform the donor of the blood or the intended recipient of the blood, in
the case of a designated blood transfusion, of all fees that the blood bank
charges to process, store, transport or otherwise prepare the blood for
transfusion.

Section 4. [Effective Date.] [Insert effective date.]
Hysterectomy Information Act

This act, based on 1990 New York legislation, requires the state health commissioner, in consultation with topic experts, to develop a standardized written summary explaining a variety of issues related to the hysterectomy procedure. Issues addressed include: common diagnoses for which hysterectomy is a common treatment; alternative treatments for these diagnoses; various types of hysterectomy; common side effects of each hysterectomy procedure; and other types of information. The health department must make the summary available to all clinics, health maintenance organizations, hospitals and physicians' offices. Physicians are directed to provide the summary to each patient for whom a hysterectomy is being considered.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Hysterectomy Information Act.

Section 2. [Legislative Findings and Intent.] Hysterectomy is one of the most common major surgical procedures performed on women and is a commonly recommended treatment for some gynecological disorders, such as uterine leiomyofibroma, endometriosis, disorders of menstruation, and uterine neoplasms. Some disorders, depending on the patient's diagnosis and situation, may be managed with alternative treatments. In an effort to promote patient's involvement in health care decisions and to promote informed consultation with their physician or other health care practitioner, the [state department of health] shall make available information which describes the medical diagnoses that are commonly treated with a hysterectomy, the various hysterectomy procedures, and treatment alternatives to the diagnoses commonly treated with hysterectomy.

Section 3. [Written Summary Regarding Hysterectomy.] The [state commissioner of health] in consultation with the medical society of the state of [state], consumers and others knowledgeable on the topic of hysterectomy shall develop a standardized written summary which shall explain:

1. the common diagnoses for which hysterectomy is a common treatment including but not limited to uterine leiomyofibroma, endometriosis, disorders of menstruation, premalignant or malignant changes in uterus or cervix and salpingo-oophoritis;
2. alternative treatments to hysterectomy for such diagnoses, in accordance with accepted medical practices;
3. the types of hysterectomy including radical, subtotal abdominal, total abdominal and vaginal;
4. the common physiological changes, side effects, risks and benefits which result after each type of hysterectomy or alternative is performed;
5. that the hysterectomy is irreversible, results in infertility and the end of menstruation; and
6. an oophorectomy, a treatment often associated with hysterectomy,
including unilateral, bilateral and salpingo-oophorectomy.

Section 4. [Availability of Written Summary.] The [state commissioner of health] shall make the summary provided for in Section 3 of this act available free of charge to all clinics, health maintenance organizations, hospitals, and physician offices.

Section 5. [Provision of Summary by Physician.] The summary shall be provided by a physician to each person under such physician’s care, when a hysterectomy is under consideration for that person.

Section 6. [Informed Consent.] Nothing in this act shall be construed to create a cause of action for lack of informed consent in any instance in which such cause of action would be limited by [insert citation for appropriate section of state statute].

Section 7. [Exception.] The dispensing of the standard written summary shall not pertain when the hysterectomy is performed in a situation of imminent danger in which the physician determines prior dispensing is not possible or feasible.

Section 8. [Effective Date.] [Insert effective date.]
Health Care Surrogate Act

In response to circumstances created largely as a result of the increasing sophistication of life-sustaining medical technology, many states have enacted legislation authorizing procedures for health care decisions to be made on behalf of patients who have lost decision making capacity. The 1992 volume of Suggested State Legislation included an entry, Health Care Decisions and Treatment: Provisions for Durable Power of Attorney and Health Care Agents (pp. 50-53), which described several state measures permitting patients to appoint an individual to make health care decisions when the patient can no longer make them.

The act presented below is based on 1991 legislation enacted in Illinois, a state that established a hierarchy by which attending physicians may assign health care surrogates. A guardian for a legally incompetent patient would be at the top of the list, followed by a spouse, any adult child, either parent, any adult sibling, any adult grandchild, a close friend, and the guardian of the patient's estate. Where there are multiple decision makers at the same priority level in the hierarchy, the surrogates must make a reasonable effort to reach a consensus regarding whether to forego life-sustaining treatment for the patient. This act does not apply to instances in which the patient has an operative and unrevoked living will or an authorized power of attorney for health care.

Washington state has a procedure similar to that of Illinois, but it encompasses all health care decisions, not just those concerning life-sustaining treatment. The state's 1987 act allows persons to make decisions on behalf of incompetent patients if the person is: the patient's court appointed guardian; a holder of a durable power of attorney for health care decisions; the patient's spouse; one of the patient's adult children; one of the patient's parents; or the patient's adult siblings. If the physician seeking informed consent makes a reasonable effort to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. Consent may not be given if a person of higher priority has refused to give such authorization or if there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Health Care Surrogate Act.

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

(1) "Adult" means a person who is
(i) 18 years of age or older or
(ii) an emancipated minor under the [state emancipation of mature minors act].

(2) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastrostomies, jejunostomies, and intravenous infusions. Artificial nutrition and hydration does not include assisted
feeding, such as spoon or bottle feeding.

3) "Available" means that a person is not "unavailable." A person in unavailable if
   (i) the person's existence is not known,
   (ii) the person has not been able to be contacted by telephone or mail, or
   (iii) the person lacks decisional capacity, refuses to accept the office of surrogate, or is unwilling to respond in a manner that indicates a choice among the life-sustaining treatment matters at issue.

4) "Attending physician" means the physician selected by or assigned to the patient who has primary responsibility for treatment and care of the patient and who is a licensed physician in [state]. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this act.

5) "Close friend" means any person 18 years of age or older who has exhibited special care and concern for the patient and who presents an affidavit to the attending physician stating that he or she
   (i) is a close friend of the patient,
   (ii) is willing and able to become involved in the patient's health care, and
   (iii) has maintained such regular contact with the patient as to be familiar with the patient's activities, health and religious and moral beliefs.

   The affidavit must also state facts and circumstances that demonstrate that familiarity.

6) "Death" means when, according to accepted medical standards, there is
   (i) an irreversible cessation of circulatory and respiratory functions or
   (ii) an irreversible cessation of all functions of the entire brain, including the brain stem.

7) "Decisional capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding forgoing life-sustaining treatment and the ability to reach and communicate an informed decision in the matter as determined by the attending physician.

8) "Forgo life-sustaining treatment" means to withhold, withdraw or terminate all or any portion of life-sustaining treatment with knowledge that the patient's death is likely to result.

9) "Guardian" means a court appointed guardian of the person who serves as a representative of a minor or as a representative of a person under legal disability.

10) "Health care facility" means a type of health care provider commonly known by a wide variety of titles, including but not limited to hospitals, medical centers, nursing homes, rehabilitation centers, long term or tertiary care facilities, and other facilities established to administer health care and provide overnight stays in their ordinary course of business or practice.

11) "Health care provider" means a person that is licensed, certified or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession, including, but not limited to, physicians, nurses, health care facilities, and any employee, officer, director, agent or person under contract with such a person.

12) "Imminent" (as in "death is imminent") means a determination made by the attending physician according to accepted medical standards that death will occur in a relatively short period of time, even if life-sustaining
treatment is initiated or continued.

(13) "Life-sustaining treatment" means any medical treatment, procedure, or intervention that, in the judgment of the attending physician, when applied to a patient with a qualifying condition, would not be effective to remove the qualifying condition or would serve only to prolong the dying process. Those procedures can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs, antibiotics and artificial nutrition and hydration.

(14) "Minor" means an individual who is not an adult as defined in this act.

(15) "Parent" means a person who is the natural or adoptive mother or father of the child and whose parental rights have not been terminated by a court of law.

(16) "Patient" means an adult or minor individual, unless otherwise specified, under the care or treatment of a licensed physician or other health care provider.

(17) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency, or any other legal entity.

(18) "Qualifying condition" means the existence of one or more of the following conditions in a patient certified in writing in the patient's medical record by the attending physician and by at least one other qualified physician:

(i) "Terminal condition" means an illness or injury for which there is no reasonable prospect of cure or recovery, death is imminent, and the application of life-sustaining treatment would only prolong the dying process.

(ii) "Permanent unconscious" means a condition that, to a high degree of medical certainty,

(A) will last permanently, without improvement,

(B) in which thought, sensation, purposeful action, social interaction and awareness of self and environment are absent, and

(C) for which initiating or continuing life-sustaining treatment, in light of the patient's medical condition, provides only minimal medical benefit.

(iii) "Incurable or irreversible condition" means an illness or injury

(A) for which there is no reasonable prospect of cure or recovery,

(B) that ultimately will cause the patient's death even if life-sustaining treatment is initiated or continued,

(C) that imposes severe pain or otherwise imposes an inhumane burden on the patient, and

(D) for which initiating or continuing life-sustaining treatment, in light of the patient's medical condition, provides only minimal medical benefit.

The determination that a patient has a qualifying condition creates no presumption regarding the application or non-application of life-sustaining treatment. It is only after a determination by the attending physician that the patient has a qualifying condition that the surrogate decision maker may consider whether or not to forgo life-sustaining treatment. In making this decision, the surrogate shall weigh the burdens on the patient of initiating or continuing life-sustaining treatment against the benefits of that treatment.

(19) "Qualified physician" means an adult individual licensed to practice medicine in all of its branches in [state] who has personally examined the patient.

(20) "Surrogate decision maker" means an adult individual or individuals
who
(i) have decisional capacity,
(ii) are available upon reasonable inquiry,
(iii) are willing to make decisions regarding the forgoing of
life-sustaining treatment on behalf of a patient who lacks decisional capacity
and is diagnosed as suffering from a qualifying condition, and
(iv) are identified by the attending physician in accordance with the
provisions of this act as the person or persons who are to make those
decisions in accordance with the provisions of this act.

Section 3. [Applicability.] This act applies to patients who lack decisional
capacity and have a qualifying condition. This act does not apply to
instances in which the patient has an operative and unrevoked living will
under the [state living will act] or an authorized agent under a power of
attorney for health care. In those instances, the living will or power of
attorney for health care, as the case may be, shall be given effect according
to its terms. This act does apply in circumstances in which a patient has a
qualifying condition but the patient's condition does not fall within the
coverage of the living will or the power of attorney for health care.
Each health care facility shall maintain any advance directives proffered
by the patient or other authorized person, including a do not resuscitate
order, a living will, or a power of attorney for health care, in the patient's
medical records for the duration of the patient's stay. This act does not
apply to patients without a qualifying condition, unless the patient is an
adult with decisional capacity, in which case the right to refuse
life-sustaining treatment does not require the presence of a qualifying
condition.

Section 4. [Private Decision Making Process.]
(a) Decisions whether to forgo life-sustaining or any other form of
medical treatment involving an adult patient with decisional capacity may
be made by that adult patient.
(b) Decisions whether to forgo life-sustaining treatment on behalf of a
patient without decisional capacity are lawful, without resort to the courts
or legal process, if the patient has a qualifying condition and if the
decisions are made in accordance with one of the following paragraphs in
this subsection and otherwise meet the requirements of this act:
(1) Decisions whether to forgo life-sustaining treatment on behalf of a
minor or an adult patient who lacks decisional capacity may be made by a
surrogate decision maker or makers in consultation with the attending
physician, in order or priority provided in Section 5 of this act. A surrogate
decision maker shall make decisions for the adult patient conforming as
closely as possible to what the patient would have done or intended under
the circumstances, taking into account evidence that includes, but is not
limited to, the patient's personal, philosophical, religious and moral beliefs
and ethical values relative to the purpose of life, sickness, medical
procedures, suffering and death. Where possible, the surrogate shall
determine how the patient would have weighed the burdens and benefits
of that treatment. In the event an unrevoked advance directive, such as a
living will or a power of attorney for health care, is no longer valid due to
a technical deficiency or is not applicable to the patient's condition, that
document may be used as evidence of a patient's wishes. The absence of a
living will or power of attorney for health care shall not give rise to any
presumption as to the patient's preferences regarding the initiation or
continuation of life-sustaining procedures. If the adult patient's wishes are unknown and remain unknown after reasonable efforts to discern them or if the patient is a minor, the decision shall be made on the basis of the patient's best interests as determined by the surrogate decision maker. In determining the patient's best interests, the surrogate shall weigh the burdens on and benefits to the patient of initiating or continuing life-sustaining treatment against the burdens and benefits of that treatment and shall take into account any other information, including the views of family and friends, that the surrogate decision maker believes the patient would have considered if able to act for herself or himself.

(2) Decisions whether to forgo life-sustaining treatment on behalf of a minor or an adult patient who lacks decisional capacity, but without any surrogate decision maker or guardian being available determined after reasonable inquiry by the health care provider, may be made a court appointed guardian. A court appointed guardian shall be treated as a surrogate for the purposes of this act.

(c) For the purposes of this act, a patient or surrogate decision maker is presumed to have decisional capacity in the absence of actual notice to the contrary without regard to advanced age. With respect to a patient, a diagnosis of mental illness or mental retardation, of itself, is not a bar to a determination of decisional capacity. A determination that an adult patient lacks decisional capacity shall be made by the attending physician to a reasonable degree of medical certainty. The determination shall be in writing in the patient's medical record and shall set forth the attending physician's opinion regarding the cause, nature and duration of the patient's lack of decisional capacity. Before implementation of a decision by a surrogate decision maker to forgo life-sustaining treatment, at least one other qualified physician must concur in the determination that an adult patient lacks decisional capacity. The concurring determination shall be made in writing in the patient's medical record after personal examination of the patient. The attending physician shall inform the patient that it has been determined that the patient lacks decisional capacity and that a surrogate decision maker will be making life-sustaining treatment decisions on behalf of the patient. Moreover, the patient shall be informed of the identity of the surrogate decision maker and any decisions made by that surrogate. If the person identified as the surrogate decision maker is not a court appointed guardian and the patient objects to the statutory surrogate decision maker or any decision made by that surrogate decision maker, then the provisions of this act shall not apply.

(d) A surrogate decision maker acting on behalf of the patient shall express decisions to forgo life-sustaining treatment to the attending physician and one adult witness who is at least 18 years of age. This decision and the substance of any known discussion before making the decision shall be documented by the attending physician in the patient's medical record and signed by the witness.

(e) The existence of a qualifying condition shall be documented in writing in the patient's medical record by the attending physician and shall include its cause and nature, if known. The written concurrence of another qualified physician is also required.

(f) Once the provisions of this act are complied with, the attending physician shall thereafter promptly implement the decision to forgo life-sustaining treatment on behalf of the patient unless he or she believes that the surrogate decision maker is not acting in accordance with his or her responsibilities under this act, or is unable to do so for reasons of
conscience or other personal views or beliefs.
(g) In the event of a patient's death as determined by a physician, all life-sustaining treatment and other medical care is to be terminated, unless the patient is an organ donor, in which case appropriate organ donation treatment may be continued temporarily.

Section 5. [Surrogate Decision Making.]
(a) When a patient has a qualifying condition and lacks decisional capacity, the health care provider must make a reasonable inquiry as to the availability and authority of a health care agent under the [state powers of attorney for health care statute]. When no health care agent is authorized and available, the health care provider must make a reasonable inquiry as to the availability of possible surrogates listed in items (1) through (4) of this subsection. The surrogate decision makers, as identified by the attending physician, are then authorized to make decisions whether to forgo life-sustaining treatment on behalf of the patient without court order or judicial involvement in the following order of priority:
(1) the patient's guardian of the person;
(2) the patient's spouse;
(3) any adult son or daughter of the patient;
(4) either parent of the patient;
(5) any adult brother or sister of the patient;
(6) any adult grandchild of the patient;
(7) a close friend of the patient;
(8) the patient's guardian of the estate.
The health care provider shall have the right to rely on any of the above surrogates if the provider believes after reasonable inquiry that neither a health care agent under the [state powers of attorney for health care statute] nor a surrogate of higher priority is available.
Where there are multiple surrogate decision makers at the same priority level in the hierarchy, it shall be the responsibility of those surrogates to make reasonable efforts to reach consensus as to their decision on behalf of the patient regarding the forgoing of life-sustaining treatment. If [two] or more surrogates who are in the same category and have equal priority indicate to the attending physician that they disagree about the health care matter at issue, a majority of the available persons in that category (or the parent with custodial rights) shall control, unless the minority (or the parent without custodial rights) initiates guardianship proceedings in accordance with the [state probate act]. No health care provider or other person is required to seek appointment of a guardian.
(b) After a surrogate has been identified, the name, address, telephone number and relationship of that person to the patient shall be recorded in the patient's medical record.
(c) Any surrogate who becomes unavailable for any reason may be replaced by applying the provisions of this section in the same manner as for the initial choice of surrogate.
(d) In the event an individual of a higher priority to an identified surrogate becomes available and willing to be the surrogate, the individual with higher priority may be identified as the surrogate. In the event an individual in a higher, a lower or the same priority level or a health care provider seeks to challenge the priority of or the life-sustaining treatment decision of the recognized surrogate decision maker, the challenging party may initiate guardianship proceedings in accordance with the [state probate act].
(e) The surrogate decision maker shall have the same right as the patient to receive medical information and medical records and to consent to disclosure.

Section 6. [Reliance on Authority of Surrogate Decision Maker.]
(a) Every health care provider and other person (a "reliant") shall have the right to rely on any decision or direction by the surrogate decision maker (the "surrogate") that is not clearly contrary to this act, to the same extent and with the same effect as though the decision or direction had been made or given by a patient with decisional capacity. Any person dealing with the surrogate may presume in the absence of actual knowledge to the contrary that the acts of the surrogate conform to the provisions of this act. A reliant will not be protected who has actual knowledge that the surrogate is not entitled to act or that any particular action or inaction is contrary to the provisions of this act.
(b) A health care provider (a "provider") who relies on and carries out a surrogate's directions and who acts with due care and in accordance with this act shall not be subject to any claim based on lack of patient consent or to criminal prosecution or discipline for unprofessional conduct. Nothing in this act shall be deemed to protect a provider from liability for the provider's own negligence in the performance of the provider's duties or in carrying out any instructions on the surrogate, and nothing in this act shall be deemed to alter the law of negligence as it applies to the acts of any surrogate or provider.
(c) A surrogate who acts or fails to act with due care and in accordance with the provisions of this act shall not be subject to criminal prosecution or any claim based upon lack of surrogate authority or failure to act. The surrogate shall not be liable merely because the surrogate may benefit from the act, has individual or conflicting interests in relation to the care and affairs of the patient, or acts in a different manner with respect to the patient and the surrogate's own care or interests.

Section 7. [Conscience of Health Care Provider; Policy of Health Care Facility.] A health care provider who because of personal views or beliefs or his or her conscience is unable to comply with the terms of a decision to forgo life-sustaining treatment shall, without undue delay, so notify the administration of the health care facility. The health care provider shall then assist the patient or surrogate in effectuating the timely transfer of the patient to another health care provider willing to comply with the wishes of the patient or the surrogate in accordance with this act or, if necessary, arrange for the patient's transfer to another facility designated by the patient or surrogate decision maker. If the policies of a health care facility preclude compliance with a decision to forgo life-sustaining treatment, the facility shall take all reasonable steps to assist the patient or surrogate in effectuating the timely transfer of the patient to a facility in which the decision can be carried out.

Section 8. [Neonates.] Nothing in this act supersedes the provisions of 45 C.F.R. 1340.15 concerning the provision of "appropriate" nutrition, hydration and medication for neonates.

Section 9. [Life Insurance.] No policy of life insurance, or annuity or other type of contract that is conditioned on the life or death of the patient, shall be legally impaired or invalidated in any manner by the withholding
or withdrawal of life-sustaining treatment from a patient in accordance with the provisions of this act, notwithstanding any terms of the policy to the contrary.

Section 10. [Not Suicide or Murder.] The withholding or withdrawal of life-sustaining treatment from a patient in accordance with the provisions of this act does not, for any purpose, constitute suicide or murder. The withholding or withdrawal of life-sustaining treatment from a patient in accordance with the provisions of this act, however, shall not relieve any individual or responsibility for any criminal acts that may have caused the existence of the qualifying condition in the patient. Nothing in this act shall be construed to condone, authorize or approve mercy killing or assisted suicide.

Section 11. [Preservation of Existing Rights.] The provisions of this act are cumulative with existing law regarding an individual’s right to consent or refuse to consent to medical treatment. The provisions of this act shall not impair any existing rights or responsibilities that a health care provider, a patient, including a minor or a patient lacking decisional capacity, or a patient's family may have in regard to the withholding or withdrawal of life-sustaining treatment, including any rights to seek judicial review of decisions regarding life-sustaining treatment under the common law or statutes of this state to the extent they are not consistent with the provisions of this act.

Section 12. [Effective Date.] [Insert effective date.]
Family Preservation Services Act

This act, based on 1992 Washington state legislation, establishes a program of intensive family preservation services to prevent the placement of children in foster care and to facilitate the reunification of children with their families. More than half of the states have initiated such pilot programs through grant funding from the National Institute of Mental Health. However, Washington state was the first to move the program from the pilot stage to statewide implementation.

Under the terms of the act, the state department of social and health services is authorized to implement and expand the program statewide. Caseworkers, who have been trained by recognized family preservation services experts, are authorized to provide the services in a family's home, neighborhood or in a local school.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Family Preservation Services Act.

Section 2. [Legislative Intent.]
(a) It is the intent of the legislature to make available, within available funds, intensive services to children and families that are designed to prevent the unnecessary imminent placement of children in foster care and designed to facilitate the reunification of the children with their families. These services are known as family preservation services and are characterized by the following values, beliefs and goals:
   (1) Safety of the child is always the first concern;
   (2) Children need their families and should be raised by their own families whenever possible;
   (3) Interventions should focus on family strengths and be responsive to individual family needs; and
   (4) Improvement of family functioning is essential in order to promote the child's health, safety and welfare and thereby allow the family to remain intact and allow children to remain at home.
(b) Subject to the availability of funds for such purposes, the legislature intends for family preservation services to be made available to all eligible families on a statewide basis through a phased-in process. Except as otherwise specified by statute, the [state department of social and health services] shall have the authority and discretion to implement and expand family preservation services according to a plan and time frame determined by the [department].
(c) Nothing in this act shall be construed to create an entitlement to services nor to create judicial authority to order the provision of family preservation services to any person or family where the [department] has determined that such services are unavailable or unsuitable or that the child or family are not eligible for such services.

Section 3. [Definitions.] As used in this act:
(1) "Department" means the [state department of social and health services].
(2) "Family preservation services" means services that are delivered
primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent foster care placement, and that have all of the characteristics delineated in Section 4 of this act.

(3) "Foster care" means placement of a child by the [department] or a licensed child placing agency in a home or facility licensed pursuant to [insert citation for appropriate state statute] or in a home or facility that is not required to be licensed pursuant to [insert citation for appropriate state statute].

(4) "Imminent" means a decision has been made by the [department] that, without family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under [insert citation for appropriate state statute], or that a voluntary placement agreement will be immediately initiated.

Section 4. [Characteristics of Family Preservation Services.] Family preservation services shall have all of the following characteristics:

(1) Services are provided by specially trained caseworkers who have received at least [40 hours] of training from recognized family preservation services experts. Caseworkers provide the services in the family's home, and may provide some of the services in other natural environments of the family, such as their neighborhood or schools;

(2) Caseload size averages [two] families per caseworker;

(3) The services to the family are provided by a single caseworker, with backup caseworkers identified to provide assistance as necessary;

(4) Caseworkers have the authority and discretion to spend funds, up to a maximum amount specified by the [department], to help families obtain necessary food, shelter or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;

(5) Services are available to the family within [24 hours] following receipt of a referral to the program;

(6) Services are available to the family [24 hours] a day and [seven] days a week;

(7) Duration of service is limited to a maximum of [40] days, unless the [department] authorizes an additional provision of service through an exception to policy;

(8) Services assist the family to improve parental and household management competence and to solve practical problems that contribute to family stress so as to effect improved parental performance and enhanced functioning of the family unit; and

(9) Services help families locate and utilize additional assistance, including, but not limited to, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services.

Section 5. [Department Responsibilities.] (a) The [department] shall be the lead administrative agency for family preservation services and may receive funding from any source for the implementation or expansion of such services. The [department] shall:

(1) Provide coordination and planning for the implementation and expansion of family preservation services; and

(2) Monitor and evaluate such services to determine whether the programs meet measurable standards specified by this act and the [department].
(b) In carrying out the requirements of subsection (a)(1) of this section, the [department] shall consult and coordinate with at least [one] qualified private, nonprofit agency that has demonstrated expertise and experience in family preservation services.

(c) The [department] may provide family preservation services directly and shall, within available funds, contract with private, nonprofit social service agencies to provide services, provided that such agencies meet measurable standards specified by this act and by the [department].

(d) The [department] shall not continue direct provision of family preservation services unless it is demonstrated that provision of such services prevents foster care placement in at least [70] percent of the cases served for a period of at least [six months] following termination of services.

The [department] shall not renew a contract with a service provider unless the provider can demonstrate that provision of services prevents foster care placement in at least [70] percent of the cases served for a period of at least [six] months following termination of service.

Section 6. [Provision of Services.]

(a) Family preservation services may be provided to children and their families only when the [department] has determined that:

1. The child has been placed in foster care or is at actual, imminent risk of foster care placement due to:
   (i) Child abuse or neglect;
   (ii) A serious threat of substantial harm to the child's health, safety or welfare; or
   (iii) Family conflict; and

2. There are no other available services that will prevent foster care placement of the child or make it possible to immediately return the child home.

(b) The [department] shall refer eligible families to family preservation services on a [24-]hour intake basis. The [department] need not refer otherwise eligible families, and family preservation services need not be provided, if:

1. The services are not available in the community in which the family resides;
2. The services cannot be provided because the program is filled to capacity and there are no current service openings;
3. The family refuses the service;
4. The [department], or the agency that is supervising the foster care placement, has developed a case plan that does not include reunification of the child and family; or
5. The [department] or the contracted service provider determines that the safety of a child, a family member, or persons providing the service would be unduly threatened.

