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Foreword

The Council of State Governments (CSG) is pleased to bring you this volume of Suggested State Legislation, the 55th 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 many 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.

October 1995
Lexington, Kentucky

Daniel M. Sprague
Executive Director
The Council of State Governments
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Introduction

“A single state's experience in a new field frequently leads to the adoption of similar action in other states, if the problem is general, the approach is well conceived, and other states can be made aware of the action.”

That statement is a simple one, but it remains as true today as it did when it first appeared 27 years ago in the introduction to the 28th volume of *Suggested State Legislation*.

For 55 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 55th 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 three separate occasions: first, in December 1994 in Pinehurst, North Carolina, again, in April 1995 in Stuart, Florida and a third time in Quebec City, Canada in August 1995, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in August 1995 in Quebec City, Canada, 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. Instated, the entries are offered as an aid to state officials.
interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.

In fact, throughout the SSL solicitation, review and selection processes, members of the Committee employ a specific set of criteria to determine which items will appear in the volume:

- Is the issue a significant one currently facing state governments?
- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill represent a practical approach to the problem?
- Does the bill represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill logically consistent?
- Are the language and style of the bill clear and unambiguous?

All items selected for publication in the annual volume are presented in a standard format as shown in the Suggested State Legislation Style Manual and Sample Act which follow on pages xiv and xv. Revisions in the headings and numbering and other modifications may be necessary in order to conform to local practices, and decisions must be made regarding optional sections and provisions.

A “Statement,” in lieu of a draft act, may appear in a volume when the SSL Committee has reviewed and approved a piece of legislation, but its length and/or complexity preclude its publication in whole or in the standard SSL format. “Notes” also may be used when the Committee is particularly interested in highlighting and summarizing a variety of legislative actions undertaken by the states in a particular area. In this volume, for example, there is a note on recent state legislative activity in the area of federal mandates.

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 and review process, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, Policy & Program Development, The Council of State Governments, 3560 Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 244-8000 or fax (606) 244-8001.
Suggested State Legislation Style

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

Introductory Matter

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

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

Standardized Sections

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

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

Form

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

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

Often it is necessary in draft legislation to indicate a state alternative to the name of an agency, the number of members on a committee, punishment for an offense, etc. In these cases brackets are used instead of parentheses.

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

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

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

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

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

Suggested Legislation

(Title, enacting clause, etc.)

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

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

Section 4. [Rehabilitation Research Commission.]
(a) A [rehabilitation research commission] is established to review, approve, and facilitate research directed at the rehabilitation of delinquent and criminal offenders and to disseminate the results of that research to correctional officials and other interested individuals and agencies.
(b) The commission shall consist of [10] members appointed by the governor [with the advice and consent of the senate].

Comment: It is suggested that some commission members be ex-offenders.
Expedited Remedial Action Reform Act

This act is based on 1994 California legislation. This act establishes a 30 site pilot program to expedite hazardous site cleanups. Any site not listed on the National Priority List (NPL) is eligible for the program. A limit of 10 of the 30 sites can have unfunded or “orphan” share, and 5 of the 30 sites may be sites that the Agency has issued an order or signed agreement requiring cleanup. A site designation committee makes the determination of site eligibility. Following selection, a site conference is held at which project proponents and Agency staff meet to establish a cost effective strategy to remediate the site. The law provides standards for remedy selection and cleanup standards, apportionment of liability, arbitration of disputes and certification of completed cleanups.

Standards
This act provides remedy selection guidelines which take into account the historical and planned use of the land. The Remedial Action Plan (RAP) is the vehicle for determining cleanup goals for the ultimate use of the site. The RAP is a site specific assessment that presents information to ensure the remedy selected will be protective of human health and the environment and provide long-term reliability.

Apportionment of Liability
This act provides for the apportionment of liability by the administering agency using equitable factors. This consists of an evaluation of liability based on (1) amount and toxicity of hazardous substances; (2) the degree of involvement by the party in the generation of the waste; and (3) the level of cooperation with environmental officials. The act also provides for agency negotiation of liability releases for de-minimis parties.

Arbitration of Disputes
This act attempts to reduce the amount of litigation by providing for arbitration to settle cleanup site disputes. A “grievance” petition submitted to the Agency results in the convening of an arbitration panel. The panel hears disputes concerning cleanup remedy selection, apportionment of liability, de-minimis settlements, land use changes or certification of completion denials. The intent is to save litigation costs.

Certification
The responsible parties receive a certification of completion when the Agency determines that the remedial action satisfactorily meets the reme-
Suggested State Legislation

dial objective of public safety for the intended land use. Once issued, no state or local agency having jurisdiction over hazardous materials may take action against the responsible party with respect to the release.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as The Expedited Remedial Action Reform Act.

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

(1) “Affected community” means the local residents or workers living or working, and owners of businesses operating, in proximity to the site, who are, or may be, directly impacted by the conditions at the site, or by any response action. “Affected community” also includes the legislative body of the jurisdiction in which a site is located.

(2) “Agency” means the [state environmental protection agency].

(3) “Arbitration panel” means the arbitration panel convened pursuant to Section 18.

(4) “Beneficial uses of water” means uses of the waters of the state that are identified in the current [state water resources control board] and [regional water quality control boards'] water quality control plans for the area in which the site is located.

(5) “Department” means the [state department of toxic substances control].

(6) “Engineering controls” means measures to control or contain migration of hazardous substances or to prevent, minimize or mitigate environmental damage which may otherwise result from a release, including but not limited to, caps, covers, dikes, trenches, leachate collection systems, treatment systems, and groundwater containment systems or procedures.


(8) “Fund administrator” means the state officer assigned the responsibility of protecting the viability of the trust fund as the representative of the state for the orphan share in all actions concerning apportionment of liability if there is a potential apportionment of liability to the orphan share for payment from the trust fund.

(9) “Hazardous substance” shall have the same meaning as set forth in [insert appropriate state citation].
(10)(i) “Insolvent” means a person or entity who has received a discharge of liability under Section 727, 944 or 1141 of Title 11 of the United States Code, for pre-petition response costs relating to a site selected for response actions pursuant to this act.

(ii) Notwithstanding paragraph 10 (i) of this section, a person or entity is not insolvent with respect to any payment that the [department] receives or will receive for any pre-petition response costs as a result of the bankruptcy, or with respect to any post-petition response costs.

(11) “Interim endangerment” means conditions at a site which pose a significant risk either of harm to human health or of serious environmental damage unless immediate response action is initiated before remedial action measures set forth in a remedial action plan prepared for the site are implemented.

(12) “Land use controls” means recorded instruments restricting the present and future uses of the site, including, but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by the [department] pursuant to [insert appropriate state citation].

(13) “Orphan share” means that share of liability for the costs of response actions apportioned to responsible persons who are insolvent or cannot be identified or located. The [department] may adopt regulations to further define a process to determine when a responsible person cannot be identified or located.

(14) “Person” shall have the same meaning as set forth in [insert appropriate state citation].

(15) “Planned use” means the reasonably expected future land uses based on all of the following factors:

(i) The land use history of the site and surrounding properties, the current land uses of the site and surrounding properties and recent development patterns in the area where the site is located.

(ii) Land use designations at the site and surrounding properties, including current and likely future zoning and local land use plans and the presence, if any, of groundwater and surface water recharge areas.

(iii) The potential for economic development.

(iv) Current plans for the site by the property owner or owners.

(v) Affected community comments on the proposals for use of the site.

(16) “Release” has the same meaning as [insert appropriate state citation].

(17) “Remedy” or “remedial action” means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance and that, when carried through
to completion, allow a site to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. "Remedy" or "remedial action" includes, but is not limited to, all of the following:

(i) Actions at the location of the release, such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling, reuse, diversion, destruction, or segregation of reactive wastes, dredging, excavation, repair, or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to ensure that these actions protect the public health and the environment.

(ii) The costs of permanent relocation of residents and businesses and community facilities where the governor determines that, alone or in combination with other measures, this relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous substances, or may otherwise be necessary to protect the public health.

(iii) Off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(18) "Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, those actions which may be necessarily taken in the event of the threat or release of hazardous substances into the environment, those actions which may be necessary to monitor, assess, and evaluate the release, or threat of release, of hazardous substances, the disposal of removed material, and the taking of other actions which may be necessary to prevent, minimize, or mitigate damage to the public health or the environment, which may otherwise result from a release or threat of release. "Remove" or "removal" also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided.

(19) "Respond," "response," or "response action" means removal actions, and remedial actions, including, but not limited to, operation and maintenance measures.

(20) "Response costs" means all costs incurred by the state or any responsible person in taking response actions under this act, including costs incurred by any state agency in implementing and administering this act and in overseeing response actions under this act. These costs shall include all costs incurred by the state in relation to any judicial review of a decision of an arbitration panel pursuant to Section 18 (e) or any arbitration conducted pursuant to this act.
(21) “Responsible person” has the same meaning as set forth in [insert appropriate state citation] for “responsible party” or “liable person.”

(22) “Secretary” means [state secretary for environmental protection].

(23) “Site” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(24) “Site designation [committee]” or “[committee]” means the [site designation committee] created as follows:

(i) There is within the [state environmental protection agency] a [site designation committee]. The membership of the [committee] consists of the following [six (6)] people:

(A) [state secretary for environmental protection].
(B) [state director of toxic substances control].
(C) [state chairperson of the state water resources control board].
(D) [state director of fish and game].
(E) [state director of the office of environmental health hazard assessment].
(F) [chairperson of the state air resources board].

(ii) The [committee] shall carry out the functions described in [insert appropriate state citation] and shall meet as necessary to ensure that those functions are carried out in a timely manner. The decisions of the [committee] shall be subject to the concurrence of [four (4)] members. The [committee] shall choose a chairperson from among its members. A [committee] member may designate an employee of the member’s agency to participate in [committee] meetings in the member’s place.

(25) “State board” means the [state water resources control board].

(26) “Trust fund” means the [Expedited Site Remediation Trust Fund] created pursuant to Section 27(a).

Section 3. [Site Selection Intent.]

(a) The intent of this act is to establish a pilot program to determine if expedited procedures for carrying out response actions at response action sites are appropriate and protective of human health and the environment.

(b) This act is applicable to not more than [thirty (30)] response action sites, of which not more than [ten (10)] may have an orphan share. The [department], upon a request from a responsible person for consideration of a site for remediation pursuant to this program, shall forward the request to the [site designation committee], along with the [department’s] recommendation as to whether the site should be selected. The [department] shall also forward the request to the local jurisdiction in which the
Section 4. [Site Selection Criteria.] The [committee] may select a site for remediation pursuant to this act only if the site meets all of the following conditions:

(1) The [department] is the appropriate administering agency for the site pursuant to [insert appropriate state citation] and the [committee] designates the [department] as the administering agency.

(2) The responsible person or persons requesting a selection of the site have submitted a completed preliminary endangerment assessment, as defined in [insert appropriate state citation], which concludes that significant response actions are necessary at the site and includes an analysis of the scope and identity of the affected community.

(3) The [committee] finds all of the following:

   (i) The site is not on, or eligible to be placed on, the National Priority List prepared pursuant to the federal act, or is not a site which is owned or operated by a department, agency or instrumentality of the United States.

   (ii) There are funds available in the trust fund to cover all of the response action costs that will or may be assigned to the orphan share at the site, unless one or more of the responsible persons who have submitted a notice of intent under paragraph (3)(iii) of this subsection agree in writing to pay for the orphan share at the site that cannot be paid by the state because of insufficient funding in the trust fund. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the [department].

   (iii) One or more responsible persons submit a notice of intent to the [department] to do all of the following:

      (A) Be bound by the requirements of this act.

      (B) Enter into an enforceable agreement with the [department], as set forth in Section 10 (b)(1).

      (C) Pay all response costs not otherwise paid by the trust fund or another responsible person.

   (iv) There is no known condition of interim endangerment existing at the site at the time it is selected for response actions pursuant to this act.

   (v)(A) Except as provided in Section 4 (3)(v)(B) of this subsection, the [department] has not already issued an order or entered into an enforceable agreement with responsible parties at the site under [insert appropriate state citation], the [department] has not commenced a judicial action against responsible persons at the site, and no orders have been issued by a court requiring responsible persons at the site to take response actions or to pay the [department's] response costs at the site.

   (B) The [committee] may waive the requirements of Section 4 (3)(v)(A) of this subsection for not more than [five (5)] sites if the [commit-
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Section 5. [Exceptions.]
(a) Except to the extent otherwise specified in this act, response actions for a site selected pursuant to Section 4 shall be taken pursuant to this act, and the requirements of [insert appropriate state citation] shall not apply. In addition, the provisions of [insert appropriate state citation] shall apply to all response actions taken at sites selected pursuant to this act, including the requirement that the response action be implemented in compliance with all state and local laws, ordinances, regulations, and standards that are applicable to the response action.
(b) The [committee] may, as part of the findings required by Section 4, direct that an [advisory committee] be convened pursuant to [insert appropriate state citation] to ensure that the [department] receives adequate guidance in overseeing response action at a site that is selected for remedial action under this act.
(c) An [advisory committee] convened pursuant to Section 5 (b) shall have the same powers and duties as an [advisory committee] that is convened pursuant to [insert appropriate state citation]. The [advisory committee] shall be bound by the decisions of an [arbitration panel] and any court decisions rendered upon judicial review.
(d) The [department] shall maintain a list of sites selected for response action pursuant to this act and shall make this list available to interested parties.

Section 6. [Prerequisites of the Program.] Any action taken by the [department] pursuant to this act shall be consistent with all applicable regulations adopted by the [state water resources control board], all applicable water quality control plans adopted pursuant to [insert appropriate state citation], and all applicable state policies for water quality control adopted pursuant to [insert appropriate state citation], to the extent the [department] determines that those regulations, plans, and policies are not less stringent than this act and the regulations adopted pursuant to this act.

Section 7. [Public Response Actions.] The [department] shall ensure that the public is given the opportunity to participate in response actions taken pursuant to this act in accordance with the [department's] public policy and procedures manual [insert appropriate state citation].

Section 8. [Volunteer Remediation Methods.] Nothing in this act shall be construed to restrict the rights of responsible persons and the [department] to agree upon other voluntary methods of remediation.
Section 9. [Expedited Site Remediation.]

(a) The [department] shall serve as the lead agency for implementing this act and shall act as the oversight agency for purposes of all response actions taken pursuant to this act.

(b) After a site has been selected for response action under this act, and prior to holding the conference specified in Section 10, the [department] shall, after necessary investigation, including a title search of the site, if appropriate, notify appropriate state and local agencies and all known potentially responsible persons for that site of all of the following:

1. The names and addresses of all potentially responsible persons who the [department] has identified at the site, and the factual and statutory basis for that identification.
2. That the site has been selected for response action under this act, that the potentially responsible person's rights and liabilities with respect to the site will be determined under this act, and that the potentially responsible person will be bound by that determination.
3. A description of the known extent and type of hazardous substance that has been released or is threatened to be released on, at, or from the site.

(c) After the notice provided for in Section 9 (b) has been issued, the [department] shall notify any additional persons who have been subsequently identified by the [department] as potentially responsible persons, of the selection of the site under this act. This notification shall include all the information specified in Section 5 (b) except that the date, time, and place of the conference specified in Section 10 need not be included if that conference has already taken place. The [department] shall also send such notifications to the other potentially responsible parties who have already been identified.

(d)(1) The [department] shall notify the city or the county in which any site is located that a response action has been initiated pursuant to this act. The [department] shall provide the city or county with notice of the time, date, and place of all public hearings and meetings regarding the response action, shall provide the city or county with regular response action reports, and shall involve the city or county in any deliberation concerning land use controls or actions pursuant to Section 15 (c). The [department] shall request the city or county to provide the [department] with the city's or county's assessment of the planned use of the site, including the current and future zoning and general plan designations for the site and the city's or county's determination as to the appropriate planned use designation in the remedial action plan prepared for the site. The city's or county's determination as to the appropriate planned use designation shall be presumed by the [department] to be the appropriate planned use for the site. In any action or proceeding to attack, set aside, void, or annul a deter-
mination of the appropriate planned use by the city or county pursuant to this section, there shall be a rebuttable presumption of the validity of the determination by the city or county. The [department] may rebut that presumption by showing, based upon substantial evidence in the record, that the requirements of this act are more fully satisfied by a determination that there should be a different planned use for the site.

(2) Before making a determination regarding the planned use for the site, the [department] shall hold a public hearing on that issue and shall consider all comments received at the hearing. The [department] shall thereafter determine the planned use and provide a written explanation supporting its determination to the city or county and to any person requesting an explanation.

(e) Nothing in this act shall be construed to affect the authority of a city or county pursuant to [insert appropriate state citation].

Section 10. [Conferences.]

(a) Within [ninety (90)] days of the selection of a site pursuant to Section 4, the [department] shall hold a conference with the identified potentially responsible persons for purposes of explaining all of the following:

(1) The [department's] requirements for the performance of a site investigation and the preparation of a site investigation report to determine the nature and extent of possible releases of hazardous substances at the site.

(2) The [department's] requirements for a community assessment.

(3) The [department's] procedures for carrying out response activities, including requirements for public participation.

(b)(1) Except as provided in Section 10 (b)(2), within [ninety (90)] days after the conference, the [department] may enter into an enforceable agreement with one or more responsible persons for a site selected pursuant to Section 4. The enforceable agreement shall require all of the following:

(i) The responsible person shall take necessary response actions at the site pursuant to this act.

(ii) The responsible person or persons shall pay all of the state's response costs that are related to the site on an ongoing basis, within [sixty (60)] days from the date of receipt of each invoice from the [department]. After liability is finally apportioned pursuant to this act, each participating responsible person's share of response costs may be adjusted in relation to the shares of other participating responsible persons. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the [department].

(iii) The [department] and the responsible person enter into a covenant not to sue each other or any responsible person who has entered into an enforceable agreement under this section pursuant to the federal act. However, any site selected for remediation pursuant to this act shall not be
immune from, and, if appropriate, may be subject to, natural resource damage claims pursuant to subdivision (f) of section 9607 of the federal act.

(iv) If a responsible person subject to the agreement fails to comply with the requirements of this act or any regulation, requirement, or order issued or adopted pursuant to this act, the [department] shall remove the site from eligibility for response action pursuant to [insert appropriate state citation], and this act, and may direct that any further response actions at that site be taken pursuant to [insert appropriate state citation], unless one or more of the remaining responsible persons, if any agree to assume the noncomplying responsible person’s responsibilities under the agreement.

(2) The [ninety (90)] day period to enter into an agreement may be extended by agreement of the [department] and responsible person.

(c) The covenants not to sue executed by responsible persons and the [department] shall be expressly conditioned upon performance of all obligations under this act and the enforceable agreement.

(d) If no responsible person enters into an enforceable agreement pursuant to Section 10 (b), the response actions at the site shall no longer be governed by this act.

(e) A draft remedial action plan shall be prepared pursuant to Section 14 by the responsible person. The draft remedial action plan shall be approved by the [department] pursuant to Section 14 for each site selected. Preliminary and intermediate actions may be taken prior to the approval of a remedial action plan to ensure protection of public health and the environment.

(f) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the [department] may exclude from the hazardous waste facilities permit requirements of [insert appropriate state citation], those portions of any response action selected and carried out pursuant to this act, that complies with all laws, rules, regulations, standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the site, and with any other condition imposed by the [department] as necessary to protect public health or the environment. The [department] may enforce any federal or state law, rule or regulation, standard, requirement, criteria, or limitation with which the response action is required to comply pursuant to this subsection.

Section 11. [Interim Endangerment.]

(a) If the [department] determines that an interim endangerment exists at any site after it has been selected for response action pursuant to Section 3, the [department] may take those actions necessary to contain or eliminate the interim endangerment.

(b) When actions are required to be taken to immediately contain or eliminate an interim endangerment, the [department] shall, whenever practi-
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cable, given the risk of harm to human health and the environment, provide the potentially responsible person or persons, who have entered into an agreement pursuant to Section 10 (b), a reasonable opportunity to initiate or take over the interim endangerment response actions as soon as possible.

(c) To contain or eliminate an interim endangerment at any site undergoing remediation pursuant to this act, the [department] may take either of the following actions:

(1) Order the responsible persons to take or pay for all appropriate remedial actions necessary to contain or eliminate the interim endangerment.

(2) Take or contract for any appropriate response actions necessary to contain or eliminate the interim endangerment and if so, the provisions of [insert appropriate state citation] shall apply with respect to response actions taken or contracted for by the [department].

(d) Any person subject to an order issued pursuant to Section 11 (c)(1) who does not comply with the order without a showing of good cause shall be subject to a civil penalty of not more than [twenty-five thousand (25,000)] dollars for each day of noncompliance. Liability under this subdivision may be imposed in a civil action or liability may be imposed administratively pursuant to [insert appropriate state citation].

Section 12. [Response Actions.] Any remedial action plan prepared pursuant to this act shall require response actions that, when fully implemented, place the site for which the plan is prepared in a condition that allows it to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. To ensure that those objectives are met and permanently maintained, response actions shall be based on a site specific assessment that evaluates the potential human health risks, if any, that are posed by the hazardous substance release or threatened release at the site, the potential human health risks, if any, may result if the site is permanently used for its planned use after response actions have been completed, and the adverse effects on the environment, if any, of the hazardous substance release. The site-specific assessment required by this section shall be carried out using standard criteria, principles, and protocols for risk assessments adopted by the [department]. Those criteria, principles, and protocols shall be based on sound scientific methods, knowledge, and practice, and shall reflect criteria, principles, and protocols developed for risk assessment pursuant to [insert appropriate state citation], to the extent relevant to risk assessments conducted pursuant to this act.

Section 13. [Boundary Modification.]

(a)(1) To expedite the conversion of property into productive use and to
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provide funds for response activities, the [department] may approve a site 
owner’s request to modify the boundaries of a site selected for response 
action under this act. The [department] may approve a site owner’s request 
for that modification only if all of the following apply to the site:

(i) A remedial action plan has been approved by the [department] 
for the site.

(ii) The holder of the first deed of trust, if any, has concurred in the 
modification of the boundaries of the site.

(iii) The portions of the site proposed to be removed from the site by 
the boundary modification do not require any response action.

(iv) The planned use for the portions of the site proposed to be re-
moved from the site by the boundary modification will not result in an 
unacceptable risk of human exposure to hazardous substances from the 
site.

(v) Hazardous substances have not migrated, and are not expected 
to migrate, onto the portions of the site proposed to be removed from the 
site by boundary modification.

(vi) The modification of the boundaries of the site will not signifi-
cantly interfere with response actions at the site.

(2) As a condition to approving a site owner’s request to modify the 
boundaries of a site pursuant to Section 13 (a)(1), the [department] shall 
require that the owner, after complying with [state subdivision map act], 
deposit the net proceeds of the sale, after payment of expenses necessary 
and appropriate to the subdivision and sale, of the portions of the site pro-
tended to be removed from the site by the boundary modification, into a 
special trust account to be applied towards the cost of response actions at 
the site if the [department] determines that adequate funds may not other-
wise be available to pay for all costs of response actions at the site. The 
[department] shall also require that the site owner provide the [depart-
ment] with access to any of the portions of the site proposed to be removed 
from the site by a boundary modification for the purpose of taking a re-
sponse action.

(b) Purchasers and their lessees of the portions of the site proposed to be 
removed from the site by a boundary modification approved pursuant to 
this section which do not require any response action under this act shall 
not acquire liability under this act solely based on that purchase or lease if 
both of the following apply:

(1) The purchaser or lessee is not affiliated with any other person 
liable for response costs at the site including any direct or indirect familial 
relationship, or any contractual, corporate, or financial relationship other 
than that created by the instruments by which title to the parcel is con-
vveyed or financed or the instruments by which a lease is created.

(2) Hazardous substances have not been released from the portions of 
the site proposed to be removed from the site by a boundary modification
subsequent to the date of the purchase or lease.
(c) The [department's] approval of a site owner's request to modify the
boundaries of a site pursuant to this section shall not constitute a subdi-
vision of any parcel within the boundaries of the site. Any subdivision of
parcels within the boundaries of the site shall comply with the require-
ments of the [state map act].

Section 14. [Remedies - Criteria.]
(a) All remedies selected at a site subject to this act shall meet all of the
following criteria:
(1) Be protective of human health and the environment.
(2) Provide long-term reliability at reasonable cost.
(3) Provide reasonable protection to the waters of the state, as re-
quired by the [State Water Code].
(4) Leave the site in a condition that allows it to be permanently used
for its planned use and free of any significant risk to human health or any
potential for any future significant environmental damage.
(b) A response action may achieve protection of human health and the
environment by any of the following methods:
(1) Proven and effective engineering controls and appropriate land
use controls to eliminate or mitigate risk at a site when utilized for its
planned use.
(2) Treatment that reduces the toxicity, mobility, or volume of hazard-
ous substances.
(3) Removal of hazardous substances.
(4) A combination of engineering and land use controls, treatment,
and removal.
(5) Other methods of protection.
(c) Except as provided in Section 14 (d), the [department] shall give no
special preference to one or more available types of response action, includ-
ing engineering and land use controls, treatment, removal, or other meth-
ods of protection, but shall evaluate available response action options on
the individual merits of each option, or combination of options, reasonably
available in light of site-specific conditions. In selecting the appropriate
remedy, the [department] shall balance all of the following factors:
(1) The effectiveness of the remedy.
(2) The long-term reliability of the remedy.
(3) Any short-term risk to the affected community, to those engaged in
the remediation effort, or to the environment.
(4) The reasonableness of the cost of the remedy.
(d) For discrete areas within a site that contain hazardous substances
which are: (1) present in high concentrations or; (2) highly mobile, and
for which containment cannot prevent significant risk of harm to human
health or the environment from exposure to the hazardous substances, the
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[department] shall select treatment or removal, or both, as the remedial alternative or alternatives. The [department] may, however, select engineering and land use controls, or other methods of protection, to be implemented in combination with treatment or removal, or both, if such a combination will prevent a significant risk of harm from exposure.

(e) A remedial action plan prepared pursuant to this act shall include all of the following:

(1) The selection of a response action alternative or combination of alternatives described in Section 14 (b) that are appropriate for the site and that satisfy the response action criteria set forth in this section.

(2) A site-specific assessment prepared for the site pursuant to Section 12.

(3) A description of the characteristics of the site, including the potential for off-site migration of hazardous substances, the condition of surface or subsurface soil, and the hydrogeologic conditions.

(4) An analysis of the cost-effectiveness of the remedial action measures.

(5) An analysis of the ability to implement the remedial action measures.

(6) Consideration of the historical use of the site, background levels of hazardous substances present there due to natural conditions, and the existing and planned use of the site, in determining the extent, type, and scope of the remedy appropriate for the site.

(f) A remedial action plan prepared pursuant to this act shall include all of the following:

(1) A summary of the site investigation report setting forth the full extent of contamination at the site, including an assessment of potential human health risks from exposure to the hazardous substances and an assessment of environmental impacts which shall include the impact of the contamination on the planned uses of the site and the beneficial uses of water.

(2) An analysis of the long-term and short-term protection afforded by the remedial action with regard to human health and the environment.

(3) An analysis of the compliance of the remedial action with federal, state, and local statutes, regulations, and ordinances.

(g) In addition to the requirements of Section 14 (a), a remedial action plan prepared pursuant to this act shall do all of the following:

(1) Describe all proposed remedial action measures in detail.

(2) Set forth a schedule for implementation of the plan.

(3) Set forth a plan for the long-term operation and maintenance of the remedial action measures, if any are required.

(h) Any remedial action plan approved pursuant to this section shall include a statement of reasons setting forth the basis for the remedial action selected. The statement shall include a description of each alternative evalu-
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ated and the reasons for the rejection of alternatives that were evaluated and not selected.

(i) Before approving a remedial action plan, the [department] shall do all of the following:

(1) Notify the public, including those persons reasonably believed to be members of the affected community, of the response action proposed in the plan in a manner that provides reasonable assurance of reaching those persons on a timely basis. The notice shall include posting notices in the area where the proposed remedial action would be taken and notification, by direct mail, of the recorded owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll and all potentially responsible persons identified in the plan.

(2) Provide at least [thirty (30)] days for comment by the potentially responsible persons, appropriate federal, state, and local agencies, the affected community, and other members of the public.

(3) Hold one or more public meetings with the potentially responsible persons, the affected community, and other members of the public, if any, seeking information or desiring to comment, concerning the response action. The information provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the response action and a description of the proposed response action, the planned use, and the remedial objectives. The [department] shall give all of the parties entitled by this section to a public meeting a fair opportunity to comment on the merits of the plan.

(4) Comply with Section 7.

(j) After complying with Section 14 (i), the [department] shall review and consider any comments received at the public meeting or by other means within the specified time period, shall consider the affected community's acceptance of the proposed remedial alternative or alternatives, and shall propose revisions to the draft plan, if appropriate.

(k) When reviewing a remedial action plan, the [department] shall give no special preferences to one or more available types of response action, including engineering and land use controls, treatment, removal, or other types of corrective action, but shall evaluate available response action options on the individual merits of each option reasonably available in light of specific site conditions.

(l) Within [sixty (60)] days after the close of the comment period set forth in Section 14 (i)(2), the [department] shall approve the final remedial action plan, or issue a notice of deficiency to the person who submitted the plan that describes, in detail, any deficiencies in the plan. A remedial action plan found to be deficient shall be modified in a reasonable time. However, any notice of rejection of the notice of deficiency shall be filed with the [department] within [thirty (30)] days from the date of receipt of the notice of deficiency. Within [sixty (60)] days of receiving a modified plan, the [de-
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Department] shall approve the plan or advise the person who prepared the
plan, in detail, of the new or continuing deficiencies. Any failure to act by
the [department] as provided in this subdivision may be appealed to the
[secretary]. If the [secretary] fails to act on behalf of the [department] within
thirty (30) days after the appeal is filed, the [department's] failure to act
may be challenged by any responsible person for the site pursuant to the
provisions of [insert appropriate state citation].

(m) Once approved by the [department], a draft plan shall become final
[sixty (60)] days from the date that notice of its approval is provided in
writing by appropriate means, as provided in Section 18 (b) unless a peti-
tion for review is filed prior to that time pursuant to Section 18.

(n) A remedial action plan is not required for the abatement of an interim
endangerment pursuant to Section 10.

(o) Nothing in this act shall be construed to change the standards for
response actions taken at voluntary action sites that are overseen by the
[department] pursuant to [insert appropriate state citation] or any other
authority.

Section 15. [Land Use Controls.]

(a) A remedial action plan may utilize land use controls to limit or restrict
land use where appropriate. All land use controls shall be recorded by the
site owner in the county in which the site is located. The site owner shall
provide the [department] with a copy of the land use controls which have
been appropriately recorded.

(b) Any person who violates the terms of a land use control which that
person knew, or reasonably should have known, applied to the property,
shall be subject to a civil penalty not to exceed [twenty-five thousand (25,000)]
dollars per day for each day of violation.

(c) The terms and conditions of a land use control may be modified only
with the express written consent of the [department], based on a determi-
nation that the response actions implemented at the site provide sufficient
protection of human health and the environment required by Section 14
(a), and are sufficient to permit the planned use of the site. If additional
response action is required to provide that protection, the [department]
shall not approve the request for modification of the restriction or control
until completion of the additional response action. Implementation of a
modification to a land use control shall be in accordance with the following
procedure:

(1) The person requesting the modification to the permitted use of the
site shall provide the request in writing to the [department] for the site to
approve a modification to an existing land use control. The request shall be
accompanied by supporting documentation demonstrating that the response
action implemented at the site provides the required protection. The re-
quest shall be accompanied by any applicable costs.
(2) Within [one hundred twenty (120)] days of receiving the request, and after a public notice is placed in a newspaper of general circulation in the affected area, and after a [thirty (30)] day public comment period, a duly noticed public meeting shall be held on the merits of the request, the [department] shall do one of the following:

(i) Approve the proposed modification.

(ii) Approve the proposed modification with conditions for implementation of additional response action.

(iii) Disapprove the proposed modification and provide the owner with the reasons for that disapproval.

(3)(i) The approval or denial of a request for modification shall become final within [thirty (30)] days from the date that the [department] acts to approve or deny the modification and provides notice to all persons required to receive notice pursuant to, and in the manner required by, Section 16 (c)(2). Within [thirty (30)] days from the date that any decision to approve a request for modification becomes final, the site owner shall record the modified land use control in the county in which the site is located and provide the [department] with a copy of the land use control which has been endorsed by the [county recorder]. The approved modification shall take effect upon recordation and after notice of the final decision is given in writing, by appropriate means, to immediately adjacent property owners, commenters, and persons who attended the public meeting and requested this notice.

(ii) If the approval is accompanied with conditions which require compliance prior to modification of the land use control, the site owner shall provide the [department] with a copy of the land use control which has been appropriately recorded within [thirty (30)] days after the [department] has notified the site owner that compliance with those conditions has been demonstrated. The approved modification shall take effect upon recordation.

Section 16. [Notice - Apportionment of Liability.]

(a) At the same time that the [department] gives notice of the approval of the remedial action plan for a site, or prior to the time that the [department] issues its first notice of deficiency regarding the remedial action plan, the [department] shall, based on all available information before the [department] at that time, do both of the following:

(1) Notify, in writing, and by appropriate means, all of the responsible persons, the affected community, and the public, of the [department's] proposed apportionment of liability for the costs of response for the site which is the subject of the remedial action plan.

(2) Indicate in the notice whether there are orphan shares that will, or may be, paid from the [trust fund].

(b) The [department] shall apportion liability for the response actions
taken pursuant to this act to each responsible person for that person's share of response costs, based upon equitable factors and fairness principles so that total shares, including orphan shares, if any, total [one hundred (100)] percent. The fund administrator shall represent any orphan share with respect to actions concerning apportionment of liability if there is a proposed apportionment of liability to the orphan share for payment from the [trust fund]. The [department] shall provide any person who has requested notification of the [department's] proposed apportionment of liability with a copy of the proposed apportionment within [ten (10)] days after the [department] completes its proposal for apportionment of liability.

(c) The [department] shall weigh each factor considered appropriate under the circumstances of the release for which the remedial action was initiated. The [department] shall emphasize timely apportionment of approximate shares of liability and is not required to precisely determine all relevant factors, as long as substantial justice among the parties is achieved. Equitable factors that shall guide the apportionment decision include, but are not limited to, all of the following:

(1) The amount of hazardous substance for which each person is responsible.
(2) The degree of toxicity of the hazardous substance, its contribution to the contamination at the site, and the total expense involved in the remediation effort attributable to the hazardous substances for which each person is responsible.
(3) The degree of involvement of the person in the generation, transportation, treatment, or disposal of the hazardous substance for which each person is responsible.
(4) The degree of cooperation by the responsible person with federal, state, and local officials to prevent harm to human health and the environment.
(5) The degree of cooperation by the responsible person with federal, state, and local officials to prevent harm to human health and the environment.

(d) The site owner shall pay for all additional costs of response actions performed pursuant to this act at the request of the site owner that exceed the costs that would be incurred if the response action were limited to those required by this act.
(e) The apportionment of liability pursuant to this section shall not be subject to judicial review, except as provided in Section 18.
(f) Notwithstanding the requirements of Section 16 (a) to (d), inclusive, the potentially responsible persons may agree upon an allocation of liability among themselves at a particular site, that, in the absence of an allocation of liability to an orphan share for payment from the [trust fund], shall be adopted by the [department] as the apportionment of liability for the site.
Section 17. [Expedited Settlement.]

(a) Prior to the date that the [department] apportions liability pursuant to Section 16, the [department] shall, when it determines that it is in the best interests of the public, propose a final administrative or judicial expedited settlement with responsible persons who, in the judgment of the [department], meet either of the following conditions for eligibility for such an expedited settlement:

(1) The responsible person's individual contribution of hazardous substances at the site is de minimis. The contribution of hazardous substance to a site by a responsible person is de minimis if both of the following apply:
   (i) The responsible person's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the site, and that individual contribution is presumed to be minimal if it is [one (1)] percent or less of the total volumetric contribution at the site, unless the [department] identifies a lower threshold based on site-specific factors.
   (ii) The responsible person's contribution of materials containing hazardous substances does not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the site.

(2)(i) The responsible person is the site owner, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the site, and did not contribute to the release or threat of release of a hazardous substance at the site through any action or omission.
   (ii) Section 17 (a)(2)(i) does not apply if the responsible person purchased the site with actual or constructive knowledge that the site was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) The [department] may reach an expedited settlement with responsible persons only when the aggregate shares of liability determined pursuant to Section 17 (a) do not exceed [ten (10)] percent of the projected cost of the response action at the site.

(c) Any person who enters into a settlement pursuant to this section shall provide any information relevant to the administration of this act which is requested by the [department]. The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the [department] at the time the determination is made. If the [department] determines not to apply the provisions of this section at a site, the basis for that determination shall be explained in writing to any person who requests such a settlement.

(d) A responsible person who has reached a final settlement under this section and paid any response costs which are part of the settlement is not liable for claims for contribution from any other party for the costs of the
response action at the site.

(e) At the same time that notice is provided pursuant to Section 16 (a), the [department] shall provide written notice of the proposed settlement to all other responsible persons, the affected community, and the public by appropriate means. The notice shall identify the site and the parties to the proposed settlement.

(f) The [department] shall consider any written comments submitted regarding the proposed expedited settlement in determining whether or not to consent to the proposed settlement. The [department] may withhold consent to the proposed settlement if the comments disclose factors or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. The [department] shall withhold consent to the proposed settlement if any responsible person for the site petitions the [department] to invoke an arbitration panel to evaluate the merits of the settlement before the settlement agreement becomes final.

Section 18. [Arbitration.]
(a) The [director of environmental health hazard assessment] shall convene an arbitration panel, if a timely petition is filed with the [director], for purposes of resolving all disputes with any responsible person concerning any of the following:

(1) The remedial action plan developed pursuant to Section 14, including disputes regarding remedy selection, other technical issues, conditions of approval, or any other element of the plan.

(2) The [department's] proposed apportionment of liability pursuant to Section 16.

(3) Any proposed de-minimis settlements pursuant to Section 17.

(4) The [department's] approval or denial of a change in land use pursuant to Section 15.

(5) The [department's] approval or denial of a certificate of completion pursuant to Section 23 (b).

(b)(1) Petitions for disputes concerning the matters specified in Section 18 (a)(1) to (3) shall be filed within [sixty (60)] days from the date that the notice of approval of the remedial action plan is issued, or from the date that the responsible person or persons preparing the remedial action plan notify the [department] in writing, by appropriate means, of the responsible person or person's rejection of a notice of deficiency. Within [ten (10)] days of the [department's] approval of the remedial action plan or receipt of a notice of a rejection of a notice of deficiency for the remedial action plan, the [department] shall provide notice in writing, by appropriate means, of its approval, or receipt of the notice of rejection, to all responsible persons for the site and to the public. The notice shall indicate the rights of the parties to file petitions for arbitration of the disputes concerning the matters specified in Section 18 (a)(1) to (3) and the deadline for the filing of a
petition. Petitions for arbitration of disputes concerning the matters specified in Section 18 (a)(1) to (3) may be made by any responsible person. Petitions for arbitration of disputes concerning the matter specified in Section 18 (a)(1) may also be filed by the affected community, and petitions for arbitration of disputes concerning the matters specified in Section 18 (a)(1) to (3) may be filed by any member of the public if orphan shares that are to be paid from the trust fund are at issue.

(2) Petitions for the arbitration of all disputes concerning the matters specified in Section 18 (a)(4) and (5) may be made by any responsible person for the site, the affected community, or the public, and shall be made prior to the time that the action in dispute becomes final.

(3) Prior to submitting a petition for arbitration, the responsible persons shall make all reasonable efforts to resolve the dispute.

(4) If one or more petitions for arbitration have been filed for any combination of review of the remedial action plan, apportionment of liability, or de minimis settlements, the arbitration panel shall review all of these petitions in a consolidated hearing. The arbitration panel shall minimize the need for hearings on all other issues by consolidating hearings in all cases where reasonably possible.

(5) The arbitrators shall be selected as provided in [insert appropriate state citation].

(c) All the provisions of [insert appropriate state citations] apply to arbitration proceedings conducted pursuant to this section, except for all of the following:

(1) The arbitration panel shall apply the factors and standards for liability apportionment set forth in Section 16 (c), instead of those set forth in [insert appropriate state citation].

(2) The provisions of [insert appropriate state citation] shall not apply.

(3) The arbitrators shall be bound by, and shall apply, the requirements and standards set forth in this act and [insert appropriate state citation] that are applicable to the dispute that is the subject of the arbitration.

