Contents – This version of the 1994 SSL volume has been converted from a text file to PDF. The bills are arranged in the same order of appearance as in the volume. However, actual page numbers are excluded because the on-line data does not correspond with the number of pages in the book. To view a bill, scroll to the appropriate title or use the key word search component.

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Foreword

The Council of State Governments is pleased to bring you this volume of Suggested State Legislation, the 53rd 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 1993
Daniel M. Sprague
Executive Director
The Council of State Governments
Lexington, Kentucky
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 25 years ago in the introduction to the 28th volume of Suggested State Legislation.

For 53 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 53rd 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 Des Moines, Iowa, and again, in April 1993 in Lexington, Kentucky, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in July 1993 in Charleston, South Carolina, 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. 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.

Comment: It is suggested that some commission members be ex-offenders.
Health Insurance Rates and Refunds Act

The act presented below, which is based on 1990 Kentucky legislation, sets procedures for the approval of health insurance rate filings that contain increases. A filing that contains an increase in premium rates may not become effective until the state commissioner of insurance holds a hearing within 30 days after receiving the filing and issues an order of approval within 30 days of the conclusion of the hearing. In reviewing a filing, the commissioner must consider whether the benefits provided are reasonable in relation to the premium charged; the previous premium rates for the policies to which the filing applies; and the effect of the increase on policyholders. An insurer who receives the commissioner's approval for a rate increase may not file for another increase until at least six months from the effective date of the approved increase.

Portions of the act do not apply and premium rates are considered approved if the filing is accompanied by a loss ratio guarantee. As defined in the act, "loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration, for all combined durations. Benefits are deemed reasonable in relation to premium rates as long as the insurer complies with the terms of the guarantee.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Health Insurance Rates and Refunds Act.

Section 2. [Definitions.] As used in this act:
(1) "Commissioner" means the [state commissioner of insurance].
(2) "Loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration, for all combined durations.

Section 3. [Filing of Rates.] Each insurer issuing health insurance policies for delivery in this state shall, before use thereof, file with the [commissioner] its premium rates and classification of risks pertaining to such policies. The insurer shall adhere to its rates and classifications as filed with the [commissioner]. The insurer may change such filings from time to time as it deems proper.

Section 4. [Procedure for Approval of Rate Filing Containing Increase; Exception for Loss Ratio Guarantor].
(a) No filing under Section 3 of this act that contains an increase in premium rates shall become effective until the [commissioner] has issued an order approving the filing. The [commissioner] may hold a hearing within [thirty (30)] days after receiving a filing under this act containing a rate increase, and shall issue an order approving or disapproving the filing within [thirty (30)] days following the conclusion of the hearing.
(b) In approving or disapproving a filing under subsection (a) of this section, the [commissioner] shall consider:
   (1) Whether the benefits provided are reasonable in relation to the premium charged;
   (2) Previous premium rates for the policies to which the filing applies; and
   (3) The effect of the increase on policyholders.
(c) Not less than [ten (10)] days in advance of a hearing held under subsection (a) of this section, the [commissioner] shall notify the [state attorney general] in writing of the hearing and of the premium increase to be considered. The [state attorney general] shall be considered a party to such hearing if he chooses to participate.
(d) No insurer receiving the [commissioner]'s approval of a filing under this section shall submit a new filing containing a rate increase for any of the same policies until at least [six (6)] months have elapsed following the effective date of the proposed increase.
(e) At any time, the [commissioner], after a public hearing of which at least [thirty (30)] days' written notice has been given, may withdraw approval of rates previously approved under this section if he determines that the benefits are no longer reasonable in relation to the premium charged.
(f) Subsections (a), (b) and (c) of this section shall not apply and premium rates shall be deemed approved upon filing with the [state department of insurance] if the filing is accompanied by a loss ratio guarantee, and benefits shall be deemed reasonable in relation to the premium rates so long as the insurer complies with the terms of the loss ratio guarantee. This loss ratio guarantee shall be in writing and shall contain at least the following:
   (1) A recitation of the anticipated loss ratio standards contained in the original actuarial memorandum filed with the policy form when it was originally approved by the [commissioner];
   (2) A guarantee that the actual [state] loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the loss ratio standards referred to in paragraph (1) of this subsection. If the annual earned premium volume in [state] under the particular policy form is less than [one million (1,000,000)] dollars and therefore not actuarially credible, the loss ratio guarantee shall be based on the actual nationwide loss ratio for the policy form;
   (3) A guarantee that the actual [state] loss ratio results for each year at issue shall be independently audited at the insurer's expense. This audit shall be done in the second quarter of the next year and the audited results shall be reported to the [commissioner] not later than the date for filing the applicable accident and health policy experience exhibit;
   (4) A guarantee that affected [state] policyholders will be issued a proportional refund, based on premium paid, of the amount necessary to bring the actual aggregate loss ratio up to the anticipated loss ratio standards referred to in paragraph (1)
of this subsection. The refund shall be made to all [state] policyholders insured under the applicable policy form as of the last of the year at issue if the refund would equal [ten (10)] dollars or more per policy. The refund shall include statutory interest from the end of the year at issue until the date of payment. Payment shall be made during the third quarter of the next year; and

(5) A guarantee that refunds of less than [ten (10)] dollars will be aggregated by the insurer and paid to the [state department of insurance].

Section 5. [Effective Date.] [Insert effective date.]
Prioritization of Health Care Services Act

As part of a comprehensive health care reform effort, the state of Oregon enacted six pieces of legislation during 1989 and 1991. In 1989, the state enacted SB 27, which is described in more detail below: SB 935, which requires employers to cover all permanent employees working 17.5 hours per week or more and their dependents by July 1, 1995 or pay into a state insurance fund that offers coverage for those employees (small employers receive tax credits for voluntary coverage before July 1995); and SB 534, under which the state funds its medical insurance pool, offering health insurance to people who cannot buy conventional coverage because of pre-existing medical problems.

In 1991, Oregon enacted SB 1076, which made affordable insurance available to small businesses employing between three and 25 persons, and created a small carrier advisory committee to develop a basic benefit package which all small business insurance carriers must offer. Under SB 1077, the state established a health resources commission to control the excessive and redundant purchase and use of medical technologies, facilities and services by determining their contribution to the health of the general population. And under SB 44, a process was initiated to offer the standard benefit package to seniors and persons with disabilities who are on Medicaid.

The act presented below is based on Oregon's SB 27 (1989), which revises the state's health care policy by expanding Medicaid eligibility to include all residents under 100 percent of the federal poverty level, thus guaranteeing them a standard benefits package. As possible, the act requires that Medicaid deliver services through managed care plans to coordinate treatment and reduce costs.

The act has received a good deal of attention, in part for a provision that calls for a health services commission to review all health services and priority rank order them -- noting the comparative benefits of each service to the entire population to be served (see especially sections 9 and 12 of the draft presented here). Under the act, the commission is to report its recommendations to a joint legislative committee on health care. Because the health plan affects the state's Medicaid program, it requires a federal waiver from the U.S. Department of Health and Human Services before it can be implemented.

During the spring of 1991, the Oregon health services commission developed a list of 709 illnesses and treatments based on their cost-efficiency and importance to the public. These illnesses and treatments were assigned priorities to control medical costs and to extend Medicaid benefits to more citizens. Certain expensive and/or high-risk medical procedures would no longer be funded under Medicaid so that other services could be provided to all those under the federal poverty level. Implementation, however, was pending approval of the Medicaid waiver by the Health Care Financing Administration, the U.S. Office of Management and Budget, and the U.S. Secretary of Health and Human Services. In August 1992, the Bush administration rejected the waiver.
application.
In March 1993, however, the Clinton administration approved the waiver and permitted Oregon to proceed with the program's implementation. However, in doing so, it required the state to revise its ranking of services to eliminate the possibility of bias against disabled persons, in accordance with the Americans with Disabilities Act.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as Prioritization of Health Care Services Act.

Section 2. [Definitions.] As used in this act:
(1) "Category of aid" means old-age assistance, aid to the blind, aid to the disabled, aid to dependent children or Supplemental Security Income payment of the federal government.
(2) "Categorically needy" means, insofar as funds are available for the category, a person who is a resident of this state and who:
   (i) Is receiving a category of aid.
   (ii) Would be eligible for, but is not receiving a category of aid.
   (iii) Is in a medical facility and, if the person left such facility, would be eligible for a category of aid.
   (iv) Is under the age of [21] years and would be a dependent child under the program for aid to dependent children except for age and regular attendance in school or in a course of vocational or technical training.
   (v) Is a caretaker relative named in [insert citation for appropriate section of state code] who cares for a dependent child who would be a dependent child under the program for aid to dependent children except for age and regular attendance in school or in a course of vocational or technical training; or is the spouse of such caretaker relative and fulfills the requirements of [insert citation for appropriate section of state code].
   (vi) Is under the age of [21] years, is in a foster family home or licensed child-caring agency or institution under a purchase of care agreement and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.
   (vii) Is a spouse of an individual receiving a category of aid and who is living with the recipient of a category of aid, whose needs and income are taken into account in determining the cash needs of the recipient of a category of aid, and who is determined by the [state division of adult and family services] to be essential to the well-being of the recipient of a category of aid.
   (viii) Is a caretaker relative named in [insert citation for appropriate section of state code] who cares for a dependent child receiving aid to dependent children, or a child who would be eligible to receive aid to dependent children except for
duration of residence requirement; or is the spouse of such caretaker relative and fulfills the requirements of [insert citation for appropriate section of state code].

(i) Is under the age of [21] years, is in a youth care center and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(ii) Is under the age of [21] years and is in an intermediate care facility which includes institutions for the mentally retarded; or is under the age of [22] years and is in a psychiatric hospital.

(iii) Is under the age of [21] years and is in an independent living situation with all or part of the maintenance cost paid by [state division of children's services].

(iv) Is a member of a family which received aid to dependent children in at least [three of the six] months immediately preceding the month in which such family became ineligible for such assistance because of increased hours or increased income from such employment. As long as the member of the family is employed, such families will continue to be eligible for medical assistance for a period of [four] calendar months beginning with the month in which such family became ineligible for assistance because of increased hours of employment or increased earnings.

(v) Was receiving Title XIX benefits in the month of [December 1973], and for that reason met all conditions of eligibility including financial eligibility for aid to the disabled or blind by criteria for blindness or disability and financial criteria established by the state of [state] in effect on or before [December 1973], has been determined to meet, and for subsequent months met all eligibility requirements.

(vi) Is an essential spouse of an individual described in subparagraph (xiii) of this paragraph.

(vii) Is an adopted person under [21] years of age for whom a public agency is assuming financial responsibility in whole or in part.

(viii) Is an individual or is a member of a group who is required by federal law to be included in the state's medical assistance program in order for that program to qualify for federal funds.

(ix) Is an individual or member of a group who, subject to the rules of the [state division of adult and family services] and within available funds, may optionally be included in the state's medical assistance program under federal law and regulations concerning the availability of federal funds for the expenses of that individual group.

(x) Is a pregnant woman who would be eligible for aid to families with dependent children, including such aid based on the unemployment of a parent, whether or not the woman is eligible for cash assistance.

(xi) Would be eligible for aid to families with dependent children pursuant to 42 U.S.C. 607 based upon the unemployment of a parent, whether or not the state provides cash assistance.

(xii) Except as otherwise provided in this section and to the extent of available funds, is a pregnant woman or child for whom federal financial participation is available under Title XIX or
the federal Social Security Act.

(xxix) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the federal Social Security Act, but whose family income is less than the federal poverty level.

(3) "Essential spouse” means the husband or wife of a recipient of a category of aid who is needy, is living with the recipient and provides a service that otherwise would have to be provided by some other means.

(4) "Health services” means at least so much of each of the following as are approved and funded by the legislature:
   (i) Provider services and supplies;
   (ii) Outpatient services;
   (iii) Inpatient hospital services; and
   (iv) Health promotions and disease prevention services.

(5) "Income” means income as defined in [insert citation for appropriate section of state code].

(6) "Medical assistance” means so much of the following medical and remedial care and services as may be prescribed by the [state division of adult and family services] according to the standards established pursuant to [insert citation for appropriate section of state code], including payments made for services provided under an insurance or other contractual arrangement and money paid directly to the recipient for the purchase of medical care:
   (i) Inpatient hospital services, other than services in an institution for mental diseases;
   (ii) Outpatient hospital services;
   (iii) Other laboratory and X-ray services;
   (iv) Skilled nursing facility services, other than services in an institution for mental diseases;
   (v) Physicians’ services, whether furnished in the office, the patient’s home, a hospital, a skilled nursing facility or elsewhere;
   (vi) Medical care, or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
   (vii) Home health care services;
   (viii) Private nursing services;
   (ix) Clinic services;
   (x) Dental services;
   (xi) Physical therapy and related services;
   (xii) Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
   (xiii) Other diagnostic, screening, preventive and rehabilitative services;
   (xiv) Inpatient hospital services, skilled nursing facility services and intermediate care facility services for individuals [65] years of age or over in an institution for mental diseases;
   (xv) Any other medical care, and any other type of remedial care recognized under state law;
   (xvi) periodic screening and diagnosis of individuals under the age of [21] years to ascertain their physical or mental defects, and such health care, treatment and other measures to correct or ameliorate defects and chronic conditions discovered thereby;
(xvii) Inpatient hospital services for individuals under [22] years of age in an institution for mental diseases; and
(xviii) Hospice services.
(7) "Medical assistance" includes any care or services for any individual who is a patient in a medical institution or any care of services for any individual who has attained [65] years of age or is under [22] years of age, and who is a patient in a private or public institution for mental diseases. "Medical assistance" includes "health services" as defined in paragraph (4) of this section. "Medical assistance" does not include care or services for an inmate in a nonmedical public institution.
(8) "Medically needy" means a person who is a resident of this state and who is considered eligible under federal law for medically needy assistance.
(9) "Resources" means resources as defined in [insert citation for appropriate section of state code].

Section 3. [Medically Needy Program.]
(a) The [state division of adult and family services] shall establish by rule a medically needy program providing services to which the categorically eligible are entitled.
(b) These services shall be provided to persons who meet categorical eligibility requirements, other than requirements relating to income limitations. Maximum income eligibility for services through the medically needy program shall be set at up to [133 1/3] percent of the payment standard for aid to dependent children eligibility, the percent to be set by the [state division of adult and family services] in consultation with the legislature.

Section 4. [Determination of Need and Amount of Aid.]
(a) The need for and the amount of medical assistance to be made available for each eligible group of recipients of medical assistance shall be determined, in accordance with the rules of the [state division of adult and family services], taking into account:
   (1) The requirements and needs of the person, the spouse and other dependents;
   (2) The income, resources and maintenance available to the person;
   (3) The responsibility of the spouse, and, with respect to a person who is blind, or is permanently and totally disabled, or is under the age of [21] years, the responsibility of the parents;
   (4) The conditions existing in each case; and
   (5) Except for eligible groups of aged, blind and disabled, or children under [insert citation for appropriate section of state code], the report of the [state health services commission], established under Section 8 of this act, and as funded by the legislature.
(b) Such amounts of income and resources may be disregarded as the [state division of adult and family services] may prescribe by rules, except that the [state division of adult and family services] may not require any needy person over [65] years of
age, as a condition of entering or remaining in a hospital, nursing home or other congregate care facility, to sell any real property normally used as such person's home. Any rule or regulation of the [state division of adult and family services] inconsistent with this section is to that extent invalid. The amounts to be disregarded shall be within the limits required or permitted by federal law, rules or order applicable thereto.

(c) In the determination of the amount of medical assistance available to a medically needy person, all income and resources available to the person in excess of the amounts prescribed in [insert citation for appropriate section of state code], within limits prescribed by the [state division of adult and family services], shall be applied first to costs of needed medical and remedial care and services not available under the medical assistance program and then to the costs of benefits under the medical assistance program.

Section 5. [Standards for Medical Assistance; Effect of Payment; Extent of Medical Benefits; Reimbursement of Rural Hospitals.]

(a) With respect to medical and remedial care and services to be provided in medical assistance during any period, and within the limits of funds available therefor, the [state division of adult and family services] shall determine, subject to such revisions as it may make from time to time and with respect to the "health services" defined in 414.705, subject to legislative funding in response to the report of the [state health services commission]:

(1) The types and extent of medical and remedial care and services to be provided to each eligible group of recipients of medical assistance.

(2) Standards to be observed in the provision of medical and remedial care and services.

(3) The number of days of medical and remedial care and services toward the cost of which public assistance funds will be expended in the care of any person.

(4) Reasonable fees, charges and daily rates to which public assistance funds will be applied toward meeting the costs of providing medical and remedial care and services to an applicant or recipient.

(5) Reasonable fees for professional medical and dental services which may be based on usual and customary fees in the locality for similar services.

(b) The types and extent of medical and remedial care and services and the amounts to be paid in meeting the costs thereof, as determined and fixed by the [state division of adult and family services] and within the limits of funds available therefor, shall be the total available for medical assistance and payments for such medical assistance shall be the total amounts from public assistance funds available to providers of medical and remedial care and services in meeting the costs thereof.

(c) Except for payments under a cost-sharing plan, payments made by the [state division for adult and family services] for medical assistance shall constitute payment in full for all medical and remedial care and services for which such payments of medical assistance were made.
(d) Medical benefits, standards and limits established pursuant to paragraphs (1), (2), and (3) of subsection (a) of this section for the eligible medically needy may be less but shall not exceed medical benefits, standards and limits established for the eligible categorically needy, except that, in the case of a research and demonstration project entered into under [insert citation for appropriate section of state code], medical benefits, standards and limits for the eligible medically needy may exceed those established for specific eligible groups of the categorically needy.

(e) Notwithstanding the provisions of this section, the [state division of adult and family services] shall cause [Type A] hospitals, as defined in [insert citation for appropriate section of state code], identified by the [state office of rural health] as rural hospitals to be reimbursed fully for the cost of covered services based on the Medicare determination of reasonable cost as derived from the Hospital and Hospital Health Care Complex Cost Report, referred to as the Medicare Report, provided by the hospital to a person entitled to receive medical assistance.

Section 6. [[State] Health Care Cost Containment Advisory System; Members; Duties; Staff.]

(a) There is created a [[state] health care cost containment advisory system committee]. The [advisory committee] shall be appointed by the governor and composed of:

(1) [One (1)] representative from the [state medical professional review organization];
(2) [One (1)] representative of the [state health division];
(3) [One (1)] member of the public with professional experience in [health care economics];
(4) [One (1)] representative of the [state division of adult and family services];
(5) [One (1)] member of the private sector with professional experience in capitated health care;
(6) [Two (2)] consumer representatives;
(7) [One (1)] representative from a [health maintenance organization] under contract with the [state division of adult and family services];
(8) [Two (2)] representatives from different physician care organizations under contract with the [state division of adult and family services];
(9) [One (1)] registered nurse licensed by the [state board of nursing] and practicing in a [managed care organization];
(10) [One (1)] mental health practitioner licensed by the state to provide mental health services.

(b) The [advisory committee] shall be staffed by the office of the [state director of human resources].

(c) The [advisory committee] shall evaluate and monitor the design and implementation of the [state health care cost containment system]. Such evaluation and monitoring shall include, but not be limited to, the following aspects of the system:

(1) Contracting standards, criteria, procedures and processes;
(2) Client enrollment procedures;
Administrative and fiscal impacts of the system on [state division of adult and family services] and contractors;

(4) The impact of the system on reasonable access to and quality of care for [state division of adult and family services] beneficiaries; and

(5) Overall fiscal ramifications of the system to the state.

(d) The [advisory committee] shall serve as a consulting body to the [state division of adult and family services] regarding future changes in the system.

(e) The [advisory committee] shall report on a periodic basis to the [joint legislative committee on ways and means].

Section 7. [Services Available to Eligible Persons.] The following services are available to persons eligible for services under this act, but such services are not subject to Section 9(a) of this act:

(1) Nursing facilities and home- and community-based waivered services funded through the [state division for senior and disabled services];

(2) Medical assistance for the aged, the blind and the disabled or medical care provided to children under [insert citation for appropriate section of state code];

(3) Institutional, home- and community-based waivered services or [community mental health program] care for the mentally retarded or developmentally disturbed and for the treatment of alcohol- and drug-dependent persons; and

(4) Services to children who are wards of the [state division of children's services] by order of the juvenile court and services or children and families for health care or mental health care through the [division].

Section 8. [[State] Health Services Commission; Confirmation; Qualifications; Terms; Expenses; Subcommittees.]

(a) The [state health services commission] is established, consisting of [11] members appointed by the governor and confirmed by the state Senate. [Five (5)] members shall be physicians licensed to practice medicine in this state who have clinical expertise in the [general areas of obstetrics, prenatal, pediatrics, adult medicine, geriatrics of public health]. [One (1)] of the physicians shall be a [Doctor of Osteopathy]. Other members shall include a [public health nurse, a social services worker and [four (4)] consumers of health care]. In making the appointments, the [governor] shall consult with professional and other interested organizations.

(b) Members of the [state health services commission] shall serve for a term of [four (4)] years, at the pleasure of the governor.

(c) Members shall receive no compensation for their services, but subject to any applicable state law, shall be allowed actual and necessary travel expenses incurred in the performance of their duties.

(d) The [commission] may establish such subcommittees of its members and other medical, economic or health services advisers as it determines to be necessary to assist the [commission] in
Section 9. [Public Hearings; Public Involvement; Biennial Reports on Health Services Priorities; Funding.]
(a) The [state health services commission] shall consult with the [joint legislative committee on health care] and conduct public hearings prior to making the report described in subsection (c) of this section. The [commission] shall solicit testimony and information from advocates for seniors; handicapped persons; mental health services consumers; low-income [state residents]; and providers of health care, including but not limited to physicians licensed to practice medicine, dentists, oral surgeons, chiropractors, naturopaths, hospitals, clinics, pharmacists, nurses and allied health professionals.
(b) In conjunction with the [joint legislative committee on health care], the commission shall actively solicit public involvement in a community meeting process to build a consensus on the values to be used to guide health resource allocation decisions.
(c) The [commission] shall report to the governor a list of health services ranked by priority, from the most important to the least important, representing the comparative benefits of each service to the entire population to be served. The recommendation shall be accompanied by a report of an independent actuary retained for the [commission] to determine rates necessary to cover the costs of the services.
(d) The [commission] shall make its report by July 1 of the year preceding each regular session of the legislature and shall submit a copy of its report on the [joint legislative committee on health care].
(e) The [joint legislative committee on health care] shall determine whether or not to recommend funding of the [state health services commission]'s report to the legislature and shall advise the governor of its recommendations. After considering the recommendations of the [joint legislative committee on health care], the legislature shall fund the report to the extent that funds are available to do so.

Section 10. [Prepaid Managed Care Health Services Contracts; Case Management Systems; Expenditure Limitation; State Supervision; Notice to Patient.] Upon meeting the requirements of [insert citation for appropriate section of state code]:
(1) Pursuant to rules adopted by the [state division of adult and family services], the [state division of adult and family services] shall execute prepaid managed care health services contracts for the health services funded pursuant to [insert citation for appropriate section of state code]. The contract must require that all services are provided to the extent and scope of the [state health services commission’s] report for each service provided under the contract. Such contracts are not subject to [insert citation for appropriate section of state code]. It is the intent of this act that the state move toward utilizing full service managed care health service providers for providing health services under this act. The [state division of
adult and family services] shall solicit qualified providers or plans to be reimbursed at rates which cover the costs of providing the covered services. Such contracts may be with hospitals and medical organizations, health maintenance organizations, managed health care plans and any other qualified public or private entities. The [state division of adult and family services] shall not discriminate against any contractors which offer services within their providers' lawful scopes of practice.

(2) The initial contract period shall begin on or after [insert date].

(3) Except for special circumstances recognized in rules of the [state division of adult and family services], all subsequent contracts shall be for [one- (1-)]year periods starting on [insert date].

(4) In the event that there is an insufficient number of qualified entities to provide for prepaid managed health services contracts in certain areas of the state, the [state division of adult and family services] may institute a fee-for-service cash management system where possible or may continue a fee-for-service payment system for those areas that pay for the same services provided under the health services contracts for persons eligible for health services under this act. In addition, the [state division of adult and family services] may make other special arrangements as necessary to increase the interest of providers in participation in the state's managed care system, including but not limited to the provision of stop-loss insurance for providers wishing to limit the amount of risk they wish to underwrite.

(5) As provided in paragraphs (1) and (4) of this section, the aggregate expenditures by the [state division of adult and family services] for health services provided to [the implementation of this act] shall not exceed the total dollars appropriated for health services under [the implementation of this act].

(6) Actions taken by providers, potential providers, contractors and bidders in specific accordance with this act in forming consortiums or in otherwise entering into contracts to provide health care services shall be performed pursuant to state supervision and shall be considered to be conducted at the direction of this state, shall be considered to be lawful trade practices and shall not be considered to be the transaction of insurance for purposes of the [state insurance code].

(7) Health care providers contracting to provide services under this act shall advise a patient of any service, treatment or test that is medically necessary but not covered under the contract if an ordinarily careful practitioner in the same or similar community would do so under the same or similar services.

Section 11. [Subcommittee on Mental Health Care and Chemical Dependency.] The [commission] shall establish a [subcommittee on mental health care and chemical dependency] to assist the [commission] in determining priorities for mental health care and chemical dependency that shall be reported to the [next session of the legislature]. The [subcommittee] shall include mental
health and chemical dependency professionals who provide inpatient and outpatient mental health and chemical dependency care.

Section 12. [Adjustment of Reimbursement in Event of Insufficient Resources; Approval of Legislature; Notice to Providers.]
(a) If insufficient resources are available during a contract period:
   (1) The population of eligible person determined by law shall not be reduced.
   (2) The reimbursement rate for providers and plans established under the contractual agreement shall not be reduced.
(b) In the circumstances described in subsection (a) of this section, reimbursement shall be adjusted by reducing the health services for the eligible population by eliminating services in the order of priority recommended by the [state health services commission], starting with the least important and progressing toward the most important.
(c) The [state division of adult and family services] shall obtain the approval of the legislature before instituting the reductions. In addition, providers contracting to provide health services under this act must be notified at least [two (2)] weeks prior to any legislative consideration of such reductions. Any reductions made under this section shall take effect no sooner than [60] days following final legislative action approving the reductions.

Section 13. [Liability of Health Care Providers and Plans.] Any health care provider or plan contracting to provide services to the eligible population under this act shall not be subject to criminal prosecution, civil liability or professional disciplinary action for failing to provide a service which the legislature has not funded or has eliminated from its funding pursuant to Section 12 of this act.

Section 14. [Authority of Legislature to Authorize Services for Other Persons.]
Nothing in this act is intended to limit the authority of the legislature to authorize services for persons whose income exceeds [100] percent of the federal poverty level for whom federal medical assistance matching funds are available if state funds are available therefor.

Section 15. [Effective Date.] [Insert effective date.]

COMMENTS: The Oregon enactment on which this draft is based incorporated other sections, including one restating the state's policy on persons who do not have access to health services: "In order to provide access to health services for those in need, to contain rising health care costs through appropriate incentives to providers, payers and consumers, to reduce or eliminate cost shifting and to promote the stability of the health services delivery system and the health and well-being of all Oregonians,
it is the policy of the State of Oregon to provide medical assistance to those in need whose family income is below the federal poverty level and who are eligible for services under the programs authorized by this chapter" (ORS 414.036). Further, the legislation expresses the need for state-wide programs for the medical care of persons with hemophilia and with cystic fibrosis.
State Health Program Act

This act, based on 1989 Maine legislation, extends eligibility for Medicaid-type services to all adults with incomes of 95 percent or less of the federal poverty level and to children under the age of 18 who are not otherwise covered by the state's existing Medicaid program and whose families have incomes at 125 percent or less of the poverty level. Eligibility for coverage is determined using a formula for countable household income.

Suggested Legislation

*(Title, enacting clause, etc.)*

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

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

1. "Applicable premium" means the amount that a person is required to pay to participate in the [state health program], as determined under Section 6 of this act.
2. "Committee" means the [state health program advisory committee] created in Section 5 of this act.
3. "Department" means the [state department of human services].
5. "Household income" means the income of a person or group of persons determined according to rules adopted by the [department] in accordance with Section 10, provided that the rules do not include, in the definition of a household, persons other than those who reside together and among whom there is legal responsibility for support.
6. "Program" means the [state health program] described in Section 3 of this act.

Section 3. [Program Created; Intent.] The [state health program] is created to expand access of [state] citizens to basic health care services. The [state health program] is intended to meet, to the extent of available funds, the health care needs of uninsured [state] residents with the highest priority being those needs of residents who are financially needy and under the age of [18].

Section 4. [Eligibility.]

(a) Except as provided in Section 6 and in subsection (b) of this section, the following persons are eligible to participate in the program and to receive benefits in accordance with this section:

1. Any person who is under [18] years of age and whose household income is [125] percent or less of the federal poverty level;
2. Any person who is age [18] or older and whose household income is [95] percent or less of the federal poverty level; and
(3) Beginning [insert date], any person who is age [18] or older and whose household income is [100] percent or less of the federal poverty level.

(b) Notwithstanding subsection (a), the following persons shall not be eligible to participate in the program:

(1) Persons eligible for the full scope of [state] medical assistance program benefits;

(2) Persons who are confined to state correctional facilities, county jails or local or county detention centers or who reside in institutions operated by the [state department of mental health and mental retardation]; and

(3) Persons who fail to meet other criteria established by this section.

Section 5. [State Health Program Advisory Committee.] There is created the [state health program advisory committee].

(a) The [committee] shall be composed of [12] members. The governor shall appoint the following members: [one (1)] representative of hospitals, to be appointed taking into account the recommendation of the [state] Hospital Association; [one (1)] representative of the providers of mental health, substance abuse or chiropractic services, to be appointed taking into account the recommendations of statewide organizations representing those providers; [one (1)] representative of physicians, to be appointed taking into account a joint recommendation of the [state osteopathic association] and the [state medical association]; [one (1)] health policy researcher, to be appointed taking into account the recommendations of the [state public health association]; and [one (1)] representative of the nursing profession, taking into account the recommendation of the [state nurses’ association and the [state nursing organization], a coalition of nursing organizations.]

The following members shall be appointed jointly by the [Senate president] and [speaker of the House]: [two (2)] representatives of health care consumers; [one (1)] representative of [special select commission on access to health care]; and [one (1)] representative of community health centers, to be appointed taking into account the recommendation of the [state ambulatory health care coalition]. The [Senate president] shall appoint [one (1)] senator and the [speaker of the House] shall appoint [one (1)] member of the House to serve on the [committee]. The [state superintendent of insurance] or the [superintendent]'s designee shall also serve on the [committee].

(b) No person may be appointed as a representative of consumers of health care if that person has within [12] months preceding the appointment been engaged for compensation in the provision of health care, or the provision of health research, instruction or insurance. Appointments shall be made no later than [insert date].

(c) Except for the initial appointees, members shall serve [two (2)]-year terms. The governor shall appoint [1/2] of the initial group of members to serve a [one (1)]-year term and [1/2] to serve a [two (2)]-year term. The [Senate president] and the [House speaker] shall appoint [1/2] of the initial group of
members to serve a [one (1)]-year term and [1/2] to serve [two (2)]-year terms.
(d) The [committee] has the following powers and duties.
(1) The [committee] shall advise the [department] on an ongoing basis with respect to the development and administration of the program, including reasonable opportunity for review and comment of proposed rules by the [committee] prior to the [department]'s issuance of public notice of rulemaking.
(2) The [committee] may accept grants to be used for the [committee]'s purposes under this section.
(e) The [committee] may study issues relating to implementation of the program as it deems advisable. The [committee] shall study what asset limits, if any, are appropriate to determine eligibility for benefits under the program. The study of asset limits shall include consideration of:
(1) The treatment of assets in other federal and state medical programs serving the population with greater income than the Medicaid program, including the Hill-Burton program of hospital community care described in United States code, Title 42, Chapter 6-A, Subchapter IV; the Medicaid expansion under the United State Omnibus Budget Reconciliation Act of 1986, Public Law 99-509; the United States Family Support Act of 1988, Public Law 100-482; and the treatment of assets under the charity care income guidelines adopted pursuant to [insert citation for appropriate section];
(2) The needs of working and nonworking participants for funds to pay transportation and other work-related costs, non-covered medical costs and other emergencies and reasonable incentives for savings; and
(3) Program administrative costs.
The [committee] shall recommend a policy on assets to the [department] for review.
(f) The [chair of the legislative council] shall call the first meeting of the [committee] no later than [30] days after all members of the [committee] have been appointed. At the first meeting and yearly thereafter, members of the [committee] shall elect a chair from among the [committee] members. Thereafter, the [committee] shall meet at the call of the chair of the [committee] or at the call of at least [1/4] of the members of the [committee]. A majority of the [committee] members shall constitute a quorum for the purpose of conducting business of the [committee] and exercising all the powers of the [committee]. A vote of the majority of the members present shall be sufficient for all actions of the [committee].
(g) Each member of the [committee] shall be compensated according to the provisions of [insert citation for appropriate section of state code].
(h) The [department] shall supply staff and other assistance to the [committee].

Section 6. [Program Development and Administration.] The [department] shall develop and administer the program with advice from the [committee] and in accordance with this section.
(a) The [department], by rule adopted in accordance with Section 10 of this act, shall determine the scope and amount of medical
assistance to be provided to participants in the program provided that the rules meet the following criteria.

(1) The scope and amount of medical assistance shall be the same as the medical assistance received by persons eligible for Medicaid, except that pregnancy-related services and nursing home benefits covered under Medicaid shall not be offered as services under the program.

(2) Notwithstanding the requirements of this section, if the [department] determines that available funds are inadequate to continue to provide the full scope and amount of medical assistance, the [department], in accordance with subsection (g) of this section, may restrict the scope and amount of medical assistance to be provided to participants in the program by adoption of rules in accordance with Section 10 of this act.

(3) The medical assistance to be provided shall not require participants with household income below [100] percent of the federal poverty level to make out-of-pocket expenditures, such as requiring deductibles or co-payments for any service covered, except to the extent out-of-pocket expenditures are required under state Medicaid rules. The [department] may study, in consultation with the [committee], whether to require co-payments from participants with household income above [100] percent of the federal poverty level. Co-payments may be required of those persons only to the extent that the study finds that implementation of the proposed co-payment will not significantly reduce access to necessary services, and will achieve appropriate reduction in the utilization of services and the cost of the program.

(b) The [department] shall develop plans to ensure appropriate utilization of services. The [department]'s consideration shall include, but not be limited to, pre-admission screening, managed care, use of preferred providers and 2nd surgical opinions.

(c) The [department] shall adopt rules in accordance with Section 10, setting forth a sliding scale of premiums to be paid by persons eligible for the program provided that the rules shall meet the following criteria.

(1) The premium for a household whose household income does not exceed [100] percent of the federal poverty level shall be zero.

(2) The premium for a household whose household income exceeds [100] percent of the federal poverty level shall not exceed [3] percent of that household income.

The [department] may, by rule, reduce or waive premiums for persons below the age of [18] years whose household income does not exceed [125] percent of the federal poverty level.

(d) The [department] shall adopt rules in accordance with Section 10 to establish guidelines on:

(1) Provider eligibility for reimbursement for services under this act, provided that the criteria for providers shall be no more stringent than those established in the state Medicaid rules; and

(2) Service provider fees, provided that the fees shall be no less than service provider fees established in the Medicaid fee schedule for the applicable program year.

(e) In each year of operation, the program's maintenance,
reduction or expansion shall be determined by the availability of funds. The [department], in accordance with subsections (f) and (g) of this section, shall adjust program criteria in order to keep costs within yearly appropriations.

The [department] shall make annual recommendations to the governor and the governor shall make annual recommendations to the legislature to maintain, reduce or expand the program after consideration of expenditures and available projected revenues. In addition, the [department] shall make an annual report to the governor and the legislature regarding experience of the program.

(f) Notwithstanding Section 4 of thisact, provided funds are available, the [department] may, by rule, provide for coverage of persons whose household income exceeds the income limits set forth in Section 4 of thisact, in accordance with statutory provisions.

(g) Notwithstanding Section 4 of thisact, if at any time during the fiscal year the [department] determines that the funds available for the program are inadequate to continue the program pursuant to the requirements of Section 4 of thisact, the [department], in accordance with this section and Section 10 of this act, may take action to limit the program for the full or partial fiscal year for which the [department] determines funding is inadequate. The priority of making reductions shall be as follows:

1. With regard to new applicants only, the income limit for persons aged 18 or older may be reduced to such lower percentage of federal poverty level as the [department] determines appropriate;
2. With regard to new applicants only, the income limits for all otherwise eligible persons may be reduced to such lower percentages of the federal poverty level as the [department] determines appropriate;
3. With regard to all otherwise eligible persons, the [department] may restrict the scope and amount of medical assistance to be provided;
4. With regard to new applicants only, no persons aged 18 or older may be found eligible for the program; and
5. No new applicants may be found eligible for the program.

(Sixty (60)] days prior to the effective date of any proposed reduction of benefits or eligibility recommended pursuant to this subsection, the [department] shall provide copies of the proposed rule together with a concise statement of the principal reason for the rule, including the balance remaining in the account for the program, an analysis of the proposed rule and the savings anticipated by the adoption of the proposed rule to the governor and to each member of the joint standing committee of the legislature having jurisdiction over insurance matters and appropriations matters.

(h) The [department] shall maximize the use of federal funds by establishing procedures to identify participants in the program who become eligible for Medicaid. Any person eligible for benefits under Medicaid or the United States Family Support Act of 1988, Public Law 100-482, is ineligible to receive those benefits under the program. This subsection authorizes the
[department] to take advantage of any Medicaid options that become available to cover persons eligible for the program.
(i) The [department] shall make available applications for participation in the program and shall assist persons in completing them. The [department] shall review those forms and notify person of eligibility and the amount of premium due within [45] days of receipt of the form.