(c) Nothing in this act shall prevent provision of family preservation services to nonfamily members when the [department] or the service provider deems it necessary or appropriate to do so in order to assist the family or child.

Section 7. [Study of Family Preservation Services.]

(a) The [department] shall, within available funds, conduct a family preservation services study in at least [one] region within the state. In developing and conducting the project, the [department] shall consult and
coordinate with at least [one] qualified private, nonprofit agency that has demonstrated expertise and experience in family preservation services. The purpose of the study is to:

1. Develop a valid and reliable process for accurately identifying clients who are eligible for family preservation services;
2. Collect data on which to base projections of service needs, budget requests and long-range planning;
3. Develop regional and statewide projections of service needs;
4. Develop a cost estimate for implementation and expansion of family preservation services on a statewide basis;
5. Develop a long-range plan and time frame for expanding the availability of family preservation services and ultimately making such services available to all eligible families on a statewide basis; and
6. Collect data regarding the number of children in foster care, group care, and institutional placements due to medical needs, mental health needs, developmental disabilities, and juvenile offenses, and assess the feasibility of expanding family preservation service eligibility to include all of these children.

(b) The [department] shall prepare a report to the legislature that addresses the objectives set forth in subsection (a) of this section. The report shall address the feasibility of expanding and implementing family preservation services on a statewide basis. The report is due [insert date].

Section 8. [Authorized Resources.] For the purpose of providing family preservation services to children who would otherwise be removed from their homes, the [department] may:

1. Solicit and use any available federal or private resources, which may include funds, in-kind resources, or volunteer services; and
2. Use any available state resources, which may include in-kind resources of volunteer services.

Section 9. [Existing Contracts.] The [department]'s provision of family preservation services under Section 5(c) of this act is not intended to replace existing contracts with private nonprofit social service agencies that provide family preservation services.

Section 10. [Appropriations.] [Insert provisions for funding.]

COMMENTS: The Washington state legislation authorizes the state secretary of social and health services to transfer funds appropriated for foster care services to purchase family preservation services for children at imminent risk of foster care placement. The state juvenile issues task force is authorized to review the advisability of transferring such funds and identify ways to improve the foster care system and expand family preservation services.

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

Section 12. [Effective Date.] [Insert effective date.]
Homeless Minors Health Care Consent Act (Statement)

In response to the needs of the growing population of homeless youths, Arizona enacted legislation ensuring that homeless minors who are separated from their parents may receive necessary health care services. This 1991 enactment amends existing provisions regarding the capacity of certain minors to obtain care and allows health care providers to treat homeless minors without the consent of the minors' parents or guardians.

In lieu of presenting this amendatory item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the provisions of the act. Readers interested in the full text should consult Ch. 84 (Sec. 44-132), or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939.

Definition

Under the act, a homeless minor is defined as an individual under the age of 18, who is living apart from his or her parents and is lacking a fixed or regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house or a place not designed for nor ordinarily used by humans for sleeping.

Consent to Health Care

Existing state law granted only emancipated or married minors the ability to consent to obtain hospital, medical and surgical care. Under the amendment, homeless minors, as defined above, may obtain such care without parental or guardian consent.

Liability

The act declares that a health care provider, relying on the consent of a minor who has authority to consent to health care under its provisions, is not subject to criminal or civil liability or professional disciplinary action on the ground that the provider failed to obtain the consent of the minor's parent(s) or legal guardian.
Toxic Household Products Act

This act, based on 1991 Oregon legislation, requires that a non-toxic aversive agent be added to toxic household products containing ethylene glycol or methanol to make these products unpalatable to children. The legislation establishes a poison prevention task force in the poison center of the state's health sciences university. It further provides that any person may bring a civil action to enforce the requirements of this act, and permits injunctive relief, punitive damages and an award of attorney fees.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Toxic Household Products Act.

Section 2. [Definitions.] As used in this act:
(1) "Household product" means any product intended for use under any of the following circumstances:
   (i) In, on or around any structure, vehicle, article, surface or area associated with the household, including but not limited to nonagricultural outbuildings, noncommercial greenhouses, pleasure boats and recreational vehicles.
   (ii) In or around any preschool or day care facility.
(2) "Task force" means the poison prevention task force created in Section 5 of this act.
(3) "Toxic household product" means any product listed in Section 4 of this act that is customarily produced or distributed for sale for use in or about the household or is customarily stored by individuals in or about the household.

Section 3. [Addition of Aversive Agent.] Any toxic household product that is listed in Section 4 of this act and is manufactured on or after [insert date], and sold in this state, shall include an aversive agent approved by the poison prevention task force within the product in a concentration so as to render the product unpalatable.

Section 4. [Products Covered and Exempted.]
(a) The following toxic household products must comply with Section 3 of this act:
   (1) Antifreeze containing 10 percent or more ethylene glycol by weight.
   (2) Windshield washer fluid containing four percent or more methyl alcohol (methanol) by weight.
(b) The following toxic household products are exempted from the requirements of Section 3 of this act:
   (1) Pesticide products subject to registration under [insert citation for appropriate state statute] or under the Federal Insecticide, Fungicide, Rodenticide Act.
   (2) Any drug as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. Section 301 et seq.) or [insert citation for appropriate state statute].
(c) Products exempted under the provisions of Section 7 of this act.
Section 5. [Creation of Task Force.]
(a) The poison prevention task force is created in the [insert appropriate state institution] and consists of [five] members as follows:
   (1) The [medical director of state poison center] or designee, who shall serve as chairperson.
   (2) The [appropriate state health department official] or a designee.
   (4) A [chemist from an academic institution], appointed by the governor.
   (5) A [representative of a manufacturer of toxic household products], appointed by the governor.
(b) Each member shall serve without compensation.
(c) The task force shall meet as considered necessary by the chairperson or on the call of [three] members of the task force.
(d) The task force shall meet for the purposes of reviewing, granting or denying requests for exemptions from and extensions of the requirements of this act.
(e) The task force shall obtain and evaluate statewide poisoning incidence and severity data over a period of every [two] years for the purpose of making recommendations for the addition or deletion of products to Section 4 of this act.

Section 6. [Extension of Time for Compliance.]
(a) Manufacturers shall apply to the poison prevention task force on or before [insert date], for an extension of time to comply with the requirements of this act. The task force may grant an extension for [insert number] days and may grant an extension for a longer period of time if the manufacturer demonstrates to the satisfaction of the task force the need for a longer extension of time.
(b) Notwithstanding subsection (a) of this section, a manufacturer shall apply to the task force on or before [insert date], for an extension of time to comply with the requirements of this act if the manufacturer must satisfy registration requirements involving a toxic household product which is also subject to the requirements of this act at another state agency or a federal agency, or both. The task force may grant an extension of time for compliance with this act until [insert date] days after the manufacturer receives notice of final registration of the toxic household product from the state agency or federal agency, or both.

Section 7. [Application for Exemption.]
(a) A manufacturer shall apply to the poison prevention task force on or before [insert date], for an exemption from the requirements of this act for a toxic household product that contains chemicals in which any aversive agent would be nonsoluble, nondispersible, unstable or would interfere with the safety or function of the product.
(b) The task force may grant an exemption if the manufacturer demonstrates to the task force, and the task force finds, that the toxic household product meets the exemption criteria described in subsection (a) of this section.

Section 8. [Task Force Request for Data.]
(a) The poison prevention task force may request efficacy and toxicity data, or other pertinent data it considers necessary, from the manufacturer of any toxic household product. The information shall be made available by the manufacturer to the task force upon request and shall remain
confidential, if so requested.
(b) The task force may request data from and utilize the technical expertise of other state agencies or health care providers, or both, to evaluate the incidence and severity of poisoning, drug overdose and toxic exposure.

Section 9. [Report to Legislature.] The poison prevention task force shall report to the legislature as necessary with recommendations for the addition or deletion of products from the list set forth in Section 4 of this act. The task force shall report to the legislature any additional recommended measures which shall include reducing the incidence and severity of poisoning, poison prevention education activities and child resistant closure effectiveness.

Section 10. [Prohibitions on Distribution of Products.] (a) It is unlawful for any person to distribute or sell a toxic household product or cause a toxic household product to be distributed or sold in this state if it does not meet the requirements of this act.
(b) The prohibition contained in subsection (a) of this section does not apply to a person engaged in the business of wholesale or retail distribution of a toxic household product, unless the person is engaged in the manufacture of the product, or has knowledge that a toxic household product which the person is distributing or selling is in violation of this act.
(c) A distributor of a house brand shall not be considered a manufacturer for purposes of filing an application for an extension pursuant to Section 6 of this act or for an exemption pursuant to Section 7 of this act. Nothing in this subsection is intended to exempt a distributor of a house brand from any other provisions of this act.

Section 11. [Civil Action.] (a) Any person may bring a civil action in a court of competent jurisdiction to enforce the requirements of this act. The court may grant injunctive relief in any action brought pursuant to this section.
(b) Punitive damages may also be awarded in any action brought pursuant to this section.
(c) Whenever the person bringing the action pursuant to this section is the prevailing party, the person shall be awarded attorney fees and costs by the court.

Section 12. [Penalty for Violation.] Any person who violates any provision of this act shall be liable for a civil penalty not to exceed [insert amount] for each day of violation, which shall be assessed and recovered in a civil action brought by the [insert appropriate state health agency].

Section 13. [Effective Date.] [Insert effective date.]
Educational Act for the 21st Century (Statement)

This 1991 Oregon legislation is designed to enhance educational programs initiated during the 1980s. In lieu of presenting this lengthy item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the major provisions of the act. Readers interested in the full text of the act should consult Oregon Ch. 693, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky, 40578-1910, (606) 231-1839, for a copy of the complete text.

Certificates of Mastery

The legislation outlines the performance required for obtaining certificates of initial mastery (CIMs) at age 16 or upon completion of the 10th grade. Under the act, CIMs are to be awarded by the 1996-97 school year. The state board of education is required to prescribe the standards students must meet to obtain a CIM. They are to be based on a series of performance-based assessments at grades three, five, eight and 10, including work samples, tests and portfolios. To acquire a CIM, students must demonstrate they have the knowledge and skills to read, write, problem solve, think critically and communicate across disciplines at national levels by the year 2000 and at international levels by the year 2010. Students also must demonstrate the capacity to learn, think, reason, retrieve information and work effectively alone and in groups. Any student who has received a CIM is entitled to attend any public education institution that enrolls the student and provides a program leading to the achievement of a Certificate of Advanced Mastery.

Certificates of Advanced Mastery (CAMs) are to be awarded by the 1997-98 school year, under the provisions of the act. Each school district must institute programs that allow students to qualify for a CAM with college preparatory and academic professional technical endorsements. A student who has obtained a CIM and enrolls in a college preparatory program shall be entitled to receive a CAM with a college preparatory endorsement if the student meets the requirements established by rule of the state board of education. The department of education, the office of community college services and the state system of higher education, in consultation with the state work force quality council, must develop comprehensive education and training programs for two- to five-year academic professional technical endorsements and associate degrees. Study may be undertaken in public schools, community colleges or public professional technical schools, or any combination thereof, and must involve at least two years of study or a combination of work and study. A student must demonstrate mastery of knowledge and skills on performance-based assessments, using work samples, tests, portfolios or other means. The act also requires the establishment of learning centers by 1995 to assist certain students who are working toward CIMs, including students who have left school.

Under the act, proposed guidelines and models for schools wishing to pursue educational choice programs as part of their CIM and CAM programs must be developed by 1992. If a student is not making
satisfactory progress toward CIM or CAM, school districts must make additional services available to the student, including a restructured school day, additional school days, individualized instruction, and family evaluation and social services.

By 1993, proposed rules for students who wish to work during the school year must be developed. The student, parents, school and employer must be involved in decisions as to what is appropriate in each circumstance. However, state policy encourages students to remain in school and earn their CIMs and CAMs before seeking employment during the regular school year.

Early Childhood Education

The act calls for comprehensive early childhood education, including funding state preschool programs for 50 percent of Head Start eligible children by 1996 and all such children by 1998, and will be expanded to include programs for children whose family income exceeds federal Head Start limits or who are underserved. The act also promotes prenatal care, parenting education, parent/child centers and extended pre-kindergarten programs. In consultation with the advisory committee for the state pre-kindergarten program, the state department of education and the office of community college services are authorized to develop a long-range plan for serving eligible children and their families. The act creates the early childhood improvement program to assist districts in providing appropriate teaching methods, materials and programs for children in kindergarten through third grade. The act also authorizes ungraded primary school classes up to the third grade.

Management and Evaluation

School districts may apply for state grants under the act to set up model projects and modify traditional ways of delivering educational services. Districts may also submit proposals to modify laws, rules or policies, establish nongraded school programs, extend the school year, or make other innovations. Under the act, site-based management with teacher majority membership must be implemented in every school district by 1994 and every school by 1995. By 1993, programs of research, teacher and administrator preparation, and continuing professional development must be in place.

The act authorizes the state board of education to appoint a 21st century schools advisory committee to propose rules for the submission and approval of grants and programs. Members are to include school administrators and board members, education school faculty, classified district employees, parents of children currently enrolled in primary or secondary schools, or members of the business or labor community. "Distinguished educators" are to be appointed as technical advisors concerning educational innovations. The 21st century schools advisory committee must adopt criteria for selecting these distinguished educators and nominate individuals who possess special skills and are willing to serve in that capacity.

The act directs the state board of education to review common curriculum goals and essential learning skills regularly. The board must establish a comprehensive statewide information system to monitor outcomes and procedures of public schools.
The state superintendent of public instruction is required to issue an annual state report card which will monitor trends among school districts and their progress in achieving educational goals. The superintendent also will collect data and issue school district and school profiles containing a variety of pieces of information about the public schools, including demographics, student performance in schools and access to educational opportunities, and staff characteristics. The act requires the state department of education to periodically conduct standardization visits to public schools and study the feasibility of lengthening the school year from 175 to 200 days by the year 2000, and to 220 days by the year 2010. The act also requires local school districts to conduct biennial self-evaluations. Through 2001, the state legislature must review the act each biennium to evaluate progress and make specified changes.
Parents as Teachers Grant Program Act

This act, based on 1991 Louisiana legislation, authorizes the state department of education, in cooperation with parish (county) and city school boards, to establish programs to train parents as teachers. The programs, featuring qualified educators who are professionally trained in child development and parenting, offer a course of instruction in child development and parenting to targeted parents of children aged three years or younger. The course of instruction must include information concerning development in language, cognitive and social skills; the effective use of community parenting resources; and monthly visits by qualified educators to the homes of participating parents.

Another state program that emphasizes parental involvement in early childhood development was featured in a 1989 Innovations report produced by The Council of State Governments. Missouri's Parents as Teachers program, which began as a local pilot project in 1981, was taken statewide as part of the state's Early Childhood Development Act of 1984. The curriculum also stresses language, intellectual development, curiosity and social skills as building blocks of learning ability, and includes home visits by trained parent educators.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Parents as Teachers Grant Program Act.

Section 2. [Legislative Intent.] The legislature finds and declares as follows:

(1) The home environment and parental attitudes about the value of education can have a significant effect on a child's ability or desire to learn.

(2) A well-substantiated body of research on how children learn and grow clearly indicates that a child's most productive and influential years of learning occur before the age of five.

(3) Experts in child development generally agree that 50 percent of intelligence, and the great majority of language skills, are developed by age four, and that these, along with the establishment of curiosity and social skills, lay the foundation for all further learning.

(4) Failure in the early years to develop adequately in these areas has been shown to lead directly to underachievement and failure in the elementary grades and beyond.

(5) Most of the children headed for academic difficulty at age six and beyond are, by age three, already significantly behind their peers.

(6) The potential dropout often comes from a home in which well-intentioned but untrained parents have not gained, or do not use effectively, their personal resources to adequately nurture in their child the intellectual and social skills required for success in the early grades.

(7) Parents are the first and most influential teachers in their child's life and a free developmental resource for their child.

(8) Neither public nor private institutions are systematically providing a meaningful number of [insert state name] parents with research-based, up-to-date instructions in giving their children the best possible beginning.
(9) The family is the proper and most influential first educational delivery system for the child.
(10) Evidence exists that a child's early experiences can significantly enhance or inhibit development and learning. It is both educationally sound and most cost-effective for schools to work cooperatively with the home during the crucial first years.
(11) High quality parenting can be one of this country's greatest national resources. It is a learned skill that can be improved for the benefit of the individual family and for our society.

Section 3. [Parents as Teachers Grant Program.] The parents as teachers grant program is hereby established as a program within the [state department of education]. The statewide grant program shall be coordinated through [county and city school boards]. The [state department of education], in cooperation with [county and city school boards], shall establish programs to train parents as teachers. The program shall address the educational needs of targeted parents of children [three years of age or less], and shall contain the following elements:
(1) The use of qualified educators who are professionally trained in child development and parenting.
(2) The provision by participating school systems of a course of instruction in child development and parenting, on a voluntary enrollment basis, to targeted parents of children from [infancy through age three], especially in their homes and in appropriate community settings, in a cost-effective, accessible and convenient manner. That course of instruction shall include all of the following:
(i) Timely and practical information and guidance on development in language, cognitive and social skills.
(ii) Instruction in the effective use of community parenting resources, including developmental and medical screening and, as needed, early intervention for children [through the first three years of life], contingent on the availability of resources and the level of voluntary parental participation.
(iii) Monthly visits to the home of each participating parent, as part of that course of instruction by one or more of the qualified educators administering the course.
(iv) Services shall be prioritized and targeted to parents [below the age of 20].

Section 4. [Requests for Proposals.] No later than [insert date] and no later than [insert date] of each succeeding year through [insert year], the [state department of education] shall develop requests for proposals and shall solicit proposals from the [county and city school boards] and from such proposals shall select participants for the grant program. The [department] shall select up to [six] participants in the first year, [12] participants in the second year, [18] participants in the third year, and [22] participants in the fourth year. The request for proposals shall require participants to demonstrate all of the following:
(1) Training in the parents as teachers program operated by the [state department of education] or by local school boards.
(2) Significant local support for the project from school system administrators and boards, county administrators and boards, and local parent and children advocacy organizations, including, whatever possible, formal support from the [county or city school board].
(3) Racial, cultural, geographic and economic diversity in the targeted population.

Section 5. [Program Objectives.] The objectives of each of the projects operated under the program established by this act include all of the following:

1. The demonstration, by parents who have participated in the program for not less than 28 months, of the development of parenting skills provided through the course of instruction described in Section 3 of this act as evidenced by progress on the part of their children as follows:
   (i) Intellectual and language development that is significantly better statistically than that demonstrated by a local comparison group or by the normed group of nationally representative children.
   (ii) Social development that is significantly more positive than that demonstrated by a local comparison group of children as measured by observational instruments developed for use in the parents as teachers grant program.

2. The demonstration, by parents who have participated in the program for not less than 28 months, of all of the following:
   (i) The ability of the parents, at an early state, to recognize in the child, indications of potential physical, mental or emotional impairment and to intervene in order to prevent or alleviate that impairment. The ability of the parents in the program shall be compared to a local comparison group based upon a statistical measure of parental recognition of, and intervention in, these potential impairments.
   (ii) A statistically improved knowledge level of child development and child rearing practices as measured by the comparison instrument developed to measure this component in the parents as teachers grant program.
   (iii) Positive feelings about the usefulness of the program, as measured by the instrument to measure this component in the parents as teachers grant program.
   (iv) Positive attitudes toward the school system, as measured by the instrument developed to measure this component in the parents as teachers grant program.

3. The retention in the project, at the end of the third year of operation, of not less than 80 percent of initial participants who remain in the school system, as measured by a project statistical report.

4. The development, no later than by the end of the third year, of a complete set of materials and instructional strategies in the English language and any other language that addresses the needs of the school system, for the operation of the project. The materials and instructional strategies shall be certified by a panel of bilingually qualified parent educators and shall be made available both in print and in an audio visual format.

Section 6. [Training; Program Assessments.]
(a) As a condition of receiving funds for the purposes of this act, each county school board selected to operate a grant program shall provide written notice, to the extent feasible, by mail or other appropriate means, to all parents of newborns within the boundaries of the school system of the availability of the pilot project.
(b) The state department of education shall develop and provide an inservices training program which shall be used as a model for the training
programs of [county school boards]. The [department] shall require applicants selected to the grant program, as condition for the receipt of grant proceeds, to participate in the in-service training program.

(c) No later than [insert date], the [state department of education] shall assess the effectiveness and the cost of the program operated under this act and shall report accordingly to the legislature.

Section 7. [Effective Date.] [Insert effective date.]
Voluntary Remediation of Hazardous Substances and Petroleum Act

This act, based on 1992 Indiana legislation, allows a person to submit a proposed work plan to the state department of environmental management for the voluntary remediation of a hazardous substance or petroleum on property or at a facility that is or will be owned or operated by the person. The act provides that with the successful completion of the remediation under a plan approved by the state commissioner of environmental management, certain legal actions may not be brought against the person.

The reader also will want to note a related item that appeared in the 1992 volume of Suggested State Legislation -- a summary of Pennsylvania's 1988 Hazardous Sites Cleanup Act (pp. 78-80). That act authorizes the state department of environmental resources to participate in the investigation, assessment and cleanup of sites under the federal Superfund act and to establish an independent state response program for these activities for any sites that are releasing or threatening the release of hazardous substances or contaminants into the environment.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Voluntary Remediation of Hazardous Substances and Petroleum Act.

Section 2. [Definitions.] As used in this act:
(1) "Commissioner" means the [commissioner of the state department of environmental management].
(2) "Department" means the [state department of environmental management].
(3) "Enforcement action" means:
   (i) a written notice of violation issued under [insert citation for appropriate state statute] that requires or involves the removal or remediation of petroleum or a hazardous substance;
   (ii) another written notice that requires the removal or remediation of petroleum or a hazardous substance and that is:
      (A) issued under [insert citations for appropriate state statutes]; or
      (B) substantially equivalent to a special notice letter issued under 42 U.S.C. 9622(e); or
      (iii) a similar notice issued by the federal government.
(4) "Hazardous substance" has the meaning set forth in [insert citation for appropriate state statute].
(5) "Petroleum" includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute).
(6) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum.
(7) "Remediation" means any of the following:
   (i) Actions necessary to prevent, minimize or mitigate damages to the
public health or welfare or to the environment, which may otherwise result from a release or threat of a release.

(ii) Actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment.

(iii) The cleanup or removal of released hazardous substances or petroleum from the environment.

(8) "Site" means a parcel of real estate for which an application has been submitted under Section 3 of this act.

Section 3. [Submission of Application.]
(a) A person
(1) who:
   (i) owns property;
   (ii) operates a facility located on property;
   (iii) is a prospective owner of property; or
   (iv) is a prospective operator of a facility located on property;
   on which an actual or threatened release of a hazardous substance or petroleum has occurred; and
   (2) who desires to participate in the voluntary remediation program under this act;
must submit an application and fee to the [department] as described under subsection (b) of this section.
(b) An application submitted under this section must meet the following conditions:
   (1) Be on a form provided by the [department].
   (2) Contain the following:
      (i) General information concerning:
          (A) the person;
          (B) the site; and
          (C) other background information;
          as requested by the [department].
      (ii) An environmental assessment of the actual or threatened release of the hazardous substance or petroleum at the site.
   (3) Be accompanied by an application fee of [insert amount].
   (c) A fee collected under this section shall be deposited in the voluntary remediation fund established by Section 17 of this act.

Section 4. [Contents of Environmental Assessment.] An environmental assessment described under Section 3(b)(2)(ii) of this act must include the following:
(1) A legal description of the site.
(2) The physical characteristics of the site.
(3) The operational history of the site to the extent the history is known by the applicant.
(4) Information that the applicant is aware of concerning:
   (i) the nature and extent of any relevant contamination; and
   (ii) relevant releases;
at the site and immediately contiguous to the site.
(5) Relevant information the applicant is aware of concerning the potential for human exposure to contamination at the site.
Section 5. [Timeframe for Determining Eligibility of Applicant.] Not more than 30 days after receiving an application and an application fee under Section 3 of this act, the [department] shall determine if the applicant is eligible to participate in the voluntary remediation program under this act.

Section 6. [Departmental Rejection of Application.]
(a) The [department] may reject an application submitted under Section 3 of this act only for one or more of the following reasons:
(1) A state or federal enforcement action that concerns the remediation of the hazardous substance or petroleum described in the application is pending.
(2) A federal grant requires an enforcement action at the site.
(3) The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment.
(4) The application is not complete.
(b) If the application is rejected under subsection (a)(4) of this section, the [department], not more than 45 days after the [department] received the application, shall provide the applicant with a list of all information needed to make the application complete. If the [department] fails to comply with this subsection, the application shall be considered completed for the purposes of this act.
(c) If the [department] rejects an application, the [department] shall do the following:
(1) As described under [insert citation for appropriate state statute(s)], notify the applicant that the [department] rejected the application.
(2) Explain the reason the [department] rejected the application.

Section 7. [Applicant's Recourse to Rejection.]
(a) If an applicant's application is rejected under Section 6 of this act, the applicant may do the following:
(1) Appeal the [department]'s decision under [insert citation for appropriate state statute].
(2) If the application is rejected because the application is not complete, submit a completed application without submitting an additional application fee.
(b) If an applicant's application is rejected and the applicant:
(1) does not appeal the rejection; or
(2) loses an appeal concerning the rejection;
the [department] shall refund any unexpended portion of the applicant's application fee.

Section 8. [Submission of Voluntary Remediation Work Plan.]
(a) If the [department] determines an application is eligible under Section 5 of this act, the applicant may submit a proposed voluntary remediation work plan to the [department].
(b) A proposed voluntary remediation work plan must include the following:
(1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed voluntary remediation work plan and a description of the work to be performed by the applicant to determine the nature and extent of the actual or threatened release.
(2) A proposed statement of work to accomplish the remediation in
accordance with guidelines established by the [department].