(4) The arbitrators shall have the expertise and experience appropriate to understand and critically evaluate the issues to be arbitrated.

(d) The arbitration panel shall hold a public hearing on any matter presented to the panel for evaluation, shall take all evidence presented, shall keep a record of the proceedings, including all testimony and evidence presented, and shall have discretion in the determination of facts. All findings and decisions of the panel shall be supported by substantial evidence in light of the whole record. The response action for which the arbitration panel has been requested to act pursuant to this section shall not be stayed during the pendency of the arbitration proceedings. Notice of the arbitration panel’s decision shall be provided in writing, by appropriate means, within [five (5)] days from the date that the arbitration panel has reached a
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decision, to the responsible persons, the affected community, the public,
and any other person or entity who participated in the arbitration proceeding and requested notice of the decision.

(e) The [department], any member of the [advisory committee] described in [insert appropriate state citation], or, for purposes of appealing the approval of a remedial action plan by the arbitration panel, any member of the affected community, may seek judicial review of a decision of the arbitration panel by filing a petition for a writ of mandate pursuant to [insert appropriate state citation] not more than [thirty (30)] days from the date that notice of the decision is provided in writing by appropriate means to those entities or persons. Any person authorized to petition for arbitration may also seek judicial review of a decision of the arbitration panel concerning any matter for which the person is authorized pursuant to Section 18 (b) to submit a petition for arbitration, by filing a petition for writ of mandate pursuant to [insert appropriate state citation] not more than [thirty (30)] days from the date that notice of the decision is provided in writing by appropriate means to that person. No person may seek judicial review of a matter that is subject to arbitration, if requested, that has not been first presented to an arbitration panel.

(f) Except for acts of recklessness, gross negligence, fraud, deceit, or other criminal activity, the arbitrators are immune from liability for any actions taken in their role as arbitrators.

Section 19. [Arbitration, Reports and Procedures.]

(a)(1) The [secretary] shall ensure that all arbitration panels are provided with the necessary technical support services by a team of state employees with experience and expertise appropriate to the issue or issues in dispute, including, but not limited to, where necessary, expertise in hydrogeology, geology, chemical engineering, toxicology, hazardous substance response action law, soil science, environmental health and engineering, industrial hygiene, and other related disciplines. The team of state employees shall provide a written report to the panel setting forth the team recommendations on all technical issues before the arbitrators, and the arbitrators shall give substantial weight to the team's recommendations. The team's report shall be a public record.

(2) The [director of environmental health hazard assessment] shall adopt procedures for the removal of arbitrators from panels for inadequate performance of their assigned responsibilities.

(b)(1) The [department] shall notify all responsible persons who have been identified and located, the affected community, the team of state employees, and the public, of the arbitration hearing request and the location and scheduling of the arbitration hearing, in writing, by appropriate means, as soon as reasonably practicable after an arbitration hearing is requested.

(2) All responsible persons for the site notified by the [department] of
the arbitration shall be subject to arbitration by the arbitration panel, and
all response costs shall be apportioned among all responsible persons noti-
fied of the arbitration proceedings regardless of whether those persons ap-
pear before the arbitration panel.

Section 20. [Conflicts of Interest.]
(a) No person may serve as an arbitrator for a site for which that person
has a conflict of interest. A conflict of interest, for purposes of this section,
includes the following:
   (1) Employment at any time in the past by one or more of the respon-
sible persons for the site.
   (2) Existence of a potentially material financial impact from one or
more of the decisions the arbitrator may be asked to make involving the
site.
(b) Any person may challenge the selection of any arbitrator on the grounds
of (1) conflict of interest, or (2) lack of one or more of the qualifications
required by Section 18. Any challenge shall be filed with the [director of
environmental health hazard assessment] within [ten (10)] days of the pro-
vision of public notice of the arbitration hearing pursuant to Section 19
(b)(1). The [director of environmental health hazard assessment] shall,
within [twenty (20)] days thereafter, determine the arbitrator’s fitness to
serve. Any arbitrator that is disqualified from serving on a particular panel
shall be replaced in a timely manner in the same manner as the disquali-
fied arbitrator was chosen.

Section 21. [Majority Vote.] All decisions of the arbitration panel shall be
made by majority vote.

Section 22. [Design Approval.] Upon completion of an engineering design
method to implement remedial action plan, the responsible persons
shall submit the design to the [department] for approval. The
[department] shall approve, modify, or deny the design within [sixty (60)]
days from the date of receipt.

Section 23. [Request for Certificate of Completion.]
(a) Upon completion of a response action pursuant to remedial action
plan, the responsible person shall file a request with the [department] for a
certificate of completion. A request for certificate of completion may be filed
even though long-term operation and maintenance requirements and other
long-term remedial activities remain an ongoing obligation, if all other fi-
nal response actions have been completed.

(b) The [department] shall review each request for a certificate of comple-
tion and shall approve the request if the [department] determines that the
response action plan and any other directive of the [department] have been
satisfactorily completed and that the site has been placed into a condition that allows it to be permanently used for its planned use without any significant risk to human health or potential for any future significant environmental damage. The [department] shall approve or deny the request for a certificate of completion within [ninety (90)] days after it is filed with the [department]. Any failure of the [department] to act on the submittal of a request for a certificate of completion within the time periods provided in this section may be appealed to the [secretary]. If the [secretary] fails to act on behalf of the [department] within [thirty (30)] days after the appeal is filed, the [department's] failure to act may be challenged by any responsible person for the site pursuant to the provisions of [insert appropriate state citation]. Any person who disputes the approval or denial of a request for a certificate of completion may, before the approval or denial becomes final pursuant to Section 23 (c), file a petition for review of that denial pursuant to Section 18 except that the petition may request review only concerning those issues in dispute that were heard before an arbitration panel in a prior hearing concerning the remedial action plan. All other disputes concerning the approval or denial of a request for a certificate of completion may be resolved by the [secretary], at the discretion of the [secretary].

(c) Notice of any approval or denial of a request for a certificate of completion shall be provided to the responsible persons for the site and to the public, by appropriate means, within [five (5)] days from the date that the decision is made by the [department]. The approval or denial shall become final within [thirty (30)] days from the date that notice is provided pursuant to this subsection, unless a review of that approval or denial is requested, pursuant to Section 23 (b), before the expiration of that [thirty (30)] day period.

(d) A certificate of completion that becomes final pursuant to this section shall be deemed to have been issued pursuant to [insert appropriate state citation] shall apply to the site.

Section 24. [Departmental Authority.] The [department] shall have the same authority with regard to a remedial action site selected for response pursuant to this act as the authority provided in [insert appropriate state citation] and all potentially responsible persons are entitled to the trade secret protection set forth in [insert appropriate state citation] with regard to any action taken by the [department] pursuant to this act.

Section 25. [Damages.] (a) A responsible person who has entered into an agreement with the [department], and is in compliance with the terms of that agreement and who is in compliance with all orders issued by the [department], may seek,
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in addition to contribution, treble damages from any responsible person who has failed or refused to comply with any order or agreement relating to a site selected for response action under this act, was named in the order or agreement, and is subject to contribution. A responsible person from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the responsible person, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the [department], or where the principles of fundamental fairness will be violated, as determined by the court. A responsible person seeking treble damages pursuant to this section shall show that notice of the order or agreement was provided to the responsible person against whom treble damages are being sought.

(b) [One-half] of any treble damages awarded pursuant to this section shall be paid to the [department] for deposit in the [trust fund]. Nothing in this section affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) If treble damages are assessed against any person pursuant to this section, that person shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of [insert appropriate state citation].

Section 26. [Recovery Actions.]

(a) A responsible person is liable to the [department] and the [trust fund] for the response costs as provided in the agreement entered into pursuant to Section 10, and for any other response costs incurred by the state, which are allocated to the responsible person in a final liability apportionment decision by the [department] pursuant to Section 16 or the final decision of an arbitration panel pursuant to Section 18 and which have been paid, or assigned for payment, from the [trust fund].

(b) Actions to recover any response costs incurred by the state shall be commenced by the [attorney general], upon the request of the [department] or the [fund administrator], against the responsible person or persons.

(c) The [department] and the [fund administrator] shall only seek response costs in an action pursuant to section 26 (b) from those responsible persons who have not paid their apportioned share of response costs to the [department], or who have otherwise failed to comply with this act or any regulation, agreement, or order adopted pursuant to this act.

(d) Any person who has incurred response costs in accordance with this act may seek contribution or indemnity from any person who is liable pursuant to this act, except that no claim may be asserted against a person whose liability has been determined and which has been or is being fully discharged pursuant to this act, or against a person who has executed an agreement with the [department] pursuant to Section 10, and is in compliance with this act and any regulation, agreement, or order adopted pursu-
Suggested State Legislation

ant to this act. An action to enforce a claim may be brought as a cross-complaint by a defendant in an action brought pursuant to this Section, or in a separate action for contribution or indemnity after the plaintiff has paid the [department] for response costs in accordance with this act. Any plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the [department] upon filing an action or cross-complaint under this section. In resolving claims for contribution or indemnity, the court shall allocate costs among liable parties, including the orphan shares, as set forth in the [department's] final liability apportionment decision or an arbitration panel decision pursuant to this act, except in instances where responsible parties have agreed to pay for orphan shares pursuant to the agreement provided in Section 10.

(e)(1) An action under this section for the recovery of response costs shall be commenced within [three (3)] years after a certificate of completion is issued pursuant to Section 23 or, in cases where responsible persons are identified by the [department] after that [three (3)] year period, within [three (3)] years after the responsible persons are identified.

(2) A subsequent action or actions under this section for further response costs may be maintained at any time during the response action, but shall be commenced no later than [three (3)] years after the date of completion of all response action.

Section 27. [Expedited Site Remediation Trust Fund.]

(a) The [Expedited Site Remediation Trust Fund] is hereby created in the [state treasury] and the money in the [trust fund] may be expended by the [department], upon appropriation by the [legislature], to carry out this act.

(b) All expenses that are incurred by the state pursuant to this act shall be paid solely by the responsible parties or the [trust fund]. No liability or obligation is imposed upon the state pursuant to this act, and the state shall not incur a liability or obligation beyond the extent to which money is provided by the responsible parties or the [trust fund] for the purposes of this act.

Section 28. [Fund Administrator.]

(a) A [fund administrator] shall be designated by the [governor].

(b) The [fund administrator] shall prudently administer the [trust fund] and shall protect the [trust fund] against unreasonable assessments of liability to the orphan share in all liability apportionment actions under this act where funding for all or a part of an orphan share is sought from the [trust fund.] The [fund administrator] shall have the same authority as a responsible person specified in this act with regard to a site where the orphan share is to be funded in whole, or in part, from the [trust fund].

Section 29. [Effective Date.] [Insert effective date].
Environmental Regulation Commission Act

This act is based on 1995 Florida legislation. It creates an environmental regulation commission as a part of the state department of environmental protection. The commission, comprised of seven members appointed by the governor and confirmed by the senate, is charged with considering scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment of environmental regulations. Rules proposed by the department of environmental protection shall be submitted for approval, modification or disapproval by the environmental regulation commission. The act also creates a risk-based priority council to recommend guidelines to the governor, the legislature and state agencies for conducting risk analyses. The council’s members are appointed by the governor four, the senate president two, and the house speaker two according to qualifications spelled out in the act. In addition, the act requires the state department of environmental protection to prepare a risk impact statement for any rule that is proposed for approval by the environmental regulation commission and that establishes or changes standards or criteria based on impacts to or effects upon human health.

Suggested State Legislation

(Title, enacting clause, etc.)

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

Section 2. [Department of Environmental Protection; Environmental Regulation Commission.]

(a) There is created the [state department of environmental protection].
(b) There is created as a part of the [state department of environmental protection] an [environmental regulation commission]. The [commission] shall be composed of [seven (7)] residents of this state appointed by the [governor], [subject to confirmation by the senate]. The [commission] shall include [one (1)], but not more than [two (2)], members from each [water management district] who have resided in the [district] for at least [one (1)] year, and the remainder shall be selected from the state at large. Membership shall be representative of the development industry, local government, the environmental community, and lay citizens, and members of the scientific and technical community who have substantial expertise in the areas...
of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering. The [governor] shall appoint the chairman, and the vice chairman shall be elected from among the membership. The members serving on the [commission] on [date] shall continue to serve on the [commission] for the remainder of their current terms. All appointments thereafter shall continue to be for [four (4)] year terms. The [governor] may, at any time, fill a vacancy for the unexpired term. The members of the [commission] shall serve without compensation, but shall be paid travel and per diem as provided in [insert appropriate state citation] while in the performance of their official duties. Administrative, personnel, and other support services necessary for the [commission] shall be furnished by the [department].

Section 3. [Career Service - Exemptions.] The exempt positions which are not covered by this section include the following, provided that no position, except for positions established for a limited period of time pursuant to [insert appropriate state citation], shall be exempt if the position reports to a position in the [career service]:

(1) All [assistant division directors], [deputy division directors], and [bureau chief] positions in any [department], and those positions determined by the [department] to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, positions in the [state department of health and rehabilitative services] and the [state department of corrections] that are assigned primary duties of serving as the [superintendent] of an institution, and positions in the [state department of transportation] that are assigned primary duties of serving as [regional toll managers] and [managers of offices] as defined in [insert appropriate state citation] and positions in the [state department of environmental protection] that are assigned the duty of an [environmental administrator] or [program administrator]. Unless otherwise fixed by law, the [department] shall set the salary and benefits of these positions in accordance with the rules established for the [Selected Exempt Service].

(2) All positions not otherwise exempt under this section which require as a prerequisite to employment: licensure as a physician pursuant to [insert appropriate state citation], licensure as an osteopathic physician pursuant to [insert appropriate state citation], licensure as a chiropractic physician pursuant to [insert appropriate state citation], including those positions which are occupied by employees who are exempted from licensure pursuant to [insert appropriate state citation], licensure as an engineer pursuant to [insert appropriate state citation], which are supervisory positions; or for [twelve (12)] calendar months, which require as a prerequisite to employment that the employee have received the degree of Bachelor of Laws or Juris Doctor from a law school accredited by the American Bar Association and thereafter membership in [state bar], except for any attor-
Environmental Regulation Commission Act

Section 4. [Environmental Regulation Commission; Powers and Duties.] Except as provided in [insert appropriate state citation], the [commission], pursuant to [insert appropriate state citation], shall exercise the standard-setting authority of the [department] under this act. The [commission], in exercising its authority, shall consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment. The [commission] shall not establish [department] policies, priorities, plans, or directives. The [commission] may adopt procedural rules governing the conduct of its meetings and hearings.

Section 5. [Secretary; Powers and Duties.] The [secretary] shall have the powers and duties of heads of departments set forth in [insert appropriate state citation], including the power to adopt rules under [insert appropriate state citation] and this act. The [secretary] shall have rulemaking responsibility under [insert appropriate state citation], but shall submit any proposed rule containing standards to the [environmental regulation commission] for approval, modification, or disapproval, pursuant to Section 4 of this act. The [secretary] shall employ legal counsel to represent the [department] in matters affecting the [department]. Except for appeals on permits specifically assigned by this act to the [governor] and [cabinet], and unless otherwise prohibited by law, the [secretary] may delegate the authority assigned to the [department] by this act to the [assistant secretary], [division directors], and [district] and [branch office managers] and to the [water management districts].

Section 6. [Risk-Based Priority Council.] (a) There is created the [risk-based priority council] to recommend guidelines to the [governor], the [legislature], and agencies for conducting risk analyses. (b) The [council] must consist of [eight (8)] members who shall represent the disciplines of toxicology, statistics, the fate and transport of air pollutants, epidemiology, the fate and transport of water pollutants, risk assessment, and human health and economics. Each [council] member must have a postgraduate degree in at least one of the disciplines specified in this subsection and at least [six (6)] years of experience in the discipline represented by the member on the [council]. Preference shall be given in choosing [council] members to individuals with knowledge or experience in risk assessment procedures, if available. Additional employment experience
may be substituted for a postgraduate degree in order for a person to qualify
for membership on the [council]. No more than [three (3)] members of the
[council] may be employees of the state or any political subdivision of the
state, or members of the faculty of a state university.

(1) The [governor] shall appoint [four (4)] members to the [council],
[one (1)] of whom must be an expert in statistics, [one (1)] of whom must be
an expert in risk assessment, [one (1)] member who shall be an expert in
economics, and [one (1)] of whom must be an expert in human health and
be a medical doctor who has at least [six (6)] years of experience in public
health.

(2) The [president of the senate] shall appoint [two (2)] members of
the [council], [one (1)] of whom must be an expert in the fate and transport
of air pollutants and [one (1)] of whom must be an expert in epidemiology.

(3) The [speaker of the house of representatives] shall appoint [two
(2)] members to the [council], [one (1)] of whom must be an expert in toxici-
ology and [one (1)] of whom must be an expert in the fate and transport of
water pollutants.

(c) The members of the [council] shall be appointed within [forty-five (45)]
days after the effective date of this act. The members of the [council] shall
select a chairman and vice chairman to serve [one (1)] year terms. A va-
cancy on the [council] shall be filled in the same manner as the initial ap-
pointment.

(d) The [council] members shall serve without compensation, but are en-
titled to reimbursement for travel and per diem expenses incurred while
engaged in the business of the [council] as provided by [insert appropriate
state citation].

(e) (1) By [date], the [council] shall submit a report to the [governor], the
[legislature], and the agencies recommending guidelines for agencies to
use in conducting risk analyses. The report must include the most cost-
effective, least burdensome, simple, and easy-to-understand risk-analysis
guidelines which provide for consideration of exposure pathways, criteria
for use of default assumptions, evaluation of dose-responsive relationships,
consideration of the mode of action in both studied subjects and potentially
exposed persons, selection of appropriate extrapolation models, use of no-
effect thresholds, and identification of limitations and uncertainties at each
stop of the analysis. In preparing the report, the [council] shall, as neces-
sary, consult with scientific, technical and legal experts. The [council] shall
provide a draft report for public comment in a timely manner before final-
zation.

(2) The [council] shall, at a minimum, consider the following issues in
preparing its report:

(i) The scope, level of detail, and sophistication of analyses required to
produce scientifically defensible risk analyses in support of regulatory de-
cision-making.
(ii) Costs associated with obtaining data and conducting risk analyses, including costs resulting from delays or inaction in implementing public health regulations.

(iii) A method for obtaining data that will serve as the basis for a risk analysis, including a process for soliciting data and criteria for evaluating the quality and appropriateness of such data.

(iv) A description of assumptions, including limitations, defaults, range and variability of estimates, and models that shall be used at each level of specificity and analysis, and processes for modifying or replacing those assumptions with actual data.

(v) Ways in which the results of a risk analysis can be conveyed in simple, easy-to-understand terms.

(vi) Opportunities for public and independent peer review of risk analyses procedures.

(vii) The relationship between state and federal regulatory agencies, including information about federal requirements or preemption in application of risk analyses by such agencies.

(viii) The impact of risk analyses on communities of color and low-income communities, including consideration of any recommendations of the [state environmental equity and justice commission].

(ix) The relative risk ranking done as part of the [state comparison of environmental risk project].

(x) Ways to minimize risk analyses, such as eliminating requirements for risk analyses where a public health rule which has undergone risk assessment analysis is incorporated by reference into another rule.

(xi) Recommendations as to the type, nature, and scope of agency rules which, based upon the applicability of scientifically based risk principles, should be subject to risk impact statements as required by [insert appropriate state citation].

(f) The [council] shall meet as often as required to prepare the report required by Section 6. The meetings shall be determined by the [council] but shall be located in different areas of the state to allow for public participation from all parts of the state.

(g) The agencies shall cooperate to the fullest extent in assisting the [council] in performing its duties under this act. Such cooperation shall include, but is not limited to, providing information and data related to an agency’s preparation of any risk analysis.

(h) For administrative purposes, the [council] is assigned to the [joint state legislative management committee], which shall provide staff and assistance to the [council].

(i) The [council] shall cease to exist after the completion of its report to the [legislature] and [governor].
Section 7. [Rulemaking.]
(a) Effective [date] the [state department of environmental protection] shall prepare a risk impact statement for any rule that is proposed for approval by the [environmental regulation commission] and that establishes or changes standards or criteria based on impacts to or effects upon human health. Effective [date], the [state department of agriculture and consumer services] shall prepare a risk impact statement for any rule that is proposed for adoption that establishes standards or criteria based on impacts to or effects upon human health.
(b) This section does not apply to rules adopted pursuant to federally delegated or mandated programs where such rules are identical or substantially identical to the federal regulations or laws being adopted or implemented by the [state department of environmental protection] or [state department of agriculture and consumer services], as applicable. However, the [state department of environmental protection] and the [state department of agriculture and consumer services] shall identify any risk analysis information available to them from the federal government that has formed the basis of such rules.
(c) This section does not apply to emergency rules adopted pursuant to this act.
(d) The [state department of environmental protection] and the [department of agriculture and consumer services] shall prepare and publish notice of the availability of a clear and concise risk impact statement for all applicable rules. The risk impact statement must explain the risk to the public health addressed by the rule and shall identify and summarize the source of the scientific information used in evaluating that risk.
(e) Nothing in this section shall be construed to create a new cause of action or basis for challenging a rule nor diminish any existing cause of action or basis for challenging a rule.

Section 8. [Model Risk-Impact Statement.] In order to initiate and develop interim guidance for conducting the risk-impact statement process, the [state department of environmental protection] shall, in [insert fiscal year], initiate at least [one (1)] model risk-impact statement project for an applicable rule. The [department] shall contract with the state university system for assistance in the technical aspects of preparing the impact statement. The sum of [fifty thousand (50,000)] dollars is hereby appropriated to the [state department of environmental protection] for the [solid waste management trust fund] for these purposes.

Section 9. [Repealers.] [Insert repealers.]

Section 10. [Effective Date.] [Insert effective date.]
Land Recycling and Environmental Remediation Standards Act

This act is based on Pennsylvania legislation enacted in 1995. This act provides for recycling of existing industrial and commercial sites and further defines the cleanup liability of new industries and tenants. The act establishes a framework for setting environmental remediation standards. It also establishes the Voluntary Cleanup Loan Fund, the Industrial Land Recycling Fund and the Industrial Sites Cleanup Fund to aid industrial site cleanups. The act assigns powers and duties to the environmental quality board and the department of environmental resources.

This Act is part of a three-bill package introduced in the Pennsylvania legislature designed to encourage the remediation and reuse of contaminated industrial and commercial properties. The related bills limit the liability of certain economic development agencies, financial institutions and fiduciaries for the cleanup of contamination not caused by the agencies or institutions. The other Act provides grants for conducting environmental assessments of industrial sites and establishes an Industrial Sites Environmental Assessment Fund.


Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short title.] This act shall be known and may be cited as the Land Recycling and Environmental Remediation Standards Act.

Section 2. [Declaration of Policy.] The [general assembly] finds and declares as follows:

1. The elimination of public health and environmental hazards on existing commercial and industrial land across this state is vital to their use and reuse as sources of employment, housing, recreation and open-space areas. The reuse of industrial land is an important component of a sound land-use policy that will help prevent the needless development of prime farmland, open-space areas and natural areas and reduce public costs for installing
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new water, sewer and highway infrastructure.

(2) Incentives should be put in place to encourage responsible persons to
voluntarily develop and implement cleanup plans without the use of tax-
payer funds or the need for adversarial enforcement actions by the [state
department of environmental resources] which frequently only serve to delay
cleanups and increase their costs.

(3) Public health and environmental hazards cannot be eliminated with-
out clear, predictable environmental remediation standards and a process
for developing those standards. Any remediation standards adopted by this
state must provide for the protection of public health and the environ-
ment.

(4) It is necessary for the [general assembly] to adopt a statute which sets
environmental remediation standards to provide a uniform framework for
cleanup decisions because few environmental statutes set cleanup stan-
dards and to avoid potentially conflicting and confusing environmental stan-
dards. The [general assembly] also has a duty to implement the provisions
of [insert appropriate state citation] with respect to environmental
remediation activities.

(5) It is necessary for the [general assembly] to adopt a statute which
provides a mechanism to establish cleanup standards without relieving a
person from any liability for administrative, civil or criminal fines or penal-
ties otherwise authorized by law and imposed as a result of illegal disposal
of waste or for pollution of the land, air or waters of this state on an identi-
fied site.

(6) Cleanup plans should be based on the actual risk that contamination
on the site may pose to public health and the environment, taking into
account its current and future use and the degree to which contamination
can spread offsite and expose the public or the environment to risk, not on
cleanup policies requiring every site in this state to be returned to a pris-
tine condition.

(7) Cleanup plans should have as a goal remedies which treat, destroy or
remove regulated substances whenever technically and economically fea-
sible as determined under the provisions of this act.

(8) The [state department of environmental resources] now routinely
through its permitting policies determines when contamination will and
will not pose a significant risk to public health or the environment. Similar
concepts should be used in establishing cleanup policies.

(9) The public is entitled to understand how remediation standards are
applied to a site through a plain language description of contamination
present on site, the risk it poses to public health and the environment and
any proposed cleanup measure.

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

(1) “Agricultural chemical.” A substance defined as a fertilizer, soil condi-
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(2) “Agriculture chemical facility.” A facility where agriculture chemicals are held, stored, blended, formulated, sold or distributed. The term does not include facilities identified by SIC 2879 where agricultural chemicals are manufactured.

(3) “Aquifer.” A geologic formation, group of formations or part of a formation capable of a sustainable yield of significant amount of water to a well or spring.

(4) “Background.” The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

(5) “BADCT” or “Best Available Demonstrated Control Technology.” The commercially available engineering technology which has demonstrated on a consistent basis that it most effectively achieves the standard for a remediation action for a regulated substance at a contaminated site under similar applications.


(7) “Carcinogen.” A chemical, biological or physical agent defined by the Environmental Protection Agency as a human carcinogen.

(8) “Cleanup or remediation.” To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment in order to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.

(9) “Contaminant.” A regulated substance released into the environment.

(10) “Control.” To apply engineering measures, such as capping or treatment, or institutional measures, such as deed restrictions, to sites with contaminated media.

(11) “Department.” The [state department of environmental resources] or its successor agency.

(12) “Engineering controls.” Remedial actions directed exclusively toward containing or controlling the migration of regulated substances through the environment. These include, but are not limited to, slurry walls, liner systems, caps, leachate collection systems and groundwater recovery trenches.

(13) “EPA.” The Environmental Protection Agency or its successor agency.

(14) “Fate and Transport.” A term used to describe the degradation of a chemical over time, and where chemicals are likely to move given their physical and other properties and the environmental medium they are moving through.

(15) “Groundwater.” Water below the land surface in a zone of saturation.

(16) “Hazard index.” The sum of more than one hazard quotient for multiple substances and multiple exposure pathways. The hazard index is
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calculated separately for chronic, subchronic and shorter duration exposures.

(17) “Hazard quotient.” The ratio of a single substance exposure level over a specified period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(18) “Hazardous Sites Cleanup Fund.” A fund established under [insert appropriate state citation].

(19) “Health advisory levels” or “HALs.” The health advisory levels published by the United States Environmental Protection Agency for particular substances.

(20) “Industrial activity.” Commercial, manufacturing, public utility, mining or any other activity done to further either the development, manufacturing or distribution of goods and services, intermediate and final products and solid waste created during such activities, including, but not limited to, administration of business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment and solid waste management.

(21) “Institutional controls.” A measure undertaken to limit or prohibit certain activities that may interfere with the integrity of a remedial action or result in exposure to regulated substances at a site. These include, but are not limited to, fencing or restrictions on the future use of the site.

(22) “Medium-specific concentration.” The concentration associated with a specified environmental medium for potential risk exposures.

(23) “Mitigation measures.” Any remediation action performed by a person prior to or during implementation of a remediation plan with the intent to protect human health and the environment.

(24) “Municipality.” A township, borough, city, incorporated village or home rule municipality. This term shall not include a county.

(25) “Nonresidential property.” Any real property on which commercial, industrial, manufacturing or any other activity is done to further either the development, manufacturing or distribution of goods and services, intermediate and final products, including, but not limited to, administration of business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment, and solid waste management. This term shall not include schools, nursing homes or other residential style facilities or recreational areas.

(26) “Person.” An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the federal government, state government, political subdivisions and state instrumentalities.

(27) “Point of compliance.” For the purposes of determining compliance
with groundwater standards, the property boundary at the time the contamina-
tion is discovered or such point beyond the property boundary as
the [state department of environmental resources] may determine to be
appropriate.
(28) “Practical quantitation limit.” The lowest limit that can be reliably
achieved within specified limits of precision and accuracy under routine
laboratory conditions for a specified matrix and based on quantitation, pre-
cision and accuracy, normal operation of a laboratory and the practical need
in a compliance-monitoring program to have a sufficient number of labora-
tories available to conduct the analyses.
(29) “Public utility.” The term shall have the same meaning as given to it
in [insert appropriate state citation] relating to public utilities.
(30) “Regulated substance.” The term shall include hazardous substances
and contaminants regulated under [insert appropriate state citation].
(31) “Release.” Spilling, leaking, pumping, pouring, emitting, emptying,
leashing, injecting, escaping, leaching, dumping or disposing of a regu-
lated substance into the environment in a manner not authorized by the
[state department of environmental resources]. The term includes the aban-
donment or discarding of barrels, containers, vessels and other receptacles
containing a regulated substance.
(32) “Residential property.” Any property or portion of the property which
does not meet the definition of “nonresidential property.”
(33) “Responsible person.” The term shall have the same meaning as given
to it in [insert appropriate state citation] relating to hazardous site clean
up, clean water laws, and air pollution control.
(34) “Secretary.” The [state secretary of environmental resources].
(35) “Site.” The extent of contamination originating within the property
boundaries and all areas in close proximity to the contamination necessary
for the implementation of remediation activities to be conducted under this
act.
(36) “Systemic toxicant.” A material that manifests its toxic effect in hu-
mans in a form other than cancer.
(37) “Treatment.” The term shall have the same meaning as given to it in
[insert appropriate state citation].

Section 4. [Environmental Quality Board, Powers and Duties.]
(a) Environmental Quality Board. The [environmental quality board] shall
have the power and its duty shall be to adopt and amend periodically there-
after by regulation statewide health standards, appropriate mathemati-
cally valid statistical tests to define compliance with this act and other
regulations that may be needed to implement the provision of this act. Any
regulations needed to implement this act shall be proposed no later than
twelve (12) months after the effective date of this act and shall be final-
ized no later than twenty-four (24) months after the effective date of this
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Section 5. [Cleanup Standards Scientific Advisory Board.]
(a) Establishment. There is hereby created a [thirteen (13)] member
[cleanup standards scientific advisory board] for the purpose of assisting
the [department] and the [environmental quality board] in developing state-
wide health standards, determining the appropriate statistically and sci-
entifically valid procedures to be used, determining the appropriate risk
factors and providing other technical and scientific advice as needed to
implement the provisions of this act.
(b) Membership. [Five (5)] members shall be appointed by the [secretary]
and [two (2)] members each by the [president pro tempore of the senate,]
the [minority leader of the senate], the [speaker of the house of representa-
tives] and the [minority leader of the house of representatives]. Members
shall have a background in engineering, biology, hydrogeology, statistics,
medicine, chemistry, toxicology or other related scientific education or ex-
pertise that relates to problems and issues likely to be encountered in
developing health-based cleanup standards and other procedures needed
to implement the provisions of this act. The [board] membership shall in-
clude representatives of local government, the public, the academic com-
unity, professionals with the appropriate background and the regulated
community (manufacturing, small business and other members of the busi-
ness community). The members shall serve for a period of [four (4)] years.
The initial terms of the members shall be staggered so that at least [one-
half (1/2)] of the members’ term expire in [two (2)] years.
(c) Organization. The [board] shall elect a chairperson by majority vote
and may adopt any bylaws or procedures it deems necessary to accomplish
its purpose. Recommendations, positions or other actions of the [board]
shall be by a majority of its members.
(d) Expenses. Members of the [board] shall be reimbursed for their travel
expenses to attend meeting as authorized by the [executive board].
(e) Support. The [department] shall provide the appropriate administra-
tional and technical support needed by the [board] in order to accomplish its
purpose, including support for surveys and technical studies the [board]
may wish to undertake. The [department] shall publish a notice of meeting
dates, times and locations and a list of topics to be discussed at any meeting
no less than [fourteen (14)] days prior to the meeting, published in the
same manner as required by [insert appropriate state citation].
(f) Interested persons list. The [department] shall maintain a mailing
list of persons interested in receiving notice of meetings and the activities
of the [board]. The [department] shall name a contact person to be respon-
sible for [board] meetings and to serve as a contact for the public to ask
Section 6. [Scope.]

(a) Remediation standards. The environmental remediation standards established under this act shall be used whenever site remediation is voluntarily conducted or is required under [insert appropriate state citation] to be eligible for cleanup liability protection under Section 16. In addition, the remediation standards established under this act shall be considered as applicable, relevant and appropriate requirements for this state under [insert appropriate state citation].

(b) Disclaimer. Nothing in this act is intended to nor shall it be construed to amend, modify, repeal or otherwise alter any provision of any act cited in this section relating to civil and criminal penalties or enforcement actions and remedies available to the [department], or, in any way, to amend, modify, repeal or alter the authority of the [department] to take appropriate civil and criminal action under these statutes.

Section 7. [Existing standards.]

(a) General rule. The [department] may continue to use remediation standards not adopted under the provisions of this act for a period of up to [three (3)] years after the effective date of this act, unless such existing standards are revised or replaced by regulations adopted under this act. All regulations, policies, guidance documents and procedures relating to remediation standards which were not adopted under the provisions of this act shall expire [three (3)] years after the effective date of this act. The standards and procedures established in Sections 8, 9, 10 (b) and 11 shall be available for use on the effective date of this act and shall supersede existing regulations, policies, guidance documents and procedures.

(b) Agreements and consent orders. The standards established under this act are not intended to impose more stringent cleanup standards than those which are contained in any prior administrative consent order, consent adjudication, judicially approved consent order, or other settlement agreement entered into with the [department] under the authority of any of the statutes referred to in Section 6 and which were entered into with the [department] on or before the effective date of this act, unless all parties thereto agree to such change.

Section 8. [Remediation standards.]

(a) Standards. Any person who proposes or is required to respond to the release of a regulated substance at a site and who wants to be eligible for the cleanup liability protection under Section 16 select and attain compli-
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In conducting remediation activities:

1. a background standard which achieves background as further specified in Section 9;
2. a statewide health standard adopted by the [environmental quality board] which achieves a uniform statewide health-based level so that any substantial present or probable future risk to human health and the environment is eliminated as specified in Section 10; or
3. a site-specific standard which achieves remediation levels based on a site-specific risk assessment so that any substantial present or probable future risk to human health and the environment is eliminated or reduced to protective levels based upon the present or currently planned future use of the property comprising the site as specified in Section 11.

(b) Combination of standards. A person may use a combination of the remediation standards to implement a site remediation plan and may propose to use the site-specific standard whether or not efforts have been made to attain the background or statewide health standard.

(c) Determining attainment. For the purposes of determining attainment of any one or a combination of remediation standards, the concentration of a regulated substance shall not be required to be less than the practical quantitation limit for a regulated substance as determined from time to time by the EPA. The department may, in consultation with the board, establish by regulation procedures for determining attainment of remediation standards when practical quantitation limits set by the EPA have a health risk that is greater than the risk levels set in Sections (10) (c) and (11) (b) and (c). The department shall not establish procedures for determining attainment of remediation standards where maximum contaminant levels and health advisory levels have already been established for regulated substances.

Section 9. [Background Standard.]

(a) Standard. Persons selecting the background standard shall meet background for each regulated substance in each environmental medium.

(b) Attainment. Final certification that a site or portion of a site meets the background standard shall be documented in the following manner:

(1) Attainment of the background standard shall be demonstrated by collection and analysis of representative samples from environmental media of concern, including soils and groundwater in aquifers in the area where the contamination occurs through the application of statistical tests set forth in regulation or, if no regulations have been adopted, in a demonstration of a mathematically valid application of statistical tests. The department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.
(2) A final report that documents attainment of the background standard shall be submitted to the [department] which includes, as appropriate:

(i) The descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, volume and composition or regulated substances.

(ii) The basis for selecting environmental media of concern, descriptions of removal or decontamination procedures performed in remediation, summaries of sampling methodology and analytical results which demonstrate that remediation has attained the background standard.

(3) Where remediation measures do not involve removal or treatment of a contaminant to the background standard, the final report shall demonstrate that any remaining contaminants on the site will meet statewide health standards and show compliance with any postremediation care requirements that may be needed to maintain compliance with the statewide health standards.

(4) Institutional controls such as fencing and future land use restrictions on a site may not be used to attain the background standard. Institutional controls may be used to maintain the background standard after remediation occurs.

(c) Authority reserved. If a person fails to demonstrate attainment of the background standard, the [department] may require that additional remediation measures be taken in order to meet the background standard or the person may select to meet the requirements of Section 10 or 11.

(d) Deed notice. Persons attaining and demonstrating compliance with the background standard for all regulated substances shall not be subject to the deed acknowledgment requirements of [insert appropriate state citation]. An existing acknowledgment contained in a deed prior to demonstrating compliance with the background standard may be removed.

(e) Notice and review provisions. Persons utilizing the background standard shall comply with the following requirements for notifying the public and the department of planned remediation activities:

(1) Notice of intent to initiate remediation activities shall be made in the following manner:

(i) A notice of intent to remediate a site shall be submitted to the [department] which, to the extent known, provides a brief description of the location of the site, a listing of the contaminant or contaminants involved, a description of the intended future use of the property for employment opportunities, housing, open space, recreation or other uses, and the proposed remediation measures. The [department] shall publish an acknowledgment noting receipt of the notice of intent in [official state publication].

(ii) At the same time a notice of intent to remediate a site is submitted to the [department], a copy of the notice shall be provided to the municipality in which the site is located and a summary of the notice of intent shall
be published in a newspaper of general circulation serving the area in which
the site is located.

(2) Notice of the submission of the final report demonstrating attainment
of the background standard shall be given to the municipality in which
the remediation site is located, published in a newspaper of general circu-
lation serving the area and in the [official state publication].

(3) The [department] shall review the final report demonstrating attain-
ment of the background standard within [sixty (60)] days of its receipt
or notify the person submitting the report of substantive deficiencies. If the
[department] does not respond with deficiencies within [sixty (60)] days,
the final report shall be deemed approved.

(4) The notices provided for in Section 9 (e)(1) and (2) are not required
to be made or published if the person conducting the remediation submits
the final report demonstrating attainment of the background standards as
required by this section within [ninety (90)] days of the release. If the final
report demonstrating attainment is not submitted to the [department]
within [ninety (90)] days of the release, all notices and procedures required
by this section shall apply. Section 9 (e)(4) is only applicable to releases
occurring after the effective date of this act.

Section 10. [Statewide Health Standard.]
(a) Standard. The [environmental quality board] shall promulgate state-
wide health standards for regulated substances for each environmental
medium. The standards shall include any existing numerical residential
and nonresidential health-based standards adopted by the [department]
and by the federal government by regulation or statute, and health advis-
ory levels. For those health-based standards not already established by
regulation or statute, the [environmental quality board] shall, by regula-
tion, propose residential and nonresidential standards as medium-specific
concentrations within [twelve (12)] months of the effective date of this act.
The [environmental quality board] shall also promulgate, along with the
standards, the methods used to calculate the standards adopted under this
section shall be no more stringent than those standards adopted by the
federal government.

(b) Medium-specific concentrations. The following requirements shall be
used to establish a medium-specific concentration:

(1) Any regulated discharge into surface water occurring during or after
attainment of the statewide health standard shall comply with applicable
laws and regulations relating to surface water discharges.

(2) Any regulated emissions to the outdoor air occurring during or after
attainment of the statewide health standard shall comply with applicable
laws and regulations relating to emissions into the outdoor air.

(3) The concentration of a regulated substance in groundwater in aqui-
ifers used or currently planned to be used for drinking water or for agricul-
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(4) For the residential standard, the concentration of a regulated substance in soil shall not exceed either the direct contact soil medium-specific concentration based on residential exposure factors within a depth of up to [fifteen (15)] feet from the existing ground surface, or the soil-to-groundwater pathway numeric value throughout the soil column, the latter to be determined by any one of the following methods:

(i) A value which is [one hundred (100)] times the medium-specific concentration for groundwater.