The [department] shall treat any application for aid to families with dependent children or for any medical assistance program administered by the [department] as an application for the program. If the applicant is not eligible for Medicaid, the [department] shall review the application for eligibility for the program. Prior to termination, the [department] shall review and determine eligibility for the program of any person whose eligibility for Medicaid or any other medical services program is being terminated.

(j) The [department] shall implement this act and commence coverage of eligible person in the program no later than [insert date].

Section 7. [Use of Available Health Coverage.] To receive any benefits under the program, a person who is eligible to be covered for a medical plan for which an employer contributes to the cost shall, unless exempted in this act, enroll in the employer-supported plan.
(a) If the person is required to contribute toward the cost of the employer-supported plan, the person shall pay only the amount the person would be required to pay as an applicable premium to be covered by the program. The [department] shall promptly pay the remainder of the person's required contribution to the employer-supported plan to the person's employer or directly to the insurer. If the person's contribution is smaller than the applicable premium, the person shall be required to make the contribution and pay the difference between the contribution and the applicable premium to the [department].

(b) Any person who has enrolled in an available employer-supported plan but whose plan does not provide all of the benefits or the same level of benefits as provided by the program, shall be entitled to receive the remaining benefits from the program.

(c) If the [department] determines that the employer-supported plan is not a cost-effective use of state funds to provide the services offered, the person need not enroll in that employer-supported plan as a condition of eligibility for the program and the [department] shall not be obligated to contribute toward the cost of the employer-supported plan as a benefit of the program.

(d) The [department] shall adopt rules in accordance with Section 10 of this act to implement this act. The [department] may adopt rules reducing or waiving the requirements of this section for persons under the age of [18] when the person's parents or other responsible adults are not participants in the program.

Section 8. [Coordination of Benefits.] Any participant who is
covered by an employer-supported plan in addition to the program shall file with the [department] the name, address and group policy number of the employer-supported plan. The [department] may request, from the insurer that provides the group policy, information sufficient to permit the [department] to coordinate benefits between the program and the employer-supported plan. An insurer shall respond to the request from the [department] within [30] days. The [department] may also require the employer or the insurer to provide notice to the [department] of any changes in coverage and to provide notice to the [department] of any termination of the policy. The program shall be a secondary payor to all other payors to the extent permitted by federal and state law.

The [department] shall adopt rules in accordance with Section 10 of this act to implement this act.

Section 9. [Transition Period for Participants Losing Eligibility.] Any participant who ceases to be eligible to participate in the program because of household income exceeding the applicable percentage of the federal poverty level shall be entitled to continue to participate in the program for a period of [two (2)] years following loss of eligibility, provided the participant's income does not exceed the applicable income eligibility standard by more than [50] percent and further provided the participant pays a premium established for such persons by the [department] by rule adopted in accordance with Section 10.

Section 10. [Procedures for Adopting Rules.] In adopting, amending or repealing any rule required or authorized by this act, the [department] shall comply with the [state] Administrative Procedure Act [insert citation], and shall provide the [committee] a reasonable opportunity to review and comment on the proposed rules as a [committee] prior to the [department] giving public notice of rulemaking.

Section 11. [Fund Balances.] Any balances of funds appropriated for services under this act shall not lapse, but shall be carried forward from year to year to be expended for the same purpose.

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

Section 13. [Effective Date.] [Insert effective date.]
Health Care Services Utilization Review Regulation Act

This act, based on 1992 Rhode Island legislation, provides for utilization review of health care services to promote the delivery of health care in a cost effective manner and engender greater coordination between providers, patients, payors and utilization review entities. Utilization review is the prospective or concurrent assessment of the necessity and appropriateness of the allocation of resources and services of a health care provider.

The act's provisions are designed to ensure that review agents are qualified to perform utilization review activities and make informed decisions on the appropriateness of medical care. The agents must use medically acceptable screening criteria and review procedures which are established and updated with physician and other health provider involvement. The act further provides for both internal and external appeals processes in the event of an adverse determination.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Health Care Services Utilization Review Regulation Act.

Section 2. [Definitions.] As used in this act:
(1) "Adverse determination" means any decision by a review agent not to certify an admission, service, procedure or extension of stay.
(2) "Certificate" means a certificate of registration granted by the [director] to a review agent.
(3) "Department" means the [state department of health].
(4) "Director" means the [director of the state department of health].
(5) "Patient" means an enrollee or participant in all hospital or medical plans seeking health care services and treatment from a provider.
(6) "Provider" means any health care facility, as defined in [insert citation for appropriate section of state code] including any mental health and/or substance abuse treatment facility, physician, or other licensed practitioners identified to the review agent as having primary responsibility for the care, treatment and services rendered to a patient.
(7) "Review agent" means a person or entity or insurer performing utilization review that is either employed by, affiliated with, under contract with, or acting on behalf of:
   (i) A business entity doing business in this state; or
   (ii) A party that provides or administers health care benefits to citizens of this state, including a health insurer, self-insured plan, non-profit health service plan, health insurance service organization, preferred provider organization or health maintenance organization authorized to offer health insurance policies or contracts or pay for the delivery of health care
services of treatment in this state; or
(iii) a provider;
(8) "Utilization review" means the prospective or concurrent
assessment of the necessity and appropriateness of the allocation
of health care resources and services of a provider, given or
proposed to be given to a patient or group of patients.
Utilization review does not mean elective requests for
clarification of coverage or claims review; or a provider's
internal quality assurance program except if it is associated
with a health care financing mechanism.
(9) "Utilization review plan" means a description of the
standards governing utilization review activities performed by a
private review agent.

Section 3. [Regulation of Review Agents; Certificate.]
(a) A review agent shall not conduct utilization review in the
state of [state] unless the [department] has granted the review
agent a certificate.
(b) Review agents who are operating in [state] prior to the
promulgation of regulations pursuant to this act may continue to
conduct utilization review until such time as the [department]
promulgates regulations, develops required forms, and has acted
on the application submitted by the review agent.
(c) Individuals shall not be required to hold separate
certification under this act when acting as an employee of a
certified review agent.
(d) The [department] shall issue a certificate to an applicant
that has met the minimum standards established by this act, and
regulations promulgated in accordance with it, including the
payment of such fees as required, and other applicable
regulations of the [department].
(e) A certificate issued under this act is not transferrable;
and the transfer of [fifty (50)] percent or more of the ownership
of a review agent shall be deemed a transfer.
(f) After consultation with the payers and providers of health
care, no later than [one (1)] year after the effective date of
this act, the [department] shall adopt regulations necessary to
implement the provisions of this act including but not limited to
the following:
(1) The requirement that the private review agent provide
patients and providers with a summary of its utilization review
plan including a summary of the standards, procedures and methods
to be used in evaluating proposed or delivered health care
services;
(2) The circumstances, if any, under which utilization review
may be delegated to a provider-based utilization review program;
(3) A complaint resolution process, acceptable to the
[department] whereby patients, their physicians or other health
care providers may seek prompt reconsideration or appeal of
adverse decisions by the private review agent, as well as the
resolution of complaints and other matters of which the review
agent has received written notice thereof;
(4) The type and qualifications of personnel authorized to
perform utilization review, including a requirement that only a
licensed physician or dentist in the same or a similar specialty as typically manages the medical condition, procedure or treatment be permitted to make a final determination that care rendered or to be rendered is medically inappropriate;

(5) The requirement that each review agent shall utilize written medically acceptable screening criteria and review procedures which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers.

(6) The requirement that, other than in exceptional circumstances, or when the patient's attending physician or dentist is not reasonably available, no determination that care rendered or to be rendered is medically inappropriate shall be made until an appropriately qualified and licensed review physician or dentist has spoken to the patient's attending physician or dentist concerning such medical care;

(7) The requirement that, upon written request made by or on behalf of a patient, any determination that care rendered or to be rendered is medically inappropriate shall include the written evaluation and findings of the reviewing physician or dentist.

(8) The requirement that a representative of the private review agent is reasonably accessible to patients, patient's family, and providers at least five (5) days a week during normal business hours.

(9) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed.

(10) The policies and procedures regarding the notification and conduct of patient interviews by the review agent.

(11) The requirement that no employee of, or other individual rendering an adverse determination for, a review agent may receive any financial incentives based upon the number of denials of certification made by such employee or individual.

(12) The requirement that immediate coverage be provided for treatment and/or hospitalization or other use of a provider's services or facilities for any patient for whom the treating provider determines the admission and/or treatment to be of an emergency nature. The emergency nature of the admission or treatment shall be documented and signed by a licensed physician and may be subject to review by a review agent.

(13) The requirement that a review agent shall make a determination, and shall communicate that determination within time-frames and by such means as specified by the [department]; and

(14) The requirement that except in circumstances as may be allowed by regulations promulgated pursuant to this act, no final adverse determination shall be made on any question relating to hospital, medical or other health care and/or medical services by any person other than a licensed physician, which determination shall be discussed by said physician with the affected provider or other designated or qualified professional or provider responsible for treatment of the patient.

(g) The [director] is authorized to establish such fees for initial application, renewal application, and such other
administrative actions as deemed necessary by the [director] to implement this act.

Section 4. [Application.]
(a) An applicant for a certificate shall:
   (1) Submit an application to the [director]; and
   (2) Pay the application fee established by the [director] through regulation and maintained in a restricted and segregated account.
(b) The application shall:
   (1) Be on a form and accompanied by supporting documentation that the [director] requires; and
   (2) Be signed and verified by the applicant.
(c) In conjunction with the application, the private review agent shall submit information that the [director] requires including:
   (1) A utilization review plan that includes:
      (i) The standards and criteria to be utilized by the private review agent, provided however, that the agent may request that the state agency regard specific portions thereof or the entire document to constitute "trade secrets" within the meaning of that term in [insert citation for appropriate sections of state code];
      (ii) Those circumstances, if any, under which utilization review may be delegated to a provider utilization review program; and
      (iii) A complaint resolution process, consistent with Section 9 of this act, whereby patients, physicians or other health care providers may seek prompt reconsideration or appeal of adverse determinations by the review agent as well as the resolution of other complaints regarding the review process.
   (2) The type and qualifications of the personnel either employed or under contract to perform the utilization review;
   (3) The procedures and policies to ensure that a representative of the review agent is reasonably accessible to patients and providers [five (5)] days a week during normal business hours;
   (4) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;
   (5) A copy of the materials used to inform enrollees of the requirements under the health benefit plan for seeking utilization review or pre-certification and their rights under this act, including information on appealing adverse determinations;
   (6) A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan;
   (7) A list of the third party payers and business entities for which the private review agent is performing utilization review in this state and a brief description of the services it is providing for each client.
   (8) Evidence that the review agent has not entered into a compensation agreement or contract with its employees or agents whereby the compensation of its employees or its agents is based upon a reduction of services or the charges therefore, the
reduction of length of stay, or utilization of alternative
treatment settings; provided nothing in this act shall prohibit
capitation agreements and similar arrangements.

(9) Evidence of liability insurance or of assets sufficient to
cover potential liability.

d) Any changes in the review agent's operations relative to
certification requirements to the [department] for approval at
least [thirty (30)] days prior to implementation.

e) The information provided must demonstrate that the private
review agent will comply with the regulations adopted by the
[director] under this act.

(f) The application and other fees required under this act shall
be sufficient to pay for the administrative costs of the
certificate program and any other reasonable costs associated
with carrying out the provisions of this act.

Section 5. [Renewal of Certificate.]

(a) A certificate expires on the second anniversary of its
effective date unless the certificate is renewed for a [two- (2-)
) year term as provided in this section.

(b) Before the certificate expires, a certificate may be renewed
for an additional [two- (2-)] year term if the applicant:

(1) Otherwise is entitled to the certificate;
(2) Pays to the [director] the renewal fee set by the
[director] through regulation; and
(3) Submits to the [director]:
   (i) A renewal application on the form that the [director]
   requires; and
   (ii) satisfactory evidence of compliance with any requirements
under this act for certificate renewal.

(c) If the requirements of this section are met, the [director]
shall renew a certificate.

(d) If a completed application is being processed by the
[department], a certificate may be continued until a renewal
determination is made.

Section 6. [Denial, Suspension, or Revocation of Certificate.]

(a) The [department] may deny a certificate upon review of the
application, if upon review of the application, it finds that the
applicant proposing to conduct utilization review does not meet
the standards required by this act or by any regulations
promulgated pursuant to this act.

(b) The [department] may revoke a certificate and/or impose
reasonable monetary penalties not to exceed [five thousand
(5,000)] dollars per violation in any case in which the review
agent fails to comply substantially with the requirements of this
act or of regulations adopted pursuant to this act, or if the
review agent fails to comply with the criteria used by it in its
application for a certificate. Such a determination may involve
consideration of any written grievances filed with the
[department] against the review agent by patients or providers.

(c) Any applicant or certificate holder aggrieved by an order or
a decision of the [department] made under this act without a
hearing may, within [thirty (30)] days after notice of the order
or decision, make a written request to the [department] for a hearing on the order or decision pursuant to [insert citation for appropriate section of state code].

d) The procedure governing hearing authorized by this section shall be in accordance with [insert citations for appropriate sections of state code]. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless the decision is appealed pursuant to [insert citation for appropriate section of state code]. A copy or copies of the transcript may be obtained by any interested party upon payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party.

Section 7. [Judicial Review.] Any person who has exhausted all administrative remedies available to him or her within the [department] and who is aggrieved by a final decision of the [department] under Section 6 of this act is entitled to judicial review pursuant to [insert citations for appropriate sections of state code].

Section 8. [Waiver of Requirements.] The [department] shall waive the requirements of this act for a review agent that operates only under contract with the federal government for utilization review of patients eligible for provider services under title XVIII and title XIX of the social security act and the civilian health and medical program of the uniformed services (CHAMPUS); provided, that a review agent performing such exempt services shall otherwise comply with all provisions of this act with respect to any utilization review performed by such review agent which is not so exempted.

Section 9. [Decisions and Internal Appeals.] The decision and appeals process of the review agent shall conform to the following:

1) Notification of a prospective determination by the review agent shall be mailed or otherwise communicated to the provider of record and to the patient or other appropriate individual within [one (1)] business day of the receipt of all information necessary to complete the review.

2) Notification of a concurrent determination shall be mailed or otherwise communicated to the patient and to the provider of record within [one (1)] business day of receipt of all information necessary to perform the review or, provided that all information necessary to perform the review has been received, prior to the end of the current certified period.

3) Any notice of a determination not to certify an admission, service, procedure or extension or stay shall be mailed or otherwise communicated, and shall include

   i) the principal reasons for the determination and

   ii) the procedures to initiate an appeal of the determination or the name and telephone number of the person to contact with regard to an appeal.

4) The review agent shall maintain and make available a written description of the appeal procedure by which either the patient
or the provider of record may seek review of determinations not to certify an admission, service, procedure or extension of stay.

The process established by each review agent may include a reasonable period within which an appeal must be filed to be considered.

5) The review agent shall notify in writing the patient and provider of record of its determination on the appeal as soon as practical, but in no case later than thirty (30) working days after receiving the required documentation on the appeal.

6) The review agent shall also provide for an expedited appeals process for emergency or life threatening situations. Each review agent shall complete the adjudication of such expedited appeals within two (2) business days of the date the appeal is filed and all information necessary to complete the appeal is received by the review agent.

7) All determinations not to certify an admission, service, procedure or extension of stay that had been ordered by a physician shall be made, documented and signed by a licensed physician.

8) In cases where an initial appeal to reverse an adverse determination is unsuccessful, the review agent shall assure that a physician in the same or a similar general specialty as typically manages the medical condition, procedure or treatment under discussion is reasonable available, to review the case as a second level or appeal. No appeals physician or other reviewer may be compensated or paid a bonus or incentive based on upholding an adverse determination. No physician or other reviewer who has been involved in prior review of the case under appeal may participate as the sole reviewer in reviewing a case under appeal.

9) The review agent shall maintain records of written appeals and their resolution, and shall provide reports as requested by the [department].

10) The [department] may, in response to a written complaint, review an appeal regarding any adverse determination, and may request information of the review agent, provider or patient regarding the status, outcome or rationale regarding a decision.

11) A review agent is only entitled to review information or data relevant to the utilization review process. A review agent may not disclose or publish individual medical records or any confidential medical information obtained in the performance of utilization review activities. A review agent shall be considered a third party health insurer for the purposes of [insert citation for appropriate section of state code] and shall be required to maintain the security procedures mandated in [insert citation for appropriate section of state code].

Section 10. [External Appeals.] In cases where the second level of appeal to reverse an adverse determination is unsuccessful, the review agent shall provide for an external appeal by an unrelated and objective appeal agency, selected by the [director]. The [director] shall promulgate rules and regulations including, but not limited to, criteria for designation,
operation, policy oversight, and termination of designation as an external appeal agency. The external appeal agency shall not be required to be certified under this act for activities conducted pursuant to such designation.

The external appeal shall have the following characteristics:

(1) The external appeal review and decision shall be based on the medical necessity for the care, treatment or service, and the appropriateness of service delivery for which authorization has been denied.

(2) Neutral physicians or dentist shall be utilized to make the final determinations. Neutral physicians or dentists shall be selected from lists:
   (i) mutually agreed upon by the provider associations, insurers and the purchaser of health services; and
   (ii) used during a [twelve- (12-)]month period as the source for names for neutral physician or dentist reviewers.

(3) The neutral physician or dentist may confer either directly with the review agent and provider, or with physicians or dentists appointed to represent them.

(4) Payment for the appeal fee charged by the neutral physician or dentist shall be shared equally between the two (2) parties to the appeal.

(5) The decision of the external appeal agency shall be binding; however, any person who is aggrieved by a final decision of the external appeal agency is entitled to judicial review in a court of competent jurisdiction.

Section 11. [Documentation of Adverse Determinations.] The [department] shall require providers to include documentation of adverse determinations and recommendations of review agents, including alternate coverage recommendations, in patients' medical records.

Section 12. [Reporting Requirements.] The [department] shall establish reporting requirements to determine if the utilization review programs are in compliance with the provisions of this act and applicable regulations.

Section 13. [Lists.] The [director] shall periodically provide a list of private review agents issued certificates and the renewal date for those certificates to all licensed health care facilities and any other individual or organization requesting the list.

Section 14. [Penalties.] A person who substantially violates any provision of this act or any regulation adopted under this act or who submits any false information in an application required by this act is guilty of [insert offense and penalty].

Section 15. [Annual Report.] The [director] shall issue an [annual] report to the governor and the legislature concerning the conduct of utilization review in the state. Such report shall include a description of utilization programs and the services they provide, an analysis of complaints filed against private
review agents by patients or providers and an evaluation of the impact of utilization review programs on patient access to care.

Section 16. [Restricted Receipts Account for Fees.] From the proceeds of any fees, monetary penalties and fines collected pursuant of the provisions of this act, there is hereby created a restricted receipts account which shall be used solely to pay for the administrative expenses incurred in administering this act.

Section 17. [Severability.] [Insert severability clause.]

Section 18. [Effective Date.] [Insert effective date.]
Health Insurance Rates and Refunds Act

The act presented below, which is based on 1990 Kentucky legislation, sets procedures for the approval of health insurance rate filings that contain increases. A filing that contains an increase in premium rates may not become effective until the state commissioner of insurance holds a hearing within 30 days after receiving the filing and issues an order of approval within 30 days of the conclusion of the hearing. In reviewing a filing, the commissioner must consider whether the benefits provided are reasonable in relation to the premium charged; the previous premium rates for the policies to which the filing applies; and the effect of the increase on policyholders. An insurer who receives the commissioner's approval for a rate increase may not file for another increase until at least six months from the effective date of the approved increase.

Portions of the act do not apply and premium rates are considered approved if the filing is accompanied by a loss ratio guarantee. As defined in the act, "loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration, for all combined durations. Benefits are deemed reasonable in relation to premium rates as long as the insurer complies with the terms of the guarantee.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Health Insurance Rates and Refunds Act.

Section 2. [Definitions.] As used in this act:
(1) "Commissioner" means the [state commissioner of insurance].
(2) "Loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration, for all combined durations.

Section 3. [Filing of Rates.] Each insurer issuing health insurance policies for delivery in this state shall, before use thereof, file with the [commissioner] its premium rates and classification of risks pertaining to such policies. The insurer shall adhere to its rates and classifications as filed with the [commissioner]. The insurer may change such filings from time to time as it deems proper.

Section 4. [Procedure for Approval of Rate Filing Containing Increase; Exception for Loss Ratio Guarantor].
(a) No filing under Section 3 of this act that contains an increase in premium rates shall become effective until the [commissioner] has issued an order approving the filing. The [commissioner] may hold a hearing within [thirty (30)] days after receiving a filing under this act containing a rate increase, and shall issue an order approving or disapproving the filing within
[thirty (30)] days following the conclusion of the hearing.

(b) In approving or disapproving a filing under subsection (a) of this section, the [commissioner] shall consider:

(1) Whether the benefits provided are reasonable in relation to the premium charged;

(2) Previous premium rates for the policies to which the filing applies; and

(3) The effect of the increase on policyholders.

(c) Not less than [ten (10)] days in advance of a hearing held under subsection (a) of this section, the [commissioner] shall notify the [state attorney general] in writing of the hearing and of the premium increase to be considered. The [state attorney general] shall be considered a party to such hearing if he chooses to participate.

(d) No insurer receiving the [commissioner]'s approval of a filing under this section shall submit a new filing containing a rate increase for any of the same policies until at least [six (6)] months have elapsed following the effective date of the proposed increase.

(e) At any time, the [commissioner], after a public hearing of which at least [thirty (30)] days' written notice has been given, may withdraw approval of rates previously approved under this section if he determines that the benefits are no longer reasonable in relation to the premium charged.

(f) Subsections (a), (b) and (c) of this section shall not apply and premium rates shall be deemed approved upon filing with the [state department of insurance] if the filing is accompanied by a loss ratio guarantee, and benefits shall be deemed reasonable in relation to the premium rates so long as the insurer complies with the terms of the loss ratio guarantee. This loss ratio guarantee shall be in writing and shall contain at least the following:

(1) A recitation of the anticipated loss ratio standards contained in the original actuarial memorandum filed with the policy form when it was originally approved by the [commissioner];

(2) A guarantee that the actual [state] loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the loss ratio standards referred to in paragraph (1) of this subsection. If the annual earned premium volume in [state] under the particular policy form is less than [one million (1,000,000)] dollars and therefore not actuarially credible, the loss ratio guarantee shall be based on the actual nationwide loss ratio for the policy form;

(3) A guarantee that the actual [state] loss ratio results for each year at issue shall be independently audited at the insurer's expense. This audit shall be done in the second quarter of the next year and the audited results shall be reported to the [commissioner] not later than the date for filing the applicable accident and health policy experience exhibit;

(4) A guarantee that affected [state] policyholders will be issued a proportional refund, based on premium paid, of the amount necessary to bring the actual aggregate loss ratio up to
the anticipated loss ratio standards referred to in paragraph (1) of this subsection. The refund shall be made to all [state] policyholders insured under the applicable policy form as of the last of the year at issue if the refund would equal [ten (10)] dollars or more per policy. The refund shall include statutory interest from the end of the year at issue until the date of payment. Payment shall be made during the third quarter of the next year; and

(5) A guarantee that refunds of less than [ten (10)] dollars will be aggregated by the insurer and paid to the [state department of insurance].

Section 5. [Effective Date.] [Insert effective date.]
Uniform Billing Format Act

This act, based on 1992 California legislation, requires the state's office of statewide health planning and development, following consultation with several other state agencies, to adopt uniform billing form formats acceptable for billing under federal law. The act requires insurance carriers to accept and providers to use the form for each instance the carrier provides coverage for professional health care services or institutional provider services. It further requires that the office specify a single, uniform system for coding diagnoses, treatments and procedures.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Uniform Billing Format Act.

Section 2. [Definitions.] As used in this act:
(1) "Carrier" means any of the following:
   (i) Any insurer, including but not limited to, disability insurers, nonprofit hospital service plans, fraternal benefit societies, and firefighters', police officers' or peace officers' benefit and relief associations.
   (ii) A health care service plan other than a specialized health care service plan.
   (iii) A self-funded employer sponsored plan, multiple employer trust, or Taft-Hartley Trust as defined by federal law, authorized to pay for health care services in this state.
   (iv) The [state compensation insurance fund].
   (v) The health insurance offered to certain employees of this state by the [public employees' retirement system].
(2) "Department" means the [state department of health services].
(3) "Director" means the [director of the state office of statewide health planning and development].
(4) "Institutional provider services" means any services, equipment and supplies, other than professional health care services which are provided by an institution, site or facility through which professional health care services are provided. "Institutional provider services" includes any component of an episode of health care for which there will be charges, other than professional health care services. "Institutional provider services" does not include diagnostic or treatment services that would be considered "professional health care services" but for the fact that the provider is licensed under [insert reference to appropriate section of state code] that the [director] of the [office] has exempted pursuant to Section 5 of this act.
(5) "Office" means the [state office of statewide health planning and development].
(6) "Professional health care services" means any diagnostic or treatment services provided in [state] directly to a patient by a
person licensed or practicing pursuant to [insert reference to appropriate section of state code] who is eligible to directly bill for their services. "Professional health care services" does not include services provided by a person licensed pursuant to [insert reference to appropriate section of state code] that the [director] of the [office] has determined, pursuant to Section 5 of this act, should be exempted.

(7) "[state] uniform billing form for professional health care services" and "[state] uniform billing form for institutional provider services" means billing forms in the formats developed by the [office] pursuant to Section 3 of this act.

Section 3. [Adoption of Billing Form Format.] The [state office of statewide health planning and development], after consultation with [insert references to insurance commissioner, corporations commissioner, state director of health services and other appropriate agencies], shall adopt a [state] uniform billing form format for professional health care services and a [state] uniform billing form format for institutional provider services. The format for professional health care services shall be the format developed by the national Uniform Claim Form Task Force. The format for institutional provider services shall be that developed by the National Uniform Billing Committee. The formats shall be acceptable for billing in federal Medicare and Medicaid programs. The [office] shall specify a single uniform system for coding diagnoses, treatments and procedures to be used as part of the uniform billing form formats. The system shall be acceptable for billing in federal Medicare and Medicaid programs.

Section 4. [Use of Uniform Billing Form.]
(a) Carriers shall accept, and providers shall use, a completed [state] uniform billing form, or the electronic equivalent, for each instance in which a carrier provides coverage for professional health care services and for each instance in which a carrier provides coverage for institutional provider services.
(b) Carriers that are health care service plans licensed under [insert references to appropriate sections of state code], and providers of professional health care services or institutional provider services covered by those plans shall be exempt from the requirement of subsection (a) except in instances in which the provider of the professional health care services bills the plan for the specific services provided and in instances in which the provider of the institutional provider services bills the plan for the specific services provided.
(c) Nothing in the forms shall be construed to prohibit a carrier from requiring that its insured or enrollee, or a person acting on behalf of the insured or the enrollee, submit other information to the carrier as necessary to determine that the professional health care services or institutional provider services are covered under the terms of the carrier's health benefits plan.

Section 5. [Determination of Exemptions.] The [director] of the [office] may determine that the definition of "professional
health care services” in paragraph (6) of Section 2 of this act does not include services provided by persons licensed under [insert reference to appropriate sections of state code] and shall have the authority to determine which [sections of state code] shall be exempt.

Section 6. [Department Adoption of Format.] The [department] shall adopt the [state] uniform billing form formats for use in all health care payment programs it administers, including, but not limited to, [insert name of state medicaid program], county health services programs, and other health care payment programs, for each instance in which a program provides coverage for professional health care services and for each instance in which a program provides coverage for institutional provider services. The [department] may adapt the billing format for institutional provider services only to the extent necessary for the forms to be optically scanned and automatically microfilmed. The [department] shall provide exemptions from this requirement as necessary and appropriate to the efficient operation of health care service plans that do not reimburse providers on a fee-for-service basis, except that the plans shall use the formats in instances in which the professional or institutional provider bills a plan for the specific services provided. The [department] shall implement this requirement in any [insert name of state medicaid program] contract for fiscal intermediary services entered into on or after [insert date].

Section 7. [Development of Uniform Core Dataset.]
(a) The [department], in consultation with the [office] and the [insert name of other policy or data advisory commission], may develop a uniform core dataset for public health programs to do all of the following:
   (1) Reduce administrative complexity.
   (2) Eliminate unnecessary duplication in the collection and reporting of data.
   (3) Facilitate integration, consistency and transfer of data among public health and health service programs.
   (4) Promote monitoring of health status, planning, policy development and service coordination, quality assurance and program evaluation for all public health programs.
(b) The [department], in consultation with the [office] and the [insert name of other policy or data advisory commission], shall develop proposed policies and procedures to ensure privacy and confidentiality and appropriate use and access to data.
(c) This section shall not be construed to require any physician and surgeon or other health care provider to provide any additional items of information to these public health care programs.

Section 8. [Effective Date.] [Insert effective date.]
Maternity Care Access Act

The act presented below is based on a 1989 Washington state enactment that is part of its "First Steps" project, a comprehensive program designed to reduce infant illness and death and improve access to maternity and early childhood care for low-income families. This act authorizes the development of a maternity care access program to ensure healthy birth outcomes. The program provides maternity care services to low-income pregnant women and health care services to children in poverty. The act requires the establishment of a maternity care case management system to assist at-risk eligible persons in obtaining medical assistance benefits and maternity care services. If a county or group of counties is determined to be an area where eligible women are unable to find adequate maternity care, an alternative delivery system must be established.

Readers interested in this area may wish to consult other legislation presented in an earlier volume of Suggested State Legislation (volume 51, 1992): Perinatal Providers -- Easing the Shortage, a legislative proposal of the Southern Regional Project on Infant Mortality (pp. 20-27); and Home Care Volunteer Program for Maternal and Child Health (pp. 28-29).

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Legislative Findings.]
(a) The legislature finds that the state and the nation as a whole have a high rate of infant illness and death compared with other industrialized nations. This is especially true for minority and low-income populations. Premature and low weight births have been directly linked to infant illness and death. The availability of adequate maternity care throughout the course of pregnancy has been identified as a major factor in reducing infant illness and death. Further, the investment in preventative health care programs, such as maternity care, contributes to the growth of a healthy and productive society and is a sound approach to health care cost containment. The legislature further finds that access to maternity care for low-income women in the state has declined significantly in recent years and has reached a crisis level.

(b) It is the purpose of this act to provide, consistent with appropriated funds, maternity care necessary to ensure healthy birth outcomes for low-income families. To this end, a maternity care access system is established based on the following principles:
   (1) The family is the fundamental unit in our society and should be supported through public policy.
   (2) Access to maternity care for eligible persons to ensure
healthy birth outcomes should be made readily available in an expeditious manner through a single service entry point.

(3) Unnecessary barriers to maternity care for eligible persons should be removed.

(4) Access to preventive and other health care services should be available for low-income children.

(5) Each woman should be encouraged to and assisted in making her own informed decisions about her maternity care.

(6) Unnecessary barriers to the provision of maternity care by qualified health professionals should be removed.

(7) The system should be sensitive to cultural differences among eligible persons.

(8) To the extent possible, decisions about the scope, content and delivery of services should be made at the local level involving a broad representation of community interests.

(9) The maternity care access system should be evaluated at appropriate intervals to determine effectiveness and the need for modification.

(10) Maternity care services should be delivered in a cost-effective manner.

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

(1) "At-risk eligible person" means an eligible person determined by the [department] to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "County authority" means the [board of county commissioners, county council, or county executive] having the authority to participate in the maternity care access program or its designee. [Two (2) or more] county authorities may enter into joint agreements to fulfill the requirements of this act.

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

(4) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to [insert citation for appropriate section of state code] or the prenatal care program administered by the [department].

(5) "Maternity care services" means inpatient and outpatient medical care, case management and support services necessary during prenatal, delivery and postpartum periods.

(6) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose.

Section 4. [Maternity Care Access Program.] The [department]
shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

1. Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;
2. Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;
3. By [insert date], have the following procedures in place to improve access to maternity care services and eligibility determinations for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:
   a. Use of a shortened and simplified application form;
   b. Outstationing [department] staff to make eligibility determinations;
   c. Establishing local plans at the county and regional level, coordinated by the [department]; and
   d. Conducting an interview for the purpose of determining medical assistance eligibility within [five (5)] working days of the date of an application by a pregnant woman and making an eligibility determination within [15] working days of the date of application by a pregnant woman;
4. Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;
5. Within available resources, establish appropriate reimbursement levels for maternity care providers;
6. Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;
7. Study the desirability and feasibility of implementing the presumptive eligibility provisions set forth in section 9407 of the federal omnibus budget reconciliation act of 1986 and report to the appropriate committees of the legislature by [insert date]; and
8. Refer persons eligible for maternity care services under the program established by this section to persons, agencies or organizations with maternity care service practices that primarily emphasize healthy birth outcomes.

Section 5. [Alternative Maternity Care Service Delivery System.]
(a) The [department] shall establish an alternative maternity care service delivery system, if it determines that a county or a group of counties is a maternity care distressed area. A maternity care distressed area shall be defined by the [department], in rule, as a county or a group of counties where eligible women are unable to obtain adequate maternity care. The [department] shall include the following factors in its determination:
   a. Higher than average percentage of eligible persons in the
distressed area who receive late or no prenatal care;
(2) Higher than average percentage of eligible persons in the distressed area who go out of the area to receive maternity care;
(3) Lower than average percentage of obstetrical care providers in the distressed area who provide care to eligible persons;
(4) Higher than average percentage of infants born to eligible persons per obstetrical care provider in the distressed area; and
(5) Higher than average percentage of infants that are of low birth weight, [five and one-half (5 1/2)] pounds or [2,500] grams, born to eligible persons in the distressed area.

(b) If the [department] determines that a maternity care distressed area exists, it shall notify the relevant county authority. The county authority shall, within [120] days, submit a brief report to the [department] recommending remedial action. The report shall be prepared in consultation with the [department] and its local community service officers, the local public health officer, community health clinics, health care providers, hospitals, the business community, labor representatives, and low-income advocates in the distressed area. A county authority may contract with a local nonprofit entity to develop the report. If the county authority is unwilling or unable to develop the report, it shall notify the [department] within [30] days, and the [department] shall develop the report for the distressed area.

(c) The [department] shall review the report and use it, to the extent possible, in developing strategies to improve maternity care access in the distressed area. The [department] may contract with or directly employ qualified maternity care health providers to provide maternity care services, if access to such providers in the distressed area is not possible by other means. In such cases, the [department] is authorized to pay that portion of the health care providers' malpractice liability insurance that represents the percentage of maternity care provided to eligible person by that provider through increased medical assistance payments.

Section 6. [Loan Repayment Program.] To the extent that federal matching funds are available, the [department] or the [state department of health] shall establish, in consultation with the health science programs of the state's colleges and universities, and community health clinics, a loan repayment program that will encourage maternity care providers to practice in medically underserved areas in exchange for repayment of part or all of their health education loans.

Section 7. [Evaluation of Program.] The [department] shall contract with an independent nonprofit entity to evaluate the effectiveness of the maternity care access program set forth in this act based on the principles set forth in Section 2 of this act. The evaluation shall also address:
(1) Characteristics of women receiving services, including health risk factors;
(2) Services utilized by eligible women;
(3) Birth outcomes of women receiving services;
(4) Birth outcomes of women receiving services, by type of practitioner;
(5) Services utilized by eligible infants; and
(6) Referrals to other programs for services.

The [department] shall submit an evaluation report to the appropriate committees of the legislature by [insert date].

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

Section 9. [Effective Date.] [Insert effective date.]
Breast Feeding Rights Act

Despite the U.S. Surgeon General's recommendation that babies from birth to one year of age be breast fed (unless medically contraindicated) to attain a healthy start in life, statistics show that a declining percentage of mothers are choosing to breast feed their babies. Only 20 percent are still breast feeding when their babies are six months old, and only 6 percent are still breast feeding when their babies reach their first year.

Apart from the demands imposed by modern life -- at home and in the workplace -- many new mothers opt for formula feeding instead of breast feeding for reasons such as embarrassment or fear of social ostracism or criminal prosecution. In 1993, the state of Florida enacted legislation permitting breast feeding in any location (see new language presented below) and further amended existing state code to provide that breast feeding a baby does not violate prohibitions against unnatural and lascivious acts or exposure of sexual organs; does not violate prohibitions against lewd, lascivious or indecent conduct in the presence of a child; does not violate prohibitions against obscenity; is not harmful to minors; and does not constitute unlawful nudity or sexual conduct.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Breast Feeding Rights Act.

Section 2. [Breast Feeding.] The breast feeding of a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values. A mother may breast feed her baby in any location, public or private, where the mother is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

Section 3. [Effective Date.] [Insert effective date.]
Mental Health Treatment Proxy Act

Recent volumes of Suggested State Legislation have included information on state legislation authorizing procedures for health care decisions to be made on behalf of incapacitated patients. The 1992 volume included Health Care Decisions and Treatment: Provisions for Durable Power of Attorney and Health Care Agents, a note on enactments from several states (pp. 50-53), and the 1993 volume included Health Care Surrogate Act, which was based on 1991 Illinois legislation establishing a hierarchy by which physicians may assign surrogates (pp. 33-41).

The act presented below, which is based on 1991 Minnesota legislation, enables any competent adult to make a declaration of preferences or instructions regarding intrusive mental health treatment. These may include, but are not limited to, consent to or refusal of such treatments.

Under the provisions of the act, a declaration may designate a proxy to make decisions about intrusive mental health treatments, and the proxy may make decisions on behalf of the declarant consistent with desires the declarant may have expressed in the declaration of preferences and instructions. The declaration, which becomes part of the declarant's medical records, is effective only if signed by the declarant and two witnesses, and may be revoked in whole or in part at any time.