(3) Plans concerning the following:
   (i) Quality assurance for the implementation of the proposed remediation project.
   (ii) Descriptions of sampling and analysis.
   (iii) Health and safety considerations.
   (iv) Community relations.
   (v) Data management and recordkeeping.
   (vi) A proposed schedule concerning the implementation of all tasks set forth in the proposed statement of work.

Section 9. [Voluntary Remediation Agreement.]
(a) Before the [department] evaluates a proposed voluntary remediation work plan, the applicant who submitted the work plan and the [commissioner] must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan. A voluntary remediation agreement must include the following:
   (1) Provisions for the following:
      (i) A requirement that the [department] provide the applicant with an itemized list of estimated costs the [department] may incur under this act.
      (ii) The recovery of all reasonable costs that:
         (A) are incurred by the [department] in the review and oversight of the work plan;
         (B) are attributable to the voluntary remediation agreement; and
         (C) exceed the fee submitted by the applicant under Section 3 of this act.
      (iii) A schedule of payments to be made by the applicant to the [department] to recover the costs to the [department].
   (2) A mechanism to resolve disputes arising from the evaluation, analysis and oversight of the implementation of the work plan, including arbitration, adjudication under [insert citation for appropriate state statute], or a dispute resolution procedure provided under [insert provision].
   (3) A provision concerning the indemnification of the parties.
   (4) A provision concerning retention of records.
   (5) A timetable for the [department] to do the following:
      (i) Reasonably review and evaluate the adequacy of the work plan.
      (ii) Make a determination concerning the approval or rejection of the work plan.
   (6) A provision concerning applicable interagency coordination.
   (7) Any other conditions considered necessary by the [commissioner] or the applicant concerning the effective and efficient implementation of this act.
(b) If an agreement is not reached between an applicant and the commissioner within a reasonable time after good faith negotiations have begun between the applicant and the [commissioner]:
   (1) the applicant or the [commissioner] may withdraw from the negotiations; and
   (2) the [department] shall refund any unexpended portion of the applicant's application fee.

Section 10. [Evaluation of Site and Work Plan.]
(a) After the [commissioner] and an applicant have signed a voluntary
remediation agreement described under Section 9 of this act, the [department] or a person under contract with the [department] shall do the following:

(1) Review and evaluate the site and the affected area surrounding the site.

(2) Review and evaluate the documentation of the investigation and feasibility study conducted by the applicant or the applicant's representative for accuracy and thoroughness.

(3) Review and evaluate the proposed voluntary remediation work plan for quality, efficiency and safety based on guidelines established by the [department].

(4) Make a recommendation to the [commissioner] concerning whether the [commissioner] should approve, modify and approve, or reject the proposed voluntary remediation work plan.

(b) At any time during the evaluation of a proposed voluntary remediation work plan, the [commissioner] or the [department] may request that an applicant submit additional or corrected information to the [department]. An applicant may:

(1) comply with the request; or

(2) withdraw the applicant's proposed voluntary remediation work plan from consideration.

Section 11. [Commissioner's Actions Following Recommendation.]

(a) After receiving a recommendation under Section 10 of this act, the [commissioner] shall:

(1) approve;

(2) modify and approve; or

(3) reject;

the proposed voluntary remediation work plan.

(b) Before the [commissioner] approves or rejects a proposed voluntary remediation work plan under this section, the [commissioner] must notify local government units located in a county affected by the proposed voluntary remediation work plan of the work plan, provide that a copy of the proposed voluntary remediation work plan be placed in at least [one] public library in a county affected by the work plan, and publish a notice requesting comments concerning the proposed voluntary remediation work plan. A comment period of at least [30] days must follow publication of a notice under this section. During a comment period, interested persons may do the following:

(1) Submit written comments to the [commissioner] concerning the proposed voluntary remediation work plan.

(2) Request a public hearing concerning the proposed voluntary remediation work plan.

If the [commissioner] receives at least [one] written request, the [commissioner] may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to approve or reject the work plan. All written comments and public testimony shall be considered by the [commissioner].

(c) If the [commissioner] rejects a proposed voluntary remediation work plan under this section:

(1) the [commissioner] shall, under applicable provisions set forth in [insert citations for appropriate state statutes], notify the applicant and specify the reasons for rejecting the work plan; and

(2) the applicant may appeal the [commissioner]'s decision under [insert
(d) If the [commissioner] approves or modifies and approves a proposed voluntary remediation work plan under this section, the [commissioner] shall notify the applicant in writing, under the applicable provisions set forth in [insert citations for the appropriate state statutes] of the following:

(1) That the voluntary remediation work plan has been approved or modified and approved.
(2) The date:
   (i) the applicant may begin implementing the work plan; and
   (ii) by which the work plan must be completed.
(3) The applicant's right to appeal the [commissioner]'s decision under [insert citation for appropriate state statute].

(e) If an applicant who submitted an approved voluntary remediation work plan desires to proceed with the implementation of the work plan, the applicant must notify the [commissioner] in writing not more than [60] days after the work plan is approved that the applicant:

(1) intends to proceed with the implementation of the work plan; and
(2) agrees to the starting and completion dates set forth by the [commissioner] under subsection (d)(2) of this section.

Section 12. [Departmental Actions Following Initiation of Work Plan.] If the applicant who submitted an approved voluntary remediation work plan proceeds with the work plan, the [department] or a person under contract with the [department] shall do the following:

(1) Oversee and review the implementation of the voluntary remediation work plan.
(2) Make regular reports to the [commissioner] concerning the remediation.

Section 13. [Certificate of Completion.]
(a) If the [commissioner] determines that an applicant has successfully completed a voluntary remediation work plan approved under this act, the [commissioner] shall certify that the work plan has been completed by issuing the applicant a certificate of completion. The issuance of a certificate of completion under this section is a final agency action for purposes of [insert citation for appropriate state statute].
(b) A person who receives a certificate under this section shall attach a copy of the certificate to the recorded deed that concerns the property on which the remediation took place.
(c) If the [commissioner] determines that the applicant has not successfully completed a voluntary remediation work plan approved under this act, the [commissioner] shall notify the applicant of this determination under [insert citation for appropriate state statute].

Section 14. [Issuance of Covenant Not to Sue.]
(a) If the [commissioner] issues a certificate to a person under Section 13 of this act, the governor shall also provide the person with a covenant not to sue for:

(1) any liability, including future liability; or
(2) a claim;
resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan successfully conducted under this act.
(b) A covenant not to sue issued under this section shall bar suit against:
(1) any person who received the certificate of completion under Section 13 of this act; or
(2) any other person who receives the certificate of completion;
   (i) through a legal transfer of the certificate of completion; or
   (ii) by acquiring property to which the certificate of completion applies;
from all public or private claims arising or rules adopted in connection
with the release or threatened release of a hazardous substance or
petroleum that was the subject of the approved voluntary remediation
work plan, except as provided in subsection (c) of this section.
(c) A covenant not to sue issued under this section may not apply to
future liability for a condition or the extent of a condition that:
(1) was present on property that was involved in an approved and
completed voluntary remediation work plan; and
(2) was not known to the [commissioner] at the time the [commissioner]
issued the certificate of completion under Section 13 of this act.
(d) Except as provided under federal law or agreed to by a federal
governmental entity, a covenant not to sue issued under this section may
not release a person from liability to the federal government for claims
based on federal law.
(e) During implementation of an approved voluntary remediation work
plan, a person may not bring an action, including an administrative action,
against a person implementing the voluntary work plan for any cause of
action arising or rules adopted and relating to the release of a hazardous
substance or petroleum that is the subject of the voluntary remediation
work plan.

Section 15. [Withdrawal of Approval for Work Plan.] This act does not
prohibit or limit the [commissioner] from withdrawing the [commissioner]'s
approval of a voluntary remediation work plan at any time during the
implementation of the work plan if:
(1) the person implementing the work plan fails substantially to comply
with the terms and conditions of:
   (i) the voluntary remediation work plan; or
   (ii) a voluntary remediation agreement; or
(2) a hazardous substance or petroleum becomes an imminent and
substantial threat to human health or the environment.

Section 16. [Claims.]
(a) This act does not affect an action or a claim, including a claim for
contribution, that a person who implements or completes an approved
voluntary remediation work plan has or may have against a third party.
(b) A person who implements or completes an approved voluntary
remediation work plan under this act may not be held liable for claims for
contribution concerning matters addressed in the work plan or a certificate
of completion issued to the person under Section 13 of this act.

Section 17. [Voluntary Remediation Fund.]
(a) The voluntary remediation fund is established to provide a source of
funds for the [department] to implement this act.
(b) The expenses of administering the fund shall be paid from the money
in the fund.
(c) The [treasurer of state] shall invest the money in the fund not
currently needed to meet the obligations of the fund in the same manner
as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.
(d) Money in the fund at the end of the state fiscal year does not revert to the state general fund.
(e) The sources of money for the fund are as follows:
    (1) Fees paid under Section 3 of this act.
    (2) Appropriations made by the legislature.
    (3) Gifts and donations intended for deposit in the fund.
    (4) Transfers from [insert other special environmental management funds].]

Section 18. [Effective Date.] [Insert effective date.]
Used Oil Collection Act

This legislative proposal would enable a state to establish and maintain public used oil facilities and programs. The state would promote the establishment of used oil collection programs; develop management standards for used oil collectors, transporters and recyclers; promote educational programs to make the public aware of the environmental problems created by improper disposal of used oil; and decrease the amount of improperly disposed used oil resulting from individuals changing their vehicles' oil.

The proposal would establish a used oil collection fund comprised of state general funds, grants or service fees to establish a toll-free telephone number for disseminating information about used oil collection centers; for grants and loans to local governments for the establishment of oil collection centers at public facilities; or for recycling programs as part of residential recycling services.

This item is based on the proposal drafted by the American Petroleum Institute (API), located in Washington, D.C. The API proposal is based on legislation enacted in South Carolina (Act 63) and Texas (Chapter 303) in 1991. While the proposal does not prescribe a funding provision, API has suggested that such programs be funded with state general fund revenues, or in the event that is not possible, through the enactment of a fee on all oil sold or imported for use.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Used Oil Collection Act.

Section 2. [Legislative Purpose.]
(a) The legislature finds and declares that approximately [insert amount] million gallons of used oil are generated each year in the state and that this oil is a valuable resource which can be utilized as an environmentally acceptable source of energy or as clean re-refined products. Despite this potential value, a significant amount of used oil is improperly disposed of resulting in a significant environmental problem and a waste of a valuable energy resource.
(b) The legislature finds that although there is an existing system for the collection and recycling of used oil generated by business and industry, private citizens have only limited access to that system and often dispose of their used automotive oil on land or in landfills, sewers, drainage systems, septic tanks, surface or ground waters and elsewhere.
(c) It is the intent of the legislature to reduce the amount of improperly disposed used oil by providing incentives to increase the number of certified collection facilities for used oil. Therefore, a used oil collection fund is created for:
   (1) the establishment and maintenance of public used oil collection facilities and programs that support used oil collection and recycling;
   (2) the development of management standards for used oil collectors, transporters and recyclers;
   (3) the promotion of educational programs to encourage the public to dispose of used oil properly.
(d) Used oil shall not be designated as a hazardous waste or hazardous
substance. If the federal government pre-empts the state's classification, the fund shall be used to properly manage used oil after the effective date of the federal law or regulation.

Section 3. [Definitions.] As used in this act, unless otherwise indicated:

(1) "Automotive oil" includes any oil classified for use in an internal combustion engine, transmission, gear box or differential for an automobile, bus or truck, lawn mower, or household power equipment.
(2) "Department" means the [state department of health and environmental control].
(3) "Do-It-Yourselfer (DIYer)" is an individual who removes used oil from the engine of a light duty motor vehicle, small utility engine owned or operated by such individual, non-commercial motor vehicle or farm equipment.
(4) "Fund" means the used oil collection fund created by this act.
(5) "Recycle" means to prepare used oil for reuse as a petroleum product by reclaiming, reprocessing, energy recovery, re-refining or other means to utilize properly treated used oil as a substitute for petroleum products provided that the preparation and use is safe, legal, and environmentally sound.
(6) "Retailer" means anyone who sells automotive oil to the consumer.
(7) "Used oil" means any oil which has been refined from crude or synthetic oils and, as a result of use, becomes unsuitable for its original purpose due to loss of original properties, or presence of impurities, but which may be suitable for further use and may be economically recyclable. Used oil does not include oil filters that have been drained of free flowing used oil or oil contaminated materials.
(8) "Used Oil Collection Center" means a facility, including fixed locations, tanks, trucks and containers, which accepts used oil from DIYers and which constitutes an approved centralized collection center for used oil.

Section 4. [Used Oil Collection Fund.] There shall be established a state used oil collection fund. The used oil collection fund shall be restricted to the uses described in this act and shall be administered by the [department].

COMMENTS: This draft proposal suggests that the collection of used DIYer oil should be supported and funded by state general funds (with an amount appropriated annually by the state legislature), grants or service fees. It further provides that the administering department may apply for, request, solicit, contract for, receive and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under the act.

However, it further acknowledges that because of different state needs and the variety of constitutional, statutory and administrative rules and procedures extant, if additional funding provisions are needed, they must be drafted on a state-by-state basis. It further suggests that any fee on petroleum products to fund the used oil collection fund should apply only to sales of automotive oil, as defined in this act, in bulk and packaged form.

Section 5. [Administration of the Used Oil Program.] The state used oil collection fund established by Section 4 of this act shall be used as follows:
(1) A toll free telephone number shall be established by the [department] and maintained for the purpose of disseminating information concerning the locations and operating hours of DIYer used oil collection centers within the state as well as information concerning the availability, dates and requirements for curbside collection where available; in addition, information regarding alternate locations that accept commercial used oil should also be available.

(2) The [department] may award grants, subsidies and/or loans to municipalities, counties and other government entities to establish DIYer used oil collection centers at publicly owned facilities such as fire stations, police barracks, highway department, county garages, public landfills, or other suitable public or private locations; and provide technical assistance to persons who organize such programs. In order to be eligible for reimbursement, such facilities shall be open at least [insert number] days per week with a regular schedule of not less than [insert number] hours per day and shall be attended.

(3) The [department] may award grants and subsidies to any approved local government entities or private collectors which offer or include as part of residential garbage collection services curbside collection of used DIYer oil from households. The reasonable costs of household containers, truck retrofitting, tanks and similar costs associated with the curbside collection of used DIYer oil shall be eligible for reimbursement from the fund.

(4) All used oil collection centers must meet minimum standards as established by the [department].

(5) In order to be eligible for reimbursement from the fund, collection facilities shall accept DIYer oil in quantities not to exceed [five] gallons per person, per day.

(6) Used oil collection centers shall transfer used DIYer oil only to certified transporters and shall maintain records of all volumes of material collected, including the identity of the hauler and the name and location of the recycling facility.

(7) The [insert state name] used oil collection fund shall indemnify and hold harmless any used oil collection center for all costs arising out of used DIYer oil collected from the public which is unsuitable for reuse or recycling, results from spills and/or contamination, or results from the additional liability associated with the operation of the used oil collection center.

(8) Use of the fund for administrative expenses will be limited to those expenses directly incurred in the administration of the used oil collection program, and will not exceed [insert amount] of the fund. Since costs should decline after the program is fully implemented, and since the economic value of used oil will fluctuate, periodic sunset reviews are mandated every [insert number] years to determine whether continuation of the fee is necessary and if the fee rate is appropriate. In no circumstance shall the fund be used for purposes other than those set out in this act.

Section 6. [Other Uses of the Fund.]
(a) The principal purpose of the [insert state name] used oil collection fund shall be to reimburse local government entities for approved costs associated with curbside collection and public used oil collection centers as set forth in Section 5 of this act, including proper disposal of the used DIYer oil.
(b) In addition, the [department] shall develop and allocate funds for:
(1) Public education programs concerning the proper handling and recycling of usedDIYer oil; and
(2) Advertising, training and unique incentives that include direct payments to selected non-government, certified used oil collection centers, and other programs to promote the collection and recycling of usedDIYer oil from the public.

Section 7. [Limitation of Liability.]
(a) A person or the state may not recover from the owner, operator, or lessor of a used oil collection center any costs of response actions resulting from a release of used oil collected at the center or in subsequent handling or disposition by others if:
(1) The owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous substance;
(2) The owner, operator, or lessor of the collection center does not accept usedDIYer oil that the owner, operator, or lessor knows contains hazardous substances; and
(3) The used oil collection center is in compliance with management standards issued by the [department] and the used oil is removed from the premises by a certified transporter.
(b) For purposes of this section, the owner, operator, or lessor of a used oil collection center may presume that a quantity of less than [five] gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous substance, provided that the owner or operator acts in good faith.
(c) This section applies only to activities directly related to the collection of used oil by a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a used oil collection center.

Section 8. [Certification of Used Oil Collection Centers.]
(a) The [department] shall develop certification requirements for usedDIYer used oil collection centers that shall require, at a minimum, that such centers:
(1) Accept uncontaminated usedDIYer oil from the general public in quantities up to [five] gallons, per person, per day;
(2) Participate in the state toll free telephone used oil information network system;
(3) Meet the minimum requirements for hours of operation as established by the [department]; and
(4) Demonstrate that it complies with all state regulations concerning tank structure and integrity, maintenance, supervision, employee training and housekeeping.

Section 9. [Transporters.]
(a) The [department] shall develop certification procedures for transporters accepting used oil from public, private and commercial collection facilities. Such certification shall include:
(1) A requirement that the transporter demonstrates familiarity with state regulations and proper used oil management rules;
(2) A requirement that the equipment used in such transportation is in good mechanical condition and is suitable for the transportation of used oil;
A requirement of proof of liability insurance or other means of financial responsibility as established by the [department].

A showing that all record keeping and reporting practices are in compliance with all applicable regulations; and

Documentation that all used oil is delivered to qualified customers or certified recyclers.

Where used oil is sold directly by the transporter to an end-user, documentation must include test results showing that said used oil meets all applicable regulatory standards.

The [department] shall require that the transporter file an annual report which specifies the type and quantity of used oil transported, collected and recycled during the preceding year.

Any person who annually transports over public highways, more than [500] gallons of used oil must be a certified transporter.

The [department] shall promulgate regulations establishing procedures for the certification of transporters.

Section 10. [Recyclers.]

(a) The [department] shall develop management standards for used oil recycling.

(b) The recycler must be in compliance with all federal, state and local regulations and have all necessary permits.

(c) The [department] shall require an annual report which specifies the quantity and source of used oil recycled during the preceding year.

(d) Each recycler shall report on an annual basis the total products produced, sold, used in the business, or disposed of during the preceding year.

Section 11. [Prohibited Acts.]

(a) Other than provided for in a state or federal discharge permit, no person shall intentionally:

(1) Discharge used oil into sewers, drainage systems, septic tanks, surface waters, ground waters, water courses or marine waters;

(2) Collect, store, recycle, use or dispose of used oil in any manner which endangers the public health or welfare;

(3) Dispose of used oil in any landfill; or

(4) Mix or commingle used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

(b) Used oil may not be used for road oiling, dust control, weed abatement or similar uses which have the potential to cause harm to the environment.

(c) Any person who violates this section shall be guilty of a [gross misdemeanor] and shall be liable for fines not to exceed [insert amount] dollars per violation per day. This provision may be enforced by a state, county or municipal law enforcement official.

Section 12. [Retail Sales of Automotive Oil.] Any retailer of automotive oil that is not a collection center shall post and maintain at or near the point of automotive oil display or sale, a durable and legible sign [minimum size of eight and one-half by eleven inches] informing the public of the importance of proper collection and disposal of used oil and the toll free number for used oil information.

Section 13. [Effective Date.] [Insert effective date.]
Adopt-A-Park Program Act

This act, based on 1991 Minnesota legislation, establishes an adopt-a-park program. It authorizes the state commissioner of natural resources to enter into informal agreements with businesses, civic groups or individuals for volunteer services to maintain and improve real and personal property in state parks, monuments, historic sites, and trails, in accordance with plans devised by the commissioner. The commissioner is prohibited from entering into any agreement that might displace public employees.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Adopt-a-Park Program Act.

Section 2. [Definitions.] As used in this act:
(1) "Commissioner" means the [state commissioner of natural resources].
(2) "Department" means the [state department of natural resources].

Section 3. [Creation of Program.] The [state] adopt-a-park program is established. The commissioner shall coordinate the program through the regional offices of the department.

Section 4. [Program Purpose.] The purpose of the program is to encourage business and civic groups or individuals to assist, on a volunteer basis, in improving and maintaining state parks, monuments, historic sites, and trails.

Section 5. [Agreements for Services.]
(a) The commissioner shall enter into informal agreements with business and civic groups or individuals for volunteer services to maintain and make improvements to real and personal property in state parks, monuments, historic sites, and trails in accordance with plans devised by the commissioner after consultation with the groups.
(b) The commissioner may erect appropriate signs to recognize and express appreciation to groups and individuals providing volunteer services under the adopt-a-park program.
(c) The commissioner may provide assistance to enhance the comfort and safety of volunteers and to facilitate the implementation and administration of the adopt-a-park program.

Section 6. [Worker Displacement Prohibited.] The commissioner may not enter into any agreement that has the purpose of or results in the displacement of public employees by volunteers participating in the adopt-a-park program under this act. The commissioner must certify to the appropriate bargaining agent that the work performed by a volunteer will not result in the displacement of currently employed workers or workers on seasonal layoff or layoff from a substantially equivalent position, including partial displacement such as reduction in hours of non-overtime work, wages or other employment benefits.

Section 7. [Study and Report.] The department shall study and report to
the appropriate committees of the state legislature by [insert date], on the implementation of the program established in Section 3. The study must focus on major elements of the program, including liability for personal injury or property damage, the relationship between program participants and departmental employees, project selection, program costs, support services for program volunteers, and recognition of accomplishments. The report must be accompanied by recommended legislation for improving the program.

Section 8. [Effective Date.] [Insert effective date.]
Act to Ban the Exportation and Importation of Wildlife

This act, based on 1991 Tennessee legislation, prohibits persons from possessing, transporting, importing, exporting, buying, selling, bartering, propagating or transferring any wildlife (whether or not indigenous to the state), except as provided under rules and regulations promulgated by the state's wildlife resources commission. Persons may not possess certain types of wildlife (including species inherently dangerous to humans and species native to the state) without documentary evidence showing the name and address of the supplier and the date of acquisition.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Act to Ban the Exportation and Importation of Wildlife.

Section 2. [Definitions.]

(1) "Cage" means the primary enclosure in which an animal is held.
(2) "Circus" means a public entertainment consisting typically of a variety of performances by acrobats, clowns and trained animals, but does not include wrestling bears or any type of show in which there is direct contact between the public and a Class I animal as defined in Section 4 of this act, except as otherwise provided for in this act.
(3) "Commercial propagator" means any person or entity which may sell, barter, trade, propagate or transfer of Class I wildlife, as defined in Section 4 of this act (excluding transfers to other commercial propagators located within the boundaries of the state), and which meets all other applicable license, permit, zoning and other requirements necessary to conduct business in the city, county and state where located.
(4) "Mobile facility" means a facility designed for the transporting of animals or for the holding of animals on a temporary basis.
(5) "Native wildlife" means those species presently occurring in the wild in the state and those extirpated species that could reasonably be expected to survive in the wild if reintroduced.
(6) "Perimeter fence" means a secondary fence that prevents the public from touching the cage in which the animal is held.
(7) "Permanent exhibitors" means those exhibits that are housed the entire year in facilities located within the state.
(8) "Personal possession permit" means a non-commercial type permit issued to private citizens for ownership or possession of non-breeding animals in small numbers.
(9) "Stationary facility" means the primary holding facility including cage and barriers that remain in a fixed location.
(10) "Temporary exhibitors" means those transient animal acts not located within the boundaries of the state.

Section 3. [Prohibitions.]

(a) It is unlawful for any person to possess, transport, import, export, buy, sell, barter, propagate or transfer any wildlife whether indigenous to this state or not, except as provided by this act and rules and regulations promulgated by the state wildlife resources commission pursuant to this act.
(b) No person shall possess Class I or Class II wildlife without having documentary evidence showing the name and address of the supplier of such wildlife and date of acquisition.

Section 4. [Classifications.] Live wildlife, kept or maintained for any purpose, shall be classified in the following five (5) classes:

(1) Class I - This class shall include all species inherently dangerous to humans. These species may only be possessed by zoos, circuses and commercial propagators except as otherwise provided in this act. The following is a listing of animals considered inherently dangerous:

(i) Mammals:
(A) Primates: Gorillas, orangutans, chimpanzees, gibbons, siamangs, mandrills, drills, baboons, Gelada baboons.
(B) Carnivores: Wolves - all species; Bears - all species; Lions, tigers, leopards, jaguars, cheetahs, cougars - all species.
(C) Order Proboscidea: Elephants - all species.
(D) Order Perissodactyla: Rhinoceroses - all species.
(E) Order Artiodactyla: Hippopotamus, African buffalo.

(ii) Reptiles:
(A) Order Crocodylia: Crocodiles and alligators - all species.
(B) Order Serpentes: Snakes - all poisonous species.

(iii) Amphibians: all poisonous species.

(iv) The [state wildlife resources commission] in conjunction with the [state commission of agriculture] may add or delete species from the list of Class I wildlife by promulgating rules and regulations.

(2) Class II - This class shall include native species except those listed in other Classes.

(3) Class III - This class shall require no permits except those required by the [state department of agriculture] and shall include all species not listed in other classes and shall include, but is not limited to, those listed in paragraphs (3)(i) through (3)(xvi). The [state wildlife resources commission], in conjunction with the [state commissioner of agriculture], may add or delete species from the list of Class III wildlife by promulgating rules and regulations:

(i) Non-poisonous reptiles and amphibians except caimans and gavials.
(ii) Rodents - Gerbils, hamsters, guinea pigs, rats, mice, squirrels and chipmunks.