(ii) A concentration in soil at the site that does not produce a leachate in excess of the medium-specific concentrations for groundwater in the aquifer when subjected to the Synthetic Precipitation Leaching Procedures, Method 1312 of SW 846, Test Methods for Evaluating Solid Waste, promulgated by the United States Environmental Protection Agency.

(iii) A generic value determined not to produce a concentration in groundwater in the aquifer in excess of the medium-specific concentration for groundwater based on a valid, peer-reviewed scientific method which properly accounts for factors affecting the fate, transport and attenuation of the regulated substance throughout the soil column.

(5) For the nonresidential standard, the concentration of a regulated substance in soil shall not exceed either the direct contact soil medium-specific concentration based on nonresidential exposure factors within a depth of up to [fifteen (15)] feet from the existing ground surface using valid scientific methods reflecting worker exposure or the soil to groundwater pathway numeric value determined in accordance with Section 10 (b)(4).

(6) Exposure scenarios for medium-specific concentrations for nonresidential conditions shall be established using valid scientific methods reflecting worker exposure.

(c) Additional factors. When establishing a medium-specific concentration, other than those established under Section 10 (b)(1),(2) or (3), the medium-specific concentration for the ingestion of groundwater, inhalation of soils, ingestion and inhalation of volatiles and particulates shall be calculated by the [department] using valid scientific methods, reasonable exposure pathway assumptions and exposure factors for residential and nonresidential land use which are no more stringent than the standard default exposure factors established by EPA based on the following levels of risk:

(1) For a regulated substance which is a carcinogen, the medium-spe-
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cific concentration is the concentration which represents an excess upper
bound lifetime cancer target risk of between [one (1)] in [ten thousand
(10,000)] and [one (1)] in [one million (1,000,000)].

(2) For a regulated substance which is a systemic toxicant, the medium-
specific concentration is the concentration to which human populations could
be exposed by direct ingestion or inhalation on a daily basis without appre-
ciable risk of deleterious effects for the exposed population.

(d) Relationship to background. The concentration of a regulated sub-
stance in an environmental medium of concern on a site where the state-
wide health standard has been selected shall not be required to meet the
statewide health standard if the statewide health standard is numerically
less than the background standard. In such cases, the background stan-
dard shall apply.

(e) Attainment. Final certification that a site or portion of a site meets
the statewide health standard shall be documented in the following man-
ner:

1. Attainment of cleanup levels shall be demonstrated by collection
and analysis of representative samples from the environmental medium of
concern, including soils, and groundwater in aquifers at the point of com-
pliance through the application of statistical tests set forth in regulation or,
if no regulations have been adopted, in a demonstration of a mathemati-
cally valid application of statistical tests. The [department of environmen-
tal resources] shall also recognize those methods of attainment demonstra-
tion generally recognized as appropriate for that particular remediation.

2. A final report that documents attainment of the statewide health
standard shall be submitted to the [department] which includes the de-
scriptions of procedures and conclusions of the site investigation to charac-
terize the nature, extent, direction, rate of movement of the site and cumu-
lative effects, if any, volume, composition and concentration of contami-
nants in environmental media, the basis for selecting environmental me-
dia of concern, documentation supporting the selection of residential or
nonresidential exposure factors, descriptions of removal or treatment pro-
cedures performed in remediation, summaries of sampling methodology
and analytical results which demonstrate that contaminants have been
removed or treated to applicable levels and documentation of compliance
with postremediation care requirements if they are needed to maintain the
statewide health standard.

3. Institutional controls such as fencing and future land use restric-
tions on a site may not be used to attain the statewide health standard.
Institutional controls may be used to maintain the statewide health stan-
dard after remediation occurs.

(f) Authority reserved. If a person fails to demonstrate attainment of the
statewide health standard, the [department] may require that additional
remediation measures be taken in order to meet the health standard or the
person may select to meet the requirements of Section 9 or 11.

(g) Deed notice. Persons attaining and demonstrating compliance with
the statewide health standard considering residential exposure factors for
a regulated substance shall not be subject to the deed acknowledgment
requirements of [insert appropriate state citation]. An existing acknowledg-
ment contained in a deed prior to demonstrating compliance with the
residential statewide health standard may be removed. The deed acknowl-
agement requirements shall apply where nonresidential exposure factors
were used to comply with the statewide health standard.

(h) Notice and review provisions. Persons utilizing the statewide health
standard shall comply with the following requirements for notifying the
public and the [department] of planned remediation activities:

(1) Notice of intent to initiate remediation activities shall be made in
the following manner:

(i) A notice of intent to remediate a site shall be submitted to the [de-
partment] which provides, to the extent known, a brief description of the
location of the site, a listing of the contaminant or contaminants involved,
a description of the intended future use of the property for employment
opportunities, housing, open space, recreation or other uses and the pro-
posed remediation measures. The [department] shall publish an acknowl-
agement noting receipt of the notice of intent in [official state publication].

(ii) At the same time a notice of intent to remediate a site is submitted
to the [department], a copy of the notice shall be provided to the munic-
ipality in which the site is located and a summary of the notice of intent shall
be published in a newspaper of general circulation serving the area in which
the site is located.

(2) Notice of the submission of the final report demonstrating attain-
ment of the statewide health standard shall be given to the municipality in
which the remediation site is located, published in a newspaper of general
circulation serving the area and in the [state publication].

(3) The [department] shall review the final report demonstrating at-
tainment of the statewide health standard within [sixty (60)] days of its
receipt or notify the person submitting the report of substantive deficien-
cies. If the [department] does not respond with deficiencies within [sixty
(60)] days, the final report shall be deemed approved.

(4) The notices provided for in Section 10 (h)(1) and (2) are not required
to be made or published if the person conducting the remediation submits
the final report demonstrating attainment of the statewide health stan-
dard as required by this section within [ninety (90)] days of the release. If
the final report demonstrating attainment is not submitted to the [depart-
ment] within [ninety (90)] days of the release, all notices and procedures
required by this section shall apply. Section 10 (h)(4) is only applicable to
releases occurring after the effective date of this act.
Section 11. [Site-specific standard.]

(a) General. Where a site-specific standard is selected as the environmental remediation standard or where the background or statewide health standard is selected but not achieved, remedial investigation, risk assessment, cleanup plans and final reports shall be developed using the procedures and factors established by this section.

(b) Carcinogens. For known or suspected carcinogens, soil and groundwater cleanup standards shall be established at exposures which represent an excess upper-bound lifetime risk of between [one (1)] in [ten thousand (10,000)] and [one (1)] in [one million (1,000,000)]. The cumulative excess risk to exposed populations, including sensitive subgroups, shall not be greater than [one (1)] in [ten thousand (10,000)].

(c) Systemic toxicants. For systemic toxicants, soil and groundwater cleanup standards shall represent levels to which the human population could be exposed on a daily basis without appreciable risk of deleterious effect to the exposed population. Where several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for multiple systemic toxicants acting through a single medium exposure pathway or through multiple-media exposure pathways.

(d) Groundwater. Cleanup standards for groundwater shall be established in accordance with Section 11 (b) and (c) using the following considerations:

(1) For groundwater in aquifers, site-specific standards shall be established using the following procedures:

   (i) The current and probable future use of groundwater shall be identified and protected. Groundwater that has a background total dissolved solids content greater than [two thousand five hundred (2,500)] milligrams per liter or is not capable of transmitting water to a pumping well in usable and sustainable quantities shall not be considered a current or potential source of drinking water.

   (ii) Site-specific sources of contaminants and potential receptors shall be identified.

   (iii) Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(2) Groundwater not in aquifers shall be evaluated using current or probable future exposure scenarios. Appropriate management actions shall be instituted at the point of exposure where a person is exposed to groundwater by ingestion or other avenues to protect human health and the environment. This shall not preclude taking appropriate source management actions by the responsible party to achieve the equivalent level of protection.

(e) Soil. Concentrations of regulated substances in soil shall not exceed:
values calculated in accordance with Section 11 (b) and (c) based on human ingestion of soil where direct contact exposure to the soil may reasonably occur; values calculated to protect groundwater in aquifers at levels determined in accordance with Section 11 (b), (c) and (d); and values calculated to satisfy the requirements of Section 11 (g) with respect to discharges or releases to surface water or emissions to the outdoor air. Such determinations shall take into account the effects of institutional and engineering controls, if any, and shall be based on sound scientific principles, including fate and transport analysis of the migration of a regulated substance in relation to receptor exposures.

(f) Factors. In determining soil and groundwater cleanup standards under Section 11 (d) and (e), the following factors shall also be considered:

(1) Use of appropriate standard exposure factors for the land use of the site with reference to current and currently planned future land use and the effectiveness of institutional or legal controls placed on the future use of the land.

(2) Use of appropriate statistical techniques, including, but not limited to, Monte Carlo simulations, to establish statistically valid cleanup standards.

(3) The potential of human ingestion of regulated substances in surface water or other site-specific surface water exposure pathways, if applicable.

(4) The potential of human inhalation of regulated substances from the outdoor air and other site-specific air exposure pathways, if applicable.

(g) Air and surface water. Any regulated discharge into surface water or any regulated emissions to the outdoor air which occur during or after attainment of the site-specific standard shall comply with applicable laws and regulations relating to surface water discharges or emissions into the outdoor air.

(h) Relationship to background. The concentration of a regulated substance in an environmental medium of concern on a site where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background standard. In such cases, the background standard shall apply.

(i) Combination of measures. The standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls and can include innovative or other demonstrated measures. The [department] shall disapprove a site-specific remediation plan that consists solely of fences, warning signs or future land use restrictions unless the site-specific standard is developed on the basis of exposure factors which are no less stringent than those which would apply to the site at the time the contamination is discovered.

(j) Remedy evaluation. The final remediation plan for a site submitted to the [department] shall include remediation alternatives and a final remedy which consider each of the following factors:
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(1) Long-term risks and effectiveness of the proposed remedy that includes an evaluation of:

(i) The magnitude of risks remaining after completion of the remedial action.

(ii) The type, degree and duration of postremediation care required, including, but not limited to, operation and maintenance, monitoring, inspections and reports and their frequencies or other activities which will be necessary to protect human health and the environment.

(iii) Potential for exposure of human and environmental receptors to regulated substances remaining at the site.

(iv) Long-term reliability of any engineering and voluntary institutional controls.

(v) Potential need for repair, maintenance or replacement of components of the remedy.

(vi) Time to achieve cleanup standards.

(2) Reduction of the toxicity, mobility or volume of regulated substances, including the amount of regulated substances that will be removed, contained, treated or destroyed, the degree of expected reduction in toxicity, mobility or volume and the type, quantity, toxicity and mobility of regulated substances remaining after implementation of the remedy.

(3) Short-term risks and effectiveness of the remedy, including the short-term risks that may be posed to the community, workers or the environment during implementation of the remedy and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the proposed remedy, including commercially available remedial measures which are BADCT, degree of difficulty associated with constructing the remedy, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remedial efforts and approvals necessary to implement the remedial efforts.

(5) The cost of the remediation measure, including capital costs, operation and maintenance costs, net present value of capital and operation and maintenance costs and the total costs and effectiveness of the system.

(6) The incremental health and economic benefits shall be evaluated by comparing those benefits to the incremental health and economic costs associated with implementation of remedial measures.

(k) Attainment. Compliance with the site-specific standard is attained for a site or portion of a site when a remedy approved by the [department] has been implemented in compliance with the following criteria:

(1) Soil, groundwater, surface water and air emission standards as determined under Section 11 (a) through (h) have been attained.

(2) Attainment of the site-specific standard shall be demonstrated by collection and analysis of samples from affected media, as applicable, such as surface water, soil, groundwater in aquifers at the point of compliance.
through the application of statistical tests set forth in regulation or, if no regulations have been adopted, in a demonstration of a mathematically valid application of statistical tests. The [department of environmental resources] shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

(i) Site investigation and remedy selection. Any person selecting to comply with site-specific standards established by this section shall submit the following reports and evaluations, as required under this section, for review and approval by the [department]:

(1) A remedial investigation report which includes:

(i) Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent, direction, rate of movement, volume and composition of regulated substances.

(ii) The concentration of regulated substances in environmental media of concern, including summaries of sampling methodology and analytical results, and information obtained from attempts to comply with the background or statewide health standards, if any.

(iii) A description of the existing or potential public benefits of the use or reuse of the property for employment opportunities, housing, open space, recreation or other uses.

(iv) A fate and transport analysis may be included in the report to demonstrate that no present or future exposure pathways exist.

(v) If no exposure pathways exist, a risk assessment report and cleanup plan are not required and no remedy is required to be proposed or completed.

(2) If required, a risk assessment report which describes the potential adverse effects under both current and planned future conditions caused by the presence of a regulated substance in the absence of any further control, remediation or mitigation measures. A baseline risk assessment report is not required where it is determined that a specific remediation measure can be implemented to attain the site-specific standard.

(3) A cleanup plan which evaluates the relative abilities and effectiveness of potential remedies to achieve the requirements for remedies described in Section 11 (k) when considering the evaluation factors described in Section 11 (j). The plan shall select a remedy which achieves the requirements for remedies described in Section 11 (k). The [department] may require a further evaluation of the selected remedy or an evaluation of one or more additional remedies in response to comments received from the community surrounding the site as a result of the community involvement plan established in Section 11 (o) which are based on the factors described in Section 11 (j) or as a result of its own analysis which are based on the evaluation factors described in Section 11 (j).

(4) A final report demonstrating that the approved remedy has been completed in accordance with the cleanup plan.
Nothing in this section shall preclude a person from submitting a remedial investigation report, risk assessment report and cleanup plan at one time to the [department] for review.

(m) Deed notice. Persons attaining and demonstrating compliance with site-specific standards for a regulated substance shall be subject to the deed acknowledgment requirements of the [insert appropriate state citations]. The notice shall include whether residential or nonresidential exposure factors were used to comply with the site-specific standard.

(n) Notice and review provisions. Persons utilizing the site-specific standard shall comply with the following requirements for notifying the public and the [department] of planned remediation activities:

(1)(i) A notice of intent to remediate a site shall be submitted to the [department] which provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved and the proposed remediation measures. The [department] shall publish an acknowledgment noting receipt of the notice of intent in [state publication]. At the same time a notice of intent to remediate a site is submitted to the [department], a copy of the notice shall be provided to the municipality in which the site is located and a summary of the notice of intent shall be published in a newspaper of general circulation serving the area in which the site is located.

(ii) The notices required by this section shall include a thirty (30) day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site. If requested by the municipality, the person undertaking the remediation shall develop and implement a public involvement program plan which meets the requirements of Section 11 (o). Persons undertaking the remediation are encouraged to develop a proactive approach to working with the municipality in developing and implementing remediation and reuse plans.

(2) The following notice and review provisions apply each time a remedial investigation report, risk assessment report, cleanup plan and final report demonstrating compliance with the site-specific standard is submitted to the [department]:

(i) When the report or plan is submitted to the [department], a notice of its submission shall be provided to the municipality in which the site is located and a notice summarizing the findings and recommendations of the report or plan shall be published in a newspaper of general circulation serving the area in which the site is located. If the municipality requested to be involved in the development of the remediation and reuse plans, the reports and plans shall also include the comments submitted by the municipality, the public and the responses from the persons preparing the reports and plans.

(ii) The [department] shall review the report or plan within no more
than [ninety (90)] days of its receipt or notify the person submitting the
report of deficiencies. If the [department] does not respond with deficien-

cies within [ninety (90)] days, the report shall be deemed approved.

(3) If the remedial investigation report, risk assessment report and
cleanup plan are submitted at the same time to the [department], the [de-
partment] shall notify persons of any deficiencies in [ninety (90)] days. If
the [department] does not respond with deficiencies within [ninety (90)]
days, the reports are deemed approved.

(o) Community involvement. Persons using site-specific standards are
required to develop a public involvement plan which involves the public in
the cleanup and use of the property if the municipality requests to be in-
volved in the remediation and reuse plans for the site. The plan shall pro-
pose measures to involve the public in the development and review of the
remedial investigation report, risk assessment report, cleanup plan and
final report. Depending on the site involved, measures may include: tech-
niques such as developing a proactive community information and consul-
tation program that includes doorstep notice of activities related to
remediation, public meetings and roundtable discussions, convenient loca-
tions where documents related to a remediation can be made available to
the public and designating a single contact person to whom community
residents can ask questions; the formation of a community-based group
which is used to solicit suggestions and comments on the various reports
required by this section; and, if needed, the retention of trained, indepen-
dent third parties to facilitate meetings and discussions and perform me-
diation services.

Section 12. [Special Industrial Areas.]

(a) Special sites. For property used for industrial activities where there
is no financially viable responsible person to clean up contamination or for
land located within enterprise zones designated pursuant to the require-
ments of the [department of community affairs], the review procedures of
this section shall apply for persons conducting remediation activities who
did not cause or contribute to contamination on the property. Any environ-
mental remediation undertaken pursuant to this section shall comply with
one or more of the standards established in this act.

(b) Baseline report. A baseline remedial investigation shall be conducted
on the property based on a work plan approved by the [department] and a
baseline environmental report shall be submitted to the [department] to
establish a reference point showing existing contamination on the site. The
report shall describe the proposed remediation measures to be undertaken
within the limits of cleanup liability found in Section 17. The report shall
also include a description of the existing or potential public benefits of the
use or reuse of the property for employment opportunities, housing, open
space recreation or other use.
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(c) Public review. Persons undertaking the cleanup and reuse of sites under this section shall comply with the following public notice and review requirements:

1. A notice of intent to remediate a site shall be submitted to the [department] which provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved and the proposed remediation measures. The [department] shall publish an acknowledgment noting receipt of the notice of intent in [official state publication]. At the same time a notice of intent to remediate a site is submitted to the [department], a copy of the notice shall be provided to the municipality in which the site is located and a summary of the notice of intent shall be published in a newspaper of general circulation serving the area in which the site is located.

2. The notices required by this subsection shall include a [thirty (30)] day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site. If requested by the municipality, the person undertaking the remediation shall develop and implement a public involvement program plan which meets the requirements of Section 11 (o). Persons undertaking the remediation are encouraged to develop a proactive approach to working with the municipality in developing and implementing remediation and reuse plans.

(d) Department review. No later than [ninety (90)] days after the completed environmental report is submitted for review, the [department] shall determine whether the report adequately identifies the environmental hazards and risks posed by the site. The comments obtained as a result of a public involvement plan developed under Section 11 (o) shall also be considered by the [department]. The [department] shall notify the person submitting the report of deficiencies within [ninety (90)] days. If the [department] does not respond within [ninety (90)] days, the report is considered approved.

(e) Agreement. The [department] and the person undertaking the reuse of a special industrial site shall enter into an agreement based on the environmental report which outlines cleanup liability for the property.

(f) Department actions. A person entering into an agreement pursuant to this section shall not interfere with any subsequent remediation efforts by the [department] or others to deal with contamination identified in the baseline environmental report so long as it does not disrupt the use of the property.

(g) Deed notice. Persons entering into agreements pursuant to this section shall be subject to the deed acknowledgment requirements of [insert appropriate state citation].

Section 13. [Local Land Development Controls.] This act shall not affect
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the ability of local governments to regulate land development under [insert appropriate state citation]. The use of the identified property and any deed restrictions used as part of a remediation plan shall comply with local land development controls adopted under the [insert appropriate state citation].

Section 14. [Immediate Response]
   (a) Emergency response. The provisions of this act shall not prevent or impede the immediate response of the [department] or responsible person to an emergency which involves an imminent or actual release of a regulated substance which threatens public health or the environment. The final remediation of the site shall comply with the provisions of this act which shall not be prejudiced by the mitigation measures undertaken to that point.
   (b) Interim response. The provisions of this act shall not prevent or impede a responsible person from undertaking mitigation measures to prevent significant impacts on human health or the environment. Those mitigation measures may include limiting public access to the release area, installing drainage controls to prevent runoff, stabilization and maintenance of containment structures, actions to prevent the migration of regulated substances, on-site treatment or other measures not prohibited by the [department]. The final remediation of the site shall comply with the provisions of this act which shall not be prejudiced by the mitigation measures undertaken to that point.

Section 15. [Appealable Actions] Decisions by the [department] involving the reports and evaluations required under this act shall be considered appealable actions under [insert appropriate state citation].

Section 16. [Cleanup Liability Protection]
   (a) General. Any person demonstrating compliance with the environmental remediation standards established in Sections 8 through 15 shall be relieved of further liability for the remediation of the site under the statutes outlined in Section 6 for any contamination identified in reports submitted to and approved by the [department] to demonstrate compliance with these standards and shall not be subject to citizens suits or other contribution actions brought by responsible persons. The cleanup liability protection provided by this act applies to the following persons:
      (1) The current or future owner of the identified property or any other person who participated in the remediation of the site.
      (2) A person who develops or otherwise occupies the identified site.
      (3) A successor or assign of any person to whom the liability protection applies.
      (4) A public utility to the extent the public utility performs activities on the identified site.
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(b) Assessments. A person shall not be considered a person responsible for a release or a threatened release of a regulated substance simply by virtue of conducting an environmental assessment or transaction screen on a property. Nothing in this section relieves a person of any liability for failure to exercise due diligence in performing an environmental assessment or transaction screen.

Section 17. [Special Industrial Areas.]
(a) Agreement. The [department] and the person undertaking the reuse in a special industrial area under Section 12 shall enter into an agreement based on the environmental report which outlines cleanup liability for the property. Any person included in such an agreement shall not be subject to a citizen suit, other contribution actions brought by responsible persons not participating in the remediation of the property or other actions brought by the [department] with respect to the property except those which may be necessary to enforce the terms of the agreement.
(b) Liability. The cleanup liabilities for the person undertaking the reuse of the property shall include the following:
(1) The person shall only be responsible for remediation of any immediate, direct or imminent threats to public health or the environment, such as drummed waste, which would prevent the property from being occupied for its intended purpose.
(2) The person shall not be held responsible for the remediation of any contamination identified in the environmental report, other than the contamination noted in Section 17 (b)(1).
(3) Nothing in this act shall relieve the person from any cleanup liability for contamination later caused by that person on the property.
(c) Developer or occupier. A person who develops or occupies the property shall not be considered a responsible person for purposes of assigning cleanup liability.
(d) Successor or assign. A successor or assign of any person to whom cleanup liability protection applies for a property shall not be considered a responsible person for purposes of assigning cleanup liability, provided the successor or assign is not a person responsible for contamination on the property who did not participate in the environmental remediation action.
(e) Public utility. A public utility shall not be considered a responsible person for purposes of assigning cleanup liability to the extent the public utility performs activities on the identified property, provided the public utility is not a person responsible for contamination on the property.

Section 18. [Existing Exclusions.] The protection from cleanup liability afforded under this act shall be in addition to the exclusions from being a responsible person under the statutes listed in Section 6.
Section 19. [New Liability.] Nothing in this act shall relieve a person receiving protection from cleanup liability under this act from any cleanup liability for contamination later caused by that person on a site which has demonstrated compliance with one or more of the environmental remediation standards established in Sections 8 through 15.

Section 20. [Reopeners.] Any person who completes remediation in compliance with this act shall not be required to undertake additional remediation actions unless the [department] demonstrates that:

1. fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further cleanup of the site;
2. new information confirms the existence of an area of previously unknown contamination which contains regulated substances that have been shown to exceed the standards applied to previous remediation at the site;
3. the remediation method failed to meet one or a combination of the three cleanup standards;
4. the level of risk is increased beyond the acceptable risk range at a site due to substantial changes in exposure conditions, such as in a change in land use from nonresidential to a residential use, or new information is obtained about a regulated substance associated with the site which revises exposure assumptions beyond the acceptable range. Any person who changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the [department] to undertake additional remediation measures under the provisions of this act; or
5. (i) The release occurred after the effective date of this act on a site not used for industrial activity prior to the effective date of this act;
   (ii) The remedy relied in whole or in part upon institutional or engineering controls instead of treatment or removal of contamination; and
   (iii) Treatment, removal or destruction has become technically and economically feasible on that part.

Section 21. [Authority Reserved.] Except for the performance of further remediation of the site, nothing in this act shall affect the ability or authority of any person to seek any relief available against any party who may have liability with respect to this site. This act shall not affect the ability or authority to seek contribution from any person who may have liability with respect to the site and did not receive cleanup liability protection under this act.

Section 22. [Industrial Land Recycling Fund.]
(a) Fund. There is hereby established a separate account in the state treasury, to be known as the [Industrial Land Recycling Fund], which shall be a special fund administered by the [department].
(b) Purpose. The moneys deposited in this fund shall be used by the
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[department] for the purpose of implementing the provisions of this act.

(c) Funds. In addition to any funds appropriated by the [general assembly], Federal funds and private contributions and any fines and penalties assessed under this act shall be deposited into the fund. Moneys in the fund are hereby appropriated, upon the approval of the [governor], for the purpose of this act.

(d) Annual report. The [department] shall on [date] report to the [general assembly] on the expenditures and commitments made from the [Industrial Land Recycling Fund].

Section 23. [Industrial Sites Cleanup Fund.]

(a) Establishment. There is hereby established a separate account in the state treasury, to be known as the [Industrial Sites Cleanup Fund], which shall be a special fund administered by the [state department of commerce]. Within sixty (60) days of the effective date of this act, the [state department of commerce] shall finalize guidelines and issue application forms to administer this fund.

(b) Purpose. The [Industrial Sites Cleanup Fund] is to provide financial assistance to persons who did not cause or contribute to the contamination on property used for industrial activity on or before the effective date of this act and who propose to undertake a voluntary cleanup of the property. The financial assistance shall be in an amount of up to [seventy-five (75)] percent of the costs incurred for completing an environmental study and implementing a cleanup plan by an eligible applicant. Financial assistance may be in the form of grants as provided in this section or low-interest loans, to be lent at a rate not exceed [two (2)] percent.

(c) Grants. Grants may be made to political subdivisions or their instrumentalities or local economic development agencies for the purposes of this section if the grantee owns the site on which the cleanup is being conducted and the grantee is overseeing the cleanup. The total amount of grants awarded under this section in any one fiscal year shall not exceed [twenty (20)] percent of the total amount of the [Industrial Sites Cleanup Fund].

(d) Loans. Loans meeting the requirements of Section 23 (b) may be made to the following categories of applicants:

(1) Local economic development agencies.

(2) Political subdivisions or their instrumentalities.

(3) Other persons determined to be eligible by the [state department of commerce].

(e) Priority for financial assistance. The [state department of commerce] shall take all of the following factors into consideration when determining which applicants shall receive financial assistance under this section:

(1) The benefit of the remedy to public health, safety and the environment.

(2) The permanence of the remedy.
(3) The cost effectiveness of the remedy in comparison with other alternatives.
(4) The financial condition of the applicant.
(5) The financial or economic distress of the area in which the cleanup is being conducted.
(6) The potential for economic development.

The [state department of commerce] shall consult with the [department] when determining priorities for funding under this section.

(f) Terms and conditions. The [state department of commerce] shall have the power to set terms and conditions applicable to loans and grants it deems appropriate. The [state department of commerce] may consider such factors as it deems relevant, including current market interest rates and the necessity to maintain the moneys in this fund in a financially sound manner. Loans may be made based upon the ability to repay from future revenue to be derived from the cleanup, by a mortgage or other collateral, or on any other fiscal matters which the [state department of commerce] deems appropriate.

(g) Funds. In addition to any funds appropriated by the [general assembly], [fifteen million (15,000,000)] dollars shall be transferred upon approval of the [governor] from the [state hazardous sites cleanup fund] established by [insert appropriate state citation], to the [Industrial Sites Cleanup Fund] for the purpose of implementing the program established in this section. Moneys received by the [state department of commerce] as repayment of outstanding loans shall be deposited in the [fund]. Any interest earned by moneys in this [fund] shall remain in this [fund]. Moneys in the [fund] are hereby appropriated to the [state department of commerce] for the purpose of implementing this section.

(h) Annual report. The [state department of commerce] shall on [date] of each year report to the [general assembly] on the grants, loans, expenditures and commitments made from this [fund]. The annual report shall include an evaluation of the effectiveness of this [fund] in recycling industrial and commercial sites. The evaluation shall include any recommendations for additional changes, if necessary to improve the effectiveness of this [fund] in recycling such sites.

Section 24. [Fees.]
(a) Amount. The [department] shall collect the following fees for the review of reports required to be submitted to implement the provisions of this act:
(1) A person utilizing the background or statewide health standards for environmental remediation shall pay a fee of [two hundred fifty (250)] dollars upon submission of the report certifying compliance with the standards.
(2) A person utilizing site-specific standards for environmental
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remediation shall pay a fee of [two hundred fifty (250)] dollars each upon
the submission of a remedial investigation, risk assessment and cleanup
plan and an additional [five hundred (500)] dollars at the time of submis-
ion of the final report certifying compliance with the standards.

(3) A person utilizing a combination of background, statewide and site-
specific standards shall pay the fees required by Section 24 (1) and (2), as
applicable.

(4) No fee shall be charged for corrective actions undertaken under [in-
sert appropriate state citation].

(b) Deposit. Fees imposed under this section shall be deposited in the
[Industrial Land Recycling Fund] established under Section 22.

Section 25. [Plain Language.] Remedial investigation, risk assessment,
cleanup plans and other reports and notices required to be submitted to
implement the provisions of this act shall contain a summary or special
section that includes a plain language description of the information in-
cluded in the report in order to enhance the opportunity for public involve-
ment and understanding of the remediation process.

Section 26. [Permits and Other Requirements.]

(a) General rule. A state or local permit or permit revision shall not be
required for remediation activities undertaken entirely on the site if they
are undertaken pursuant to the requirements of this act.

(b) Applicable requirements. The [department] may waive in whole or in
part, in writing, otherwise applicable requirements where responsible per-
sons demonstrate that any of the following apply:

(1) Compliance with a requirement at a site will result in greater risk to
human health, safety and welfare and the environment than alternative
options.

(2) Compliance with a requirement at a site will substantially interfere
with natural or artificial structures or features.

(3) The proposed remedial action will attain a standard of performance
that is equivalent to that required under the otherwise applicable require-
ment through the use of an alternative method or approach.

(4) Compliance with a requirement at a site will not provide for a cost-
effective remedial action. The [department] may not waive the remediation
standards established under Sections 8, 9, 10, and 11.

Section 27. [Future Actions.] At any time, a request may be made to the
[department] to change the land use of the site from nonresidential to resi-
dential. The [department] shall only approve the request upon a demon-
stration that the site meets all the applicable cleanup standards for resi-
dential use of the property. Any existing deed acknowledgment contained
in the deed prior to the demonstrating compliance with the residential use
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Section 28. [Relationship to Federal and State Programs.]
(a) Federal. The provisions of this act shall not prevent the [state] from enforcing specific numerical cleanup standards, monitoring or compliance requirements specifically required to be enforced by the federal government as a condition to receive program authorization, delegation, primacy or federal funds.
(b) State priority list. Any remediation undertaken on a site included on the [state priority list] established under [insert appropriate state citation] shall be performed in compliance with the administrative record and other procedural and public review requirements of [insert appropriate state citation].
(c) Storage tanks. The environmental remediation standards established under this act shall be used in corrective actions undertaken pursuant to [insert appropriate state citation]. However, the procedures in [insert appropriate state citation] for reviewing and approving corrective actions shall be used in lieu of the procedures and reviews required by this act.
(d) Agricultural chemical facilities. The environmental remediation standards and procedures established under this act shall be used in any remediation undertaken at an agricultural chemical facility. The [department of agriculture] shall have the power and its duty shall be to promulgate regulations providing for the option of safely reuseing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. Such regulations shall provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of land application.
(e) Oil spill response. This act shall not apply to the removal of a discharge under [insert appropriate state citation].

Section 29. [Enforcement.]
(a) General. The [department] is authorized to use the enforcement and penalty provisions applicable to the environmental medium or activity of concern, as appropriate, established under [insert appropriate state citation] to enforce the provisions of this act.
(b) No defense to illegal activities. The provisions of this act do not create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air or waters of this [state] on the identified site.
(c) Fraud. Any person who willfully commits fraud demonstrating at-
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...tainment with one or more standards established under this act shall, upon conviction, be subject to an additional penalty of [fifty thousand (50,000)] dollars for each separate offense or to imprisonment for a period of not more than [one (1)] year for each separate offense, or both. Each day shall be a separate offense.

(d) Criminal convictions. If a person is convicted in a court of competent jurisdiction of a violation of the criminal provisions of any act identified in Section 6 in the degree of misdemeanor or felony and the violation arises from unlawful conduct which results in a release at a site, the court may, in addition to any fines, imprisonment or other penalties imposed under the appropriate act, order the person to perform remediation at the site consistent with the provisions and standards established under Section 9 or Section 10.

Section 30. [Past Penalties.] Persons who have no responsibility for contamination on a site and participate in environmental remediation activities under this act shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the property.

Section 31. [Evaluation.] Beginning [three (3)] years after the effective date of this act and every [two (2)] years thereafter, the [department] shall conduct and submit to the [general assembly] an evaluation of the effectiveness of this act in recycling existing industrial and commercial sites. The evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this act in recycling such sites.

Section 32. [Repealer.] [Insert repealer.]

Section 33. [Effective date.] [Insert effective date.]
Building Energy Efficiency Rating Act

This act is based on Iowa legislation enacted in 1993. This act establishes a statewide building energy efficiency rating system for new and existing residential, public, commercial and industrial buildings. The ratings will be established by July 1, 1995. A minimum acceptable energy efficiency standard for each class of new building will be established by the director of the department of natural resources. Upon request, the energy efficiency rating will be disclosed to a buyer or lessee whose rent does not include energy cost. At the same time, the buyer or lessee will receive an informational brochure that will include how to analyze the building's energy efficiency rating, comparisons to statewide averages for new and existing construction of that class, notice to the prospective buyer that the seller must disclose the efficiency rating upon request, information regarding methods to improve the building's energy efficiency rating, and a notice for residential buyers that qualifying income for mortgage loan purposes may be affected by the rating.

A voluntary working group of individuals, including electrical engineers, mechanical engineers, architects and builders, will be established to advise the department of natural resources in the development of the energy efficiency rating system and in its implementation.

The source of the Iowa statute was a Legislature Interim Study Committee formed in 1989-90.

The Florida and Iowa acts may be effectively preempted by a voluntary energy efficiency rating guideline system which the U.S. Department of Energy recently released.

The development of criteria for building energy efficiency evolved from efforts of the National Association of Homebuilders in conjunction with such other organizations as the Edison Electric Institute and the American Gas Association and an organization called the Home Energy Rating Systems Council (HERSC). The purpose of this group has been to determine nation-wide criteria by which any rating agency, public or private, can measure the energy efficiency of a building and be able to use that rating in a meaningful way. The primary goal of this effort has been to establish a system that would enable consumers to “compare apples to apples.”

The importance of this effort has been underscored by the prospect that such financial products as “energy efficient mortgages” (EEMs) and “energy efficient loans” (EELs) could be offered by lending institutions as an incentive for homeowners to add energy efficient improvements and to ask builders for energy efficient features. However, a barrier to such products has been presented by the number of different rating systems with ratings that meant different things. Apparently, the primary and secondary lenders such as Freddie Mac and Fannie Mae will not create these EEMs and
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EELs without uniform guidelines for energy efficiency ratings because the numbers are not uniform and would therefore have no meaning.

Accordingly, the HERSC has developed voluntary guidelines to set a single national method of determining home energy ratings and assure that all homes receive fair evaluations. This system allows for standardized, meaningful energy efficiency ratings across the nation. The U.S. Department of Energy now has these guidelines and has published them in the Federal Register on July 25, 1995 in vol. 60, No 14 p. 37949 et. seq. The guidelines are available for all voluntary state participants. The HERSC is suggesting that these guidelines may be a more effective alternative to model legislation on the subject. However, the Department of Energy is required to allow a public comment period which could be extended up to one year before the rule is final.

Copies of the guidelines are available from The Council of State Governments.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Statewide Building Energy Efficiency Rating System Act.

Section 2. [Definitions.]

(1) “Builder” means the prime contractor that hires and coordinates building subcontractors or if there is no prime, the contractor that completes more than [fifty (50)] percent of the total construction work performed on the building. Construction work includes, but is not limited to, foundation, framing, wiring, plumbing, and finishing work.

(2) “Designer” means the architect, engineer, landscape architect, builder, interior designer or other person who performs the actual design work or under whose direct supervision and responsible charge the construction documents are prepared.

(3) “Public building” means a building owned or operated by the state, a state agency, or a governmental subdivision, including but not limited to a city, county, or school district.

Section 3. [Rules Establishing a Statewide Building Energy Efficiency Rating System.]

(a) The [director] shall adopt rules, pursuant to [insert appropriate state citations], establishing a [statewide building energy efficiency rating system].

(b) The [rating system] shall apply to all new and existing public, com-
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section 4. [Standards.] The [director] shall adopt a [minimum acceptable energy efficiency standard] for each class of new buildings.

Section 5. [Volunteer Working Group.] The [director] shall establish a [voluntary working group] of persons and interest groups interested in the [energy efficiency rating system] or energy efficiency, including, but not limited to such persons as electrical engineers, mechanical engineers, architects, and builders. The [interest group] shall advise the [department] in the development of the [energy efficiency rating system] and shall assist the [department] in implementation of the [rating system] by coordinating education programs for designers, builders, businesses, and other interested persons to assist compliance and to facilitate incorporation of the rating system into existing practices. The intent of the [general assembly] is to encourage the consideration of the [energy efficiency rating system] in the market, so as to provide market rewards for energy efficient buildings and those designing, building, or selling energy efficient buildings.

Section 6. [Analysis and Comparison.]
(a) The [energy efficiency rating system] adopted by the [department] shall provide a means of analyzing and comparing the relative energy efficiency of buildings upon sale or lease of new or existing residential, commercial, or industrial buildings. The system shall provide for rating each public building in existence to assist public officials in decision making with regard to capital improvements and public energy costs.
(b) The [director] shall make available energy efficiency practices information to be used by individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.

Section 7. [Disclosure.]
(a) The [energy efficiency rating] shall be disclosed at the request of the prospective purchaser according to the terms of the offer to purchase.
(b) The [energy efficiency rating] shall be disclosed to a prospective lessee whose rent does not include energy cost upon request.
(c) The designer of a new residential or commercial building shall state in writing to the [department] that to the best of the person's knowledge, in-
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formation, and belief, the new building design is in substantial compliance with the minimum energy efficiency standards established by rule of the [department].

(d) Concurrent with the disclosure of an [energy efficiency rating] pursuant to Section 7 (a) through (c), the prospective purchaser or lessee shall be provided with a copy of an information brochure prepared by the [department] which includes information relevant to that class of building, including, but not limited to:

1. How to analyze the building's energy efficiency rating.
2. Comparisons to statewide averages for new and existing construction of that class.
3. Notice to the prospective purchaser that the seller must disclose a building's [energy efficiency rating] upon the prospective purchaser's request.
4. Information concerning methods to improve a building's energy efficiency rating.
5. A notice for residential buyers that qualifying income for mortgage loan purposes may be affected by the [energy efficiency rating].

Section 8. [Documentation.] A new residential, commercial, or industrial building shall not be hooked up or connected to any provider of electricity, whether a regulated utility, rural electric cooperative, municipal utility, or otherwise, or natural gas, except liquid petroleum, unless the builder states in writing to the utility that to the best of the builder's knowledge, information, and belief, the building was built in accordance with the construction documents.

Section 9. [Public Buildings.]
(a) Each public building proposed for construction, renovation, or acquisition shall be rated pursuant to the [energy efficiency rating system] provided in Section 1 prior to contracting for the construction, renovation, or acquisition. The public body proposing to contract for construction, renovation, or acquisition for a public building shall consider the energy efficiency ratings of alternatives when contracting.
(b) All public buildings shall be analyzed for energy efficiency using this rating system by [date]. The results of that analysis shall be submitted to the [department] by [date]. The [department] shall submit a report to the [governor] and [general assembly] by [date], that analyzes the results of this evaluation of public buildings and includes recommendations. The results of the analysis of each building shall be submitted to the public agency or governmental subdivision which owns or operates that building as well.

Section 10. [Fraudulent Conduct.] The [director] may report an architect, professional engineer, or landscape architect to the [appropriate examining
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3 board] if the director believes the person has engaged in fraudulent con-
4 duct in connection with an [energy efficiency rating] for a building. The
5 [director] may report a builder to the [division of labor, bureau of contractor
6 registration], if the [director] believes the builder has engaged in fraudu-
7 lent conduct in connection with an [energy efficiency rating] for a building.