The Minnesota enactment also allows a patient under neuroleptic medication to prepare a declaration authorizing a proxy to request treatment if the declarant is incapacitated.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Mental Health Treatment Proxy Act.

Section 2. [Declaration of Preferences.] A competent adult may make a declaration of preferences or instructions regarding intrusive mental health treatment. These preferences or instructions may include, but are not limited to, consent to or refusal of these treatments.

Section 3. [Designation of Proxy.] A declaration may designate a proxy to make decisions about intrusive mental health treatment. A proxy designated to make decisions about intrusive mental health treatments and who agrees to serve as proxy may make decisions on behalf of the declarant consistent with any desires the declarant expresses in the declaration.

Section 4. [Declaration in Effect.] A declaration is effective only if it is signed by the declarant and two witnesses. The witnesses must include a statement that they believe the declarant understood the nature and significance of the declaration. A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment
provider. The physician or provider must comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. The physician or provider shall continue to obtain the declarant's informed consent to all intrusive mental health treatment decisions if the declarant is capable of informed consent. A treatment provider may not require a person to make a declaration under this act as a condition of receiving services.

Section 5. [Declaration Part of Medical Record.] The physician or other provider shall make the declaration a part of the declarant's medical record. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider must promptly notify the declarant and document the notification in the declarant's medical record. If the declarant has been committed as a patient under [insert reference to appropriate section of state code], the physician or provider may subject the declarant to intrusive treatment in a manner contrary to the declarant's expressed wishes, only upon order of the committing court. If the declarant is not a committed patient under [insert reference to appropriate section of state code], the physician or provider may subject the declarant to intrusive treatment in a manner contrary to the declarant's expressed wishes, only if the declarant is committed as mentally ill or mentally ill and dangerous to the public and a court order authorizing the treatment has been issued.

Section 6. [Revocation of Declaration.] A declaration under this act may be revoked in whole or in part at any time and in any manner by the declarant if the declarant is competent at the time of revocation. A revocation is effective when a competent declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

Section 7. [Liability.] A provider who administers intrusive mental health treatment according to and in good faith reliance upon the validity of a declaration under this act is held harmless from liability resulting from a subsequent finding of invalidity.

Section 8. [Other Delegations.] In addition to making a declaration under this act, a competent adult may delegate parental powers under [insert reference to appropriate section of state code] or may nominate a guardian or conservator under [insert reference to appropriate section of state code].

Section 9. [Effective Date.] [Insert effective date.]
Developmental Disabilities Services Acts

The following acts -- the first based on 1989 Illinois legislation, the second on a 1992 Alaska enactment -- are designed to establish service implementation plans or a system of programs for services to the developmentally disabled in the state.

Readers interested in the area may also wish to consult an earlier edition of Suggested State Legislation (volume 49, 1990) for a Self-Sufficiency Trust Fund Act (pp. 104-105), based on a 1986 Illinois enactment. The concept of a self-sufficiency trust is to provide a mutually beneficial public-private working relationship between families of disabled individuals, the state, and the community-based human service network. Coupled with existing developmental disability legislation, the trust offers a financing mechanism which operates through individualized programs to arrange for supplemental services from existing provider networks.

Developmental Disabilities Services Act

The following, based on a 1989 Illinois enactment, creates an advisory committee to develop a developmental disabilities services implementation plan. No entitlement to services is established under the act, except as provided in the implementation plan and made effective by provisions enacted after the effective date of the legislation.

Under the act, persons with developmental disabilities are entitled to services that include: comprehensive evaluation and diagnosis, non-discriminatory access to services, residential choices and options, public education, vocational education, employment, and due process.

Other portions of the 1989 legislation, the texts of which are not included in the draft below, authorize the state department of mental health and developmental disabilities to encourage, develop, sponsor and fund home-based and community-based services for mentally disabled adults as alternatives to institutionalization; and further create a mandate for the department to strengthen, promote and financially assist families who provide care with the family home for children whose level of mental illness or developmental disability constitutes a risk of out-of-home placement. Copies of the full text are available by contacting the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Developmental Disabilities Services Law.

Section 2. [Purpose.] It is the purpose of this act to create an
[advisory committee] to develop a developmental disabilities services implementation plan as provided in Section 5 of this act. No entitlement to services shall be established under this act except as provided in such implementation plan and made effective by the express provision of laws enacted after the effective date of this act.

Section 3. [Definitions.] As used in this act:
(1) "Developmental disability" means a severe chronic disability of a person which:
(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
(ii) is manifested before the person attains age [22];
(iii) is likely to continue indefinitely;
(iv) results in substantial functional limitation in three or more of the following areas of major life activity:
   (A) self-care;
   (B) receptive and expressive language;
   (C) learning;
   (D) mobility;
   (E) self-direction;
   (F) capacity for independent living; and
   (G) economic sufficiency; and
   (v) Reflects the person's need for a combination and sequence of special, interdisciplinary or general care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.
(2) "Council" means the [governor's planning council on developmental disabilities].
(3) "Department" means the [state department of mental health and developmental disabilities, department on aging, department of rehabilitation services, department of public health, department of public aid, department of children and family services, state board of education and other relevant agencies], where appropriate, as designated in the implementation plan developed under Section 5 of this act.
(4) "Case coordination services" means a lifelong goal-oriented process for the coordination of the range of services needed by persons with developmental disabilities and their families. Case coordination services are designed to ensure accessibility, continuity of care and accountability and to maximize the potential of persons with developmental disabilities for independence, productivity and integration into the community. Case coordination services include, at a minimum:
(i) outreach to identify eligible individuals;
(ii) assessment and periodic reassessment to determine each individual's strengths, functional limitations and need for specific services;
(iii) development of a comprehensive individual program plan;
(iv) referral to and coordination of needed social, medical, educational support and other services;
(v) monitoring to ensure the delivery of appropriate services and to determine individual progress in meeting goals and objectives;
(vi) advocacy to assist the person in obtaining all services to which he or she is entitled.
(5) "Chronological age-appropriate services" means services, activities and strategies for persons with developmental disabilities that are representative of the lifestyle activities of non-disabled peers of similar age in the community.
(6) "Comprehensive evaluation" means procedures and assessments used to determine whether a person has a developmental disability and the nature and extent of the services that the person with a developmental disability needs. The term means procedures used selectively with an individual. All components of a comprehensive evaluation must be administered by a qualified examiner.
(7) "Family" means a natural, adoptive or foster parent or parents or other person or person responsible for the care of an individual with a developmental disability in a family setting.
(8) "Family or individual support" means those resources and services which are necessary to maintain a family member with a developmental disability within the family home. These services may include, but are not limited to, cash subsidy, respite care and counseling services.
(9) "Individual program plan" means a recorded assessment of the needs of a person with a developmental disability, a description of the services recommended, the goals of each type of element of service, an anticipated timetable for the accomplishment of the goals, and a designation of the qualified professional responsible for the implementation of the plan.
(10) "Least restrictive environment means an environment that represents the least departure from the normal patterns of living and which effectively meets the needs of the person receiving the service.

Section 4. [Services.] Persons with developmental disabilities may be provided the following services under the developmental disabilities services implementation plan developed under this act:
(1) Comprehensive evaluation and diagnosis. A person with a suspected developmental disability who is applying for disability services shall receive a comprehensive diagnosis and evaluation, including an assessment of skills, abilities and potential for residential and work placement, adapted to his primary language, cultural background and ethnic origin.
(2) Individual program plan. A person with a developmental disability shall receive services in accordance with a current individual program plan. A person with a developmental disability who is receiving services shall be provided periodic, but at least [semi-annual], reevaluation and review of the individual program plan in order to measure progress, to modify or change objectives if necessary, and to provide guidance and mediation techniques.
A person with a developmental disability and his representatives have the right to participate in the planning and decision making process regarding the person's individual program plan and to be informed in writing, or in that person's mode of communication, of progress at reasonable time intervals. Each person shall be
given the opportunity to make decisions and exercise options regarding the plan, consistent with the person's capabilities.

(3) Nondiscriminatory access to services. A person with a developmental disability shall not be denied program services because of age, sex, ethnic origin, marital status, ability to pay (except where contrary to law), criminal record, degree of disability or illness.

(4) Family/individual support. A person with a developmental disability shall be provided family and/or individual support services under [insert reference to other legislation] to prevent unnecessary out-of-home placement and to foster independent living skills.

(5) Residential choices and options. A person with a developmental disability who requires residential placement in a supervised or supported setting shall be provided choices among various residential options. Such placement shall be offered in the least restrictive setting possible.

(6) Education. A person with a developmental disability has the right to a free, appropriate public education as provided in both state and federal law. Each local educational agency shall prepare persons with developmental disabilities for adult living. In anticipation of adulthood, each person with a developmental disability has the right to a transition plan developed and ready for implementation prior to the person's exit from school.

(7) Vocational training. A person with a developmental disability shall be provided vocational training, when appropriate, which contributes to the person's independence and employment potential. This training shall include strategies and activities in programs which lead to employment and reemployment.

(8) Employment. A person with a developmental disability has the right to be employed free from discrimination, pursuant to the constitution and laws of this state.

(9) Case coordination services. A person with a developmental disability shall be provided case coordination services.

(10) Due process. A person with a developmental disability retains the rights of citizenship. Any person aggrieved by a decision of a [department] regarding services provided under this act shall have an opportunity to present complaints at a due process hearing before a hearing officer designated by the [director] of that [department]. Any person aggrieved by a final administrative decision rendered following such due process hearing may seek judicial review of that decision pursuant to the [administrative review law], as now or hereafter amended. The term "administrative decision" is defined as in [insert citation for section of code of civil procedure]. Reasonable attorney's fees and costs may be awarded to the successful plaintiff in any formal administrative or judicial action under this Act.

The right to a hearing under this paragraph (10) shall be in addition to any other rights under federal, state or local laws.

Section 5. [Implementation.] The governor, with the assistance of the chairperson of the [council], shall appoint an [advisory committee] to develop a developmental disabilities services implementation plan. The [advisory committee] shall be composed
of [council] members and other individuals who represent each principal state agency, local government agencies and nongovernmental organizations concerned with services for persons with developmental disabilities. The implementation plan shall include, but is not limited to: establishing procedures for completing comprehensive evaluations; establishing procedures for the development of an individual program plan for each person with a developmental disability; identifying core services to be provided by agencies of the state or other governmental agencies; establishing minimum standards for individualized program services; establishing minimum standards for residential services in the least restrictive environment; establishing minimum standards for vocational services; establishing due process hearing procedures; and establishing minimum standards for family support services.

The governor, with the assistance of the [director] of the [council], is responsible for the completion of the implementation plan. The governor, with the assistance of the [director] of the [council], shall submit a report to the legislature by [insert date], which shall include the implementation plan, the estimated costs to implement the services, and a proposal for legislation to implement the services that may be provided under this act.

No service established under this act shall be provided except as required under the implementation plan and made effective by the express provision of laws enacted after the effective date of this act.

Section 6. [Effective Date.] [Insert effective date.]
Developmental Disabilities Intervention Services Act

This act, based on 1992 Alaska legislation, directs the state department of health and social services to establish a statewide system of multi-disciplinary interagency programs that provide early intervention services. The programs are for children under the age of three who have developmental disabilities and for their families. The department must develop a system for finding children and families eligible for the program; provide for a comprehensive evaluation of the needs of each child and family; and develop a written, individualized service plan that identifies how the needs of each child and family can be met.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Developmental Disabilities Intervention Services Act.

Section 2. [Legislative Findings.] The legislature finds that
(1) there are [insert number of] children in the state under the age of three, [insert number] percent of whom experience developmental delays or disabilities and an additional [insert number] percent of whom are at risk of delays or disabilities due to social, environmental or biological factors;
(2) there are existing programs, such as infant learning, head start, parent and child centers, child development services, handicapped children's programs, community developmental disabilities program, and child care assistance programs that can and do meet many of the needs of young children and their families if the programs are family-oriented, community-based, coordinated and provided with sufficient resources;
(3) many current social programs are aimed at addressing needs after problems occur rather than addressing prevention and early intervention; early identification and treatment have proven effective in reducing and sometimes totally eliminating the long-term effects of disabling conditions, lowering long-term costs to society as a whole, and reducing the incidence of child abuse, divorce, and domestic violence in families with children who experience disabilities;
(4) there is an urgent and substantial need to
   (i) support the development of children under the age of three who experience developmental delays or disabilities or who are at risk of experiencing developmental delays or disabilities;
   (ii) help reduce the stress on parents and other family members that results from the special needs of children under the age of three with developmental delays or disabilities;
   (iii) recognize the importance of parents and families as the constant in the child's life, as the primary caregivers and teachers of infants, especially those who experience developmental delays or disabilities;
   (iv) recognize family strengths and diversity, and to encourage a variety of methods of coping;
(v) encourage normal patterns of living in the home and community;
(vi) encourage and facilitate parent-to-parent support;
(vii) support the unique ability of communities to address issues at the local and family levels with different combinations of resources;
(viii) facilitate parent and professional collaboration at all levels of education and health care, and to assure that education and health care services are designed to be flexible, accessible, and responsive to families;
(ix) reduce the long-term educational costs to the state by minimizing the need for special education and related services after children with developmental delays and disabilities reach school age;
(x) minimize the likelihood of institutionalization or out-of-home placement of persons with developmental delays or disabilities;
(xi) maximize the potential for persons with developmental delays or disabilities to lead independent, productive lives within their communities.

Section 3. [Purpose.] It is the purpose of this act to
(1) subject to the availability of funding, provide quality learning and related early intervention family support services to eligible children under the age of three who have developmental delays or disabilities and, on a discretionary basis, to those children under the age of three who are at risk of developmental delays or disabilities;
(2) bring together and make optimal use of all available federal, state, local, and private resources for the benefit of children under the age of three with developmental delays or disabilities and their families;
(3) expand and improve existing learning and early intervention services and to provide and arrange for comprehensive services through local agencies and statewide support programs.

Section 4. [Definitions.] As used in this act:
(1) "Additional early intervention services" means

(i) family training and counseling;
(ii) speech pathology and audiology;
(iii) occupational therapy;
(iv) physical therapy;
(v) psychological services;
(vi) medical services only for diagnostic or evaluation purposes; and
(vi) health services for the child that are necessary to enable the child to benefit from the other early intervention services;
(2) "Core early intervention services" means
(i) case management services;
(ii) special instruction; and
(iii) early identification, screening, and assessment;
(3) "Department" means the [state department of health and social services];
(4) "Developmentally delayed" means functioning at least 15 percent below a chronological or corrected age or 1.5 standard deviations below age appropriate norms in one or more of the following areas: cognitive development, gross motor development, sensory development, speech or language development, or psychosocial development, including self-help skills and behavior, as measured and verified by appropriate diagnostic instruments and procedures or through systematic observation of functional abilities in a daily routine by two professionals and a parent, developmental history, and appropriate assessment procedures;

(5) "Disability" means having an identifiable physical, mental, sensory, or psychosocial condition that has a probability of resulting in developmental delay even though a developmental delay may not be exhibited at the time the condition is identified, including

(i) chromosomal abnormalities associated with delays in development, such as Down's syndrome, Turner's syndrome, Cornelia de Lareig syndrome, or fragile X syndrome;

(ii) other syndromes and conditions associated with delays in development, such as fetal alcohol syndrome, cocaine and other drug-related syndromes, metabolic disorders, cleft lip, or cleft palate;

(iii) neurological disorders associated with delays in development, such as cerebral palsy, microcephaly, hydrocephaly, spina bifida, or periventricular leukomalacia;

(iv) sensory impairment, such as hearing loss or deafness, visual loss or blindness, or a combination of hearing and visual loss, that interferes with the child's ability to respond effectively to environmental stimulus;

(v) congenital infections, such as rubella, cytomegalovirus, toxoplasmosis, or acquired immune deficiency syndrome;

(vi) chronic illness or conditions that may limit learning or development, such as cystic fibrosis, bronchopulmonary dysplasia, tracheostomies, amputations, arthritis, or muscular dystrophy;

(vii) psychosocial disorders, such as reactive attachment disorder, infant autism, or childhood schizophrenia; or

(viii) atypical growth patterns consistent with a prognosis of developmental delay based upon paternal and professional judgment, such as failure to thrive;

(6) "Early intervention services" or "Services" means services that are designed to help meet the developmental needs of a child under the age of three who is developmentally delayed or disabled or at risk of development delay or disability or the needs of the child's family so that the family can support the child's development.

Section 5. [Establishment of Program.]

(a) The [department], with the assistance of the [governor's council for the handicapped and gifted], shall establish a coordinated, comprehensive, statewide system of multi-disciplinary interagency programs that provide appropriate early intervention services to eligible persons under this act.

(b) The [department] is the lead agency for purposes of federal
law with respect to the administration of the early intervention services system required under subsection (a) of this section. The [department] shall establish and administer the system required under subsection (a) of this section so that the state is eligible for the maximum available funding from public and private sources.

(c) In connection with the system established under subsection (a) of this section, the [department] shall

(1) develop a state plan that identifies the best methods of providing services to children under the age of three with developmental delays or disabilities and their families, and report to the governor on the extent to which that plan is being implemented in the state;

(2) develop and implement an educational program concerning the nature and effects of developmental delays and disabilities;

(3) serve as a clearinghouse for education materials and information about developmental delays and disabilities;

(4) organize and encourage training programs for persons who provide services to children under the age of three with developmental delays and disabilities and their families;

(5) establish a training program for paraprofessionals who provide services to children under the age of three with developmental delays and disabilities and their families;

(6) cooperate with other public and private agencies and individuals to facilitate the transition of children served in the early intervention system to the formal education system;

(7) identify and use all public and private resources available to the state; and

(8) monitor and evaluate the services provided to ensure the demonstrable effectiveness of the services and compliance with state and federal law and [department] policy regarding the provision of early intervention services.

Section 6. [Program Eligibility.]

(a) A child and the child's family are eligible for core early intervention services and additional early intervention services under this act if the child is under the age of three and

(1) experiencing developmental delays or disability; or

(2) at risk of experiencing developmental delay or disability if early intervention services are not provided.

(b) If the [department] estimates that funding available for services under this act will be insufficient to provide services to all persons who are eligible under subsection (a) of this section, the [department] shall eliminate coverage for services in the following order;

(1) additional early intervention services for persons eligible under subsection (a)(2) of this section;

(2) additional early intervention services for persons eligible under subsection (a)(1) of this section;

(3) core early intervention services for persons eligible under subsection (a)(2) of this section; and

(4) core early intervention services for persons eligible under subsection (a)(1) of this section.
Section 7. [Finding and Evaluating Eligible Participants.]
(a) The [department] shall establish a comprehensive system for finding children and their families who are eligible for services under this act. This child find system must
   (1) include a public awareness program focusing on early identification of developmentally delayed and disabled children under three years of age;
   (2) provide for participation by primary referral sources; and
   (3) include procedures with timelines for referral of eligible participants to service providers.
(b) The [department] shall, within [45] days after a child's referral for services under subsection (a) of this section, ensure that all affected public agencies and service providers
   (1) provide for a comprehensive multi-disciplinary evaluation of the functioning of the child and the needs of the child's family so that the family can appropriately assist in the development of the child;
   (2) in consultation with the child's parents, develop a written individualized service plan that identifies how the needs of the child and the family could be met.

Section 8. [Individualized Family Service Plan.] The individualized family service plan developed under Section 7(b)(2) of this act must be based on the evaluation conducted under Section 7(b)(1) of this act and must include, subject to Section 6(b) of this act,
(1) provisions for case management services to implement the plan, including the name of the case manager from the profession more immediately relevant to the child's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons;
(2) a statement of the child's present levels of physical development, cognitive development, language and speech development, psychosocial development, and self-help skills, based on appropriate objective criteria;
(3) a description of the family's concerns, priorities, and resources as the relate to the future enhancement of the child's development;
(4) a description of the specific early intervention services that will help meet the unique needs of the child and the family, including the frequency, intensity, and method with which the services should be delivered;
(5) the projected dates for initiation of services and the anticipated duration of the services;
(6) an outline of the major outcomes expected to be achieved for the child and the family along with the criteria, procedures, and timelines that will be used to determine the degree to which progress toward achieving the outcomes are being made and whether modifications or revisions of the outcomes or services are necessary; and
(7) a statement of the steps that will be taken to support the transition of the child and the family to the use of services available under other appropriate programs, including programs for children who are three years of age or older.
Section 9. [Other Duties of Department].
(a) The [department] shall adopt regulations necessary to implement this act, including regulations
(1) for personnel development, including pre-service and in-service training programs for providers of early intervention services;
(2) to govern resolution of intra-agency and interagency disputes about the provision of services under this act and the financial responsibility of the respective parties for those services;
(3) that ensure that services are provided to children and their families in a timely manner pending the resolution of disputes among public agencies or service providers;
(4) providing for due process with respect to the rights of children and parents who are eligible for services under this act; the regulations must provide that during the pendency of a complaint about a change in services, the child and family shall continue to receive the prior services unless the state and the family otherwise agree, or, if the complaint relates to an application for initial services, the child and family shall receive the services that are not in dispute.
(b) The [department] shall establish a system for compiling data on the numbers of children and their families in the state who need early intervention services, the numbers being served, the types of services provided, and other information as required under federal law. Personally identifiable information obtained under this act is confidential for purposes of [insert citation for appropriate section of state code].

Section 10. [Effective Date.] [Insert effective date.]
Government Mutual Aid Agreements

A series of disasters -- more recently, 1992's Hurricane Andrew in Florida and the extensive flooding along the Mississippi River in 1993 -- have focused unprecedented attention on governmental planning and preparedness and the provision of emergency services. One mechanism that has been devised for times of actual or potential disasters or emergency situations is a mutual aid or cooperative agreement.

In 1991, the state of North Dakota enacted legislation authorizing its division of emergency management to assist local governments in entering mutual aid agreements with other public and private agencies for aid in responding to and recovering from disasters or emergencies (Ch. 381, SB 2152). The legislation allows the governor, on behalf of the state, to join with other states or with Canadian provinces in interstate mutual aid agreements or compacts, the text of which is incorporated into the act.

Florida enacted legislation in 1993 calling for an interstate compact on emergency relief (Ch. 283, HB 1925). The compact formally recognizes informal agreements between the Florida National Guard and Guard organizations from other states. It is designed to protect the rights of Florida Guard members performing emergency duties in other states and to allow the Guard to pre-arrange for Guard personnel and equipment from other states in times of emergency.

The act presented below is based on 1991 amendments to Wisconsin legislation originally enacted in 1971. The provisions on emergency government allow the governor, on behalf of the state, to enter into mutual aid agreements with other states. The 1991 amendments allow counties, municipalities and towns to contract for emergency government services with political subdivisions, emergency government units and civil defense units within the state, and upon approval of the state adjutant general, with such entities in bordering states. Also, under the enactment, employees of (or volunteers with) municipal and county emergency government units are considered employees of (or volunteers with) the municipality or county to which the unit is attached for purposes of workers' compensation benefits. Emergency government employees or volunteers who engage in emergency government activities upon order of any echelon in the emergency government organization other than that which carries their workers' compensation coverage are eligible for the same benefits as though employed by the governmental unit employing them.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Government Mutual Aid Act.

Section 2. [Cooperation.]
(a) Counties, towns, and municipalities may cooperate under [insert citation for section of state code] to furnish services, combine offices and finance emergency government services. 
(b) Counties, towns and municipalities may contract for emergency government services with political subdivisions, emergency government units and civil defense units of this state, and upon prior approval of the [state adjutant general], with such entities in bordering states. A copy of each such agreement shall be filled with the [state adjutant general] within 10 days after execution thereof. 
(c) The state and its departments and independent agencies and each county, town and municipality shall furnish whatever services, equipment, supplies and personnel are required of them under [insert citation for section of state code regarding emergency government].

Section 3. [Personnel.]
(a) Employees of municipal and county government units are employees of the municipality or county to which the unit is attached for purposes of workers' compensation benefits. Volunteer emergency government workers are employees of the emergency government unit with whom duly registered in writing for purposes of workers' compensation benefits. An emergency government employee or volunteer who engages in emergency government activities upon order of any echelon in the emergency government organization other than that which carries his or her workers' compensation coverage shall be eligible for the same benefits as though employed by the governmental unit employing him or her. Any employment which is part of an emergency government program including but not restricted because of enumeration, test runs and other activities which have a training objective as well as emergency government activities during an emergency proclaimed in accordance with [insert citation for section of state code regarding emergency government] and which grows out of, and is incidental to, such emergency government activity is covered employment. Members of an emergency government unit who are not acting as employees of a private employer during emergency government activities are employees of the emergency government unit for which acting. If no pay agreement exists or if the contract pay is less, pay for workers' compensation purposes shall be computed in accordance with [insert citation for appropriate section of state code]. 
(b) Emergency government employees as defined in subsection (a) of this section shall be indemnified by their sponsor against any tort liability to third persons incurred in the performance of emergency government activities while acting in good faith and in a reasonable manner. Emergency government activities constitute a governmental function. 
(c) If the total liability for workers’ compensation benefits under subsection (a) of this act, indemnification under subsection (b) and loss from destruction of equipment under Section 4 of this act, incurred in any calendar year exceeds [one (1)] dollar per capita of the sponsor's population, the state shall reimburse the sponsor for the excess. Payment shall be made
from the appropriation in [insert citation for appropriate section of state code] on certificate of the adjutant general.
(d) Emergency government employees as such shall receive no pay unless specific agreement for pay is made.

Section 4. [Bearing of Losses.] Any loss arising from the damage to or destruction of government-owned equipment utilized in any authorized emergency government activity shall be borne by the owner thereof.

Section 5. [Exemption from Liability.] No person who provides equipment of services under the direction of the governor, the [state adjutant general] or the head of emergency government services in any county, town, or municipality during a state of emergency declared by the governor is liable for the death or injury to any person or damage to any property caused by his or her actions, except where the trier of fact finds that the person acted intentionally or with gross negligence. This section does not affect the right of any person to receive benefits to which he or she would otherwise be entitled under the worker's compensation law or under any pension law, nor does it affect entitlement to any other benefits or compensation authorized by state or federal law.

Section 6. [Effective Date.] [Insert effective date.]
Disaster Services Volunteer Leave Act

In response to an increasing number of disasters in the United States in recent years, and in response to their rising costs, several states have enacted legislation authorizing paid leave for state government employees who have received appropriate training and who volunteer for American Red Cross operations. Often, state employees possess skills that can be transferred to disaster operations, including shelter management, mass feeding, damage assessment and family services.

The American Red Cross based the 1992 draft act presented below on legislation enacted in Ohio (Section 124.132, Ohio Revised Code, 1983) and Illinois HB 2349, 1991). However, other states with disaster leave legislation include Connecticut (P.A. 89-379, SHB 7368, 1989), Kansas SB 96, 1993), Nebraska (LB 697, 1993), North Carolina (Ch. 13, HB 87, 1993), Tennessee SB 1704, 1993) and Texas (SB 5, 1993).

The draft act allows state employees a maximum of 30 days paid leave during a 12-month period, without loss of seniority, vacation time, sick leave, or earned overtime accumulation and does not restrict the areas in which state workers may serve. Disaster leave limits imposed by existing state legislation include 30 days (Ohio), 20 days (Illinois, Kansas), 15 days (Nebraska, North Carolina, Tennessee), 14 days (Connecticut), and five days (Texas). Also, in Nebraska and North Carolina, leave is granted only for disasters within the respective states, while Kansas limits leave to service within the state or contiguous states. Texas legislation limits to 500 the pool of state employees certified as disaster volunteers.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Disaster Services Volunteer Leave Act.

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

(1) "Disaster" includes disasters designated at level III and above in the American National Red Cross Regulations and Procedures.

(2) "State agency" includes all departments, officers, commissions, boards, institutions and bodies politic and corporate of the State, including the offices of the [clerk of the Supreme Court and clerks of the appellate courts], the several courts of the state and the legislature, its committees or commissions.

Section 3. [Establishment of Disaster Services Volunteer Leave.] (a) An employee of a state agency who is a certified disaster services volunteer of the American Red Cross may be granted leave from his work with pay for not to exceed [thirty (30) work days in any [12-]month period to participate in specialized disaster relief services for the American Red Cross, upon the request of
the American Red Cross for the services of that employee and upon the approval of that employee’s agency, without loss of seniority, pay, vacation time, sick time or earned overtime accumulation. The agency shall compensate an employee granted leave under this section at his regular rate of pay for those regular work hours during which the employee is absent from his work.

Section 4. [Effective Date.] [Insert effective date.]
Food Donation Liability Legislation (Note)

States have enacted "Good Samaritan" laws over the years to protect persons who donate time or goods to assist impoverished, ill or injured individuals. These statutes are designed to protect volunteers from liability and encourage participation in various acts of charity, including food donation projects. Good Samaritan statutes for food donation are designed to encourage the distribution of food to the poor and needy while addressing the fear of litigation that might arise if a particular donation of food were not in ideal condition. The Committee on Suggested State Legislation approved the inclusion of this note to give readers an overview of the various state enactments in this area. A table summarizing state provisions appears on page xx.

There are different facets of state Good Samaritan food donation legislation, including: the definition of food; the definition of donor; whether there is a good faith exception to liability; whether the act provides immunity from both civil and criminal liability for food donors, or just civil liability; and the standard for donor liability. According to the National Restaurant Association and Second Harvest, a national food bank network, all 50 states and the District of Columbia have some type of Good Samaritan statutes regarding food donation. At least three states (Alaska, Louisiana and New Jersey) have statutes specifically granting liability protection for food banks. According to the Washington, DC, law firm of Winthrop, Stimson, Putnam and Roberts, none of the state Good Samaritan food donation acts had been tested in court as of August 1992.

Definitions

Definitions for donated food items vary from state to state and include such terms as "perishable" food (31 states), "prepared" food (eight states), "agricultural products" (12 states), or simply "food" or "food apparently fit for human consumption" (31 states). Twenty-five states list canned goods in their food donation statutes. States may combine several of these terms in their definitions of food items. Most states define Good Samaritan food donors broadly to include any "persons," "donors," "individuals" or "gleaners." The term "gleaner" refers to persons who harvest food from an agricultural crop that has been donated by the owner for free distribution to the needy or for donation to a nonprofit organization for ultimate distribution to the needy. Eight states specifically include restaurants or food service establishments in their state statute definitions as food donors. Other states have broader definitions of what constitutes a "donor," which may include such terms as "farmer," "processor," "distributor," "wholesaler" or "retailer of food." As with definitions of food, states may use several overlapping terms in defining Good Samaritan food donors.

Good faith exception to liability
At least 34 states and the District of Columbia currently require donors to show "good faith" to be eligible for immunity. Most of these states do not define "good faith," though it is widely understood to refer to a donor's state of mind and honesty of purpose in giving an unconditional gift of food. At least 33 states and the District of Columbia provide both civil and criminal liability protection for food donors. The remaining 17 states provide donor immunity from civil liability only.

Standard for donor liability

All of the state statutes include provisions outlining a standard of liability, but donors are generally immune from civil or criminal liability if their actions conform to certain standards. Most statutes require donors to inspect food and find it fit for human consumption at the time of donation. Twenty-two states provide that a donor is immune from liability arising from injury or death attributable to the condition of donated food only if it is not due to some type of negligence, recklessness or misconduct.

Federal model

In November 1990, Congress passed a model food donation Good Samaritan Act for use by states under the "National Community Service Act." It was signed into law by President George Bush on November 16, 1990. The act offers exemptions from both civil and criminal liability for food donation; includes all food apparently fit for human consumption; and defines donors to include any person, donor or gleaner, farmer, retailer, distributor, processor, wholesaler, business, partnership, institution, association or corporation. The standard for donor liability under the federal model is "gross negligence or intentional misconduct." The act is offered as a model for state governments, but is not a mandate and does not have force of law. According to staff at Second Harvest, as many as 25 states have incorporated portions of the federal model food donation act into their Good Samaritan food donation laws since its enactment.

Information for this note was adapted from "Summary of Good Samaritan Food Donation Statutes," Winthrop, Stimson, Putnam & Roberts, Washington, DC, August 1992.

Defense Contractor Restructuring Assistance Act

In the wake of defense industry cutbacks and reductions in military spending, many states have had to find ways to compensate for the loss of dollars and jobs, and assist in the defense conversion and diversification. The act presented below, which is based on 1992 Arizona legislation, establishes a defense contractor restructuring and assistance program to be implemented by the state department of commerce. The department must coordinate a coalition of qualified defense contractors in the state to identify and address relevant
issues and opportunities.
Under the Arizona provisions, the department identifies and certifies to the state revenue department the names and relevant information relating to qualified defense contractors for the purpose of available tax incentives. The act defines a qualified defense contractor as having one or more contracts with the U.S. Department of Defense that: total at least $5 million in sales of tangible items manufactured, assembled, fabricated, researched, developed or designed in the state; do not require providing products or services directly to a particular military base, bases or installations; and employs at least 200 full-time equivalent employee positions in the state solely with respect to defense contracts.
To obtain and maintain certification, a defense contractor must apply to the commerce department; allow inspections and audits as necessary to verify the accuracy of the information submitted; and agree to furnish, in writing, information regarding the amount of tax benefits the taxpayer receives each year for disclosure in composite form in an annual commerce department report.

The act also designates military reuse zones. Within one year after the title to a closed military facility is transferred to the state or to another public or private entity, the governor, in consultation with the director of the commerce department, may designate the property as a military reuse zone. A prime contractor may qualify for an exemption from transaction privilege tax with respect to activities in a military reuse zone. A taxpayer who owns or leases income-producing property located in a military reuse zone is eligible for an income tax credit for net increases in employment of full-time employees temporarily engaged in manufacturing, assembling or fabricating aviation or aerospace products.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Defense Contractor Restructuring Assistance Act.

Section 2. [Definitions.] As used in this act:
(1) "Department" means the [state department of commerce].
(2) "Dislocated military base employee" means a civilian who previously had permanent full-time civilian employment on the military facility as of the date the closure of the facility was finally determined under federal law, as certified by the [state department of commerce].
(3) "Qualified defense contractor" means a business entity that, on initial qualification, meets all of the following requirements:
   (i) Has one or more current manufacturing, assembling, fabricating, research, development or design contracts directly with the United States Department of Defense that:
   (A) Total at least [five (5)] million dollars in sales of
tangible personal property manufactured, assembled, fabricated, researched, developed or designed in this state.

(B) Do not require providing products or services directly to a particular military base or bases or installations.

(ii) Employs at least [200] full-time equivalent employee positions in this state solely with respect to Department of Defense contracts.

Section 3. [Defense Contractor Restructuring Assistance Program; Definition.]

(a) The [department] shall establish and conduct a defense contractor restructuring and assistance program to:

(1) Assist qualified defense contractors in this state to maintain and attract the maximum state share of available contracts with the United States Department of Defense.

(2) Encourage qualified defense contractors in this state to diversify into commercial markets and consolidate facilities into this state.

(3) Encourage qualified defense contractors in this state to adopt new manufacturing processes and technologies.

(b) The [department] shall coordinate a coalition of qualified defense contractors in this state to identify and address relevant issues and opportunities and to increase communication and the capacity to solve common problems.

(c) Until [insert date], the [state department of commerce] shall identify and certify to the [state department of revenue] the names and relevant information relating to qualified defense contractors for purposes of available tax incentives. The certification is valid only for [five (5)] full consecutive calendar or fiscal years, as determined by the [state department of commerce], but the [state department of commerce] may revoke the certification for failure to qualify and comply with the terms and conditions prescribed by this section and shall immediately notify the [state department of revenue] of a revocation. The [state department of revenue] may also revoke the certification if it obtains information indicating a failure to qualify and comply. The [state department of commerce] shall not certify any new qualified defense contractor after [insert date].

To obtain and maintain certification, a defense contractor must:

(1) Apply to the [state department of commerce].

(2) Submit and retain copies of all required information including information relating to the amount of tax benefits the defense contractor receives.

(3) Allow such inspections and audits as are necessary to verify the accuracy of the submitted information.

(4) Agree in writing with the [state department of commerce] to furnish information relating to the amount of tax benefits the taxpayer receives each year for disclosure in composite form in an annual report by the [state department of commerce].

Section 4. [Designating Military Reuse Zones; Term; Renewal.]

(a) Within [one (1)] year after title to a closed military facility is transferred to this state or to another public or private entity, the governor, after consulting with the [director
of the state department of commerce], may designate the property as a military reuse zone. Only properties that were used for operational and training purposes of the active uniformed services of the United States qualify for consideration as a military reuse zone.

(b) The governor shall set a termination date for the military reuse zone that is not more than [five (5)] years after the date the zone is designated. During the last year before termination the [department] may recommend and the governor and the legislature may renew the military reuse zone by joint resolution for consecutive [one (1)] year terms.

Section 5. [Tax Incentives; Conditions.]
(a) A prime contractor may qualify for an exemption from transaction privilege tax with respect to activities in a military reuse zone as provided, and subject to the terms and conditions prescribed, by [insert citation for section of state code regarding prime contracting classification, definitions or exemptions].

(b) A taxpayer that owns or leases income producing property located in a military reuse zone is eligible for an income tax credit for net increases in employment of full-time employees who are primarily engaged in manufacturing, assembling or fabricating aviation or aerospace products as provided, and subject to the terms and conditions prescribed, by Section 11 of this act, as applicable.

(c) Taxable property in a military reuse zone that is devoted to manufacturing, assembling or fabricating aviation or aerospace products qualifies for assessment as [insert classification] property as provided, and subject to the terms and conditions prescribed, by [insert citations for sections of state code regarding the classification of property for taxation and determination of assessed values].