(iii) Rabbits, hares, moles and shrews.
(iv) Ferrets and chinchillas.
(v) Llamas, alpacas, guanacos, vicuñas, camels, giraffes and bison.
(vi) Avian species not otherwise listed, excluding North American game birds, ostriches and cassowary.
(vii) Semi-domestic hogs, sheep and goats.
(viii) All fish held in aquaria.
(ix) Bovidae not otherwise listed.
(x) Marsupials.
(xi) Common domestic farm animals.
(xii) Equidae.
(xiii) Primates not otherwise listed.
(xiv) Bobcat/domestic cat hybrids.
(xv) Hybrids resulting from a cross between a Class II species and a domestic animal or Class III species.
(xvi) Cervidae except white-tailed deer.
(xvii) Furbearing mammals, including those native to [state] raised solely
for the sale of fur.

(4) Class IV - This class shall include those native species that may be possessed only by zoos and temporary exhibitors; provided that rehabilitation facilities may possess Class IV wildlife as provided by rules established by the [state wildlife resources commission] if authorized by letter from the [director of the state wildlife resources agency]:

(i) Black bear (Ursus americanus).
(ii) White-tailed deer (Odocoileus virginianus).
(iii) Wild turkey (Meleagris gallopavo) (including the eggs thereof).
(iv) Bobcat (Lynx rufus).
(v) Hybrids of a Class IV species other than bobcat shall be Class IV.
(vi) Animals that are morphologically indistinguishable from native Class IV wildlife shall be Class IV.

(5) Class V - This class shall include such species that the [state wildlife resources commission] in conjunction with the [state commissioner of agriculture] may designate by rules and regulations as injurious to the environment. Species so designated may only be held in zoos under such conditions as to prevent the release or escape of such wildlife into the environment.

Section 5. [Permits for Possession.]

(a) The [state wildlife resources agency] shall issue permits for possessing live wildlife as defined in this act.

(b)(1) The [state wildlife resources commission] shall adopt reasonable rules for issuing permits to possess live wildlife and establishing the conditions thereof. The conditions shall be directed toward assuring the health, welfare and safety of animals, the public and, where necessary, the security of facilities in which the animals are kept.

(2) The [director of the state wildlife resources agency] may authorize by letter permission to possess any class of wildlife for approved research studies or for the temporary holding of animals in the interest of public safety. The [director] may exempt specific events from the caging and handling requirements established for Class I wildlife. Approval of an exemption will be based on a written request that outlines safety precautions that must be implemented during the specified activity.

(c) Class I Wildlife.

(1) Persons legally possessing Class I wildlife prior to the effective date of this act shall obtain annually a personal possession permit to keep such Class I wildlife. To obtain a personal possession permit, such persons shall comply with all of the provisions of this act. After the effective date of this act, no new animals shall be brought into possession under authority of a personal possession permit. Provided, however, persons in legal possession of one or more species of Class I wildlife as of the effective date of this act, may maintain the lineage of such species up to a maximum of [three] animals per species. Persons in legal possession of the offspring of such Class I wildlife shall have a maximum of [12] months from the date of birth of such offspring to obtain appropriate permits for such offspring or to dispose of such offspring through an appropriate commercial propagator or by any other manner permitted by law within the state. The provisions of this section shall apply solely to persons in legal possession of Class I wildlife as of the effective date of this act, and shall not be construed to authorize new personal possession of Class I wildlife.

(2) The [director] of the agency shall issue a permit upon a satisfactory showing of qualifications to possess live wildlife under the following
conditions:

(i) The applicant must be at least [21] years of age.
(ii) The applicant must have at least [two] years of experience in the handling or care of the Class I species for which the applicant is applying, or in the alternative, must take a written examination, developed and administered by the [state wildlife resources agency], evidencing basic knowledge of the habits and requirements, in regard to proper diet, health care, exercise needs and housing of the species to be covered by the permit. Experience gained while in violation of this act shall not be considered qualified experience.

(iii) The facilities for holding Class I wildlife must be located on the premises on which the permit holder resides or shall have a full-time resident caretaker to supervise the care and security of the facilities. Facilities for Class I animals may not be on premises of less than [one] acre for a personal possession permit and [three] acres for a commercial propagator facility permit, and may not be located in a multi-unit dwelling or trailer park.

(iv) The applicant must have a plan for the quick and safe recapture of the wildlife, or if recapture is impossible, for the destruction of any animal held under the permit. The applicant must have the legal authority to possess weapons or other equipment necessary to carry out the plan and in fact possess such weapons or other equipment.

(3) The permittee shall control and maintain Class I wildlife at all times in such a manner as to prevent direct exposure or contact between the animal(s) and the public, provided that a trained elephant may be brought into contact with the public under the close supervision of a qualified trainer or handler.

(d) No person shall hold live wildlife in captivity without first obtaining the appropriate permit as provided in this act. The annual permits and fees for holding live wildlife are as follows:
[insert fees]

Section 6. [Requirements for Wildlife Enclosures, Constraints.]
(a) Wildlife housed in dangerously unsafe conditions constituting a threat to human safety shall at the direction of [state wildlife resources agency] personnel, be placed in agency approved facilities at the owner's expense.
(b) Any condition which results in wildlife escaping from its enclosure, cage, leash or other constraint shall be considered maintaining wildlife in an unsafe manner and shall be a violation of this act.
(c) Cages shall be sufficiently strong to prevent escape and to protect the caged animal from injury.
(d) No person shall maintain any wildlife in captivity in any unsanitary or unsafe condition or in a manner which results in the maltreatment or neglect of such wildlife nor shall any species of wildlife be confined in any cage or enclosure which does not meet the cage specifications.
(e) An enclosure in which wildlife is held in captivity shall be maintained as follows:

(1) Water - Drinking water shall be provided daily in clean containers. Swimming or wading pools shall be cleaned as needed to ensure good water quality. Enclosures shall provide adequate drainage of surface water.
(2) Food - Food provided shall be unspoiled and not contaminated.
(3) Waste - Fecal and food waste shall be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Hard floors shall be scrubbed and disinfected weekly. Large pens
and paddocks with dirt floors shall be raked every [three] days and the waste removed.

(f) The [state wildlife resources commission] may promulgate rules and regulations requiring specific cage requirements for any species of live wildlife.

(g) Stationary facilities - Class I wildlife.

(1) All stationary facilities must be surrounded by a perimeter fence (secondary barrier) of at least [eight] feet in height and a minimum of [four] feet from the cage holding the animal, or such other fencing, building, or other protection of the enclosure where the animal is kept sufficient to prevent unauthorized public entry or direct physical contact between the animal and the public.

(2) All cages shall be well braced and securely fastened to the floor or in the ground and shall utilize metal clamps or braces of equivalent strength as that prescribed for cage construction.

(3) All cage entrances shall have double safety doors, [one] of which only opens to the inside. These doors must remain locked at all times when unattended with chains and locks of sufficient strength to prevent the animal from breaking open the door if highly excited.

(4) All cages shall be constructed with a den, nest box or other connected housing unit that can be closed off and locked with the animal inside for the safe servicing and cleaning of the open area. In lieu of a nest box, a divided cage with a door between the [two] compartments may be used.

(5) All outdoor cages shall provide adequate shelter from inclement weather conditions, shade from the sun and provide for the protection and health of the wildlife held.

(6) The mesh size or distance between bars shall be sufficiently small to prevent the escape of the animal being held.

(7) The above requirements shall be deemed to have been met by restraints consisting of a barrier system of moats or other structures as are commonly accepted by AAZPA as suitable to restrain and contain the animal in question. Any moat system utilized, whether wet or dry, shall be sufficient to prevent escape of the animal.

(8) Restraint by tethering cannot be used as a means to hold an inherently dangerous animal in captivity except for elephants within a perimeter fence or trained elephants under the immediate supervision of a qualified trainer or handler.

(9) All animals shall be kept in cages which meet the following minimum criteria, or shall be housed in buildings in which the strength of the walls, and the restraints affixed to all windows, doors and other means of entry or exit in effect meet such minimum criteria:

(i) Felidae and Ursidae.

(A) All cages shall be constructed of and covered at the top with [nine] gauge steel chain link or equivalent with tension bars and metal clamps to prevent the escape of the animal; provided that animals, except tigers, leopards and jaguars, may be held in facilities without a top where the sides of the cages are a minimum of [11] feet high with the top [three] feet of fencing turned at a [45] degree angle. No structures which could provide potential escape routes may be present near the fence of an open top cage.

(B) All cages for cougars and cheetahs shall be constructed as specified above except that minimum strength shall be of [11 1/2] gauge steel chain link or equivalent.
(ii) Canidae - All cages shall be constructed of and be covered at the top with [11 1/2] gauge steel chain link or equivalent with tension bars and metal clamps to prevent the escape of the animal; provided that animals may be held in facilities without a top where the sides of the cage are a minimum of [nine] feet high with the top [three] feet of fencing turned at a [45] degree angle.

(iii) Elephants, rhinoceros, hippopotamus and African buffalo:
(A) Construction materials shall consist of steel bars, masonry block or equivalent. If masonry block construction is used, the holes in the blocks must be filled with steel reinforced concrete to provide sufficient strength.
(B) Restraints consisting of a barrier system of moats or other structures are commonly accepted as suitable to restrain and contain these animals in paddocks or corrals may be used in lieu of a cage.

(iv) Poisonous animals - Poisonous animals shall be kept in a cage or in a glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animals' escape. The cage or glass enclosure must be kept locked at all times. No person except the permittee or such person's authorized employee shall open any cage or other container which contains poisonous animals. Persons keeping poisonous animals shall have in their possession antivenin for each species possessed.

(v) Chimpanzees, gorillas, orangutans - Cage construction materials shall consist of steel bars, [two-inch galvanized pipe, reinforced masonry block or their strength equivalent.

(vi) Drills, mandrills, baboons, Gelada baboons, gibbons, siamange - Cage construction materials shall consist of not less than [nine] gauge steel chain link or equivalent.

(vii) Alligators and crocodiles - Cages shall consist of fencing at least [five] feet in height of not less than [11 1/2] gauge chain link or equivalent.

(h) Mobile facilities - No mobile facility shall be used in transporting any wildlife except as follows:
(1) Facilities shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements to all animals.
(2) The animal traveling area shall be free of engine exhaust fumes.
(3) Animal cages shall have openings for the emergency removal of wildlife.
(4) Cages shall be large enough to ensure that each specimen has sufficient room to stand erect and lie naturally.
(5) Wildlife transported in the same cage area shall be in compatible groups.
(6) Facilities used in transporting or temporarily exhibiting Class I wildlife shall be constructed of steel or case hardened aluminum of sufficient strength to prevent the escape of wildlife being transported. Such facilities shall be constructed in such a manner to prevent contact between the animal(s) and the general public. All doors shall be locked when the facility is in use.
(7) Poisonous reptiles shall only be transported in a strong, closely woven cloth sack, tied or otherwise secured. This sack shall then be placed in a box. The box shall be of strong material in solid sheets, except for small air holes, which shall be screened. Boxes containing poisonous reptiles shall be locked and prominently labeled "Danger Poisonous Snakes" or "Danger Poisonous Reptiles" and shall include the owner's name, address, telephone number and list of number and species being transported.
(8) Temporary exhibits shall be housed in cages that meet the minimum
cage specifications as provided in the subsection on stationary facilities when such wildlife is present in any geographical location for more than [10] days.

(9) Prior to entering the state of [state], temporary exhibitors shall submit a schedule that details the exact locations and dates of shows and places where such wildlife will be exhibited while in the state. Failure to provide such a schedule upon application for a permit shall be grounds to deny issuance of such permit.

Section 7. [Liability.]
(a) Any person who keeps Class I wildlife shall be liable for any costs incurred by any person, city, county or state agency resulting from the escape from captivity of the animal(s).
(b) Neither the state of [state] nor any agency, employee or agent thereof shall be liable for any animal that expires, or is injured or is destroyed.
Neither the state of [state] nor any agency, employee or agent thereof shall be liable for any damage or injury caused by live wildlife under a permit issued pursuant to this act.

Section 8. [Transfer of Wildlife.]
(a) Prior to the transfer of any Class I wildlife to a new owner, the prospective owner must provide the seller with proper documentation of an approved holding facility for that species. Proper documentation shall consist of a copy of a current permit for that species or a letter from the [state wildlife resources agency] stating that the facilities have been inspected and are approved. Any transfer without approved holding facilities shall be a violation of this act by the seller who shall provide housing for the animal at such seller's cost until the transferee can provide approved facilities or until final court actions are concluded. If the seller does not provide housing, such seller shall be liable for costs incurred by the agency for providing such housing.
(b) Permittees must notify the agency of any transfer of Class I wildlife within [five] days of the transfer on forms provided by the agency.

Section 9. [Possession of Unpermitted Wildlife.] Owners of unpermitted wildlife who do not qualify for a permit to possess such wildlife shall dispose of such wildlife to an approved recipient within [30] days of notification by the [state wildlife resources agency]. Each day of possession of unpermitted wildlife after such [30-]day period shall constitute a separate violation.

Section 10. [Inspection.] Any person possessing live wildlife in Class I or II shall, during normal business hours and at all reasonable times, and without the necessity of a search warrant, allow the [director of state wildlife resources agency] or any officer or employee of the agency to inspect all animals, facilities and records relating to such animals for the purpose of ensuring compliance with the provisions of this act.

Section 11. [Permits for Propagation.]
(a) Before any person may engage in the business of propagating or otherwise obtaining Class I or II wildlife for sale, barter or trade, whether indigenous to this state or not, such person must obtain and possess a permit for each propagating location.
(b) Any nonresident who enters the state for the purpose of selling Class I
or II wildlife species in this state shall also be required to purchase and possess a permit.
(c) All permits under this section shall comply with all provisions of the United States Code and the Code of Federal Regulations relating to exotic animals, their care, propagation, importation and sale.
(d) Artificially propagated wildlife may be propagated, sold, possessed, released or exported in accordance with the rules and regulations prescribed by the [state wildlife resources commission] and in the case of migratory birds the regulations prescribed by the federal government.
(e) Only commercial propagators may qualify for a permit to propagate Class I wildlife and may transfer Class I wildlife only to persons or entities approved to possess Class I wildlife. First time commercial propagators shall have [one] permit year to meet the criteria as defined in Section 2(3) of this act. Renewal of a commercial propagator permit shall be conditional on the permittee having met the definition of a "commercial propagator" during the prior permit year.

Section 12. [Permit for Importation.]
(a) All persons wishing to possess Classes I and II live wildlife obtained outside the state of [state] shall have in their possession the importation permit required by this act. The permit and all bills of lading and shipping papers relating to any wildlife which such person may have in his possession shall be open and available for inspection at all reasonable times by authorized [state wildlife resources agency] officers and employees for the purpose of ensuring compliance with the provisions of this act.
(b) Animals brought into this state under the authority of an annual importation permit must be reported to the [state wildlife resources agency] within [five] days of the date of importation.
(c) An importation permit is required for all interstate movement of live wildlife except Class III, except no permit shall be required for zoos and temporary exhibitors.

Section 13. [Unlawful Release of Wildlife.] It is unlawful to release any class of wildlife in [state] except in accordance with the rules and regulations promulgated by the [state wildlife resources commission].

Section 14. [Private Wildlife Preserves.]
(a) It is unlawful for any person to operate a private wildlife preserve for the purpose of propagating and/or hunting any class of wildlife reared in captivity unless that person shall obtain the appropriate permit and operate such private wildlife preserve in accordance with the rules and regulations promulgated by the [state wildlife resources commission].
(b) It is lawful to hunt approved species of pen-reared and farm-reared animals on such preserve.
(c) Persons hunting pen-reared animals on such preserve shall not be required to possess a hunting license.

Section 15. [Falconry Permits.]
(a) Before any person may take, transport or possess raptors for the purpose of falconry, such person shall first obtain a falconry permit in accordance with the rules and regulations promulgated by the [state wildlife resources commission]. This permit shall be supplemental to all other permits and licenses required for hunting as provided in [insert
reference to appropriate state statute], except that a holder of a falconry license may import and possess raptors legally obtained without the necessity of an importation permit.

(b) Rules and regulations promulgated by the [state wildlife resources commission] shall govern the taking, importation, possession and use of raptors and shall require applicants for such permit to satisfactorily pass a written examination attesting to their qualification to possess and use falcons. The rules and regulations may provide for a waiver of the examination if the applicant has satisfactorily passed an examination in any other state which the [state wildlife resources commission] deems comparable to the [state] examination. The rules and regulations shall not be less restrictive than federal regulations governing taking, transporting, possessing and using raptors for the purpose of falconry.

Section 16. [Actions for Violation.]

(a) Any officer of the [state wildlife resources agency], upon finding a violation of the provisions of this act of the terms of the permit or rules and regulations promulgated may take the following action or actions, as appropriate:

(1) Such officer may exercise his arrest authority or in lieu thereof, issue a finding of violation, along with a warning to remedy the violation by a specified date. Each day's continuation after such date shall constitute a separate violation.

(2) Such officer may give [three] days written notice seizure to the alleged offender, and make application to a court of proper jurisdiction for an order to seize any items or wildlife held, used or transported in violation of the provisions of this act, permit or rules or regulations; provided that if such officer determines that the public health, safety or welfare imperatively requires emergency action, the notice requirement shall be suspended and such officer may make immediate application to the court for seizure; and provided further, that if the emergency is such that the wildlife presents a present or imminent life threatening situation or is likely to do so under the circumstances, then such officer or any member of the [state wildlife resources agency] who may be present and assisting the officer may destroy such wildlife.

(3) Such officer may take any other reasonable and appropriate actions otherwise provided by law including, but not limited to, the action provided for under Section 6(a).

(b) Any person violating any provision of this act, including a failure to remedy under subsection (a)(1), or who violated the terms of any permit or rules and regulations promulgated pursuant to this act shall be guilty of a [insert offense]; provided, further, that in the discretion of the court, and in lieu of or in addition to a fine or a jail sentence, or both, the person's permit may be revoked and such person shall be precluded from applying for or obtaining a permit under this act for a period not to exceed [three] years.

(c) In the event of revocation of a person's permit, the court shall determine whether or not the items seized pursuant to subsection (a)(2) shall be ordered forfeited to the state.

(d) When any item or wildlife is forfeited, the court shall enter an order accordingly and the contraband property shall be sold at public sale by the [state commissioner of general services] or as otherwise provided by rules and regulations, or donated to a worthy recipient. However, upon request of the [state wildlife resources agency] at the trial of the matter, the
court, as a act of its order, may direct that specific items or wildlife, which the court has ordered forfeited, be awarded to the agency for use as educational or training purposes.

(e) No item or wildlife seized by the [state wildlife resources agency] may be forfeited or disposed of in the discretion of the court unless the offender has been convicted of the offense charged and all appeals from such conviction have been exhausted. An appeals bond shall be required to cover the cost of holding and maintaining such animals held pending final disposition of the appeal.

Section 17. [Notification of Escape.] Permittees shall immediately notify the [state wildlife resources agency] or local law enforcement officials of any escape of Class I wildlife. Any person injury inflicted by any species of captive wildlife requiring medical treatment shall be reported to the agency within [48] hours of the injury and a complete report provided regarding the nature and circumstances of the injury.

Section 18. [Severability.] [Insert severability clause.]

Section 19. [Effective Date.] [Insert effective date.]
Stormwater Management and Sediment Reduction Act

This act, based on 1991 South Carolina legislation, establishes a statewide regulatory stormwater management and sediment control program. It authorizes the state land resources commission (in conjunction with conservation districts, federal, state and local agencies, and other appropriate agencies) to develop and implement a statewide program for land disturbing activities undertaken on private land. The legislation directs the commission to require that all land disturbing activities be conducted in accordance with stormwater management and sediment control plans approved at either the state or local level.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Stormwater Management and Sediment Reduction Act.

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

(1) "Commission" means the [state land resources conservation commission].

(2) "Designated watershed" means a watershed designated by a local government and approved by the [commission, state department of health and environmental control and the state water resources commission] and identified as having an existing or potential stormwater, sediment control, or nonpoint source pollution problem.

(3) "District" means any [soil and water conservation district created pursuant to state statute].

(4) "Erosion" means the wearing away of land surface by the action of wind, water gravity, ice or any combination of those forces.

(5) "Implementing agency" means the [commission, local government or conservation district] with the responsibility for receiving stormwater management and sediment control plans for review and approval, reviewing plans, issuing permits for land disturbing activities, and conducting inspections and enforcement actions in a specified jurisdiction.

(6) "Land disturbing activity" means any use of the land by any person that results in a change in the natural cover or topography that may cause erosion and contribute to sediment and alter the quality and quantity of stormwater runoff.

(7) "Local government" means any county, municipality or any combination of counties or municipalities, acting through a joint program pursuant to the provisions of this act.

(8) "Nonpoint source pollution" means pollution contained in stormwater runoff from ill-defined diffuse sources.

(9) "Person" means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, electric supplier, municipality, interstate body, the federal government, or other legal entity.

(10) "Person responsible for the land disturbing activity" means:

(a) the person who has or represents having financial or operational control over the land disturbing activity; and/or

(b) the landowner or person in possession or control of the land who directly or indirectly allowed the land disturbing activity or has benefited from it or who has failed to comply with any provision of this act, these
regulations, or any order or local ordinance adopted pursuant to this act as imposes a duty upon him.

(11) "Responsible personnel" means any foreman, superintendent, or similar individual who is the on-site person in charge of land disturbing activities.

(12) "Sediment" means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, ice or gravity from its site of origin.

(13) "Stop work order" means an order directing the person responsible for the land disturbing activity to cease and desist all or any portion of the work which violates the provisions of this act.

(14) "Stormwater management" means, for:
   (a) quantitative control, a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff caused by manmade changes to the land;
   (b) qualitative control, a system of vegetative, structural or other measures that reduce or eliminate pollutants that might otherwise be carried by stormwater runoff.

(15) “Stormwater management and sediment control plan” means a set of drawings, other documents, and supporting calculations submitted by a person as a prerequisite to obtaining a permit to undertake a land disturbing activity, which contains all of the information and specifications required by an implementing agency.

(16) "Stormwater runoff" means direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm sewer, or other concentrated flow during and following the precipitation.

(17) "Stormwater utility" means an administrative organization that has been created for the purposes of planning, designing, constructing, and maintaining stormwater management, sediment control, and flood control programs and projects.

(18) “Subdivision,” unless otherwise defined in an ordinance adopted by a local government pursuant to [insert citation for appropriate section of state statute], means all divisions of a tract of parcel of land into two or more lots, building sites, or other divisions, or parcels less than [five] acres, for the purpose, whether immediate or future, of sale, legacy or building development, or includes all division of land involving a new street or a change in existing streets, and includes subdivision and, where appropriate, in the context, shall relate to the process of subdividing or to the land or area subdivided.

(19) "Watershed master plan" means a plan for a designated watershed that analyzes the impact of existing and future land uses and land disturbing activities in the entire watershed and includes strategies to reduce nonpoint source pollution, to manage stormwater runoff and control flooding. The plan must be developed for the entire watershed, regardless of political boundaries, and must include appropriate physical, institutional, economic and administrative data needed to justify the plan.

Section 3. [Submission of Stormwater Management and Sediment Control Plan.]
(a) Unless exempted, no person may engage in a land disturbing activity without first submitting a stormwater management and sediment control plan to the appropriate implementing agency and obtaining a permit to proceed.
(b) Each person responsible for the land disturbing activity shall certify, on the stormwater management and sediment control plan submitted, that all land disturbing activities will be done according to the approved plan.

(c) All approved land disturbing activities must have associated therein at least one individual who functions as responsible personnel.

Section 4. [Exempted Land Disturbing Activities.] The provisions of this act do not apply to the following land disturbing activities:

1. Land disturbing activities on agricultural land for production of plants and animals useful to man, including but not limited to: forages and sod crops, grains and feed crops, tobacco, cotton and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of these animals; bees and dairy products; fur animals and aquaculture, except that the construction of an agricultural structure of one or more acres, such as broiler houses, machine sheds, repair shops and other major buildings and which require the issuance of a building permit shall require the submittal and approval of a stormwater management and sediment control plan prior to the start of the land disturbing activity.

2. Land disturbing activities undertaken on forest land for the production and harvesting of timber and timber products.

3. Activities undertaken by persons who are otherwise regulated by the provisions of [insert citation for state mining statute, as applicable].

4. Construction or improvement of single family residences or their accessory buildings which are separately built and not part of multiple construction in a subdivision development.

5. Land disturbing activities, other than activities identified in paragraph (6) of this section, that are conducted under another state or federal environmental permitting, licensing or certification program where the state or federal environmental permit, license, or certification is conditioned on compliance with the minimum standards and criteria developed under this act.

6. Any of the following land disturbing activities undertaken by any person who provides gas, electrification or communications services, subject to the jurisdiction of the [state public service commission], or corporations organized and operating pursuant to [insert citation for appropriate state statute]:
   (i) land disturbing activities conducted pursuant to a certificate of environmental compatibility and public convenience and necessity issued pursuant to [insert citation for appropriate state statute], or land disturbing activities conducted pursuant to any other certification or authorization issued by the [state public service commission];
   (ii) land disturbing activities conducted pursuant to a federal environmental permit, including Section 404 of the Federal Clean Water Act, and including permits issued by the Federal Energy Regulatory Commission;
   (iii) land disturbing activities associated with emergency maintenance or construction of electric, gas or communications facilities, when necessary to restore service or when the governor declares the area to have sustained a disaster and the actions are undertaken to protect the public from a threat to health or safety;
   (iv) land disturbing activities associated with routine maintenance and/or repair of electric, gas or communications lines;
   (v) land disturbing activities associated with the placement of poles for
overhead distribution or transmission of electric energy or of communications services;

(vi) land disturbing activities associated with placement of underground lines for distribution or transmission of electric energy or of gas or communications services; or

(vii) land disturbing activities conducted by a person filing environmental reports, assessments or impact statements with the United States Department of Agriculture, Rural Electrification Administration in regard to a project.