Section 11. [Effective Date.] [Insert effective date.]
Lead Poisoning Prevention Program

This program is based on Maryland legislation enacted in 1994. The program's purpose is to reduce the incidence of childhood lead poisoning, while maintaining the stock of available affordable rental housing. It establishes standards of care for owners of certain rental property to follow to reduce the lead-based paint hazards posed by the property. The program also makes changes in the way damage claims related to the ingestion of lead are handled.

The program applies to all properties in the state constructed before 1950 that contain at least one rental dwelling unit. If properties tested by a department-accredited private inspector are certified to be lead-free, they are not subject to the program's requirements. An owner must either pass a department-approved test for lead-contaminated dust or perform specified lead hazard reduction treatments under the supervision of department-accredited personnel. At each change in occupancy of a rental unit, the unit must be certified to satisfy the risk reduction standard set by this act. By October 1, 1999, 50 percent of each owner's units must meet the risk reduction standard; by October 1, 2004, 100 percent must meet the standard.

Other provisions of the act include setting up a Lead Poisoning Prevention Fund consisting of fees collected from owners of certain rental properties. A lead poisoning prevention commission is to be established to assess the effectiveness of the program and to advise staff in developing regulations for the program. Federal requirements imposed in 1978 by the Consumer Product Safety Commission limit lead content in paint used in residential dwellings to 600 parts per million. Effective October 28, 1995, mandatory disclosures are to be furnished by all sellers and lessors of lead-based paint hazards. Prospective buyers or lessees have a 10-day period to inspect and test for lead content.

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(Title, enacting clause, etc.)

Section 1. [Short title] This act may be cited as the Reduction of Lead Risk in Housing Act.

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

(1)(i) "Affected property" means:

(A) A property constructed before 1950 that contains at least one rental dwelling unit; or

(B) Any residential rental property for which the owner makes an elec-
Lead Poisoning Prevention Program

- (ii) “Affected property” includes an individual rental dwelling unit within a multifamily rental dwelling.
- (iii) “Affected property” does not include property exempted under Section 4 (b) of this act.
- (2) “Change in occupancy” means a change of tenant in an affected property in which the property is vacated and possession is either surrendered to the owner or abandoned.
- (3) “Child” means an individual under the age of [six (6)] years.
- (4) “Commission” means the [state lead poisoning prevention commission].
- (5) “Elevated blood lead” or “EBL” means a quantity of lead in whole venous blood, expressed in micrograms per deciliter (UG/DL), that exceeds a specified threshold level.
- (6) “Exterior surfaces” means:
  - (i) All fences and porches that are part of an affected property; and
  - (ii) All outside surfaces of an affected property that are accessible to a child and that:
    - (A) Are attached to the outside of an affected property; or
    - (B) Consist of other buildings that are part of the affected property.
- (7) “Fund” means the [state lead poisoning prevention fund].
- (8)(i) “High efficiency particle air vacuum” or “HEPA-Vacuum” means a device capable of filtering out particles of 0.3 microns or greater from a body of air at an efficiency of 99.97% or greater.
  - (ii) “HEPA-Vacuum” includes use of a HEPA-Vacuum.
- (9) “Lead-based paint” means paint or other surface coatings that contain lead in excess of the maximum lead content level allowed by the [department] by regulation.
- (10) “Lead-contaminated dust” means dust in affected properties that contains an area or mass concentration of lead in excess of the lead content level determines by the [department] by regulation.
- (11) “Lead-free” means at or below a lead content level deemed to be lead-free in accordance with criteria established by the [department] by regulation.
- (12) “Lead-safe housing” means a rental dwelling unit that:
  - (i) Is certified to be lead-free in accordance with Section 5 of this act.
  - (ii) Was constructed after 1978;
  - (iii) Is deemed to be lead-safe by the [department] in accordance with criteria established by the [department] by regulation; or
  - (iv) Is certified to be in compliance with Section 13 (a) of this act and:
    - (A) In which all windows are either lead-free or have been treated so that all friction surfaces are lead-free;
    - (B) In which lead particulate levels are determined to be within abatement clearance levels established by the [department] by regulation,
within [fifteen (15)] days prior to the relocation of a person at risk to the rental dwelling unit in accordance with a qualified offer made under this act; and

(C) Which is subject to ongoing maintenance and testing as specified by the [department] by regulation.

(13) “Multifamily rental dwelling” means a property which contains more than one rental dwelling unit.

(14)(i) “Owner” means a person, firm, corporation, guardian, conservator, receiver, trustee, executor, or legal representative who, alone or jointly or severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold interest to any property, with or without actual possession.

(ii) “Owner” includes:

(A) Any vendee in possession of the property; and

(B) Any authorized agent of the owner, including a property manager or leasing agent.

(iii) “Owner” does not include:

(A) A trustee or a beneficiary under a deed of trust or a mortgagee; or

(B) The owner of a reversionary interest under a ground rent lease.

(15) “Person at risk” means a child or a pregnant woman who resides or regularly spends at least [twenty-four (24)] hours per week in an affected property.

(16) “Related party” means any:

(i) Person related to an owner by blood or marriage;

(ii) Employee of the owner; or

(iii) Entity in which an owner, or any person referred to in Section 2 (16) (i) or (ii) of this act, has an interest.

(17) “Relocation expenses” means all expenses necessitated by the relocation of a tenant's household to lead-safe housing, including moving and hauling expenses, the HEPA-Vacuuming or all upholstered furniture, payment of a security deposit for the lead-safe housing, and installation and connection of utilities and appliances.

(18) “Rent subsidy” means the difference between the rent paid by a tenant for housing at the time a qualified offer is made under Sections 23 through 39 of this act and the rent due for the lead-safe housing to which the tenant is relocated.

(19)(i) “Rental dwelling unit” means a room or group of rooms that form a single independent habitable rental unit for permanent occupation by one or more individuals that has living facilities with permanent provisions for living, sleeping, eating, cooking, and sanitation.

(ii) “Rental dwelling unit” does not include:

(A) An area not used for living, sleeping, eating, cooking or sanitation, such as an unfinished basement;
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(B) A unit within a hotel, motel, or similar seasonal or transient facility;

(C) An area which is secured and inaccessible to occupants;

(D) A common area which is not part of, or adjoining, a rental dwelling unit within a multifamily rental dwelling; or

(E) A unit which is not offered for rent.

(20) “Risk reduction standard” means a risk reduction standard established under Section 13 or Section 17 of this act.

Section 3. [Purpose.] The purpose of this act is to reduce the incidence of childhood lead poisoning, while maintaining the stock of available affordable rental housing.

Section 4. [Applicability.]

(a) This act applies to:

(1) Affected property; and

(2) Notwithstanding Section 4 (b), any residential rental property, the owner of which elects to comply with this act.

(b) This act does not apply to:

(1) Property not expressly covered in Section 4 (a);

(2) Affected property owned or operated by a unit of federal, state, or local government, or any public, quasi-public, or municipal corporation, if the affected property is subject to lead standards that are equal to, or more stringent than, the risk reduction standard established under Section 13 of this act; or

(3) Affected property which is certified to be lead-free pursuant to Section 5 of this act.

Section 5. [Exemptions.] Affected property is exempt from the provisions of Section 13 of this act if the owner submits to the [department] an inspection report that:

(1) Indicates that the affected property has been tested for the presence of lead-based paint in accordance with standards and procedures established by the [department] by regulation;

(2) States that all exterior surfaces and interior surfaces of the affected property are lead-free; and

(3) Is verified by the [department] accredited inspector who performed the test.

Section 6. [Lead Poisoning Prevention Commission.]

(a) There is a [lead poisoning prevention commission] in the [department].

(b)(1) The [commission] consists of [eighteen (18)] members.

(2) Of the [eighteen (18)] members:
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(i) [One (1)] shall be a member of the [senate] of [state], appointed by
the [president of the senate];
(ii) [One (1)] shall be a member of the [state] [house of delegates], ap-
pointed by the [speaker of the house]; and
(iii) [Sixteen (16)] shall be appointed by the [governor] as follows:
   (A) The [secretary] or the [secretary’s] designee;
   (B) The [state secretary of health and mental hygiene] or the
secretary’s] designee;
   (C) The [state secretary of housing and community development]
or the [secretary’s] designee;
   (D) The [state insurance commissioner] or the [commissioner’s] des-
ignee;
   (E) A representative of local government;
   (F) A representative from an insurer that offers premises liability
coverage in the state;
   (G) A representative of a financial institution that makes loans se-
cured by rental property;
   (H) A representative of owners of rental property located in [place
and date];
   (I) A representative of owners of rental property located outside
[place and date];
   (J) A representative of owners of rental property built after [date];
   (K) A representative of a child health or youth advocacy group;
   (L) A health care provider;
   (M) A child advocate;
   (N) A parent of a lead-poisoned child;
   (O) A lead hazard identification professional; and
   (P) A representative of child care providers.

(3) In appointing members to the [commission], the [governor] shall
give due consideration to appointing members representing geographically
diverse jurisdictions across the state.

(c)(1)(i) The term of a member appointed by the [governor] is [four (4)]
years.
(ii) A member appointed by the [president] and [speaker] serves at the
pleasure of the appointing officer.

(2) The terms of members are staggered as required by the terms pro-
vided for the members of the [commission] on [date].
(3) At the end of a term, a member continues to serve until a successor
is appointed and qualifies.
(4) A member who is appointed after a term has begun serves only for
the remainder of the term and until a successor is appointed and qualifies.

Section 7. [Meetings, Chair, Quorum.]
(a) The [commission] shall meet at least quarterly at the times and places
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it determines.

(b) From among the members, the [governor] shall appoint the chairman of the [commission.]

(c) (1) A majority of the members then serving on the [commission] constitutes a quorum.

(2) The [commission] may act upon a majority vote of the quorum.

(d) A member of the [commission]:

(1) May not receive compensation; but

(2) Is entitled to reimbursement from the fund for reasonable travel expenses related to attending meetings and other [commission] events in accordance with the [standard state travel regulations].

Section 8. [Window Replacement Program.]

(a) In consultation with the [secretary of housing and community development], the [commission] shall develop recommendations for establishing a program that would provide financial incentives or assistance to owners of affected property to replace windows.

(b) In developing recommendations for a window replacement program, the [commission] shall consider the feasibility and desirability of merging a window replacement program into existing housing programs.

(c) The [commission] shall include in its first annual report under Section 9 of this act its recommendations for establishing a window replacement program.

Section 9. [Information Collection.]

(a) The [commission] shall study and collect information on the:

(1) Effectiveness of this act in:

(i) Protecting children from lead poisoning; and

(ii) Lessening risks to responsible owners;

(2) Effectiveness of the treatments specified in Section 13 and Section 17 of this act, including recommendations for changes to those treatments:

(3) Availability of third-party bodily injury liability insurance and premises liability insurance for affected property, including waivers of lead hazard exclusion and coverage for qualified offers made under Sections 23 through Section 39 of this act.

(4) Ability of state and local officials to respond to lead poisoning cases;

(5) Availability of affordable housing;

(6) Adequacy of the qualified offer caps; and

(7) Need to expand the scope of this act to other property serving persons at risk, including child care centers, family day care homes, and preschool facilities.

(b) The [commission] may appoint a subcommittee or subcommittees to study the following subjects relating to lead and lead poisoning:

(1) Medical referral;
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(2) Regulation and compliance;
(3) Worker education;
(4) Social services;
(5) Educational services;
(6) Legal aspects;
(7) Employer services;
(8) Abatement of lead sources;
(9) Financial subsidies and other encouragement and support for the abatement of the causes of lead poisoning;
(10) Laboratory services; and
(11) Other subjects that the [commission] considers necessary.

(c) The [commission] shall review the implementation and operation of this act and, on or before [date] of each year, starting in [year], submit a report to the [governor] and, subject to [insert appropriate state citation], the [general assembly] on the results of the review, and the [commission's] recommendations concerning this act, other lead poisoning issues, and the need for further action that the [commission] determines to be necessary.

(d) The [department] shall consult with the [commission] on establishing the optional lead-contaminated dust-testing standards under Section 14 of this act and in developing regulations to implement this act.

Section 10. [Registration of Affected Property.]

(a)(1) On or before [date], the owner of an affected property shall register the affected property with the [department].

(2) Notwithstanding Section 10 (a)(1), an owner of affected property for which an election is made under Section 4 (a) of this act shall register at the time of the election.

(b) The owner shall register each affected property using forms prepared by the [department], including the following information:

(1) The name and address of the owner;
(2) The address of the affected property;
(3) If applicable, the name and address of each property manager employed by the owner to manage the affected property;
(4) The name and address of each insurance company providing property insurance or lead hazard coverage for the affected property, together with the policy numbers of that insurance or coverage;
(5) The name and address of a resident agent, other agent of the owner, or contact person in the state with respect to the affected property;
(6) Whether the affected property was built before [year] or after [year];
(7) The date of the latest change in occupancy of the affected property;
(8) The dates and nature of treatments performed to attain or maintain a risk reduction standard under Sections 13 or 17 of this act; and
(9) The latest date, if any, on which the affected property has been certified to be in compliance with the provisions of Section 13 of this act.
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(c)(1) Subject to the provision of Section 10 (c)(2), the information provided by an owner under Section 10 (b) shall be open to the public.

(2)(i) Except as provided in Section 10 (c)(2)(ii), the [department] may not disclose an inventory or list of properties owned by an owner.

(ii) The [department] shall, upon request, disclose whether the owner has met the percentage of inventory requirements under Section 15 of this act.

Section 11. [Registration Renewal.]
(a) An owner who has registered an affected property under Section 10 of this act shall:
   (1) Renew the registration of the affected property on or before [date] of each year; and
   (2) Update the information contained in the owner’s registration required by Section 10 (b)(5) of this act within [thirty (30)] days after any change in the information required in the registration.
(b) An owner who first acquires affected property after [date] shall register the affected property under Section 10 of this act within [thirty (30)] days after the acquisition.

Section 12. [Failure to Register.]
(a) An owner who fails to register an affected property under Section 10 of this act, or who fails to renew the registration of an affected property under Section 11 of this act, is not in compliance with respect to that affected property with the provisions of this act for purposes of Section 33 of this act.
(b) A person who willfully and knowingly falsifies information filed in a registration or renewal under Sections 10 through 12 of this act is guilty of a misdemeanor and on conviction is subject to a fine not exceeding [one thousand (1,000)] dollars.

Section 13. [Risk Reduction Standard for Affected Property.]
(a) No later than the first change in occupancy in an affected property that occurs on or after [date], before the next tenant occupies the property, an owner of an affected property shall initially satisfy the risk reduction standard established under this act by:
   (1) Passing the test for lead-contaminated dust under Section 14 of this act; or
   (2) Performing the following lead hazard reduction treatments:
      (i) A visual review of all exterior and interior painted surfaces;
      (ii) The removal and repainting of chipping, peeling, or flaking paint on exterior and interior painted surfaces;
      (iii) The repair of any structural defect that is causing the paint to chip, peel, or flake that the owner of the affected property has knowledge of
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or, with the exercise of reasonable care, should have knowledge of;

(iv) Stripping and repainting, replacing, or encapsulating all interior window sills with vinyl, metal, or any other material in a manner and under conditions approved by the [department].

(v) Ensure that caps of vinyl, aluminum, or any other material in a manner and under conditions approved by the [department], are installed in all window wells in order to make the window wells smooth and cleanable;

(vi) Except for a treated or replacement window that is free of lead-based paint on its friction surfaces, fixing the top sash of all windows in place in order to eliminate the friction caused by movement of the top sash;

(vii) Rehanging all doors necessary in order to prevent the rubbing together of a lead-painted surface with another surface;

(viii) Making all bare floors smooth and cleanable;

(ix) Ensure that all kitchen and bathroom floors are overlaid with a smooth, water-resistant covering; and

(x) HEPA-vacuuming and washing of the interior of the affected property with high phosphate detergent or its equivalent, as determined by the [department].

(b) At each change in occupancy thereafter, before the next tenant occupies the property, the owner of an affected property shall satisfy the risk reduction standard established under this act by:

(1) Passing the test for lead-contaminated dust under Section 14; or

(2)(i) Repeating the lead hazard reduction treatments specified in Section 13 (a)(2)(i), (ii), (iii), and (x); and

(ii) Ensuring that the lead hazard reduction treatments specified in Section 13 (a)(2)(iv), (v), (vi), (vii), (viii), and (ix) are still in effect.

(c) Except for affected properties that pass a test for lead-contaminated dust under Section 14 of this act, at each change in occupancy, an owner of an affected property shall have the property inspected to verify that the risk reduction standard specified in this section has been satisfied.

(d)(1) Exterior work required to satisfy the risk reduction standard may be delayed, pursuant to a waiver approved by the appropriate person under Section 13 (d)(2), during any time period in which exterior work is not required to be performed under an applicable local housing code or, if no such time period is specified, during the period from [date], inclusive.

(2) A waiver under Section 13 (d)(1) may be approved by the [code official for enforcement] of the [housing code] or [minimum livability code of the local jurisdiction], or if there is no such official, the [department of housing and community development].

(3) Notwithstanding the terms of the waiver, all work delayed in accordance with Section 13 (d)(1) shall be completed within [thirty (30)] days after the end of the applicable time period.

(4) Any delay allowed under Section 13 (d)(1) may not affect the obliga-
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58 tion of the owner to complete all other components of the risk reduction
59 standard and to have those components inspected and verified.
60 (5) If the owner has complied with the requirements of Section 13 (d)(4),
61 the owner may rent the affected property during any period of delay al-
62 lowed under Section 13 (d)(1).
63 (e) On request of a local jurisdiction, the [secretary] may designate the
64 [code official for enforcement] of the [housing code] or [minimum livability
65 code for the local jurisdiction], or an appropriate [employee of the local ju-
66 risdiction], to conduct inspections under this act.

Section 14. [Lead-Contaminated Dust Testing.] The [department] shall
1 establish procedures and standards for the optional lead-contaminated dust
2 testing by regulation.

Section 15. [Percentages and Liability.]
1 (a)(1) On and after [date], an owner of affected properties shall ensure
2 that at least 50 percent of the owner’s affected properties have satisfied the
3 risk reduction standard specified in Section 13 of this act, without regard
4 to the number of affected properties in which there has been a change in
5 occupancy.
6 (2)(i) Notwithstanding any other remedy that may be available, an owner
7 who fails to meet the requirements of Section 15 (b)(1) and 15 (c) shall lose
8 the liability protection under Section 33 of this act for any alleged injury or
9 loss caused by the ingestion of lead by a person at risk that is first docu-
10 mented by a test for EBL of 20 UG/DL or more on or after [date], in any of
11 the owner’s units that have not satisfied the risk reduction standard spe-
12 cified in Section 13 (a) of this act and the inspection requirement of Section
13 15 (c).
14 (ii) The liability protection under Section 33 of this act shall be rein-
15 stated for any alleged injury or loss caused by the ingestion of lead by a
16 person at risk that is first documented by a test for EBL of 20 UG/DL or
17 more on or after the date that the owner meets the requirements of Sec-
18 tions 15 (b)(1) and 15 (c).
19 (b)(1) On and after [date] an owner of affected properties shall ensure
20 that 100 percent of the owner’s affected properties in which a person at risk
21 resides, and of whom the owner has been notified in writing, have satisfied
22 the risk reduction standard specified in Section 13 (a) of this act.
23 (2)(i) Notwithstanding any other remedy that may be available, an owner
24 who fails to meet the requirements of Section 15 (b)(1) and 15 (c), or of
25 Section 17 of this act shall lose the liability protection under Section 33 of
26 this act for any alleged injury or loss caused by the ingestion of lead by a
27 person at risk that is first documented by a test for EBL of 20 UG/DL or
28 more on or after [date] in any of the owner’s units that have not satisfied
29 the risk reduction standard specified in Section 13 (a) of this act. The in-
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inspection requirement of Section 15 (c), or the modified risk reduction standard specified in Section 17 (a) of this act, as applicable.

(ii) The liability protection under Section 33 of this act shall be reinstated for any alleged injury or loss caused by the ingestion of lead that is first documented by a test for EBL of 20 UG/DL or more after the date that the owner meets the requirements of Section 15 (b)(1) and 15 (c) and the requirements of Section 17 (f) of this act.

(iii) The provisions of this paragraph do not apply if the owner proves that the noncompliance results from:

(A) A tenant's lack of cooperation with the owner's compliance efforts; or

(B) Legal action affecting access to the unit.

(3) Notice given under Section 15 (b)(1) shall be sent by:

(i) certified mail, return receipt requested; or

(ii) A verifiable method approved by the [department].

(c) On each occasion that an affected property which has not undergone a change in occupancy is treated to satisfy the requirements of this section, the owner of the affected property shall have the property inspected to verify that the risk reduction standard specified in Section 13 (a) has been satisfied.

(d) The owner of an affected property shall be responsible for the cost of any temporary relocation of the tenants of the affected property that is necessary to fulfill the requirements of this section.

Section 16. [Inspections.]

(a) Any person performing lead-contaminated dust testing or conducting inspections required by this act:

(1) Shall be accredited by the [department];

(2) May not be a related party to the owner; and

(3) Shall submit a verified report of the result of the lead-contaminated dust testing or visual inspection to the [department], the owner, and the tenant, if any, of the affected property.

(b) A report submitted to the [department] under Section 16 (a) that certifies compliance for an affected property with the risk reduction standard shall be conclusive proof that the owner is in compliance with the risk reduction standard for the affected property during the period for which the certification is effective, unless there is:

(1) Proof of actual fraud as to that affected property;

(2) Proof that the work performed in the affected property was not performed by or under the supervision of personnel accredited under [insert appropriate state citation]; or

(3) Proof that the owner failed to respond to a complaint regarding the affected property as required by Section 17 of this act.
Section 17. [Treatment.]

(a) The modified risk reduction standard shall consist of performing the following lead hazard reduction treatments:

1. A visual review of all exterior and interior painted surfaces;
2. The removal and repainting of chipping, peeling, or flaking paint on exterior and interior painted surfaces;
3. The repair of any structural defect that is causing the paint to chip, peel or flake that the owner of the affected property has knowledge of or, with the exercise of reasonable care, should have knowledge of;
4. Stripping and repainting, replacing, or encapsulating all interior window sills with vinyl, metal, or any other material in a manner and under conditions approved by the [department];
5. Ensure that caps of vinyl, aluminum, or any other material in a manner and under conditions approved by the [department], are installed in all window wells in order to make the window wells smooth and cleanable;
6. Except for a treated or replacement window that is free of lead-based paint on its friction surfaces, fixing the top sash of all windows in place in order to eliminate the friction caused by the movement of the top sash;
7. Rehanging all doors in order to prevent the rubbing together of a lead-painted surface with another surface;
8. Ensure that all kitchen and bathroom floors are overlaid with a smooth, water-resistant covering; and
9. HEPA-vacuuming and washing with high phosphate detergent or its equivalent, as determined by the [department], any area of the affected property where repairs were made.

(b)(1) A tenant of an affected property may notify the owner of the affected property of a defect in the affected property under this section in accordance with Section 17 (b).

(2) Notice of a defect under this section shall consist of:

(i) If the modified risk reduction standard has not been satisfied for the affected property, the presence of chipping, peeling, or flaking paint on the interior or exterior surfaces of the affected property or of a structural defect causing chipping, peeling, or flaking paint in the affected property; or

(ii) If the modified risk reduction standard has been satisfied for the affected property, a defect relating to the modified risk reduction standard.

(c)(1) After [date], an owner of an affected property shall satisfy the modified risk reduction standard:

(i) Within [thirty (30)] days after receipt of written notice that a person at risk who resides in the property has an elevated blood lead level greater than or equal to 15 UG/DL; or

(ii) Except as provided in Section 17 (c)(2), within [thirty (30)] days after receipt of written notice from the tenant, or from any other source, of:
(A) A defect; and
(B) The existence of a person at risk in the affected property.

(2) After [date], and before [date], an owner of a number of affected
properties shall satisfy the modified risk reduction standard within the
specified period after receipt of written notice from the tenant, or from any
other source, of a defect in accordance with the following schedule:
(i) For an owner of [three hundred (300)] or fewer affected properties,
within [thirty (30)] days; and
(ii) For an owner of more than [three hundred (300)] affected proper-
ties:
(A) If the owner has received notice from the tenant, or from any
other source, of the existence of a person at risk in the affected property,
within [sixty (60)] days; or
(B) If the owner has not received notice from the tenant, or from any
other source, of the existence of a person at risk in the affected property,
within [ninety (90)] days.

(d) After [date], an owner of an affected property shall satisfy the modi-
fied risk reduction standard within [thirty (30)] days after receipt of writ-
ten notice from the tenant, or from any other source, of a defect.

(e) Except as provided in Section 15 (b) of this act, on and after [date] an
owner of affected properties shall ensure that 100 percent of the owner’s
affected properties in which a person at risk does not reside have satisfied
the modified risk reduction standard.

(f)(1) An owner of an affected property shall verify satisfaction of the modi-
fied risk reduction standard by submitting a statement of the work per-
formed on the property, verified by the tenant and an accredited supervisor
or contractor, to the [department] on or before the [tenth (10th)] day of the
month following the month in which the work was completed.
(2)(i) If the tenant fails or refuses to verify the statement of work per-
formed on the affected property, the owner shall within [five (5)] business
days of the failure or refusal, contact an inspector accredited under Section
16 (a) of this act to inspect the affected property.
(ii) The inspector’s report shall either certify that the work required
to be performed under this section was satisfactorily completed or specify
precisely what additional work is required.
(iii) If additional work is required:
(A) The owner shall have [twenty (20)] days after receipt of the
inspector’s report in which to perform the work, subject to a weather delay
under the provisions of Section 17 (j) and;
(B) The inspector shall reinspect the affected property after the ad-
ditional work is completed and:
(1) Issue a report certifying that the work is complete; and
(2) Mail a copy of the report to the tenant, the owner, and the [de-
partment] within [ten (10)] days after the inspection or reinspection.
In lieu of satisfying the modified risk reduction standard, the owner of an affected property may elect to pass the test for lead-contaminated dust under Section 14 of this act.

Notice given under this section shall be written, and shall be sent by:

1. Certified mail, return receipt requested; or
2. A verifiable method approved by the department.

The department may, by regulation, eliminate any treatment from the modified risk reduction standard if the department finds that performing the treatment in an occupied property is harmful to public health.

Exterior work requested to satisfy the modified risk reduction standard may be delayed, pursuant to a waiver approved by the appropriate person under Section 17 (j)(2), during any time period in which exterior work is not required to be performed under an applicable local housing code or, if no such time period is specified, during the period from [dates], inclusive.

A waiver under Section 17 (j)(1) may be approved by the code official for enforcement of the housing code or minimum livability code of the local jurisdiction, or, if there is no such official, the department of housing and community development.

Notwithstanding the terms of the waiver, all work delayed in accordance with Section 17 (j)(1) shall be completed within [thirty (30)] days after the end of the applicable time period.

Any delay allowed under Section 17 (j)(1) may not affect the obligation of the owner to complete all other components of the risk reduction standard and to have those components inspected and verified.

The statement verified by the owner and the tenant of work performed on the affected property in accordance with Section 17 (f)(1) or the final report of the inspector verifying that work was performed on the affected property in accordance with Section 17 (f)(2) of this section, shall create a rebuttable presumption that may be overcome by clear and convincing evidence that the owner is in compliance with the modified risk reduction standard for the affected property unless there is:

1. Proof of actual fraud as to that affected property; or
2. Proof that the work performed on the affected property was not performed by or under the supervision of personnel accredited under [insert appropriate state citation].

The statement verified by the owner and the tenant of work performed on the affected property in accordance with Section 17 (f)(1) shall contain a statement:

1. Describing the modified risk reduction standard required under this act;
2. That execution of this statement by the tenant can affect the tenant's legal rights; and
3. That if the tenant is not satisfied that the modified risk reduction
standard has been met, the tenant should not execute the statement and
should inform the owner and that the owner will have the affected property
inspected by a certified inspector at the owner’s expense.

Section 18. [Notice]
(a) Except as provided in Section 18 (b), an owner of an affected property
shall give to the tenant of the affected property a notice, prepared by the
[department], of the tenant’s rights under Sections 15 and 17, of this act,
according to the following schedule:
(1) At least 25 percent of the owner’s affected properties by [date].
(2) At least 50 percent of the owner’s affected properties by [date];
(3) At least 75 percent of the owner’s affected properties by [date]; and
(4) One hundred percent of the owner’s affected properties by [date].
(b) An owner of an affected property shall give to the tenant of the af-
fected property a notice prepared by the [department] of the tenant’s rights
under Section 15 and 16 of this act upon the execution of a lease or the
inception of a tenancy.
(c) An owner of an affected property shall give to the tenant of the affected
property a notice prepared by the [department] of the tenant’s rights under
Sections 15 and 17 of this act at least every [two (2)] years after last giving
the notice to the tenant.
(d)(1) Notice given under this section shall be written, and shall be sent
by:
(i) Certified mail, return receipt requested; or
(ii) A verifiable method approved by the [department].
(2) When giving notice to a tenant under this section, the owner shall
provide documentation of the notice to the [department] in a manner ac-
ceptable to the [department].
(3) A notice required to be given to a tenant under this section shall be
sent to a party or parties identified as the lessee in a written lease in effect
for an affected property or, if there is no written lease, the party or parties
to whom the property was rented.

Section 19. [Access.]
(a)(1) Whenever an owner of an affected property intends to make repairs
or perform maintenance work that will disturb the paint on interior sur-
faces of an affected property, the owner shall make reasonable efforts to
ensure that all persons who are not persons at risk are not present in the
area where work is performed and that all persons at risk are removed
from the affected property when the work is performed.
(2) A tenant shall allow access to an affected property, at reasonable
times, to the owner to perform any work required under this act.
(3) If a tenant must vacate an affected property for a period of [twenty-
four (24)] hours or more in order to allow an owner to perform work that
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will disturb the paint on interior surfaces, the owner shall pay the reasonable expenses that the tenant incurs directly related to the required relocation.

(b)(1) If an owner has made all reasonable efforts to cause the tenant to temporarily vacate an affected property in order to perform work that will disturb the paint on interior surfaces, and the tenant refuses to vacate the affected property, the owner may not be liable for any damages arising from the tenant’s refusal to vacate.

(2) If an owner has made all reasonable efforts to gain access to an affected property in order to perform any work required under this act, and the tenant refuses to allow access, even after receiving reasonable advance notice of the need for access, the owner may not be liable for any damages arising from the tenant’s refusal to allow access.

(c) All hazard reduction treatments required to be performed under this act shall be performed by or under the supervision of personnel accredited under [insert appropriate state citation].

Section 20. [Conflicting State or Local Laws.]
(a) The provision of this act do not affect:

(1) The duties and obligations of an owner of an affected property to repair or maintain the affected property as required under any applicable state or local law or regulation; or

(2) The authority of a state or local agency to enforce applicable housing or livability codes or to order lead abatements in accordance with any applicable state or local law or regulation.

(b)(1) Notwithstanding Section 4 of this act, following an environmental investigation in response to a report of a lead-poisoned person at risk, a local jurisdiction may order an abatement, as defined in [insert appropriate state citation] of this act, in any residential property.

(2) No provision of this act may be construed to limit the treatments which may be encompassed by an order to abate lead hazards.

(c) Whenever there is a conflict between the requirements of an abatement order issued by a state or local agency to an owner of an affected property and the provisions of this act, the more stringent provisions of this act and of the abatement order shall be controlling in determining the owner’s obligations regarding the necessary lead hazard reduction treatments that shall be performed in the affected property that is subject to the abatement order.

Section 21. [Information Packet.]
(a) By [date], an owner of an affected property shall give to the tenant of each of the owner’s affected properties a lead poisoning information packet prepared or designated by the [department].

(b) On or after [date] upon the execution of a lease or the inception of a
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6  tenancy for an affected property, the owner of the affected property shall
give to the tenant a lead poisoning information packet prepared or design-
nated by the [department].

9  (c) An owner of an affected property shall give to the tenant of the affected
property another copy of the lead poisoning information packet prepared or
designated by the [department] at least every [two (2)] years after last giv-
ing the information packet to the tenant.

13  (d) A packet given to a tenant under this section shall be sent by:

14     (1) Certified mail, return receipt requested; or

15     (2) A verifiable method approved by the [department].

16  (e) The packet required to be given to a tenant under this section shall be
sent to a party or parties identified as the lessee in a written lease in effect
for an affected property or, if there is no written lease, the party or parties
to whom the property was rented.

Section 22. [Disclosure.] An owner shall disclose an obligation to perform
either the modified or full risk reduction treatment to an affected property
under this act to any prospective purchaser of an affected property at or
prior to the time a contract of sale is executed, if:

(1) An event has occurred that requires performance of either the modi-

fied or full risk reduction treatment to the affected property under this act;

and

(2) The owner will not perform the required treatment prior to the trans-
fer of ownership.

Section 23. [Qualified offer.] In Sections 23 through 39 the following words
have the meanings indicated:

(1) “Action” includes a complaint, counterclaim, cross-claim, or third-

party complaint.

(2) “Co-offer” means a qualified offer which is made by or on behalf of

more than one person as provided under Sections 23 through 39 of this act.

(3) “Offeror” means a person including an insurer or other agent who

makes a qualified offer under Sections 23 through 39 of this act.

Section 24. [Liability.] Sections 23 through 39 of this act apply to all
potential bases of liability for alleged injury or loss to a person caused by
the ingestion of lead by a person at risk in an affected property.

Section 25. [Blood levels.] (a) This section applies to an owner of an affected property who has, with
respect to the affected property, complied with the applicable requirements
of Sections 10, 11, 13, 15 and 17 of this act, and has sent to the tenant the
notices required by Sections 18 and 21 of this act.

(b) A person may not bring an action against an owner of an affected
property for damages arising from alleged injury or loss to a person at risk caused by the ingestion of lead by a person at risk that is first documented by a test for EBL of 25 UG/DL or more performed on or after [date] or 20 UG/DL or more performed on or after [date] unless the owner has been given:

(1) Written notice from any person that the elevated blood level of a person at risk is:
   (i) Greater than or equal to 25 UG/DL as first documented by a test for EBL performed on or after [date]; or
   (ii) On or after [date], an EBL greater than or equal to 20 UG/DL as first documented by a test for EBL performed on or after [date]; and

(2) An opportunity to make a qualified offer under Section 28 of this act.

Section 26. [Testing.]
(a) A person who receives notice under Section 25 (b)(1) of this act is entitled to the results of any available prior blood lead tests of the person at risk for the purpose of determining whether to make a qualified offer under this act and whether the qualified offer should be designated as a co-offer.
(b) In the event a local [health department] notifies an owner of an affected property in accordance with Section 25 (b)(1) of this act, the local [health department] shall also provide the owner with any blood lead test results and history of residence for the person at risk which the local [health department] has on record.

Section 27. [Lead Concentration.] If the concentration of lead in a whole venous blood sample of a person at risk tested within [thirty (30)] days after the person at risk begins residence or to regularly spend at least [twenty-four (24)] hours per week in an affected property that is certified as being in compliance with Section 13 of this act is greater than or equal to 25 UG/DL, or, on and after [date], greater than or equal to 20 UG/DL, it shall be presumed that the ingestion of lead occurred before a person at risk began residing or regularly spending at least [twenty-four (24)] hours per week in the affected property.

Section 28. [Qualified Offer.]
(a) A qualified offer may be made to a person at risk under Sections 23 through 39 of this act by:
   (1) The owner of the affected property in which the person at risk resides or regularly spends at least [twenty-four (24)] hours a week;
   (2) An insurer of the owner; or
   (3) An agent of the owner.
(b) Upon notice to a third party, an offeror may designate the third party as a co-offer.
(c) If a qualified offer is made under Section 28 (a), the qualified offer
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shall:

(1) Be made within [thirty (30)] days after the offeror receives notice under Section 25 of this act.

(2) Include the provision specified in Section 36 of this act; and

(3) Satisfy the requirements of Section 29 (a) of this act.

Section 29. [Notice]

(a) An offeror under Section 28 of this act shall send notice of the qualified offer to the person at risk, or, in the case of a minor, the parent or legal guardian of the minor in the form and manner specified by the [department].

(b)(1) An offeror under Section 28 of this act shall send a copy of the qualified offer to the local [health department] in the jurisdiction where the person at risk resides.

(2) Within [five (5)] business days after receiving the copy of the qualified offer under Section 29 (b)(1), the local [health department] shall personally notify the person at risk, or in the case of a minor, the parent or legal guardian of the minor of state and local resources available for lead poisoning prevention and treatment.

(3) The local [health department] shall maintain a copy of the qualified offer in the case management file of the person at risk.

Section 30. [Minors]

(a) For purposes of this section, a parent or legal guardian of a person at risk who is a minor is unavailable if, following reasonable efforts, the offeror is unable to locate or communicate with the parent or guardian of the minor.

(b)(1) If a parent or legal guardian of the minor is unavailable, the offeror may:

(i) Petition a court in accordance with the provisions of [insert appropriate state citation] to appoint a person to respond to the offer on behalf of the minor, and

(ii) File the qualified offer with the court.

(2) The court shall appoint a person to act on behalf of the minor within [fifteen (15)] days after the date of filing of the petition.

(3) A person appointed to act on behalf of the minor shall file a response with the court either rejecting or accepting the qualified offer within [thirty (30)] days after appointment by the court.

(4) The response of the person appointed to respond to the offer on behalf of the minor is subject to approval by the court.

(c) Within [fifteen (15)] days after a response to a qualified offer is filed with a court under Section 30 (b)(3), the court:

(1) May hold a hearing; and

(2) Shall approve or disapprove the response to the qualified offer.
(d) If a court disapproves the response to the qualified offer filed by the person acting on behalf of the minor, the court may order:

(1) That an additional response be filed on behalf of the minor; or
(2) Any action the court considers necessary and appropriate to protect the interests of the minor.

(e) If the court approves a response accepting a qualified offer on behalf of the minor, the order of the court shall designate one or more persons who shall be responsible for and authorized to make all decisions on behalf of the minor necessary to implement the qualified offer.

Section 31. [Acceptance]
(a) A person at risk, or a parent or legal guardian of a minor who is a person at risk, may accept or reject a qualified offer made under Sections 23 through 39 of this act as provided in this section.

(b) Subject to the provisions of Section 30 of this act, a person at risk, or a parent or legal guardian of a minor who is a person at risk, may accept a qualified offer within [thirty (30)] days after receipt of the qualified offer unless the parties agree otherwise.

(c) Subject to the provisions of Section 30 of this act and unless the parties agree otherwise, an offer which is not accepted within [thirty (30)] days following receipt shall be deemed to have been rejected.

Section 32. [Release from Liability.] Acceptance of a qualified offer by a person at risk or by a parent, legal guardian, or other person authorized under Section 30 of this act to respond on behalf of a person discharges and releases all potential liability of the offeror, the offeror’s insured or principal, and any participating co-offeror to the person at risk and to the parent or legal guardian of the person at risk for alleged injury or loss caused by the ingestion of lead by the person at risk in the affected property.

Section 33. [Rejection of Qualified Offer.] An owner of an affected property is not liable, for alleged injury or loss caused by ingestion of lead by a person at risk in the affected property, to a person at risk or a parent, legal guardian, or other person authorized under Section 30 of this act to respond on behalf of a person at risk who rejects a qualified offer made by the owner or the owner’s insurer or agent if, during the period of the alleged ingestion of lead by the person at risk, and with respect to the affected property in which the exposure allegedly occurred, the owner:

(1) Has given to the tenant the notices required by Sections 18 and 21 of this act; and
(2) Was in compliance with:
   (i) The registration provisions of Sections 10 through 12 of this act; and
   (ii) The applicable risk reduction standard and response standard under.
Section 13 or 17 of this act, and the risk reduction schedule under Section 15 of this act.

Section 34. [Offer of Compromise.] A qualified offer shall be treated as an offer of compromise for purposes of admissibility in evidence, notwithstanding that the amount is not in controversy.

Section 35. [Reasonable Care.]
(a) An owner of an affected property that is not in compliance with the provisions of Sections 13 through 22 of this act during the period of residency of the person at risk is presumed to have failed to exercise reasonable care with respect to lead hazards during that period in an action seeking damages for alleged injury or loss caused by the ingestion of lead by a person at risk in the affected property.
(b) The owner has the burden of rebutting the presumption established under Section 35 (a) by a preponderance of the evidence.