(d) To qualify for a tax incentive described in this section, the taxpayer shall:

   (1) Agree with the [state department of commerce] in writing to furnish information relating to the amount of tax benefits the taxpayer receives each year. If the taxpayer fails to provide the required information, the [state department of commerce] shall immediately revoke the taxpayer's qualification and notify the [state department of revenue].

   (2) Enter into a memorandum of understanding with this state through the [state department of commerce] containing employment goals. Each year the taxpayer shall report in writing to the [state department of commerce] its performance in achieving the goals. The memorandum shall contain provisions that allow:

      (i) The [state department of commerce] to stop, readjust or recapture all or part of the tax incentive provided to the taxpayer on noncompliance with the terms of the memorandum.

      (ii) The [state department of commerce] to notify the [state department of revenue] of the conditions of noncompliance.

      (iii) The [state department of revenue] to require the taxpayer to file appropriate amended tax returns reflecting the recapture of the tax incentives.
COMMENTS: The Arizona legislation on which this act is based amends the state code regarding the prime contracting classification, definitions and exemptions to incorporate the following deduction from the gross proceeds of sales or gross income before computing the tax base: the gross proceeds of sales or gross income received from a contract entered into for the construction, alteration, repair, addition, subtraction, improvement, movement, wrecking or demolition of any building, highway, road, railroad, excavation or other structure, project, development or improvement located in a military reuse zone for a manufacturer, assembler or fabricator of aviation or aerospace products within five years after the zone is initially established. To qualify for this deduction, before beginning work under the contract, the prime contractor must obtain a letter of qualification from the state department of revenue.

Section 6. [Duties of State Department of Commerce.] The [department] shall administer this act and shall:
(1) Monitor the implementation and operation of this act and continually evaluate the progress made in the military reuse zone.
(2) Assist and employer or prospective employer in a zone to obtain the benefits of any incentive authorized by this act.
(3) Submit an annual written report to the governor and to the legislative oversight committee established by Section 7 of this act, evaluating the effectiveness of the program with respect to each zone, stating the amount of foregone tax revenue due to the incentives offered pursuant to Section 5 of this act, reporting any abuses and presenting any suggestions to improve the program. The report is due on or before [insert date], beginning in the first full calendar year after the zone is established and ending the first full calendar year after the zone is terminated.
(4) Adopt rules as necessary to administer this act.
(5) Provide information regarding military reuse zones on request and conduct informational and instructional seminars and training.

Section 7. [Legislative Oversight Committee.]
(a) If a military reuse zone is established under this act, and for as long as any military reuse zone is in existence in this state, the [Senate president] and the [House speaker] shall establish a legislative oversight committee consisting of [six (6)] members, [three (3)] each appointed by the [Senate president] and the [House speaker]. Not more than [three (3)] of the committee members can be from the same political party.
(b) The committee shall:
(1) Select a chairman from among its members.
(2) Meet at least [once] each year and at additional times on the call of the chairman or a majority of its members.
(3) Review the annual report for each military reuse zone issued by the [state department of commerce] under Section 6 of this act and consider the conditions, progress and outlook with respect to each military reuse zone in the state.
(4) Make recommendations to the [Senate president], the [House speaker], the governor and local governmental authorities with respect to each zone in the state.

COMMENTS: The Arizona legislation on which this act is based amends the state code regarding the classification of property for taxation. Under the provisions, real and personal property and improvements that are located in a military reuse zone, and devoted to manufacturing, assembling or fabricating aviation or aerospace products are classified as "class eight," but may not be classified under the provision for more than five tax years. If a military reuse zone is terminated, the property in that zone will be reclassified.

The legislation amends the section of the code regarding the amounts that shall be added to the state's gross income in computing adjusted gross income: The amount of depreciation or amortization of costs of any capital investment that is deducted pursuant to section 167 or 179 of the Internal Revenue Code by a qualified defense contractor with respect to which an election is made to amortize; the amount of gain from the sale or other disposition of a capital investment which a qualified defense contractor has elected to amortize; and the amount paid as taxes on property in the state with respect to which a credit is claimed under Section 10 of the act presented here.

The legislation further amends the section of the code regarding the amounts that shall be subtracted from the state's gross income in computing adjusted gross income: The amount allowed by Section 8 of the act presented here, for amortization, by a qualified defense contractor certified by the state department of commerce under Section 3 of the act presented here, of a capital investment for private commercial activities; and the amount of gain included in federal adjusted gross income on the sale or other disposition of a capital investment that a qualified defense contractor has elected to amortize pursuant to Section 8 of the act presented here, for private commercial activities.

Section 8. [Amortization of Private Commercial Capital Investment by Qualified Defense Contractor.]

(a) A qualified defense contractor that is certified by the [state department of commerce] under Section 3 of this act may elect pursuant to this section to amortize the cost of any new device, machinery, equipment or other capital investment that is used exclusively for private commercial activities in this state. The period of amortization allowed by this section is equal to [one-half] of the time period allowed pursuant to the Internal Revenue Code for the same class of property. In computing [state] taxable income, the amortization is allowed as a subtraction ratably over the period allowed by this section beginning with the month in which the device, machinery, equipment or other capital investment is placed in exclusively private commercial service in this state.

(b) The taxpayer shall make the election under this section by an appropriate statement in the income tax return for the initial taxable year. The taxpayer may also elect to discontinue
amortization with respect to the remainder of the amortization period by an appropriate statement in the income tax return for the taxable year in which the election to discontinue is made.
(c) In determining the adjusted basis for the purposes of subsection (a) of this section, the device, machinery, equipment or other capital investment shall include only an amount that is properly attributable to constructing, installing or acquiring the device, machinery, equipment or other investment as certified by the [state department of commerce]. The taxpayer shall use the adjusted basis determined pursuant to this section in determining the gain on the sale or other disposition of a capital investment that is amortized under this section.
(d) The subtraction provided by this section is in lieu of any allowance for exhaustion, wear and tear of the property allowed by section 167 or 179 of the Internal Revenue Code.

COMMENTS: The Arizona legislation on which the act presented here is based, amends the state code regarding itemized deductions: A qualified defense contractor that is identified and certified by the state department of commerce pursuant to Section 3 of the act presented here, shall not claim both a deduction and a credit under Section 10 presented below, with respect to the same property taxes paid.

Section 9. [Credit for Employment by Qualified Defense Contractor.]
(a) A tax credit is allowed for:
(1) Net increases in employment under United States Department of Defense contracts during the taxable year, as computed under subsection (d) of this section, by a qualified defense contractor who is certified by the [state department of commerce] under Section 3 of this act.
(2) Net increases in private commercial employment during the taxable year, as computed under subsection (e) of this section, by a qualified defense contractor who is certified by the [state department of commerce] under Section 3 of this act due to full-time equivalent employee positions transferred during the taxable year by the taxpayer from exclusively defense related activities to employment by the taxpayer in exclusively private commercial activities.
(b) The amount of the credit is a dollar amount allowed for each full-time equivalent employee position created, determined as follows: [1st year $2,500; 2nd year $2,000; 3rd year $1,500; 4th year $1,000; 5th year $500].
(c) If the allowable tax credit exceeds the taxes otherwise due on the claimant's income, or if there are no taxes due, the taxpayer may carry the amount of the claim not used to offset the taxes forward for not more than [five (5)] taxable years as a credit against subsequent years' income tax liability, regardless of continuing certification as a qualified defense contractor.
(d) The net increase in employment under defense related contracts shall be determined as follows:
(1) Establish an employment baseline for the taxpayer based on a multi-year forecast of employment on United States Department
of Defense contracts that was submitted to the Department of Defense before [insert date]. The annual average employment forecast for the first year the taxpayer qualified is the baseline. If the taxpayer did not make such a forecast before [insert date], the baseline is the average annual employment as reported to the [state department of economic security] during the preceding taxable year. If a taxpayer qualifies in the same year it relocates into this state, the taxpayer's baseline is zero.

(2) For the first year of the credit, the taxpayer's net increase in average employment is the increase in employment reported to the [state department of economic security] during the first taxable year.

(3) For each succeeding year of the credit, the taxpayer's net increase in average employment is the increase in employment reported to the [department of economic security] for the taxable year over the preceding year's average employment.

(e) In computing the amount of credit allowed under subsection (a)(2) of this section, the taxpayer shall:

(1) Prorate employment during the taxable year according to the date of transfer from defense to private commercial activities or the date of transfer from private commercial activities to defense.

(2) Compute and subtract an amount pursuant to subsection (b) of this section for full-time equivalent employee positions that were transferred during the taxable year by the taxpayer from exclusively private commercial activities to exclusively defense related activities.

(f) The taxpayer shall account for qualifying full-time equivalent employee positions on a first-in first-out basis. If a decrease in qualifying employment occurs, the taxpayer shall subtract the decrease from the earliest qualifying positions.

(g) A credit is not allowed under both subsection (a), paragraphs (1) and (2) of this section with respect to the same employee position. A full-time equivalent employee position may be considered for purposes of computing the credit under either subsection (a), paragraph (1) or (2) of this section, but not both.

(h) A credit is not allowed under this section with respect to employment that was transferred from an outside contractor in this state to in-house employment by the taxpayer solely for purposes of qualifying for the credit.

(i) A taxpayer who claims a credit under Section 11 of this act may claim a credit under this section with respect to the same employees.

(j) Co-owners of a business, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the Internal Revenue Code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed for all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

Section 10. [Credit for Property Taxes Paid by Qualified Defense
(a) A credit is allowed against the property taxes imposed equal to a portion of the amount paid as taxes during the taxable year by a qualified defense contractor that is certified by the [state department of commerce] under Section 3 of this act, on property in this state that is classified as [insert classification].

(b) The amount of the credit is determined as follows:

(1) Multiply the amount paid as taxes on property classified as [insert classification] in this state during the taxable year by a percentage based on net new defense related employment, determined by subtracting the employment baseline determined pursuant to Section 9(d)(1) of this act, from average annual employment as reported to the [state department of economic security] for the taxable year, as follows:

- New Employment Credit Percentage: [more than 900, 40 percent; 601-900, 30 percent; 301-600, 20 percent; 1-300, 10 percent.]

(2) Multiply the amount determined under paragraph (1) of this subsection by a percentage determined by dividing the taxpayer's total gross income from United States Department of Defense contracts apportioned to this state by the taxpayer's total gross income from all sources apportioned to this state.

(c) If the allowable tax credit exceeds the taxes otherwise due on the claimant's income, or if there are no taxes due, the taxpayer may carry the amount of the claim not used to offset the taxes forward for not more than [five (5)] taxable years as a credit against subsequent years' income tax liability, regardless of continuing certification as a qualified defense contractor.

(d) The credit allowed by this section is in lieu of a deduction for property taxes with respect to the same taxes paid.

(e) Co-owners of a business, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the Internal Revenue Code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

Section 11. [Credit for Increased Employment in Military Reuse Zones; Definition.]

(a) A credit is allowed against the taxes imposed for net increases in employment by the taxpayer of full-time employees working in a military reuse zone who are primarily engaged in manufacturing, assembling or fabricating aviation or aerospace products. The amount of the credit is a dollar amount allowed for each new employee, determined as follows:

(1) With respect to each employee other than a dislocated military base employee: [1st year, $500; 2nd year, $1,000; 3rd year, $1,500; 4th year, $2,000; 5th year, $2,500].

(2) With respect to each dislocated military base employee: [1st year, $1,000; 2nd year, $1,500; 3rd year, $2,000; 4th year, $2,500; 5th year, $3,000].

(b) If the allowable tax credit exceeds the taxes otherwise due on the claimant's income, or if there are no taxes due, the amount of the claim not used to offset the taxes may be carried
forward as a credit against subsequent years' income tax
liability for the period, not to exceed [five (5)] taxable years,
if the business remains in the military reuse zone.
(c) The net increase in the number of employees for purposes of
this section shall be determined by comparing the taxpayer's
previous year's [fourth quarter] employment in the zone, based on
the taxpayer's report to the [state department of economic
security] for unemployment insurance purposes but considering
only employment in the zone.
(d) Co-owners of a business, including partners in a partnership
and shareholders of an S corporation, as defined in section 1361
of the Internal Revenue Code, may each claim only the pro rata
share of the credit allowed under this section based on the
ownership interest. The total of the credits allowed all such
owners may not exceed the amount that would have been allowed for
a sole owner of the business.
(e) A credit is not allowed under this section with respect to
an employee whose place of employment is relocated by the
taxpayer from a location in this state to the military reuse
zone, unless the employee is engaged in manufacturing, assembling
or fabricating aviation or aerospace products and the taxpayer
maintains at least the same number of employees in this state but
outside the zone.
(f) A taxpayer who claims a credit under Section 9 of this act
may not claim a credit under this section with respect to the
same employees.

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

Section 13. [Effective Date.] [Insert effective date.]
Interstate Bank Branching Act

This act, based on 1992 New York legislation, allows, on a reciprocal basis, out-of-state banks to open and maintain branches in the state (hereafter referred to as the host state).

The act requires an out-of-state bank to obtain the approval of the host state superintendent of banks prior to opening or maintaining a branch; authorizes a branch of an out-of-state bank to exercise the same powers as a host state bank; provides that the superintendent may examine branches operating in the host state and allows interstate branching only if a bank's home state supervisor has agreed to provide ongoing examination information to the host state superintendent; prohibits branches from operating in localities in which the host state banks currently are not allowed to locate; and enables the superintendent to deny branching if an out-of-state bank does not have an acceptable record of meeting the credit needs of the entire community.

The reader may wish to note that in 1993, at least three states enacted interstate bank branching legislation: Alaska Ch. 26, SB 149, North Carolina SB 936, and Oregon SB 849.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Interstate Bank Branching Act.

Section 2. [Definitions.] As used in this act:
(1) "Acquisition transaction" means any merger, consolidation or purchase of assets and assumption of liabilities.
(2) "Appropriate state supervisor" means the home state supervisor with supervisory and regulatory jurisdiction over an out-of-state depository institution in its home state.
(3) "Banking organization" means [insert definition and citation for appropriate section of state code].
(4) "Department" means the [state banking department].
(5) "Home state" means, with respect to an out-of-state depository institution, the state under the laws of which such out-of-state depository institution is incorporated or otherwise organized.
(6) "Like-type banking organization" means, with respect to an out-of-state depository institution, a banking organization with the type of charter that most nearly corresponds to the charter of such out-of-state depository institution, as determined by the [superintendent].
(7) "Out-of-state depository institution" means a state bank or a state savings association, as such terms are defined in section 3(a)(2) and section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(2) and (b)(3)), but such term shall not include a banking organization.
(8) "State" means any state of the United States (other than this state), the District of Columbia, any territory of the
United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Mariana Islands.

(9) "Superintendent" means the [state superintendent of banking].

Section 3. [Establishment of Branches by Out-of-State Depository Institutions.]
(a) Subject to the provisions of this act, an out-of-state depository institution may open and occupy one or more de novo branches in this state with prior approval of the [superintendent]. An application for approval submitted pursuant to this section shall contain such information as the [superintendent] deems necessary. At the time of making such application, an investigation fee of [insert dollar amount] shall be paid to the [superintendent] for each branch office for which approval is sought. If the [superintendent] finds that the opening of the branch office is not consistent with the declaration of the policy set forth in [insert citation for appropriate section of state code], he or she shall notify the applicant that the application has been denied.

(b) Subject to the provisions of this act, if the merger or acquisition agreement so provides, an out-of-state depository institution may maintain as a branch or branches the place or places of business of any banking organization which it has received into itself as a result of an acquisition transaction authorized by this act.

(c) No out-of-state depository institution shall open, occupy or maintain a branch pursuant to subsection (a) or (b) of this section at a location not permitted to a like-type banking organization.

Section 4. [Interstate Acquisition Transactions.]
(a) An out-of-state depository institution may engage in an acquisition transaction with a banking organization if such acquisition transaction is permitted by the laws of the home state of the out-of-state depository institution. Each such transaction shall be subject to the requirements of this act.

(b) With respect to procedure, each constituent banking organization shall comply with [insert citation for section of state code regarding merger agreement, authorization, approval, filing], or [insert citation for section of state code regarding purchase of assets], as the case may be, and each constituent out-of-state depository institution shall comply with the applicable provisions of law of its home state.

(c) [Insert citation for section of state code regarding approval or disapproval of merger or purchase of assets] shall apply to any acquisition transaction authorized by this act.

(d) At the time when a merger or consolidation authorized by this act becomes effective:
   (1) the resulting or consolidated corporation shall be considered the same business and corporate entity as each of the constituent corporations;
   (2) all the property, rights, powers and franchises of each of
the constituent corporations shall vest in the resulting or consolidated corporation and the resulting consolidated corporation shall be subject to and shall be deemed to have assumed all of the debts, liabilities, obligations and duties of each constituent corporation and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the resulting or consolidated corporation;

(3) any reference to a constituent corporation in any contract, will or document, whether executed or taking effect before or after the merger or consolidation, shall be considered a reference to the resulting or consolidated corporation if not inconsistent with the other provisions of the contract, will or document; and

(4) a pending action or other judicial proceeding to which any constituent corporation is a party, shall not be deemed to have abated or to have discontinued by reason of the merger or consolidation, but may be prosecuted to final judgment, order or decree in the same manner as if the merger or consolidation had not been made, or the resulting or consolidated corporation may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such constituent corporation if the merger or consolidation had not occurred.

(e) In the case of an acquisition transaction in which an out-of-state depository institution is the resulting or consolidated corporation, the franchise of each constituent banking organization shall automatically terminate when the acquisition transaction is consummated.

Section 5. [Grounds for Denial.]
(a) No out-of-state depository institution shall receive approval to open, occupy or maintain a branch in this state pursuant to this act unless:

(1) the [superintendent] finds that the laws of the home state of such out-of-state depository institution:

(i) authorize a like-type banking organization to open, occupy or maintain one or more branches in such state in the same manner (either de novo or by acquisition transaction) in which the out-of-state depository institution is seeking to open, occupy or maintain a branch or branches in this state, with no more restrictive limitations on the location of such branch or branches than would be applicable to such out-of-state depository institution, and

(ii) do not impose conditions on the powers or privileges that may be exercised at a branch or branches of a like-type banking organization in such state that are materially more restrictive than those imposed on the powers or privileges that may be exercised by such out-of-state depository institutions in such state; and

(2) the appropriate state supervisor shall have agreed to supply the [superintendent] with such examination reports and
reports of condition as the [superintendent] shall deem sufficient to allow the [superintendent] to ascertain on a current basis the financial condition of the out-of-state depository institution; and
(3) such out-of-state depository institution shall have filed with the office of the [superintendent]
   (i) a duly executed instrument in writing, by its terms of indefinite duration and irrevocability, appointed the [superintendent] and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against it in a cause of action arising out of a transaction with its branch or branches in this state, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and
   (ii) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent or other person to whom such process shall be forwarded by the [superintendent]; and
(4) such out-of-state depository institution shall have supplied the [superintendent] with such information as he or she shall require by regulation.
(b) In addition, the [superintendent] is authorized to deny an application to open, occupy or maintain a branch in this state pursuant to this act if he or she shall determine that such out-of-state depository, any holding company thereof, and any other depository institution subsidiary of such holding company, shall not have an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution within the meaning of an act of Congress entitled Community Reinvestment Act of 1977, United States Public Law 95-128, or [insert citation for other appropriate section of state code].

Section 6. [Power of Superintendent to Examine Branches of Out-of-State Depository Institutions.] The [superintendent] shall have the power at any time in his or her discretion to examine every branch located in this state of an out-of-state depository institution for the same purposes and to the same extent as is provided in the case of banking organizations pursuant to the provisions of [insert citation for appropriate section of state code].

Section 7. [Applicability of Certain Sections to Out-of-State Depository Institutions.] Any reference in [insert citation for appropriate section of state code] to a foreign bank or foreign banking corporation licensed to do business in this state shall be deemed to be a reference to an out-of-state depository institution authorized to open, occupy and maintain a branch pursuant to the provisions of this act. Notwithstanding the foregoing,
(1) the provisions of [insert citations for sections of state code regarding repayment of deposits standing in the names of
minors, trustees, joint depositors or custodians interpleader in certain actions], [insert citation for section of state code regarding change of location, name or business], [insert citations for sections of state code regarding payment of claims by foreign banking corporations where adverse claim is asserted; effect of claims or advices originating in and statutes, rules or regulations purporting to be in force in occupied territory; performance of contracts and repayment of deposits performable or repayable at foreign offices of foreign banking corporations] shall apply with equal force and effect to out-of-state depository institutions authorized to open, occupy or maintain branches pursuant to the provisions of this act, and (2) the provisions of [insert citations for appropriate sections of state code regarding restrictions on executive officers or directors of foreign banking corporations], shall not apply to out-of-state depository institutions authorized to open, occupy or maintain branches pursuant to the provisions of this act.

Section 8. [Powers of Out-of-State Depository Institutions.] An out-of-state depository institution that opens, occupies or maintains a branch in this state as authorized by this act shall have in this state the same powers under the laws of this state as a like-type banking organization.

Section 9. [Powers Permitted to Out-of-State Branches of Banking Organizations.] A banking organization that opens, occupies and maintains one or more branch offices in any state may exercise such powers at such branch or branches as would be permitted at such place or places to an out-of-state depository institution maintaining a branch or branches at such place or places with the type of charter that most nearly corresponds to the charter of such banking organization unless the [superintendent] determines that the exercise of such powers is contrary to the declaration of policy contained in [insert citation for appropriate section of state code].

Section 10. [Revocation of Authority to Open, Occupy or Maintain a Branch.] The [superintendent] may, upon notice and an opportunity to be heard, suspend or revoke an out-of-state depository institution's authority to maintain a branch or branches in this state if the [superintendent] shall find that such out-of-state depository institution:
(1) Has violated any law;
(2) Is conducting its business in an unauthorized or unsafe manner;
(3) Is in an unsound or unsafe condition to transact its business;
(4) Cannot with safety and expediency continue business;
(5) Has neglected or refused to comply with the terms of a duly issued order of the [superintendent];
(6) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner for the [department];
(7) Has refused to be examined upon oath regarding to its affairs;
(8) Has as its home state a state the laws of which no longer satisfy the conditions contained in Section 5 of this act.

Section 11. [Rules and Regulations.] The [superintendent] shall have the authority to promulgate such rules and regulations consistent with the purposes of this act, including but not limited to such rules and regulations as may define the terms used in this act and as may be necessary or appropriate to interpret, implement or enforce the provisions thereof.

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

Section 13. [Effective Date.] [Insert effective date.]
Refund Anticipation Loan Act

The act presented below, which is based on 1992 Louisiana legislation, requires persons facilitating refund anticipation loans to register with the state's commissioner of financial institutions. Applications must be in writing and submitted with a non-refundable fee of $250 for each location where the registrant intends to make refund anticipation loans. The registration requirements do not apply to a licensed or chartered bank, savings and loan, credit union or lender. The act requires the registrant to disclose to the debtor who applies for a refund anticipation loan: the loan fee; the fee for the electronic filing of the tax return; the time within which the proceeds will be paid if the loan is approved; the debtor's responsibility for repayment if the tax refund is not paid; the availability of electronic tax return filing; and examples of annual percentage rates for certain amounts of money. The act further prohibits the facilitators of such loans from engaging in specified activities.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Refund Anticipation Loan Act.

Section 2. [Definitions.] As used in this act:
(1) "Applicant" means a person who applies for registration as a facilitator of refund anticipation loans.
(2) "Commissioner" means the [state commissioner of financial institutions].
(3) "Creditor" means a person who makes a refund anticipation loan.
(4) "Debtor" means a person who receives the proceeds of a refund anticipation loan.
(5) "Facilitator" means a person who, individually or in conjunction or cooperation with another person, processes, receives, or accepts for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitates the making of a refund anticipation loan.
(6) "Office" mean the [state office of financial institutions].
(7) "Person" means an individual, firm, corporation, partnership, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or another entity.
(8) "Refund anticipation loan" means a loan that the creditor arranges to be repaid directly from the proceeds of the debtor's income tax refund.
(9) "Refund anticipation loan fee" means the charges, fees or other monies or consideration charged or imposed by the creditor or facilitator for the making of a refund anticipation loan. This term shall not include any charge, fee or other consideration.
usually charged or imposed by the facilitator in the ordinary course of business for non-loan services, such as fees for tax return preparation and fees for electronic filing of tax returns.

(10) "Registrant" means a person who is registered as a facilitator of refund anticipation loans under this act.

Section 3. [Restrictions.] No person shall, individually or in conjunction or cooperation with another person, process, receive or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitate the making of a refund anticipation loan or a check in payment of refund anticipation loan proceeds, or in any other manner facilitate the making of a refund anticipation loan unless the person has complied with the provisions of this act.

Section 4. [Registration Requirement.]
(a) No person shall, individually or in conjunction or cooperation with another person, process, receive or accept for delivery and application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds without first being registered with the [commissioner] in accordance with the registration procedure provided in this act.
(b) Violation of this act is a [insert offense and penalty].
(c) This section shall not apply to a person who is licensed or chartered to do business as a bank, savings association, credit union or licensed lender under the laws of this state or the United States.

Section 5. [Registration.]
(a) An application to become registered as a facilitator shall be in writing, under oath, and in a form prescribed by the [commissioner]. The application shall contain all information prescribed by the [commissioner]. Each application for registration shall be accompanied by a non-refundable fee, payable to the [commissioner], of [insert amount of fee] plus [insert amount] for each location where the registrant intends to facilitate refund anticipation loans.
(b) Upon the filing of an application for registration, if the [commissioner] finds that the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of facilitating refund anticipation loans will be operated honestly and fairly and within the purposes of this act, the [commissioner] shall register the applicant as a facilitator of refund anticipation loans and shall issue and transmit to the applicant a certificate attesting to the registration. If the [commissioner] does not so find, he shall not register the applicant. Upon written request, the applicant whose application is denied is entitled to a hearing on the question of his qualifications for a license if either of the following has occurred:
   (1) The [commissioner] has notified the applicant in writing that his application has been denied.
   (2) The [commissioner] has not issued a license within [insert
number] days after the application for a license was filed.

A request for a hearing shall not be made more than made more
than [insert number] days after the [commissioner] has mailed a
written notice to the applicant notifying him that the
application has been denied and stating in substance the
[commissioner's] findings regarding denial of the application.

(c) Upon receipt of a certificate of registration, the
applicant is registered under this act and may engage in the
business of facilitating refund anticipation loans at the
locations identified on the application for registration.

Section 6. [Renewal of Registration.]
(a) Each registration as a facilitator of refund anticipation
loans shall expire on [insert date] that it was issued, unless it
is renewed for the succeeding year. Before the registration
expires, the registrant may renew the registration by filing with
the [commissioner] an application for renewal in the form and
containing all information prescribed by the [commissioner]. Each
application for renewal of registration shall be accompanied by a
fee of [insert amount] for each location where the registrant
intends to facilitate refund anticipation loans during the
succeeding year.

(b) Upon the filing of an application for renewal of
registration under this act, the [commissioner] shall renew the
registration unless the [commissioner] decides that the fitness
of the registrant or the operations of the registrant would not
support registration of the registrant. If the [commissioner]
makes such a determination, he shall so notify the registrant,
stating the reasons for the determination.

Section 7. [Display of Certificate.] Each registrant shall
prominently display a certificate issued under this act at each
location in the state where the registrant facilitates the making
of refund anticipation loans.

Section 8. [Bond or Trust Account Required.]
(a) Each registrant shall obtain a surety bond issued by a
surety company authorized to do business in state, or establish a
trust with a licensed and insured bank or savings institution
located in [state]. The amount of the bond or trust account shall
be [insert amount] for the first location plus [insert amount]
for each additional location where the registrant intends to
facilitate refund anticipation loans. The bond or trust account
shall be in favor of the state of [state]. Any person damaged by
the registrant's breach of contract, by any obligation arising
therefrom, or by any violation of law may bring an action against
the bond or trust account to recover monies therefrom.

(b) The term of the bond shall be continuous, but it shall be
subject to termination by the surety upon giving [insert number]
days written notice to the principal and to the [commissioner].
The bond shall continue in effect during the [insert number of
days] period.

(c) A copy of said bond shall be conspicuously posted at any
business location where refund anticipation loans are made.
(d) It shall be unlawful for any registrant or its agent or employee to post an expired bond or a bond which does not meet the requirements of this section.

Section 9. [Filing and Posting of Loan Fees; Disclosures.]
(a) On or before [insert date] each year, each registrant shall file with the [commissioner] a schedule of the refund anticipation loan fees to be facilitated by the registrant during the succeeding year. Immediately upon learning of any change in the refund anticipation loan fee for that year, the registrant shall file an amendment with the [commissioner] setting out the change. Filing shall be effective upon receipt by the [commissioner].

(b) Each registrant shall prominently display at each office where the registrant is facilitating refund anticipation loans a schedule showing the current refund anticipation loan fees for refund anticipation loans facilitated at the office and the current electronic filing fees for the electronic filing of the taxpayer's tax return. Each registrant shall also prominently display on each fee schedule a statement to the effect that the taxpayer may have the tax return filed electronically without also obtaining a refund anticipation loan. No registrant shall facilitate a refund anticipation loan unless the schedule required by this section is displayed and the refund anticipation loan fee actually charged is the same as the fee displayed on the schedule and the fee filed with the [commissioner] pursuant to subsection (a) of this section.

(c) At the time that a debtor applies for a refund anticipation loan, the registrant shall disclose the following to the debtor on a form separate from the application:

   (1) The fee for the loan.
   (2) The fee for electronic filing of a tax return.
   (3) The time within which the proceeds of the loan will be paid to the debtor if the loan is approved.
   (4) That the debtor is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.
   (5) The availability of electronic filing of the taxpayer's tax return, along with the average time announced by the appropriate taxing authority within which a taxpayer can expect to receive a refund if the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.

   (6) Examples of the annual percentage rates, as defined by the Truth in Lending Act, 15 U.S.C. Section 1607 and 12 C.F.R. Section 266.22, for refund anticipation loans of [insert various dollar amounts. Regardless of disclosures of the annual percentage rate required by the Truth in Lending Act, if the debtor is required to establish or maintain a deposit account with the creditor for receipt of the debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of determining the annual percentage rate disclosure under this section shall be assumed to be the estimated date when the tax refund will be deposited in the debtor's account.
Section 10. [Prohibited Activities.] A facilitator of a refund anticipation loan shall not engage in any of the following activities:

1. Misrepresenting a material factor or condition of a refund anticipation loan.
2. Failing to arrange for a refund anticipation loan promptly after the debtor applies for the loan.
3. Engaging in any transaction, practice or course of business that operates a fraud upon any person in connection with a refund anticipation loan.
4. Facilitating a refund anticipation loan for which the refund anticipation loan fee is either different from the fee posted or the fee filled with the [commissioner].
5. Directly or indirectly arranging for payment of any portion of the refund anticipation loan for check cashing, credit insurance or any other good or service unrelated to either preparing and filing tax returns or facilitating refund anticipation loans.
6. Arranging for a creditor to take a security interest in any property of the debtor other than the proceeds of the debtor's tax refund to secure payment of the loan.
7. Violation of any rule or order promulgated by the [commissioner] pursuant to this act, or violation of a consent agreement entered into with the [commissioner].

Section 11. [Cease and Desist Orders.]

(a) Upon the finding that any action of a registrant may be in violation of this act or that the registrant has engaged in an unfair or deceptive act or practice, the [commissioner] shall give reasonable notice to the registrant of the suspected violation or unfair or deceptive act or practice, and an opportunity for the registrant to be heard. If, following the hearing, the [commissioner] finds that an action of the registrant is in violation of this act or that the registrant has engaged in an unfair or deceptive act or practice, the [commissioner] shall order the registrant to cease and desist from the action.

(b) If the registrant fails to appeal a cease and desist order of the [commissioner] in accordance with the Administrative Procedure Act and continues to engage in an action in violation of the [commissioner]'s order to cease and desist from the action, the registrant shall be subject to a civil penalty of [insert dollar amount] for each action it takes in violation of the [commissioner]'s order.

Section 12. [Revocation of Registration.] After notice and hearing, and upon the finding that a registrant has either engaged in a course of conduct that is in violation of this act or has continued to engage in an action in violation of a cease and desist order of the [commissioner] that has not been stayed upon application of the registrant, the [commissioner] may revoke the registration of the registrant temporarily or permanently, in the discretion of the [commissioner].
Section 13. [Penalties.] Except in the case of a refund anticipation loan that is not approved by the creditor, a facilitator who fails to deliver to the debtor the proceeds of a refund anticipation loan within [insert number] hours after the time period promised by the facilitator when the debtor applied for the loan shall pay to the debtor an amount equal to the refund anticipation loan fee. A facilitator who engages in an activity prohibited under Section 10 of this act in connection with a refund anticipation loan is liable to the debtor for damages of [insert number] times the amount of the refund anticipation loan fee or other unauthorized charge plus reasonable attorney's fees.

Section 14. [Rules; Enforcement.] The [commissioner] may promulgate reasonable rules as necessary to effect the purposes of this act, to provide for the protection of the borrowing public, and to assist registrants in interpreting this act. In order to enforce this act, the [commissioner] may make investigations, subpoena witnesses, require audits, recordkeeping and reports, and conduct hearings regarding possible violations of this act.

Section 15. [Exemptions.]
(a) This act shall not apply to a person who does not deal directly with debtors but who acts solely as an intermediary by processing or transmitting, electronically or otherwise, tax or credit information or by preparing for a facilitator refund anticipation loan checks to be delivered by the facilitator to the debtor.
(b) A person who is registered as a facilitator of refund anticipation loans under this act shall be exempt from the definition of a consumer loan broker and shall not be required to be registered under [insert citation for appropriate state statute], relative to consumer loan brokers, in order for such person to broker refund anticipation loans. The brokering of any other type of consumer loan shall, however, require registration as a consumer loan broker.

Section 16. [Effective Date.] [Insert effective date.]
Export Trade Revolving Loan Fund Act

The act presented below is designed to promote export activities to small and medium-sized companies. One impediment to the entry of such firms into the marketplace is their inability to obtain financing for export preparation activities at a reasonable interest rate. A substantial amount of market research and preparation is needed prior to the actual sale of products and such activity is expensive and risky in the case of exports. This act, based on 1990 New York state legislation, creates an export trade revolving loan fund within the state job development authority to provide funds to state firms employing fewer than 100 individuals for pre-export activities. It further requires the state department of economic development to provide technical export expertise to the job development authority.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Export Trade Revolving Loan Fund Act.

Section 2. [Legislative Findings and Purpose.] The legislature hereby finds and declares that small and medium-sized companies have sought to increase their sales and employment by entering the world market in that they are desirous of making international sales. However, such business transactions are substantially more complex than a normal domestic sales relationship familiar to the United States business community. Further, the international sale requires a great deal of documentation, knowledge of foreign markets, high risk relative to a domestic sale, special freight forwarding transaction, and most importantly, special financing.

The legislature further finds and declares that small and medium-sized manufacturers require short-term financing which is currently not available throughout the state for activities that must be completed prior to the foreign sale of goods known as pre-export activities. Therefore, to help business in this state to better export its products, the legislature desires that the [state job development authority] provide loans to small and medium-sized companies through appropriate and efficient methods so that more businesses in the state may enter the international sales marketplace.

Section 3. [Definitions.] As used in this act:
(1) "Agreement" means an export trade loan agreement made pursuant to this act.
(2) "Authority" means the [state job development authority] created by [insert citation for appropriate state statute].
(3) "Borrower" means any entity which receives a loan under this act to participate in an eligible project.
(4) "Eligible project" means pre-export activities conducted by an export trading entity, engaged in activities involving the
export of goods and services, including but not limited to market surveys, research, product sourcing, marketing, advertising, bonding, insuring, warehousing, shipping, storage, documentation, export market development, expert advice and trade shows.

(5) "Export trading entity" means a person, firm, partnership, corporation or other entity, principally doing business in the state of [state], with fewer than 100 employees, engaged in or seeking to engage in an eligible project.

(6) "Project cost" includes all reasonable and necessary costs to be incurred while completing an eligible project, including legal, financial, insurance and export trading services.

Section 4. [Powers of Job Development Authority.] The [authority] shall have the power and duty to:

(1) Assist and counsel export trading entities in their dealings with federal, state and local governments, including but not limited to providing access to information regarding government requirements affecting export trading activities.

(2) Prescribe standards and criteria for the granting of applications for loans to export trading entities and for the making of loans for eligible projects. Such standards and criteria shall implement the legislative findings and purpose set forth in this act. In developing such standards and criteria, the [authority] shall consult with the [superintendent of banks, the superintendent of insurance and the commissioner of economic development] regarding standards and criteria for the making of loans for an eligible project; to plan, develop and undertake a program wherein such loans for eligible projects can be dispersed to the general business community of the state of [state] for eligible projects.

(3) Make and execute contracts for the administration or servicing of any loan made by the [authority] in furtherance of this act and to pay the reasonable values of such services rendered to the [authority] pursuant to such contract.

(4) Access funds for the promotion of this activity as defined in this act and to do all things reasonable to develop a viable pool of funds to carry out the legislative intent of this act to include seeking out and securing monies from the Small Business Administration, Export-Import Bank of the United State, Economic Development Administration, Agency for International Development, the Department of Housing and Urban Development or other federal agencies.

(5) Do any and all things necessary or convenient to carry out this corporate purpose and exercise the powers given and granted in this act.

(6) Notwithstanding any of the provisions of this act, the borrower may only use funds made available by the [authority] through loans for eligible projects. Specifically, the [authority] shall not finance the sale of products or services being exported as part of an export sale from the United States.

Section 5. [Repayment of Loans.]

(a) The entire amount loaned shall be repaid by the borrower to the [authority] in a term not longer than [one year].
(b) Interest shall accrue on the unpaid balance throughout the lifetime of the loan at a rate to be determined by the [job development authority].