Any person, other than a person identified in subparagraph (vii), who undertakes land disturbing activities described in subparagraphs (iv), (v), and (vi) of this paragraph must file with the [state public service commission], in a policy and procedures manual, the procedures it will follow in conducting such activities. Any person, other than a person identified in subparagraph (vii), who conducts land disturbing activities described in subparagraph (ii) of this paragraph, must address the procedures it will follow in conducting the activities in the policy and procedures manual filed with the [state public service commission] to the extent that the land disturbing activities are not specifically addressed in the federal permit or permitting process. If any person, other than a person identified in subparagraph (vii), does not have a policy and procedures manual on file with the [state public service commission], such manual must be filed with the [state public service commission] not later than [six] months after the effective date of this act.

Any person who undertakes land disturbing activities described in subparagraph (vi) of this paragraph shall give the same written notice to the commission as given to agencies whose permits are required for project approval by the regulations of the United States department of Agriculture, Rural Electrification Administration.

(7) Activities relating to the routine maintenance and/or repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.

(8) Activities undertaken on state-owned or managed lands that are otherwise regulated by the provisions of [insert citation for state erosion and sediment reduction statute, as applicable].

(9) Activities undertaken by local governments or special purpose or public service districts relating to the repair and maintenance of existing facilities and structures.

Section 5. [Establishment of State Stormwater Management and Sediment Reduction Program.]

(a) The commission shall develop a state stormwater management and sediment reduction program.

(b) In carrying out this act, the commission shall:

   (1) provide technical and other assistance to local governments and others in implementing this act;

   (2) require that appropriate stormwater management and sediment control provisions be included in all stormwater management and sediment control plans developed pursuant to this act;

   (3) cooperate with appropriate agencies of this state, the United States, other states, or any interstate agency with respect to stormwater management and sediment control;

   (4) conduct studies and research regarding the causes, effects and hazards of stormwater and sediment and methods to control stormwater
runoff and sediment;
(5) conduct and supervise educational programs with respect to stormwater management and sediment control;
(6) require the submission to the commission of records and periodic reports by implementing agencies as may be necessary to carry out this act;
(7) establish a means of communications, such as a newsletter, so that information regarding program development and implementation can be distributed to interested individuals;
(8) assist [conservation districts] and local governments involved in the local stormwater management and sediment control program; and
(9) develop a schedule for implementing this act in the counties and municipalities of this state.
(c) The commission shall promulgate regulations, minimum standards, guidelines and criteria necessary to carry out the provisions of this act with input from the [state erosion and reduction advisory council], appointed by the governor, in consultation with the [state department of health and environmental control], the [state water resources commission], the [state association of counties], the [state coastal council], the [state association of special purpose districts], and the [state municipal association], and a task force of technical experts appointed by the commission. The regulations must include, but are not limited to:
(1) criteria for the delegation of program elements and review and revocation of delegated program elements;
(2) appeal procedures for local governments requesting delegation of program elements;
(3) types of activities that require stormwater management and sediment control permit;
(4) waivers, exemptions, variances and appeals;
(5) stormwater management and sediment control plan application or inspection fees;
(6) criteria for distribution of funds collected by sediment and stormwater plan approval and inspection fees;
(7) criteria for implementation of stormwater management utility;
(8) specific design criteria and minimum standards and specifications;
(9) permit application and approval requirements;
(10) specific enforcement options;
(11) criteria for approval of designated watersheds;
(12) criteria regarding correction of off-site damages resulting from the land disturbing activity;
(13) construction inspections;
(14) maintenance requirements for sediment control during construction and stormwater management structures after construction is completed;
(15) procedures to accept and respond to citizen complaints on delegated program components and individual site problems; and
(16) a schedule for implementing this act considering such factors as demographics, growth and development, and state and local resources.
(d) These regulations promulgated for carrying out the stormwater management and sediment control program must:
(1) be based upon relevant physical and developmental information concerning the watershed and drainage basins of the state, including but not limited to, data relating to land use, soils, hydrology, geology, grading, ground cover, size of land area being disturbed; and
(2) contain conservation standards for various types of soils and land uses, which standards must include criteria and alternative techniques and
methods for the control of erosion, sediment and stormwater runoff resulting from land disturbing activities.

(e) The commission may amend, modify, or repeal these regulations in accordance with the provisions of the [state administrative procedures act].

Section 6. [Delegation of Program Elements.]
(a) The commission may delegate any or all components of stormwater management and sediment control programs to a local government or conservation district pursuant to regulations promulgated by the commission.

(b) Requests for delegation of program elements must be submitted within [six] months of the promulgation of the applicable state regulation, and by [January 1] of subsequent years if delegation is desired at a future date. The commission shall approve, approve with modification, or deny such a request on or before [April 1] of the year for which the delegation is sought.

(c) Delegation, once applied for, becomes effective on [July 1] and may not exceed [three] years, at which time delegation renewal is required.

(d) A local government may develop the program in cooperation with conservation districts.

(e) In the event a local government does not adopt and request approval of a stormwater management and sediment control program within its jurisdiction, the local conservation district may adopt a program in conjunction with subdivision regulations, if applicable, and submit it to the commission for approval.

(f) The commission has jurisdiction, to the exclusion of other implementing agencies, for the purpose of adopting the components of a sediment control and stormwater management program for land disturbing activities that are:
(1) conducted by the United States;
(2) conducted by persons having the power of eminent domain for land disturbing activities which cross jurisdictional boundaries;
(3) conducted by local governments.

Section 7. [Approval of Program Components.]
(a) Any local government that has adopted a stormwater management and/or sediment control program before the effective date of this act may request approval of any or all components of its existing program within its jurisdiction. This request must be submitted within [six] months of the promulgation of the applicable state regulation. The review and approval, approval with modification, or disapproval of these existing programs must be given priority by the commission. The local government shall continue to administer its existing programs during the review process by the commission. The review must include consideration of the efficiency and effectiveness of the existing program in meeting the intent of this act.

(b) The commission shall approve a program upon determining that its standards equal or exceed those of this act. The commission shall only modify the portions of a program which do not meet the minimum standards of this act.

(c) If a local government's request for approval of one or more components of an existing stormwater management or sediment control program is not approved by the commission, the local government may appeal the commission's action following the procedures detailed in the regulations promulgated pursuant to this act.
Section 8. [Prohibition on Regulated Activities.]
(a) One year after the effective date of this act, a federal agency may not undertake any regulated activity unless the agency has submitted a stormwater management and sediment control plan to the commission and received its approval. The only variation to this requirement is when program elements are delegated by the commission to a federal agency.
(b) After the effective date of this act, a local government or special purpose or public service district may not undertake any regulated activity unless the local government or special purpose or public service district has submitted a request for a general permit to the commission and received its approval.

Section 9. [Implementing Agency Responsibilities and Rights.]
(a) With respect to approved stormwater management and sediment control plans, the implementing agency shall ensure that periodic reviews are undertaken, implementation is accomplished in accordance with the approved plans, and the required measures are functioning in an effective manner. Notice of right of entry must be included in the stormwater management and sediment control plan certification. The implementing agency may request assistance from the commission.
(b) The request for assistance from the commission may initiate an inspection to verify site conditions. That inspection may result in the following actions:
   (1) notification by the implementing agency to the person responsible for the land disturbing activity to comply with the approved plan within a specified time;
   (2) notification by the implementing agency that the required measures are not functioning in an effective manner, with a schedule for the person responsible for the disturbing activity to maintain the required measures or install additional measures which will be effective in controlling stormwater runoff and off-site sediment movement.
(c) Failure of the person responsible for the land disturbing activity to comply with commission requirements may result in the following actions in addition to other penalties as provided in this act:
   (1) The commission may request that the appropriate implementing agency issue a stop work order until the violations have been remedied.
   (2) The commission may request that the appropriate implementing agency refrain from issuing any further building or grading permits to the person having outstanding violations until those violations have been remedied.
   (3) The commission may recommend fines to be levied by the implementing agency.
(d) The implementing agency shall have the right of entry for the purpose of determining if a land disturbing activity is being conducted without an approved stormwater management and sediment control plan, conducting inspections and taking enforcement actions.
(e) Upon inspection, if the implementing agency determines that a land disturbing activity is taking place without an approved stormwater management and sediment control plan, the implementing agency shall post a stop work order at the site of the land disturbing activity and shall notify the person responsible for the land disturbing activities of the requirements to submit a stormwater management and sediment control plan to the implementing agency and receive approval prior to resuming
the land disturbing activity and the requirement to correct all violations.

Section 10. [Existing Disturbed Areas.] (a) All disturbed areas which exist on the effective date of this act as a result of land disturbing activity and which result in on-site damage from sediment and stormwater runoff, must be provided with ground cover or other protective measures, structures or devices sufficient to control on-site sediment and nonpoint source pollution. (b) The implementing agency shall serve a notice to comply upon the landowner or other person in possession or control of the land by depositing in the mail a certified letter. The notice must state the measures needed and the time allowed for compliance. The implementing agency shall consider the economic feasibility, technological expertise, and quality of work required, and shall establish reasonable time limits.

Section 11. [Conduct of Educational Programs.] The commission, in conjunction with local governments and districts and other appropriate state and federal agencies, shall conduct educational programs in stormwater management and sediment control for state and local government officials, persons engaged in land disturbing activities, interested citizen groups, and others.

Section 12. [Funding for Program Administration.] (a) The implementing agencies are authorized to receive from federal, state or other public or private sources financial, technical or other assistance for use in accomplishing the purposes of this act. (b) The implementing agency has authority to adopt a fee system to help fund program administration. A fee system may be adopted by the implementing agency to help to fund overall program management, plan review, construction review, enforcement actions and maintenance responsibilities. In those situations where the commission becomes the implementing agency, the commission may assess a plan review and inspection fee. Fees must be based upon the costs to the implementing agency to implement and administer the program. The implementing agency is granted authority to expend the funds it collects from the fee system to administer the provisions of this act. The commission shall not assess a local government a plan review and inspection fee. (c) Authority is granted to local governments to establish a stormwater utility. The stormwater utility may fund such activities as watershed master planning, facility retrofitting, and facility maintenance. This funding shall occur through the establishment of a fee system or tax assessment that must be reasonable and equitable. Criteria for the implementation of the stormwater utility must be established in regulations promulgated under this act. The implementation of a stormwater utility will necessitate the adoption of a local utility ordinance prior to its implementation.

Section 13. [Watershed Master Plan.] (a) In addition to the other regulatory requirements in this act, designated watersheds shall have the regulatory requirements for land disturbing activities within the watershed clearly specified through a watershed master plan which includes nonpoint source pollution control, stormwater management and flood control components. The watershed master plan for the designated watershed must contain the following information: (1) stormwater quantity or quality problem identification;
(2) the overall condition and needs of the watershed, not just the additional impacts of new development activities;
(3) alternative approaches to address the existing and future problems;
(4) a defined approach which includes the overall costs and benefits;
(5) a schedule for implementation;
(6) funding sources and amounts; and
(7) a public involvement process which includes the establishment of a local watershed advisory committee and public hearing prior to approval by the commission, the [state water resources commission], and the [state department of health and environmental control].

(b) Upon approval of the watershed master plan, all projects undertaken in the designated watershed must have stormwater management and nonpoint source pollution control requirements placed upon them that are consistent with the designated watershed master plan.

Section 14. [Penalties for Violation.]
(a) Any person who violates any provision of this Act or any ordinance or regulation promulgated, enacted, adopted or issued pursuant to this Act by the commission or other implementing agency, or who initiates or continues a land disturbing activity for which a stormwater management and sediment control plan is required except in accordance with the terms, conditions and provisions of an approved plan, is subject to a civil penalty of not more than [insert amount]. No penalty may be assessed until the person alleged to be in violation has been notified of the violation. Each day of a violation constitutes a separate violation.
(b) The implementing agency shall determine the amount of the civil penalty to be assessed under this section for violations under its jurisdiction. It shall make written demand for payment upon the person responsible for the violation and set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within [insert number of days] after demand for payment is made, a civil action may be filed in the [insert appropriate court of jurisdiction] in the county in which the violation is alleged to have occurred to recover the amount of the penalty. If the implementing agency is the commission, the action must be brought in the name of the state. Local governments shall refer the matters under their jurisdiction to their respective attorneys for the institution of a civil action in the name of the local government in the [insert appropriate court of jurisdiction] in the county in which the violation is alleged to have occurred for recovery of the penalty.

Section 15. [Civil Action for Injunctive Relief.]
(a) When the implementing agency has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this Act, it may, either before or after the institution of any other action or proceeding authorized by this Act, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action must be brought in the [insert appropriate court of jurisdiction] of the county in which the violation or threatened violation is occurring or about to occur.
(b) Upon determination by the court that an alleged violation is occurring or is threatened it shall enter the order necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under subsection (a) of this section does not relieve any party to the proceeding from any civil penalty prescribed for violations of
Section 16. [Liability.] Nothing contained in this act and no action or failure to act under this act may be construed:
(1) to impose any liability on the state, commission, districts, local governments, or other agencies, officers or employees thereof for the recovery of damages caused by such action or failure; or
(2) to relieve the person engaged in the land disturbing activity of the duties, obligations, responsibilities or liabilities arising from or incident to the operations associated with the land disturbing activity.

Section 17. [Effective Date.] [Insert effective date.]
Targeted Group Small Business Procurement Program

In the 1989 case of Croson v. Richmond, the U.S. Supreme Court toughened the constitutional criteria for laws that set aside a percentage of state purchasing and contracts for businesses owned or run by women or minorities. The Court ruled that such laws must be based on sufficient evidence of race or sex discrimination and must offer remedies that minimize damage to other groups. The act presented below is based on a 1990 Minnesota enactment designed to meet the criteria in a way that the state's existing law did not.

The act establishes a state program for purchasing goods and services from targeted group small businesses, as designated by the state commissioner of administration, and sets a 6 percent purchasing preference in the amount bid for specified goods and services to those targeted businesses. The program is designed to help remedy past effects of discrimination against members of certain targeted groups, including businesses owned by women, persons with disabilities, and minorities. State agencies are encouraged to purchase from targeted group small businesses when making purchases that are not subject to competitive bidding.

Small businesses in labor-surplus areas, low-income counties, enterprise zones and certain other neighborhoods are eligible to participate in the program as economically disadvantaged businesses and receive a 4 percent purchasing preference.

The act further allows the state department of administration to set goals requiring prime contractors for construction contracts and consultant, professional and technical services to subcontract a portion of a contract to targeted group small businesses. The act includes a provision requiring prompt payment to subcontractors.

The existing state requirement to purchase at least 25 percent of the value of anticipated total state procurements from small businesses remained unchanged by the enactment.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Targeted Group Small Business Procurement Program Act.

Section 2. [Definitions.] As used in this act:
(1) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding, except as otherwise provided in this act.
(2) "Bureau" means the [bureau of small business].
(3) "Business entity" means an entity organized for profit, including an individual, partnership, corporation, joint venture, association or cooperative.
(4) "Commissioner" means the [state commissioner of administration].
(5) "Contract" means an agreement entered into between a business entity and the state of the [state] for construction or for consultant, professional or technical services.
(6) "Department" means the [state department of administration].
(7) "Second party bond" means a bond that designates as principal, guarantor, or both, a person or persons in addition to the person to whom the contract is proposed for award.
(8) "Small targeted group business" means a business designated under Section 7 of this act.
(9) "Subcontractor" means a business entity which enters into a legally binding agreement with another business entity which is a party to a contract as defined in paragraph (5) of this section.

Section 3. [Small Business Procurements.] The [commissioner] shall for each fiscal year ensure that small businesses receive at least [25] percent of the value of anticipated total state procurement of goods and services, including printing and construction. The [commissioner] shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses. In making the annual designation of such procurements the [commissioner] shall attempt:
(1) to vary the included procurements so that a variety of goods and services produced by different small businesses are obtained each year, and
(2) to designate small business procurements in a manner that will encourage proportional distribution of such awards among the geographical regions of the state.
To promote the geographical distribution of set-aside awards, the [commissioner] may designate a portion of the small business set-aside procurement for award to bidders from a specified congressional district or other geographical region specified by the [commissioner]. The failure of the [commissioner] to designate particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal solicitation and bidding processes.

Section 4. [Adoption of Rules Defining Small Business.] The [commissioner] shall adopt rules defining "small business" for purposes of this act. The definition must include only businesses with their principal place of business in [state]. The definition must establish different size standards for various types of businesses. In establishing these standards, the [commissioner] must consider the differences among industries caused by the size of the market for goods or services and the relative size and market share of the competitors operating in those markets.
The definition of "small business" in [insert citation for appropriate state statute] applies to this act, until the [commissioner] adopts rules with a new definition. However, only small businesses with a principal place of business in [state] are included for purposes of this act.

Section 5. [Consultant, Professional and Technical Procurements.] Every state agency shall for each fiscal year designate for awarding to small businesses at least [25] percent of the value of anticipated procurements of that agency for consultant services or professional and technical services. The set-aside under this section is in addition to that provided by Section 3 of this act, but shall otherwise comply with [insert citation for other appropriate state statute].

Section 6. [Targeted Group Purchasing.] The [commissioner] shall establish a program for purchasing goods and services from targeted group businesses, as designated in Section 7 of this act. The purpose of the program is to remedy the effects of past discrimination against members of targeted groups. In furtherance of this purpose, the [commissioner] shall attempt to assure that for each category of goods or services purchased by
the state, the percentage of purchasing from each type of targeted group business is proportional to the representation of that targeted group business among all businesses in the state in the purchasing category.

Section 7. [Designation of Targeted Groups.]
(a) The [state commissioner of administration] shall periodically designate businesses that are majority owned and operated by women, persons with a disability, or specific minorities as targeted group businesses within purchasing categories the [commissioner] determines. A group must be targeted within a purchasing category if the [commissioner] determines there is a statistical disparity between the percentage of purchasing from businesses owned by group members and the representation of businesses owned by group members among all business in the state in the purchasing category. The [commissioner] must review public agencies' purchasing from businesses owned by women, persons with a disability, and minorities at least once every [two] years. The [commissioner] must review the representation of businesses owned by these groups among all businesses in the state at least once every [five] years.
(b) In addition to designations under subsection (a) of this section, an individual business may be included as a targeted group business if the [commissioner] determines that inclusion is necessary to remedy discrimination against the owner based on race, gender or disability in attempting to operate a business that would provide goods or services to public agencies.
(c) The designations of purchasing categories and businesses under subsections (a) and (b) are not rules for purposes of [insert citation for appropriate chapter/title of state code], and are not subject to rulemaking procedures of [insert citation for appropriate chapter/title of state code].

Section 8. [Purchasing Methods.]
(a) The [commissioner] may award up to a [six] percent preference in the amount bid for specified goods or services to small targeted group businesses.
(b) The [commissioner] may designate a purchase of goods or services for award only to small targeted group businesses, if the [state small business procurement commission] determines that at least [three] small targeted group businesses are likely to bid.
(c) The [commissioner], as a condition of awarding a construction contract or approving a contract for consultant, professional or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses. The [commissioner] must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The [commissioner] may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this subsection. The subcontracting requirements of this subsection do not apply to prime contractors who are small targeted group businesses.

Section 9. [Economically Disadvantaged Areas.] The [commissioner] may award up to a [four] percent preference in the amount bid on state procurement to small businesses located in an economically disadvantaged area. A business is located in an economically disadvantaged area if:
(1) the owner resides or is employed in a county in which the median
income for married couples is less than [70] percent of the state median income for married couples; or
(2) the owner resides or is employed in an area designated a labor surplus area by the U.S. Department of Labor; or
(3) the business is a rehabilitation facility or work activity program.

The [commissioner] may designate [one or more] areas designated as targeted neighborhoods under [insert citation for appropriate state statute] or as enterprise zones under [insert citation for appropriate state statute] as economically disadvantaged areas for purposes of this section if the commissioner determines that this designation would further the purposes of this section. If the owner of a small business resides or is employed in a designated area, the small business is eligible for any preference provided under this section.

The [state department of revenue] shall gather data necessary to make the determinations required by paragraph (1), and shall annually certify counties that qualify under paragraph (1). An area designated a labor surplus area retains that status for [120] days after certified small businesses in the area are notified of the termination of the designation by the U.S. Department of Labor.

Section 10. [Surety Bonds.] Surety bonds guaranteed by the federal Small Business Administration and second party bonds are acceptable security for a construction award under this act.

Section 11. [Determination of Ability to Perform.] Before making an award under the preference programs established in Sections 6 to 9 of this act, the commissioner shall evaluate whether the small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence.

Section 12. [Limits.] At least [75] percent of the value of the subcontracts awarded to small targeted group businesses under Section 8(c) of this act must be performed by the business to which the subcontract is awarded or by another small targeted group business.

Section 13. [Procurement Procedures.] All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply equally to procurements designated for small businesses. In the event of conflict with other rules, [insert citation for appropriate state statute] and rules adopted under it govern, if [insert citation for appropriate state statute] applies. If it does not apply, Sections 3 to 19 of this act and rules adopted under those sections govern.

Section 14. [Applicability.] This act does not apply to construction contracts or contracts for consultant, professional or technical services under [insert citation for appropriate state statute] that are financed in whole or in part with federal funds and that are subject to federal disadvantaged business enterprise regulations.

Section 15. [Cooperative Arrangements between Commissioners of Administration and Trade and Economic Development.] (a) The [state commissioners of administration and trade and economic development] shall publicize the provisions of the purchasing programs in
Sections 3 to 19 of this act, attempt to locate small businesses able to perform under the programs, and encourage participation. When the [state commissioner of administration] determines that a small business is unable to perform under a program established in this act, the [commissioner] shall inform the [state commissioner of trade and economic development] who shall assist the small business in attempting to remedy the causes of the inability to perform a set-aside award. In assisting the small business, the [state commissioner of trade and economic development] in cooperation with the [state commissioner of administration] shall use management or financial assistance programs made available by or through the [state department of trade and economic development], other state or governmental agencies, or private sources.

Section 16. [Establishment, Duties of Advisory Council.]
(a) A [small business and targeted group procurement advisory council] is created. The [council] consists of [13] members appointed by the [state commissioner of administration]. A chair of the [advisory council] shall be elected from among the members. The appointments are subject to the appointments program provided by [insert citation for appropriate state statute]. The terms, compensation and removal of members are as provided in [insert citation for appropriate state statute].
(b) The [small business and targeted group procurement advisory council] shall:
(1) advise the [state commissioner of administration] on matters relating to the small business and targeted group procurement program;
(2) review complaints or grievances from small business and targeted group vendors or contractors who are doing or attempting to do business under the program; and
(3) review the reports of the [state commissioners of administration and trade and economic development] provided by Section 17 of this act to ensure compliance with the goals of the program.

Section 17. [Reports.]
(a) The [commissioner] shall submit an [annual] report to the governor and the legislature with a copy to the [state commissioner of trade and economic development] indicating the progress being made toward the objectives and goals of this act during the preceding fiscal year. The [commissioner] shall also submit a [quarterly] report to the [small business and targeted group procurement advisory council]. These reports shall include the following information:
(1) the total dollar value and number of potential set-aside awards identified during this period and the percentage of total state procurement this figure reflects;
(2) the number of small businesses identified by and responding to the small business procurement program, the total dollar value and number of set-aside and other contracts actually awarded to small businesses, and the total number of small businesses that were awarded set-aside and other contracts;
(3) the total dollar value and number of contracts awarded to small targeted group businesses pursuant to each bidding process authorized under this act; the total number and value of these contracts awarded to each small targeted group business and to each type of small targeted group business in each purchasing category, and the percentages of the total procurement for each purchasing category the figures represent.
(4) the total dollar value and number of contracts awarded to small businesses in economically disadvantaged areas under the bidding process authorized in Section 9 of this act; the total number and value of these contracts awarded to each business, and to all businesses within each economically disadvantaged area in each purchasing category, and the percentages of total procurement for each purchasing category the figures represent.

The information required by paragraphs (1) and (2) must be presented on a statewide basis and also broken down by geographic regions within the state.

(b) The [state commissioner of trade and economic development] shall submit an [annual] report to the governor and the legislature with a copy to the [state commissioner of administration]. This report shall include the following information:

(1) the efforts undertaken to publicize the provisions of the small business and targeted group procurement program during the preceding fiscal year;
(2) the efforts undertaken to identify small targeted group businesses and the efforts undertaken to encourage participation in the targeted group procurement program;
(3) the efforts undertaken by the [state commissioner of trade and economic development] to remedy the inability of small businesses and targeted group businesses to perform on potential contract awards; and
(4) the [state commissioner of trade and economic development]'s recommendations for strengthening the small business and small targeted group business procurement program and delivery of services to small businesses.

(c) The [insert other applicable agency officials] shall report to the [state commissioner of administration] all information that the [commissioner] requests to make reports required under this act. The information must be reported at the time and in the manner requested by the [state commissioner of administration].

Section 18. [Eligibility; Rules.]
(a) A small business wishing to participate in the programs under Sections 6 to 9 of this act, must be certified by the [state commissioner of administration]. The [commissioner] shall adopt by rule standards and procedures for certifying that small businesses, small targeted group businesses, and small businesses located in economically disadvantaged areas are eligible to participate under the requirements of this act. The [commissioner] shall adopt by rule standards and procedures for hearing appeals and grievances and other rules necessary to carry out the duties set forth in this act.

(b) The [state commissioner of administration] may make rules which exclude or limit the participation of non-manufacturing business, including third-party lessors, brokers, franchises, jobbers, manufacturers' representatives, and others from eligibility under this act.

(c) The [state commissioner of administration] may make rules that set time limits and other eligibility limits on business participation in programs under this act.

Section 19. [Criminal Penalty.] A person who knowingly provides false information to a public official or employee for the purpose of obtaining or retaining certification as a small targeted group business or a small
business located in an economically disadvantaged area under this act, is guilty of a [insert offense].