Section 36. [Reasonable Expenses.]
(a) Whenever a qualified offer is made under Sections 23 through 39 of this act, the qualified offer shall include payment for reasonable expenses and costs up to the amount specified in Section 37 of this act for:
   (1) The relocation of the household of the person at risk to lead-safe housing of comparable size and quality that may provide:
      (i) The permanent relocation of the household of the affected person at risk to lead-safe housing, including relocation expenses, a rent subsidy, and incidental expenses; or
      (ii) The temporary relocation of the household of the affected person at risk to lead-safe housing while necessary lead hazard reduction treatments are being performed in the affected property to make that affected property lead-safe; and
   (2) Medically necessary treatment for the affected person at risk as determined by the treating physician or other health care provider or case manager of the person at risk that is necessary to mitigate the effects of lead poisoning, as defined by the [department] by regulation, and, in the case of a child, until the child reaches the age of [eighteen (18)] years.
(b) An offeror is required to pay reasonable expenses for the medically necessary treatments under Section 36 (a)(2) if coverage for these treatments is not otherwise provided by [insert appropriate state citation] or by a third-party health insurance plan under which the person at risk has coverage or in which the person at risk is enrolled.
(c) A qualified offer shall include a certification by the owner of the affected property, under the penalties of perjury, that the owner has complied with the applicable provisions of Sections 10 through 22 of this act in a manner that qualifies the owner to make a qualified offer under this sec-
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(d) The [department] may adopt regulations that are necessary to carry out the provisions of this section.

Section 37. [Qualified Offer Caps.]
(a) The amounts payable under a qualified offer made under Sections 23 through 39 of this act are subject to the following aggregate maximum caps:
(1) [seven thousand, five hundred (7,500)] dollars for all medically necessary treatments as provided and limited in Section 36 (a) and (b) of this act and
(2) [nine thousand, five hundred (9,500)] dollars for relocation benefits which shall include:
   (i) Relocation expenses;
   (ii) A rent subsidy, up to 150 percent of the rent each month, for the period until the person at risk reaches the age of [six (6)] years or in the case of a pregnant woman, until the child born as a result of that pregnancy reaches the age of [six (6)] years; and
   (iii) Incidental expenses which may be incurred by the household, such as transportation and child care expenses.
(b) All payment under a qualified offer specified in Section 37 (a) shall be paid to the provider of the service, except that payment of incidental expenses as provided by Section 37 (a)(2)(iii) may be paid directly to the person at risk, or in the case of a child, to the parent or legal guardian of the person at risk.
(c) The payments under a qualified offer may not be considered income or an asset of the person at risk, the parent of a person at risk who is a child, the legal guardian, or a person who accepts the offer on behalf of a person at risk who is a child under Section 30 of this act for the purposes of determining eligibility for any state entitlement program.

Section 38. [Payments.]
(a) Payments under a qualified offer for temporary relocation shall include:
(1) Transportation expenses;
(2) The rent or per diem cost of temporary lead-safe housing;
(3) Meal expenses, if the temporary lead-safe housing does not contain meal preparation facilities; and
(4) The cost of moving, hauling, or storing furniture or other personal belongings.
(b) The household of the person at risk may not reoccupy the affected property until the property has been certified as lead-safe.

Section 39. [Failure to Comply.]
(a) An offeror who fails to comply with the terms of a qualified offer, or
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who falsely certifies compliance under Section 36 (c) of this act shall be
deemed to be out of compliance with the provisions of Sections 13 through
22 of this act with respect to the person who is the subject of the qualified
offer for purposes of Section 33 of this act.

(b) The statute of limitations shall be tolled until the failure to comply
under Section 39 (a) is discovered.

Section 40. [Fees.]

(a)(1) Except as provided in Section 40 (a) and Section 40 (b), and in coop-
eration with the [department of housing and community development], the
[state department of assessments and taxation] and other appropriate gov-
ernmental units, the [department] shall provide for the collection of an
annual fee for every rental dwelling unit in the state.

(2) The annual fee for an affected property is [ten (10)] dollars.

(3)(i) Subject to the provisions of Section 40 (a)(3)(ii) and Section 40
(a)(3)(iii), on or before [date] the annual fee for a rental dwelling unit built
after [year] that is not an affected property is [five (5)] dollars. After [date],
there is no annual fee for a rental dwelling unit build after [year] that is not
affected property.

(ii) The owner of a rental dwelling unit built after [year] that is not an
affected property may not be required to pay the fee provided under this
paragraph if the owner certifies to the [department] that the rental dwell-
ing unit is lead free pursuant to Section 5 of this act.

(iii) An owner of a rental dwelling unit who submits a report to the
[department] that the rental dwelling unit is lead free pursuant to Section
5 of this act shall include a [five (5)] dollar processing fee with the report.

(b) The fees imposed under this section do not apply to any rental dwell-
ing unit:

(1) Built after [year]; or

(2) Owned and operated by a unit of federal, state, or local government,or
any public, quasi-public, or municipal corporation.

(c) The fee imposed under this section shall be paid on or before [date] or
the date of registration of the affected property under Sections 10 through
12 of this act, whichever is earlier, and on or before [date] of each year
thereafter.

(d) An owner who fails to pay the fee imposed under this section is liable
for a civil penalty of up to triple the amount of each registration fee unpaid
that, together with all costs of collection, including reasonable attorney's
fees, shall be collected in a civil action in any court of competent jurisdic-
tion.

Section 41. [Lead Poisoning Prevention Fund.]

(a) There is a [lead poisoning prevention fund] in the [department].

(b) The [fund] consists of:
(1) All fees collected and penalties imposed under this act; and
(2) Moneys received by grant, donation, appropriation, or from any other source.
(c) The [department] shall use the [fund] to cover the costs of fulfilling the duties and responsibilities of the [department] and the [commission] under this act, and for program development of these activities.
(d)(1) The [fund] is a continuing, nonlapsing special fund, and is not subject to [insert appropriate state citation].
(2) The [state treasurer] shall hold and the [state comptroller] shall account for the [fund].
(3) The [fund] shall be invested and reinvested and any investment earnings shall be paid into the [fund].

Section 42. [Data Base.]
(a) The [department] shall establish and maintain a statewide data base which tracks the status of affected property.
(b)(1) Except as provided in Section 42 (b)(2), the [department] may, by regulation, require owners of affected property to provide information that the [department] considers necessary for the data base.
(2) The [department] may not require the owner to provide:
(i) Information more frequently than annually;
(ii) The identities of persons or entities having an ownership interest in an owner of an affected property who are not otherwise owners of the affected property; and
(iii) Any financial information regarding an affected property or the owner of an affected property, other than data on any costs that an owner has incurred with respect to an affected property in order to comply with Sections 13 through 22 of this act.
(c) The data base shall be used to implement the provisions of this act.
(d)(1) An owner who uses a standard lease form may only be required to submit one copy of that form and any alterations to, or variations from, that form.
(2) The [department] may, by regulation, designate or define minor alterations and variations to standard lease forms that do not require separate submittal.
(e)(1) Subject to the provisions of Section 42 (e)(2) the information provided by the owner under this section shall be open to the public.
(2)(i) Except as provided in Section 42 (e)(2)(ii), the [department] may not disclose:
(1) An inventory or list of properties owned by an owner; or
(2) The costs that an owner has incurred with respect to an affected property in order to comply with Sections 13 through 22 of this act. If the information is identified to:
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(A) A specific owner; or
(B) A specific affected property or group of affected properties owned by the same owner.

(ii) The [department] shall, upon request, disclose whether the owner has met the percentage of inventory requirements under Section 15 of this act.

Section 43. [Miscellaneous.]
(a) A local [health department] that receives the results of a blood lead test under [insert appropriate state citation] indicating that a person at risk has an EBL greater than or equal to 15 UG/DL shall notify:
   (1) The person at risk, or in the case of a minor, the parent of the person at risk, of the results of the test; and
   (2) The owner of the affected property in which the person a risk resides or regularly spends at least [twenty-four (24)] hours per week of the results of the test.
(b) The notices to be provided to the parent or owner under Section 43 (a) shall be on the forms prepared by the [department] and shall contain any information required by the [department].

Section 44. [Disclosure of blood tests.]
(a)(1) An owner who receives the blood lead test results of a person at risk under this act may not disclose those results to another person except:
      (i) The insurer of the owner;
      (ii) A medical doctor or other health professional with whom the owner consults; or
      (iii) An attorney of the owner or any person specified in Section 44 (a)(1) or Section 44 (a)(1)(ii).
(2) A person who receives blood lead test results from an owner under Section 44 (a)(1) may not disclose those results to any person not specified in Section 44 (a)(1).
(b) A person who in good faith discloses or does not disclose the results of a blood lead test to an owner under this part is not liable under any cause of action arising from the disclosure or nondisclosure of the test results.
(c) A person who violates the provisions of this section is subject to the penalties provided in [insert appropriate state citation].

Section 45. [Community Outreach.] The [department] shall:
(1) Develop and establish community outreach programs to high lead-risk areas, which may be implemented by the [department, local governments, or community groups]; and
(2) Assist local governments to provide case management services, if necessary, to persons at risk with elevated blood lead.
Section 46. [Administrative Penalties.]

(a)(1) The [department] shall impose an administrative penalty on an owner who fails to register an affected property by [date] or within the time period specified in Section 10 (a)(2) or Section 11 (b) of this act or fails to renew or update a registration as provided under Section 11 (a) of this act. The administrative penalty imposed shall be [ten (10)] dollars per day, calculated from the date compliance is required, for each affected property which is not registered or for which registration is not renewed or updated.

(2) The [department] may waive an administrative penalty under this section upon a showing of hardship.

(b) An owner who fails to renew or update a registration as required under Section 11 of this act within [ninety (90)] days after the date specified shall be deemed to be out of compliance with the provisions of this act, with respect to each affected property to which that renewal or update relates, for purposes of Section 33 of this act on the [ninety-first (91st)] day after the date the renewal or update was required.

Section 47. [Enforcement.]

(a) Except as provided in Section 46 of this act, in addition to any other remedies provided in this act, the provisions and procedures of [insert appropriate state citation] shall be used and shall apply to enforce violations of this act, provided that the penalty imposed under [insert appropriate state citation] may not exceed [two hundred fifty (250)] dollars per day for any violation of this act which is not cured within [twenty (20)] days after receipt of notice of the violation by the owner.

(b) If an accredited supervisor falsely verifies that work was performed on an affected property pursuant to Section 17 (f) of this act, the owner of the affected property who employs the supervisor and who has actual knowledge of the false verification shall be subject to a civil penalty not to exceed [fifteen thousand (15,000)] dollars.

Section 48. [Audits.]

(a) The [department] may audit, through a spot check or other investigation, the verification of work performed pursuant to Section 17 (f) of this act.

(b) If the [department], through audits conducted within [thirty (30)] days of receipt of verification of work performed pursuant to Section 17 (f) of this act, finds that the condition of the affected property does not comport with the work that was verified by the same contractor or supervisor, an owner of a property for which work was verified by that contractor or supervisor within the previous year shall be required to have that property inspected and treated as necessary to satisfy the modified risk reduction standard under Section 17 of this act.
Section 49. [Spot Checks.]
(a) The [department] may, at any time, spot check affected properties that have been reported as satisfying the risk reduction standard or verified as satisfying the modified risk reduction standard.
(b) If a spot check pursuant to Section 49 (a) reveals that an affected property that has been reported as satisfying the risk reduction standard under Section 13 of this act does not satisfy that standard, the [department] may order that the owner of the property satisfy the risk reduction standard, as verified by an inspection conducted within [thirty (30)] days of receipt of the order.
(c) If a spot check pursuant to Section 49 (a) reveals that an affected property that has been verified as satisfying the modified risk reduction standard under Section 17 of this act, but has not been reported as satisfying the risk reduction standard under Section 13 of this act, does not satisfy the modified risk reduction standard, the [department] may order the owner of the property to satisfy the modified risk reduction standard, as verified by an inspection conducted within [thirty (30)] days of receipt of the order.

Section 50. [Liability Insurance Requirements for Affected Property.]
In this act the following words have the meanings indicated.
(1) "Administration" means the [state insurance administration].
(2) "Affected property" means a property that contains at least one rental dwelling unit.
(3) "Authorized insurer" means an insurer that:
   (i) Holds a certificate of authority in the state;
   (ii) Issues or issues for delivery in the state third party bodily injury liability insurance under:
      (A) Homeowners’ coverage;
      (B) Owners’, landlords’, and tenants’ coverage; or
      (C) Other premises liability coverage; and
   (iii) Is subject to regulation by the [state insurance administration].
(4)(i) "Department" means the [state department of the environment].
   (ii) "Department" includes a designee of the [secretary of the environment].
(5) "Owner" has the meaning stated in Section 2 (14) of this act.

Section 51. [Waiver.]
(a) Notwithstanding Section 51(f), upon the inception or renewal of a policy, an insurer may provide for a lead hazard exclusion with respect to a policy of insurance covering an affected property.
(b) A lead hazard exclusion contained in a contract of insurance issued or renewed on or after [date] shall be waived with respect to an affected property which is covered under the policy, to the extent of a qualified offer.
Lead Poisoning Prevention Program

made or to be made under Sections 23 through 39 of this act.

(1) The affected property is in compliance with the provisions of Sections 10 through 12 of this act;

(2) Without regard to whether a change in occupancy has occurred, and at the election of the insured, the affected property:

(i) Passes the test for lead-contaminated dust under Section 13 of this act; or

(ii) Has undergone the lead hazard reduction treatment and complies with the risk reduction standards under Section 13 (a)(2) of this act; and

(3) The insured submits to the authorized insurer a current verified report of an accredited inspector under Section 16 of this act certifying that the affected property complies with the standards set forth in Section 51 (b)(2).

(c) An authorized insurer may exclude coverage for lead hazard with respect to an affected property in excess of the amount of a qualified offer made or to be made under Sections 23 through 39 of this act.

(d) This section applies only to coverage for lead hazard and does not affect coverage for property damage or any other form of coverage provided in a policy or contract of insurance.

(e) In lieu of waiver of a lead hazard exclusion under Section 51 (a), and with the prior approval of the administration, an authorized insurer may offer an alternative form of coverage for a qualified offer made with respect to an affected property under Sections 23 through 39 of this act.

(f)(1) An insurer may cancel or nonrenew lead hazard coverage or reimpose an exclusion only if:

(i) The insured fails to:

(A) Pay the applicable premium;

(B) Provide reasonable access to the affected property for purposes of inspection for the presence or condition of lead by the insurer or the insurer’s designee;

(C) Comply with the terms or conditions of the policy; or

(D) Perform lead hazard reduction treatments; or

(ii) The affected property fails to comply or maintain compliance with the risk reduction standards under Section 13 (a)(2) of this act.

(2)(i) An insurer may cancel or nonrenew lead hazard coverage or reimpose an exclusion under this section only if the insurer provides the insured with:

(A) Written notice that the insurer intends to cancel the coverage; and

(B) An opportunity to correct the violation within [thirty (30)] days after mailing of the notice.

(ii) Coverage is automatically reinstated if the violation is corrected within [thirty (30)] days after the mailing of the notice.

(iii) Within [forty-five (45)] days of issuing a notice of cancellation un-
Suggested State Legislation

(g) An insurer providing lead hazard coverage under this act:
   (1) Shall offer the coverage without a deductible; and
   (2) May offer the coverage with a deductible.

Section 52. [Claims.]
   (a) Subject to reasonable notice provisions in a contract or policy of insurance, notice that a person at risk has an elevated blood lead level that is provided to an insured under the provisions of Section 25 (b)(1) of this act shall be deemed a claim against the insured for the purpose of triggering the authorized insurer's duty to respond on behalf of the insured in accordance with Sections 23 through 39 of this act.
   (b) Notwithstanding the provisions of Section 28 and Section 51 of this act, an authorized insurer is not liable for a qualified offer made under Sections 23 through 39 of this act if the qualified offer was made in violation of the terms of the contract or policy of insurance.

Section 53. [Regulations.]
   (a) The administration may adopt regulations necessary to carry out the provision of this act.
   (b) The administration shall review policy forms and endorsements to implement and enforce compliance with the provisions of this act.

Section 54. [Real Property.]
   (a) The landlord of real property subject to the provisions of this act may not evict or take any other retaliatory action against a tenant primarily as a result of the tenant providing information to the landlord under this act.
   (b) For purposes of this section, a retaliatory action includes:
      (1) An arbitrary refusal to renew a lease;
      (2) Termination of a tenancy;
      (3) An arbitrary rent increase or decrease in service which the tenant is entitled; or
      (4) Any form of constructive eviction.
   (c) A tenant subject to an eviction or retaliatory action under this section is entitled to the relief, and is eligible for reasonable attorney's fees and costs, authorized under [insert appropriate state citation].
   (d) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from a breach of any provision of a lease.

Section 55. [Records.] Every landlord shall maintain a records system showing the dates and amounts of rent paid to him by his tenant or tenants and showing also the fact that a receipt of some form was given to each
Lead Poisoning Prevention Program

Section 56. [Commission Terms.] The terms of the initial [fifteen (15)] members of the [lead poisoning prevention commission] appointed by the [governor] shall expire as follows:

(1) Three in [date];
(2) Four in [date];
(3) Four in [date]; and
(4) Four in [date].

Section 57. [Pooling Insurance.] The [state department of the environment], in conjunction with the [lead poisoning prevention commission], the [department of housing and community development], and interested groups, shall study and report on or before [date] to the [governor] and, subject to [insert appropriate state citation], to the [general assembly] on methods for pooling insurance risks of lead hazards in rental dwelling units among property owners, including recommendations for proposed legislation, if appropriate.

Section 58. [Fees and Community Outreach.] Of the fees generated and paid into the [lead poisoning prevention fund] under Section 40 of this act at least [seven hundred, fifty thousand (750,000)] dollars per fiscal year shall be dedicated to the [community outreach and education program] established under Section 45 of this act. The [department of the environment] shall establish priorities for allocation of funding to local governments and to not-for-profit organizations for the [community outreach and education program]. Criteria for priorities of not-for-profit organizations shall include prior experience of the organizations in lead poisoning issues, outreach and education, child health issues, and relationships with tenants of low-income housing and with health care providers for childhood lead poisoning.

Section 59. [Catchlines.] Any catchlines contained in this act are not law and may not be considered to have been enacted as a part of this act.

Section 60. [Conditions.] This act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any event or conditions occurring before the effective date of this act, except for:

(1) The case of a person at risk with an elevated blood lead of 25 micrograms per deciliter or more first documented by a test performed on or after [date] or with an elevated blood lead of 20 micrograms per deciliter or more first documented by a test performed on or after [date], if the elevated blood lead was caused by the ingestion of lead prior to [date]; or
Suggested State Legislation

(2) The acceptance of a qualified offer under Section 32 of this act, if the alleged injury or loss caused by the ingestion of lead by the person at risk in the affected property occurred before [date].

Section 61. [Insurance Policies.] Notwithstanding other provisions of this act, this act shall apply beginning on [date] to insurance policies issued or renewed between [date] and [date].

Section 62. [Effective Date.] [Insert effective date.]
Salvaged Food Act

This act is based on Minnesota legislation enacted in 1994. Before the passage of this act, the state required salvaged food to be tested by the agriculture department for safety before being sold but did not require labeling such food. This act sets salvaged food labeling requirements, defines “salvaged food distributor” and requires salvaged food distributors to be licensed.

All food products reclaimed from fires, floods, temperature changes or other accidents must be clearly labeled as “salvaged food” or “reconditioned food.” Stores selling salvaged food must label each retail package or notify consumers the food is salvaged by posting a conspicuous placard at the retail display location stating “salvaged” or “reconditioned food.”

Wholesalers selling salvaged food must be licensed as a salvaged food distributor. Salvaged food processors and distributors must keep written records regarding when the food was received, its condition, the source of the food, and to whom the food was sold.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Salvaged Food Act.

Section 2. [Definitions.]
(1) “Distressed food” means any food, the label of which has been lost, defaced, or obliterated, or food which has been subjected to possible damage due to accident, fire, flood, adverse weather, or to any other similar cause; or food which is suspected of having been rendered unsafe or unsuitable for food use.
(2) “Reconditionable or salvaged food” is distressed food which is possible to reclaim for food, feed, or seed use as determined by examination by the [commissioner] or the [commissioner’s representatives].
(3) “Reconditioned or salvaged food” is reconditionable or salvaged food which has been reconditioned or salvaged under supervision of the [commissioner] so as to comply with the standards established under this section.
(4) “Reconditioning” or “salvaging” is the act of cleaning, culling, sorting, scouring, labeling, relabeling, or in any way treating “distressed food” so that it may be deemed to be “reconditioned” or “salvaged food” and therefore is acceptable for sale or use as human food, animal feed, or seed as provided therefor by the [commissioner].

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Suggested State Legislation

(5) “Salvage food processor” is a person who holds a license under [insert appropriate state citation] to operate as a salvage food processor and who receives supervision of the salvaging operations from the [commissioner].

(6) “Labeling” means any legend or descriptive matter or design appearing upon an article of food or its container, and includes circulars, pamphlets and the like, which are packed and go with the article to the purchaser, and placards which may be allowed to be used to describe the food.

(7) “Salvage food distributor” means a person who engages in the business of selling, distributing, or otherwise trafficking at wholesale in any distressed or salvaged food.

Section 3. [Licensing; Permit.]

(a) It is unlawful for any person either to claim to be a salvage food processor, or to engage in the activities of reconditioning or salvaging distressed food, or both, without a license issued under [insert appropriate state citation] authorizing that person to operate as a salvage food processor, which license may not be issued absent compliance with all the provisions of this section and all rules promulgated under this section.

(b) Before issuing a license, the [commissioner] shall determine that the applicant's salvage establishment meets at least the minimum requirements adopted by rule for such an establishment which shall include but not be limited to adequacy of buildings, location, water supply, waste disposal, equipment, hand washing and toilet facilities, and sanitation practices, as the same relate to the protection of the public health and welfare.

(c) It is unlawful for any person either to claim to be a salvage food distributor or to engage in the activities of selling, distributing, or otherwise trafficking in any distressed or salvaged food, or both, at wholesale, without a license issued under [insert appropriate state citation] authorizing that person to operate as a salvage food distributor, which license may not be issued absent compliance with all the provisions of this section and all rules adopted under this section.

Section 4. [Labeling Requirements.]

(a) Any container of food with the label or mandatory information missing that cannot be identified and relabeled correctly must not be sold. When original labels are missing or illegible, relabeling or overlabeling is required.

(b) All salvaged food, except as described in Section 4 (e), shall be identified to indicate that the food has been salvaged by clearly marking the term “salvaged food” on all invoices, bills of lading, shipping invoices, receipts, and inventory records.

(c) All persons selling salvaged food, at retail, except as described in Section 4 (e), shall notify the consumer that the food is salvaged either by (1) labeling each retail package or container “salvaged” or “reconditioned” or (2) posting a conspicuous placard at the retail display location stating “sal-
Salvaged Food Act

(d) All salvaged food in containers must be provided with labels that comply with the requirements contained in [insert appropriate state citations]. If original labels are removed from containers that are to be resold or redistributed, the replacement labels must show as the distributor the name and address of the salvage food processor and the date of reconditioning for sale or distribution.

(e) Section 4 (b) and Section 4 (c) do not apply to food products damaged in the normal course of handling and transportation, where the food is intact in its original container and has not been subject to fire, chemical spills, temperature abuse in perishable food products, immersion in water, or other similar risk of contamination.

(f) The [commissioner], in consultation with the [commissioner of health], may adopt rules providing for the identification and labeling of food products pursuant to this subsection.

Section 5. [Record Keeping Requirements.] A written record or receipt of distressed, salvageable, and salvaged food must be kept by the salvage food processor and distributor for inspection by the [commissioner] during business hours. The records must include the name of the product, the source of the distressed food, the date received, the type of damage, the salvage process conducted, and the purchaser of the salvaged food. These records must be kept on the premises of the salvage food processor and distributor for a period of [one (1)] year following the completion of transactions involving the food.

Section 6. [Effective Date.] [Insert effective date.]
Highway and Street Intersection Safety Act

This act is based on North Carolina legislation enacted in 1994. This act allows counties and municipalities to adopt an ordinance providing for the enforcement of traffic regulations through a traffic control signal photographic system at highway and city intersections. The photographic system consists of a camera and a vehicle sensor connected to a traffic signal light. The system will automatically produce two or more photographs of each vehicle proceeding beyond the legal stop line at an intersection at a red light.

The county or municipality can then hold the owner of a vehicle responsible and liable for moving violations unless the owner can furnish proof that the vehicle was in the custody of another person at the time of the violation. Violations are regarded as noncriminal and drivers are assessed a $50 civil penalty.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Highway and Street Intersection Safety Act.

Section 2. [Legislative Findings.] The [general assembly] finds:

1. the [state] faces a tremendous problem with motorists who fail to obey traffic signals; and
2. the failure to obey traffic signals is a major cause of accidents, causing deaths, injuries and property damages; and
3. state and local authorities lack the resources to provide sufficient law enforcement officers to enforce [insert appropriate state citation] pertaining to stop lights; and
4. the technology exists for a traffic control signal photographic system which will create a photographic record of vehicles failing to obey traffic signals; and
5. traffic control signal photographic systems have been used successfully in at least [twelve (12)] foreign nations including Israel, Spain, Australia, Switzerland and the Netherlands; and
6. the use of traffic control signal photographic systems has been shown to substantially enhance motorists' compliance with traffic control signals and reduce accidents; and
Highway and Street Intersection Safety Act

(7) It is the intent of the [general assembly] to provide an alternate enforcement mechanism [insert appropriate state citation] by authorizing municipalities and counties to use traffic control signal photographic systems, subject to the provisions of this act.

Section 3. [Traffic Control Signal Photographic Systems.]
(a) A traffic control signal photographic system is defined as an electronic system consisting of a photographic camera and a vehicle sensor installed to work in conjunction with an official traffic control signal and to automatically produce two or more photographs of each vehicle proceeding beyond the legal stop line at an intersection while facing a red indication.
(b) Any traffic control signal photographic system as defined in subsection (a) of this section or device which is a part thereof deployed on the streets and highways of the state shall meet requirements established by the [state department of transportation].
(c) Each county and municipality is authorized to adopt an ordinance providing for the enforcement of [insert appropriate state citation] by means of a traffic control signal photographic system as defined in subsection (a) of this section. Such an ordinance shall provide for the following:
(1) The owner of a vehicle shall be responsible for a violation of [insert appropriate state citation] unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. In such instances, the owner of the vehicle shall, within [twenty-one (21)] days after notification of the violation, furnish the officials or agents of the municipality or county who issued the ticket, the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle. The owner of the vehicle shall not be responsible for the violation if the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.
(2) The violation of [insert appropriate state citation] detected by a traffic control signal photographic system shall be deemed a noncriminal violation for which a civil penalty of [fifty (50)] dollars shall be assessed and for which no points shall be assigned to the owner or driver of the vehicle.
(3) The owner of the vehicle shall be issued a ticket and shall comply with the directions on the ticket. The ticket shall be processed by officials or agents of the municipality or county and shall be forwarded by first class mail to the address given on the motor vehicle registration. Personal service on the owner of the vehicle shall not be required. In the event that payment of the civil penalty is not received or a response to the ticket is not made within the time period specified thereon, the owner shall be deemed to have waived his right to pay the civil penalty and the officials or agents making the original mailing of the ticket shall submit a copy of the ticket to the [District Attorney] for submission to the [District Court].
shall find that in failing to make payment of the civil penalty the owner
shall be deemed to have been convicted of a violation of [insert appropriate
state citation] and shall be subject to a fine of not to exceed [one hundred
(100)] dollars, and the [Court] shall take appropriate measures to enforce
collection of the fine.

(4) Any person who elects to appear before a [District Court] to present
evidence shall be deemed to have waived his right to pay the civil penalty.
A certificate sworn to or affirmed by a technician employed by or under
contract to the municipality or the county where the violation occurred, or
a facsimile thereof, based upon inspection of photographs or other recorded
images produced by a traffic control signal photographic system shall be
prima facie evidence of the facts contained therein. The [Court], after a
hearing, shall make a determination as to whether a violation of [insert
appropriate state citation] has been committed and, if a violation is deter-
mmed, shall impose a fine not to exceed [one hundred (100)] dollars plus
court costs. If the fine and court costs have not been paid within the time
specified by the [Court], the [Court] shall take appropriate measures to
enforce collection.

Section 4. [Effective Date.] [Insert effective date.]
Interstate Insurance Receivership Compact

This compact was enacted by Nebraska in 1995. The compact promotes, develops, and facilitates uniform insurer receivership laws and operations; coordinates interaction between insurer receivership and guaranty fund operations; and creates a nonprofit Commission, controlled by regulators, to oversee rules and procedures. The compact is designed to make receiverships and the laws governing them more orderly, efficient and uniform, as well as to coordinate interaction between receiverships and guaranty associations.

Similar compact bills have been or are being considered in California, Illinois, Indiana, Missouri, Nebraska, New Hampshire, and Texas. Additionally, Michigan is considering a proposal that would establish a dual regulatory system, governed by one board of directors and one board of regulators, and allow insurers to choose to operate under the existing system or to operate under the compact.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short title.] The State [insert state] ratifies the following Interstate Insurance Receivership Compact:

ARTICLE I. PURPOSES
The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote, develop and facilitate orderly, efficient, cost effective and uniform Insurer Receiverships laws and operations;

2. To coordinate interaction between Insurer Receivership and Guaranty Fund operations;

3. To create the Interstate Insurance Receivership Commission; and

4. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

ARTICLE II. DEFINITIONS
Suggested State Legislation

For the purposes of this Compact:

1. “By-laws” mean those by-laws established by the Commission for its governance, or for directing or controlling the Commission’s actions or conduct.

2. “Compacting State” means any State which has enacted the enabling legislation for this Compact.

3. “Commission” means the “Interstate Insurance Receivership Commission” established by this Compact.

4. “Commissioner” means the chief insurance regulatory official of a State.

5. “Deputy Receiver” means any person appointed or retained by a Receiver and who is the Receiver’s duly authorized representative for administering one or more Estates.

6. “Domiciliary State” means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry; or in the case of an unauthorized Insurer not incorporated, organized, or entered in any State, a state where the Insurer is engaged in or doing business.

7. “Estate” means the assets and liabilities of any Insurer in Receivership.

8. “Guaranty Association” means an insurance guaranty fund or association or any similar entity now or hereafter created by statute in a Compacting State, other than a Receivership, to pay or assume, in whole or in part, the contractual claim obligations of insolvent Insurers.

9. “Insurer” means any person who has done, purports to do, is doing or is licensed to do any insurance or reinsurance business, or is or has been subject to the authority of, or to liquidation, rehabilitation, supervision, conservation or ancillary receivership by, any Commissioner.

10. “Member” means the Commissioner of a Compacting State or his or her designee, who shall be a person officially connected with the Commissioner and who is wholly or principally employed by said Commissioner.

11. “Non-compacting State” means any State which has not enacted
the enabling legislation for this Compact.

12. “Operating Procedures” means procedures promulgated by the Commission implementing a Rule, an existing law in a Compacting State, or a provision of this Compact.

13. “Publication” means the act of publishing in the official state publication in a Compacting State or in such other publication as may be established by the Commission.

14. “Receiver” means receiver, liquidator, rehabilitator, conservator or ancillary receiver as the context requires.

15. “Receivership” means any liquidation, rehabilitation, conservation or ancillary receivership proceeding as the context requires.

16. “Rules” means acts of the Commission, duly promulgated pursuant to Article VII of this Compact, substantially affecting interested parties in addition to the Commission, which shall have the force and effect of law in the Compacting States.

17. “State” means any state, district or territory of the United States of America.

ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish an entity known as the “Interstate Insurance Receivership Commission.”

2. The Commission is a body corporate of each Compacting State.

3. The Commission is a not-for-profit entity, separate and distinct from the Compacting States.

4. The Commission is solely responsible for its liabilities except as otherwise provided in this Compact.

5. Except as otherwise specifically provided in state or federal law in the jurisdiction where the Commission’s principal office is located or where the Commission is acting as Receiver, venue is proper and judicial proceedings by or against the Commission shall be brought in a court of competent jurisdiction where the Commission’s principal office is located.

ARTICLE IV. POWERS OF THE COMMISSION
Suggested State Legislation

The Commission shall have the following powers:

1. To promulgate Rules which shall have the force and effect of statutory law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

2. To promulgate Operating Procedures which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

3. To oversee, supervise and coordinate the activities of Receivers in Compacting States;

4. To act as Receiver of Insurers organized under the laws of, engaged in or doing the business of insurance in, a Compacting State upon the request of the Commissioner of such State or when grounds for Receivership by the Commission exist under Article IX of this Compact;

5. To act as Deputy Receiver of Insurers organized under the laws of, engaged in or doing the business of insurance in, a Non-compacting State in accordance with Article IX of this Compact;

6. To act as ancillary Receiver in a Compacting State of an Insurer domiciled in a Non-compacting State;

7. To monitor the activities and functions of Guaranty Associations in the Compacting States;

8. To delegate its operating authority or functions; provided, that its rulemaking authority under Article VII of this Compact shall not be delegated;

9. To bring or prosecute legal proceedings or actions in its name as the Commission, or in the name of the Commission acting as Receiver;

10. To bring or prosecute legal proceedings or actions on behalf of an Estate or its policyholders and creditors; provided, that any Guaranty Association's standing to sue or be sued under applicable law shall not be affected;

11. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;
Interstate Insurance Receivership Compact

12. To establish and maintain offices;

13. To purchase and maintain insurance and bonds;

14. To borrow, accept or contract for services of personnel, including, but not limited to, Members and their staff;

15. To elect or appoint such officers, attorneys, employees or agents, and to fix their compensation, define their duties and determine their qualifications; and to establish the Commission’s personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

16. To accept any and all donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same;

17. To lease, purchase, accept gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed;

18. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

19. To enforce compliance with Commission Rules, Operating Procedures and By-laws;

20. To provide for dispute resolution among Compacting States and Receivers;

21. To represent and advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;

22. To provide advice and training to Receivership personnel of Compacting States, and to be a resource for Compacting States by maintaining a reference library of relevant materials;

23. To establish a budget and make expenditures;

24. To borrow money;

25. To appoint committees including, but not limited to, an industry advisory committee and an executive committee of Members;
26. To provide and receive information relating to Receiverships and Guaranty Associations, and to cooperate with law enforcement agencies;

27. To adopt and use a corporate seal; and

28. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact as may be consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

ARTICLE V. ORGANIZATION OF THE COMMISSION

Section A. Membership, Voting and By-laws

1. Each Compacting State shall have and be limited to one Member. Each member shall be qualified to serve in such capacity under or pursuant to the applicable law of the Compacting State. Each Compacting State retains the discretionary right to determine the due election or appointment and qualification of its own Commissioner, and to fill all vacancies of its Member.

2. Each Member shall be entitled to one vote.

3. The Commission shall, by a majority of the Members, prescribe By-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

   a. establishing the fiscal year of the Commission;

   b. providing reasonable standards and procedures: (i) for the establishment of committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

   c. providing reasonable procedures for calling and conducting meetings of the Commission, and ensuring reasonable notice of each such meeting;

   d. establishing the titles and responsibilities of the officers of the Commission;

   e. providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the By-laws shall exclusively govern the personnel policies and programs of the Commission; and
f. providing a mechanism for winding up the operations of the Commis-
sion and the equitable return of any surplus funds that may exist after the
termination of the Compact after the payment and/or reserving of all of its
debts and obligations.

Section B. Officers and Personnel

1. The Commission shall, by a majority of the Members, elect annually
from among its Members a chairperson and a vice chairperson, each of
whom shall have such authorities and duties as may be specified in the By-
laws. The chairperson or, in his or her absence or disability, a Member
designated in accordance with the By-laws, shall preside at all meetings of
the Commission. The officers so elected shall serve without compensation
or remuneration from the Commission; provided that, subject to the avail-
ability of budgeted funds, the officers shall be reimbursed for any actual
and necessary costs and expenses incurred by them in the performance of
their duties and responsibilities as officers of the Commission.

2. The Commission may, by a majority of the Members, appoint or re-
tain an executive director for such period, upon such terms and conditions
and for such compensation as the Commission may deem appropriate. The
executive director shall serve as secretary to the Commission, but shall not
be a Member of the Commission. The executive director shall hire and
supervise such other staff as may be authorized by the Commission.

Section C. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in ac-
cordance with the By-laws.

Section D. Qualified Immunity, Defense and Indemnification

1. The Members, officers, executive director and employees of the Com-
mission shall be immune from suit and liability, either personally or in
their official capacity, for any claim for damage to or loss of property or
personal injury or other civil liability caused or arising out of any actual or
alleged act, error or omission that occurred, or that such person had a rea-
sonable basis for believing occurred within the scope of Commission em-
ployment, duties or responsibilities; provided, that nothing in this para-
graph shall be construed to protect any such person from suit and/or liabil-
ity for any damage, loss, injury or liability caused by the intentional or
willful and wanton misconduct of any such person, or to protect the Com-
mission acting as Receiver under Article IX of this Compact.
Suggested State Legislation

2. The Commission shall defend any Commissioner of a Compacting State, or his or her representatives or employees, or the Commission’s representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

3. The Commission shall indemnify and hold the Commissioner of a Compacting State, or his or her representatives or employees, or the Commission’s representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

4. The costs and expenses of defense and indemnification of the Commission acting as Receiver of an Estate shall be paid as administrative expenses from the assets of that Estate unless such costs and expenses are covered by insurance maintained by the Commission.

ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact.

2. Except as otherwise provided in this Compact and unless a greater percentage is required by the By-laws, in order to constitute an act of the Commission, such act shall have been taken at a meeting of the Commission and shall have received an affirmative vote of a majority of the Members.

3. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A member shall vote in person and shall not delegate his or her vote to another Member. The By-laws may provide for Members’ participation in meetings by telephone or other means of telecommunication.
4. The Commission shall meet at least once during each calendar year. The chairperson of the Commission may call additional meetings at any time and, upon the request of a majority of the Members, shall call additional meetings.

5. The Commission's Rules shall establish conditions and procedures under which the Commission shall make its information and official records available to the public for inspection or copying. The Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such Rules, the Commission may consider any special circumstances pertaining to Insurer insolvencies, but shall be guided by the principles embodied in state and federal freedom of information laws. The Commission may promulgate additional Rules under which it may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

6. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in this Compact. The Commission shall promulgate Rules consistent with the principles contained in the “Government in Sunshine Act,” 5 U.S.C. Section 552(b), as may be amended. The Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

   a. relate solely to the Commission's internal personnel practices and procedures;

   b. disclose matters specifically exempted from disclosure by statute;

   c. disclose trade secrets or commercial or financial information which is privileged or confidential;

   d. involve accusing any person of a crime, or formally censuring any person;

   e. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

   f. disclose investigatory records compiled for law enforcement purposes;
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g. disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

h. disclose information, the premature disclosure of which would significantly endanger the stability of a regulated entity;

i. specifically relate to the Commission’s issuance of a subpoena, or its participation in a civil action or proceeding.

7. For every meeting closed pursuant to this provision, the Commission’s chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each Member on the question.) All documents considered in connection with any action shall be identified in such minutes.

ARTICLE VII. RULEMAKING FUNCTIONS OF THE COMMISSION

1. The Commission shall promulgate Rules and Operating Procedures in order to effectively and efficiently achieve the purpose of this Compact; provided, that the Commission shall not promulgate any Rules: (i) directly relating to Guaranty Association, including but not limited to, Rules governing coverage, funding, or assessment mechanisms; or (ii) (except pursuant to Rules promulgated under Article VII (3) of this Compact) altering the statutory priorities for distributing assets out of an Estate.

2. Rulemaking shall occur pursuant to the criteria set forth in this Article and the Rules and Operating Procedures adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended.

3. Other than the adoption of such Rules as are necessary for the orderly operation of the Commission, the first Rule to be considered by the Commission shall be uniform provisions governing Insurer Receiverships including, but not limited to, provisions requiring Compacting States to implement, execute, and administer in a fair, just, effective and efficient
manner Rules and Operating Procedures relating to Receiverships. The Commission shall within three years of the adoption of this Compact by two or more States, promulgate such uniform provisions through the rulemaking process. Such uniform provisions shall become law in all of the Compacting States upon legislative enactment in a majority of the Compacting States.

4. All Rules and amendments shall become binding as of the date specified in each Rule or amendment; provided, that if a Compacting State expressly rejects such Rule or amendment through legislative enactment as of the expiration of the second full calendar year after such Rule is promulgated, such Rule or amendment shall have no further force and effect in the rejecting Compacting State. If a majority of Compacting States reject a Rule, then such Rule shall have no further force and effect in any Compacting States.