Section 6. [Rules and Regulations of the Authority.]
(a) The [authority] shall make, promulgate and enforce such reasonable rules and regulations relating to its duties under this act as it may deem appropriate.
(b) To effectuate the purpose of this act, the [authority] may request from any [authority, division, board, bureau, commission or any other agency] of the state or from any public corporation, and the same are authorized to provide such services, assistance and data as will enable the [authority] to properly carry out its functions, powers and duties under this act.

Section 7. [Effective Date.] [Insert effective date.]
In 1992, New Jersey enacted a package of seven job training and education bills. The legislation was designed to enable both currently employed and recently displaced workers to acquire employment and training services for career advancement opportunities and improved earning power.

In lieu of presenting these complex items in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the provisions of the seven acts establishing the program. Readers interested in the full text of the legislation should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939.

Summary of Package

The centerpiece of the training package is the "Employment and Workforce Development Act" (Ch. 43, AB 1402). This act establishes the workforce development partnership program, and provides customized training services for businesses, and provides grants to train unemployed, displaced and disadvantaged individuals. At least 30 percent of program funds must be allocated for training workers who have been laid off, at least 8 percent must be reserved for training other economically disadvantaged individuals, and not less than 3 percent must be reserved for occupational safety and health training. Funds available under the program may not be used to displace currently employed workers with trainees. The act establishes a revolving Workforce Development Partnership Fund to be managed and invested by the state treasurer. Proceeds from the fund are to be used solely to pay for employment and training programs.

The revenue legislation in the package (Ch. 44, AB 1403) funds the program by redirecting approximately $50 million of unemployment insurance tax revenue to workforce development. The revenue raised amounts to 0.125 percent of the wages subject to the unemployment insurance tax, which, in 1993, was the first $16,100 of a worker's wages in New Jersey.

An existing program of tuition waivers for laid-off workers to enroll in vocational courses in county and state colleges is extended under the legislation to include course work at state universities (Ch. 45, AB 1404). The legislation also authorizes waivers for courses in remedial education needed to succeed in job training.

In some cases, unemployment insurance benefits had been denied to workers receiving high-level training. Under Ch. 46, AB 1405, displaced workers may receive unemployment insurance benefits while attending approved training and education programs.

Under Ch. 47, AB 1406, up to 26 weeks of extended unemployment insurance benefits are provided for laid-off workers who are enrolled in qualified job training programs. The act is designed to encourage in-depth training in extended courses. Training programs funded under the federal Job Training Partnership Act...
(JTPA) are subject to many of the same oversight and accountability requirements as the state workforce development partnership program under Ch. 48, AB 1407.

The use of college students as literacy volunteers is encouraged under Ch. 49, AB 1408, by allowing public colleges and universities to establish literacy tutoring programs and offer course credit toward graduation to students who elect to participate. The purpose is to bring state higher education institutions into the effort to strengthen the workforce through literacy training.

Workplace Literacy

Under Ch. 43, AB 1402, every prospective trainee is entitled to basic skills assessment and counseling, including a literacy assessment, to determine any needed remediation needed for vocational training. The assessment and counseling must be carried out by the state in a setting independent of service providers and providers must train all individuals referred to them on a first-come, first-serve basis. This prevents providers from training only the most easily trainable individuals. The same requirements are imposed on JTPA programs under Ch. 48, AB 1407.

Program Quality and Accountability

The collection of information to conduct long-term follow-ups of former trainees is required and funded under Ch. 43, AB 1402. The data are to be used to screen out training providers who perform poorly. The same requirement is imposed upon providers funded by JTPA under Ch. 48, AB 1407.

Both Ch. 43 and Ch. 48 set standards to ensure that on-the-job training is accompanied by appropriate classroom training. Such training is only provided for jobs with an appropriate level of skill and complexity and for a duration appropriate to the skill levels of the job and the trainee.

Training Providers

Under Ch. 43, AB 1402, labor unions, employer organizations, educational institutions and individual employers may apply to establish customized training programs, in addition to training providers. In any workplace with a unionized workforce, union participation in the planning of training funded under the workforce development partnership program and union approval of the training is required.

Matching Funds and Business Plans

As customized training is more likely to benefit a particular industry, employers applying for customized training funds must provide 40 percent of the cost of the training unless the state department of labor finds that a larger or smaller share is feasible because of the employer's size (Ch. 43, AB 1402).
Businesses applying for customized training grants must present a long-term human resource plan documenting that the grants will result in an expanded training program and that most training will be for production workers.

Public Sector Labor-Management Cooperation Act
Draft Legislation from the State and Local Government Labor-Management Committee

The draft act presented below creates a public sector labor-management council within an appropriate state agency to encourage and support the establishment and operation of joint public sector labor-management activities and committees for improving labor-management relationships and organizational effectiveness.

An appropriate state agency may enter into contracts and make grants to fulfill its responsibilities. Nothing in the act is intended to affect the terms and conditions of any collective bargaining agreement or the rights of employees or employers established under other laws.

This proposal was drafted in 1992 by the State and Local Government Labor-Management Committee, comprised of 20 major national organizations representing public employers and public employees in the United States. It includes The Council of State Governments, the National Association of Counties, the National Conference of State Legislatures, the National Governors’ Association, the National League of Cities, the U.S. Conference of Mayors, and 11 labor organizations, in cooperation with the Federal Mediation and Conciliation Service and the U.S. Department of Labor.

The draft is based on the federal Labor-Management Cooperation Act of 1978 and on a Wisconsin act establishing a labor and management council. Although originally designed for the private sector, today the acts are administered with partial attention paid to state and local government labor-management cooperation as devices to improve the quality of public services and enhance the state’s ability to attract and keep business enterprises.

Across the states, there are a variety of examples of public and private sector labor-management cooperative efforts. Many of these programs, however, have not been established by state legislation, but instead are products of collective bargaining agreements or administrative actions.

For example, in 1981, New York state created a joint labor-management day care advisory committee to establish on-site day care centers for the children of state employees. The joint committee was the result of discussions between state employee relations officials and state employee union representatives. The committee has established 38 on-site day care centers for 2,400 children.

In Oregon, the state employees union obtained contract language in 1988 that established workforce task forces for social service workers in five state human resources agencies. The task force was formed in response to growing caseloads for social service
workers. In 1990, the contract was renegotiated to include nine
pilot projects in which labor-management teams in local social
services offices have authority to address workload issues.
Michigan developed a statewide labor-management committee under a
state contract to improve the state's delivery of social
services.
In 1988, Minnesota's department of human services reached an
agreement with a state employees union to restructure the state's
system of services to the mentally disabled. Labor-management
teams in New York state have responded to state requests for
proposals for community service centers that provide one-stop
services, such as unemployment insurance and food stamps, for the
unemployed. A labor-management committee also helped restructure
New York's state department of labor. Illinois has a labor-
management career counseling and advancement program for state
workers under a collective bargaining agreement. Indiana, which
established its first labor-management committee in January 1992,
will discuss, among other things, health and safety issues,
grievance procedures for non-disciplinary issues, and layoff and
recall procedures.
Several states also have developed labor-management councils
concerning private sector employment. Pennsylvania's "Making
Industry and Labor Right in Today's Economy" or MILRITE Council,
Kentucky's Labor-Management Advisory Council, Tennessee's Center
for Labor-Management Relations and West Virginia's Labor-
Management Council were all created by legislative action in
1978.
Pennsylvania's council is headed by industry, labor and
government leaders and is responsible for developing programs to
encourage economic development and improve productivity and
labor-management relations. West Virginia's council is
responsible for making the state more attractive to industry and
employs workshops to encourage cooperation. Kentucky's council
serves as an advisory body for state officials and local councils
in attracting new industry. And Tennessee's council is a
statewide education and training agency of the state department
of labor. Illinois, Indiana, Iowa, Massachusetts, Michigan,
Minnesota, Ohio and Wisconsin are among the other states that
have established labor-management councils.

Public Sector Labor-Management Cooperation Act
A Draft of the State and Local Government Labor Management
Committee

Section 1.
(a) This Act may be cited as the [state] Public Sector Labor-
Management Cooperation Act.
(b) It is the purpose of this Act
(1) to recognize that quality public services are essential to
a competitive economy and to a contributing citizenry;
(2) to study and explore ways of eliminating potential problems
which reduce the effectiveness of governmental operations;
(3) to provide workers, their labor organizations, and public
employers with opportunities to study and explore new and
innovative joint approaches to achieving organizational effectiveness;
(4) to assist workers, their labor organizations, and public employers in solving problems of mutual concern;
(5) to enhance the involvement of workers in making decisions that affect their working lives;
(6) to expand and improve working relationships between workers and managers; and
(7) to encourage worker participation by establishing continuing mechanisms for communication between employers, and employees and their labor organizations through state assistance to the formation and operation of labor management committees.

Section 2.
(a) There is hereby created in the [appropriate state agency] a public sector Labor and Management Council to advise the [appropriate state agency] about sponsoring public sector labor and management conferences and meetings and promoting positive relations between public sector labor and management. The Council shall have [insert number] members serving [five- (5-) ] year terms consisting equally of representatives of the public sector labor community in the state and representatives of the public sector management community in the state.
(b) The [appropriate state agency] is authorized and directed to enter into contracts and to make grants, where necessary or appropriate, to fulfill its responsibilities under this section.
(c) There are authorized to be appropriated to carry out the provisions of this section [insert dollar amount] for the fiscal year [insert year], and such sums as may be necessary thereafter.
(d) Nothing in this Act shall affect the terms and conditions of any collective bargaining agreement whether in effect prior to or entered into after the date of enactment of this section, and nothing in this Act shall affect the rights of employees and employers as established under other statutes.

Youth Apprentice Pilot Program Act

The act presented below, which is based on 1991 Oregon legislation, requires the state apprenticeship and training council and state division of vocational education to establish a youth apprenticeship pilot program to assist in the transition to regular apprenticeship programs and to provide occupational skill training. Under the Oregon act, the program is limited to 100 students in each biennium and is restricted to students over the age of 16 who are enrolled in appropriate high school vocational programs. The program requires that employment with a training agent count toward graduation requirements.

The act also creates a business tax credit equal to wages paid to a youth apprentice for the first year of employment, up to $2,500 per student. Students must be enrolled in and complete an 18-week career exploration and work experience program prior to being registered with a training agent. The apprentice's combined in-school course work and training in addition to that on the job may not exceed 40 hours per week and the wage must not be less
than the state minimum wage.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Youth Apprenticeship Pilot Program Act.

Section 2. [Establishment of Program.]
(a) The [state apprenticeship and training council] and the [state division of vocational education] shall establish a youth apprenticeship pilot program to provide occupational skill training for up to [100] individual high school students in each [biennium] to assist them in making the transition to apprenticeship programs under [insert reference to appropriate section of state code].
(b) Participating students must be [16] years of age or older and must be enrolled in a high school vocational technical program that is applicable to the specific youth apprenticeship pilot program for which they are applying. Students also must be enrolled in and complete and [18]-week career exploration and work experience program prior to being registered with a training agent. In licensed trades and in hazardous occupations, on-the-job training for students [16] years of age may be simulated cooperatively at industry training centers.
(c) Participating schools shall develop and maintain a list of students eligible for youth apprenticeship programs. In a cooperative effort, high school counselors, instructors, training agents and local apprenticeship committee members shall review and select students for participation from the list of eligible students established under this subsection.
(d) Training agents under [insert reference to appropriate section of state code] shall cooperate with the [state director of apprenticeship and training] through the applicable apprenticeship committee to develop training guidelines consistent with youth apprenticeship standards for a specific trade. The guidelines shall provide listing of work processes and related training to be done that will permit the student to acquire necessary skills. The training agent, school and youth apprentice shall evaluate monthly the student's progress in high school curriculum, related training and on-the-job training.
(e) The [state apprenticeship and training council] shall adopt rules detailing the process through which local apprenticeship committees shall periodically evaluate youth apprentices and grant credit, consistent with committee policies, to eligible youth apprentices for experience obtained through participation in youth apprenticeship programs.
(f) No registered youth apprentice shall displace a regular employee of an approved training agent.

Section 3. [Program Restrictions.] In addition to the provisions of Section 2 of this act, in each pilot program:
(1) Each training agent shall be allowed [one (1)] youth
apprentice. An additional youth apprentice shall be allowed for each training agent who employs from [three (3) to 10] journeypersons and at least [two (2)] registered apprentices. A third youth apprentice shall be allowed when the training agent employs more than [15] journeypersons in that trade. At no time shall any training agent have more than [three (3)] youth apprentices.

(2) The training agent shall provide workers' compensation coverage for the youth apprentices as required by [insert reference to appropriate section of state code].

(3) The student youth apprentice shall begin at a wage that is [80] percent of the first period of the apprenticeship wage established by the appropriate apprenticeship committee for the applicable standards, but shall not be less than the state minimum wage.

(4) Youth apprentices shall be evaluated for wage increases consistent with the policies established by the participating local apprenticeship committee.

(5) Youth apprentices shall not be employed on projects subject to the federal Davis-Bacon Act or on projects subject to [insert reference to appropriate sections of state code].

(6) The youth apprentice's combined in-school coursework and related training, as well as on-the-job training and other training experiences shall not exceed [eight (8)] hours per day or [40] hours per week.

(7) Employment with the training agent shall not exceed [20] hours per week while the student is enrolled in school classes. All or a portion of the on-the-job training shall be used to meet graduation requirements.

(8) Participating students who fail to regularly attend in-school courses and required related training or who leave high school prior to graduation or completion of their high school requirements shall automatically be removed from the youth apprenticeship program.

COMMENTS: Under the provisions of the Oregon legislation on which this act is based, a business tax credit is allowed to eligible taxpayers who sponsor student participants in the youth apprenticeship program.

Section 4. [Penalties for Termination of Youth Apprentices Without Cause.] Training agents who terminate youth apprentices without cause as determined by the appropriate apprenticeship committee prior to completion of training or who violate Section 2 or 3 of this act or rules adopted pursuant thereto by the [state apprenticeship and training council] or the [state division of vocational education], upon notice to the [state department of revenue], may lose their eligibility for tax credits pursuant to [insert reference to appropriate section of state code] and [insert reference to new sections of code establishing tax credit for apprenticeship program] and their eligibility to train and employ youth apprentices under this act for a period of [one (1)] year.
Section 5. [Effective Date.] [Insert effective date.]
Controversies surrounding the balance of employers' interests and employees' rights have intensified and taken various forms in recent years. How far an employer can go in restricting employees' personal behavior, recreational interests, political activities, or even appearance, has become a topic for discussion in the workplace, the media, and the courtroom. In response, several states have taken action to prohibit discrimination against workers based on personal behavior and lifestyle decisions.

This act, based on 1992 New York legislation, bars an employer or employment agency from discriminating against an employee on the basis of legal activities undertaken by that employee during non-working hours, away from the employer's premises, and without the use of the employer's equipment or resources. The act prohibits any employer or employment agency from refusing to hire, employ, or license, or from discharging or otherwise discriminating against an individual -- in compensation, promotion, or the terms, conditions or privileges of employment -- because of an individual's political activities, use of consumable products, legal recreational activities or union membership.


Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Act Prohibiting Discrimination Against Employees' Participation in Legal Activities During Non-Working Hours.

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

1. "Political activities" means
   (i) running for public office
   (ii) campaigning for a candidate for public office, or
   (iii) participating in fund-raising activities for the benefit of a candidate, political party or political advocacy group.

2. "Recreational activities" means any lawful, leisure-time activities, for which the employee receives no compensation and which is generally engaged in for recreational purposes, including but not limited to sports, games, hobbies, exercise, reading, and the viewing of television movies, and similar material.

3. "Work hours" means all time, including paid and unpaid breaks and meal periods, that the employee is suffered, permitted or expected to be engaged in work, and all time the employee is actually engaged in work. This definition shall not be referred to in determining hours worked for which an employee is entitled to compensation under any law including [insert citation for appropriate section of state code].
Section 3. [Applicability.] Unless otherwise provided by law, it shall be unlawful for any employer or employment agency to refuse to hire, employ or license, or for any employer or employment agency to discharge from employment or to otherwise discriminate against an individual in compensation, promotion or terms, conditions or privileges of employment because of:

(1) an individual's political activities outside of working hours, off of the employer's premises and without use of the employer's equipment or other property, if such activities are legal, provided, however, that this paragraph shall not apply to persons whose employment is defined in [insert citation for appropriate section of state code], and provided further that this paragraph shall not apply to persons who would otherwise be prohibited from engaging in political activity pursuant to [insert citation for appropriate section of state code];

(2) an individual's legal use of consumable products prior to the beginning or after the conclusion of the employee's work hours, and off of the employer's premises and without use of the employer's equipment or other property;

(3) an individual's legal recreational activities outside work hours, off of the employer's premises and without use of the employer's equipment or other property; or

(4) an individual's membership in a union or any exercise of rights granted under [insert citations for appropriate section of state code].

Section 4. [Exemptions.] The provisions of Section 3 of this act shall not be deemed to protect activity which:

(1) creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest;

(2) with respect to employees of a state agency as defined in [insert citation for appropriate section of state code], is in knowing violation of [insert citation for section of state code regarding public officers];

(3) with respect to employees of a state agency as defined in [insert citation for appropriate section of state code], is in knowing violation of a provision of a collective bargaining agreement concerning ethics, conflicts of interest, potential conflicts of interest, or the proper discharge of official duties;

(4) with respect to employees of any employer as defined in [insert citation for appropriate section of state code] who are not subject to [insert citation for section of state code regarding public officers], is in knowing violation of [insert citation for appropriate section of general municipal code] or any local law, administrative code provision, charter provision or rule or directive of the [mayor] or any [municipal agency head], where such law, code provision, charter provision, rule or directive concerns ethics, conflicts of interest, potential conflicts of interest, or the proper discharge of official duties and otherwise covers such employees; and

(5) with respect to employees other than those of any employer
as defined in [insert citation for appropriate section of state
code], violates a collective bargaining agreement or a certified
or licensed professional's contractual obligation to devote his
or her entire compensated working hours to a single employer,
provided however that the provisions of this paragraph shall
apply only to professionals whose compensation is at least
[insert dollar amount] for the year [insert year] and in
subsequent years is an equivalent amount adjusted by the same
percentage as the annual increase or decrease in the consumer
price index.

Section 5. Notwithstanding the provisions of Section 4 of this
act, an employer shall not be in violation of this act where the
employer takes action based on the belief either that
(1) the employer's actions were required by statute, regulation,
ordinance or other governmental mandate,
(2) the employer's actions were permissible pursuant to an
established substance abuse or alcohol program or policy,
professional contract or collective bargaining agreement, or
(3) the individual's actions were deemed by an employer or
previous employer to be illegal or to constitute habitually poor
performance, incompetency or misconduct.

Section 6. [Professional Service Contract; Non-Applicability.]
Nothing in this act shall apply to persons who, on an individual
basis, have a professional service contract with an employer and
the unique nature of the services provided is such that the
employers shall be permitted, as part of such professional
service contract, to limit the off-duty activities which may be
engaged in by such individual.

Section 7. [Differential Insurance Coverage.] Nothing in this
act shall prohibit an organization or employer from offering,
imposing or having in effect a health, disability or life
insurance policy that makes distinctions between employees for
the type of coverage based upon the employees' recreational
activities or use of consumable products, provided that
differential premium rates charged reflect a differential cost to
the employer and that employers provide employees with a
statement delineating the differential premium rates used by the
carriers providing insurance for the employer, and provided
further that such distinctions in type or price of coverage shall
not be utilized to expand, limit or curtail the rights or
liabilities of any party with regard to a civil cause of action.

Section 8. [Penalties.]
(a) Where a violation of this act is alleged to have occurred,
the [state attorney general] may apply in the name of the people
of the state of [state] for an order enjoining or restraining the
commission or continuance of the alleged unlawful acts. In any
such proceeding, the court may impose civil penalty in the amount
of [insert dollar amount] for the first violation and [insert
dollar amount] for each subsequent violation.
(b) In addition to any other penalties or action otherwise
applicable, where a violation of this act is alleged to have occurred, an aggrieved individual may commence an action for equitable relief and damages.

Section 9. [Effective Date.] [Insert effective date.]
Act to Prohibit Surrogate Parenting Contracts

This act, based on 1992 New York legislation, declares that surrogate parenting contracts are contrary to the state's public policy and are void and unenforceable. A "surrogate parenting contract," as defined in the act, is an agreement -- oral or written -- in which a woman agrees to be inseminated with the sperm of (or to be impregnated with an embryo that is the product of an ovum fertilized with the sperm of) a man who is not her husband and further agrees or intends to surrender or consent to the adoption of the child resulting from the insemination or impregnation.

The act prohibits any person or other entity from knowingly requesting, receiving or paying a fee or other compensation in connection with a surrogate parenting contract. Its provisions specifically exclude payments concerning adoption and medical fees concerning insemination.

Readers might be interested to note that in 1988, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Status of Children of Assisted Conception Act. For further information or copies of the full draft of the 1988 act, contact John McCabe, National Conference of Commissioners on Uniform State Laws, 676 North Saint Clair Street, Suite 1700, Chicago, Illinois, (312) 915-0195.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Act to Prohibit Surrogate Parenting Contracts.

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

(1) "Birth mother" means a woman who gives birth to a child pursuant to a surrogate parenting contract.
(2) "Genetic father" means a man who provides sperm for the birth of a child born pursuant to a surrogate parenting contract.
(3) "Genetic mother" means a woman who provides an ovum for the birth of a child born pursuant to a surrogate parenting contract.
(4) "Surrogate parenting contract" means any agreement, oral or written, in which:

(i) a woman agrees either to be inseminated with the sperm of a man who is not her husband or to be impregnated with an embryo that is the product of an ovum fertilized with the sperm of a man who is not her husband; and
(ii) the woman agrees to, or intends to, surrender or consent to adoption of the child born as a result of such insemination or impregnation.

Section 3. [Public Policy.] Surrogate parenting contracts are hereby declared contrary to the public policy of this state and are void and unenforceable.
Section 4. [Prohibitions.]
(a) No person or other entity shall knowingly request, accept, receive, pay or give any fee, compensation or other remuneration, directly or indirectly, in connection with any surrogate parenting contract, or induce, arrange or otherwise assist in arranging a surrogate parenting contract for a fee, compensation or other remuneration, except for:
   (1) payments in connection with the adoption of a child permitted by [insert citation for appropriate section of state code] and disclosed pursuant to [insert citation for appropriate section of state code]; or
   (2) payments for reasonable and actual medical fees and hospital expenses for artificial insemination or in vitro fertilization services incurred by the mother in connection with the birth of the child.

Section 5. [Penalties.]
(a) A birth mother or her husband, a genetic father and his wife and, if the genetic mother is not the birth mother, the genetic mother and her husband who violate this act shall be subject to a civil penalty not to exceed [insert dollar amount].
(b) Any other person or entity who or which induces, arranges, or otherwise assists in the formation of a surrogate parenting contract for a fee, compensation or other remuneration or otherwise violates this act shall be subject to a civil penalty not to exceed [insert dollar amount] and forfeiture to the state of any such fee, compensation or remuneration in accordance with the provisions of [insert citation for appropriate section of state code], for the first such offense. Any person or entity who or which induces, arranges or otherwise assists in the formation of a surrogate parenting contract for a fee, compensation or other remuneration or otherwise violates this act, after having been once subject to a civil penalty for violating this act, shall be guilty of [insert criminal offense].

Section 6. [Proceedings Regarding Parental Rights, Status or Obligation.] In any action or proceeding involving a dispute between the birth mother and the genetic father, the genetic mother, both the genetic father and genetic mother, or the parent or parents of genetic father or genetic mother, regarding parental rights, status, or obligations with respect to a child born pursuant to a surrogate parenting contract:
   (1) the court shall not consider the birth mother’s participation in the surrogate parenting contract as adverse to her parental rights, status or obligation; and
   (2) the court, having regard to the circumstances of the case and the respective parties including the parties’ relative ability to such fees and expenses, in its discretion and in the interests of justice, may award to either party reasonable and actual counsel fees and legal expenses incurred in connection with such action or proceeding. Such award may be made in the order or judgment by which the particular action or proceeding is finally determined, or by one or more orders from time to time before the final order or judgment, or by both such order or
orders and the final order or judgment; provided, however, that in any dispute involving a birth mother who has executed a valid surrender or consent to the adoption, nothing in this act shall empower a court to make any award that it would not otherwise be empowered to direct.

Section 7. [Effective Date.] [Insert effective date.]
Child Support Enforcement Legislation (Statement)

Increasing numbers of children are living in single-parent households. The prevalence of absent parents who fail to make child support payments, however, is forcing states to take stronger measures to enforce child support orders. Two pieces of child support enforcement legislation were enacted by the states of Ohio and Texas in 1992. In lieu of presenting these lengthy and amendatory items in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following summaries of the major provisions of these acts. Readers wishing to acquire copies of these measures should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike P.O. Box 11910, Lexington, KY 40578-1910, (606) 231-1939.

Child Support Enforcement Act

The Ohio act (ASSB 10) authorizes issuance of administrative child support orders, which may be enforced by withholding or deducting support payments from paychecks. Child support enforcement agencies must periodically review administrative support orders, or do so upon the request of a party who owes or receives child support. Child support agencies are permitted to request a court of common pleas to issue an order requiring an employer to comply with an administrative withholding or deduction order and to hold the employer in contempt of court if it fails to comply with the court order. The act requires a court to assess interest on the amount of support a person owing child support willfully fails to pay.

The act requires the state division of child support and allows child support agencies to publish and distribute posters depicting persons who are delinquent in child support payments. Child support enforcement agencies must develop paternity compliance plans, establish paternity compliance units, and submit an adopted paternity compliance plan to the division of child support. Each child support agency must employ or contract with a person to serve as an administrative officer to issue orders determining the existence or nonexistence of a parent-child relationship and requiring the payment of child support.

The act creates an administrative procedure for a natural mother and an alleged natural father to voluntarily acknowledge a parent and child relationship between the father and the child. Hospital staff must meet with unmarried mothers who give birth in or en route to the hospital and, if possible, meet with the fathers as well, to discuss establishing a relationship between the father and the child. The act permits the mother and alleged natural father to agree to be bound by the results of genetic testing in determining paternity.

Child Support Act

The Texas act (HB 7) requires domestic relations offices, including court registries, to enforce child support orders, such
as filing notices of delinquency and writs of income withholding. A domestic relations office may obtain records related to persons ordered to pay child support, including up-to-date addresses, place of employment and current salary. A child support lien may be issued against the property of a person owing child support. When a child support lien notice has been filed, an action to foreclose a lien on nonexempt real or personal property may be brought in the district court of the county in which the property is or was located and the lien was filed. Any person or entity who fails to surrender on demand nonexempt personal property being seized under the act is liable to the claimant in an amount equal to that for which the foreclosure judgment was issued. The act makes the person owing child support responsible for providing child health insurance, whether through the place of employment, union or trade organization, or through the payment of additional child support. The act further defines health insurance to include coverage for basic health care services, such as office visits, hospitalization, laboratory work, x-rays and emergency services, whether provided through a health maintenance organization (HMO) or other private or public organization.

If an enforceable court order for support has not been issued, the state attorney general, county or district attorney or a domestic relations office may commence an action to establish periodic or lump sum child support payments, a periodic or lump sum payment of the amount of reimbursement for public assistance, or an obligation to provide child support. If a court order for child support has been issued, the state attorney general, county or district attorney, or domestic relations office may commence action to confirm a child support arrearage and to obtain a judgment for child support payments past due, petition the court to require withholding from earnings or recover support under any reciprocal enforcement or support or interstate income withholding act.

In an action for the establishment or enforcement of a child support obligation, a parent may request a negotiation conference to attempt to reach agreement concerning the relief requested. On receipt of a request for a negotiation conference that includes a completed affidavit of financial resources, the attorney general, county or district attorney, or domestic relations office will schedule a negotiation conference and will notify the requestor and any other parties required to be served of the date, time and place of the negotiation conference. The negotiation conference is designed to resolve issues regarding support without a court hearing.

Children's Safety Centers Act

The act presented below, which is based on 1992 Minnesota legislation, authorizes the state commissioner of human resources to award grants to local, non-profit, non-governmental organizations for the purpose of using existing local facilities as pilot children's safety centers. The centers are designed to provide a safe, supervised location where non-custodial parents
can visit their children. They also may be used as drop-off sites, so that parents who are under court order to have no contact with each other can exchange children for visitation purposes.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Children's Safety Centers Act.

Section 2. [Purpose.] The [state commissioner of human resources] shall issue a request for proposals from existing local nonprofit, nongovernmental organizations, to use existing local facilities as pilot children's safety centers. The [commissioner] shall award grants in amounts up to [insert dollar amount] for the purpose of creating children's safety centers to reduce children's vulnerability to violence and trauma related to family visitation, where there has been a history of domestic violence or abuse within the family.

At least [one] of the pilot projects shall be located in the [describe geographical area] and at least [one] of the projects shall be located outside the [describe geographical area], and the [commissioner] shall award the grants to provide the greatest possible number of safety centers and to locate them to provide for the broadest possible geographic distribution of the centers throughout the state.

Each children's safety center must use existing local facilities to provide a healthy interactive environment for parents who are separated or divorced and for parents with children in foster homes to visit with their children. The centers must be available for use by [insert appropriate courts of jurisdiction] who may order visitation to occur at a safety center. The centers may also be used as drop-off sites, so that parents who are under court order to have no contact with each other can exchange children for visitation at a neutral site. Each center must provide sufficient security to ensure a safe visitation environment for children and their parents. A grantee must demonstrate the ability to provide a local match, which may include in-kind contributions.

Section 3. [Priorities in Grant Awards.] In awarding grants under the program, the [state commissioner of human resources] shall give priority to:

(1) areas of the state where no children's safety center or similar facility exists;
(2) applicants who demonstrate that private funding for the center is available and will continue; and
(3) facilities that are adapted for use to care for children, such as day care centers, religious institutions, community centers, schools, technical colleges, parenting resource centers, and child care referral centers.
Section 4. [Additional Services.] Each center may provide parenting and child development classes, and offer support groups to participating custodial parents and hold regular classes designed to assist children who have experienced domestic violence and abuse.

Section 5. [Report.] The [state commissioner of human resources] shall evaluate the operation of the children’s safety centers and report to the state legislature by [insert date], with recommendations.

Section 6. [Effective Date.] [Insert effective date.]
Juvenile Offender Recidivism Reduction Act

The act presented below, which is based on 1992 Minnesota legislation, directs the state commissioner of human services, in cooperation with the state corrections commissioner, to establish pilot projects to reduce juvenile offender recidivism by identifying and treating mental health problems. The commissioners must jointly develop a model screening tool to determine whether a mental health assessment is needed for a juvenile held in a detention center. The act requires that county proposals must be made jointly by all affected local agencies and result from consultations with the local coordinating council and the local mental health advisory council.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Juvenile Offender Recidivism Reduction Act.

Section 2. [Establishment of Projects.] The [state commissioner of human services], in cooperation with the [state commissioner of corrections], shall establish pilot projects in counties to reduce the recidivism rate of juvenile offenders, by identifying and treating underlying mental health problems that contribute to delinquent behavior and can be addressed through non-residential services. At least [one] of the pilot projects must be in the [describe geographical area] and at least [one] must be in [describe geographical area].

Section 3. [Program Components.] The [state commissioner of human services] shall, in consultation with [insert various councils or agencies], provide grants to the counties for the pilot projects. The projects shall build upon the existing service capabilities in the community and must include:

1. screening for mental health problems of all juveniles admitted before adjudication to a secure detention facility as defined in [insert citation for appropriate state statute], and any juvenile alleged to be delinquent as that term is defined in [insert citation for appropriate state statute], who is admitted to a shelter care facility, as defined in [insert citation for appropriate state statute];
2. referral for mental health assessment of all juveniles for whom the screening indicates a need. This assessment is to be provided by the appropriate mental health professional. If the juvenile is of a minority race or minority ethnic heritage, the mental health professional must be skilled in and knowledgeable about the juvenile's racial and ethnic heritage, or must consult with a special mental health consultant who has such knowledge so that the assessment is relevant, culturally specific, and sensitive to the juvenile's cultural needs; and
3. upon completion of the assessment, access to or provision of non-residential mental health services identified as needed in
the assessment.

COMMENTS: The Minnesota enactment specifies that the commissioner of human services, in providing grants to counties for pilot projects (Section 3 of this draft act) and in developing systems and procedures for evaluating the projects (Section 7 of this draft act), shall consult with the Indian affairs council, the council on affairs of Spanish-speaking people, the council on Black Minnesotans, and the council on Asian-Pacific Minnesotans.

Section 4. [Screening Tool.] The [state commissioner of human services] and the [state commissioner of corrections] shall jointly develop a model screening tool to screen juveniles held in juvenile detention to determine if a mental health assessment is needed. This tool must contain specific questions to identify potential mental health problems. In implementing a pilot project, a county must either use this model tool or another screening tool approved by the [state commissioner of human services] which meets the requirements of this act.

Section 5. [Program Requirements.] To receive funds, the county program proposal shall be a joint proposal with all affected local agencies, resulting in part from consultation with the [local coordinating council] established under [insert citation for appropriate state statute], and the [local mental health advisory council] established under [insert citation for appropriate state statute], and shall contain the following:

(1) evidence of interagency collaboration by all publicly-funded agencies serving juveniles with emotional disturbances, including evidence of consultation with the agencies listed in this act;
(2) a signed agreement by the local court services and local mental health and county social services agencies to work together on the following:
   (i) development of a program;
   (ii) development of written interagency agreements and protocols to ensure that the mental health needs of juvenile offenders are identified, addressed and treated; and
   (iii) development of a procedure for joint evaluation of the program;
(3) a description of existing services that will be used in this program;
(4) a description of additional services that will be developed with program funds, including estimated costs and numbers of juveniles to be served; and
(5) assurances that funds received by a county under this act will not be used to supplant existing mental health funding for which the juvenile is eligible.

The [state commissioner of human services] and the [state commissioner of corrections] shall jointly determine the application form, information needed, deadline for application, criteria for awards, and a process for providing technical assistance and training to counties. The technical assistance shall include information about programs that have been successful in reducing recidivism by juvenile offenders.
Section 6. [Interagency Agreements.] To receive funds, the county must agree to develop written interagency agreements between local court services agencies and local county mental health agencies within [insert number] months of receiving the initial program funds. These agreements shall include a description of each local agency’s responsibilities, with a detailed assignment of the tasks necessary to implement the program. The agreement shall state how they will comply with the confidentiality requirement of the participating local agencies.

Section 7. [Evaluation.] The [state commissioner of human services] and the [state commissioner of corrections] shall, in consultation with [insert various councils or agencies], develop systems and procedures for evaluating the pilot projects. The departments must develop and interagency management information system to track juveniles who receive mental health and chemical dependency services. The system must be designed to meet the information needs of the agencies involved and to provide a basis for evaluating outcome data. The system must be designed to track the mental health treatment of juveniles released from custody and to improve the planning, delivery and evaluation of services and increase interagency collaboration. The evaluation protocol must be designed to measure the impact of the program on juvenile recidivism, school performance, and state and county budgets.

Section 8. [Report.] On [insert date], and annually after that, the [state commissioner of corrections] and the [state commissioner of human services] shall present a joint report to the state legislature on the pilot projects funded under this act. The report shall include the following:
(1) the number of juvenile offenders screened and assessed;
(2) the number of juveniles referred for mental health services, the types of services provided, and the costs;
(3) the number of subsequently adjudicated juveniles that received mental health services under this program; and
(4) the estimated cost savings of the program and the impact on crime.

Section 9. [Effective Date.] [Insert effective date.]
Victims' Rights Implementation Act

In November 1990, Arizona voters approved Proposition 104, the "Victims' Bill of Rights," as an amendment to the state constitution (Art. II, Sec. 2.1). In 1991, the state enacted legislation necessary to implement the amendment's provisions. The act presented below is based on that legislation and the technical changes and amendments that were enacted in 1992 to address problem areas that arose upon implementation.

The Victims' Bill of Rights establishes that a crime victim has a right to: be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse, throughout the criminal justice process; be informed, upon request, when the accused or convicted person is released from custody or has escaped; be present at, and upon request, be informed of all criminal proceedings when the defendant has the right to be present; be heard at any proceeding involving a post-arrest release decision, a negotiated plea and sentencing; refuse an interview, deposition or other discovery request by the defendant, defendant's attorney or other person acting on behalf of the defendant; confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and be informed of the disposition; read presentence reports relating to the crime against the victim when they are available to the defendant; receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury; be heard at any proceeding when any post-conviction release from confinement is being considered; a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence; have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules be subject to amendment or repeal by the legislature to ensure protection of these rights; and be informed of victims' constitutional rights. The victim's exercise of any of these rights is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

Readers might be interested to note that in 1992, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Victims of Crime Act. For further information or copies of the full draft of the 1992 act, contact John McCabe, National Conference of Commissioners on Uniform State Laws, 676 North Saint Clair Street, Suite 1700, Chicago, Illinois, (312) 915-0195.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Victims' Rights Implementation Act.

Section 2. [Legislative Intent.] The legislature recognizes that many innocent persons suffer economic loss and personal injury or
death as a result of criminal acts. It is the intent of the legislature of this state to:
(1) Enact laws that define, implement, preserve and protect the rights guaranteed to crime victims by [insert citation for section of state constitution, as applicable].
(2) Ensure that [insert citation for section of state constitution, as applicable], is fully and fairly implemented and that all crime victims are provided with basic rights of respect, protection, participation and healing of their ordeals.
(3) Ensure at all stages of the criminal justice process that the duties established by [insert citation for section of state constitution, as applicable], are fairly apportioned among all law enforcement agencies, prosecution agencies, courts and corrections agencies in this state.
(4) Ensure that employees of this state and its political subdivisions who engage in the detention, investigation, prosecution and adjudication of crime use reasonable efforts to see that crime victims are accorded the rights established by [insert citation for section of state constitution, as applicable].