Section 20. [Noncompetitive Bids.] Agencies are encouraged to purchase from small targeted group businesses designated under Section 7 of this act when making purchases that are not subject to competitive bidding procedures.

Section 21. [Bureau of Small Business.] (a) The [bureau of small business] within the business assistance center shall serve as a clearinghouse and referral service for information needed by small businesses including small targeted group businesses and small businesses located in an economically disadvantaged area as defined in Section 9 of this act.

(b) The [bureau] shall:
   (1) provide information and assistance with respect to all aspects of business planning and business management related to the start-up, operation or expansion of a small business in [state];
   (2) refer persons interested in the start-up, operation or expansion of a small business in [state] to assistance programs sponsored by federal agencies, state agencies, educational institutions, chambers of commerce, civic organizations, community development groups, private industry associations, and other organizations or to the business assistance referral system established by the [insert other applicable agency];
   (3) plan, develop and implement a master file of information on small business assistance programs of federal, state and local governments, and other public and private organizations so as to provide comprehensive, timely information to the [bureau]'s clients;
   (4) employ staff with adequate and appropriate skills and education and training for the delivery of information and assistance;
   (5) seek out and utilize, to the extent practicable, contributed expertise and services of federal, state and local governments, educational institutions, and other public and private organizations;
   (6) maintain a close and continued relationship with the [director of the state procurement program] within the [state department of administration] so as to facilitate the [department]'s duties and responsibilities under this act relating to the small targeted group business and economically disadvantaged business program of the state;
   (7) develop an information system which will enable the [state commissioner of administration] and other state agencies to efficiently store, retrieve, analyze and exchange data regarding small business development and growth in the state. All executive branch agencies of state government and the [secretary of state] shall to the extent practicable, assist the [bureau] in the development and implementation of the information system;
   (8) establish and maintain a toll free telephone number so that all small business persons anywhere in the state can call the [bureau] office for assistance. An outreach program shall be established to make the existence of the [bureau] well known to its potential clientele throughout the state. If the small business person requires a referral to another provider the [bureau] may use the business assistance referral system established by the [insert other applicable agency];
   (9) conduct research and provide data as required by state legislature;
   (10) develop and publish material on all aspects of the start-up,
operation, or expansion of a small business in [state];
(11) collect and disseminate information on state procurement
opportunities, including information on the procurement process;
(12) develop a public awareness program through the use of newsletters,
personal contacts, and electronic and print news media advertising about
state assistance programs for small businesses, including those programs
specifically for socially disadvantaged small business persons;
(13) publicize to small businesses [insert citation for appropriate state
statute], which requires consideration of small business issues in state
agency rulemaking;
(14) enter into agreements with the federal government and other public
and private entities to serve as statewide coordinator or host agency for
the federal small business development center program under U.S.C., Title
15, Section 648;
(15) establish an evaluation mechanism to determine if assistance
providers have adequate expertise and resources to deliver quality services.
Evaluation of assistance providers may be based on the ability of the
provider to offer the advertised service, the training and experience of the
provider, and the formal evaluation process used by the provider. The
evaluation mechanism must be designed so that the business assistance
referral system established by the [insert applicable agency] may use the
results of the evaluation in providing clients with referrals to providers;
and
(16) assist providers in the evaluation of their programs and the
assessment of their service area needs. The [bureau] may establish model
evaluation techniques and performance standards for providers to use.

Section 22. [Studies.]
(a) The [state commissioner of trade and economic development] shall
evaluate the effectiveness of programs to provide working capital to small
businesses and the need for additional programs.
(b) The [state commissioner of administration] shall review current
practice and study the extent to which public agencies need to reserve
retainage from progress payments on public contracts.
(c) The [state commissioner of administration] shall review current
practices and study the extent to which public agencies need to require
security bonds on public contracts.
(d) The reviews and evaluations in this section must be done by [insert
date].

Section 23. [Rules.] For purposes of certifying small targeted group
businesses and small businesses located in economically disadvantaged
areas, the [state commissioner of administration] may use, without further
rulemaking, previous rules used to implement the program governing
socially or economically disadvantaged businesses. If the [commissioner]
uses those rules, the phrase "socially or economically disadvantaged
business" in those rules must be read to refer to targeted group businesses
located in economically disadvantaged areas. The phrase "set-aside"
program in those rules must be read to refer to the programs created in
this act.

Section 24. [Prompt Payment to Subcontractors.] Each state agency contract
must require the prime contractor to pay any subcontractor within [insert
number] days of the prime contractor's receipt of payment from the state
for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of [insert number] percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of [insert amount] or more is [insert amount]. For an unpaid balance of less than [insert amount], the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney’s fees, incurred in bringing the action.

Section 25. [Effective Date.] [Insert effective date.]
Repurchased Automobile Act

This act, based on 1991 Oregon legislation, requires automobile manufacturers who repurchase autos for any reason to inform the dealers to whom they deliver the autos for resale that the vehicles had been repurchased. If the reason for repurchase was failure or inability to conform the automobile to warranties, the manufacturer also must inform the dealer.

The auto dealers must, in turn, provide the information in writing to any prospective buyers. Similarly, an owner who has been given this information must provide it in writing to any prospective buyer. Under the provisions of the act, the auto buyer who prevails in an action against a person who has a duty to disclose this information shall be awarded attorney fees and costs.

Section 1. [Short Title.] This act may be cited as the Repurchased Automobile Act.

Section 2. [Responsibilities for Provision of Information on Repurchased Automobiles.]
(a) The manufacturer of an automobile who repurchases the automobile for any reason shall inform any automobile dealer to whom the manufacturer subsequently delivers the automobile for resale that the automobile has been repurchased by the manufacturer. If the reason for the repurchase was failure or inability to conform the automobile to express warranties under the provisions of [insert citation for appropriate state statute] or any similar law of another jurisdiction, the manufacturer shall also inform the dealer of that fact.
(b) A dealer who has been given information required by subsection (a) of this section shall give the information, in writing, to any prospective buyer of the vehicle.
(c) An owner of an automobile who has been given information as required by subsection (a) or (b) of this section shall give the information, in writing, to any prospective buyer of the vehicle.

Section 3. [Action for Failure to Disclose.] The buyer of an automobile who prevails in an action against a person who has a duty to disclose information under Section 2 of this act to the buyer shall be awarded attorney fees and costs.

Section 4. [Applicability.] This act applies to automobiles repurchased on or after the effective date of this act.

Section 5. [Effective Date.] [Insert effective date.]
Insurance Claims for Excessive Charges Act

This act, based on 1989 Texas legislation, provides that an offense is committed if a seller of goods or services advertises or promises to pay or rebate an applicable insurance deductible, and charges more than customary for the goods or services paid for by a consumer from the proceeds of a property or casualty insurance policy. The insured commits an offense by submitting such a claim to the insurer or knowingly allowing such a claim to be submitted (unless the insured promptly notifies the insurer of the excessive charges).

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Insurance Claims for Excessive Charges Act.

Section 2. [Certain Insurance Claims for Excessive Charges.] (a) A person who sells goods or services commits an offense if:

1. the person advertises or promises to provide the good or service and to pay:
   - (i) all or part of any applicable insurance deductible; or
   - (ii) a rebate in an amount equal to all or part of any applicable insurance deductible;
2. the good or service is paid for by the consumer from proceeds of a property or casualty insurance policy; and
3. the person knowingly charges an amount for the good or service that exceeds the usual and customary charge by the person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by the person to an insurer on behalf of an insured or remitted to an insured by the person as a rebate.

(b) A person who is insured under a property or casualty insurance policy commits an offense if the person:

1. submits a claim under the policy based on charges that are in violation of subsection (a) of this section; or
2. knowingly allows a claim in violation of subsection (a) of this section to be submitted, unless the person promptly notifies the insurer of the excessive charges.

(c) An offense under this section is a [insert penalty].

Section 3. [Effective Date.] [Insert effective date.]
Residential Real Estate Disclosure Act

This act, based on 1992 Virginia legislation, requires the state real estate board to develop a residential property disclaimer form, stating that the owner makes no representations or warranties as to the property's condition. The form must include items to be disclosed, including defects in the water and sewer systems, insulation, structural systems, plumbing and electrical systems, termite infestation, the presence of hazardous wastes, and other problems.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Residential Real Estate Disclosure Act.

Section 2. [Applicability.] The provisions of this act apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than [one nor more than four] dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson.

Section 3. [Exemptions.] The following are specifically excluded from the provisions of this act:
(1) Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
(2) Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default; transfers by a trustee under a deed of trust pursuant to a foreclosure sale; or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.
(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust.
(4) Transfers from one or more co-owners solely to one or more other co-owners.
(5) Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.
(6) Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of [insert citation for appropriate state statute].
(7) Transfers made by virtue of the record owner's failure to pay any federal, state or local taxes.
(8) Transfers to or from any governmental entity of public or quasi-public housing authority or agency.
(9) Transfers involving the first sale of a dwelling.
Section 4. [Required Disclosures.] With regard to transfers described in Section 2 of this act, the owner of the residential real property shall furnish to a purchaser one of the following:

(1) A residential property disclaimer statement in a form provided by the [state real estate board] stating that the owner makes no representations or warranties as to the condition of the real property or any improvements thereon, and that the purchaser will be receiving the real property "as is," that is, with all defects which may exist, if any, except as otherwise provided in the real estate purchase contract; or

(2) A residential property disclosure statement disclosing those items contained in a form provided by the [state real estate board] to implement the provisions of this act and to list items which are required to be disclosed relative to the physical condition of the property. Such disclosure form may include defects of which the owner has actual knowledge regarding:
   (i) the water and sewer systems, including the source of household water, water treatment system, sprinkler system;
   (ii) insulation;
   (iii) structural systems, including roof, walls, floors, foundation and any basement;
   (iv) plumbing, electrical, heating and air conditioning systems;
   (v) wood-destroying insect infestation;
   (vi) land use matters;
   (vii) hazardous or regulated materials, including asbestos, lead-based paint, radon and underground storage tanks; and
   (viii) other material defects known to the owner.

The disclosure form shall contain a notice to prospective purchasers and owners that the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property. The disclosure form shall also contain a notice to purchasers that the information contained in the disclosure is the representations of the owner and is not the representations of the broker or salesperson, if any. The owner shall not be required to undertake or provide any independent investigation or inspection of the property in order to make the disclosures required by this act.

Section 5. [Time for Disclosure; Cancellation of Contract.]

(a) The owner of residential real property subject to this act shall deliver to the purchaser the written disclosures or disclaimer required by this act prior to the acceptance of a real estate purchase contract. For the purposes of this act, a "real estate purchase contract" means a contract for the sale, exchange, or lease with option to buy of real estate subject to this act, and "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclaimer statement or residential property disclosure statement may be included in the real estate purchase contract, in an addendum thereto, or in a separate document.

(b) If the disclosure or disclaimer required by this act is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of
   (1) [three] days after delivery of the disclosure or disclaimer in person; or
   (2) [five] days after the postmark if the disclosure or disclaimer is deposited in the United States mail, postage prepaid, and properly
addressed to the purchaser; or
(3) settlement upon purchase of the property; or
(4) occupancy of the property by the purchaser; or
(5) the execution by the purchaser of a written waiver of the purchaser’s
right of termination under this act contained in a writing separate from the
real estate purchase contract.

In order to terminate a real estate purchase contract when permitted by
this act, the purchaser must within the times required by this act, give
written notice to the owner either by hand delivery or by United States
mail, postage prepaid, and properly addressed to the owner. If the
purchaser terminates a real estate purchase contract in compliance with
this act, the termination shall be without penalty to the purchaser, and any
deposit shall be promptly returned to the purchaser. Any rights of the
purchaser to terminate the contract provided by this act are waived
conclusively if not exercised prior to settlement or occupancy by the
purchaser, in the event of a sale, or occupancy, in the event of a lease with
option to purchase.

Section 6. [Owner Liability.]
(a) The owner shall not be liable for any error, inaccuracy or omission of
any information delivered pursuant to this act if:
(1) the error, inaccuracy or omission was not within the actual knowledge
of the owner or was based on information provided by public agencies or
by other persons providing information as specified in subsection (b) of
this section that is required to be disclosed pursuant to this act, or the
owner reasonably believed the information to be correct, and
(2) the owner was not grossly negligent in obtaining information from a
third party and transmitting it.
(b) The delivery by a public agency or other person, as described in
subsection (c) of this section, of any information required to be disclosed
by this act to a prospective purchaser shall be deemed to comply with the
requirements of this act and shall relieve the owner of any further duty
under this act with respect to that item of information.
(c) The delivery by the owner of a report or opinion prepared by a
licensed engineer, land surveyor, geologist, wood-destroying insect control
expert, contractor or other home inspection expert, dealing with matters
within the scope of the professional's license or expertise, shall satisfy the
requirements of subsection (a) of this section if the information is provided
to the owner pursuant to a request therefor, whether written or oral. In
responding to such a request, an expert may indicate, in writing, an
understanding that the information provided will be used in fulfilling the
requirements of this act and, if so, shall indicate the required disclosures,
or portions thereof, to which the information being furnished is applicable.
Where such a statement is furnished, the expert shall not be responsible
for any items of information, or portions thereof, other than those
expressly set forth in the statement.

Section 7. [Change in Circumstances.] If information disclosed in
accordance with this act is subsequently rendered or discovered to be
inaccurate as a result of any act, occurrence, information received,
circumstance or agreement subsequent to the delivery of the required
disclosures, the inaccuracy resulting therefrom does not constitute a
violation of this act. However, at or before settlement, the owner shall be
required to disclose any material change in the physical condition of the
property or certify to the purchaser at settlement that the condition of the property is substantially the same as it was when the disclosure form was provided. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner, and is not used for the purpose of circumventing or evading this act.

Section 8. [Duties of Real Estate Licensees.] A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this act. A real estate licensee representing a purchaser of residential real property, or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this act. Provided a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this act, and shall not be liable to any party to a residential real estate transaction for a violation of this act or for any failure to disclose any information regarding any real property subject to this act.

Section 9. [Actions Under This Act.] (a) Notwithstanding any other provision of this act, or of any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that an occupant of the subject real property, whether or not such real property is subject to this act, was afflicted with human immunodeficiency virus (HIV) or that the real property was the site of:

(1) An act or occurrence which had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or

(2) A homicide, felony or suicide.

(b) The purchaser's remedies hereunder for failure of an owner to comply with the provisions of this act shall be either:

(1) In the event of a misrepresentation in any residential property disclosure statement, an action for actual damages suffered as a result of defects existing in the property as of the date of execution of the real estate purchase contract which would have been disclosed by a disclosure in compliance with this act and of which the purchaser was not aware at the time of settlement or occupancy by the purchaser, in the event of a sale of the property, or occupancy, in the event of a lease with the option to purchase. Any action brought under this subsection shall be commenced within [one] year from the date the purchaser received the disclosure statement, or, if no disclosure statement was delivered to the purchaser, within [one] year of the date of the settlement, in the event of a sale, or occupancy, in the event of a lease or a lease with the option to purchase; or

(2) In the event of a misrepresentation in any residential property disclosure statement or the failure to provide a disclosure or disclaimer as required by this act, termination of the contract, subject to the provisions
of Section 5(b) of this act.
Nothing contained herein shall be construed to prevent a purchaser from pursuing any remedies at law or equity otherwise available against an owner in the event of an owner’s intentional or willful misrepresentation of the condition of the subject property.

Section 10. [Promulgation of Forms.] An owner shall be required to make disclosures pursuant to this act on and after [insert date]. On or before [insert date], the [state real estate board] shall, by regulation, promulgate the forms of the residential property disclaimer statement and the residential property disclosure statement and shall provide a copy thereof to all licensees of the [state real estate board]. Until such time as the forms are promulgated by the [board], forms currently in use may continue to be used.

Prior to [insert date], at which time an owner of residential real property shall be required to provide to a purchaser disclosures pursuant to this act, the parties may, by written agreement in the real estate purchase contract, in an addendum to the real estate purchase contract, or in a separate agreement, agree that the provisions of this act shall apply, in which event the owner of residential real property shall provide a purchaser with a residential property disclaimer statement or a residential property disclosure statement. Such statement may be prepared by the owner, an attorney, or a real estate broker and shall comply with the provisions of this act.

Section 11. [Effective Date.] [Insert effective date.]
Development Impact Fee Act

A "development impact fee" is imposed as a condition of development approval to pay for a proportionate share of the costs of system improvements needed to serve new growth and developments, and of the costs of public facilities designed to provide service to the community at-large. Under the provisions of this act, based on 1991 Georgia legislation, payment of a development impact fee is deemed to be in compliance with any municipal or county requirements for the provision of adequate public facilities or services.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [state] Development Impact Fee Act.

Section 2. [Legislative Findings.] The legislature finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the state. It is the intent of this act to:

(1) Ensure that adequate public facilities are available to serve new growth and development;
(2) Promote orderly growth and development by establishing uniform standards by which municipalities and counties may require that new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;
(3) Establish minimum standards for the adoption of development impact fee ordinances by municipalities and counties; and
(4) Ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development actions.

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

(1) "Capital improvement" means an improvement with a useful life of [10] years of more, by new construction or other action, which increases the service capacity of a public facility.
(2) "Capital improvements element" means a component of a comprehensive plan adopted pursuant to [insert citation for appropriate state statute] which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.
(3) "Comprehensive plan" has the same meaning as provided for in [insert citation for appropriate state statute].
(4) "Developer" means any person or legal entity undertaking development.
(5) "Development" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and
need for public facilities.

(6) "Development approval" means any written authorization from a municipality or county which authorizes the commencement of construction.

(7) "Development exaction" means a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication, or contribution of goods, services, land or money as a condition of approval.

(8) "Development impact fee" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(9) "Encumber" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a municipality or county.

(10) "Feepayer" means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this act has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

(11) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios or the comfort and convenience of use or service of public facilities or both.

(12) "Present value" means the current value of past, present or future payments, contributions or dedications of goods, services, materials, construction or money.

(13) "Project" means a particular development on an identified parcel of land.

(14) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on-site or off-site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

(15) "Proportionate share" means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project.

(16) "Public facilities" means:

(i) Water supply production, treatment and distribution facilities;

(ii) Waste-water collection, treatment and disposal facilities;

(iii) Roads, streets and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;
(iv) Storm-water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements; 
(v) Parks, open space, and recreation areas and related facilities; 
(vi) Public safety facilities, including police, fire, emergency medical and rescue facilities; and 
(vii) Libraries and related facilities. 

(17) “Service area” means a geographic area defined by a municipality, county or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both. 

(18) “System improvement costs” means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys’ fees, and expert witness fees), and expenses incurred for qualified staff of any qualified engineer, planner, architect, landscape architect or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed [3] percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training and other operating costs. 

(19) “System improvements” means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to “project improvements.”

Section 4. [Authorization to Impose Impact Fees.] 
(a) Municipalities and counties which have adopted a comprehensive plan containing a capital improvements element are authorized to impose by ordinance development impact fees as a condition of development approval on all development pursuant to and in accordance with the provisions of this act. 
(b) Notwithstanding any other provision of this act, that portion of a project for which a valid building permit has been issued prior to the effective date of a municipal or county development impact fee ordinance shall not be subject to development impact fees so long as the building permit remains valid and construction is commenced and is pursued according to the terms of the permit. 
(c) Payment of a development impact fee shall be deemed to be in compliance with any municipal or county requirement for the provision of adequate public facilities or services in regard to the system improvements for which the development impact fee was paid.

Section 5. [Calculation of Development Impact Fees.] Development impact fees: 
(1) shall not exceed a proportionate share of the cost of system
improvements, as defined in this act;
(2) shall be calculated and imposed on the basis of service areas;
(3) shall be calculated on the basis of levels of service for public facilities
that are adopted in the municipal or county comprehensive plan that are
applicable to existing development as well as the new growth and
development;
(4) shall be based on actual system improvement costs or reasonable estimates of such costs; and
(5) shall be calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees and intergovernmental transfers.

Section 6. [Requirements for Municipal or County Development Impact Fee Ordinance.] A municipal or county development impact fee ordinance:
(1) shall provide that development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing construction of a building or structure; provided, however, that development impact fees for public facilities described in subparagraph (iv) of paragraph (16) of Section 3 of this act may be collected at the time of a development approval that authorizes site construction or improvement which requires public facilities described in subparagraph (iv) of paragraph (16) of Section 3 of this act;
(2) shall include a schedule of impact fees specifying the development impact fee for various land uses per unit of development on a service area by service area basis. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs;
(3) shall be adopted in accordance with the procedural requirements of Section 8 of this act;
(4) shall include a provision permitting individual assessments of development impact fees at the option of applicants for development approval under guidelines established in the ordinance;
(5) shall provide for a process whereby a developer may receive a certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee for a period of 180 days from the date of certification;
(6) shall include a provision for credits in accordance with the requirements of Section 9 of this act;
(7) shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of Section 10 of this act;
(8) may provide for the imposition of a development impact fee for system improvement costs previously incurred by a municipality or county to the extent that new growth and development will be served by the previously constructed system improvements;
(9) may exempt all or part of particular development projects from development impact fees provided that such projects are determined to create extraordinary economic development and employment growth or affordable housing, provided that the public policy which supports the
exemption is contained in the municipality's or county's comprehensive plan and provided that the exempt development's proportionate share of the system improvement is funded through a revenue source other than development impact fees;
(10) shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located;
(11) shall provide that, in the event a building permit is abandoned, credit shall be given for the present value of the development impact fees against future development impact fees for the same parcel of land;
(12) shall provide for a refund of development impact fees in accordance with the requirements of Section 11 of this act; and
(13) shall provide for appeals from administrative determinations regarding development impact fees in accordance with the requirements of Section 12 of this act.

Section 7. [Establishment of Development Impact Fee Advisory Committee.] (a) Prior to the adoption of a development impact fee ordinance, a municipality or county adopting an impact fee program shall establish a development impact fee advisory committee.
(b) Such committee shall be composed of not less than [five] nor more than [10] members appointed by the governing authority of the municipality or county and at least [40] percent of the membership shall be representatives from the development, building or real estate industries. An existing planning commission or other existing committee that meets these requirements may serve as the development impact fee advisory committee.
(c) The development impact fee advisory committee shall serve in an advisory capacity to assist and advise the governing body of the municipality or county with regard to the adoption of a development impact fee ordinance. In that the committee is advisory, no action of the committee shall be considered a necessary prerequisite for municipal or county action in regard to adoption of an ordinance.

Section 8. [Requirement for Public Hearings.] Prior to the adoption of an ordinance imposing a development impact fee pursuant to this act, the governing body of a municipality or county shall cause two duly noticed public hearings to be held in regard to the proposed ordinance. The second hearing shall be held at least [two] weeks after the first hearing.

Section 9. [Provision of Credits.] (a) In the calculation of development impact fees for a particular project, credit shall be given for the present value of any construction or improvements or contribution or dedication of land or money required or accepted by a municipality or county from a developer or his predecessor in title or interest for system improvements of the category for which the development impact fee is being collected. Credits shall not be given for project improvements.
(b) In the event that a developer enters into an agreement with a county or municipality to construct, fund or contribute system improvements such that the amount of the credit created by such construction, funding or contribution is in excess of the development impact fees which would otherwise have been paid for the development project, the developer shall
be reimbursed for such excess construction, funding or contribution from development impact fees paid by other development located in the service area which is benefited by such improvements.

Section 10. [Expenditures of Fees.]
(a) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in [one or more] interest-bearing accounts. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this act.
(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital improvement element and as authorized by this act. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.
(c) As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered and used during the preceding year by category of public facility and service area.

Section 11. [Provision for Refunds.] Any municipality or county which adopts a development impact fee ordinance shall provide for refunds in accordance with the following provisions:
(1) Upon the request of an owner of property on which a development impact fee has been paid, a municipality or county shall refund the development impact fee if capacity is available and service is denied or if the municipality or county, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within [six] years after the date that the fee was collected. In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis;
(2) When the right to a refund exists due to a failure to encumber development impact fees, the municipality or county shall provide written notice of entitlement to a refund to the feepayer who paid the development impact fee at the address shown on the application for development approval or to a successor in interest who has given notice to the municipality or county of a transfer or assignment of the right or entitlement to a refund and who has provided a mailing address. Such notice shall also be published within [30] days after the expiration of the [six]-year period after the date that the development impact fees were collected and shall contain the heading "Notice of Entitlement to Development Impact Fee Refund";
(3) An application for a refund shall be made within [one] year of the time such refund becomes payable under paragraph (1) or (2) of this section or within [one] year of publication of the notice of entitlement to a refund under this section, whichever is later;
(4) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected;
(5) All refunds shall be made to the fee payor within [60] days after it is determined by a municipality or county that a sufficient proof of claim for a refund has been made; and
(6) The fee payor shall have standing to sue for a refund under the provisions of this act if there has been a timely application for a refund and the refund has been denied or has not been made within [one] year of submission of the application for refund to the collecting municipality or county.

Section 12. [Administrative Appeals.]
(a) A municipality or county which adopts a development impact fee ordinance shall provide for administrative appeals to the governing body or such other body as designated in the ordinance of a determination of the development impact fees for a particular project.
(b) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment shall not be stopped from exercising the right of appeal provided by this act, nor shall such developer be stopped from receiving a refund of any amount deemed to have been illegally collected.
(c) A municipality or county development impact fee ordinance may provide for the resolution of disputes over the development impact fee by binding arbitration through the American Arbitration Association or otherwise.

Section 13. [Intergovernmental Agreements.] Municipalities and counties which are jointly affected by development are authorized to enter into intergovernmental agreements with each other, with authorities, or with the state for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws.

Section 14. This act shall not repeal any existing laws authorizing a municipality or county to impose fees or require contributions or property dedications for capital improvements; provided, however, that all local ordinances or resolutions imposing development impact fees for system improvements on the effective date of this act shall be brought into conformance with this act shall be brought into conformance with this act no later than [two] years from the effective date of this act.