5. When prescribing a Rule or Operating Procedure, the Commission shall: (a) effect Publication of proposed rulemaking, stating with particularity the text of the Rule or Operating Procedure which is proposed and the reason for the proposed Rule or Operating Procedure; (b) allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available; (c) provide an opportunity for an informal hearing; and (d) promulgate a final Rule or Operating Procedure and its effective date, if appropriate, based on the rulemaking record.

6. Not later than sixty days after a Rule or Operating Procedure is promulgated, any interested person may file a petition in a court of competent jurisdiction where the Commission’s principal office is located for judicial review of such Rule or Operating Procedure. If the court finds that the Commission’s action is not supported by substantial evidence in the rulemaking record, the court shall hold the Rule unlawful and set it aside.

ARTICLE VIII. OVERSIGHT AND DISPUTE RESOLUTION BY THE COMMISSION

Section A. Oversight

1. The Commission shall oversee the administration and operations of Receiverships in Compacting States, and shall monitor Receiverships being administered in Non-compacting States which may significantly affect Compacting States.

2. To aid its monitoring, oversight and coordination responsibilities, the Commission shall establish Operating Procedures requiring each Mem-
Suggested State Legislation

(b) to submit written reports to the Commission as follows:

a. An initial report to the Commission upon a finding or other official action by the Compacting State that grounds exist for Receivership of an Insurer doing business in more than one State. Thereafter, reports shall be submitted periodically and as otherwise required pursuant to the Commission's Operating Procedures. The Commission shall be entitled to receive notice of, and shall have standing to appear in, Compacting States' Receiverships; and

b. An initial report of the status of an Insurer within a reasonable time after the initiation of a Receivership.

3. The Commission shall promulgate Operating Procedures requiring Receivers to submit to the Commission periodic written reports and such additional information and documentation as the Commission may reasonably request. Each Compacting State's Receivers shall establish the capability to obtain and provide all records, data and information required by the Commission in accordance with the Commission's Operating Procedures.

4. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the responsibility to disclose any relevant records, data or information to the Commission; provided, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that the Commission shall be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to all records, data and information in its possession.

5. The courts and executive agencies in each Compacting State shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any Receivership or other judicial or administrative proceeding in a Compacting State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission, the Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the Receivership or proceeding for all purposes.

6. The Commission shall analyze and correlate records, data, information and reports received from Receivers and Guaranty Associations, and shall make recommendations for improving their performance to the Com-
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pacting States. The Commission shall include summary information and data regarding its oversight functions in its annual report.

Section B. Dispute Resolution

1. The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues which are subject to this Compact and which may arise among Compacting States and Non-compacting States.

2. The Compacting States shall report to the Commission on issues or activities of concern to them, and cooperate with and support the Commission in the discharge of its duties and responsibilities.

3. The Commission shall promulgate an Operating Procedure providing for binding dispute resolution for disputes among Receivers.

4. The Commission shall facilitate voluntary dispute resolution for disputes among Guaranty Associations and Receivers.

ARTICLE IX. RECEIVERSHIP FUNCTIONS OF THE COMMISSION

1. The Commission has authority to act as Receiver of any Insurer domiciled, engaged in or doing business in a Compacting State upon the request of the Commissioner of such Compacting State, or as otherwise provided in this Compact.

   a. The Commission as Receiver shall have all powers and duties pursuant to the Receivership laws of the Domiciliary State.

   b. The Commission shall maintain accounts of receipts and disbursements of the Estates consistent with the accounting practices and procedures set forth in the By-laws.

   c. The Commission shall cause an annual audit of each Estate for which it is acting as Receiver to be conducted by an independent certified public accountant. The costs and expenses of such audit shall be paid as administrative expenses from the assets of the Estate. The Commission shall not cause an annual audit to be conducted of any Estate which lacks sufficient assets to conduct such audit.

   d. The Commission as Receiver is authorized to delegate its Receivership duties and functions, and to effectuate such delegation through contracts with others.
Suggested State Legislation

2. The Commission shall act as Receiver of any Insurer domiciled or doing business in a Compacting State in the event that the Member acting as Receiver in that Compacting State fails to comply with duly-adopted Commission Rules or Operating Procedures. The Commission shall notify such Member in writing of his or her noncompliance with Commission Rules or Operating Procedures. If the Member acting as Receiver fails to remedy such noncompliance within ten days after his or her receipt of such notification, the Commission may petition the supervising court before which such Receivership is pending for an order substituting and appointing the Commission as Receiver of the Estate.

3. The Commission shall not act as Receiver of an Estate which appears to lack sufficient assets to fund such Receivership unless the Compacting State makes provisions for the payment of the Estate's administrative expenses satisfactory to the Commission.

4. The Commission may act as Deputy Receiver for any Insurer domiciled or doing business in a Non-compacting State in accordance with such State's laws, upon request of that Non-compacting State's Commissioner and approval of the Commission.

5. With respect to Receiverships pending in a Compacting State on the effective date of the enactment of this Compact by the Compacting State:
   a. the Commission may act as Receiver of an Insurer upon the request of that Compacting State's Member and approval of the Commission; and
   b. the Commission shall oversee, monitor and coordinate the activities of all Receiverships pending in that Compacting State regardless whether the Commission is acting as Receiver of Estates in the Compacting State.

ARTICLE X. FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization.

2. Except as otherwise provided in this Compact or by act of the Commission, the costs and expenses of each Compacting State shall be the sole and exclusive responsibility of the respective Compacting State. The Commission may pay or provide for actual and necessary costs and expenses for attendance of its Members at official meetings of the Commission or its designated committees.

3. The Commission shall levy on and collect an annual assessment
from each Compacting State and each Insurer authorized to do business in a Compacting State, and writing direct insurance, to cover the cost of the internal operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

a. The aggregate annual assessment amount shall be allocated seventy-five percent to Insurers, hereinafter referred to as the "Insurers' Portion," and twenty-five percent to Compacting States, hereinafter referred to as the "Compacting States' Portion." The Insurers Portion shall be allocated to each Insurer by the percentage derived from a fraction, the numerator of which shall be the gross direct written premium received on that Insurer's business in all Compacting States and the denominator of which shall be the gross direct written premium received by all Insurers on business in all Compacting States. The Compacting States' Portion shall be allocated to each Compacting State by the percentage derived from a fraction, the numerator of which shall be the gross direct written premium received by all Insurers on business in that Compacting State and the denominator shall be the gross direct written premium received on all Insurers on business in all Compacting States. Each Compacting State's Portion shall be funded as designated by that State's legislature. In no event shall an Insurer's assessment be less than $50 or more than $25,000; provided, that affiliated Insurers' combined assessments shall not exceed $50,000. Upon the request of an Insurer, the Commission may exempt or defer the assessment of any Insurer, if such assessment would cause the Insurer's financial impairment.

b. These assessments shall not be used to pay any costs or expenses incurred by the Commission and its staff acting as Receiver of Estates. Such costs and expenses shall be payable from the assets of the Estates as provided by law, except as otherwise provided in this Compact.

c. Each Insurer authorized to do business in a Compacting State shall timely pay assessments to the Commission. Failure to pay such assessments shall not be grounds for the revocation, suspension or denial of an Insurer's authority to do business, but shall subject the Insurer to suit by the Commission for recovery of any assessment due, attorneys' fees and costs, together with interest from the date the assessment is due at a rate of 10 percent per annum, and to civil forfeiture in an amount to be determined by the Commissioner of the Compacting State in which the Insurer received the greatest premium in the year next preceding the first year for which the Insurer shall be delinquent in payment of assessments.

4. The Commission shall be reimbursed in the following manner for the costs and expenses incurred by the Commission and its staff acting as Re-
Suggested State Legislation

cever of Estates to the extent that an Insurer’s assets may be insufficient for the effective administration of its Estate:

a. if the Insurer is domiciled in a Compacting State, the Estate shall be closed unless that Compacting State makes provisions for reimbursing the Commission; and

b. if the Insurer is unauthorized to do business in a Compacting State or if the Insurer is domiciled in a Non-compacting State and subject to ancillary receivership, then the Commission and such State shall make provisions for reimbursing the Commission prior to the Commission becoming Receiver of such Insurer.

5. To fund the cost of the initial operations of the Commission until its first annual budget is adopted and related assessments have been made, contributions from Compacting States and others may be accepted and a one-time assessment on Insurers doing a direct insurance business in the Compacting States may be made not to exceed $450 per Insurer.

6. The Commission’s adopted budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact. The budget shall determine the amount of the annual assessment. The Commission may accumulate a net worth not to exceed thirty percent of its then annual cost of operation to provide for contingencies and events not contemplated. These accumulated funds shall be held separately and shall not be used for any other purpose. The Commission’s budget may include a provision for a contribution to the Commission’s net worth.

7. The Commission shall be exempt from all taxation in and by the Compacting States.

8. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.

9. The Commission shall keep complete and accurate accounts of all its internal receipts (including grants and donations) and disbursements of all funds, other than Receivership assets, under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its By-laws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three years, the review of such independent auditor shall in-
include a management and performance audit of the Commission. The report of such independent audit shall be made available to the public and shall be included in and become part of the annual report of the Commission to the Governors and legislatures of the Compacting States. The Commission's internal accounts, any workpapers related to any internal audit and any workpapers related to the independent audit, shall be confidential; provided that, such materials shall be made available: (i) in compliance with the order of any court of competent jurisdiction; (ii) pursuant to such reasonable Rules as the Commission shall promulgate; and (iii) to any Commissioner, Governor of a Compacting State, or their duly authorized representatives.

10. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or the Commission acting as Receiver or to any other Commission funds held pursuant to the provisions of this Compact.

ARTICLE XI. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.

3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until it is enacted into law by unanimous consent of the Compacting States.

ARTICLE XII. WITHDRAWAL, DEFAULT AND TERMINATION

Section A. Withdrawal

1. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

2. The effective date of withdrawal is the effective date of the repeal,
Suggested State Legislation

provided, that the repeal shall not apply to any Receiverships, for which the Commission is acting as Receiver, pending on the date of the repeal except by mutual agreement of the Commission and the Withdrawing State.

3. The Withdrawing State shall immediately notify the Chairperson of the Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

4. The Commission shall notify the other Compacting States of the Withdrawing State's intent to withdraw within sixty days of its receipt thereof.

5. The Withdrawing State is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. Notwithstanding the foregoing, the Withdrawing State is responsible for the costs and expenses of its Estates subject to this Compact pending on the date of repeal; the Commission and the other Estates subject to this Compact shall not bear any costs and expenses related to the Withdrawing States' Estates unless otherwise mutually agreed upon between the Commission and the Withdrawing State.

6. Reinstatement following withdrawal of any Compacting State shall occur upon the Withdrawing State reenacting the Compact or upon such later date as determined by the Commission.

Section B. Default

1. If the Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, or the By-laws and duly promulgated Rules, all rights, privileges and benefits conferred by this Compact and any agreements entered into pursuant to this Compact shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting state must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be ter-
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minated from the Compact upon an affirmative vote of a majority of the
Compacting States and all rights, privileges and benefits conferred by this
Compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a Defaulting
State, the Commission shall notify the Governor and the Majority and Mi-
nority Leaders of the Defaulting State's legislature of such termination.

3. The termination of a Defaulting State shall apply to all Receivers-
ships, for which the Commission is acting as Receiver, pending on the effec-
tive date of termination except by mutual agreement of the Commission
and the Defaulting State.

4. The Defaulting State is responsible for all assessments, obligations
and liabilities incurred through the effective date of termination, and is
responsible for the costs and expenses relating to its Estates subject to this
Compact pending on the date of the termination. The Commission and the
other Estates subject to this Compact shall not bear any costs relating to
the Defaulting State's Estates unless otherwise mutually agreed upon be-
tween the Commission and the Defaulting State.

5. Reinstatement following termination of any Compacting State re-
quires both a reenactment of the Compact by the Defaulting State and the
approval of the Commission pursuant to the Rules.

Section C. Dissolution of Compact

1. The Compact dissolves effective upon the date of the withdrawal or
default of the Compacting State which reduces membership in the Com-
pact to one Compacting State.

2. Upon the dissolution of this Compact, the Compact becomes null and
void and shall be of no further force or effect, and the business and affairs of
the Commission shall be wound up and any surplus funds shall be distrib-
uted in accordance with the By-laws.

ARTICLE XIII. SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable, and if any phrase,
clause, sentence or provision is deemed unenforceable, the remaining pro-
visions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally construed to effec-
tuate its purposes.
ARTICLE XIV. BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a Compacting State that is not inconsistent with this Compact.

2. All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict.

Section B. Binding Effect of this Compact

1. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.

2. All agreements between the Commission and the Compacting States are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.
Collection of Royalties Bill

This Texas act, like the New Jersey bill, provides protection to business owners who provide live or recorded music to patrons.

**Contract Restrictions**
Performing rights societies (such as ASCAP or BMI) are required to provide explicit information in contracts, including a schedule or rates and terms of royalties for that specific contract, rates and terms for similar businesses holding contracts, a list of the copyright owners and specific works represented and licensed by the society, amounts and terms of any discounts, explanation of exceptions to U.S. copyright laws, and notice of the provisions of this act. In addition, contracts must be in writing and must be signed, and contracts may not exceed one year.

**Licensing Restrictions**
Performing society representatives must obtain a license (called a “pocket card”) before entering into contractual agreements with business owners. Representatives must identify themselves proprietors and explain the nature of the visit and refrain from using harassing or intimidating practices in negotiations.

**Suggested Legislation**

(Title, enacting clause, etc.)

1. **Section 1.** [Short Title.] This act may be cited as the Copyright Royalty Collection Practices Act.

1. **Section 2.** [Definitions.] As used in this act:
   1. (1) “Area” means a geographical region having a [twenty-five (25)] mile radius surrounding the business location of a proprietor. In the case of a proprietor with more than one business location, there shall be a separate area for each location for the purposes of this act.
   2. (2) “Copyright owner” means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, Pub. L. 94-553 (17 U.S.C. 101 et seq.).
   3. (3) “Performing rights society” means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SBSAC, Inc.
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(4) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business located in this state in which the public may assemble and be performed, broadcast, or otherwise transmitted.

(5) "Royalty" or "royalties" means the fees payable to copyright owner or performing rights society.

Section 3. [Licensing Negotiations.] No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless, at the time of the offer, it provides to the proprietor, in writing, the following:

(1) A schedule of the rates and terms of royalties under the contract;
(2) A schedule of the rates and terms of royalties under agreements executed by the performing rights society and proprietors of comparable businesses in the area;
(3) A list of the copyright owners represented by the society and the works licensed under the contract;
(4) In the case of a performing rights society which offers discounts to proprietors in the area on any basis, the amounts and terms of those discounts;
(5) An explanation of any exceptions to the copyright laws of the United States, including what is commonly referred to as the "home-style" exemption;
(6) Notice of the provisions of this act and the information contained in this section, and that the failure of the performing rights society or its agents or employees to comply with this act is a violation of the provisions of this act subjecting the violator to civil liability and penalties.

Section 4. [Form of Contract.] Every contract for the payment of royalties executed in this state shall:
(1) be in writing;
(2) be signed by the parties;
(3) not exceed one year; and
(4) include at least the following information:
   (i) the proprietor's name and business address and the name and location of each place of business to which the contract applies;
   (ii) if requested by the proprietor, the name and address of the copyright owner(s) and any performing rights society authorized by him to act on his behalf;
   (iii) if requested by the proprietor, the copyrighted works licensed under the contract in a format convenient to the proprietors;
   (iv) the duration of the contract;
   (v) the schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or
Collection of Royalties Bill

decrease of those rates for the duration of that contract; and

(vi) provide that all billings, invoices or other requests for payment
include an itemization showing the charge for each licensed activity and
the manner in which it is assessed.

Section 5. [Licensing of Agents or Employees.]
(a) No person shall act on behalf of, attempt to negotiate for, contact, or
contact with any proprietor for a performing rights society without first
obtaining a license.
(b) An application for a license under this act shall be in the form pre-
scribed by the [state department of licensing and regulation]. The applica-
tion shall include:
   (1) the full name and business address of the applicant;
   (2) two recent photographs of the applicant; and
   (3) any other information, evidence, statement, or documents as may
be required by the [state department of licensing and regulation].
(c) A pocket card shall be issued by the [department of licensing and regu-
lation] to each individual agent or employee. The pocket card must state
the name of the individual who is registered and the entity or entities rep-
resented by that individual.
(d) When an individual to whom a pocket card has been issued under this
act terminates his position the individual shall return the pocket card to
the [state department of licensing and regulation].
(e) A license issued under this act expires at 12 midnight on the last day
of the 11th month after the month in which it is issued.
(f) The renewal period for a license is the month proceeding the month in
which it expires.
(g) A person may renew an unexpired license by paying to the [state de-
partment of licensing and regulation], before the expiration date of the li-
cense, the required renewal fee.
(h) Upon a determination by the [state department of licensing and regu-
lation] that a person licensed under this act has violated any provisions of
this act, the person's license shall be revoked. A revoked license may not be
reinstated for a period of [six (6)] months.
(i) Revocation or non-renewal of a license shall not prohibit the bringing
of disciplinary proceedings for an act committed before the license was ter-
minated.
(j) The [state department of licensing and regulation] by rule shall access
and collect a fee from all holders of a license issued under this act by the
[state department of licensing and regulation]. The fee shall be set at a
level so that the anticipated total of all fees collected by the [state depart-
ment of licensing and regulation] for a fiscal year are equal to the antici-
pated cost of issuing the license and administering this act.
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Section 6. [Improper Licensing Practices.] No performing rights society, or any agent or employee thereof shall:

1. (1) enter onto the premises of a proprietor’s business without first identifying himself to the proprietor or his employees and making known to them the purpose of the visit;
2. (2) collect, or attempt to collect, a royalty payment or any other fee except as provided in a contract executed pursuant to the provisions of this act;
3. (3) use or attempt to use any harassing or intimidating act or practice in negotiating with a proprietor for the payment of royalties, including, but not limited to:
   (i) using profane or obscene language or language that is abusive to the proprietor;
   (ii) placing phone calls without disclosing the name of the person making the call, who the person represents, and the nature of the call prior to commencing any further conversation; or
   (iii) causing expense to any proprietor in the form of long distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, without first disclosing the name of the person making the call, who the person represents, and the nature of the communication;
4. (4) divulge to any other person, except as may be required by law, any information concerning a proprietor.

Section 7. [Penalty.] A person who violates any provision of this act may be assessed a civil penalty by the [department of licensing and regulation] to be paid to the [state] not to exceed [one thousand (1,000)] dollars for each violation, together with the reasonable costs of prosecuting the case.

Section 8. [Cause of Action.]

(a) A proprietor may bring an action or assert a counterclaim in a court of competent jurisdiction against a performing rights society, its agent or employee, to enjoin any violation of this act. A proprietor may recover from a performing rights society any damages sustained by the proprietor as a result of a violation of this act. The proprietor may petition the court to terminate a contract which violates the provisions of this act. A proprietor shall be entitled to recover the greater of [one thousand (1,000)] dollars or the damages sustained by him, together with reasonable attorney’s fees, filing fees and reasonable costs of suit, in addition to any other legal or equitable relief.

(b) The rights, remedies and prohibitions accorded by the provisions of this act shall be in addition to and cumulative of any other right remedy or prohibition accorded by common law, federal law or the statutes of this state, and nothing contained herein shall be construed to deny, abrogate or impair any common law or statutory right, remedy or prohibition.
Section 9. [Application.] This act shall not apply to contracts between performing rights societies and broadcasters licensed by the Federal Communications Commission, except that if a performing rights society is licensed by the Federal Communications Commission, this act shall apply to contracts between that performing rights society and a proprietor as otherwise provided herein.

Section 10. [Severability.] [Insert severability clause.]

Section 11. [Effective Date.] [Insert effective date.]
Hurricane Relief Fund

Established in 1993, Hawaii’s Hurricane Relief Fund creates a separate insurance pool for all hurricane coverage. A board of directors, including the insurance commissioner as an ex officio voting member and six other members appointed by the governor, will monitor the availability of property insurance. If the board determines that private insurers are not making insurance reasonably available to consumers, they may sell hurricane property insurance policies through the fund.

The Hawaii program also ensures that the board will develop an incentive program to encourage insurer to provide hurricane policies. In addition, the fund is charged with developing a comprehensive loss reduction plan. The plan will include standards for new residential and commercial structures, and separate standards for existing residential and commercial structures.

A note to the statute says another 1993 law enables the “director” to establish a loan program to assist the Hawaii Hurricane Relief Fund in carrying out the plan of operation, and may make loans to the Hawaii Hurricane Relief Fund. That law apparently created a separate and special fund to be designated as the Hurricane Bond Loan Fund. It authorizes the department of budget and finance to issue revenue bonds to provide all or part of the proceeds of the Hurricane Relief Fund.

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(Title, enacting clause, etc.)

Section 1. [Short title.] This act may be cited as the Hurricane Relief Fund Act.

Section 2. [Definitions.] As used in this act, unless the context otherwise requires:

(1) “Board” means the [board of directors] of the [hurricane relief fund].
(2) “Commissioner” means the [insurance commissioner].
(3) “Covered event” means each hurricane that directly causes windstorm damage in the state.
(4) “Deductible” or “mandatory deductible” means the amount of loss assumed by the policyholder that is not included in the coverages provided by the fund.
(5) “Department” means the [department of commerce and consumer affairs].
Hurricane Relief Fund

(6) “Director” means the [director of finance].

(7) “Eligible property” means:

(i) Real property of [one (1)] to [four (4)] units used for residential purposes and which is in insurable condition, and tangible personal property located therein or thereon as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation; and

(ii) Real property used for business, commercial, or industrial purposes which is in insurable condition located therein or thereon as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation.

(8) “Fund” means the [hurricane relief fund] established by this act.

(9) “Hurricane” means a storm that has been declared and defined by the [National Weather Service Center] located at [insert location] to be a hurricane.

(10) “Plan of operation” means the plan for providing hurricane property insurance as adopted by the [board of directors] of the [hurricane relief fund], and any amendments thereto, under Section 8.

(11) “Policy of hurricane property insurance” means a policy or endorsement of insurance issued by the fund insuring only against damage or loss to eligible property caused by a covered event in excess of the deductible and up to [seven hundred fifty thousand (750,000)] dollars per risk on real property of [one (1)] to [four (4)] units used for residential purposes and up to [five hundred thousand (500,000)] dollars per risk on real property used for business commercial or industrial purposes, subject to the limits defined by the plan of operation; provided that this policy shall not include coverage for business interruption.

(12) “Policy of property insurance” means a policy providing “property insurance” as defined in [insert appropriate state citation]. For purposes of this act, it includes “basic property insurance” as provided under [insert appropriate state citation].

(13) “Property insurance” means policies, riders, or endorsements of insurance that provide indemnity, in whole or in part, for the loss, destruction, or damage of eligible property.

(14) “Servicing facility” means any insurer engaged in writing direct property insurance in this state and licensed in this state, and any other party authorized to act in like capacity on behalf of the [fund].

Section 3. [Hurricane Relief Fund.] There shall be a [hurricane relief fund] to be placed within the [department of commerce and consumer affairs] for administrative purposes. The [fund] shall be a public body and a body corporate and politic.

Section 4. [Fund Board of Directors.]

(a) The [board or directors] of the [fund] shall consist of the [insurance
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com... voting member and [six (6)] members appointed by the [governor] in accordance with [insert appropriate state citation]. The [board] shall be the policy making body of the [fund]. As such, the [board] shall be responsible for establishing policies for the administration and operation of the [fund] and the performance of other duties and functions assigned to the [fund].

(b) [Two (2)] members shall, by and with the advice and consent of the [senate], be appointed by the [governor] for a term of [four (4)] years; provided that of the initial appointees, [one (1)] shall be appointed for a [two (2)] year term. A vacancy on the authority of a seat subject to this section shall be filled in accordance with [insert appropriate state citation].

(c) [Two (2)] members shall, by and with the advice and consent of the [senate], be appointed by the [governor] from a list of nominations submitted by the [president of the senate]. The members appointed from a list of nominations of the [president of the senate] shall serve for a term of [four (4)] years; provided that of the initial appointees, [one (1)] shall be appointed for a [two (2)] year term.

(d) [Two (2)] members shall, by and with the advice and consent of the [senate], be appointed by the [governor] from a list of nominations submitted by the [speaker of the house of representatives]. The members appointed from a list of nominations of the [speaker of the house of representatives] shall serve for a term of [four (4)] years; provided that of the initial appointees, [one (1)] shall be appointed for a [two (2)] year term.

(e) The [governor] shall select a chairperson and vice-chairperson from among the members.

(f) The [board] shall meet as often as necessary to formulate and implement strategies and plans of operations in furtherance of this act. Upon its appointment, the [board] shall adopt an interim plan of operation within [ninety (90)] days.

(g) The appointed [directors] shall receive no compensation for services, but shall be entitled to reimbursement of necessary expenses, including travel expenses, incurred in the performance of their duties.

(h) The [board] may appoint, not subject to [insert appropriate state citation], an [executive director] of the [fund] whose salary shall be set by the [board]. The [board] may employ, not subject to [insert appropriate state citation], technical experts and officers, agents and employees, permanent or temporary, as required. The [board] may also contract with persons, not subject to [insert appropriate state citation] when in the determination of the [board], the services to be performed are unique and essential to the execution of the functions of the [fund]; provided that no individual contract shall be for a period longer than [two (2)] years per term.

Section 5. [Powers and Duties of Fund Regarding Insurance Availability.]

(a) The [fund] shall be responsible for monitoring the availability of prop-
erty insurance, including insurance for covered events, in this state. If at
any time the [board] determines, in its sole discretion, that the private
insurance market is not making such insurance reasonably available to
consumers in this state, the [fund] may offer policies of hurricane property
insurance for sale in accordance with this act.

(b) Nothing in Section 5 (a) shall prohibit the [board] from exercising its
powers to develop plans and procedures for the operation and management
of the [fund] without regard to the determination of the [board] as to the
availability of insurance in the private market.

Section 6. [General and Specific Powers of Fund.]

(a) The [hurricane relief fund] shall have the following general powers:

(1) To sue and be sued;
(2) To make and alter policies for its organization and internal adminis-

tration;
(3) To adopt rules in accordance with [insert appropriate state citation]
to effectuate the purposes of this act;
(4) To borrow monies, including but not limited to monies from state or
 federal sources and to issue notes or other obligations of the [fund] for the
 purposes of providing funds for any of its purposes as authorized by [the
 legislature] from time to time;
(5) To pledge or assign all or any part of the monies, rents, charges, or
 other revenue and any proceeds derived by the [fund]; and
(6) To enter into contracts as necessary to effectuate the purposes of this
act.

(b) In addition to the general powers under Section 6 (a), the [fund] shall
have the specific power to:

(1) Adopt and administer a plan of operation in accordance with Section
8, and a manual of rules and rates to provide persons having an insurable
interest in eligible property with insurance coverage provided by the [fund];
(2) Authorize the provision of hurricane coverage by the [fund] for tan-
gible personal property located in or on real property used for business,
commercial, or industrial purposes and establish limits of liability for spe-
cific coverages within the range of authorized coverage;
(3) Adopt actuarially sound rates based on reasonable assumptions rela-
tive to expectations of hurricane frequency and severity for all coverage
provided under policies or endorsements issued by the [fund]. Rates adopted
shall be subject to approval by the [commissioner] pursuant to [insert ap-
propriate state citation]. Rates adopted shall provide for classification of
risks and shall include past and prospective losses and expense experience
in this state;
(4) Adopt procedures, guidelines, and surcharges applicable to hurricane
policies issued in connection with an underlying property policy issued by
an unauthorized insurer;
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(5) Adopt any form of insurance policy necessary for providing hurricane property insurance by the [fund], with the approval of the [commissioner];
(6) Issue insurance policies and pay claims for coverage over the mandatory deductible;
(7) Require every licensed insurer transacting direct property insurance business in this state to act as a servicing facility, and by contract with such insurer authorize such insurer to inspect eligible properties, service policies and policyholders of hurricane property insurance, provide claim services, and perform any other duties as authorized by the [fund] for applicants to the [fund] and those insured by it;
(8)(i) Assess annually all licensed property or casualty insurers the amounts which, together with the other assets of the [fund], are sufficient to meet all necessary obligations of the [fund]. The assessment shall be made on the insurer’s gross direct written premiums for property and casualty insurance in [state] for the preceding calendar year. The rate of assessment in a year in which a covered event has not occurred shall be [three and three-quarters (3.75)] per cent and shall not include the insurer’s gross direct written premiums for motor vehicle insurance in [state]; provided that the rate of assessment may be increased to an amount not to exceed [five (5)] per cent and may include the insurer’s gross direct written premiums for motor vehicle insurance in [state] following a covered event. An insurer authorized to provide comparable coverage under Section 11 (b) shall be assessed an amount that excludes gross direct written premiums for property insurance in [state].
(ii) In the event of a loss from a covered event the [fund], in addition to the annual assessment in Section 6 (b)(8)(i), shall assess those insurers which wrote property insurance coverage during the year immediately preceding the year of the covered event in proportion to each insurer’s share of the total property premium during that year. However, in no event shall the total assessment exceed [five hundred million (500,000,000)] dollars in the aggregate; provided that a separate assessment shall be made for each covered event. An insurer authorized to provide comparable coverage under Section 11 (b) shall be exempted from this subparagraph.
(iii) Each insurer shall be notified of any assessment not later than [thirty (30)] days before it is due. The [fund] may exempt or differ, in whole or in part, the assessment of any insurer if the assessment would cause the insurer’s financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by this jurisdiction;
(9) Develop a program of incentives to encourage insurers to provide policies of hurricane property insurance in the event the [commissioner] authorizes the provision of comparable insurance pursuant to Section 11 (b); which may include, but are not limited to, exemption of the insurer’s gross direct written premium for property insurance from the annual assessment.
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assessment pursuant to Section 6 (b) and (8)(i);

(10) Develop a credit against the annual assessment based on the difference between premiums written in [date] and the premiums written in [date] by each property insurer;

(11) Develop procedures regarding policies written by unauthorized insurers comparable to the assessments, and other contributions made by insurers authorized to do business in this state;

(12) Accumulate reserves or funds, including the investment income thereon, to be used for paying expenses, making loans, and paying valid claims for covered events insured by the [fund]; and

(13) Collect and maintain statistical and other data as may be required by the [commissioner].

Section 7. [Advisory Committee.] To assist it in implementing this act the [fund] may appoint an [advisory committee] consisting of:

(1) Not less than one individual who is employed or trained as a meteorologist and possesses knowledge of the history, trends, and nature of windstorms in the [Pacific/Atlantic ocean];

(2) Not less than [one (1)] individual who is a member of the American academy of actuaries; and

(3) Not less than [one (1)] individual who is a structural engineer licensed to practice in the state and is knowledgeable about local community building codes.

The [fund] may establish additional advisory committees as it may deem necessary in furtherance of this act.

Section 8. [Plan of Operation, Manual of Rules and Rates.] (a) The [fund] shall adopt a plan of operation, and a manual of rules and rates necessary or suitable to ensure both the solvency and the reasonable and equitable administration of the [fund].

(b) If the [fund] fails to adopt a plan of operation, or the [fund] fails to adopt amendments to the plan of operation, the [commissioner] shall adopt a plan of operation or make amendments necessary to carry out the purposes of this act. Any plan of operation, or amendment, adopted by rule is superseded by a plan of operation, or amendment, adopted by a majority vote of all members of the [fund's] [board], and approved by the [commissioner].

(c) The plan of operation shall:

(1) Establish procedures for performance of all powers and duties of the [fund];

(2) Establish procedures for providing notice to all persons with interests insurable by the [fund] in the state of the type of insurance available from the [fund] in the event the [fund] offers insurance;

(3) Provide for and adopt all necessary forms, including insurance poli-
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cies to be used by and on behalf of the [fund], for use by the [fund] and
servicing facilities;

(4) Adopt actuarially sound rates, based on reasonable assumptions rela-
tive to expectations of hurricane frequency and severity, to be charged for
insurance provided by the [fund], in accordance with [insert appropriate
state citation];

(5) Publish manuals of rules, rates, and rating and classification plans,
which shall address mandatory deductibles, limits of coverage, and the clas-
sification of risks and rate modifications based on the exposure of insureds;

(6) Establish procedures for receiving and servicing applications to the
[fund];

(7) Establish procedures for processing and maintaining records of the
[fund] relating to its financial transactions, its agents, its employees, its
operations, and all transactions with any servicing facility;

(8) Establish procedures for the collection and remittance of the premi-
ums and return of unearned premiums where applicable;

(9) Establish procedures for the payment of valid claims;

(10) Establish procedures for prorating available funds pursuant to Sec-
Section 16;

(11) Establish procedures for obtaining reinsurance;

(12) Establish procedures to borrow funds; and

(13) Develop a plan for the investment of monies held by the [fund] sub-
ject to the limitations in [insert appropriate state citation].


(a) The [fund] shall submit to the [commissioner] each year, not later
than [one hundred twenty (120)] days after the end of the [fund’s] fiscal
year, a financial report in a form approved by the [commissioner].

(b) The [commissioner] may require other reports concerning risks in-
sured by the [fund] as the [commissioner] deems appropriate.

Section 10. [Examination by Commissioner.]

(a) For the purpose of ascertaining the [fund’s] condition or compliance
with this act, the [commissioner] shall examine the accounts, records, docu-
ments, and transactions of the [fund] at least once every [three (3)] years
commencing at the time the [fund] starts issuing policies of hurricane prop-
erty insurance or more often if the [commissioner] deems advisable. The
[fund] shall pay all reasonable and actually incurred expenses of the ex-
amination in accordance with [insert appropriate state citation].

(b) The [commissioner] may exercise all of the [commissioner’s] powers
provided by law in the supervision and regulation of the [fund], any servic-
ing facility, and any other person or entity subject to the jurisdiction of the
[commissioner].

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Section 11. [Policies Issued by Fund: Coverage.]
(a) Policies issued by the [fund] shall provide a maximum aggregate coverage of up to [seven hundred fifty thousand (750,000)] dollars per risk on real property of [one (1)] to [four (4)] units used for residential purposes and [five hundred thousand (500,000)] dollars per risk for real property used for business, commercial, and industrial purposes and shall provide for a mandatory deductible. The deductible amount for residential personal property policies shall be the greater of [one thousand (1,000)] dollars or [one (1)] per cent of the insured value or the greater of [two thousand (2,000)] dollars or [two (2)] per cent of the insured value; provided that the [board] may establish higher deductible limits. The deductible amount for commercial property policies shall be the greater of [five thousand (5,000)] dollars or [five (5)] per cent of the insured value or an amount equivalent to the all other perils deductible of the underlying policy of property insurance; provided that the [board] may establish higher deductible limits.
(b) Upon the authorization of the [commissioner], insurers may provide standard extended coverage endorsements, including coverage of hurricane risks, subject to the [fund's] program for incentives and credits; provided that in the absence of such authorization no other policy of property insurance or endorsement to a policy of property insurance on eligible property located in this state shall be issued to provide insurance for damages or losses caused by a covered event if such coverage is offered by the [fund].

Section 12. [Underlying Policies of Property Insurance.]
(a) Any eligible property for which coverage is sought from the [fund] shall already be insured by an underlying policy of property insurance as defined in [insert appropriate state citation] but excluding the covered event. Every underlying policy of property insurance provided by an unauthorized insurer shall be subject to the procedures, guidelines and surcharges as provided in the plan of operation.
(b) The [fund] shall not deny any application for hurricane property insurance on any property eligible under Section 12 (a).
(c) The [fund] shall renew any policy provided payment of the applicable renewal premium is received by the [fund] on or before the expiration date stated in the policy. The [fund] may nonrenew a policy on the grounds the property is no longer covered by an underlying policy of property insurance. The policy issued by the [fund] shall not provide coverage in the event that there is no underlying policy of property insurance at the time of loss. In such case, any unearned premiums shall be returned to the policyholder on a pro-rata basis.

Section 13. [Comprehensive Loss Reduction Plan.] The [fund] shall develop a comprehensive loss reduction plan for the hurricane peril. The plan shall include standards for new residential and commercial structures...
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and separate standards for existing residential and commercial structures. The plan shall provide a timetable for implementation of mandatory loss mitigation measures for both new and existing structures.

Section 14. [Right to Appeal; Judicial Review.] (a) Any applicant or policyholder adversely affected by a decision of the [fund] shall have the right to appeal to the [fund’s] [board] within [thirty (30)] days after the decision. The application for an appeal shall specify how the person making the appeal was aggrieved and the grounds upon which relief is demanded. The decision of the [board] shall be deemed final. 

(b) Any final action, decision, or order of the [board] under this act shall be subject to judicial review by the [appropriate court].

Section 15. [Liability of Fund.] There shall be no liability on the part of, and no cause of action of any nature shall arise against, any servicing facility; the [fund] or its agents, employees, or its [board]; the state; the [commissioner]; or the [commissioner’s] representatives for any action taken by them in the performance of their powers and duties under this act; provided that this section shall not be construed to prohibit any exercise of the [commissioner’s] power pursuant to this act or any other law or rule adopted pursuant to law, and any other law to the contrary notwithstanding. Nothing in this act shall create an obligation, debt, claim, cause of action, claim for relief, charge or any other liability of any kind whatsoever in favor of any person or entity without regard to whether that person or entity received any benefits under this act, against the state, or its officers and employees. The state and its officers and employees shall not be liable for the results of any application, denial of application, claim, loss, or other benefits provided by the [fund] pursuant to this act. Nothing in this act shall be construed as authorizing any claim against the state whatsoever, nor shall this act be construed as authorizing any claim against the [fund] in excess of any note, loan, liability, or other obligation incurred by the [fund].

Section 16. [Applicability of Other Laws; Insufficiency of Available Funds.] Notwithstanding any other provision of law to the contrary, neither the [fund] nor its policyholders shall be subject to the provisions of, or be eligible for, the benefits provided in [insert appropriate state citation]. If the total amount available at any time to the [fund] is insufficient to make all necessary payments, the monies available shall be prorated and the unpaid portion shall be paid as soon thereafter as monies become available.

Section 17. [Hurricane Reserve Trust Fund.] (a) There is created in the [treasury of the state] the [hurricane reserve trust fund] to be administered by the [hurricane relief fund], into which
Hurricane Relief Fund

shall be deposited the special mortgage recording fee established by this
act. The special mortgage recording fee shall be imposed on each mortgage
and each amendment to a mortgage which increases the principal amount
of the secured debt which is recorded in the [bureau of conveyances of the
state] under [insert appropriate state citation] or filed with the [assistant
registrar of the land court] of the state under [insert appropriate state cita-
tion].

The special fee shall be in an amount equal to [one-tenth (1/10)] of [one
(1)] per cent of the stated principal amount of the debt secured by the mort-
gage or, in the case of an amendment of a mortgage, an amount equal to
[one-tenth (1/10)] of [one (1)] per cent of the amount of the increase of the
stated principal debt.

The special fee shall be in addition to any applicable fees under [insert
appropriate state citation]. The special fees shall be collected by escrow
depositories licensed under [insert appropriate state citation], or financial
institutions authorized to engage in the escrow business, or persons and
companies permitted to engage in limited escrow transactions under [in-
sert appropriate state citations]. The special mortgage recording fees shall
be collected prior to recordation of the mortgage with the [bureau of con-
veyances] or the [assistant registrar of the land court of the state] and shall
be deposited into the [hurricane reserve trust fund]. The [bureau of con-
veyances] and the [assistant registrar of the land court] may also collect
and transmit any special fees for deposit into the [hurricane reserve trust
fund].

(b) The [fund] shall implement the annual assessment of all licensed prop-
erty and casualty insurers as authorized by Section 6 (b), 8(i) and the pro-
cceeds from the assessments shall be deposited into the [hurricane reserve
trust fund].

(c) If the [fund] offers to issue policies of hurricane property insurance,
the premiums for such policies shall be deposited into the [hurricane re-
serve trust fund].

(d) Should the monies in the [hurricane reserve trust fund] be insuffi-
cient to pay claims arising out of a covered event, the [fund] is authorized to
levy a surcharge not to exceed [seven and one-half (7 1/2)] per cent a year
on premiums charged for policies issued by all licensed property and casu-
alty insurers. These monies may be used for purposes as directed by the
board, including but not limited to the payment of debt service and prin-
cipal on a contract of financial reinsurance. The formula to calculate the
amount and period of the surcharge and the procedures and methodology
for payment of claims during periods of insufficiency of monies for such
purpose shall be provided in the plan of operation.