Section 3. [Definitions.] As used in this act:
(1) "Accused" means a person who has been arrested for committing a criminal offence and who is held for an initial appearance or other proceeding before trial.
(2) "Appellate proceeding" means a contested oral argument held in open court before the [state appellate court], the [state court of last resort], a federal court of appeals, or the United States supreme court.
(3) "Arrest" means the actual custodial restraint of a person or his submission to custody.
(4) "Court" means all state, county and municipal courts in this state.
(5) "Crime victim advocate" means a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims.
(6) "Criminal offense" means conduct that gives a peace officer or prosecutor probably cause to believe that a felony or that a misdemeanor involving physical injury, the threat of physical injury, or a sexual offense has occurred.
(7) "Criminal proceeding" means a hearing, argument or other matter scheduled by and held before a trial court but does not include a deposition, lineup, grand jury proceeding or other matter not held in the presence of the court.
(8) "Custodial agency" means a law enforcement officer, sheriff, municipal jailer, the [state department of corrections], the [board of pardons and paroles] or a secure mental health facility having custody of a person who is arrested or is in custody for a criminal offense.
(9) "Defendant" means a person or entity that is formally charged by complaint, indictment or information of committing a criminal offense.
(10) "Final disposition" means the ultimate termination of the
criminal prosecution of a defendant by a trial court, including dismissal, acquittal or imposition of a sentence.

(11) "Immediate family" means a victim's spouse, parent, child, sibling, or grandparent.

(12) "Lawful representative" means a person who is designated by the victim or appointed by the court and who will act in the best interests of the victim.

(13) "Post-arrest release" means the discharge of the accused from confinement on recognizance, bond or other condition.

(14) "Post-conviction release" means parole, work furlough, home arrest or any other permanent, conditional, or temporary discharge from confinement in the custody of the state department of corrections or a sheriff or from confinement in a municipal jail or a secure mental health facility.

(15) "Post-conviction relief proceeding" means a contested argument of evidentiary hearing that is held in open court and that involves a request for relief from a conviction or sentence.

(16) "Prisoner" means a person who has been convicted of a criminal offense against a victim and who has been sentenced to the custody of the sheriff, the state department of corrections, a municipal jail or a secure mental health facility.

(17) "Rights" means any right granted to the victim by the laws of this state.

(18) "Victim" means a person against whom the criminal offense has been committed, or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

Section 4. [Implementation of Rights and Duties.]
(a) Except as provided in Sections 6 and 7 of this act, the rights and duties that are established by this act arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this act until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution.

(b) If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceeding.

(c) After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the [insert citation for section of state constitution, as applicable], any implementing legislation or court rule is no longer entitled to such rights.

Section 5. [Inability to Exercise Rights; Designation of Others; Notice; Representative for a Minor.]
(a) If a victim is physically or emotionally unable to exercise any right but is able to designate a lawful representative who is not a bona fide witness, the designated person may exercise the same rights that the victim is entitled to exercise. The victim may revoke his designation at any time and exercise his rights.

(b) If a victim is incompetent, deceased or otherwise incapable of designating another person to act in his place, the court may appoint a lawful representative who is not a witness. If at any time the victim is no longer incompetent, incapacitated or otherwise incapable of acting, the victim may personally exercise his rights.

(c) If the victim is a minor, the victim's parent or other immediate family member may exercise all of the victim's rights on behalf of the victim. If the criminal offense is alleged against a member of the minor's immediate family, such rights may not be exercised by that person but may be exercised by another member of the immediate family unless the court, after considering the guidelines in subsection (e) of this section, finds that another person would better represent the interests of the minor for the purposes of this act.

(d) Any notices that are to be provided to a victim pursuant to this act shall be sent only to the victim or the victim's lawful representative.

(e) The court shall consider the following guidelines in appointing a representative for a minor:

(1) Whether there is a relative who would not be so substantially affected or adversely impacted by the conflict occasioned by the allegation of criminal conduct against a member of the immediate family of the minor that he could not represent the victim.

(2) The representative's willingness and ability to do all of the following:

(i) Undertake working with and accompanying the minor victim through all proceedings, including criminal, civil and dependency proceedings.

(ii) Communicate with the minor victim.

(iii) Express the concerns of the minor to those authorized to come in contact with the minor as a result of the proceedings.

(3) The representative's training, if any, to serve as a minor's representative.

(4) The likelihood of the representative being called as a witness in the case.

(f) The minor's representative shall accompany the minor victim through all proceedings, including criminal proceedings, dependency proceedings and civil proceedings and, before the minor's courtroom appearance, shall explain to the minor the nature of the proceedings and what the minor will be asked to do, including telling the minor that the minor is expected to tell the truth. The representative shall be available to observe the minor in all aspects of the case in order to consult with the court as to any special needs of the minor. Those consultations shall take place before the minor testifies. The court may recognize the minor's representative when the representative
indicates a need to address the court. A minor’s representative shall not discuss the facts and circumstances of the case with the minor witness, unless the court orders otherwise upon a showing that it is in the best interests of the minor.

Section 6. [Limited Rights of a Legal Entity.] A corporation, partnership, association or other legal entity which, except for its status as an artificial entity, would be included in the definition of victim in Section 3 of this act shall be afforded the following rights:
(1) The prosecutor shall, within a reasonable time after arrest, notify the legal entity of the right to appear and be heard at any proceeding relating to restitution or sentencing of the person convicted of committing the criminal offense against the legal entity.
(2) The prosecutor shall notify the legal entity of the right to submit to the court a written statement containing information and opinions on restitution and sentencing in its case.
(3) On request, the prosecutor shall notify the legal entity in a timely manner of the date, time and place of any proceeding relating to restitution or sentencing of the person convicted of committing the criminal offense against the legal entity.
(4) A lawful representative of the legal entity shall have the right, if present, to be heard at any proceeding relating to the sentencing or restitution of the person convicted of committing the criminal offense against the legal entity.

Section 7. [Information Provided to Victim by Law Enforcement Agencies.]
(a) As soon after the detection of a criminal offense as the victim may be contacted without interfering with an investigation, the law enforcement agency that has responsibility for investigating the criminal offense shall:
(1) Inform the victim of the victim's rights under the victims' bill of rights, [insert citation for section of state constitution, as applicable], any implementing legislation and court rules.
(2) Inform the victim of the availability, if any, of crisis intervention services and emergency and medical services, and, where applicable, that medical expenses arising out of the need to secure evidence may be reimbursed pursuant to [insert citation for appropriate section of state code].
(3) If an arrest has been made, inform the victim:
   (i) That a suspected offender has been arrested and that, on request, further information and notice of all proceedings in the case will be given to the victim.
   (ii) Of the next regularly scheduled time, place and date for initial appearances in the jurisdiction.
   (iii) That the victim has the right to be heard at the initial appearance.
   (iv) That the right to be heard may be exercised by the submission of a written statement to the court and advise the victim on how the statement may be submitted.
(4) If a suspected offender has not been arrested, inform the victim that the victim will be notified by the law enforcement agency that a suspected offender has been arrested at the earliest opportunity after the arrest and that, on request, further information and notice of all proceedings in the case will be given to the victim.

(5) If a suspected offender is cited and released, inform the victim of the court date and how to obtain additional information about the subsequent criminal proceedings.

(6) If the case has been submitted to a prosecutor's office, provide the victim with the name, address and telephone number of the prosecutor's office.

(7) Provide the victim with the names and telephone numbers of private and public victim assistance programs, including programs that provide counseling, treatment and other support services.

(8) In cases of domestic violence, inform the victim of the procedures and resources available for the protection of the victim pursuant to [insert citation for appropriate section of state code].

(9) Provide the victim with the police report number, if available, other identifying case information and the following statement: "If within [thirty (30)] days you are not notified of an arrest in your case, you may call [the law enforcement agency's telephone number] for the status of the case."

(b) The law enforcement agency that has responsibility for investigating the criminal offense shall provide all notices to the victim required under this section.

Section 8. [Notice of Initial Appearance.] On becoming aware of the date, time and place of the initial appearance of the accused, the law enforcement agency shall inform the victim of such information unless the accused appeared in response to a summons. In that case, the prosecutor's office shall, on receiving such information, provide the notice to the victim.

Section 9. [Notice of Terms and Conditions of Release.] Upon the request of the victim, the custodial agency shall provide a copy of the terms and conditions of release to the victim unless the accused appeared in response to a summons. In that case, upon request of the victim, the prosecutor's office shall, on receiving such information, provide a copy of the terms and conditions of release to the victim.

Section 10. [Pretrial Notice.]
(a) Within [seven (7)] days after the prosecutor charges a criminal offense by complaint, information or indictment and the accused is in custody or has been served a summons, he prosecutor's office shall give the victim notice of the following:

(1) The victim's rights under the victims' bill of rights, [insert citation for section of state constitution, as applicable], any implementing legislation and court rule.

(2) The charge or charges against the defendant and a clear and concise statement of the procedural steps involved in a criminal
prosecution.
(3) The procedures a victim shall follow to invoke his right to confer with the prosecuting attorney pursuant to Section 21 of this act.
(4) The person within the prosecutor's office to contact for more information.
(b) Notwithstanding the provisions of subsection (a) of this section, if a prosecutor declines to proceed with a prosecution after the final submission of a case by a law enforcement agency at the end of an investigation, the prosecutor shall, before the decision not to proceed is final, notify the victim and provide the victim with the reasons for declining to proceed with the case. The notice shall inform the victim of his right on request to confer with the prosecutor before the decision not to proceed is final. Such notice applies only to violations of a state criminal statute.

Section 11. [Notice of Criminal Proceedings.]
(a) Except as provided in subsection (b) of this section, the court shall provide notice of criminal proceedings for criminal offenses filed by information, complaint or indictment, except initial appearances and arraignments, to the prosecutor's office at least [five (5)] days before a scheduled proceeding to allow the prosecutor's office to provide notice to the victim.
(b) If the court finds that it is not reasonable to provide the [five (5)] days' notice to the prosecutor's office under subsection (a) of this section, the court shall state in the record why it was not reasonable to provide [five (5)] days' notice.
(c) On receiving the notice from the court, the prosecutor's office shall, on request, give notice to the victim in a timely manner of scheduled proceedings and any changes in that schedule.

Section 12. [Notice of Conviction, Acquittal or Dismissal; Impact Statement.]
(a) The prosecutor's office shall, on request, give to the victim within [fifteen (15)] days after the conviction or acquittal or dismissal of the charges against the defendant notice of the criminal offense for which the defendant was convicted or acquitted or the dismissal of the charges against the defendant.
(b) If the defendant is convicted, and the victim has requested, the victim shall be notified, if applicable, of:
(1) The function of the presentence report.
(2) The name and telephone number of the probation department that is preparing the presentence report.
(3) The right to make a victim impact statement under Section 26 of this act.
(4) The defendant's right to view the presentence report.
(5) The victim's right to view the presentence report, except those parts excised by the court or made confidential by law, and on request, to receive a copy from the prosecutor.
(6) The right to be present and be heard at any presentence or sentencing procedure pursuant to Section 28 of this act.
(7) The time, place and date of the sentencing proceeding.
(8) If the court orders restitution, the right to file a
restitution lien pursuant to [insert citation for section of code
regarding restitution for offense causing economic loss].
(c) The victim shall be informed that his impact statement may
include the following:
   (1) An explanation of the nature and extent of any physical,
       psychological or emotional harm or trauma suffered by the victim.
   (2) An explanation of the extent of any economic loss or
       property damage suffered by the victim.
   (3) An opinion of the need for and extent of restitution.
   (4) Whether the victim has applied for or received any
       compensation for the loss or damage.
(d) Notice provided pursuant to this section does not remove the
[probation department]'s responsibility pursuant to [insert
citation for appropriate section of state code] to initiate the
contact between the victim and the [probation department]
concerning the victim's economic, physical psychological or
emotional harm. At the time of contact, the [probation
department] shall advise the victim of the date, time and place
of sentencing and of the victim's right to be present and be
heard at the proceeding.

Section 13. [Notice of Post-Conviction Review and Appellate
Proceedings.]
(a) Within [fifteen (15)] days after sentencing the prosecutor's
office shall, on request, notify the victim of the sentence
imposed on the defendant.
(b) On request of the victim, the prosecutor's office shall
provide the victim with a form that allows the victim to request
post-conviction notice of all post-conviction review and
appellate proceedings, all post-conviction release proceedings,
all probation modification proceedings that impact the victim,
all probation revocation or termination proceedings, any
decisions that arise out of these proceedings, all releases and
all escapes.
(c) The prosecutor's office shall advise the victim on how the
completed request form may be filed with the appropriate agencies
and departments.
(d) On request of the victim, the prosecutor's office that is
responsible for handling any post-conviction or appellate
proceedings shall notify the victim of the proceedings and any
decision that arise out of the proceedings.

Section 14. [Notice of Release on Bond or Escape.]
(a) If the terms and conditions of a post-arrest release include
a requirement that the accused post a bond, the sheriff or
municipal jailer shall, on request, notify the victim of the
release on bond of the accused.
(b) A victim and the prosecutor's office shall immediately be
given notice of an escape and subsequent arrest of an
incarcerated person who is accused or convicted of committing a
criminal offense against the victim. The notice shall be given by
any reasonable means by the custodial agency.
Section 15. [Notice of Prisoner's Status.]
(a) If the victim has made a request for post-conviction notice, the [director of the state department of corrections] shall mail to the victim the following information about a prisoner in the custody of the [state department of corrections]:
   (1) Within [thirty (30)] days after the request, notice of the earliest release date of the prisoner if his sentence exceeds [six (6)] months.
   (2) At least [fifteen (15)] days before the prisoner's release, notice of the release.
   (3) Within [fifteen (15)] days after the prisoner's death, notice of the death.
(b) If the victim has made a request for post-conviction notice, the sheriff having custody of the prisoner shall mail to the victim notice of release at least [fifteen (15)] days before the prisoner's release or notice of death within [fifteen (15)] days after the prisoner's death.

Section 16. [Notice of Post-Conviction Release; Right to be Heard; Hearing; Final Decision.]
(a) The victim has the right to be present and be heard at any proceeding in which post-conviction release from confinement is being considered pursuant to [insert citations for appropriate sections of state code].
(b) If the victim has made a request for post-conviction notice, the [board of pardons and paroles] shall, at least [fifteen (15)] days before the hearing, give to the victim written notice of the hearing and of the victim's right to be present and be heard at the hearing.
(c) If the victim has made a request for post-conviction notice, the [board of pardons and paroles] shall give to the victim notice of the decision reached by the [board]. The notice shall be mailed within [fifteen (15)] days after the [board] reaches its decision.

Section 17. [Notice of Probation Modification, Revocation or Termination.] On request of the victim, the court shall notify the victim of any probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of person who is convicted of committing a criminal offense against the victim. On request of the victim, the court shall notify the victim of a modification of the terms of probation or intensive probation of a person only if the modification will substantially affect the person's contact with or safety of the victim or if the modification affects restitution or incarceration status.

Section 18. [Notice of Release, Discharge or Escape from a Mental Health Treatment Agency.] (a) If the victim has made a request for notice, a mental health treatment agency shall mail to the victim at least [ten (10)] days before the release or discharge of the person accused or convicted of committing a criminal offense against the victim,
notice of the release or discharge of the person who is placed by court order in a mental health treatment agency pursuant to [insert citation for appropriate section of state code].

(b) A mental health treatment agency shall mail to the victim immediately after the escape or subsequent readmission of the person accused or convicted of committing a criminal offense against the victim, notice of the escape or subsequent readmission of the person who is placed by court order in a mental health treatment agency pursuant to [insert citation for appropriate section of state code].

Section 19. [Request for Notice.]
(a) The victim shall provide to and maintain with the agency that is responsible for providing notice to the victim a request for notice on a form that is provided by that agency. The form shall include a telephone number and address. If the victim fails to keep his telephone number and address current, his request for notice is withdrawn. At any time the victim may restore a request for notice of subsequent proceedings by filing on a request from provided by the agency the victim's current telephone number and address.

(b) Except as provided in subsection (c) of this section, all notices provided to a victim pursuant to this act shall be on forms developed by the [state attorney general].

(c) Each law enforcement agency, prosecuting office and court within a county may agree formally or informally to establish different notice procedures that are designed to more efficiently and effectively provide notice to victims. If different notice procedures are established, they shall be explained to the victim as soon as the notice is implemented and as applicable. Notice of any different procedures shall be reported to the [state attorney general].

(d) The court and all agencies that are responsible for providing notice to the victim shall establish and maintain a system for the receipt of victim requests for notice.

Section 20. [Construction of Act.] This act shall be liberally construed to preserve and protect the rights to which victims are entitled.

Section 21. [Victim Conference with Prosecuting Attorney.]
(a) On request of the victim, the prosecuting attorney shall confer with the victim about the disposition of a criminal offense, including the victim's views about a decision not to proceed with a criminal prosecution, dismissal, plea or sentence negotiations and pretrial diversion programs.

(b) On request of the victim, the prosecuting attorney shall confer with the victim before the commencement of the trial.

(c) The right of the victim to confer with the prosecuting attorney does not include the authority to direct the prosecution of the case.

Section 22. [Criminal Proceedings; Right to be Present.] The victim has the right to be present throughout all criminal
proceedings in which the defendant has the right to be present.

Section 23. [Initial Appearance.] The victim has the right to be heard at the initial appearance of the person suspected of committing the criminal offense against the victim.

Section 24. [Post-Arrest Custody Decisions.] The victim has the right to be heard at any proceeding in which the court considers the post-arrest release of the person accused of committing a criminal offense against the victim or the conditions of that release.

Section 25. [Plea Negotiating Proceedings.]
(a) On request of the victim, the victim has the right to be present and be heard at any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court.
(b) The court shall not accept a plea agreement unless:
   (1) The prosecuting attorney advises the court that before requesting the negotiated plea reasonable efforts to confer with the victim pursuant to Section 21 of this act were made.
   (2) Reasonable efforts are made to give the victim notice of the plea proceeding pursuant to Section 11 of this act and to inform the victim that the victim has the right to be present, and if present, to be heard.
   (3) The prosecuting attorney advises the court that to the best of the prosecutor's knowledge, notice requirements of this act have been complied with and the prosecutor informs the court of the victim's position, if known, regarding the negotiated plea.

Section 26. [Impact Statement; Presentence Report]
(a) The victim may submit a written impact statement or make an oral impact statement to the probation officer for the officer's use in preparing a presentence report.
(b) The probation officer shall consider the economic, physical and psychological impact that the criminal offense has had on the victim and the victim's immediate family pursuant to [insert citation for appropriate section of state code].

Section 27. [Inspection of Presentence Report.] If the presentence report is available to the defendant, the court shall permit the victim to inspect the presentence report, except those parts excised by the court or made confidential by law. If the court excises any portion of the presentence report, it shall inform the parties and the victim of its decision and shall state on the record its reasons for the excision. On request of the victim, the prosecutor's office shall provide to the victim a copy of the presentence report.

Section 28. [Sentencing.] The victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence or the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding and the victim has the right to be present and be heard at any
Section 29. [Probation Modification, Revocation or Termination Proceedings.]
(a) The victim has the right to be present and be heard at any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate probation or insensitive probation of a person who is convicted of committing a criminal offense against the victim.
(b) The victim has the right to be heard at any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person if the modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.

Section 30. [Victim's Discretion; Form of Statement.]
(a) It is at the victim's discretion to exercise his rights under this act to be present and heard at court proceedings and the absence of the victim at the court proceeding does not preclude the court from going forth with the proceeding.
(b) Except as provided in subsection (c) of this section, a victim's right to be heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement or submission of a statement through audiotape or videotape.
(c) If a person against whom a criminal offense has been committed is in custody for an offense, the person may be heard by submitting a written statement to the court.

Section 31. [Return of Victim's Property; Release of Evidence.]
(a) On request of the victim and after consultation with the prosecuting attorney, the law enforcement agency responsible for investigating the criminal offense shall return to the victim any property belonging to the victim that was taken during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. The law enforcement agency shall make reasonable efforts to return the property to the victim as soon as possible.
(b) If the victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, this defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.

Section 32. [Consultation Between Crime Victim Advocate and Victim; Privileged Information; Exception.]
(a) A crime victim advocate shall not disclose as a witness or otherwise any communication except compensation or restitution information between himself and the victim unless the victim consents in writing to the disclosure.
(b) Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes,
documents, correspondence, reports or memoranda except compensation or restitution information that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on the communication between the victim and the advocate.

(c) The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory material.

(d) A defendant may make a motion for disclosure of privileged information. If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the defendant.

(e) If, with the consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose such material to the defendant's attorney only if such information is otherwise discoverable.

(f) Notwithstanding the provisions of subsections (a) and (b) of this section, if a crime victim advocate is employed or authorized by a prosecutor's office, the advocate may disclose information to the prosecutor with the oral consent of the victim.

Section 33. [Victim's Right to Safety.] Before, during and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that occurs between the victim, the victim's immediate family and the victim's witnesses and the defendant, the defendant's immediate family and defense witnesses.

Section 34. [Victim's Right to Safety; Standing.] If the prosecutor decides not to move to revoke the bond or personal recognizance of the defendant, the prosecutor shall inform the victim that the victim may petition the court to revoke the bond or personal recognizance of the defendant based on the victim's notarized statement asserting that harassment, threats, physical violence or intimidation against the victim or the victim's immediate family by the defendant or on behalf of the defendant has occurred.

Section 35. [Victim's Right to Refuse an Interview.] (a) Unless the victim consents, the victim shall not be compelled to submit to an interview on any matter, including a charged criminal offense witnessed by the victim that occurred on the same occasion as the offense against the victim, that is conducted by the defendant, the defendant's attorney or an agent of the defendant.

(b) The defendant, the defendant's attorney or another person action on behalf of the defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's
request for an interview and shall advise the victim of his right to refuse the interview.

(c) If the victim consents to an interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the time and place the victim has selected for the interview. If the victim wishes to impose other conditions on the interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the conditions. The victim has the right to terminate the interview at any time or to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation or abuse and, pursuant to that standing, may seek any appropriate protective court order.

(d) Unless otherwise directed by the victim, the prosecutor may attend all interviews. If a transcript or tape of the interview is made and on request of the prosecutor, the prosecutor shall receive a copy of the transcript or tape at the prosecutor's expense.

(e) If the defendant or defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the [state] constitution.

(f) For the purposes of this section, a peace officer shall not be considered a victim if the act that would have made him a victim occurs while the peace officer is acting in the scope of his official duties.

Section 36. [Victim's Right to Privacy.]

(a) The residences, business addresses, telephone numbers, places of employment or other information that could result in locating the victim, the victim's immediate family or the victim's lawful representative shall not be disclosed unless the victim consents in writing to the disclosure or a court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.

(b) A public officer, employee or volunteer shall not make available for public inspection any document unless the residences, business addresses and telephone numbers of the victim, the victim's immediate family and the victim's lawful representative have been deleted, the victim consents in writing to the disclosure or a court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.

(c) The victim has the right at any court proceeding not to testify regarding the victim's addresses, telephone numbers, place of employment or other locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.

Section 37. [Victim's Right to a Speedy Trial.]

(a) In any criminal proceeding, the court, prosecutor and law enforcement officials shall take appropriate action to ensure a
speedy trial for the victim.
(b) In any criminal proceeding in which a continuance is requested, the court shall consider the victim's views and the victim's right to a speedy trial. If a continuance is granted, the court shall state on the record the reason for the continuance.

Section 38. [Effect of Failure to Comply; Reexamination Policy.]
(a) The failure to use reasonable efforts to perform a duty or provide a right is not cause to seek to set aside a conviction or sentence.
(b) Unless the prisoner is discharged from his sentence, the failure to use reasonable efforts to provide notice and a right to be present or be heard pursuant to this act at a proceeding that involves a post-conviction release is a ground for the victim to seek to set aside the post-conviction release until the victim is afforded the opportunity to be present or be heard.
(c) If the victim seeks to have a post-conviction release set aside pursuant to subsection (b) of this section, the court, [board of pardons and paroles] or [state department of corrections] shall afford the victim a reexamination proceeding after the parties are given notice.
(d) A reexamination proceeding conducted pursuant to this section or any other proceeding that is based on the failure to perform a duty or provide a right shall commence not more than [thirty (30)] days after the appropriate parties have been given notice that the victim is exercising his right to a reexamination proceeding pursuant to this section or to another proceeding based on the failure to perform a duty or provide a right.

Section 39. [Standing to Invoke Rights; Recovery of Damages.]
(a) The victim has standing to seek an order or to bring a special action mandating that the victim be afforded any right or to challenge an order denying any right guaranteed to victims under the victims' bill of rights, [insert citation for section of state constitution, as applicable], any implementing legislation and court rules. In asserting any right, the victim has the right to be represented by personal counsel at the victim's expense.
(b) A victim has the right to recover damages from a governmental entity responsible for the intentional, knowing or grossly negligent violation of the victim's rights under the victims' bill of rights, [insert citation for section of state constitution, as applicable], any implementing legislation and court rules. Nothing in this section alters or abrogates any provision for immunity provided for under common law or statute.
(c) At the request of the victim, the prosecutor may assert any right to which the victim is entitled.

COMMENTS: The Arizona legislation on which this act is based also establishes a victim's rights implementation revolving fund consisting of monies collected through misdemeanor penalty assessments.
Section 40. [Repealer.] [Insert repealer clause.]

Section 41. [Effective Date.] [Insert effective date.]
Psychotherapy Grievance Board Act

The purpose of the act presented below is to adjudicate consumer complaints against psychotherapists. Such complaints could include violations of confidentiality, failure to make a necessary referral, ordering unnecessary tests, using false or misleading advertising, abusing drugs or alcohol, giving kickbacks to someone who refers clients, not using treatments which conform to generally accepted standards of practice, or sexual contact with a patient.

This act, based on Colorado legislation that was enacted in 1988 and amended in 1992, establishes a grievance board with the authority to take disciplinary action or injunctive action concerning unlicensed psychotherapists, licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, licensed professional counselors, and certified school psychologists. Under the supervision and control of the state division of registration, the grievance board is to consist of at least eight members.

Under the provisions of the Colorado act, at least four of the board members must be licensed members of their respective licensing boards. Three additional board members are appointed by the governor for disciplinary hearings depending on which profession is concerned -- that is, if the disciplinary action relates to a licensed clinical social worker, three licensed clinical social workers must be added to the board.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Psychotherapy Grievance Board Act.

Section 2. [Definitions.] As used in this act:
(1) "Certified school psychologist" means a person who practices psychotherapy and who is a school psychologist certified pursuant to the provisions of [insert citation for appropriate section of state code].
(2) "Grievance board" means the state grievance board created by Section 3 of this act.
(3) "Independent advertising or marketing agent" means a person, firm, association or corporation which performs advertising or other marketing services on behalf of licensees, including referrals of patients to licensees resulting from patient-initiated responses to such advertising or marketing services.
(4) "Licensed clinical social worker" means a person who practices psychotherapy and who is a clinical social worker licensed pursuant to the provisions of [insert citation for appropriate section of state code].
(5) "Licensed marriage and family therapist" or "marriage and family therapist" means a person who practices psychotherapy and who is a marriage and family therapist licensed pursuant to the provisions of [insert citation for appropriate section of state code].
code].

(6) "Licensed professional counselor" or "professional counselor" means a person who practices psychotherapy and who is a professional counselor licensed pursuant to the provisions of [insert citation for appropriate section of state code].

(7) "Licensed psychologist" or "psychologist" means a person who practices psychotherapy and who is a psychologist licensed pursuant to the provisions of [insert citation for appropriate section of state code].

(8) "Licensee" means a psychologist, clinical social worker, marriage and family therapist or professional counselor licensed pursuant to the provisions of [insert citation for appropriate section of state code].

(9) "Professional relationship" means an interaction that is deliberately planned or directed, or both, by the psychotherapist toward obtaining specific psychotherapeutic objectives, such as those set forth in paragraph (10) of this section.

(10) "Psychotherapy" means the treatment, diagnosis, testing, assessment or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship or attitudinal conflict, or modify behaviors which interfere with effective emotional, social or intellectual functioning. Psychotherapy follows a planned procedure of intervention which takes place on a regular basis, over a period of time. It is the intent of the state legislature that the definition of psychotherapy as used in this act be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition set forth in this paragraph.

(11) "Unlicensed psychotherapist" means any person whose primary practice is psychotherapy or who holds himself out to the public as being able to practice psychotherapy for compensation and who is not a certified school psychologist or who is not licensed under this title to practice psychotherapy.

Section 3. [State Grievance Board; Creation; Subject to Termination].

(a) There is hereby created the state grievance board, which shall be under the supervision and control of the [state division of registrations] as provided in [insert citation for appropriate state statute]. The grievance board shall consist of [eight (8)] members or [eleven (11)] members, as determined pursuant to this section, who are residents of the state of [state].

(b) [Four (4)] members of the grievance board shall be appointed by the governor, with the consent of the Senate, from the general public with a good faith effort to achieve broad-based geographical representation: [one (1)] to serve a term of [one (1)] year, [one (1)] to serve a term of [two (2)] years, and [two (2)] to serve a term of [three (3)] years. No such member shall have any direct involvement or interest in the provision of psychotherapy; except that such member may be or may have been a consumer of such services.

(c) [Four (4)] members of the grievance board shall be licensed members of their respective licensing boards and shall be
appointed by the governor, with the consent of the Senate, as follows:

(1) A licensed marriage and family therapist to serve a term of [two (2)] years;
(2) A licensed professional counselor to serve a term of [two (2)] years;
(3) A licensed clinical social worker to serve a term of [two (2)] years;
(4) A licensed psychologist to serve a term of [three (3)] years.

(d) The grievance board shall attempt to schedule disciplinary matters to be heard by the grievance board in a manner so as to reduce the number of additional members needed for any meeting. For disciplinary proceedings of the grievance board, in addition to the [eight (8)] members appointed to the grievance board under subsections (b) and (c) of this section, [three (3)] additional members shall be appointed by the governor to the grievance board as follows:

(1) If the disciplinary action relates to a licensed psychologist, the [three (3)] additional members shall be licensed psychologists.
(2) If the disciplinary action relates to a licensed clinical social worker, the [three (3)] additional members shall be licensed clinical social workers.
(3) If the disciplinary action relates to a licensed marriage and family therapist, the [three (3)] additional members shall be licensed marriage and family therapists.
(4) If the disciplinary action relates to a licensed professional counselor, the [three (3)] additional members shall be licensed professional counselors.
(5) If the disciplinary action relates to a certified school psychologist, the [three (3)] additional members shall be certified school psychologists.
(6) If the disciplinary action relates to an unlicensed psychotherapist, the [three (3)] additional members shall be unlicensed psychotherapists.

(e)(1) [Five (5)] of the persons eligible to serve on the grievance board under subsection (d) of this section shall be appointed by the governor to serve a term of [one (1)] year, [one (1)] from each of the professions licensed pursuant to [insert citation for appropriate section of state code] and [one (1)] certified school psychologist.
(2) [Five (5)] of the persons eligible to serve on the grievance board under subsection (d) of this section shall be appointed by the governor to serve a term of [two (2)] years, [one (1)] from each of the professions licensed pursuant to [insert citation for appropriate section of state code] and [one (1)] certified school psychologist.
(3) [Five (5)] of the persons eligible to serve on the grievance board under subsection (d) of this section shall be appointed by the governor to serve a term of [three (3)] years, [one (1)] from each of the professions licensed pursuant to [insert citation for appropriate section of state code] and [one (1)] certified school psychologist.
(4) Of the [three (3)] persons eligible to serve on the
grievance board under subsection (d) of this section as
unlicensed psychotherapists, [one (1)] shall be appointed by the
governor to serve a term of [one (1)] year, [one (1)] shall be
appointed to serve a term of [two (2)] years, and [one (1)] shall
be appointed to serve a term of [three (3)] years.

(f)(1) Members of the grievance board appointed under sub-
section (b) or (c) of this section may serve [two (2)] full
consecutive terms.

(2) The appointees under paragraphs (1) and (2) of subsection
(c) of this section and under paragraphs (3) and (4) of
subsection (d) of this section shall have met all qualifications
for licensure pursuant to [insert citation for appropriate
section of state code] and shall have been practicing in their
professions for at least [five (5)] years prior to appointment.
The initial appointees shall be licensed pursuant to [insert
citation for appropriate section of state code]. The governor
shall remove a board member for failure to comply with the
requirements of this section.

(g) Each member shall hold office until the expiration of his
appointed term or until a successor is duly appointed. When the
term of each grievance board member expires, the governor shall
appoint his successor for a term of [three (3)] years. Any
vacancy occurring in the grievance board membership other than by
the expiration of a term shall be filled by the governor by
appointment for the unexpired term of such member. The governor
may remove any grievance board member for misconduct,
incompetence or neglect of duty. Actions constituting neglect of
duty shall include, but not be limited to, the failure of board
members to attend [three (3)] consecutive meetings or at least
[three-quarters (3/4)] of the board's meetings in any [one (1)]
calendar year.

(h) Members of the grievance board and consultants to the
grievance board shall be immune from suit in any action, civil or
criminal, based upon any disciplinary proceedings or other
official acts performed in good faith as members of such board or
consultants to such board.

(i) A majority of the grievance board shall constitute a quorum
for the transaction of all business. However, for purposes of
initial consideration of complaints, a quorum shall be a majority
of all members appointed pursuant to subsections (b) and (c) of
this section. For purposes of the initial consideration of
complaints, if a member of the grievance board appointed pursuant
to subsection (b) or (c) of this section is disqualified from
participation in grievance board deliberations on any matter due
to having an immediate personal, private or financial interest in
any matter pending before the grievance board, a member appointed
pursuant to subsection (d) of this section from the same
discipline as the member disqualified from participation may
participate and vote on the matter before the grievance board and
shall constitute part of the quorum required by this subsection.

(j) The provisions of [insert citation for appropriate section
of state code], concerning the termination schedule for
regulatory bodies of the state unless continued as provided in
that section, are applicable to the grievance board.

Section 4. [Powers and Duties of the Grievance Board.]
(a) In addition to all other powers and duties conferred and
imposed upon the grievance board by this act, the grievance board
has the following powers and duties:

(1) To annually elect one of its members as chairman and one as
vice-chairman. It may meet at such times and adopt such rules for
its government as it deems proper.

(2) To make investigations, hold hearings and take evidence in
accordance with the provisions of [insert citation for
appropriate section of state code] and this act in all matters
relating to the exercise and performance of the powers and duties
vested in the grievance board and, in connection with any
investigation or hearing and through any member or an
administrative law judge, to subpoena witnesses, administer
oaths, and compel the testimony of witnesses and the production
of books, papers and records relevant to any inquiry or hearing.
Any subpoena issued pursuant to this act shall be enforceable by
the [insert appropriate court of jurisdiction]. Subpoenas issued
on behalf of the board may be signed by the program
administrator.

(3) To aid the several [district attorneys] of this state in
the enforcement of this act and in the prosecution of all
persons, firms, associations or corporations charged with the
violation of any of its provisions and to report to the
appropriate [district attorney] any violation of this act which
it reasonably believes involves a criminal violation;

(4) To take disciplinary actions in conformity with this act;

(5) Through the [state department of regulatory agencies] and
subject to appropriations made to the [state department of
regulatory agencies], to employ [administrative law judges] on a
full-time or part-time basis to conduct any hearings required by
this act. The [administrative law judges] shall be appointed
pursuant to [insert citation for appropriate section of state
code].

(6) To notify the public of all disciplinary actions taken
against licensees or certified school psychologists and
unlicensed psychotherapists pursuant to this act;

(7) To request that any board or individual board member advise
it or an [administrative law judge] it employs in any
disciplinary matter. In addition, the grievance board may request
the assistance of a professional psychologist, clinical social
worker, marriage and family therapist, professional counselor or
certified school psychologist when a disciplinary matter relates
to a practitioner within the same field of practice as the
professional psychologist, clinical social worker, marriage and
family therapist, professional counselor or certified school
psychologist respectively.

(b) Pursuant to this act and [insert citation for appropriate
section of state code], the grievance board is authorized to
adopt and revise such rules and regulations as may be necessary
to enable it to carry out the provisions of this act.
Section 5. [Prohibited Activities; Related Provisions.]

(1) A person practicing psychotherapy under this act is in violation of this act if he:

(1) Has been convicted of a felony or has accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to practice psychotherapy. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the grievance board shall be governed by the provisions of [insert citation for appropriate section of state code].

(2) Has violated, or attempted to violate, directly or indirectly, or assisted or abetted the violation of, or conspired to violate any provision or term of this act or rule or regulation promulgated pursuant to this act or any order of a board established pursuant to this act;

(3) Has used advertising which is misleading, deceptive or false;

(4)(i) Has committed abuse of health insurance pursuant to [insert citation for appropriate section of state code];

(ii) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television or otherwise, that the person will perform any act prohibited by [insert citation for appropriate section of state code];

(5) Is addicted to or dependent on alcohol or any habit-forming drug, as defined in [insert citation for appropriate section of state code], or is a habitual user of any controlled substance, as defined in [insert citation for appropriate section of state code], or any alcoholic beverage;

(6) Has a physical or mental disability which renders him unable to treat with reasonable skill and safety his clients or which may endanger the health or safety of persons under his care;

(7) Has acted or failed to act in a manner which does not meet the generally accepted standards of his practice. A certified copy of a malpractice judgment of a court of competent jurisdiction shall be conclusive evidence of such act or omission, but evidence of such act or omission shall not be limited to a malpractice judgment.