Section 15.
(a) Nothing in this act shall prevent a municipality or county from requiring a developer to construct reasonable project improvements in conjunction with a development project.
(b) Nothing in this act shall be construed to prevent or prohibit private agreements between property owners or developers and municipalities, counties or other governmental entities in regard to the construction or installation of system improvements and providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project.
(c) Nothing in this act shall limit a municipality, county or other
governmental entity which provides water or sewer service from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook up or connection fees as a condition of water or sewer service to new or existing users, provided that the development impact fee ordinance of a municipality or county that collects development impact fees pursuant to this act shall include a provision for credit for such hook up or connection fees collected by the municipality or county to the extent that such hook up or collection fee is collected to pay for system improvements.

Section 16. [Effective Date.] [Insert effective date.]
Employee Leasing Company Registration Act

Employee leasing firms place employees of a client business on their payroll and, for a fee, lease the workers back to the client on an ongoing basis with no restriction or limitation on the duration of employment. Arkansas, Florida, Maine, Tennessee and Utah were the first states to pass laws regulating, to some degree, such firms.

This act, based on the 1991 Utah legislation, requires employee leasing companies to register annually with the state's department of corporations and commercial code. For purposes of maintaining insurance and benefit plans, the registered employee leasing companies are considered employers.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Employee Leasing Company Registration Act.

Section 2. [Definitions.] As used in this act:
(1) "Applicant" means a business or individual seeking to be registered under this act.
(2) "Client company" means a person or entity which under a written agreement and for a fee is provided employees by an employee leasing company.
(3) "Corporation" means a domestic corporation or a foreign corporation authorized to do business in [state].
(4) "Division" means the [state division of corporations and commercial code of the state department of commerce].
(5) "Employee leasing company" or "leasing company" means an individual or business which under a written agreement between the client company and the leasing company and for a fee places all or substantially all of the regular, full-time employees of the client company on the leasing companies' payroll and leases them to the client company on an ongoing basis with no restriction or limitation on the duration of employment.
(6) "Registrant" means either a business registrant or individual registrant registered with the [division] and doing business in this state as an employee leasing company.

Section 3. [Registration Required.]
(a) Beginning [insert date], a person, sole proprietorship, partnership, corporation, or other entity may not do business or continue doing business as an employee leasing company in this state without first registering with the [division] under the provisions of this act.
(b) Registration must be renewed each year before the anniversary date of the initial registration.
(c) Application for registration or renewal shall be made on forms provided by the [division] and shall contain the information required by Section 6 of this act, and any additional information the [division] requires by rule.

Section 4. [Registration Fees.]
(a) Each applicant upon initial registration and each registrant upon renewal shall pay to the [division] a fee of [insert dollar amount] to be
reviewed by the legislature pursuant to [insert citation for appropriate state statute].

(b) If a registrant does not submit a completed renewal application with the renewal fee within [30] days after the anniversary date of registration the [division] shall send a notice to the registrant requiring payment within [30] days after receipt of the notice together with payment of the delinquency fee. If payment is not received within the [30-] day period the registration shall be suspended for [30] days. The [division] shall cancel the registration if the completed application, the renewal fee, and late penalty are not submitted by the end of the [30-] day suspension period.

Section 5. [Cancellation of Registration.]
(a) A registration may be canceled for cause and may not be reinstated by the [division].
(b) Cancellation of a registration under this section does not affect the standing of a corporation or a certificate of limited partnership for any leasing company organized in either form.

Section 6. [Application Contents.]
(a) An individual application shall be signed by the applicant under oath, shall be notarized, and shall contain the following information:
(1) the applicant's full name and title of his position with the employee leasing company;
(2) the business name of the applicant and the date of registration of the name under [insert citation for appropriate state statute];
(3) the applicant's age, date and place of birth, and social security number;
(4) the applicant's current resident street address; and
(5) the current business street address of its registered agent and office for service of process in this state, if the agent is other than the applicant.
(b) If the applicant is a sole proprietorship, partnership or corporation, the application shall be signed under oath by the proprietor, each general partner or a corporate officer. The application shall be notarized and shall contain the information required in subsection (a)(1) through (3) for each person signing; and the current business street address of its registered agent and office for service of process in this state.

Section 7. [Information Update.]
(a) Any change of the information required by Section 6 of this act shall be reported to the [division] within 30 days of the change. The [division] may cancel the registration of a leasing company failing to comply with this requirement.
(b) The [division] shall provide forms for the reporting required by subsection (a) of this section.

Section 8. [Benefit Plans; Employment Contributions; Tax Withholdings.]
(a) A registered employee leasing company is considered the employer of its leased employees for purposes of sponsoring and maintaining any benefit plans.
(1) A leasing company commencing to do business in this state after [insert date], may not offer to its employees any self-funded insurance program.
(2) Leasing companies doing business in this state prior to [insert date],
which offer coverage through a self-funded insurance program shall obtain coverage by a private carrier before [insert date].

(3) Proof of insurance coverage by a private carrier under any benefit plan offered must be provided to the [state insurance department] prior to registration or renewal as required by this act.

(b) The leasing company is responsible for payment of contributions under [insert citation for state statute on employment security]. The leasing company must provide proof of compliance with any registration requirements of the [state department of employment security] prior to registration.

(c) The leasing company is considered the employer for purposes of [insert citation for appropriate statute on withholding of tax]. Proof of compliance with any registration requirements of the [state tax commission] must be provided prior to registration.

Section 9. [Membership in National Association.] Any employee leasing company applying for registration in this state shall be a member of the National Staff Leasing Association.

Section 10. [Compliance.]
(a) An employee leasing company doing business in this state on [insert date], shall provide evidence of compliance with Section 8 of this act before [insert date]. An employee leasing company commencing to do business after [insert date], shall provide the [division] evidence of compliance with Sections 8 and 9 of this act at the time it submits an application for registration or renewal.

(b) Any change in the information required under Section 8 and 9 of this act shall be reported within [30] days of the change. The [division] may cancel the registration of a leasing company failing to comply with this requirement.

(c) The [division] shall provide forms for the reporting required by subsection (b) of this section.

Section 11. [Agreement Required]. The employment relationship with workers provided by the employee leasing company to a client company shall be established by written agreement between the leasing company and the client company. Written notice of the employment relationship and of compliance by the leasing company with the requirements of Sections 8, 9 and 10 of this act, shall be given by the leasing company to each leased employee assigned to perform services for the client company.

Section 12. [Business Name.] A registrant may not do business under a fictitious or assumed name without registration of the business under [insert citation for appropriate state statute].

Section 13. [Criminal Penalty; Right of Action.]
(a) An employee leasing company doing business in this state without registering as required by this act is guilty of a [insert penalty].

(b) A client company, a leased employee, or other person who suffers civil damages by the failure of a leasing company to comply with this act may maintain a civil action to recover the damages resulting from the noncompliance against any individual required to sign the registration application under Section 6 of this act.
Section 14. [No Exemptions from Other Laws, Rules.] Nothing in this act exempts any employee leasing company, any client company or any leased employee from any other license requirements, employment duties or other obligations of state, local or federal law.

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

Section 16. [Effective Date.] [Insert effective date.]
Public Records Storage on Optical Disk

Technological advances in the electronic storage of information have made their way into the states, making it easier for agencies to both store and manage massive records and document collections. Nevertheless, the movement into electronic storage, in this case, the storage of public records on the format known as optical disk, raises a variety of issues.

The item below is based on a 1991 Wisconsin enactment which amended the state's existing public records and related statutes. The act permits any state agency to transfer any public record in its custody to optical disks for storage and to retain the record in that format only, if the retention period for the record as prescribed by law or by the state public records and forms board is not more than 10 years; or if the board, upon showing extenuating circumstances that make such action appropriate, permits such a transfer and retention.

The act also permits any state agency to transfer any other public record in its custody to optical disks for storage if the agency retains the original record. Under the act's provisions, a copy of a record generated from an optical disk in accordance with the legislation's requirements and the standards prescribed by the state public records and forms board is the same as the original record for all legal purposes.

State agencies which store records in optical disk format are required to maintain procedures to ensure the authenticity, accuracy and reliability of the records, and the accessibility of the records if the agency does not retain the originals. Moreover, the agencies must ensure that records stored in this format are protected from unauthorized destruction.

In presenting this draft, the Committee on Suggested State Legislation would like to call attention to two points worthy of note: first, given continuous advances in technology, a state may want to take caution in locking itself into a specific storage mechanism or format; and second, a state will want to review carefully its current definition of record. In the case of the draft presented below, a record is defined as the physical document, not the information itself.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Public Records Storage on Optical Disk Act.

Section 2. [Definitions.] As used in this act:
(1) "Board" means the [state public records and forms board].
(2) "Optical disk" means a rotating circular plate on which information or images are placed in nonerasable storage in the form of holes smaller than one micrometer in size, and is recorded and read by laser beams focused on the plate.
(3) "Optical imaging" means transferring to a format employing an optical disk.
(4) "Public records" means all books, papers, maps, photographs, films, recordings, optical disks or other documentary materials or any copy thereof, regardless of physical form or characteristics, made, or received by any state agency or its officers or employees in connection with the
transaction of public business, except the records and correspondence of any member of the legislature.

(5) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

Section 3. [Powers and Duties of the Board.] The [board] upon the request of any state agency, county, town, city, village or school district, may order upon such terms as the [board] finds necessary to safeguard the legal, financial and historical interests of the state in public records, the destruction, reproduction by microfilm or other process, temporary or permanent retention or other disposition of public records or in the case of a state agency, the retention of public records in optical disk storage.

Section 4. [Approval for Disposition of Records.]
(a) Except as provided in subsection (b) of this section, state agencies shall submit records retention schedules for all public records series in their custody to the [board] for its approval within [one] year after each record series has been received or created unless a shorter period of retention is authorized by law, in which case a retention schedule shall be submitted within that period. The [board] may alter retention periods for any records series; but if retention for a certain period is specifically required by law, the [board] may not decrease the length of that period. The [board] may not authorize the destruction of any public records during that period specified in [insert citation for appropriate state statute].
(b) A state agency which desires to maintain a records series in its custody solely in optical disk format shall submit a records retention schedule for that records series to the [board] for its approval at the time the records series is created and before any portion of the series is transferred to optical disk format.

Section 5. [Transfer of Public Records to Optical Disk Format.]
(a) Subject to rules promulgated by the [board], any state agency may transfer any public record in its custody to optical disk format and retain the public record in that format only, if the retention period for the public record prescribed by law or under Section 4 of this act is not more than [10] years or if the [board], upon showing of extenuating circumstances that make such action appropriate, permits such transfer and retention.
(b) Subject to rules promulgated by the [board], any state agency that has custody of a public record for which optical disk storage is not authorized under subsection (a) of this section may duplicate any public record in its custody by transferring the public record to optical disk format if the state agency retains the original public record in another form authorized by
law.
(c) Subject to rules promulgated by the [board], state agencies shall maintain procedures to ensure the authenticity, accuracy and reliability of public records transferred to optical disk format under subsections (a) or (b) of this section, and the accessibility of public records transferred to optical disk format under subsection (a) of this section.
(d) Subject to rules promulgated by the [board], state agencies that transfer public records in their custody to optical disk format shall ensure that the public records stored in that format are protected from unauthorized destruction.
(e) The [board] may promulgate rules to effectuate the requirements under subsections (c) and (d) of this section.

Section 6. [When Optical Disk-Generated Copy Deemed Original Public Record.] Any microfilm reproduction of an original record, or in case of a record of a state agency, a copy generated from an optical disk of an original record is deemed an original public record if all of the following conditions are met:
(1) Any device used to reproduce the record on film or to transfer the record to optical disk format and generate a copy of the record from optical disk format accurately reproduces the content of the original.
(2) The reproduction is on film which complies, or the optical disk copy and the copy generated from optical disk format comply, with the minimum standards of quality for such copies, as established by rule of the [board].
(3) The record is arranged, identified and indexed so that any individual document or component of the record can be located with the use of proper equipment.
(4) The [state agency records and forms officer] or other person designated by the head of the state agency or the custodian of any other record executes a statement of intent and purpose describing the record to be reproduced or transferred to optical disk format, the disposition of the original record, the disposal authorization number assigned by the [board] for public records of state agencies, the enabling ordinance or resolution for cities, towns, villages or school districts, or the resolution which authorizes the reproduction for counties when required, and executes a certificate verifying that the record was received or created and microfilmed or transferred to optical disk format in the normal course of business and that the statement of intent and purpose is properly recorded as directed by the [board].

Section 7. [Admissible in Evidence.]
(a) Any microfilm reproduction of a public record meeting the requirements of Section 6 of this act or copy of a public record of a state agency generated from an original record stored in optical disk format in compliance with this act shall be taken as, stand in lieu of and have all the effect of the original document and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible.
(b) Any enlarged copy of a microfilm reproduction of a public record made as provided by this act or any enlarged copy of a public record of a state agency generated from an original record stored in optical disk format in compliance with this act that is certified by the custodian as provided in [insert citation for statute regarding documentary evidence]
shall have the same force as an actual-size copy.

Section 8. [Preservation of Reproductions.] Provision shall be made for the preservation of any microfilm reproductions of public records and of any public records stored in optical disks in conveniently accessible files in the agency of origin or its successor or in the state archives.

Section 9. [Contracts for Copying.] Contracts for microfilm reproduction or optical imaging of public records to be performed as provided in this act shall be made by the [insert appropriate state official] provided in [insert citation for appropriate state statute on state purchasing] and the cost of making such reproductions or optical disks shall be paid out of the appropriation of the state agency having the reproduction made.

Section 10. [Authority to Reproduce Records.] Nothing in this act shall be construed to prohibit the responsible officer of any state agency from reproducing any document by any method when it is necessary to do so in the course of carrying out duties or functions in any case other than where the original document is to be destroyed; but no original public record may be destroyed after microfilming or optical imaging without the approval of the [board] unless authorized under Section 4 or 5 of this act.

Section 11. [Access to Reproductions and Copies.] All persons may examine and use the microfilm reproductions of public records and copies of public records generated from optical disk storage subject to such reasonable rules as may be made by the responsible officer of the state agency having custody of the same.

COMMENTS: The Wisconsin enactment further amends existing statutes and makes appropriations to various state agencies to provide records, microfilm, optical imaging and forms services; collect fees for generating copies of documents from optical disk storage; and accept collections in the optical disk format.

Section 12. [Effective Date.] [Insert effective date.]
Cellular Mobile Radio Communications Act (Statement)

In 1991, Wisconsin enacted legislation designed to improve cellular mobile telephone communications services in the state and to prohibit the fraudulent use of such services. In response to the safety concerns of travellers and others who might become stranded in their motor vehicles and need assistance, the act guarantees "911" emergency service for cellular telephone customers where such service is available. The act also added criminal provisions, based on those in cable television service statutes, for individuals who use cellular telephone services but do not pay for them. The legislation incorporated provisions of the federal Electronic Communications Privacy Act (P.L. 99-508), which clarified state law concerning the privacy of calls made over cellular mobile radio telecommunications utilities. These measures were enacted as part of Wisconsin's 1991 budget act.

In lieu of presenting this amendatory item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the major provisions of the enactment. Readers interested in reviewing the act in full text should consult Act 39, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939, for a copy of the item.

Readers also will want to note the related pieces of legislation that have been published in past volumes of Suggested State Legislation: in 1981, the 911 Emergency Telephone Number Act, which established the "911" emergency number (pp. 67-75); and in 1989, the Cellular Radio Telephone Privacy Act, which prohibits interception of mobile telephone service (pp. 103-106).

Fees and Services

This act guarantees "911" emergency service for cellular telephone customers where such service is already available in the state. The act prohibits cellular mobile telephone companies from charging customers a daily access fee if the customer initiates a cellular telephone call from a location within the state but outside the customer's home coverage area after June 30, 1995. Customers also may not be charged for incomplete calls.

Legal Restrictions

The act prohibits individuals from: obtaining or attempting to obtain cellular telephone service from a company by trick, artifice, deception, use of an illegal device or other fraudulent means with the intent to deprive that company of lawful compensation for rendering such services; giving technical assistance or instruction to any person in obtaining or attempting to obtain any cellular telephone service without payment; maintaining an ability to connect with any facilities, components, or other devices used for the transmission of cellular telephone services; making or maintaining any modification or alteration to any device installed with the authorization of a company for the purpose of obtaining an unauthorized service; possessing without authority any device designed to receive services offered
for sale by a company; and manufacturing, importing into the state, 
distributing, publishing, advertising, selling, leasing or offering for sale 
any device or plan designed to receive cellular telephone services. 
The legislation also prohibits the interception of cellular mobile telephone 
communications.
Equitable Restrooms Act

This act, based on 1991 Illinois legislation specifies that places of public accommodation shall be equipped with the following: at least one women's toilet stall for every 200 persons in the maximum legal capacity of the place of public accommodation; at least one men's toilet stall for every 700 persons in the maximum legal capacity of the place of public accommodation; and at least one men's urinal for every 250 persons in the maximum legal capacity of the place of public accommodation. That Act only applies to places commencing construction (or commencing alterations exceeding 50 percent of the entire accommodation) after January 1, 1992.

Section 1. Short title. This Act may be cited as the Equitable Restrooms Act.

Section 5. Legislative finding. The General Assembly finds that an inequitable situation occurs due to delays which women face in the use of restroom facilities when men are rarely required to wait for the same purpose. Rectifying this inequitable situation is a matter of serious public concern. This Act shall be liberally construed toward that end.

Section 10. Definition. As used in this Act, "place of public accommodation" means a publicly or privately owned sports or entertainment arena, stadium, community or convention hall, special event center, amusement facility or a special event center in a public park. This definition does not include hotels, restaurants or schools.

Section 15. Specifications. A place of public shall be equipped with the following facilities:
(1) At least one women's toilet stall for every 200 persons in the maximum legal capacity of the place of public accommodation.
(2) At least one men's toilet stall for every 700 persons in the maximum legal capacity of the place of public accommodation.
(3) At least one men's urinal for every 250 persons in the maximum legal capacity of the place of public accommodation.

Section 20. Application. This Act applies only to places of public accommodation that commence construction, or that commence alterations exceeding 50% of the entire place of public accommodation, after the effective date of this Act.
Security Interest in Boats Act

The act presented below, based on 1991 Wisconsin legislation, establishes an exclusive method of perfecting a security interest in a boat (generally one 16 feet in length or longer) that is required to be titled in the state. A security interest is a charge against or an interest in property to secure payment of a debtor's obligation. A secured party (one who holds a security interest) perfects a security interest to give the secured party an interest in the property against other creditors of the debtor. Under existing state law, a security interest in a boat was generally perfected by the filing of a financing statement under the Uniform Commercial Code with the register of deeds for the county in which the debtor resided.

Under this act, a secured party perfects a security interest in the boat by filing the title and an application to name a secured party, and paying a fee to the state department of natural resources. The boat owner must complete the application and deliver the title, application and fee to the secured party for filing. The department lists the new secured party on the title and returns the title to the boat owner. The act establishes similar provisions for an assignment of a security interest and establishes a method for the release of a security interest by a secured party.

In addition to establishing perfection procedures, the act authorizes the department to suspend or revoke a certificate of title for a boat if the department finds that the title was fraudulently procured or erroneously obtained, if the boat has been scrapped or destroyed, or if a court sets aside a transfer of title.

The reader will want to note that the state of Ohio has legislation similar to that of Wisconsin. The Ohio act (R.C. 1548.20, regarding security interests in watercraft) does not permit or require the deposit, filing or other record of security interest covering a watercraft or outboard motor for which a certificate of title is required. Any security agreement covering a security interest in watercraft or an outboard motor is valid against a debtor's creditors.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Security Interest in Boats Act.

Section 2. [Certificate of Title; Issuance, Records Fees.] The [state department of natural resources] shall require that:

(1) The owner of a boat pay a single [insert amount] fee for the original notation and subsequent release of a security interest on a certificate of title.

(2) A person who has perfected a security interest and who is notified under Section 4 of this act pay a [insert amount] fee for each notification.

(3) An assignee of a security interest pay a [insert amount] fee to be named a secured party on a certificate of title.

Section 3. [Perfection of Security Interests.]
(a) Except as provided in subsection (a) of this section, a security interest in a boat of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or secured parties.
of the boat unless perfected as provided in this section and Section 5 and 6 of this act.

(b) This section and Sections 4 through 9 of this act do not apply to any of the following:

1. A lien given by statute to a supplier of services or materials for a boat.
2. A lien given by statute to the United States, this state or a political subdivision of this state.
3. A security interest governed by uniform commercial code regarding secured transactions that is created by a manufacturer or dealer who holds the boat for sale.

(c) Except as provided in subsection (d) of this section, a security interest is perfected by the delivery to the [state department of natural resources] of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party, and the required fee. The security interest is perfected as of the time of its creation if delivery to the [department] is completed within [10] days after its creation and without regard to the limitations expressed in uniform commercial code regarding secured transactions; otherwise, as of the time of delivery.

(d) If a secured party whose name and address is contained on the certificate of title for a boat acquires a new or additional security interest in the boat, the new or additional security interest is perfected at the time of its attachment under uniform commercial code regarding secured transactions.

(e) An unperfected security interest is subordinate to the rights of persons described in uniform commercial code regarding secured transactions.

(f) The rules of priority stated in uniform commercial code regarding secured transactions, and the other sections referred to in that section, shall, to the extent appropriate, apply to conflicting security interests in a boat of a type for which a certificate of title is required.

(g) The rules stated in uniform commercial code regarding secured transactions governing the rights and duties of secured parties and debtors and the requirements for, and effect of, disposition of a boat by a secured party, upon default shall, to the extent appropriate, govern the rights of secured parties and owners with respect to security interests in boats perfected under this section and Sections 5 and 6 of this act.

(h) If a boat is subject to a security interest when brought into this state, uniform commercial code regarding secured transactions state the rules which determine the validity and perfection of the security interest in this state.

Section 4. [Notification of Person Who Has Perfected Security Interest.] If the [department] receives information from another state that a boat that is titled in this state is being titled in the other state and the information does not show that a perfected security interest, as shown by the records of the [department], has been satisfied, the [department] shall notify the person who has perfected the security interest. The person shall pay the department the fee under Section 2(2) of this act for each notification.

Section 5. [Duties on Creation of Security Interest.]
(a) Subsections (b) to (d) apply if an owner creates a security interest in a boat of a type for which a certificate of title is required, unless the name and address of the secured party already appears on the certificate of title for the boat.

(b) At the time that the security interest is created, the owner shall complete, in the space provided on the certificate of title or on a separate form prescribed by the [department], an application to name the secured party on the certificate, showing the name and address of the secured party. The owner shall deliver the certificate, application and the fee required under Section 2(1) of this act to the secured party.

(c) Within [10] days after receipt, the secured party shall deliver the certificate, application and fee to the [department].

(d) Upon receipt of the certificate of title, application and fee, the [department] shall issue to the owner a new certificate containing the name and address of the new secured party. The [department] shall deliver to the new secured party and to the register of deeds for the county in which the debtor resides, memoranda, in a form prescribed by the [department], of the notation of the security interest upon the certificate. The [department] shall deliver to the secured party and to the register of deeds additional memoranda of any assignment, termination or release of the security interest.

(e) A register of deeds may maintain a file of all memoranda received from the [department] under subsection (d) of this section. A filing, however, is not required for a perfection, assignment or release of a security interest, which is effective upon compliance with Sections 3(c), 6 and 7 of this act.

Section 6. [Assignment of Security Interest.]

(a) A secured party may assign, absolutely or otherwise, the secured party's security interest in a boat to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the secured party as the holder of the security interest and the secured party remains liable for any obligations as a secured party until the assignee is named as secured party on the certificate of title.

(b) To perfect an assignment, the assignee may deliver to the [department] the certificate of title, the fee required under Section 2(3) of this act and an assignment by the secured party named in the certificate in the form the [department] prescribes. Upon receipt, the [department] shall name the assignee as a secured party on the certificate and issue a new certificate.

Section 7. [Release of Security Interest.]

(a) Within [one] month, or within [10] days following written demand by the debtor, after there is no outstanding obligation and no commitment to make advances, incur obligations or otherwise give value, secured by the security interest in a boat under any security agreement perfected under Sections 3, 5 and 6 of this act between the owner and the secured party, the secured party shall execute and deliver to the owner a release of the security interest in the form and manner prescribed by the [department] and a notice to the owner stating in no less than [10-point boldface] type the owner's obligation under subsection (b) of this section. If the secured party fails to execute and deliver the release and notice of obligation as required by this subsection, the secured party is liable to the owner for
Section 8. [Secured Party's and Owner's Duties.]
(a) A secured party named in a certificate of title shall, upon written request of the owner or of another secured party named on the certificate, disclose any pertinent information about the secured party's security agreement and the indebtedness secured by it.
(b) An owner shall promptly deliver the certificate of title to any secured party who is named on it or who has a security interest in the boat described in it under any applicable prior law of this state, upon receipt of a notice from the secured party that the secured party's security interest is to be assigned, extended or perfected.
(c) A secured party who fails to disclose information under subsection (a) of this section shall be liable to the owner for any loss caused by the failure to disclose.
(d) An owner who fails to deliver the certificate of title to a secured party requesting it under subsection (b) of this section shall be liable to the secured party for any loss caused to the secured party by the failure to deliver.

Section 9. [Method of Perfecting Exclusive.]
(a) Except as provided in subsection (b) of this section, the method provided in Sections 3 to 8 of this act of perfecting and giving notice of security interests subject to those sections is exclusive. Security interests subject to Sections 3 to 8 of this act are exempt from the provisions of law that otherwise require or relate to the filing of instruments creating or evidencing security interests.
(b) Subsection (a) does not affect the validity of a security interest perfected before [insert date].