(e) Any proceeds from loans or other monies from the federal govern-
ment, any proceeds from bonds issued pursuant to this act loaned by the
[director of finance] to the [hurricane relief fund], and such other monies as
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the state may make available from time to time shall be deposited into the [hurricane reserve trust fund].

(f) Monies in the [hurricane reserve trust fund] shall be expended by the [fund] and used solely for the purpose of this act.

(g) Upon dissolution of the [fund], the net monies of the [hurricane reserve trust fund] shall revert to the [state general fund].

Section 18. [Discontinuance by Insurer.] [Thirteen (13)] months prior to discontinuation of writing property insurance coverage, an insurer shall file an affidavit with the [commissioner] stating the reasons for the discontinuation.

Section 19. [Other Sources of Insurance.] Nothing in this act shall prohibit or limit any person from obtaining insurance for property subject to [insert appropriate state citation], from any insurer other than the [fund] if such insurance is deemed sufficient by the [commissioner].

Section 20. [Effective Date.] [Insert effective date.]
Insurance Fraud Act

This act, submitted by the Coalition Against Insurance Fraud (CAIF), establishes insurance fraud as a specific crime and as a felony in severe cases. It imposes both civil and criminal penalties for claims fraud, underwriting fraud, deceptive sales practices and scams by insurance operators. Under the provisions, both insurers and consumers face civil and criminal penalties for fraudulent acts, but both are also provided with expanded remedies.

Fraudulent Insurance actions

Fraudulent insurance actions are defined as acts committed by anyone who knowingly and intentionally defrauds another person for gain. Claims fraud and application fraud are included in the definition, but the act contains a separate provision dealing with insurer fraud. Individuals who conspire, aid and/or abet a fraudulent act are also covered by the definition. A conviction under these provisions must meet the criminal burden of proof beyond a reasonable doubt.

Specifically, fraudulent actions include the preparation and presentation of information affecting the application for an insurance policy, and insurance claims and payments made pursuant to a policy. Actions that would fall under the insurer fraud portion of the act include the solicitation for sale of any policy or purported policy, an application for certificate of authority and misrepresentation of the financial condition of any insurer.

Attempts to commit fraud, as well as schemes perpetrated by insurers or those who claim to be in the insurance business, may also be prosecuted as specific crimes.

Unlawful Insurance actions

The act also stipulates that anyone who commits or allows to be committed an act with "an intent to induce reliance" has participated in unlawful insurance actions. Unlike the fraudulent insurance actions outlined above, "intent to defraud" is not required; the act utilizes a form of recklessness standards. Convictions under this section require only a preponderance of evidence.

The act separates the definition of unlawful insurance actions affecting policy claims, applications and payments fraud from fraud committed by insurers. The insurer fraud portion of the act includes application for certificates of authority, misrepresentations of the financial condition of an insurer and the solicitation for sale of any policy or purported policy.

Criminal Penalties

Criminal penalties apply only to those persons charged with committing
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a fraudulent insurance act. The penalties use a stepladder approach and increase based on actual damages and/or by previous convictions for fraud. The penalties would allow the courts and the prosecution to segregate or aggregate the economic loss suffered by the persons defrauded. The highest felony charge includes those charged with committing a fraudulent insurance act where the offense places anyone at risk of bodily injury or death.

Restitution
Anyone convicted of a fraudulent act would be required to make monetary restitution for any financial loss due to the violation. Courts may order lump sum or installment payments.

Administrative Penalties for Practitioners
Notification of the appropriate state licensing authority is required if any practitioner is found guilty of a fraudulent insurance act. The licensing authority would be required to hold a hearing to consider whether administrative sanctions (including license revocation) are appropriate.

Civil Remedies
Anyone defrauded by an unlawful insurance act can recover the profit or payment received as a result of the violation, plus attorney fees not to exceed $5,000. In cases of fraudulent insurance acts, the state attorney general or prosecutor has the authority to conduct civil proceedings on behalf of the state insurance department and victims. A $5,000 fine for each violation can be assessed. Victims can recover profits or payments received from the fraud, reasonable attorney fees, and all other economic damages resulting from the violation. The act also allows victims to recover treble damages if there’s clear evidence that the offense was part of a pattern or practice of violations of the fraudulent insurance act.

Civil remedies may be sought in cases where it’s difficult to prove charges beyond a reasonable doubt, but the act restricts civil remedies provisions so they may not be used with other remedies under the law.

Cooperation
Insurers are required to disclose information about suspected insurance fraud to any court, law enforcement agency or insurance department. The bill allows a disclosing insurer to have the right to receive case-related information from the agency to which the insurer submitted material, but allows for the protection of any information that is privileged. Any person or insurer who does not cooperate is not eligible to receive restitution.

Immunity
The act grants civil immunity to anyone who, in the absence of actual malice, furnishes information about insurance fraud. The bill allows for
the exchange of information among insurers and any other organization for the purpose of detecting and deterring fraud. Recovery of reasonable legal fees is possible if any action is brought against any person found to be immune from liability.

**Regulatory Requirements**

All insurers have six months after the law's effective date to prepare, implement and maintain an anti-fraud plan. The act establishes a framework for procedures to prevent and detect fraud, to educate appropriate employees on detection, to hire or contract for fraud investigators, and to report fraud to the appropriate authorities for investigation and prosecution.

The state insurance commissioner may examine the insurer’s compliance with the state anti-fraud plan. The plans would be exempt from the state's police records act. Insurers are also required to print or attach fraud warnings on all applications and claim forms no later than six months after the effective date of the law. Insurers face a fine for failing to prepare, implement, maintain and submit an anti-fraud plan to the insurance department.


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**Suggested Legislation**

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Model Insurance Fraud Act.

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

1 (1) “Actual malice” means the knowledge that information is false, or reckless disregard of whether it is false.

1 (2) “Conceal” means to take affirmative action to prevent others from discovering information. Mere failure to disclose information does not con-
Suggested State Legislation

stitute concealment. Action by the holder of a legal privilege, or one who
has a reasonable belief that a privilege exists, to prevent discovery of privi-
leged information does not constitute concealment.

(3) "Insurance policy" means the written instrument in which are set
forth the terms of any certificate of insurance, binder of coverage or con-
tract of insurance (including a certificate, binder or contract issued by a
state-assigned risk plan); benefit plan; nonprofit hospital service plan; mo-
tor club service plan; or surety bond, cash bond or any other alternative to
insurance authorized by a state's financial responsibility act.

(4) "Insurance professional" means sales agents, managing general
agents, brokers, producers, adjusters and third party administrators.

(5) "Insurance transaction" means a transaction by, between or among
(1) an insurer or a person who acts on behalf of an insurer; and (2) an
insured, claimant, applicant for insurance, public adjuster, insurance pro-
fessional, practitioner, or any person who acts on behalf of any of the fore-
going, for the purpose of obtaining insurance or reinsurance, calculating
insurance premiums, submitting a claim, negotiating or adjusting a claim,
or otherwise obtaining insurance, self-insurance, or reinsurance or obtain-
ing the benefits thereof or therefrom.

(6) "Insurer" means any person purporting to engage in the business of
insurance or authorized to do business in the state or subject to regulation
by the state, who undertakes to indemnify another against loss, damage or
liability arising from a contingent or unknown event. "Insurer" includes,
but is not limited to, an insurance company; self-insurer; reinsurer; recip-
rocal exchange; interinsurer; risk retention group; Lloyd's insurer; frater-
nal benefit society; surety; medical service, dental, optometric or any other
similar health service plan; and any other legal entity engaged or purport-
edly engaged in the business of insurance, including any person or entity
which falls within the definition of "insurer" found within [state Insurance
Code §].

(7) "Pattern or practice" means repeated, routine or generalized in na-
ture, and not merely isolated or sporadic.

(8) "Person" means a natural person, company, corporation, unincorpo-
rated association, partnership, professional corporation, agency of govern-
ment and any other entity.

(9) "Practitioner" means a licensee of this state authorized to practice
medicine and surgery, psychology, chiropractic or law or any other licensee
of the state or person required to be licensed in the state whose services are
compensated either in whole or in part, directly or indirectly, by insurance
proceeds, including but not limited to automotive repair shops, building
contractors and insurance adjusters, or a licensee similarly licensed in other
states and nations or the licensed practitioner of any nonmedical treat-
ment rendered in accordance with a recognized religious method of heal-
ing.
Insurance Fraud Act

(10) "Premium” means consideration paid or payable for coverage under an insurance policy. "Premium” includes any payments, whether due within the insurance policy term or otherwise, and deductible payments whether advanced by the insurer or insurance professional and subject to reimbursement by the insured or otherwise, any self insured retention or payments, whether advanced by the insurer or insurance professional and subject to reimbursement by the insured or otherwise, and any collateral or security to be provided to collateralize obligations to pay any of the above.

(11) “Premium finance company” means a person engaged or purporting to engage in the business of advancing money, directly or indirectly, to an insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, including but not limited to loan contracts, notes, agreements or obligations, wherein the insured has assigned the unearned premiums, accrued dividends, or loss payments as security for such advancement in payment of premiums on insurance policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services.

(12) “Premium finance transaction” means a transaction by, between or among an insured, a producer or other party claiming to act on behalf of an insured and a third-party premium finance company, for the purposes of purportedly or actually advancing money directly or indirectly to an insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned premiums, accrued dividends or loan payments as security for such advancement in payment of premiums on insurance policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services.

(13) “Reckless” means without reasonable belief of the truth, or, for the purposes of Section 4 (a)(3), with a high degree of awareness of probable insolvency.

(14) "Withhold” means to fail to disclose facts or information which any law other than this act requires to be disclosed. Mere failure to disclose information does not constitute “withholding” if the one failing to disclose reasonably believes that there is not duty to disclose.

Section 3. [Fraudulent Insurance Act.]

(a) Any person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits, or participates in or permits its employees or its agents to commit any of the following acts, has committed a fraudulent insurance act:

(1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an insurer, insurance professional or premium finance company in connection with an insurance transaction or premium finance transaction,
any information which contains false representations as to any material fact, or which withholds or conceals a material fact concerning any of the following:

(i) The application for, rating of, or renewal of, any insurance policy;
(ii) A claim for payment or benefit pursuant to any insurance policy;
(iii) Payments made in accordance with the terms of any insurance policy;
(iv) The application used in any premium finance transaction;

(2) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, insurance professional or a premium finance company in connection with an insurance transaction or premium finance transaction, any information which contains false representations as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(i) The solicitation for sale of any insurance policy or purported insurance policy;
(ii) An application for certificate of authority;
(iii) The financial condition of any insurer;
(iv) The acquisition, formation, merger, affiliation or dissolution of any insurer;

(3) Solicits or accepts new or renewal insurance risks by or for an insolvent insurer.

(4) Removes the assets or records of assets, transactions and affairs or such material part thereof, from the home office or other place of business of the insurer, or from the place of safekeeping of the insurer, or destroys or sequesters the same from the [state department of insurance].

(5) Diverts, misappropriates, converts or embezzles funds of an insurer, an insured, claimant or applicant for insurance in connection with:

(i) An insurance transaction;
(ii) The conduct of business activities by an insurer or insurance professional;
(iii) The acquisition, formation, merger, affiliation or dissolution of any insurer.

(b) It shall be unlawful for any person to commit, or to attempt to commit, or to aid, assist, abet or solicit another to commit, or to conspire to commit a fraudulent insurance act.

Section 4. [Unlawful Insurance Act.]
(a) Any person who commits, or participates in, or permits its employees or its agents to commit any of the following acts with an intent to induce reliance, has committed an unlawful insurance act:

(1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an insurer, insurance professional or a premium finance company in connection with an insurance transaction or premium finance transac-
Insurance Fraud Act

...tion, any information which the person knows to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(i) The application for, rating of, or renewal of, any insurance policy;
(ii) A claim for payment or benefit pursuant to any insurance policy;
(iii) Payments made in accordance with the terms of any insurance policy;
(iv) The application for the financing of any insurance premium;

(2) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, insurance professional or a premium finance company in connection with an insurance transaction or premium finance transaction, any information which the person knows to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(i) The solicitation for sale of any insurance policy or purported insurance policy;
(ii) An application for certificate of authority;
(iii) The financial condition of any insurer;
(iv) The acquisition, formation, merger, affiliation or dissolution of any insurer;

(3) Solicits or accepts new or renewal insurance risks by or for an insurer which the person knows was insolvent or the insolvency of which the person recklessly disregards.

(b) It shall be unlawful for any person to commit, or to attempt to commit, or to aid, assist, abet or solicit another to commit, or to conspire to commit an unlawful insurance act.

Section 5. [Criminal Penalties.] A person who violates Section 3 of this act is guilty of:

(1) A [Class A misdemeanor] if the greater of (A) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (B) the segregate or aggregate economic loss suffered by any person or persons as a result of his violation of Section 3, is less than [insert amount];

(2) A [Class B misdemeanor] if:
(i) the greater of (A) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (B) the segregate or aggregate economic loss suffered by any person or persons as a result of his violation of Section 3, is [insert amount] or more but less than [insert amount]; or
(ii) the greater of (A) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (B) the segregate or aggregate economic loss suffered by any person or persons as a result of his violation of Section 3, is less than [insert amount], and the defendant has
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been previously convicted of any class or degree of insurance fraud in any
jurisdiction;

(3) A [Class C misdemeanor] if the greater of (A) the value of property,
services or other benefit he wrongfully obtained, or attempted to obtain, or
(B) the segregate or aggregate economic loss suffered by any person or per-
sons as a result of his violation of Section 3, is [insert amount] or more but
less than [insert amount];

(4) A felony in the third degree if:

(i) the greater of (A) the value of property, services or other benefit he
wrongfully obtained, or attempted to obtain, or (B) the segregate or aggre-
gate economic loss suffered by any person or persons as a result of his
violation of Section 3, is [insert amount] or more but less than [insert
amount]; or

(ii) the greater of (A) the value of property, services or other benefit he
wrongfully obtained, or attempted to obtain, or (B) the segregate or aggre-
gate economic loss suffered by any person or persons as a result of his
violation of Section 3, is less than [insert amount], and the defendant has
been previously convicted [two (2)] or more times of any class or degree of
insurance fraud in any jurisdiction;

(5) A felony in the second degree if the greater of (A) the value of property,
services or other benefit he wrongfully obtained, or attempted to obtain, or
(B) the segregate or aggregate economic loss suffered by any person or per-
sons as a result of his violation of Section 3, is [insert amount] or more but
less than [insert amount].

(6) A felony in the first degree if:

(i) the greater of (A) the value of property, services or other benefit he
wrongfully obtained, or attempted to obtain, or (B) the segregate or aggre-
gate economic loss suffered by any person or persons as a result of his
violation of Section 3, is [insert amount] or more but less than [insert
amount]; or

(ii) the greater of (A) the value of property, services or other benefit he
wrongfully obtained, or attempted to obtain, or (B) the segregate or aggre-
gate economic loss suffered by any person or persons as a result of his
violation of Section 3, is less than [insert amount] and the defendant has
been previously convicted [two (2)] or more times of any degree of felony
insurance fraud in any jurisdiction; or

(iii) the greater of (A) the value of property, services or other benefit he
wrongfully obtained, or attempted to obtain, or (B) the segregate or aggre-
gate economic loss suffered by any person or persons as a result of his
violation of Section 3, is less than [insert amount] and his violation of Sec-
tion 3 of this act placed any person at risk of death or serious bodily injury.

Section 6. [Restitution.]

(a) A person convicted of a violation of Section 3 of this act shall be or-
ordered to make monetary restitution for any financial loss or damages sustained by any other person as a result of the violation. Financial loss or damage shall include, but is not necessarily limited to, loss of earnings, out-of-pocket and other expenses, paid deductible amounts under an insurance policy, insurer claim payments, cost reasonably attributed to investigations and recovery efforts by owners, insurers, insurance professionals, law enforcement and other public authorities, and cost of prosecution.

(b) When restitution is ordered, the court shall determine its extent and methods. Restitution may be imposed in addition to a fine and, if ordered, any other penalty, but not in lieu thereof. The court shall determine whether restitution, if ordered, shall be paid in a single payment or installments and shall fix a period of time, not in excess of [insert amount], within which payment of restitution is to be made in full.

Section 7. [Administrative Penalties for Practitioners.] Any practitioner determined by the court to have violated Section 3 shall be deemed to have committed an act involving moral turpitude that is inimical to the public well-being. The court or prosecutor shall notify the appropriate licensing authority in this state of the judgment for appropriate disciplinary action, including revocation of any such professional license(s), and may notify appropriate licensing authorities in any other jurisdictions where the practitioner is licensed. Any victim may notify the appropriate licensing authorities in this state and any other jurisdiction where the practitioner is licensed, of the conviction. The [state licensing authority] shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, to consider the imposition of the administrative sanctions as provided by law against the practitioner. Where the practitioner has been convicted of a felony violation of Section 3 of this act, the [state licensing authority] shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, and shall summarily and permanently revoke the license and it is hereby recommended by the [legislature] that the [state supreme court] shall summarily and permanently disbar any attorney found guilty of such felony. All such referrals to the appropriate licensing or other agencies, and all dispositive actions thereof, shall be a matter of public record.

Section 8. [Civil Remedies.] (a)(1) Any person injured in his business or property by reason of a violation of Section 4 may recover therefor from the person(s) violating Section 4, in any appropriate [court] the following:

(i) Return of any profit, benefit, compensation or payment received by the person violating Section 4 directly resulting from said violation;
(ii) Reasonable attorney's fees, related legal expenses, including internal legal expenses and court costs, not to exceed [five thousand (5,000)]
Suggested State Legislation

(2) An action maintained under this subsection may neither be certified as a class action nor be made part of a class action.

(b)(1) Any person injured in his business or property by reason of a violation of Section 3 may recover therefor from the person(s) violating Section 3, in any appropriate [court] the following:

(i) Return of any profit, benefit, compensation or payment received by the person violating Section 3 directly resulting from said violation;

(ii) Reasonable attorney's fees, related legal expenses, including internal legal expenses and court costs;

(iii) All other economic damages directly resulting from the violation of Section 3;

(iv) Reasonable investigative fees based on a reasonable estimate of the time and expense incurred in the investigation of the violation(s) of Section 3 proved at trial;

(v) A penalty of no less than [insert amount] and no greater than [insert amount].

(2) An action maintained under this subsection may neither be certified as a class action nor be made part of a class action.

(c) Any person injured in his or her business or property by a person violating Section 3, upon a showing of clear and convincing evidence that such violation was part of a pattern or practice of such violations, shall be entitled to recover threefold the injured person's economic damages. An action for treble damages must be brought within [insert number of year(s)] of such violation. One-third of the treble damages awarded shall be payable to the state to be used solely for the purpose of investigation and prosecution of violations of this act or other fraudulent behavior relating to insurance transactions, and/or for public education relating to insurance fraud. An action maintained under this subsection may neither be certified as class action nor be made part of a class action, unless the violations of Section 3 giving rise to the action resulted in criminal conviction of the violator(s) under Section 5.

(d) The [state attorney general], [district attorney] or prosecutorial agency shall have authority to maintain civil proceedings on behalf of the [state insurance department] and any victims of violations of Section 3. In any such action, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(1) The [court(s)] shall have jurisdiction to prevent and restrain violations of Section 3 of this act by issuing appropriate orders.

(2) In any action commenced under this section 8 (d), the court, upon finding that any person has violated Section 3, shall levy a fine of up to [five
Insurance Fraud Act

(e) Any court in which a prosecution for violation of Section 3 is pending shall have authority to stay or limit proceedings in any civil action regarding the same or related conduct. Any court in which is pending a civil action brought pursuant to Section 8 (d) may stay or limit proceedings in actions brought pursuant to Section 8 (a) through (c) regarding the same or related conduct or may transfer such actions or consolidate them before itself or allow the plaintiffs in such actions to participate in the action brought pursuant to section 8 (d), as it shall prescribe.

(f) Any cause of action under this section for violation of Section 3 or Section 4 must be brought within [insert number of years] of the commission of the acts constituting such violation, or within [insert number of years] of the time the plaintiff discovered (or with reasonable diligence could have discovered) such acts, whichever is later.

(g) An insurer shall not pay damages awarded under Section 8, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification. A third party who has asserted a claim against an insured shall have no cause of action under this section against the insurer of the insured arising out of the insurer’s processing or settlement of the third party’s claim. An obligee under a surety bond shall not have a cause of action under this section against the surety arising out of the surety’s processing or settlement of the obligee’s claim against the bond.

(h) Any person injured in his business or property by reason of a violation of Section 3 or Section 4 of this act may recover under only one of the subsections in this section.

Section 9. [Exclusivity of Remedies.]

(a) The remedies expressly provided in Section 8 shall be the only private remedies for violations of this act and no additional remedies shall be implied. The remedies available under Section 8 shall not be used in conjunction with or in addition to any other remedies available at law or in equity to duplicate recovery for the same element of economic damage. Further, in any civil action pleading both exemplary damages and the treble damages available in Section 8 (c), plaintiff shall elect one or the other remedy, but not both, at the conclusion of the evidentiary phase of the trial.

(b) However, nothing in this act shall limit or abrogate any right of action which would have existed in the absence of this act, but no action based on such a right shall rely on this act to establish a standard of conduct or for any other purpose.

Section 10. [Cooperation.]

(a) When any law enforcement official or authority, any insurance department, state division of insurance fraud, or state or federal regulatory
or licensing authority requests information from an insurer or insurance professional for the purpose of detecting, prosecuting or preventing insurance fraud, the insurer or insurance professional shall take all reasonable actions to provide the information requested, subject to any legal privilege protecting such information.

(b) Any insurer or insurance professional that has reasonable belief that an act violating Section 3 or 4 will be, is being, or has been committed shall furnish and disclose any information in its possession concerning such act to the appropriate law enforcement official or authority, insurance department, state division of insurance fraud, or state or federal regulatory or licensing authority, subject to any legal privilege protecting such information.

(c) An insurer or insurance professional providing information to any law enforcement, regulatory, licensing or other governmental agency under Section 10 (a) or 10 (b), shall have the right to request information in the possession or control of the agency relating to the suspected violation or to a pattern of related activity, except information which was privileged or confidential under the laws of this state prior to its submission to the agency. In instances where disclosure would not jeopardize an ongoing investigation or prosecution, the agency shall provide the requested information to the insurer or insurance professional. The agency may request that the insurer or insurance professional keep the disclosed information confidential.

(d) Any person that has a reasonable belief that an act violating this act will be, is being, or has been committed; or any person who collects, reviews or analyzes information concerning insurance fraud may furnish and disclose any information in its possession concerning such act to an authorized representative of an insurer that requests the information for the purpose of detecting, prosecuting or preventing insurance fraud.

(e) Failure to cooperate with a request for information from an appropriate local, state or federal governmental authority shall bar a person's eligibility for restitution from any proceeds resulting from such governmental investigation and prosecution.

Section 11. [Immunity.] In the absence of actual malice, no person furnishing, disclosing or requesting information pursuant to Section 10 shall be subject to civil liability for libel, slander, or any other cause of action arising from the furnishing, disclosing or requesting of such information. No person providing information pursuant to Section 10 (a) shall be subject to civil liability for any cause of action arising from the person's provision of requested information. Any person against whom any action is brought who is found to be immune from liability under this section, shall be entitled to recover reasonable attorney's fees and costs from the person or party who brought the action. This section does not abrogate or modify in
any way any common law or statutory privilege or immunity heretofore
enjoyed by any person.

Section 12. [Regulatory Requirements.] Insurers solely writing [insert type
of insurance] shall be excepted from the requirements of this section.

(1) Anti-Fraud Plans

(i) Within [six (6)] months of the effective date of this legislation, every
insurer shall prepare, implement, maintain and submit to the [state de-
partment of insurance] an insurance anti-fraud plan.

(ii) Each insurer’s anti-fraud plan shall outline specific procedures,
appropriate to the type of insurance the insurer writes in this state, to:

(A) prevent, detect and investigate all forms of insurance fraud, in-
cluding fraud involving the insurer’s employees or agents; fraud resulting
from misrepresentations in the application, renewal or rating of insurance
policies; claims fraud; and security of the insurer’s data processing system.

(B) educate appropriate employees on fraud detection and the insurer’s
anti-fraud plan.

(C) provide for the hiring of or contracting for fraud investigators.

(D) report insurance fraud to appropriate law enforcement and regu-
larly authorities in the investigation and prosecution of insurance fraud.

(E) pursue restitution for financial loss caused by insurance fraud,
where appropriate.

(iii) The [commissioner] may review each insurer’s anti-fraud plan to
determine if it complies with the requirements of this section.

(iv) It shall be the responsibility of the [commissioner] to assure in-
surer compliance with anti-fraud plans submitted to the [commissioner].

The [commissioner] may require reasonable modification of the insurer’s
anti-fraud plan, or may require other reasonable remedial action if the re-
view or examination reveals substantial non-compliance with the terms of
the insurer’s own anti-fraud plan.

(v) The [commissioner] may require each insurer to file a summary of
the insurer’s anti-fraud activities and results. The anti-fraud plans and the
summary of the insurer’s anti-fraud activities and results are not public
records and are exempt from the [insert name of public records act], and
shall be proprietary and not subject to public examination, and shall not be
disclosable or admissible in civil litigation.

(vi) This section confers no private rights of action.

(2) Fraud Warnings

(i) No later than [six (6)] months after the effective date of this act, all
printed applications for insurance, and all printed claim forms provided
and required by an insurer or required by law as a condition of payment of
a claim, shall contain a statement, permanently affixed to the application
or claim form, that clearly states in substance the following:

“It is a crime to knowingly provide false, incomplete or misleading informa-
Suggested State Legislation

Penalties include imprisonment, fines and denial of insurance benefits.”

(ii) The lack of a statement required in this section does not constitute a defense in any criminal prosecution under Section 3 nor in any civil action under Sections 3 or 4.

(3) Enforcement

Notwithstanding any other provision of the [state insurance code], the following are the exclusive monetary penalties for violation of this section. Insurers that fail to prepare, implement, maintain and submit to the [state department of insurance] an insurance anti-fraud plan are subject to a penalty of [five hundred (500)] dollars per day, not to exceed [twenty-five thousand (25,000)] dollars.

Section 13. [Effective Date.] [Insert effective date.]
Federal Mandates Act

This act, based on 1994 Colorado legislation, requires any state officer, official or employee to implement federal statutes in good faith and to exercise a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions that are inconsistent with state policy or do not advance state policy in a cost-effective manner. It also requires state agencies to follow certain criteria in the development of state programs that respond to mandates in federal statutes.

The act prohibits any state appropriations for a state program authorized or mandated by a federal statute unless the program is necessary to protect the public health, safety and welfare; is necessary to implement the federal statute; provides a cost-effective implementation of the federal statute; or benefits the state by providing a cost-effective means to meet a higher public health, safety and welfare standard established under state law. It also directs the general assembly to determine whether a state program is necessary and whether federal constitutional and state constitutional or statutory authority exist.

Each state agency is required to provide information regarding any monetary savings for the state and any reduction in regulatory burden that could be or have been achieved through the development of state policies that meet the intent of a federal statute but do not necessarily follow all applicable federal regulations, guidelines or policies. State agencies must provide advice to the office of state planning and budgeting and the joint budget committee regarding statutory changes that are necessary to provide the authority to implement state policies to create additional savings or greater reductions in regulatory burdens.

Programs funded with non-tax or non-fee revenues that state authorities are required to administer in a trusteeship or custodial capacity and are not subject to appropriation by the general assembly are excluded from this act.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title.] This act may be cited as the Federal Mandates Act.

2. Section 2. [Legislative Findings.]

(a) In enacting this article, the [general assembly] employs its legislative authority to establish that the people of the [state], acting through their
Suggested State Legislation

[elect officials in [state] state government, have the responsibility and authority to establish policy in and for [state] pertaining to federal programs mandated in federal statutes.

(b) The intent of the [general assembly] is to assure the primacy of the [state] legal and political authority to implement in and for [state] the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with [state] policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this connection the [state] [general assembly] finds and declares that:

(1) The power to implement federal policies in and for [state] is central to the ability of the people of [state] to govern themselves under a federal system of government; and

(2) Any implementation of federal policies in and for [state] by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(d) The [general assembly] further finds and declares that:

(1) There is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of [state], and the state and does not properly respect the rights of the [state], local government, and citizens.

(2) The state government has an obligation to the public to do what is necessary to protect the rights of [state] citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state.

(3) The tenth amendment to the United States Constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. [State], as one of the sovereign states within the Union, has constitutional authority to enact laws protecting the environment of the [state] and safeguarding the public health, safety, and welfare of the citizens of [state]. However, this authority has too often been ignored by the federal government, as the federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the tenth amendment be accorded proper respect.

(4) Current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of [state or region], and federal regulators frequently do not understand the needs and priorities of the citizens of [state].

(5) The citizens of this state can create and wish to create innovative solutions to [state] problems, but the current manner in which legal chal-
Federal Mandates Act

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

(1) “Executive committee” means [the executive committee of the legislative council] established pursuant to [insert appropriate state citation].

(2) “Federal statute” means a federal statute that is in accord with the United States Constitution imposing mandates on state or local governments, which may include, but is not limited to, the following:


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(xii) The Federal “Family and Medical Leave Act of 1993”, P.L. 103-3, as amended;
(xvii) The Federal Social Services and Medicaid Requirements, 42 U.S.C. sec. 1396, as amended;
(xviii) Federal Highway Safety Programs;
(xix) The Federal “Intermodal Surface Transportation Efficiency Act of 1991”, P.L. 102-240, as amended; and

(3) “Joint Budget Committee” means the [joint budget committee of the general assembly] established pursuant to [insert appropriate state citation].

Section 4. [State Programs to Implement Federal Statutes.]
(a) Any state officer, official, or employee charged with the duty of implementing any federal statute shall implement the law as required by the federal statute in good faith and exercising a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with state policy or do not advance state policy in a cost-effective manner.
(b) Any agency of the executive department of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary regulations using the following criteria:
(1) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith with a critical view toward any federal regulations, guidelines, or policies.
(2) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of [state], and the state, including the limitations imposed by [insert appropriate state citation].
(3) Any state program that implements the goals of the federal statute should use the most efficient method possible, with careful consideration given of cost of the program and the impact of the program on [state] citizens and local governments, and the long-range public health, safety, and welfare of citizens of the state.
Section 5. [Joint Budget Committee - Reports to the [Executive Committee] - Budgetary Savings.]

(a) The [joint budget committee] shall report to the [executive committee] regarding the proposed implementation of this section.

(b)(1) If any state program is authorized or mandated by a federal statute, no state appropriations for the program shall be enacted unless:

(i) The state program is necessary to protect the public health, safety, and welfare;

(ii) The state program is necessary to implement the federal statute;

(iii) The operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the state, by local government, and by business; or

(iv) The state program benefits the state, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.

(2) Each state agency making a budget request for state appropriations for a state program authorized or mandated by federal statute shall include in its budget request citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The [joint budget committee] shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the [general assembly] and the [executive committee] thereon.

(3) The [general assembly], after receiving a recommendation from the [joint budget committee] and the [executive committee], shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The [general assembly] shall exercise a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Enactment of state appropriations for a state program shall constitute the [general assembly's] determination that the state program is necessary and that federal constitutional authority and state constitutional or statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.

(4) Prior to recommending to the [general assembly] any budget for a state agency that is charged with implementing federal mandates, the [office of state planning and budgeting] and the [joint budget committee] shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on the public and local governments that could be or have been achieved through the development of state policies that meet the intent of the federal statute but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the [office of state
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planning and budgeting] and the [joint budget committee] regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The [office of state planning and budgeting] shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in its annual budget request to the [joint budget committee] based upon such information.

(c) For purposes of this section, “state program” does not include any portion of a program that is funded with non-tax or non-fee revenues, or both, which state authorities are required to administer in a trusteeship or custodial capacity and which are not subject to appropriation by the [general assembly].

Section 6. [Requests for Information Regarding Federal Mandates.]

(a) The staff of the [legislative council] and the [office of legislative legal services] shall jointly prepare one or more requests for information regarding federal mandates on or before [date]. The requests for information shall be directed to persons involved with or affected by federal mandates, including but not limited to the following:

(1) Public and private institutions of higher education both within and outside of [state] and individuals in such institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;

(2) Attorneys in private practice who have dealt with federal mandate litigation or research; and

(3) Organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on state and local governments.

(b) The issues addressed in the request for information issued pursuant to this section shall include the following:

(1) Identification of federal mandates expressing broad federal policies that would best be implemented on a state-by-state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;

(2) Legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state’s own policies;

(3) Practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;

(4) Recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and is suited to the
needs of each state; and

(5) Possible funding sources for federal mandate efforts and opportunities for [state] to match other funding sources or to cooperate with other entities in working towards federal mandate solutions.

(c) The requests for information prepared pursuant to this section shall require that the initial responses be received by the staff of the [legislative council] and the [office of legislative legal services] by [date]. The staff of the [legislative council] and the [office of legislative legal services] may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

Section 7. [Report by the [Staff of the Legislative Council] and the [Office of Legislative Legal Services] regarding Federal Mandates - Recommendations.]

The [staff of the legislative council] and the [office of legislative legal services] shall examine the information received through the requests for information prepared pursuant to [insert appropriate state citation] and, based upon such information, shall jointly present a report to the [executive committee of the legislative council] on or before [date], that includes the following:

(1) Recommendations to the [executive committee] regarding:

(i) Contracts that the [executive committee] may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; or

(ii) A request for proposals process to obtain bids for contracts to provide services regarding federal mandates with the intent that the contracts be entered into on or before [date], and that the results of any research or analysis performed under such contracts be received by the [executive committee] on or before [date]; and

(2) Estimates of the cost of the federal mandate efforts recommended by the [staff of the legislative council] and the [office of legislative legal services] under the provisions of this section and recommendations regarding any possible public and private sources of moneys to fund such efforts, including any appropriations by the [general assembly] that may be required.

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

Section 9. [Powers and Duties.] The [committee] has the duty to enforce the requirements of the “Federal Mandates Act”, [insert appropriate state citation] in the budgeting process pursuant to the requirements of Section 5 of this act.

Section 10. [Functions.] In addition to any other powers and duties set
Section 11. [No Appropriations.] The [general assembly] has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state money is necessary to carry out the purposes of this act.

Section 12. [Effective Date] [Insert appropriate effective date.]
Local Government Efficiency and Cooperation Act

This act, which is based on 1994 Minnesota legislation, creates a board of local government innovation and cooperation, the membership of which is to include three members of the Senate, three members of the House (one member from each body representing the minority party), two administrative law judges, the state commissioners of finance and administration or their designees, and the state auditor and his or her designee.

The board has six specific duties:

• to rule on applications from local government units for waivers of administrative rules and procedural requirements in state law;
• to provide grants to local government units proposing to design models and plans for innovative service delivery and management;
• to rule on applications from local government units for financial assistance to enable them to plan for cooperative efforts;
• to rule on applications from eligible local government units for service-sharing grants under existing law;
• to rule on applications from counties, cities, and towns proposing to combine under existing law;
• and to make recommendations to the legislature regarding the elimination of state mandates that inhibit local government efficiency, innovation and cooperation.

The act was later amended to simplify the application process for local governments and to streamline the review and award process for the board. The language establishing the board’s procedures for reviewing applications was also reorganized and the grant programs established in 1993 were altered to make them administratively similar.

The 1994 SSL volume included a note entitled “Local Government Mandate Relief Legislation.” The note described state actions designed to alleviate the impact of state mandates upon local governments, including mandate reimbursement requirements and fiscal impact requirement statements.

A section was also added to this act specifying that the board must rule on the local government’s exemption from certain state procedural mandates which inhibit local government efficiency, innovation and cooperation. The board must decide whether the exemption sought by a local government is an exemption from a “procedural” law. The act provides guidelines for determining whether a law is “procedural” based upon whether it specifies how a local government unit is to achieve an outcome rather than a substantive law requiring a specific outcome. The criteria for such a determination include: who must deliver a service, where the service must
be delivered, how often a service must be provided to a recipient, and to whom and in what form reports must be made.

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(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Local Government Efficiency and Cooperation Act.

Section 2. [Definitions.]
1. “Agency” means a department, agency, board, or other instrumentality of state government that has jurisdiction over an administrative rule or law from which a waiver is sought under Section 6 of this act. If no specific agency has jurisdiction over such a law, “agency” refers to the [attorney general].
2. “Board” means the [board of government innovation and cooperation] established by Section 3 of this act.
3. “Council” or “metropolitan council” means the metropolitan council established by [insert appropriate state citation].
4. “Local government unit” means a county, home rule charter or statutory city, school district, town, or special taxing district, except for purposes of Sections 17 through 22 of this act.
5. “Metropolitan agency” has the meaning given in [insert appropriate state citation].
6. “Metropolitan area” has the meaning given in [insert appropriate state citation].
7. “Scope” as used in this act, the terms defined in this section have the meanings given them.

Section 3. [Membership, Board of Government Innovation and Cooperation.] The [board of government innovation and cooperation] consists of [three (3)] members of the [senate] appointed by the [subcommittee on committees] of the [senate committee on rules and administration], [three (3)] members of the [house of representatives] appointed by the [speaker of the house], two [administrative law judges] appointed by the [chief administrative law judge], the [commissioner of finance], the [commissioner of administration], and the [state auditor], may each designate one staff member to serve in the [commissioner’s] or [auditor’s] place. The members of the [senate] and [house of representatives] serve as nonvoting members.

Section 4. [Duties of Board.]
(a) The board shall:
Local Government Efficiency and Cooperation Act

(1) accept applications from local government units for waivers of administrative rules and temporary, limited exemptions from enforcement of procedural requirements in state law as provided in this act, and determine whether to approve, modify, or reject the application;
(2) accept applications for grants to local government units and related organizations proposing to design models or plans for innovative service delivery and management as provided in Section 13 of this act, and determine whether to approve, modify, or reject the application;
(3) accept applications from local government units for financial assistance to enable them to plan for cooperative efforts as provided in this act, and determine whether to approve, modify, or reject the application;
(4) accept applications from eligible local government units for service-sharing grants as provided in this act and determine whether to approve, modify, or reject the application;
(5) accept applications from counties, cities, and towns proposing to combine under this act and determine whether to approve or disapprove the application; and
(6) make recommendations to the [legislature] regarding the elimination of state mandates that inhibit local government efficiency, innovation, and cooperation.

(b) The [board] may purchase services from the [metropolitan council] in reviewing requests for waivers and grant applications.

Section 5. [Staff.] The [board] may hire staff or consultants as necessary to perform its duties.

Section 6. [Rule and Law Waiver Requests.]
(a) Generally. Except as provided in Section 6 (b), a local government unit may request the [board of governmental innovation and cooperation] to grant a waiver from one or more administrative rules or a temporary, limited exemption from enforcement of state procedural laws governing delivery of services by the local government unit. Two or more local government units may submit a joint application for a waiver or exemption under this section if they propose to cooperate in providing a service or program that is subject to the rule or law. Before submitting an application to the [board], the governing body of the local government unit must approve, in concept, the proposal waiver or exemption. A local government unit or two or more units acting jointly may apply for a waiver or exemption on behalf of a nonprofit organization providing services to clients whose costs are paid by the unit or units. A waiver or exemption granted to a nonprofit organization under this section applies to services provided to all the organization's clients at a meeting required to be public under [insert appropriate state citation].
(b) A school district that is granted a variance from rules of the [state
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board of education] under [insert appropriate state citation] need not apply
to the [board] for a waiver of those rules under this section. A school district
may not seek a waiver of rules under this section if the [state board of
education] has authority to grant a variance to the rules under [insert ap-
propriate state code]. Section 6 (b) does not preclude a school district from
being included in a cooperative effort with another local government unit
under this act.

Section 7. [Application Required.]
  (a) A local government unit requesting a waiver of a rule or exemption
from enforcement of a law under this act shall present a written applica-
tion to the [board]. The application must include:
  (1) identification of the service or program at issue;
  (2) identification of the administrative rule or the law imposing a proce-
dural requirement with respect to which the waiver or exemption is sought;
  and
  (3) a description of the improved service outcome sought, including an
  explanation of the effect of the waiver or exemption in accomplishing that
  outcome.
  (b) A copy of the application must be provided by the requesting local
government unit to the exclusive representative as certified under [insert
appropriate state citation] to represent employees who provide the service
or program affected by the requested waiver or exemption.