(8) Has performed services outside of his area of training, expertise or competence;

(9) Has maintained relationships with clients that are likely to impair his professional judgment or increase the risk of client exploitation, such as treating employees, supervisees, close colleagues or relatives;

(10) Has exercised undue influence on the client, including the promotion of the sale of services, goods, property or drugs in such a manner as to exploit the client for the financial gain of the practitioner or a third party;

(11) Has failed to terminate a relationship with a client when it was reasonably clear that the client was not benefiting from the relationship and is not likely to gain such benefit in the future;

(12) Has failed to refer a client to an appropriate
practitioner when the problem of the client is beyond his training, experience or competence;
(13) Has failed to obtain a consultation or perform a referral when such failure is not consistent with generally accepted standards of care;
(14) Has failed to render adequate professional supervision of persons practicing psychotherapy under his supervision according to generally accepted standards of practice;
(15) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;
(16) Has failed to comply with any of the requirements pertaining to mandatory disclosure of information to clients pursuant to [insert citation for appropriate section of state code];
(17) Has offered or given commissions, rebates or other forms of remuneration for the referral of clients. Notwithstanding this provision, a licensee, certified school psychologist or unlicensed psychotherapist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on his behalf by such agent, including compensation which is paid for the results of performance of such services on a per patient basis;
(18) Has engaged in sexual contact, sexual intrusion or sexual penetration, as defined in [insert citation for appropriate section of state code], with a client during a period of time in which a therapeutic relationship exists or for up to [six (6)] months after the period in which such a relationship exists;
(19) Has resorted to fraud, misrepresentation or deception in applying for or in securing licensure or taking any examination provided for in this act;
(20) Has engaged in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory test or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to the generally accepted standards of his practice;
(21) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records; or
(22) Has committed a fraudulent insurancenaet, as defined in [insert citation for appropriate section of state code].
(b) A disciplinary action relating to a license to practice a profession licensed under [insert appropriate reference to state code] or any related occupation in any other state, territory or country for disciplinary reasons shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of licensure, by the grievance board. This subsection (b) shall apply only to disciplinary actions based upon acts or omissions in such other state, territory or country substantially similar to those set out as grounds for disciplinary action pursuant to subsection (a) of this section.
(c) The grievance board shall notify the [state board of
education] of any action the grievance board takes against a certified school psychologist pursuant to this act, and the [state board of education] may use evidence of such action in any proceeding related to the certified school psychologist, subject to the requirements of [insert citation for appropriate section of state code].

Section 6. [Authority of Grievance Board; Cease and Desist Orders.]

(a) If a licensee has violated any of the provisions of Section 5 of this act, the grievance board may deny, revoke or suspend any license, issue a letter of admonition to a licensee, place a licensee on probation, or apply for an injunction pursuant to Section 10 of this act to enjoin a licensee from practicing the profession for which he is licensed under this [insert appropriate reference to state code].

(b) If a certified school psychologist practicing psychotherapy outside the school setting has violated any of the provisions of Section 5 of this act, the grievance board may issue a letter of admonition to such certified school psychologist, place such certified school psychologist on probation, or apply for an injunction pursuant to Section 10 of this act to enjoin such certified school psychologist from practicing psychotherapy outside the school setting.

(c) If an unlicensed psychotherapist violates any of the provisions of Section 5 of this act, the grievance board may permanently or for a set period of time strike the name of such psychotherapist from the data base maintained pursuant to [insert citation for appropriate section of state code], issue a letter of admonition to such unlicensed psychotherapist, or place such unlicensed psychotherapist on probation, or apply for an injunction pursuant to Section 10 of this act to enjoin such unlicensed psychotherapist from practicing psychotherapy.

(d)(1) If, as a result of an investigation of a complaint by any person or of an investigation on its own motion, the grievance board determines that any person is acting or has acted in violation of Section 5 of this act, and the grievance board determines that any such violation creates an emergency condition which may affect the health, safety or welfare of any person, the grievance board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules and regulations alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts cease forthwith. The person so ordered may request a hearing on the question of whether any violation occurred if such request is made within [thirty (30)] days after the date of service of the order to cease and desist. Upon request, any person ordered to cease and desist unlawful acts as authorized in this subsection shall be entitled to a hearing and an oral or written decision from the [administrative law judge] on any such order within [seven (7)] working days after the issuance thereof. The hearing shall be conducted in accordance with the provisions of [insert citation for appropriate section of state code].

(2) In the event that any person fails to comply with a cease
and desist order, the grievance board may request the [attorney general] or the [district attorney] for the judicial district in which the alleged violation exists to bring, and if so requested the [attorney general] or [district attorney] shall bring, a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the order.

(3) No stay of a cease and desist order shall be issued before a hearing thereon involving both parties.

Section 7. [Disciplinary Proceedings; Judicial Review; Mental and Physical Examinations.]

(a) A proceeding for discipline of a licensee or certified school psychologist may be commenced when the grievance board has reasonable grounds to believe that a licensee or certified school psychologist under the grievance board's jurisdiction has committed any act or failed to act pursuant to the grounds established in Section 5 of this act.

(b)(1) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act," [insert citation].

(2) The grievance board, through the [state department of regulatory agencies], may employ [administrative law judges], on a full-time or part-time basis, to conduct hearings as provided by [insert reference to appropriate section of state code] or on any matter within the grievance board's jurisdiction upon such conditions and terms as the grievance board may determine. The grievance board may elect to refer a case for formal hearing to an [administrative law judge], with or without an assigned advisor from the grievance board or other board. If the grievance board so elects to refer a case with an assigned advisor and such advisor is a member of the grievance board, he shall be excluded from the grievance board review of the decision of the [administrative law judge]. The adviser shall assist the [administrative law judge] in obtaining and interpreting data pertinent to the hearing.

(3) No licensee's or certified school psychologist's right to use his title as provided in [insert citation for appropriate section of state code] shall be denied, revoked or suspended by the grievance board, nor shall a licensee or certified school psychologist be placed on probation pursuant to the grounds established in Section 5 of this act, until after a hearing has been conducted if so required pursuant to [insert citation for appropriate section of state code], except as provided for in emergency situations by [insert citation for appropriate section of state code], or except in the event that a licensee or certified school psychologist has been adjudicated as mentally ill, gravely disabled, mentally retarded, mentally incompetent, or insane by a court of competent jurisdiction, or except in the event that a licensee or certified school psychologist violates paragraph (5) of this subsection, in which case the grievance board is empowered to summarily suspend his license or the certified school psychologist's right to use his title as provided in [insert citation for appropriate section of state code], subject to the limitation of [insert citation for
appropriate section of state code].

(4) If the board has reasonable cause to believe that a licensee or certified school psychologist is unable to practice with reasonable skill and safety to patients, it may require such licensee or certified school psychologist to submit to mental or physical examinations designated by the board. Upon the failure of such licensee or certified school psychologist to submit to such mental or physical examinations, unless he shows good cause for such failure, the board may act pursuant to paragraph (3) of this subsection or enjoin a certified school psychologist or licensee pursuant to Section 5 of this act until such time as he submits to the required examinations.

(5) Every licensee or certified school psychologist shall be deemed to have given his consent to submit to mental or physical examinations when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground of privileged communication.

(6) The results of any mental or physical examination ordered by the board may be used as evidence in any proceeding initiated by the board or within the board's jurisdiction in any forum.

(c) Disciplinary actions may consist of the following:

(1) Revocation of a license.
   (i) Revocation of a license by the grievance board shall mean that the licensee shall surrender his license to the grievance board within a period of [thirty (30)] days. Similarly, a certified school psychologist's right to use his title as provided in [insert citation for appropriate section of state code] shall cease within a period of [thirty (30)] days. Failure to do so will render the licensee or certified school psychologist liable to prosecution by the [district attorney].
   (ii) Any person whose license to practice is revoked is rendered ineligible to apply for any license issued under [insert appropriate reference to state code] until more than [three (3)] years have elapsed from the date of surrender of the license. Any reapplication after such [three- (3-)] year period shall be treated as a new application.

(2) Suspension of a license. Suspension of a license or a certified school psychologist's right to use his title as provided in [insert citation for appropriate section of state code] by the grievance board shall be for a period to be determined by the grievance board.

(3) Probationary status. Probationary status may be imposed by the grievance board. If the grievance board places a licensee or certified school psychologist on probation, it may include such conditions for continued practice as the grievance board deems appropriate to assure that the licensee or certified school psychologist is physically, mentally and otherwise qualified to practice in accordance with generally accepted professional standards of practice, including any or all of the following:
   (i) Submission by the licensee or certified school psychologist to such examinations as the grievance board may order to determine his physical or mental condition or his professional qualifications;
(ii) The taking by him of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(iii) Such review or supervision of his practice as may be necessary to determine the quality of his practice and to correct deficiencies therein; and

(iv) The imposition of restrictions upon the nature of his practice to assure that he does not practice beyond the limits of his capabilities.

(4) Issuance of letters of admonition. Such letters shall be sent by certified mail to the licensee or certified school psychologist against whom a complaint was made. The letter shall advise the licensee or certified school psychologist that he may, within [twenty (20)] days after receipt of the letter, make a written request to the grievance board to institute formal disciplinary proceedings in order to formally adjudicate the conduct or acts on which the letter was based.

(d) Complaints, investigations, hearings, meetings or any other proceedings of the grievance board conducted pursuant to the provisions of this act and relating to the disciplinary proceedings shall be exempt from the provisions of any law requiring that proceedings of the grievance board be conducted publicly or that the minutes or records of the grievance board with respect to action of the grievance board taken pursuant to the provisions of this act be open to public inspection; except that this exemption shall apply only when the grievance board, or an [administrative law judge] acting on behalf of the grievance board, specifically determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, or, if the licensee or certified school psychologist is violating Section 5(a)(5) of this act, the licensee or certified school psychologist is participating in good faith in a program approved by the grievance board designed to end such addiction or dependency and the licensee or certified school psychologist has not violated any provisions of the grievance board order regarding his participation in such a treatment program. If the grievance board determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, then the final action of the grievance board must be open to the public without disclosing the name of the client or other recipient.

(e) Final grievance board actions and orders appropriate for judicial review may be judicially reviewed in the [insert appropriate court of jurisdiction], and judicial proceedings for the enforcement of a grievance board order may be instituted in accordance with [insert citation for appropriate section of state code].

(f) Any person participating in good faith in the making of a complaint or report or participating in any investigatory or administrative proceeding before the grievance board pursuant to this act shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.
(g) Any grievance board member having an immediate personal, private or financial interest in any matter pending before the grievance board shall disclose the fact to the grievance board and shall not vote on the matter.

(h) Any licensee or certified school psychologist against whom a malpractice claim is settled or a judgment rendered in a court of competent jurisdiction shall notify the grievance board of such judgment or settlement within [sixty (60)] days of such disposition.

(i) Any licensee or certified school psychologist having direct knowledge that an unlicensed psychotherapist, a certified school psychologist, or a licensee has violated any of the provisions of Section 5 of this act has a duty to report such knowledge to the grievance board, unless such report would violate the prohibition against disclosure of confidential information without client consent pursuant to [insert citation for appropriate section of state code].

Section 8. [Reconsideration and Review of Action of Grievance Board.] The grievance board, on its own motion or upon application, at any time after the imposition of any discipline as provided in Section 7 of this act, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the grievance board.

Section 9. [Unlawful Acts.]

(a) It is unlawful for any person:

(1) To violate the provisions of Section 5(a)(8) of this act, or [insert citations for other appropriate sections of state code];

(2) To use in connection with his name any designation tending to imply that he is licensed pursuant to [insert reference to appropriate section of state code] or certified as a certified school psychologist during a period when his license has been suspended or revoked or his certificate or right to use the title "certified school psychologist" has been suspended or revoked;

(3) To sell or fraudulently obtain or furnish a license to practice as a clinical social worker, marriage and family therapist, professional counselor or psychologist or a certificate to practice as a certified school psychologist or to aid or abet therein.

(b) Any person who violates any provision of subsection (a) of this section commits a [insert offense and penalty]. Any person who subsequently violates any provision in subsection (a) of this section within [three (3)] years after the date of a conviction for a violation of subsection (a) of this section commits a [insert offense and penalty].

(c) Such offense shall be prosecuted by the [district attorney] of the judicial district in which the offense was committed in the name of the people of the state of [state].

(d) No action may be maintained for the breach of a contract
involving the unlawful practice of psychology, social work, professional counseling, marriage and family therapy, psychotherapy or certified school psychology or for the recovery of compensation for services rendered under such a contract.

(e) When an individual has been the recipient of services prohibited by this act, whether or not he knew that the rendition of the services were unlawful:

(1) He or his personal representative is entitled to recover the amount of any fee paid for the services; and

(2) Damages for injury or death occurring as a result of the services may be recovered in appropriate action without any showing of negligence.

Section 10. [Injunctive Proceedings.]
(a) The grievance board may, in the name of the people of the state of [state], apply for an injunction in any court of competent jurisdiction:

(1) To enjoin any person from committing any act prohibited by the provisions of this act or [insert reference to other appropriate sections of state code];

(2) To enjoin a licensee from practicing the profession for which he is licensed or to enjoin a certified school psychologist from practicing psychotherapy outside the school setting if he has violated the provisions of Section 7(b)(4) of this act or the provisions of Section 5 of this act;

(3) To enjoin an unlicensed psychotherapist from practicing psychotherapy if he has violated the provisions of Section 5 of this act.

(b) If it is established that the defendant has been or is committing any act prohibited by this act or [insert reference to other appropriate sections of state code], the court shall enter a decree perpetually enjoining said defendant from further committing said act or from practicing psychotherapy.

(c) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this act or [insert reference to other appropriate sections of state code].

(d) When seeking an injunction under this section, the grievance board shall not be required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Section 11. [Expenses of Grievance Board.] All reasonable expenses of the grievance board shall be paid as determined by the director of the state division of registrations from the fees collected pursuant to [insert citation for appropriate section of state code] as provided by law.

Section 12. [Grievance Board; Jurisdiction.] All investigations completed or in progress pursuant to [insert citations for appropriate sections of state code] as said sections existed on [insert date], shall be referred to the grievance board. Hearings which have been initiated by a board or formally referred to hearing or dismissed pursuant to such sections prior to [insert
date] shall be completed and a decision rendered by that board. All actions taken and decisions rendered by a board prior to [insert date], are hereby ratified.

Section 13. [Records.] The grievance board shall maintain records of all cases considered and decisions rendered by said board.

Section 14. [Repealer.] [Insert repealer clause.]

Section 15. [Effective Date.] [Insert effective date.]
Marine Sewage Pumpout Act

The act presented below, which is based on 1989 Maryland legislation, prohibits the construction or the expansion of marinas unless the marina installs a wastewater collection and treatment system on site or has a contract with a pumpout station located within two miles of the marina.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Marine Sewage Pumpout Act.

Section 2. [Applicability.] This act applies to any public or private marina that is located on the navigable waters of the state.

Section 3. [Limitation on Number of Slips.] On or after [insert date], a person may not construct any additional slips at an existing marina that would result in a total slip capacity of more than [ten (10)] slips or construct a new marina with more than [ten (10)] slips on the navigable waters of the state unless:

(1) The wastewater collection and treatment system at the marina is adequate to handle any existing and increased flow; and
(2) There is a pump-out station on site at the marina that is adequate to handle the increased sewage capacity from vessels that use the marina and that is operable and accessible at reasonable times; or
(3) The marina has a contract with a pump-out facility that:
   (i) is located not more than [two (2)] miles from the marina, and
   (ii) is adequate to handle the increased sewage capacity from vessels that use the marina and that is operable and accessible at reasonable times.

Section 4. [Effective Date.] [Insert effective date.]
Senior Environmental Corps Act

In his 1988 state of the state address, the governor of Washington state recommended the establishment of a senior environmental corps that would tap the expertise of professional seniors for environmental and natural resource programs. The act presented below, which is based on 1992 Washington state legislation, establishes the senior environmental corps under the state's department of community development. According to figures provided by the department, at least 175 senior volunteers have donated 14,000 hours of their time. The goals of the corps include carrying out projects that focus on natural, environmental and recreational resources; providing opportunities for seniors to use their professional expertise; assisting state agencies in carrying out statutory responsibilities; and providing outreach and education services. The act establishes a corps coordinating council to oversee corps' operations. The council's duties include evaluation and selection of projects for senior volunteer participation. The act further stipulates that volunteers cannot be used to displace current state workers.

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Legislative Findings.] The legislature finds that:
(1) Enhancement and protection of the state's environment demands more resources than government funding can provide;
(2) A critical underutilized asset to society is the knowledge, skills abilities, and wisdom of our expanding, able senior population;
(3) Central to the well-being and continued connection to the society of [state's] senior citizens is the opportunity for them to voluntarily continue to provide meaningful contributions and to share their professional training, lifelong skills, talents, and wisdom with [state's] citizens;
(4) It will benefit all the citizens of the state to create a partnership between our senior citizens and the state's natural resource agencies to augment our capacity to protect, enhance and appreciate the environment.

Section 3. As used in this act:
(1) "Agency" means one of the agencies or organizations participating in the activities of the senior environmental corps.
(2) "Coordinator" means the person designated by the director of the [department of community development] with the advice of the council to administer the activities of the senior environmental corps.
(3) "Corps" means the senior environmental corps.
(4) "Council" means the senior environmental corps coordinating council.

(5) "Department" means the [department of community development].

(6) "Director" means the director of the [department of community development] or the director's authorized representative.

(7) "Representative" means the person who represents an agency on the council and is responsible for the activities of the senior environmental corps in his or her agency.

(8) "Senior" means any person who is [fifty-five (55)] years of age or over.

(9) "Volunteer" means a person who is willing to work without expectation of salary or financial reward, and who chooses where he or she provides services and the type of services he or she provides.

Section 4. [Creation of Senior Environmental Corps.] The senior environmental corps is created within the [department of community development]. The [departments] of [insert appropriate state agencies or authorities] shall participate in the administration and implementation of the corps and shall appoint representatives to the council.

Section 5. [Goals of Senior Environmental Corps.] The goals of the corps shall be to:

1. Provide resources and a support structure to facilitate corps activities and accomplish goals;
2. Carry out professional and paraprofessional projects that focus on conservation, protection, rehabilitation and enhancement of the state's natural, environmental and recreational resources and that otherwise would not be implemented because of limited financial resources;
3. Provide meaningful opportunities for senior volunteers to continue to utilize their professional training, lifelong skills, abilities, experience and wisdom through participation in corps projects;
4. Assist agencies in carrying out statutory assignments with limited funding resources;
5. Enhance community understanding of environmental issues through educational outreach; and
6. Enhance the state's ability to provide needed public services in both urban and rural settings.

Section 6. [Creation of Senior Environmental Corps Coordinating Council.] The [department] shall convene a senior environmental corps coordinating council to meet as needed to establish and assess policies; define standards for projects, evaluate and select projects; develop recruitment, training and placement procedures; receive and review project status and completion reports; and provide for recognition of volunteer activity. The council shall include representatives appointed by the [departments] of [insert appropriate state agencies or authorities]. The council shall develop bylaws, policies and

...
procedures to govern its activities.
The council shall advise the director on distribution of available funding for corps activities.

Section 7. [Corps Coordinating Council Duties.]
(a) Contingent upon available funding, the [department] shall:
(1) Provide a coordinator and staff support to the council as needed;
(2) Provide support to the agencies for recruitment of volunteers;
(3) Develop a budget and allocate available funds with the advice of the council;
(4) Develop a written volunteer agreement;
(5) Collect and maintain project and volunteer records;
(6) Provide reports to the state legislature and the council as requested;
(7) Provide agency project managers and volunteers with orientation to the corps program and training in the use of volunteers;
(8) Act as a liaison with and provide information to other states and jurisdictions on the corps program and program activities;
(9) Appoint a representative to the coordinating council;
(10) Develop project proposals;
(11) Administer project activities within the agency;
(12) Develop appropriate procedures for the use of volunteers;
(13) Provide project orientation, technical training, safety training, equipment and supplies to carry out project activities;
(14) Maintain project records and provide project reports;
(15) Apply for and accept grants or contributions for corps approved projects; and
(16) With the approval of the council, enter into memoranda of understanding and cooperative agreements with federal, state and local agencies to carry out corps approved projects.
(b) The [department] shall not use corps volunteers to displace currently employed workers.

Section 8. All volunteer activity must be performed under the terms of a written master agreement approved by the council and the [state attorney general]. As a minimum, the volunteer agreement must include a description of the work that the volunteer is to perform, including the standards of performance required, any expenses or other benefits to which the volunteer is to be entitled, such as mileage, lodging, state industrial coverage, uniforms or other clothing or supplies, training or other support to be provided to the volunteer by the agency, the duration of the agreement, and the terms under which the agreement may be canceled.

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

Section 10. [Effective Date.] [Insert effective date.]
The proposal presented below would enable a state to establish an environmental education program both through the traditional education system and through community and state agency activities to ensure that citizens are well-informed on environmental issues. It would establish an environmental education board to guide the state environmental education program, an office of environmental education to implement it, and an interagency coordinating committee to facilitate cooperation among state agencies. The draft calls for the development of a state plan for environmental education, a grants program, and regional environmental education centers.

It requires the development of an environmental education curriculum framework for grades K through 12 and environmental education studies for teacher pre-service and in-service education programs, as well as undergraduate education. The act also sets forth state agency duties for non-formal environmental education initiatives.

Drafted by a subcommittee of The Council of State Governments' national Environmental Task Force, the proposal was subsequently accepted by the Task Force at its September 1992 meeting in Austin, Texas. The subcommittee members and additional reviewers of the proposal represented state and federal education, environmental protection and natural resource agencies; state legislators; academic institutions; environmental public interest organizations; and the private sector.

Although the enactments of several states were consulted in the drafting of the proposal, it is based largely on existing environmental education legislation from the states of Arizona (Ch. 266, HB 2675, 1990), Florida Ch. 92-128, 1990 and 1992 amendments), and Wisconsin (1989 Assembly Bill 660).

More information on this proposal or the activities of the CSG Environmental Task Force may be obtained by contacting The Council of State Governments, Center for the Environment, 3560 Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578, (606) 231-1939.

Environmental Education Act
A Proposal of the CSG national Environmental Task Force

Section 1. [Short Title.] This act may be cited as the [state] Environmental Education Act.

Section 2. [Mission Statement.]
(a) It is in the public interest that a comprehensive environmental education initiative be undertaken that will result in environmentally literate citizens who will effectively and constructively solve existing environmental problems, prevent new ones, and maintain a sustainable environment for future generations. The appropriate audiences for environmental education include formal education, business, government, non-profits, and citizens.

(b) Characteristics of an environmentally literate citizenry
must include:
(1) Ecological literacy - a basic understanding of:
(i) ecological principles and concepts and their application;
(ii) the cause and effect relationship between human behavior
and the environment; and
(iii) the economics of that relationship.
(2) Civics literacy - a basic understanding of the decision-
making processes of governments, business and other social,
political and economic institutions impinging upon environmental
issues.
(3) Mathematical, technological and scientific literacy - an
understanding of the basic concepts of math and science to
evaluate environmental problems and make sound decisions
regarding their resolution.
(4) Personal and social action skills - develop and use skills
such as problem-solving, risk analysis and integrating diverse
perspectives to understand and contribute to decision-making
processes.
(5) Attitudes - expression of care for other humans, present
and future, and for other components of the environment. These
attitudes also affect understanding of ecology and civic
responsibility.
(6) Motivation for action - the commitment to act for a healthy
environment based on one's attitudes, knowledge and skills.
(c) There is hereby created a statewide environmental education
program to implement the purpose of this act. The program shall
consist of an [environmental education board], an [office of
environmental education], an [interagency coordinating
committee], a state plan, environmental education centers, a
curriculum framework, teacher and undergraduate environmental
education programs, non-formal programs, and a finance and grants
program.

Section 3. [Environmental Education Board.]
(a) There is created an [environmental education board] attached
for administrative purposes to the [state department of education
or natural resources]. The [board] shall identify needs and set
priorities for environmental education within the state. It shall
be responsible for reviewing, approving and transmitting a plan
for environmental education to the governor and the legislature
every [two (2)] years. An annual appropriation should be provided
to finance the operation of the [board]. The appropriation level
would range from [50,000] dollars to [100,000] dollars depending
upon the size, needs and resources of the state. Staffing of the
[board] shall be provided by the [office of environmental
education].
(b) The [board] shall provide advice and assistance to the
governor, the legislature, the [office of environmental
education], and other state agencies, including university
extensions, conservation and environmental organizations,
community action services, and nature and environmental centers
on policies and practices needed to provide environmental
education. The [board] shall serve as a forum for the discussion
and study of problems that affect the environment and
environmental education. It shall provide assistance to and obtain information from the interagency committee to coordinate the environmental education programs of state agencies.

(c) The [board] shall be responsible for the administration of the state’s environmental education grants program. The [board] shall promulgate rules establishing the procedure for the awarding of grants. Grants under this section may not be used to replace funding available from other sources. No more than [one-third (1/3)] of the total amount awarded in grants in any fiscal year may be awarded to state agencies.

(d) The [board] shall be appointed by the governor for staggered [three- (3-)year terms and include a balance of government and non-governmental entities that consists of the following members or their designees with experience in environmental education:

1. [state superintendent of public instruction];
2. [secretary of environmental protection];
3. [tribal government (if applicable)];
4. [secretary of natural resources];
5. [one (1)] majority and [one (1)] minority party member of each house of the legislature];
6. [board of regents (specify number)];
7. [environmental advocacy organizations (specify number)];
8. [industrial community (specify number)];
9. [small business (specify number)];
10. [municipal corporations (specify number)];
11. [elementary and secondary school teachers (specify number)];
12. [ethnic minorities (specify number)]; and
13. [a professional environmental scientist].

Section 4. [Office of Environmental Education.]

(a) A state [office of environmental education] shall be established by the legislature. It shall be headed by an environmental educator who is appointed by the [environmental education board]. The [office] should have supra-agency authority and dependable funding. It may be administratively attached to an existing agency such as the [state education or natural resources department].

(b) The responsibilities of the [office] shall include:

1. Assess the status of environmental literacy in the state’s students, teachers and citizens every [two (2)] years.
2. Prepare a plan for environmental education every [two (2)] years at the direction of the [environmental education board] and with the assistance of the [interagency coordinating committee].
3. Provide assistance to the [environmental education board] in the administration and evaluation of the state environmental education grants program.
4. Promote and aid in the establishment and evaluation of learner outcomes for pre K-12 school environmental education programs through cooperation with the [state department of education].
5. Promote and aid in the development of pre-service and in-service environmental education programs for teachers through cooperation with the [council on higher education] or its
equivalent and the state's colleges and universities.

(6) Cooperate with federal government and state agencies and the private sector in developing, promoting and evaluating programs of environmental education.

(7) Function as an environmental education clearinghouse by:

(i) reviewing and recommending environmental education materials;

(ii) cooperating with state agencies and organizations in the development and distribution of an environmental education newsletter;

(iii) establishing an electronic capacity to disseminate databases of environmental education information and to network with interstate and federal programs.

(8) Promote the development of cooperative environmental education initiatives with the private sector.

(9) Initiate, develop, implement, evaluate and market non-formal environmental education programs; facilitate, encourage and support multi-school district cooperative efforts to assess the need for, develop and evaluate environmental education curriculums; promote state government and private sector policy that is consistent with the environmental education strategic plan established in paragraph (2) of this section, and coordinate non-formal environmental education with the K-12 and postsecondary environmental education programs.

(10) Initiate research on environmental education as called for in the strategic plan by issuing contracts to colleges, universities and other research based institutions.

(11) Coordinate an environmental education conference on a periodic basis to assist in the dissemination, development and achievement of the state's environmental education strategic plan.

(c) Staffing. The [office of environmental education] should be administered by a professional environmental educator and staffed with personnel having appropriate expertise and education.

Section 5. [Interagency Environmental Education Committee.]

(a) An [interagency environmental education committee] shall be established to promote networking, coordination and cooperation among state agencies and federal, tribal and local agencies to promote the efficient distribution of information and to facilitate the planning and development of educational programs and materials. One agency shall be given responsibility for convening and facilitating the functions of the [committee].

(b) The [committee] shall be composed of [specify number] persons with experience in environmental education and the members shall consist of employees of the following agencies that have been appointed by the agency head: [state departments of education, economic development, environmental protection, resource management, land, parks, water resources, tourism, environment commission, geological survey, energy, fish and wildlife, agriculture, mining, attorney general, health, transportation, local government/community affairs, general services, local conservation districts, county extension, community services, youth groups and minority affairs]. The
chairperson shall be elected by the members.
(c) Members of the [committee] shall also serve as environmental education coordinators for their respective agencies, and shall direct an assessment of their own agency's target audiences and appropriate programs. The [committee] shall establish subcommittees as needed and assist with the development and implementation of the state's environmental education strategic plan.
(d) The [committee] shall develop and maintain a memorandum of understanding to specify methods by which the agencies can share their resources to benefit environmental education in the state.
(e) Members of the [committee] are not eligible to receive compensation and are not eligible for reimbursement of expenses from the [committee].

Section 6. [State Plan.] The [office of environmental education], with assistance from the [interagency committee] should coordinate, write and publish a plan for environmental education. It should be reviewed and approved by the [environmental education board] and transmitted to the governor and the legislature every [two (2)] years. A report on the status of environmental literacy in the state should be conducted every [two (2)] years to serve as a basis for the plan. The plan shall be officially called the "Governor's Plan for Environmental Education".

Section 7. [Grants Program.] The [environmental education board] shall award grants [annually] to non-profit organizations and public agencies for the development, dissemination and evaluation of environmental education programs. Proposals addressing needs and priorities identified by the [board] or included in the strategic plan should receive priority. The [office of environmental education] staff shall administer the grants program and develop an evaluation plan. Grant recipients must provide a match of at least [25] percent of the amount of the grant. No more than [33] percent of the grant funds shall be awarded to state agencies in [one (1)] year. The [environmental education board] shall promulgate rules establishing the specific criteria and guidelines for the program. An annual state appropriation ranging from [200,000] dollars to [2,500,000] dollars shall be provided to fund the grants program. Funding mechanisms are described in the Section 14 of this act.

Section 8. [Environmental Education Centers.] (a) Regional environmental education centers should be established at state universities. They should perform the following functions:
(1) provide graduate level and continuing education courses for educators;
(2) develop and maintain a resource library for teachers and other educators that includes curriculum materials, software and audio visual materials;
(3) provide assistance to schools in the development of their environmental education curricula;
(4) coordinate an annual conference for resource providers and educators to share, plan and implement environmental education;
(5) support teachers to conduct action research or classroom-based research on environmental education strategies and student outcomes;
(6) network with interstate, federal, regional and tribal environmental education and training centers;
(7) provide for residential environmental education experiences for all students.
(b) Regional environmental education centers shall receive an annual appropriation to finance the staff, travel and supplies necessary to carry out these functions.

Section 9. [Curriculum Framework.]
(a) The [office of environmental education] and the [environmental education board] shall work with the [state department of education] to develop a curriculum framework for establishing environmental education programs in all public and private elementary and secondary schools. The programs shall integrate environmental concepts, skills and attitudes into the regular curriculum, where appropriate, including but not limited to:
(1) basic ecological relationships including firsthand real life experiences in varied natural and built environments with organisms as they interact with their environment;
(2) issue investigation, analysis, evaluation, problem-solving, prediction, and action skills that enable the student to understand concepts such as the interrelationships and interdependence of natural and human systems;
(3) the values and behaviors of individuals, institutions and nations regarding environmental problems;
(4) alternative responses to environmental issues and their consequences; and
(5) the potential controversies arising from multiple use patterns of public and private lands.
(b) Model measurable learner outcomes. The program shall be implemented through the [state department of education]. The program should be comprehensive and include learner outcomes, assessments, feedback mechanisms and instructional processes. The [state department of education] shall develop curriculum integration models for a measurable learner outcome-based environmental education program. The models must include:
(1) the specific environmental education and curriculum integration goals;
(2) the various options to achieve the goals;
(3) a hierarchy of learner outcomes composed of state learner goals; integrated learner outcomes; program learner outcomes; and course, unit and lesson learner outcomes;
(4) mechanisms to communicate the models;
(5) an objective process to evaluate the progress to establish and implement a model integrated environmental education curriculum;
(6) methods to assess pupils' environmental learning.
Section 10. [Pre-service Teacher Education.]
(a) Pre-service education in environmental education is essential in order to foster an environmentally literate citizenry. Future teachers must acquire the content and teaching skills to effectively instruct students in preschool through grade 12.
(b) Teacher education pre-service programs are required to provide instruction in environmental education, including ecological concepts, environmental issues and problems, developmentally appropriate practices, and use of a variety of instructional curricula and materials. Teacher education should come from a variety of sectors, including academia, environmentalists and the regulated communities.
(c) The [environmental education board] and the [office of environmental education] shall work with members of teacher education institutions, natural resources departments in colleges and universities, the state higher education council, the state board of regents, and representatives from private colleges and universities to develop guidelines for incorporating environmental education into teacher education requirements.
(d) In states where teacher exams are required, environmental education knowledge and teaching skills should be assessed by the exams.
(e) Pre-service teacher education should consist of the following components:
   (1) Definition of the environmental education competencies that teacher candidates are expected to acquire;
   (2) Definition of the acceptable approaches that can be used to develop the competencies;
   (3) A plan for evaluating the achievement of the competencies;
   (4) A plan for evaluating pre-service teacher environmental education programs and;
   (5) A timeline for implementing the required pre-service education programs at colleges and universities.

Section 11. [Staff Development: K-12 Teachers (In-service Education).] In-service teachers should develop the same environmental education competencies specified for pre-service teachers. To accomplish this:
(1) In-service education in environmental education should be added to the courses recommended or required for recertification or licensing;
(2) Every teacher education institution shall be required to offer both pre-service and in-service courses in environmental education;
(3) State natural resources, environmental protection, parks, health and human services and education agencies shall develop and publicize environmental education teacher in-services and/or professional internships related to their mission;
(4) School districts shall be encouraged to develop environmental education staff development plans and seek matching funding for implementation of these plans from the state grants program.
Section 12. [Undergraduate Environmental Education.]
(a) Universities, colleges and vocational institutions are required to implement programs that encourage environmental literacy and provide opportunities for environmental stewardship among the student population.
(b) Such programs shall include at a minimum:
   (1) Course Requirement. Implementation of an environmental studies course requirement for all graduates, or the development of an integrated general education program that accomplishes environmental literacy through its integration in a variety of required courses.
   (2) Comprehensive Program Planning. The state higher education coordinating council or board of regents shall plan and implement the following programs:
      (i) Environmental audit. Institutions shall conduct an [annual] environmental audit to review the environmental and economic impact of the institution's operations. This evaluation should include a review of purchasing, waste disposal, energy usage and transportation practices. Institutions should implement methods and processes to reduce the negative impacts of these activities on the environment.
      (ii) Assessment. Each institution shall review their activities (curriculum, internships, work study program, scholarships) to evaluate how they can promote environmental literacy among their student population.
      (iii) Faculty development. Each institution shall provide opportunities and incentives for faculty of all disciplines to learn how they can contribute to developing environmental literacy in the student body.
      (iv) Consortium. A consortium shall be developed to facilitate communication about existing environmental education programs.
      (v) Environmental centers. Institutions shall be selected on a regional basis to serve as environmental centers to accomplish the functions in Section of this act.
      (vi) Competency identification and assessment. Environmental literacy competencies required for all graduates should be identified and a plan for assessing the achievement of these competencies shall be developed and implemented.
      (vii) Environmental careers. Institutions should be encouraged to offer environmental career awareness workshops for high school students and especially for under-represented populations.

Section 13. [Non-formal Education.]
(a) "Non-formal" refers to education conducted outside of traditional formal education systems. The audiences for non-formal environmental education are numerous and quite diverse. They include: general public, youth and adult groups, local government, business and industry, environmental and conservation organizations, the media, elderly, and ethnic and cultural groups.
(b) Non-formal programs should focus on communities, the media, and other state agencies not traditionally considered part of the environmental protection/natural resources agenda.
(c) All state agency mission statements and particularly
environmental protection or resource management agencies shall contain an environmental education component.

(d) Agency Duties. An agency shall be charged with the following duties:

(1) Establish a committee within the agency of representatives of all programs conducting education activities to facilitate coordination and communications;

(2) Conduct a periodic assessment of non-formal environmental education offered by the agency throughout the state;

(3) Maintain an inventory of its environmental education materials, programs and resources;

(4) Prepare a periodic report to the [interagency coordinating committee] and the state [environmental education board] outlining environmental education programs, activities and needs;

(5) Identify target audiences and programs;

(6) Environmental protection leadership. State agency internal operations should serve as a model for waste and pollution reduction, energy efficiency, and protection, preservation, and management of natural resources. The state [interagency committee] shall outline ways in which state agencies can implement model environmental policies such as office waste reduction and recycling, employee incentives for using mass transit, workplace energy conservation, native landscape planting and native plant and wildlife habitat restoration around state office buildings, printing on recycled paper, procuring paper with recycled content, and recycling of used oil and tires from state auto fleets;

(7) Educate the regulated community (operators, builders, developers, private landowners, agriculture, water and air dischargers, water and sewer authorities, and local government) to promote:

(i) conservation and environmental protection;

(ii) economic benefits of protecting the environment;

(iii) the intrinsic valuing of natural resources;

(iv) development/enhancement of a corporate environmental ethic and responsibility for environmental protection;

(8) Promote programs for the regulated community that:

(i) provide examples of economically viable business/industry activities which have also benefited the environment;

(ii) provide education programs and field experiences;

(iii) establish awards programs (waste reduction award, environmental protection award, community action award, best management practices award, habitat restoration award, etc.);

(iv) establish or promote the development of an industry council on environmental education to promote industry partnerships;

(v) facilitate innovative industry environmental problem solving;

(vi) provide workplace environmental education materials;

(vii) promote public/private partnerships for environmental education programs and initiatives.