Section 10. [Suspension or Revocation of Certificate of Title.]
(a) The [department] shall suspend or revoke a certificate of title for a boat if it finds any of the following:
(1) The certificate of title was fraudulently procured, erroneously issued or prohibited by law.
(2) The boat has been scrapped, dismantled or destroyed.
(3) A transfer of title is set aside by a court order or judgment.
(b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.
(c) When the [department] suspends or revokes a certificate of title, the owner or person in possession of the certificate shall, within [five] days after receiving notice of the suspension or revocation, mail or deliver the certificate to the [department].
(d) The [department] may seize and impound a certificate of title that is suspended or revoked.

COMMENTS: The Wisconsin enactment further amends existing statutes to indicate that the filing provisions of the Uniform Commercial Code regarding secured transactions are not necessary or effective to perfect a
security interest in property subject to the boat title provisions noted above as Sections 3, 5 and 6; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, specified filing provisions of that existing chapter apply to a security interest in that collateral created by that person as debtor.

Section 11. [Effective Date.] [Insert effective date.]
Service Corps Program Act

This act, based on 1991 Wisconsin legislation, establishes a service corps program within the state department of industry, labor and human relations. Under existing law, the state's conservation corps could hire persons between the ages of 18 through 25 to work on projects involving conservation activities or activities designed to help children, the disabled, elderly or low-income individuals. Under the provisions of the new enactment, the department may hire persons within the same age range, who live in counties with a minimum population of 500,000, for community service activities. A community service activity is defined as one that addresses a social, economic or health need of a county. Upon satisfactory completion of the project's term, a worker is entitled to receive an education voucher worth between $1,000 and $1,800.

The reader will want to note that the 1986 volume of Suggested State Legislation included the Youth Corps Act (pp. 60-64). The act, based on New Jersey legislation, was designed to recruit, train and employ young persons to supplement and assist in the revitalization of urban areas.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Service Corps Program Act.

Section 2. [Definitions.] As used in this act:
(1) "Community services activity" means an activity that addresses a social, health or economic need of the community.
(2) "Corps member" means a person enrolled in the service corps program under this act.
(3) "Financial support" includes in-kind services and materials.
(4) "In-kind services and materials" includes services such as training, supervision, administration, transportation, insurance liability coverage and similar services and materials such as supplies, fuel, tools, equipment, safety equipment and other materials for a project.
(5) "Local unit of government" means the governing body of any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or school district or the elected tribal governing body of a federally recognized American Indian tribe or band.
(6) "Nonprofit organization" has the meaning given in [see organization described in s. 501(c)(3) of the Internal Revenue Code which is exempt from federal income tax under s. 501(a) of said code].
(7) "Public assistance" means general relief under [insert citations for appropriate statutes related to relief of needy Indian persons, aid to families with dependent children, medical assistance, low-income energy assistance, and the food stamp program under U.S.C. 2011 to 2029].
(8) "State agency" has the meaning given in [insert citation for appropriate state statute].

Section 3. [Objectives.] The [department] shall develop guidelines for the service corps program designed to promote the objectives of:
(a) Employment of young adults. Providing employment for young men
and women in a county with a population of [500,000 or more].
(b) Personal development. Encouraging and developing work skills, discipline, cooperation, meaningful work experiences and training and educational opportunities for corps members.
(c) Community services. Addressing the social, health and economic needs of community within a county that has a population of [500,000 or more].

Section 4. [Application for Project Approval.]
(a) A state agency, local unit of government or private organization that operates in a county that has a population of [500,000 or more] may apply to the department for approval of a project consisting of community services activities.
(b) In order to qualify as an approved project, the project must provide employment opportunities, consist of community services activities and be located in a county that has a population of [500,000 or more]. If the sponsor is a nonprofit organization, the project must serve a valid public purpose in order to qualify as an approved project.
(c) In order to qualify as an approved project, the sponsor must submit in the application:
(1) A summary of the extent and value of all financial support it will provide for the project.
(2) A preliminary cost estimate including a summary of all anticipated costs resulting from implementation of the project.
(3) A preliminary work plan specifying the nature, scope and duration of the project.
(d) The [department] shall encourage local units of government to apply for the approval of projects and shall provide assistance and information to facilitate these applications.
(e) No project may be approved by the [department] if corps members will be used in any manner in connection with a work or labor dispute or if approval of the project would impair existing contracts or collective bargaining agreements with existing employees of the sponsor. No project may be approved by the [department] if corps members will be used to displace existing permanent employees of the sponsor, including any employees who have been temporarily laid-off by the sponsor.

Section 5. [Guidelines for Project Approval.] The [department] shall establish guidelines to be used in selecting projects for approval. These guidelines shall include:
(a) Employment opportunities. The extent to which the project will provide employment in meaningful labor intensive work activities for corps members.
(b) Community services. The extent to which the project will address the social, health or economic needs of the community that is to be served by the project.
(c) Implementation. The degree of difficulty in implementing the project and its compatibility with other projects in the area.
(d) Extent of sponsor's responsibility. The value of financial support to be provided by the sponsor.
(e) Public purpose and benefit. The extent to which the project will serve a valid public purpose and benefit a large segment of the public.

Section 6. [Project Funding.]
(a) Moneys appropriated under [insert funding source] may be used for
community services activities as authorized under those appropriations.
(b) A state agency may use moneys from any appropriation for that
agency to sponsor a project if implementation of the project is consistent
with any purpose for which the moneys are appropriated.

Section 7. [Administration and Matching Funds.]
(a) The [department] shall provide guidelines for administration of the
service corps program and the program shall be administered according to
those guidelines.
(b) The [department] shall set requirements as to the amount of financial
support that a sponsor must provide. The [department] may waive the
requirements for a project sponsored by a local unit of government or
state agency and may reduce the amount of matching funds required for a
project sponsored by a private organization.

Section 8. [Project Approval and Implementation; Corps Members
Supervision.]
(a) Projects shall be selected and approved by the [department] based on
guidelines established under Section 5 of this act and the requirements
established under Section 7(b) of this act.
(b) Before the approval of a project, the sponsor shall prepare and submit
to the [department] a responsibility agreement that incorporates the
complete project cost estimate and a detailed work plan and specifies in
detail the responsibilities of the sponsor and of the [department] with
respect to the project. The complete project cost estimate shall include a
summary of all anticipated costs resulting from the implementation of the
project. The detailed work plan shall specify the nature, scope and
duration of the project; the number of corps members required for project;
training, supervisory, administrative and other service requirements; supply,
fuel, tool, equipment, safety equipment and other material requirements;
time schedules; and other details relating to the implementation of the
project.
(c) A project is not authorized and may not be implemented until the
sponsor and the secretary sign the responsibility agreement.
(d) Except as provided in a responsibility agreement, the sponsor is
responsible for the implementation of and the administrative services for
an authorized project and the [department] is responsible for the
recruitment, supervision, control and training of corps members for the
project.
(e) The number of corps members serving on a project may not exceed
[three].

Section 9. [Education and Training.] The [department] shall facilitate
arrangements with local schools and institutions of higher education for
academic study by corps members during nonworking hours to upgrade
literacy skill, obtain equivalency diplomas or college degrees or enhance
employment skills. The [department] shall encourage the development of
training programs for corps members for use during periods when
circumstances do not permit work on a project.

Section 10. [Corps Members.] 
(a) The [department] may employ corps members.
(b) All corps members shall be employed outside the civil service.
(c) Corps members shall be paid at the prevailing federal minimum wage
or the applicable state minimum wage established under [insert citation for appropriate state statute], whichever is greater. Corps members shall receive their pay for the previous pay period on the last working day of the current pay period.

(d) A corps member is not eligible for unemployment compensation benefits by virtue of his or her employment in the service corps program. To the extent permitted by federal law, the service corps program shall be considered a work-relief and working-training program for the purpose of determining eligibility for benefits under [insert citation for appropriate statute].

(e) A corps member is eligible for worker's compensation benefits as provided under [insert citation for state worker's compensation law].

(f) A corps member is not an eligible employee for health care benefits or other benefits under [insert citation for public employee trust funds law].

(g) A person who is employed as a corps member for the specified term of a project and who receives a satisfactory employment evaluation upon termination of employment is entitled to an education voucher that is worth [at least $1,000 but not more than $1,800]. The [department] may authorize a partial education voucher for a person who is employed as a corps member and who receives a satisfactory employment evaluation upon termination of employment if the person is employed as a corps member for less than the specified term of the project and if the [department] determines that employment was terminated because of special circumstances beyond the control of the corps member or was terminated in order to enable the corps member to attend an institution of higher education, vocational institution or other training program or to enable the corps member to obtain other employment. The education voucher is valid for [three] years after the date of issuance for the payment of tuition and required program activity fees at any institution of higher education, as defined under [insert citation for appropriate statute], that accepts the voucher and the [department] shall authorize payment to the institution of face value of the voucher upon presentment.

Section 11. [Qualifications and Requirements for Corps Members.]

(a) In order to qualify for employment as a corps member, a person is required to have attained the age of [18 years but may not have attained the age of 26 years] at the time he or she accepts employment.

(b) In order to qualify for employment as a corps member, a person is required to be unemployed at the time he or she applies for employment. In order to establish that a person is unemployed at the time of application for employment, the [department] may require the person to be certified as unemployed by a local job service office.

(c) In order to qualify for employment as a corps member, a person is required to sign a statement of intention to serve in the service corps program for a [9-]month period. This statement does not obligate the [department] to provide employment for the member for that period.

(d) No training or skills are required in order to qualify for employment as a corps member.

(e) No physical examination is required in order to apply for employment as a corps member but the [department] shall require a physical examination before employment. The [department] may accept evidence of a physical examination conducted within [one] year before employment if the examining physician signs a form containing the information required
Section 12. [Selection of Corps Members.]
(a) The [department] shall establish standards for the selection of corps members from among those persons who are qualified and who seek employment.
(b) The [department] shall attempt to hire at least [50] percent of its corps members from among those persons who are receiving public assistance at the time of application for employment, who have received public assistance within [one] year of the time of application for employment or who are likely to be eligible for public assistance if they do not obtain employment.
(c) The [department] shall adopt a statewide affirmative action plan and shall comply with the requirements under [insert citation for state's regular affirmative action procedures]. The standards established under subsection (a) of this section shall be consistent with this plan.
(d) The [department] shall develop procedures for the hiring of corps members. The [department] shall use any appropriate local job service office in the area of a project to distribute applications, conduct interviews and evaluate applicants and make recommendations concerning the hiring of corps members. The [department] may use project sponsors who are sponsoring long-term projects to conduct interviews, evaluate applicants and make recommendations concerning the hiring of corps members.

Section 13. [Enrollment Period; Evaluation; Discipline.]
(a) The normal enrollment period for a corps member is from [six to nine months]. The [department] may authorize the employment of a corps member beyond the end of the normal enrollment period for a limited time, not to exceed [three] months, under special circumstances where continued employment is required in order to complete a project in progress.
(b) The [department] shall establish standards and procedures to evaluate the performance, for discipline and for termination of employment of corps members.

Section 14. [Guidelines.] In establishing the guidelines described under Sections 3, 5 and 7 of this act, the [department] shall request the assistance of the [current officer of the existing state conservation corps], the [executive directors] of not less than [two] nonprofit organizations that provide community development services in a county that has a population of [500,000 or more], the [district director of a vocational, technical and adult education district serving a county that has a population of [500,000 or more], a representative of the mayor of a city that has a population of [500,000 or more], and a [representative of private business nominated by the area private industry council under the job training partnership act, 29 U.S.C. 1501 to 1781, serving a county that has a population of [500,000 or more]]. The [department] need not promulgate as rules the guidelines described under Sections 3, 5 and 7 of this act.

Section 15. [Effective Date.] [Insert effective date.]
Omnibus Criminal Justice Reform Act (Statement)

This act was adopted by the state of Texas in 1991 to provide alternatives to incarceration for individuals convicted of certain crimes. In lieu of presenting this lengthy item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the major provisions of the act.

Readers interested in the full text of the act should consult Texas Ch. 10 (72nd Legislature, second called session), or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike P.O. Box 11910, Lexington, Kentucky, 40578-1910, (606) 231-1939, for a copy of the complete text.

Substance Abuse Felony Punishment

This act establishes a substance abuse felony punishment providing for direct court sentences to newly-created substance abuse felony punishment facilities, which have 12,000 beds. Courts may sentence offenders to a term of confinement of six months to one year in such facilities. The minimum term for DWI offenders is 30 days.

An offender is eligible for sentencing to a substance abuse treatment facility if a pre-sentence investigation determines chemical addiction contributed to the commission of the offense, and the court determines there are no community-based programs suitable for treating the offender. The court must determine, after considering the gravity and circumstances of the offense committed, that substance abuse felony punishment would best serve justice. Certain violent criminals, such as murderers, are ineligible for this type of punishment. Following incarceration in a substance abuse treatment facility, an offender may be sentenced to a probated sentence of two to 10 years in a state penitentiary.

Certain types of professionals must be hired to implement the program, including: alcohol and drug abuse counselors, certified social workers, licensed counselors, physicians or psychologists, with at least two years experience in chemical dependency counseling.

Special Needs Parole

The act also creates a special needs parole program. An offender may become eligible for parole at an earlier date if, on the basis of the offender's condition or a medical evaluation, he or she is designated by a parole panel as: elderly, handicapped, terminally ill, mentally ill or mentally retarded, or no longer a threat to public safety or to commit further offenses. For each offender, the state pardons and paroles division must prepare a special needs parole plan which ensures appropriate supervision, service provision, and placement. Persons designated as mentally ill or mentally retarded may be released only if the pardons and paroles division has prepared a special needs parole plan approved by the state council on offenders with mental impairments.

Performance Rewards

The act establishes a performance reward program which provides
financial assistance to local governments diverting offenders from the state prison system. The state board of criminal justice is authorized to develop, adopt and implement such a program to reward each county served by a local probation department that successfully diverts offenders from confinement. In developing the program, the board must consider relevant factors for each county, including the: personal bond utilization rate; pretrial diversion rate; deferred adjudication rate; probation rate; probation revocation rate; utilization rate of residential and nonresidential diversion programs; institutional division commitment rate; admission per index crimes rate; and frequency with which and extent to which the county does not use all admissions to which it is entitled under the allocation formula.

The minimum amount a county is entitled to receive under the act is $50,000 per fiscal year. Counties participating in the program must develop a budget schedule and other plans indicating how the funds are to be used. At least 25 percent of the funds must be used for substance abuse prevention and treatment programs.

Other Programs

Each year, prosecuting attorneys and district court judges are required each year to complete a course of instruction related to the diversion of offenders from confinement. Instruction must include information relating to case law, statutory law, and procedural rules relating to felony diversions in addition to available community and state resources for diversions.

The act also establishes the Texas Punishment Standards Commission, which is responsible for studying the punishments prescribed for criminal offenses, sentencing practices, costs related to prison construction, and the impact of prison overcrowding and lenient parole laws on sentences actually served by defendants convicted of criminal offenses. After completing the study, the commission is required to propose legislation to revise punishments and probation and parole laws and expand corrections facilities. Under the provisions of the act, the commission is scheduled to expire September 1, 1994.
Act to Extend Qualifying Deadlines for Elections

This act provides a one-week filing deadline extension in cases where an incumbent officeholder withdraws or dies on the day of the deadline or thereafter. The legislation, based on Tennessee's 1991 "anti-skullduggery" act, is designed to prevent incumbent candidates from filing for re-election to discourage potential opponents and then withdrawing from the race at the last moment in favor of hand-picked successors.

Other states have taken different approaches to this problem. Wisconsin, for example, prohibits a candidate from withdrawing once he or she has filed for an office. California law prohibits a candidate from withdrawing after the filing deadline closes and imposes an automatic five-day extension of the filing period if an incumbent fails to qualify by the deadline.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Act to Extend Qualifying Deadlines for Elections.

Section 2. [Extension of Qualifying Deadline.]
(a) Notwithstanding any provision of [insert citation for state statute applying to qualifying deadlines for elections] to the contrary, additional candidates may qualify for an office by qualifying as provided by law no later than [twelve o'clock (12:00) noon], prevailing time, on the [seventh] day after the original withdrawal deadline, if an incumbent of such office is a candidate for a primary or a nonpartisan general election and if such incumbent dies or properly withdraws on the last day for qualifying or prior to [twelve o'clock (12:00) noon], prevailing time, on the [seventh] day after the qualifying deadline.
(b) If an incumbent withdraws during the period specified in subsection (a) of this section, the provisions of this act shall operate to:
   (1) extend the period to qualify for the primary election of each political party holding a primary for that office;
   (2) extend the period during which a political party would have been authorized by law to nominate a candidate for the office by a means other than primary election, but did not do so prior to the withdrawal of the incumbent; and
   (3) extend the period a person may qualify for a nonpartisan general election.
(c) Any request to withdraw by such additional candidates shall be filed no later than [twelve o'clock (12:00) noon], prevailing time, on the [fourth] day after the new qualifying deadline.

Section 3. [Effective Date.] [Insert effective date.]
Federal mandates, with substantial requirements and costs to the states, have become increasingly common in recent years. During the 1980s and early 1990s, new regulations for domestic programs were established and federal preemptive power expanded while federal grant program funds decreased and the budget deficit grew. Many federal mandates concern Medicaid, particularly expansion of coverage to children and pregnant women. Other prominent subjects for mandates include education and transportation.

The Committee on Suggested State Legislation approved the inclusion of this note to provide state policymakers with an overview of recent federal provisions requiring state legislative or regulatory action or additional expenditures, as well as mandates preempting state policies. The note covers the activities of the first session (1991) of the 102nd U.S. Congress. The reader should take caution, however, in that this is an overview, and as such is not intended to serve as the primary source of information on all aspects -- technical and otherwise -- of the federal legislation and requirements.

The 1992 volume of Suggested State Legislation (SSL) included a similar note on enactments from the 101st Congress (1989-90). The Committee on Suggested State Legislation intends to continue to include mandate reviews in future volumes of SSL, not only as a mechanism for tracking major enactments, but also as an historical reference for the states.

The 102nd Congress

During the first session of the 102nd U.S. Congress, at least 10 enactments mandated state action. Each is listed here with a brief description of its impact upon state governments.

Banking and Finance

The Federal Deposit Insurance Corporation Improvement Act (HR 6, S 543, PL 102-242) prohibits state-insured banks from engaging in activities not permitted for federally-chartered banks. Generally, national banks cannot engage in non-banking activities. The Federal Deposit Insurance Corporation, however, may allow exceptions when it determines such activities pose no significant threat to the insurance fund. State banks have been granted five years to sell any prohibited equity investment, and may hold equity stakes in subsidiaries they controlled. Excess investments have to be divested over a three-year period.

All state-chartered banks, thrifts and credit unions that did not carry federal deposit insurance are to disclose that fact to existing and prospective customers along with the fact that depositors were not guaranteed the return of their money if the institution failed. The Act also gives the Federal Reserve Board authority to regulate certain non-banking offices of foreign banks, which are generally subject only to state regulation under existing law.

The measure requires regulators to take action within 90 days after an institution's capital falls below a critical level and allows regulators to choose action other than closure for 90-day periods if that would better
protect the deposit insurance fund. These provisions preempt contrary state laws.

Another measure, the Resolution Trust Corporation (RTC) Refinancing, Restructuring and Improvement Act (HR 3425, PL 102-233) deferred from July 1, 1991 to December 31, 1992 the effective date for mandatory state standards for licensed real estate appraisers. The act also broadens an existing affordable housing program to include single and multifamily housing held by thrift institutions that are open and operating under an RTC conservatorship. The program makes property available on a right-of-first-refusal basis to state housing authorities, among others.

Education

The National Literacy Act (HR 751, PL 102-73) authorizes $25 million in FY92 for the U.S. Secretary of Education to make grants to the states to provide training and coordination of federal, state and local literacy programs. The measure also allows a state block grant fund program to be used to help teachers and counselors identify elementary and secondary students who have reading difficulties. It requires the Education Secretary and each state to develop methods of evaluating the quality of literacy programs and to judge applicants for aid on that basis.

The measure also authorizes grants from the U.S. Department of Justice to correctional systems to start literacy programs. The measure prohibits parole from being granted to any person who refuses to participate in the program unless the state parole board waives the prohibition. It requires screening and testing of all inmates for functional literacy and disabilities affecting a prisoner's ability to read or write upon arrival at the prison.

The 1991 amendments to the 1973 Rehabilitation Act (HR 2127, PL 102-52) renewed state grants for vocational rehabilitation and amended certain criteria allowing states to continue to receive the assistance. The Individuals with Disabilities Education Act (HR 3053, PL 102-119) also amends pre-existing federal mandates concerning assistance to children who suffer from mental and physical disabilities.

Medicaid

The Medicaid Moratorium Act (HR 3595, PL 102-234) prohibits federal matching payments for funds raised through donations from health care providers beginning January 1, 1992. Exceptions include states with donation programs already in effect and funds provided by health care providers to retain state or local workers on-site to determine Medicaid patients' eligibility. Donations may not exceed 10 percent of the state's total administrative expenditures if states are to continue to draw federal matching funds in FY93.

In some states, providers put up money, which they later would recover along with federal matching funds. This act declares that federal matching funds may only be allocated to "bona fide provider-related donations." These are defined as donations that have no relationship to Medicaid payments made to specific providers or other providers in the same class. The U.S. Secretary of Health and Human Services (HHS) is required to issue regulations determining what constitutes bona fide donations.

To qualify for federal matching payments, funds raised through taxes on health care providers must be broad-based, meaning that they must be applied uniformly to all providers in a particular class. The classes are:
inpatient and outpatient hospital services; nursing home care, including care for the mentally retarded; physician services; home health services; outpatient prescription drugs; services provided by health maintenance organizations; and other classes designated by the HHS Secretary. Provider taxes may not account for more than 25 percent of a state's share of Medicaid costs until September 30, 1995, after which the cap is eliminated. States already over the cap in 1992 are allowed to continue at their 1992 percentage until September 30, 1992. The act also establishes a national disproportionate share payment limit equal to 12 percent of total Medicaid expenditures, with provisions treating those over and under 12 percent.

Transportation

The Intermodal Surface Transportation Efficiency Act of 1991 (HR 2950, PL 102-240) incorporates several requirements for states. Effective September 30, 1994, states will no longer be allowed to collect fees from motor carriers subject to the jurisdiction of the Interstate Commerce Commission (ICC). A one-year grant program will be established to offset the revenue loss to the states. Effective September 30, 1996, states must join the International Fuel Tax Agreement (IFTA) which uses a base state registration for the collection of fuel taxes and is overseen by the IFTA Board. The act also requires states to provide 20 percent of the authorized federal cost for each road, transit or safety project. A state share of 10 percent is provided for remaining interstate construction projects. States may transfer up to 50 percent of their highway system funds to mass transit, with an additional 50 percent available if the U.S. Secretary of Transportation certifies that such a transfer is in the public interest. While states are required to spend 20 percent of their surface transportation funds for safety and transportation enhancement programs, at least 62.5 percent of the remaining 80 percent is to be divided among urban areas of at least 200,000 residents and other less populated areas in amounts proportional to the population. The act also authorizes $3 billion for the bonus minimum allocation program designed to ensure that each state receives the highest possible return on its contributions into the Highway Trust Fund.

The act requires urban areas with 50,000 or more residents to establish metropolitan planning groups to coordinate various transportation modes. Each group must work with states to develop a transportation improvement program encompassing all federal transportation projects in the area. Plans must conform with a long-range transportation plan and state efforts to comply with the federal Clean Air Act. States must also develop plans for intermodal, or mixed transportation, systems.

The act provides incentive grant money to states that establish motorcycle helmet and seatbelt laws. States not participating in the grant program by FY94 would be required to spend 1.5 percent of their highway money on highway safety programs. States that fail to enact such laws by FY95 must spend 3 percent of their highway funds on safety programs.

The measure provides states up to 35 percent of the cost of building new public toll facilities on roads, bridges and tunnels other than on free segments of the existing Interstate system. Tolls set to expire may be kept open. The program allows states to levy tolls on vehicles traveling on congested routes during peak travel periods.
Several highway beautification measures are included. The act authorizes states to use federal aid funds to remove illegal roadway signs and justly compensate sign owners. The provision applies to signs located along Interstate and primary system roads designated as scenic byways by the states. Also, $3 million in authorized funds for the scenic byways program is available for billboard removal, in addition to a $30 million program to establish national scenic and historic homes. The act also authorizes $25 million for the states to plant trees along federal highways.

Each state must determine which trucks can use its roads, but the Transportation Secretary may challenge the state's assessment of its vehicle length and weight laws. States are permitted to restrict the use of longer-combination vehicles beyond federal limits.

The act repealed several older mandates, including one allowing states to require truck drivers to be certified and another requiring federal monitoring of speed compliance and mandating that states only submit data and certify that speed limits were being enforced. The new measure, however, did make permanent the states' ability to raise speed limits to 65 mph on certain non-Interstate highways built to Interstate standards.

Finally, the act suspended a federal study of state efforts to comply with a 1991 law requiring the suspension of drug offenders' driver's licenses.

The FY92 U.S. Department of Transportation Appropriations Act (HR 2942, PL 102-143) requires the Transportation Secretary to withhold 10 percent of the federal funds allocated to any state that does not enact and enforce a law requiring the revocation of the driver's license of any individual convicted of any violation of the federal Controlled Substances Act or of any other drug offense. Reinstatement of licenses must be delayed for at least six months after the applicant requests reinstatement.

Civil Rights

The Civil Rights Act of 1991 (S 1745, PL 102-166) extends the protections of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the 1973 Rehabilitation Act, and the Age Discrimination in Employment Act of 1967 to state employees who work for elected officials. These acts allow workers to sue in cases of intentional bias to recover compensatory and punitive damages in addition to attorneys' fees and back pay.

Environment

The reauthorization of the 1984 Striped Bass Conservation Act (HR 2387, PL 102-130) places a federal moratorium on fishing for striped bass in the coastal waters of states whose actions are inconsistent with federal guidelines designed to protect the striped bass.