Section 14. [Finance.]

(a) Funds will be necessary to implement the environmental
education program and create the [environmental education board], [office of environmental education], and the grants program.  
(b) There is hereby created a [special non-lapsing environmental education trust fund] in the state treasury. Monies for the fund shall be authorized by the state legislature. All monies placed in the fund and the interest it accrues are hereby appropriated, upon authorization by the governor and with advice from the [board], to accomplish the purposes of this act. All monies in the fund shall only be used for environmental education. This fund is exempt from provisions relating to lapsing of appropriations. On notice from the [board], the [state treasurer] shall invest and divest monies in the fund. The [state treasurer] shall credit all monies earned from these investments to the fund. The [board] shall develop a plan for the expenditure of monies in the fund.

Section 15. [Effective Date.] [Insert effective date.]
Lease-to-Own Housing Program Act

For many individuals and families, a primary obstacle to home ownership is their inability to save enough money for the initial costs of buying a home, such as the down payment and closing costs. The program established in the act presented below allows prospective purchasers to set aside a portion of monthly rental payments for future down payments and closing costs while occupying homes or units as tenants.

This act, based on 1992 New York state legislation, authorizes the state mortgage agency (SONYMA) to provide mortgage financing to sellers who have entered into lease-to-own contracts with eligible tenant-purchasers for single-family homes or condominiums or cooperative units. The applicable lease-to-own contract must provide for rental payments sufficient to pay estimated property taxes and insurance; interest on the mortgage loan; monthly maintenance, in the case of a cooperative unit, or common charges, in the case of a condominium unit; and a tenant-purchaser escrow account that will accumulate over the lease period to cover the required down payment and the tenant's estimated closing costs. Under the terms of the New York act, the lease cannot exceed five years. In the event the tenant fails to close on the title at the end of the lease term, the tenant will forfeit all monies in the tenant-purchaser escrow account.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Lease-to-Own Housing Program Act.

Section 2. [Definitions.] As used in this act:
(1) "Agency" means the [state mortgage agency].
(2) "Residence" means a single-family home, a condominium housing unit or a housing unit owned by a cooperative housing corporation.
(3) "Seller" means the party to the lease-to-own contract who is the seller of the residence.
(4) "Tenant-purchaser" means the prospective purchaser who is a party to the lease-to-own contract.

Section 3. [Lease-to-Own Program; Establishment; Authorization to Participate.] The [agency] is authorized to participate in lease-to-own programs as described in this act. The purpose of a lease-to-own program is to provide mortgage financing for a residence occupied as a primary residence by a prospective mortgagor pursuant to a lease-to-own contract with the owner of such property. The lease-to-own contract shall provide for the eventual purchase by the resident of the residence and an interim lease of the residence prior to the closing of the purchase thereof.

Section 4. [Authorization to Acquire Mortgage Loans.] The
[agency] may contract to acquire and may acquire a mortgage loan or loans made by a bank to a seller who has entered a lease-to-own contract with an eligible tenant-purchaser for the property which is the subject of and security for such mortgage loan.

Section 5. [Lease-to-Own Contract.]
(a) The lease-to-own contract shall contain:
(1) a lease of the residence, or in the case of cooperative housing units a sublease, for a term not to exceed [insert number] years.
(2) provision for a rental payment not less than the sum of
   (i) an amount sufficient to pay the estimated real property taxes and insurance on the residence, or in the case of a cooperative unit, the maintenance charges;
   (ii) the cost of routine maintenance of the residence unless the lease-to-own contract requires the tenant-purchaser to perform such maintenance at his own expense;
   (iii) an amount sufficient to pay the interest on the mortgage loan held by the [agency] on the residence less the estimated earnings on the escrow fund provided for in Section 6 of this act which is allocable to such mortgage held by the [agency];
   (iv) an amount to be held in escrow, referred to as the "tenant-purchaser escrow," which, when accumulated over the period of the lease-to-own contract, will amount to a sum sufficient to pay the tenant-purchaser's required down payment under the lease-to-own contract plus the estimated closing costs of purchase which will be allocable to the tenant-purchaser, including the seller's closing costs at the initial closing of the mortgage to the seller; and
   (v) in the case of a condominium unit, common charges.
(3) provisions obligating the tenant-purchaser to buy and the seller to sell the residence at the end of the lease term.
(4) a provision under which the seller waives specific performance with respect to the tenant-purchaser's obligation to purchase.
(5) a provision that default by the tenant-purchaser under the provisions of the lease-to-own contract shall result in the forfeiture to the seller of all amounts in the tenant-purchaser escrow.
(6) a provision that the tenant-purchaser shall have the option upon reasonable notice to the seller and the [agency] to elect to close the purchase of the residence at an earlier date than that specified in the lease-to-own contract.
(7) a provision that the rent shall be adjusted under the lease-to-own contract periodically to take account of changes in taxes, insurance, escrow earning and other variables intended to be covered by the tenant's rental payment.
(8) a provision governing the consequences of default by each of the parties.
(b) The provisions of [insert reference to any appropriate rent control or tenant protection statutes] shall not apply to the tenancy of the tenant-purchaser under the lease-to-own contract from and after the purchase by the [agency] of the mortgage loan on the residence so long as the [agency] holds the mortgage loan.
The [agency] shall not sell the mortgage loan prior to the closing of the transfer of title to the tenant-purchaser or default by the tenant-purchaser under the lease-to-own contract.

(c) The [agency] shall adopt procedures to ensure that the payments contemplated by subsection (a)(2) of this section are in fact applied to those purposes.

Section 6. [Tenant-Purchaser Escrow Account.]
(a) The mortgage loan documents with respect to a mortgage loan acquired by the [agency] pursuant to this act shall provide that there shall be retained as additional security for the mortgage loan an amount not less than [insert number] percent of the purchase price stated in the lease-to-own contract. The amount retained shall be disbursed in cash at the mortgage closing to an escrow fund held by the owner of the mortgage. When the [agency] becomes the owner of the mortgage loan, the [agency] shall receive the escrow amount to be held by the [agency] in securities in which the [agency] is authorized to invest its own funds. All banks and trust companies are authorized to give such security for deposits by the [agency] of escrowed funds as determined by the [agency]. The escrow amounts pertaining to various lease-to-own mortgage loans may be commingled for investment purposes, but the [agency] shall keep books of account showing the amount to the credit of each individual escrow account. The investment earning on each individual escrow account shall be credited to the interest payment on the applicable mortgage loan.

(b) The [agency] shall advise the seller at periodic convenient intervals of the amount of such earnings with respect to each mortgage loan.

Section 7. [Alternative to Establishment of Tenant-Purchaser Escrow Account.] With the [agency's] approval, the lease-to-own contract may provide that, so long as the seller is not in default, in lieu of the establishment of a tenant-purchaser escrow account, that the portion of the tenant-purchaser's rental payments allocable to such an account may be received by the seller first as reimbursement of the seller's costs of closing of the initial mortgage to the seller and, second, to be credited to the purchase price of the premises.

Section 8. [Closing of Transfer of Title.]
(a) At the closing of the transfer of title to the residence to the tenant-purchaser pursuant to the lease-to-own contract, the [agency] shall disburse the escrow amount to or for the account of the tenant-purchaser.

(b) At such closing, the [agency] shall require the tenant-purchaser to furnish private mortgage insurance if such insurance is required in the case of other mortgage loans under this title.

If such insurance is not obtainable in the private market at the time of such closing, the [agency] is authorized to issue such insurance.
Section 9. [Agency Establishment of Requirements and Restrictions.]
(a) The [agency] shall establish such requirements with regard to lease-to-own contracts, lease-to-own residences, the qualifications of tenant-purchasers, and the [agency's] participation in any lease-to-own program, as may be deemed appropriate by the [agency] to achieve the objectives of this act. The [agency's] requirements, including but not limited to income limits applicable to the tenant-purchaser and the purchase price of the residence, must be satisfied at or before the time the mortgage loan is purchased, and the tenant-purchaser must be deemed qualified by the [agency] at that time.
(b) Notwithstanding any other provision of law, the [agency] is authorized to require, as a condition to the financing of any mortgage with respect to a lease-purchase residence, such restrictions upon assumability of the mortgage, default provisions, rights to accelerate, and other terms as the [agency] may determine to be necessary or desirable. All such terms shall be enforceable by the originating bank, the [agency], and any successor holder of the mortgage unless expressly waived in writing by or on behalf of the [agency].

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

Section 11. [Effective Date.] [Insert effective date.]
Motor Vehicle Liability Insurance Enforcement Act

The act presented below, which is based on 1992 Louisiana legislation, requires law enforcement officers to confiscate the license plate of a motor vehicle when they discover that the vehicle is being operated by the driver without proof of motor vehicle liability security. [State law requires motor vehicle owners to keep proof of compliance with the compulsory liability security law in the vehicle at all times.] The law enforcement officer who removes a plate must issue a temporary sticker, good for five days, to be attached to the rear of the vehicle. Under the provisions of the Louisiana enactment, the local office of motor vehicles must return the plate, at no charge, to any owner who shows proof of insurance within 10 days of the confiscation; otherwise the office must destroy the plate.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Motor Vehicle Liability Insurance Enforcement Act.

Section 2. [Definitions.] As used in this act:
(1) "Department" means the [state department of public safety].
(2) "Secretary" means the [secretary of the state department of public safety].

Section 3. [Evidence of Compliance with Compulsory Motor Vehicle Liability Security.]
(a) No owner or lessee of a self-propelled motor vehicle registered in this state, except a motor vehicle used primarily for exhibit or kept primarily for use in parades, exhibits or shows, or agricultural or forest use vehicles during seasons when they are not used on the highways, shall operate or allow the operation of such vehicle on any public road, street or highway in this state unless there is contained within the vehicle one of the following documents evidencing that the motor vehicle is in compliance with [insert appropriate citation for state statute] relative to compulsory motor vehicle liability security:
(1) A certificate of insurance. "Certificate" means the written evidence of motor vehicle liability insurance as defined in [insert appropriate citation for state statute] that is in the form of one of the following:
   (i) An identification card issued by an insurer to its insured which shall contain the following information:
      (A) the name and address of the insurance company;
      (B) the insurance policy number;
      (C) A description of the motor vehicle insured under the policy; and
      (D) The effective date and the expiration date of the policy.
   (ii) A motor vehicle liability insurance policy or a duplicate
original thereof.

(iii) A motor vehicle liability insurance policy binder or a duplicate original thereof.

(2) A duplicate original of a motor vehicle liability bond which complies with the requirements for motor vehicle liability bonds set forth in [insert appropriate citation for state statute].

(3) A certificate of the [state treasurer] stating that cash or securities have been deposited with said [treasurer] as provided for under the provisions of [insert appropriate citation for state statute].

(4) A certificate of self-insurance issued by the [secretary] under the provisions of [insert appropriate citation for state statute] qualifying the owner of the vehicle as a self-insurer.

(b) An operator of a motor vehicle shall be required to show that it is in compliance with the provisions of this act by displaying a document in the form provided in subsection (a) of this section when requested to do so by a law enforcement officer when investigating an accident, stopping a vehicle or detaining the operator of a vehicle in connection with a violation of the law, or performing a routine driver's license check.

Section 4. [Sanctions for Failure to Produce Proof of Security.] If the operator of a motor vehicle is unable to show compliance with the provisions of this act by displaying the required document when requested to do so, the operator shall be issued a notice of noncompliance with the provisions of this act on a form to be provided by the [department]. The enforcement officer issuing the notice shall forward a copy to the [department] within [ten (10)] days after the date the notice was issued. Upon receipt of the notice, the [secretary] shall impose the sanctions and send written notice to the owner or lessee of the motor vehicle, all in accordance with [insert appropriate citation for state statute]. In addition, the law enforcement officer shall remove and take the license plate attached to the vehicle. The law enforcement officer shall deliver the license plate to the chief of the agency which employs the officer or the designee of the chief. The agency shall deliver any license plate taken from a vehicle to the [local office of motor vehicles]. The chief administrative officer of such local office shall destroy or cause to be destroyed, any license plate that has been taken from an automobile, the owner of which fails to make proof of the fact that the vehicle was properly insured at the time of the taking. However, if the vehicle was insured at the time of the offense, the owner of the vehicle shall have at least [ten (10)] working days to present proof of insurance coverage or security in effect at the time of such offense, whereupon the license plate shall be returned at no cost to the owner of the vehicle.

Section 5. [Issuance of Temporary Stickers.] (a) Any law enforcement officer who removes and takes a license plate pursuant to the provisions of this act shall issue for attachment to the rear end of the vehicle, a temporary sticker
denoting its use in lieu of an official license plate. The
sticker shall bear the date upon which it was issued in written
or stamped numerals or alphabets not less than [three (3)] inches
in height. This temporary sticker shall only be effective for a
period of [five (5)] days beginning from the day on which the
license plate is taken.
(b) The temporary stickers required by subsection (a) of this
section shall be designed and produced by the [department], and
the [department] shall supply such stickers, at no cost, to all
law enforcement agencies authorized by law to enforce traffic
laws.

Section 6. [Promulgation of Rules and Regulations.] The
department] shall formulate and promulgate rules and regulations
for the implementation of the provisions of this act. To this
end, no license shall be taken or destroyed pursuant to the
authority granted in Section 4 of this act until such rules are
properly promulgated in accordance with law. However, this
limitation shall not be construed so as to otherwise limit the
enforcement of laws relative to operating a vehicle without
proper insurance or security.
Prior to reinstatement of registration and license plate
privileges to any individual who cannot prove insurance coverage
or security in effect at the time of the offense within [ten
(10)] days after the offense, the [department] shall collect a
reinstatement fee of [ten (10)] dollars to offset the cost of
administering this act. This fee shall be in addition to any
other fines, fees or penalties owned prior to reinstatement of
privileges.

Section 7. [Effective Date.] [Insert effective date.]
Telephone Caller Identification Services Act

This act, based on 1991 Wisconsin legislation, prohibits the state public service commission from approving a telecommunications utility schedule or tariff for caller identification services unless it meets specified conditions for service. For example, the utility may not charge an access line customer for withholding the customer's telephone line identification from identification on an individual call basis. Certain access line customers, including victims of domestic violence or programs serving such persons, also may choose to have their identification withheld, without charge, for all calls originating from their access lines. Moreover, the public service commission may not approve a schedule or tariff that allows a customer to block telephone line identification from a "911" emergency service system.

Suggested Legislation

Section 1. [Short Title.] This act may be cited as the Telephone Caller Identification Services Act.

Section 2. [Definitions.] As used in this act:
(1) "Commission" means the [state public service commission].
(2) "Inbound wide-area telecommunications service" means a telecommunications service that allows a subscriber to the service to receive telephone calls from selected service areas at no charge to the person originating the telephone call.
(3) "Information service" means a telecommunications service that permits simultaneous calling by a large number of callers to a single telephone number and for which the customer is assessed, on a per-call or a per-time-interval basis, a charge that is greater than or in addition to the charge for the transmission of the call. "Information service" does not include a directory assistance or conference call service that is offered by a telecommunications utility and does not include a telecommunications service for which the customer charge is dependent on the existence of a presubscription relationship.
(4) "Telecommunications utility" has the meaning designated under [insert citation for appropriate state statute].
(5) "Telephone caller identification service" means a telecommunications service offered by a telecommunications utility that identifies a telephone line identification for an access line that is used by a person to originate a telephone call to a subscriber to the service.
(6) "Telephone line identification" means the number of or other information associated with an access line that can be used to identify the access line or the subscriber to the line.

Section 3. [Conditions for Service.] The [commission] may not approve a schedule or tariff that permits a telephone caller identification service to be offered in this state unless the schedule or tariff provides all of the following:
(1) For the [60]-day period immediately preceding the first day
on which a telephone caller identification service is operational in a geographical area, the telecommunications utility offering the service shall conduct an informational campaign to describe the telephone caller identification service to its access line customers within that area. The telecommunications utility informational campaign shall include all of the following information:

(i) That the utility is offering telephone caller identification service and the date on which the service becomes operational.
(ii) That an access line customer may choose not to have the customer's telephone line identification identified to telephone caller identification service subscribers on an individual call basis without charge.
(iii) Other information on the telephone caller identification service that is specified by the [commission].

Section 4. [Per Line Blocking.] Under any schedule or tariff that the [commission] approves, the [commission] may require a
telecommunications utility that offers a telephone caller identification service to permit an access line customer to choose to withhold the customer's access line identification from identification for all calls originating from the customer's access line.

Section 5. [Blocking By Business.] The [commission] may prohibit business or commercial access line customers from withholding customer telephone line identification from identification under any schedule or tariff that the [commission] approves.

Section 6. [Exceptions.] The [commission] may not approve a schedule or tariff under Section 3 of this act if the schedule or tariff allows a customer to withhold the identity of a telephone line identification from any of the following:
(1) A public agency emergency system under [insert citation for appropriate state statute].
(2) An identification service provided in connection with an inbound wide-area telecommunications service or an information service, unless the [commission] determines that the telecommunications utility providing the inbound wide-area telecommunications service or the information service has the capability to comply with Section 3(2) or 3(3) of this act with regard to that service.
(3) A telephone caller identification service used for calls that are completed within a system that includes both the caller's telephone or other customer premises equipment and the call recipient's telephone or other customer premises equipment and are completed without being transmitted through a publicly switched network.
(4) A trap and trace device as authorized under [insert citation for appropriate state statute].
(5) A telecommunications utility, to identify the access line used to originate a call, for purposes of billing for that call.

COMMENTS: The Wisconsin legislation on which this draft is based prevents the state public service commission from approving a schedule or tariff that allows a customer to withhold the identity of a telephone line identification from a "public agency emergency system," as specified in paragraph (1) of Section 6. Section 146.70 of the 1991-92 Wisconsin statutes defines this as the "911" emergency service provided to connect a person with appropriate fire fighting, law enforcement, medical or other emergency services.

Section 7. [Costs.] Except for customer premises equipment offered under Section 3(6) of this act, a telecommunications utility shall charge all costs for caller identification services provided under this act, including all costs related to the options and services provided to access line customers under Sections 3 and 4 of this act, to telephone caller identification service subscribers.
Section 8. [Privacy Considerations.] The [commission] shall promulgate a rule that establishes privacy guidelines applicable to telecommunications utilities.

Section 9. [Effective Date.] [Insert effective date.]
Local Government Mandate Relief Legislation (Note)

In recent years, states have enacted various measures designed to provide local governments relief from state mandates. The Committee on Suggested State Legislation approved the inclusion of this note to give readers an overview of various state enactments designed to address the question of state mandates on local governments.

Mandate Reimbursement Requirements

Several states have passed state constitutional amendments that require mandates to local governments to be funded. In 1992, Maine became the most recent state to approve an anti-mandate amendment to its state constitution (Art. 9, Sec. 21). The amendment requires the state to fund all mandates to local governments.

During 1990 and 1991, Florida and Louisiana amended their state constitutions to give local governments greater protection from state mandates. Florida's amendment includes a provision requiring that mandates imposed on local governments be funded and another requiring that such mandates pass both houses of the legislature by a two-thirds majority (Art. 7, Sec. 18, 1990). Before passage of the amendment, Florida's requirement that state mandates to local governments be funded was enforced by a statute enacted in 1978.

The Louisiana amendment provides that no law or state executive order, rule or regulation requiring increased local government expenditures will become effective unless approved by an ordinance or resolution of its governing authority and funds are provided, or unless a law provides for a local source of revenue (Art. 4, Sec. 14, 1991).

Other states with such amendments include California (Art. 13B, Sec. 6), Hawaii (Art. 8, Sec. 5), Michigan (Art. 9, Sec. 29), Missouri (Art. 10, Sec. 21), New Hampshire (Part 1, Art. 28A), New Mexico (Art. X, Sec. 8) and Tennessee (Art. 11, Sec. 24).

In 1988, Alabama amended its constitution to state that laws requiring new or increased expenditures of county funds must be approved by the county government by adoption of a resolution or must provide the county with new or additional revenues sufficient to fund the new or increased cost (State Const. Amdt. 474). Otherwise, such a law cannot take effect until the "first day of fiscal year next following the passage of such act."

Several other states have statutory provisions requiring that local governments be reimbursed for state mandates. States with statutes requiring state funding of local government mandates include Illinois, Massachusetts, Montana, Rhode Island, South Carolina, Washington.

The Illinois act defines state mandates to include any statutory or executive action that requires a local government to make additional expenditures from local revenues (Ch. 85, Sec. 2201 et. seq., 1981). The Massachusetts statute was part of Proposition 2 1/2, a tax reduction measure approved by the electorate in 1980. The statute declares that any state law or
rule imposing a cost upon local governments is binding only if the state provides reimbursement, although localities may voluntarily comply with unfunded mandates if they so choose (Ch. 29, Sec. 27C; Ch. 11, Sec. 6, 1980). Montana has separate statutes pertaining to mandates to local governments and school districts (Stats. 1-2-112 and 1-2-113, 1974 and 1981). The local mandates statute requires the legislature to provide funding when it enacts legislation mandating activities, services or facilities.

Rhode Island defines mandates to local government as any state action that requires a local government to make additional local government expenditures necessary (Stat. 45-13-7, 1979). The act also acknowledges that the state may exceed minimum standards imposed by federal mandates, and when the standards are exceeded, the action may be regarded as a state mandate or partial mandate.

South Carolina enacted legislation providing that county governments may not be bound by any statute requiring an expenditure of funds unless the legislature has determined that such an expenditure fulfills a state interest and the law requiring the expenditure is approved by a two-thirds majority of the members voting (HR 181SB 228, Sec. 4-9-55, Amdts. to 1976 Code, 1993). Circumstances under which mandates may be placed on county governments with the vote of a simple majority of the members present in the state General Assembly include: when funds appropriated have been estimated by the state budget division at the time of enactment to be sufficient to fund the expenditures; when the General Assembly authorizes or has authorized a county to enact a funding source not available on July 1, 1993, that can be used to generate the funds estimated to be sufficient to fund the expenditure; when the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; and when the law is either needed to comply with a federal requirements or required for eligibility for a federal entitlement.

In 1980, Washington voters approved Initiative 62, which assures that the state does not impose responsibility for new programs or increased services upon local governments unless the costs are paid by the state (Stat. 43.135.060, 1980).

Fiscal Impact Requirement Statutes

According to a study published by the National League of Cities, at least 20 states have statutory fiscal note requirements to estimate costs of legislation, while eight states require fiscal notes under legislative rules. Fiscal notes are usually prepared by legislative staff or state agencies that deal with budgeting and fiscal analysis. Maryland became the first state to require fiscal notes in 1968. According to the National League of Cities, eight states had neither fiscal note nor reimbursement requirements as of February 1992 (Alaska, Delaware, Idaho, Oklahoma, South Dakota, Utah, Vermont and Wyoming). California required its commission on state mandates to report to the state legislature on the number of state mandates, the estimated costs of each mandate, and reasons for recommending
reimbursement of mandated costs (Sec. 17600, Calif. Code). Colorado legislation stipulates that no new state mandate or increase in the service level of an existing mandate can be imposed on any local government by the legislature or a state agency unless additional funds are provided to cover the costs of the mandate (HB 91-1262, 1991). Maine enacted legislation requiring fiscal notes to include "statements pertaining to the existence of cost or the amount of cost to municipalities or counties for implementing or complying with the proposed law" (3 Sec. 163-A(12), 1985). Maine also requires a similar fiscal impact assessment for proposed rules, with the exception of emergency rules (3 Sec. 8063, 1991). Minnesota legislation authorizes any local government to appeal to the state commission on planning and fiscal policy to review any existing or proposed rule that imposes a fiscal or administrative burden unnecessary for the accomplishment of statewide policy goals and requirements of the statute authorizing the rule (Ch. 345, 1990). New Hampshire requires state agencies to file fiscal impact statements declaring that proposed rules do not include reimbursable mandates (Ch. 384, 1991). Washington state law declares that "the legislature shall not impose responsibility for new programs or increased levels of service under existing programs on any taxing district unless the districts are reimbursed for the costs thereof by the state" (Stat. 43.135.060, 1980, amended 1990).

Non-fiscal Mandate Requirement Statutes

Minnesota legislation directs its commission on planning and fiscal policy to select state mandates for review after consulting with the governor and chairpersons of legislative standing committees (Ch. 345, 1990). New Hampshire requires the word "local" to appear on all state laws and amendments that impact local government expenditures or that require the state to forward all or part of earmarked revenues to municipalities (Ch. 103, 1991). New York requires all state agencies to identify all mandates contained in proposed rules and regulations (Ch. 305, 1991). Related legislation includes various mandate relief proposals developed by associations of local government in conjunction with the governor (Ch. 413, 1991).

Advisory Referenda

Illinois enacted legislation submitting an advisory question to the voters in the 1992 general election: "Should the Illinois General Assembly, in order to stop increasing property taxes due to unfunded mandates on local government, approve a Resolution for a State Constitutional Amendment prohibiting the General Assembly and Governor from adopting new unfunded State mandates that impose additional costs on units of local government?" (SB 1556, 1992). Voters approved the question with 80 percent of the vote. In 1992, Nevada passed a non-binding referendum addressing unfunded state mandates to local governments.
Federal Mandates for State Action

A Note on Enactments from the Second Session of the 102nd Congress

Federal mandates for state government action 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 funding for federal grant programs was reduced. Meanwhile, the budget deficit continued to grow. Prominent policy areas for federal mandates include criminal justice, education and the environment.

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. This note covers the activities of the second session (1992) 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 of the federal legislation and requirements, technical and otherwise.

The 1992 volume of Suggested State Legislation (SSL) included a note on enactments from the 101st Congress (1989-90) and the 1993 volume included a note on enactments from the first session of the 102nd Congress (1991). 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 second session of the 102nd U.S. Congress, at least 10 major enactments mandated state action. Each is listed here with a brief description of its impact upon state governments.

Communications

The Cable Television Consumer Protection Act (PL 102-385, S 12) requires the Federal Communications Commission (FCC) to regulate rates for basic cable service. Enforcement of rate regulation may be implemented by state and local governments if local franchising authorities certify they will follow FCC procedures and standards. The FCC may revoke a locality's regulatory authority if it determines that its procedures and standards are not being properly enforced. Subscribers and franchising authorities may only complain about existing cable rates during a 180-day period after the effective dates of the FCC's new rules. After that period, rate complaints may only be filed against future rate increases or soon after an increase is in place. Federal, state and local officials may establish rules barring price discrimination among current and potential cable customers, other than "reasonable" discounts for senior citizens or other economically disadvantaged groups.
Criminal Justice

The Anti-Car Theft Act (PL 102-519, HR 4542) provides funding to initiate programs to connect state motor vehicle departments by computer so each state will have access to other states' valid title lists. Under the law, states will be required to check the title lists for the state of origin to verify the legitimacy of vehicle titles before issuing new ones to out-of-state vehicles. The act also makes carjacking, or using a firearm to forcibly take a motor vehicle, a federal offense punishable by up to 25 years in prison if it results in injury and life imprisonment if the action results in a death. By making carjacking a federal offense, local law enforcement officials have the option of referring cases to federal prosecutors if they believe state punishment is insufficient.

The Animal Research Facilities Protection Act (PL 102-346, S 544) makes it a federal crime to sabotage research facilities using animals as research subjects and makes it a crime to steal such animals. Previously, such crimes could only be prosecuted under state laws concerning theft and trespass.

The Juvenile Justice and Delinquency Prevention Act (PL 102-586) requires deinstitutionalization of status offenders and separation of juveniles from adults in corrections facilities. The act also includes funding increases for grants to help states deter juvenile violence and financial incentives to encourage states to offer alternatives to imprisonment for teens convicted of non-violent offenses.

Domestic Affairs

The Child Support Recovery Act (PL 102-521, S 1002) makes it a federal crime to fail to pay child support or to leave a state for the purposes of avoiding child support payments. Parents who willfully avoid payments for six months and owe at least $2,500 could be sentenced to up to six months in jail and fined as much as $5,000. Repeat offenders could be sentenced to up to two years in jail and fined as much as $250,000. Those who cannot afford child support payments are not covered by the measure. The act targets cases where parents live in a different state from their children. Previously such offenses were punishable only under state laws.

Federal regulations issued in August 1992 require states to spend at least 90 percent of Child Care and Development Block Grants for child care services only, which excludes resource and referral, training or respite care under most circumstances. States can apply for a waiver for a portion of the funds if they spend 10 percent of the funds on a voucher program and consumer education.

Education

The Higher Education Act Reauthorization (PL 102-325, S 1150) increases state responsibility for licensing and oversight of
postsecondary institutions and calls for states to adopt stringent requirements for college student loan programs.

National Early Intervention Scholarship Program

The National Early Intervention Scholarship and Partnership Program authorizes the U.S. Secretary of Education to create a program encouraging states to guarantee to eligible low-income students who graduate from high school the financial assistance needed to obtain postsecondary education and to provide support services to primary and secondary school students who are at risk of dropping out. The act requires each state seeking federal grant money to submit an implementation plan to the Secretary. The plan must outline a scholarship component and an early intervention plan, and states must provide matching funds from state, local or private resources of no less than 50 percent.

State Student Incentive Grant

The State Student Incentive Grant (SSIG) program authorizes $105 million in grants to states to be distributed to students attending postsecondary schools and to students performing campus-based community services work. The reauthorization act increased the maximum grant to $5,000 a year from the previous threshold of $2,500, for an overall increase of $33 million from the fiscal 1992 allocation. States must match these grants dollar-for-dollar to receive the funding.

Robert C. Byrd Honors Scholarship Program

Under the Robert C. Byrd Honors Scholarship Program, Congress has authorized $10 million for scholarships of up to $1,500 to outstanding students in their first year of college, an increase of $2 million over fiscal 1992. States are required to distribute the scholarships on a statewide basis, rather than awarding them according to congressional districts. The program allocates scholarships to the states based on their ratio of children between the ages of five and 17.

Supplemental Educational Opportunity Program

Under the Supplemental Educational Opportunity Program, which provides funds to institutions making awards to undergraduates who demonstrate financial need, the reauthorization increases the institutional match from 15 percent to 25 percent. Under the Federal Work Study Program, institutions are required to inform all eligible students of the opportunity to perform community service. Institutions must use at least 5 percent of program allocations to pay students performing community services.

Other Provisions

The reauthorization act also calls for the Education Secretary to designate one postsecondary review agency in each state to
review higher education institutions and determine their eligibility to participate in federal financial aid programs. Criteria for the reviews include the default rate on loans. The act authorizes $75 million in fiscal 1993 for state reimbursement, and also authorizes $350 million for federal grants to states for construction, reconstruction and renovation of academic facilities. The funds are to be distributed under a formula based on state population and the number of students attending colleges and universities. States must match the federal funds with 25 percent of the money received and give priority in distributing grants to colleges and universities where large numbers of minority or disadvantaged students are enrolled. Schools must provide a 50 percent match to receive funding.

Energy and Environment

The Comprehensive National Energy Policy Act (PL 102-486, HR 776) issues federal guidelines for state programs to promote the use of alternative-fuel vehicles and authorizes $10 million a year for five years to aid such state efforts. Incentives could include tax incentives, special parking for alternative fuel vehicles, and public education campaigns.

The act requires that states phase in alternative fuel vehicles for their automobile fleets, beginning with 10 percent of the new vehicles by the year 1996, and increasing each year until the figure reaches 75 percent in the year 2000 and beyond. States could avoid these mandates if they submit plans approved by the U.S. Secretary of Energy that would result in an equal or greater number of alternative fuel vehicles by means such as converting conventional fuel vehicles. The act also authorizes the federal government to help states develop an infrastructure for electric vehicles, and the legislation for as many as 10 cost-shared ventures.

The act requires states to establish minimum energy codes that meet or exceed model industry standards designed to improve energy efficiency in commercial buildings. The act also directs state electric utility regulators to consider adopting policies that promote energy efficiency and conservation by electric utilities as an alternative to building new power plants. Regulators also will have to consider these directives for natural gas utilities.

The act allows the U.S. Secretary of Energy to provide states with up to $1 million to help establish revolving funds to finance energy efficiency improvements in state and local government buildings. States may use the grant funds for various purposes, including training building designers and contractors and adopting standards to increase efficiency. To receive federal aid under the conservation program, states must allow vehicles to turn left on a red light after stopping, provided they are turning from a one-way street onto another one-way street.

Financing for environmental improvements at hydroelectric dams is excluded from federal limits on the number of tax-exempt bonds each state can issue. The act allows states to regulate low-level
radioactive waste if it is deregulated at the federal level and
revokes a proposal to bury such waste in conventional landfills.
It allows state regulators to examine the debt load of an
independent generator and grants state regulators access to the
relevant financial records of wholesale power generators that are
exempt from certain legal requirements established under a 1935
federal law. The act strengthens state authority to enforce
octane posting requirements at gasoline stations and extends such
postings to non-traditional automotive fuels, such as diesel
fuel, reformulated gasoline and gasohol -- provisions designed to
prevent the over-representation of gas octane levels. Finally,
the act extends the Abandoned Mine Reclamation Fund through the
year 2004.
The Federal Facilities Compliance Act (PL 102-386, HR 2194)
allows states to collect funds from the federal government for
violations of laws concerning the management of solid or
hazardous waste. Sovereign immunity for the federal government is
waived under the act. However, states may only use these fine
monies for environmental programs, unless the state constitution
has provisions that conflict with the requirement or the state
has a statute requiring the funds be used differently.

Health and Human Services

The Alcohol, Drug Abuse and Mental Health Administration
Reorganization (ADAMHA) Act (PL 102-321, S 1306) divides the
ADAMHA Block Grant into two separate block grants: one for
substance abuse and one for mental health. The formula for grant
allocation to states has been changed to account for the degree
to which a state is urbanized and the cost of various treatment
programs. States are required to have state child mental health
programs funded by at least 10 percent of the Mental Health Block
Grant for fiscal 1993; by fiscal 1994, states must allocate at
least 20 percent of the grant to child mental health programs.
For substance abuse, states are still required to spend at least
35 percent of the grant monies for other drug treatment. Funds
must be spent on programs for individuals who do not require
treatment or primary prevention programs.
For fiscal 1993, states are required to allocate a 5 percent
increase over fiscal 1992 expenditure levels for services to
pregnant women and women with dependent children, and an
additional 5 percent increase in expenditures in fiscal 1994 over
the level of the previous year.
States whose AIDS case rate is at least 10 cases per 100,000
citizens as of 1991 must set aside between 2 percent and 5
percent of their block grant for the provision of non-hospital
services for AIDS patients. Pregnant women seeking drug treatment
must be referred to treatment centers or to interim services
within 48 hours of the request. Some drug users must also be
served within a set time period.
The act requires states to enact statutes by fiscal 1994
prohibiting the sale of tobacco products to minors under the age
of 18. States who fail to do so will lose a portion of their
grant funding.
The Omnibus Budget and Reconciliation Act of 1990 (P.L. 101-508) included a mandate requiring states to establish Medicaid drug use review programs for covered outpatient drugs by January 1, 1993, including establishment of drug use review boards (see "Drug Utilization Review Board Act," Suggested State Legislation 1993, Vol. 52, pp. 6-13). On November 2, 1992, the federal Health Care Financing Administration issued regulations specifying that a state Medicaid agency is ultimately responsible for ensuring that the drug use review (DUR) program is operational and that the agency has the authority to accept or reject the recommendations or decisions of the DUR Board (Sec. 456.714[c]). The regulation pre-empts state legislation giving DUR Boards power to approve Medicaid agency contracts.

Housing

The Lead-Based Paint Hazard Reduction Act was part of a measure re-authorizing federal housing programs (PL 102-550, HR 5334). The act requires the U.S. Environmental Protection Agency (EPA) to promulgate regulations concerning certification of contractors who provide lead abatement and inspection services. The regulations must be promulgated no later than 18 months after the date of enactment (October 28, 1992). The act allows states to develop their own certification programs prior to the promulgation of EPA regulations, but state programs may have to be changed to comply with the EPA standards once they are in place. State programs must be at least as protective of public health and the environment as the federal program and must be authorized by the EPA. The EPA must promulgate a model state program within 18 months of October 28, 1992. The model program must encourage states to use existing state and local certification and accreditation programs and encourage reciprocity by the states. If a state does not have an authorized state lead abatement program two years after the EPA regulations are promulgated, EPA will administer and enforce its own program. Grants are available to states which establish certification programs, but no grant funding will be available to states that have no authorized program two years after EPA promulgates its regulations. Grants for as much as $200,000 are available to states for fiscal 1993 and fiscal 1994.

States also must estimate the number of low income units with lead paint hazards, outline actions to evaluate and reduce hazards, and describe how hazard reduction will be integrated into housing policies and programs. States must consult with state or local health and child welfare agencies and examine data, including addresses of children who have been identified as lead poisoned.

Revenue

The Professional and Amateur Sports Protection Act (PL 102-559, S 474) prohibits states from operating lotteries based on sporting events, except those sporting events that have existing sports gambling programs, such as horse racing. Some states have
proposed legalized gambling on professional or amateur sporting events as a way to raise revenue. States that currently allow or engage in sports gambling include Delaware, Nevada, Oregon, and Montana. New Jersey was given one year to let voters consider a referendum on whether to allow sports gambling.

Voting Rights

The Voting Rights Language Assistance Act (PL 102-344, HR 4312) requires localities to provide bilingual assistance to voters if they have more than 10,000 citizens who speak a particular language other than English or if more than 5 percent of the voting age citizens of voting age do not speak English.