Section 8. [Application Review.]
  (a) Upon receipt of an application from a local government unit, the [board]
shall review the application. The [board] shall dismiss an application if it
finds that the application proposes a waiver of rules or exemption from
enforcement of laws that would result in due process violations, violations
of federal law or the state or federal constitution, or the loss of services to
people who are entitled to them.
  (b) The [board] shall determine whether a law from which an exemption
for enforcement is sought is a procedural law, specifying how a local gov-
ernment unit is to achieve an outcome, rather than a substantive law pre-
scribing the outcome or otherwise establishing policy. In making its deter-
mination, the [board] shall consider whether the law specifies such require-
ments as:
    (1) who must deliver a service;
    (2) where the service must be delivered;
    (3) to whom and in what form reports regarding the services must be
made; and
    (4) how long or how often the service must be made available to a
given recipient.
  (c) If the [commissioner of finance], the [commissioner of administration],

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or the [state auditor] has jurisdiction over a rule or law affected by an application, the chief administrative law judge, as soon as practicable after receipt of the application, shall designate a third administrative law judge to serve as a member of the board in place of that official while the [board] is deciding whether to grant the waiver or exemption. If the application is submitted by a local government unit in the metropolitan area or the unit requests a waiver of a rule or temporary, limited exemptions from enforcement of a procedural law over which the [metropolitan council] or a metropolitan agency has jurisdiction, the [board] shall also transmit a copy of the application to the [council] for review and comment. The [council] shall report its comments to the [board] within [sixty (60)] days of the date the application was transmitted to the [council]. The [council] may point out any resources or technical assistance it may be able to provide a local government submitting a request under this section.

Within [fifteen (15)] days after receipt of the application, the [board] shall transmit a copy of it to the [commissioner] of each [agency] having jurisdiction over a rule or law from which a waiver or exemption is sought. The [agency] may mail a notice that it has received an application for a waiver or exemption to all persons who have registered with the [agency] under [insert appropriate state citation] identifying the rule or law from which a waiver or exemption is requested. If no [agency] has jurisdiction over the rule or law, the [board] shall transmit a copy of the application to the [attorney general]. The [agency] shall inform the [board] of its agreement with or objection to and grounds for objection to the waiver or exemption request within [sixty (60)] days of the date when the application was transmitted to it. An agency's failure to do so is considered agreement to the waiver or exemption. The [board] shall decide whether to grant a waiver or exemption at its next regularly scheduled meeting following its receipt of an agency's response or the end of the [sixty (60)] day response period. If consideration of an application is not concluded at that meeting, the matter may be carried over to the next meeting of the [board]. Interested persons may submit written comments to the board on the waiver or exemption request up to the time of its vote on the application.

(f) If the exclusive representative of the affected employees of the requesting local government unit objects to the waiver or exemption request it may inform the [board] of the objection to and the grounds for the objection to the waiver or exemption request within [sixty (60)] days of the receipt of the application.

Section 9. [Hearing.] If the [agency] or the exclusive representative does not agree with the waiver or exemption request, the board shall set a date for a hearing on the application. The hearing must be conducted informally at a meeting of the [board]. Persons representing the local government unit shall present their case for the waiver or exemption, and persons rep-
representing the [agency] shall explain the [agency's] objection to it. Members of the [board] may request additional information from either party. The [board] may also request, either before or at the hearing, information or comments from representatives of business, labor, local governments, state agencies, consultants, and members of the public. If necessary, the hearing may be continued at a subsequent [board] meeting. A waiver or exemption must be granted by a vote of a majority of the [board] members. The [board] may modify the terms of the waiver or exemption request in arriving at the agreement required under this act.

Section 10. [Conditions of Agreements.] If the [board] grants a request for a waiver or exemption, the [board] and the local government unit shall enter into an agreement providing for the delivery of the service or program that is the subject of the application. The agreement must specify desired outcomes and the means of measurement by which the [board] will determine whether the outcomes specified in the agreement have been met. The agreement must specify the duration of the waiver or exemption, which may be for no less than [two (2)] years and no more than [four (4)] years, subject to renewal if both parties agree. The [board] may reconsider or renegotiate the agreement if the rule or law affected by the waiver or exemption is amended or repealed during the term of the original agreement. A waiver of a rule under this act has the effect of a variance granted by an agency under this act. A local unit of government that is granted an exemption from enforcement of a procedural requirement in state law under this section is exempt from that law for the duration of the exemption. The board may require periodic reports from the local government unit, or conduct investigations of the service or program.

Section 11. [Enforcement.] If the [board] finds that the local government unit is failing to comply with the terms of the agreement under this act, it may rescind the agreement. Upon the rescission, the local unit of government becomes subject to the rules and laws covered by the agreement.

Section 12. [Access to Data.] If a governmental unit, through a cooperative program under this act, gains access to data collected, created, received, or maintained by another local government that is classified as not public, the unit gaining access is governed by the same restrictions on access to and use of the data as the unit that collected, created, received, or maintained the data.

Section 13. [Service Budget Management Model Grants.] [One (1)] or more local units of governments, an association of local governments, the [metropolitan council], a local unit of government acting in conjunction with an organization or a state agency, or an organization established by [two
(2) or more local units of government under a joint powers agreement may apply to the [board of government innovation and management] for a grant to be used to develop models for innovative service budget management. A copy of the application must be provided by the units to the exclusive representatives certified under [insert appropriate state citation] to represent employees who provide the service or program affected by the application. Proposed models may provide options to local governments, neighborhood or community organizations, or individuals for managing budgets for service delivery. A copy of the work product for which the grant was provided must be furnished to the [board] upon completion, and the [board] may disseminate it to other local units of government or interested groups. If the [board] finds that the model was not completed or implemented according to the terms of the grant agreement, it may require the grantee to repay all or a portion of the grant. The [board] shall award grants on the basis of each qualified applicant's score under the scoring system in Section 16 of this act. The amount of a grant under this section may not exceed [fifty thousand (50,000)] dollars.

Section 14. [Cooperation Planning Grants.] Two (2) or more local government units an association of local governments; a local unit of government acting in conjunction with the [metropolitan council], an organization, or a state agency; or an organization formed by [two (2)] or more local units of government under a joint powers agreement may apply to the [board of government innovation and cooperation] for a grant to be used to develop a plan for intergovernmental cooperation in providing services. A copy of the application must be provided by the units to the exclusive representatives certified under [insert appropriate state citation] to represent employees who provide the service or program affected by the application. The plan may include model contracts or agreements to be used to implement the plan. A copy of the work product for which the grant was provided must be furnished to the [board] upon completion, and the [board] may disseminate it to other local units of government or interested groups. If the [board] finds that the grantee has failed to implement the plan according to the terms of the agreement, it may require the grantee to repay all or a portion of the grant. The [board] shall award grants on the basis of each qualified applicant's score under the scoring system in Section 16 of this act. The amount of a grant under this section may not exceed [fifty thousand (50,000)] dollars.

Section 15. [Service Sharing Grants.] Two or more local units of government; an association of local governments; a local unit of government acting in conjunction with the [metropolitan council], an organization, or a state agency; or an organization established by [two (2)] or more local units of government under a joint powers agreement may apply to the [board of
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government innovation and cooperation] for a grant to be used to meet the
start-up costs of providing shared services or functions. Agreements solely
to make joint purchases are not sufficient to qualify under this section. A
copy of the application must be provided by the applicants to the exclusive
representatives certified under [insert appropriate state citation] to repre-
sent employees who provide the service or program affected by the applica-
tion.
The proposal must include plans fully to integrate a service or function
provided by [two (2)] or more local government units. A copy of the work
product for which the grant was provided must be furnished to the [board]
upon completion, and the [board] may disseminate it to other local units of
government or interested groups. If the [board] finds that the grantee has
failed to implement the plan according to the terms of the agreement, it
may require the grantee to repay all or a portion of the grant. The [board]
shall award grants on the basis of each qualified applicant's score under
the scoring system in Section 16 of this act. The amount of a grant under
this section may not exceed [one hundred thousand (100,000)] dollars.

Section 16. [Scoring System.] In deciding whether to award a grant un-
der this act, the [board] shall use the following scoring system:
(1) Up to [fifteen (15)] points shall be awarded to reflect the extent to
which the application demonstrates creative thinking, careful planning,
cooperation, involvement of the clients of the affected service, and commit-
ment to assume risk.
(2) Up to [twenty (20)] points shall be awarded to reflect the extent to
which the proposed project is likely to improve the quality of service and to
have benefits for other local governments.
(3) Up to [fifteen (15)] points shall be awarded to reflect the extent to
which the application's budget provides sufficient detail, maximizes the
use of state funds, documents the need for financial assistance, commits to
local financial support, and limits expenditures to essential activities.
(4) Up to [twenty (20)] points shall be awarded to reflect the extent to
which the application reflects the statutory goal of the grant program.
(5) Up to [fifteen (15)] points shall be awarded to reflect the merit of
the proposed project and the extent to which it warrants the state's finan-
cial participation.
(6) Up to [five (5)] points shall be awarded to reflect the cost/benefit
ratio projected for the proposed project.
(7) Up to [five (5)] points shall be awarded to reflect the number of
government units participating in the proposal.
(8) Up to [five (5)] points shall be awarded to reflect the minimum
length of time the application commits to implementation.

Section 17. [Definitions.] As used in Sections 17 through 21 of this act,
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the following words mean:

1. “Board” means the [board of government innovation and cooperation].
2. “City” means home rule charter or statutory cities.
3. “Governing body” means, in the case of a county, the county board; in the case of a city, the city council; and, in the case of a town, the town board.
4. “Local government unit” or “unit” includes counties, cities, and towns.

Section 18. [Adoption and State Agency Review.] Each governing body that proposes to combine under this act must adopt by resolution a plan for cooperation and combination. The plan must address each item in this act. The plan must be specific for any item that will occur within [three (3)] years and may be general or set forth alternative proposals for an item that will occur more than [three (3)] years in the future. The plan must be submitted to the [board of government innovation and cooperation] for review and comment. For a metropolitan area local government unit, the plan must also be submitted to the [metropolitan council] for review and comment. The [council] may point out any resources or technical assistance it may be able to provide a governing body submitting a plan under this act. Significant modifications and specific resolutions of items must be submitted to the [board] and [council], if appropriate, for review and comment. In the official newspaper of each local government unit proposed for combination, the governing body must publish at least a summary of the adopted plans, each significant modification and resolution of items, and the results of each [board] and [council] if appropriate, review and comment.

Section 19. [State Agency Approval.] Before scheduling a referendum on the question of combining local government units, the units shall submit the plan adopted under this act to the [board.] Metropolitan area units shall also submit the plan to the [metropolitan council] for review and comment. The [board] may require any information it deems necessary to evaluate the plan. The [board] shall disapprove the proposed combination if it finds that the plan is not reasonably likely to enable the combined unit to provide services in a more efficient or less costly manner than the separate units would provide them, or if the plans or plan modification are incomplete. If the combination of local government units is approved by the [board] under this act, the local units are not required to proceed to accomplish the combination.

Section 20. [Eligibility.] A local government unit is eligible for aid under this section if the [board] has approved its plan to cooperate and combine under this act.

Section 21. [Additional Eligibility.] A local government unit is eligible for
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2 aid under this act if it has combined with another unit of government in
3 accordance with this act and a copy of the municipal board's order combin-
4 ing the two units of government is forwarded to the [board].

Section 22. [Appropriation.] [One million two hundred thousand
(1,200,000)] dollars is appropriated from the [local government trust fund]
2 to the [board of government innovation and cooperation] for the purpose of
4 making grants under this act, and paid under this act.

Section 23. [Appropriation.] [Two million two hundred thousand
(2,200,000)] dollars is appropriated from the [general fund] to the [board of
2 government innovation and cooperation] to implement and administer the
4 programs of the [board] in fiscal year [date].

Section 24. [Effective Date.] [Insert effective date.]
Federal Mandates for State Action
(Note)

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 to states was reduced.

The Committee on Suggested State Legislation approved the inclusion of this note to provide state policy makers with a continuing overview of recent federal measures requiring state legislative action for additional expenditures. In some cases, federal mandates preempt state statutes or policies. This note covers the activities of the second session (1994) of the 103rd U.S. Congress. Readers should take caution, however, that this is an overview and, as such, is not intended to serve as the primary source of information on all aspects of federal legislation and requirements, technical and otherwise.

The 1993 volume of Suggested State Legislation included a note on enactments from the first session of the 102nd Congress (1991); the 1994 volume, a note on enactments from the second of the 102nd Congress (1992); and the 1995 volume, a note on enactments from the first session of the 103rd Congress (1993). The Committee on Suggested State Legislation intends to continue to include mandate reviews in future volumes, not only as a mechanism for tracking major enactments, but also as an historical reference for the states.

The 103rd Congress

During the second session of the 103rd Congress, seven major enactments were passed that mandate or preempt state action. These mandates are listed here with a brief description of the impact of each one upon state governments.

Banking and Finance

The Interstate Banking Efficiency Act (PL 103-328) mandates interstate banking one year after enactment, or by June 1, 1995, and interstate branching three years after enactment, or by June 1, 1997. State legislatures have three years to decide whether to opt-out of a national interstate branching network and may choose to opt-in before the June 1, 1997 deadline.

State taxing authority is maintained under the act. The act “grandfathers” state restrictions on national banks under the Douglas Amendment
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to the Bank Holding Company Act with regard to consumer protection, fair lending, community reinvestment and intrastate branching if these restrictions or conditions have been in place by the enactment date of this legislation.

The act prevents the office of the Comptroller of the currency from preemption of state laws through issuance of interpretive letters. The Comptroller is required under this law to follow a formal procedure through the Federal Register, which will give states and other interested parties at least 30 days to respond to any possible preemption. After the comment period, the Comptroller will issue a formal ruling, which will provide standing to the states to file legal challenges to such rulings if they choose to do so.

Domestic Affairs

The Full Faith and Credit for Child Support Orders Act (PL 103-383) provides that a state court may not modify an order of another state court requiring the payment of child support unless the recipient of child support payments resides in the state in which modification is sought or consents to the issue of modification being considered in that court.

The Multiethnic Placement Act (PL 103-382) (Title VI of the ESEA Reauthorization) prohibits agencies or entities which have received federal assistance and which are involved in foster care or adoptive placements from denying or delaying the placement of a child solely on the basis of race, color or national origin of the adoptive or foster parent. The act permits consideration of the race, color or national origin of a child only when such factors are: (1) considered in conjunction with other factors, and (2) are relevant to the child’s best interest. The act requires withholding of adoption assistance funds from non-complying agencies.

Health

As a result of the Health Care Financing Administration’s interpretation of language in the fiscal 1994 Labor, Health and Human Services, and Education Appropriations Bill, states will be required to pay for abortions for low-income women in cases of rape or incest or to save the life of the mother.

The Social Security Administration Reform Act (PL 103-296) establishes the Social Security Administration as an independent agency. It restricts SSI and SSDI payments for alcoholics or drug abusers to no more than three years, regardless of availability of treatment. No additional funding is provided even though the treatment population is greatly expanded.
Justice

The Violent Crime Control and Law Enforcement Act (PL 103-322) bans manufacture of 19 types of assault weapons. In addition, the act contains sweeping expansion of the federal death penalty to cover 60 different offenses, including crimes such as carjacking, drive-by shootings and gun murders, to which the federal death penalty can be applied, even in states which have rejected this form of punishment.

This act also prohibits the sale or transfer of a firearm to or possession of certain firearms by juveniles.

State are required to register sexually violent predators upon release from prison, being placed on parole or being placed on supervised release, including a current address which must be provided to designated state law enforcement agency. States failing to implement these requirements in the time allotted lose 10 percent of funds allocated under Section 506 of the Omnibus Crime Control and Safe Streets Act.

The act also penalizes State Departments of Motor Vehicles that release identifying information about individuals obtained in connection with registration, licensing or obtaining motor vehicle titles, and the Departments can be fined up to $5,000 per day for offenses.

The act requires state court clerks to report information on individuals who post cash bonds in excess of $10,000 to the Internal Revenue Service.

Both the House and Senate have authorized, but not appropriated, $100,000,000 of expenditures in 1995 and $250,000,000 in 1996 for states to develop police corps. In exchange for stipends toward educational studies, members of the corps will be obligated for four years of service. Besides having specific criteria to guide state plans for adoption of the police corps, the expectations of the program will have fiscal consequences as state and local governments face the responsibility of hiring students who have completed their courses. The act limits reimbursement to state and local governments to $10,000 per participant for each year of service.

Transportation

The Aviation Infrastructure Act (PL 103-305) preempts most state authority to regulate intrastate trucking operations including typically local firms, such as tow trucks and trash haulers.
Railroad Trespassing Act

According to the Federal Railroad Administration, 523 people were killed and 505 seriously injured in 1993 while trespassing on railroad property. The focus of private and federal efforts regarding trespassing on railroad rights-of-way is to prevent trespassing from occurring in the first place - not to make trespassing safe.

This act is based on legislation introduced in Utah in 1994. The act makes it a class C misdemeanor to climb on or attempt to climb on or around a railroad locomotive, car or train or to walk, ride, or travel across railroad property at any location other than public crossings. No one may obstruct or interfere with train operations or use railroad property for recreational purposes.

An owner or operator of a railroad owes no duty of care to keep railroad property safe for entry or to give any warning on the property to anyone violating this act. However, the owner or operator must not intentionally, willfully or maliciously injure a person if the owner or operator has actual knowledge of the person's presence on the property.

The act does not apply to a railroad employee or other person authorized to be on railroad property.

Other states address trespassing by providing immunity from civil liability to landowners if trespassers are injured on their property. For instance, in Florida landowners are provided immunity from liability for injury to trespassers on real property (§ 768.075, 1990). An owner shall not be held liable for civil damages for death of or injury to a trespasser when the trespasser is under the effects of alcohol or any chemical substance. The owner is not immune from liability for gross negligence or willful and wanton misconduct which may cause injury to the trespasser. Indiana addresses this problem in its Recreational Use Statute (I.C. § 14-2-6-3, 1969). This statute provides a landowner limited immunity from civil liability for injuries to a person who goes upon a landowner’s property with or without permission to hunt, fish, swim, trap, camp, hike, sightsee, or for any other purposes, without the payment of monetary consideration. Such a person is not entitled to any assurance that the premises are safe for such purpose. The owner is not excused from liability for injuries caused by the malicious or illegal acts of the owner.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Railroad Trespassing Act.] This act may be cited as the Rail-
Railroad Trespassing Act

Section 2. [Railroad Property - Duty of Care.]
(a) It shall be prohibited to engage in any of the following activities:
   (1) A person may not ride or climb or attempt to ride or climb on, off, under, over, or across a railroad locomotive, car, or train.
   (2) A person may not walk, ride or travel across, along or upon railroad property, including yards, tracks, rights-of-way, or bridges, at any location other than public crossings.
   (3) A person may not obstruct or interfere with train operations or use railroad property for recreational purposes.
(b)(1) Except as provided under Section 1 (b)(2), an owner or operator of a railroad owes no duty of care to keep railroad property safe for entry, or to give any warning of a dangerous condition, use, structure, or activity on the property to any person violating this section.
   (2) The owner or operator of a railroad may not intentionally, willfully, or maliciously injure a person if the owner or operator has actual knowledge of the person's presence on the property.
(c) This section does not apply to a railroad employee or other person expressly authorized to enter upon railroad property by the owner or operator of the railroad.
(d) A violation of this section is a [class C misdemeanor].

Section 3. [Effective Date.] [Insert effective date.]
Public Access Across Federal Lands

This act is based on Utah legislation enacted in 1993. This act defines the scope and terms of right-of-way grants accepted across federal lands. The act provides safety standards and maintenance requirements; exempts certain rights-of-way from mapping and centerline survey requirements; and provides for abandonment, assumption of risk and immunity.

This act is a response to the repeal by the Congress of the United States of Revised Statute 2477 which was originally enacted in 1866 concerning rights-of-way for the construction of highways across public lands. While this repeal took place in 1976, interpretation of this Act remains important because valid rights of way existing at the time of the repeal were not terminated. In recent years, there has been growing controversy in different states, including Utah, over whether specific claimed access routes ought to be considered "highways" that were "constructed" pursuant to Revised Statute 2477, and, if so, the extent of the rights thus obtained.

In addition to this act, the state legislature also passed House Concurrent Resolution 1 during the 1993 Second Special Session. The resolution opposed any action by the U.S. Congress, U.S. Department of Interior, U.S. Department of Agriculture restricting the state's authority to administer rights-of-way across federal public lands.

The Department of the Interior has promulgated an administrative rule governing determination of rights-of-way under this prior statute. However, at least two Federal Court of Appeals cases have recognized the scope of a right-of-way may be properly determined by looking to state law. See for example United States vs. Gates of the Mountains, Lake Shore Homes, 732 F.2d. 1411, 1413 (9th Cir., 1984) and Sierra Club vs. Hodel, 848 F.2d. 1068 (10th Cir., 1988). In a more recent case, the U.S. Court of Appeals for the Ninth Circuit issued a decision in the case of Schultz vs. Department of the Army, 92-35197, 92-35580, 1993 U.S. App. Lexis 31037 (9th Cir., Nov. 30, 1993), in which the Court of Appeals took a more lenient view of the criteria for establishing a claim for right of way under Revised Statute 2477. While the Federal Government apparently disagrees with this approach in its promulgated regulation, this decision of the Ninth Circuit is indicative of the view of the circuit on this question and appears to reinforce state initiatives such as the Utah law.

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Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short title.] This act may be cited as the Rights-of-Way Across Federal Lands Act.
Section 2. [Definitions.] As used in this act:

(1) “Acceptance,” “acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses,” or “accepted” means one or more of the following acts prior to October 21, 1976:

(i) by the state or any political subdivisions of the state:
   (A) Construction or maintenance of a highway;
   (B) Inclusion of the highway in a state, county, or municipal road system;
   (C) Expenditure of any public funds on the highway;
   (D) Execution of a memorandum of understanding or other agreement with any other public or private entity or an agency of the federal government that recognizes the right or obligation of the state or a political subdivision of the state to construct or maintain the highway or a portion of the highway; or
   (E)(1) The acceptance at statehood of the school or institutional trust lands accessed or traversed by the right-of-way; or
   (2) The selection and receipt by the state of a clear list, indemnity list, or other document conveying title to the state of school, institutional trust lands, or other state lands accessed or traversed by the highway;

(ii) use by the public for a period in excess of [ten (10)] years in accordance with [insert appropriate state citation]; or

(iii) any other act consistent with state or federal law indicating acceptance of a right-of-way.

(2)(i) “Construction” means any physical act of readying a highway for use by the public according to the available or intended mode of transportation, including, foot, horse, vehicle, pipeline, or other mode.

(ii) “Construction” includes:
   (A) removing vegetation;
   (B) moving obstructions, including rocks, boulders, and outcroppings;
   (C) filling low spots;
   (D) maintenance over several years;
   (E) creation of an identifiable route by use over time; and
   (F) other similar activities.

(3)(i) “Highway” means:
   (A) any road, street, trail, or other access or way that is open to the public to come and go or transport water at will, without regard to how or by whom the way was constructed or maintained; and
   (B) appurtenant land and structures including road drainage ditches, back and front slopes, turnouts, rest areas, and other areas that facilitate use of the highway by the public.

(ii) “Highway” includes:
   (A) pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, and all other ways and their attendant access for maintenance; and
Suggested State Legislation

(B) irrigation canals, waterways, viaducts, ditches, pipelines, or other means of water transmission and their attendant access for maintenance.

(4) “Maintenance” means any physical act of upkeep of a highway or repair of wear or damage whether from natural or other causes.

(5) “Public lands not reserved for public uses” means any federal lands open to entry and location.

(6) “R.S. 2477 right-of-way” means a right-of-way for a highway constructed in this state on public lands not reserved for public uses in accordance with Revised Statute 2477, codified as 43 U.S.C. Section 932, and accepted by the state or a political subdivision of the state prior to October 21, 1976.


(a) This act applies to all R.S. 2477 rights-of-way.

(b) The state and its political subdivisions have title to the R.S. 2477 rights-of-way.

(c) (1) Acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses, is presumed if the state or a political subdivision of the state makes a finding that the highway was constructed and the right-of-way was accepted prior to October 21, 1976.

(2) The existence of a highway establishes a presumption that the highway has continued in use in its present location since the land over which it is built was public land not reserved for public use.

(d)(1) Unless specifically determined by the state or a political subdivision of the state with authority over the R.S. 2477 right-of-way, the scope of the R.S. 2477 right-of-way is that which is reasonable and necessary to ensure safe travel for all uses that occurred before October 21, 1976.

(2) The scope of the R.S. 2477 right-of-way includes the right to widen the highway as necessary to accommodate the increased travel associated with those uses, up to, where applicable, improving a highway to [two (2)] lanes so travelers can safely pass each other.

(3) The width of an R.S. 2477 right-of-way used for vehicular travel may not be less than the setback standards for wilderness boundaries along existing roads as described in Bureau of Land Management Manual H-8560-1, Management of Designated Wilderness Areas, dated July 27, 1988, as follows:

(i) high standard paved highways shall be [three hundred (300)] feet from the centerline;

(ii) high standard logging roads shall be [one hundred (100)] feet from the centerline;

(iii) low standard logging, jeep, maintenance, dirt roads used for right-of-way, or similar roads shall be [thirty (30)] feet from the centerline.

(e) The safety standards established by the [state department of transportation] in accordance with [insert appropriate state citation] apply to all
Section 4. [Maintenance – Impact on Adjacent Land Owners.]

(a)(1) The state and its political subdivisions are not required to maintain highways within R.S. 2477 rights-of-way for vehicular travel unless the R.S. 2477 right-of-way encompasses a highway included on a highway system for vehicular travel.

(2) A decision to improve or not improve an R.S. 2477 right-of-way is a purely discretionary function.

(b) The holder of an R.S. 2477 right-of-way and the owner of this servient estate shall exercise their rights without unreasonably interfering with one another.

(c) The holder of the R.S. 2477 right-of-way shall design and conduct construction and maintenance activities so as to minimize impacts on adjacent federal public lands, consistent with applicable safety standards.

Section 5. [Mapping and Survey Requirements.]

(a) The [state department of transportation], counties, and cities are not required to possess centerline surveys for R.S. 2477 rights-of-way.

(b) Highways within R.S. 2477 rights-of-way do not need to be included in the plans, descriptions, and maps of county roads required by [insert appropriate state citation] or on the [state geographic information database], created in [insert appropriate state citation], required to be maintained by Section 5 (c)(1), to be accepted.

(c)(1) The [automated geographic referencing center], created in [insert appropriate state citation], shall create and maintain a record of R.S. 2477 rights-of-way on the [geographic information database].

(2) The record of R.S. 2477 rights-of-way shall be based on information maintained by the [state department of transportation] and cartographic, topographic, photographic, historical, and other data available to or maintained by the [automated geographic referencing center].

(3) Agencies and political subdivisions of the state may provide additional information regarding R.S. 2477 rights-of-way when information is available.

Section 6. [Term of Grant – Abandonment.]

(a) In accordance with the terms of the R.S. 2477 right-of-way grant, once accepted, an R.S. 2477 right-of-way is established for a perpetual term.

(b)(1) Abandonment of any R.S. 2477 right-of-way shall only take place in accordance with the procedures in [insert appropriate state citation].

(2) If any R.S. 2477 right-of-way is abandoned by a political subdivision of the state, the right-of-way shall revert to the state.

(c) The passage of time or the frequency of use of an R.S. 2477 right-of-way is not evidence of waiver or abandonment of the R.S. 2477 right-of-way.
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(d) An R.S. 2477 right-of-way continues even if the servient estate is transferred out of the public domain.

Section 7. [Assumption of Risk – Immunity – Public Safety.]
(a) An R.S. 2477 right-of-way not designated under [insert appropriate state citation] as a [insert specific classes] road is traveled at the risk of the user.
(b) The state and its political subdivisions do not waive immunity under [insert appropriate state citation], for injuries or damages occurring in or associated with any R.S. 2477 right-of-way.
(c) The state and its political subdivisions assume no liability for injury or damage resulting from a failure to maintain any:
   (1) R.S. 2477 right-of-way for vehicular travel; or
   (2) highway sign on an R.S. 2477 right-of-way.
(d) If the state or any political subdivision of the state chooses to maintain an R.S. 2477 right-of-way, the basic governmental objective involved in providing the improvements is the consistent promotion of public safety.
(e) (1) The state recognizes that there are limited funds available to upgrade all R.S. 2477 rights-of-way to applicable safety standards.
   (2) A decision by the state or a political subdivision of the state to allocate funds for maintaining an R.S. 2477 right-of-way is the result of evaluation and assigning of priorities for the promotion of public safety.
   (3) The state or political subdivision of the state must use its judgment and expertise to evaluate which safety feature improvements should be made first. In making this policy determination the state or a political subdivision of the state may:
      (i) perform on-site inspections and weigh all factors relating to safety, including the physical characteristics and configuration of the R.S. 2477 right-of-way and the volume and type of traffic on the R.S. 2477 right-of-way; and
      (ii) consult with transportation experts who have expertise to make an evaluation of the relative dangerousness of R.S. 2477 rights-of-way within their jurisdiction.

Section 8. [Effective Date] [Insert effective date.]
Missing Child Rapid Response Act

This act was passed as part of Minnesota’s Omnibus 1994 Crime Bill. The act encourages local law enforcement agencies to work closely with the State Bureau of Criminal Apprehension (BCA) as soon as an apparent abduction of an endangered child is reported. Law enforcement agencies that fail to coordinate immediately would not be eligible for reimbursement from the State Crime Fund. The bill also requires the BCA to distribute a policy manual on child abduction investigations to assist local law enforcement agencies in adopting local policies.

Section 8 requires the commissioner of public safety to develop an electronic integrated criminal alert network. The network incorporates a broadcast fax system to immediately transmit suspect information and photo identification of missing children to thousands of private businesses such as grocery stores, fast food restaurants, department stores, banks, etc. The fax network will be connected to other existing statewide computer networks, including schools.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Missing Child Rapid Response Act.

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

(1) “Child” means any person under the age of 18 years or any person certified or known to be mentally incompetent;

(2) “CJIS” means [state criminal justice information system];

(3) “Missing” means the status of a child after a law enforcement agency that has received a report of a missing child has conducted a preliminary investigation and determined that the child cannot be located;

(4) “NCIC” means National Crime Information Center; and

(5) “Endangered” means that a law enforcement official has received sufficient evidence that the child is with a person who presents a threat of immediate physical injury to the child or physical or sexual abuse of the child.

Section 3. [Investigation and Entry of Information.] Upon receiving a report of a child believed to be missing, a law enforcement agency shall conduct a preliminary investigation to determine whether the child is missing. If the child is initially determined to be missing and endangered, the agency shall immediately consult the [bureau of criminal apprehension] during
the preliminary investigation, in recognition of the fact that the first two hours are critical. If the child is determined to be missing, the agency shall immediately enter identifying and descriptive information about the child through the [CJIS] into the NCIC computer. Law enforcement agencies having direct access to the [CJIS] and the NCIC computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the systems.

Section 4. [Missing and Endangered Children.] If the [bureau of criminal apprehension] receives a report from a law enforcement agency indicating that a child is missing and endangered, the [superintendent of the bureau of criminal apprehension] may assist the law enforcement agency in conducting the preliminary investigation, offer resources, and assist the agency in helping implement the investigation policy with particular attention to the need for immediate action.

Section 5. [Judicial Training.] The [state supreme court's] judicial education program must include ongoing training for [district court judges] on child and adolescent sexual abuse, domestic abuse, harassment, and stalking laws, and related civil and criminal court issues. The program must include education on the causes of sexual abuse and family violence and culturally responsive approaches to serving victims. The program must emphasize the need for the coordination of court and legal victim advocacy services and include education on sexual abuse and domestic abuse programs and policies within law enforcement agencies and prosecuting authorities as well as the court system.

Section 6. [Manual and Policy for Investigating Cases Involving Children Who Are Missing and Endangered.] (a) By [date] the [superintendent of the bureau of criminal apprehension] shall transmit to law enforcement agencies a training and procedures manual on child abduction investigations.

(b) By [date] the [peace officer standards and training board] shall develop a [model investigation policy] for cases involving children who are missing and endangered as defined in this act. The model policy shall describe the procedures for the handling of cases involving children who are missing and endangered. In developing the policy, the [board] shall consult with representatives of the [bureau of criminal apprehension], [state police chiefs association], [state sheriff's association], [state police and peace officers association], [state association of women police], [state county attorneys association], a nonprofit foundation formed to combat child abuse, and [two (2)] representatives of victims advocacy groups selected by the [commissioner of corrections]. The manual on child abduction investiga-
Missing Child Rapid Response Act

section shall serve as a basis for defining the specific actions to be taken during the early investigation.

Section 7. [Local Policy.] By [date] each chief of police and sheriff shall establish and implement a written policy governing the investigation of cases involving children who are missing and endangered as defined in this act. The policy shall be based on the model policy developed under Section 6(b). The policy shall include specific actions to be taken during the initial [two (2)] hour period.

Section 8. [Criminal Alert Network.]
(a) The [commissioner of public safety], in cooperation with the [commissioner of administration], shall develop a plan for an integrated criminal alert network to facilitate the communication of crime prevention information by electronic means among state agencies, law enforcement officials, and the private sector. The plan shall identify ways to disseminate data regarding the commission of crime, including information on missing and endangered children. In addition, the plan shall consider methods of reducing theft and other crime by the use of electronic transmission of information. In developing the plan, the [commissioner] shall consider the efficacy of existing means of transmitting information about the crime and evaluate the following means of information transfer: existing state computer networks, INTERNET, and fax machines, including broadcast fax procedures.
(b) The [commissioner] shall report to the [legislature] by [date], concerning the details of the plan.

Section 9. [Effective Date.] [Insert effective date.]
DNA Database and Databank Act

This act is based on New Jersey legislation enacted in 1994. The act requires certain serious sex offenders to provide blood specimen for DNA analysis and establishes a DNA database and DNA databank containing the blood samples.

Beginning January 1, 1995, every person who is convicted of aggravated sexual assault and sexual assault or aggravated criminal sexual contact and criminal sexual contact or any attempt to commit any of these crimes and who is sentenced to prison shall have a blood sample drawn upon entering prison. Every person convicted of these crimes but not sentenced to prison shall provide a DNA sample as a condition of the sentence imposed. A person who has been convicted and imprisoned for these crimes before January 1, 1995, shall have a DNA sample drawn before parole or release from prison.

The DNA samples will be used for several purposes, including law enforcement identification, development of a population database, judicial proceedings, and criminal defense purposes on behalf of a defendant.

The division of state police in the department of law and public safety is charged with the identification, analysis and storage of the DNA samples and typing results of the DNA samples. The division will create a separate population database comprised of these samples after all personal identification is removed. This database may be made available to and searched by other agencies.

Any person whose DNA profile has been included in the DNA database may ask that the sample be removed on the grounds that the conviction has been reversed and the case dismissed.

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Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “DNA Database and Databank Act.”

Section 2. [Legislative Findings.] The legislature finds and declares that DNA databanks are an important tool in criminal investigations and in deterring and detecting recidivist acts. Several states have enacted laws requiring persons convicted of certain crimes, especially serious sexual offenses, to provide genetic samples for DNA profiling. Moreover, it is the policy of [state] to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of persons who are
the subjects of criminal investigations. It is therefore in the best interest of [state] to establish a DNA database and a DNA databank containing blood samples submitted by certain serious sexual offenders.

Section 3. [Definitions.] As used in this act:
(1) “CODIS” means the FBI’s national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic laboratories.
(2) “DNA” means deoxyribonucleic acid.
(3) “DNA record” means DNA identification information stored in the [State DNA database] or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results.
(4) “DNA sample” means a blood sample provided by any person convicted of any offense enumerated in Section 4 of this act or submitted to the [division] for analysis pursuant to a criminal investigation.
(5) “Division” means the [Division of State Police in the Department of Law and Public Safety].
(6) “FBI” means the Federal Bureau of Investigation.
(7) “State DNA database” means the DNA identification record system to be administered by the [division] which provides DNA records to the FBI for storage and maintenance in CODIS.
(8) “State DNA databank” means the repository of DNA samples collected under the provisions of this act.

Section 4. [Blood Sample.] On or after [date] every person who is convicted of aggravated sexual assault and sexual assault or aggravated criminal sexual contact and criminal sexual contact under [insert appropriate state citations] or any attempt to commit any of these crimes and who is sentenced to a term of imprisonment shall have a blood sample drawn for purposes of DNA testing upon commencement of the period of confinement. In addition, every person convicted on or after [date] of these offenses, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence imposed. A person who has been convicted and incarcerated as a result of a conviction of one or more of these offenses prior to [date] shall have a DNA sample drawn before parole or release from incarceration.

Section 5. [Tests.] (a) Tests shall be performed on each blood sample submitted pursuant to Section 4 of this act in order to analyze and type the genetic markers contained in or derived from the DNA. Except insofar as the use of the results of these tests for such purposes would jeopardize or result in the loss of federal funding, the results of these tests shall be used for the following purposes:
Suggested State Legislation

(1) For law enforcement identification purposes;
(2) For development of a population database;
(3) To support identification research and protocol development of forensic DNA analysis methods;
(4) To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes;
(5) For research, administrative and quality control purposes;
(6) For judicial proceedings, by order of the court, if otherwise admissible pursuant to applicable statutes or rules;
(7) For criminal defense purposes, on behalf of a defendant, who shall have access to relevant samples and analyses performed in connection with the case in which the defendant is charged; and
(8) For such other purposes as may be required under federal law as a condition for obtaining federal funding.

(b) The DNA record of identification characteristics resulting from the DNA testing conducted pursuant to this section shall be stored and maintained in the [State DNA database] and forwarded to the FBI for inclusion in CODIS. The DNA sample itself will be stored and maintained in the [State DNA databank].

Section 6. [Testing Sites, Liability.] Each DNA sample required to be drawn pursuant Section 4 of this act from persons who are incarcerated shall be drawn at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be drawn at a prison or jail unit to be specified by the sentencing court. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist or other health care worker with phlebotomy training shall draw any DNA sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing of any DNA sample. No sample shall be drawn if the [division] has previously received an adequate blood sample from the convicted person.

Section 7. [Testing Procedures.] The [division] shall adopt rules governing the procedures to be used in the submission, identification, analysis and storage of DNA samples and typing results of DNA samples submitted under this act. The DNA sample shall be securely stored in the [State DNA databank]. The typing results shall be securely stored in the [State DNA database]. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the [State DNA database]. The DNA identification system established pursuant to this act shall be com-
Section 8. [Storing DNA Samples.]

(a) It shall be the duty of the [division] to store, analyze, classify and file in the [State DNA database] and with the FBI for inclusion in CODIS the DNA record of identification characteristic profiles of DNA samples submitted pursuant to Section 4 of this act and to make such information available from the [State DNA database] as provided in this act. The [division] may contract out DNA typing analysis to a qualified DNA laboratory that meets established guidelines. The results of the DNA profile of individuals in the [State database] shall be made available to local, state or federal law enforcement agencies, and approved crime laboratories which serve these agencies, upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order issued by a [judge of the superior court] directing the [division] to release these results to appropriate parties not listed above. The [division] shall maintain a file of such court orders.

(b) The [division] shall adopt rules governing the methods of obtaining information from the [State DNA database] and CODIS and procedures for verification of the identity and authority of the requester.

(c) The [division] shall create a separate population database comprised of records obtained pursuant to this act after all personal identification is removed. Nothing shall prohibit the [division] from sharing or disseminating population databases with other law enforcement agencies, and crime laboratories which serve these agencies, upon written or electronic request and in furtherance of an official investigation of a criminal offense, or other third parties deemed necessary to assist with statistical analysis of the population databases. The population database may be made available to and searched by other agencies participating in the CODIS system.

Section 9. [Expungement of Samples.]

(a) Any person whose DNA record or profile has been included in the [State DNA database] and whose DNA sample is stored in the [State DNA databank] may apply for expungement on the grounds that the conviction that resulted in the inclusion of the person’s DNA record or profile in the [State DNA database] or the inclusion of the person’s DNA sample in the [State DNA databank] has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application for expungement shall be served on the prosecutor for the county which the conviction was obtained not less than [twenty (20)] days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon that conviction.

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(b) Upon receipt of an order of expungement and unless otherwise provided, the [division] shall purge the DNA record and all other identifiable information from the [State DNA database] and the DNA sample stored in the [State DNA databank] covered by the order. If the individual has more than one entry in the [State DNA database and databank], then only the entry covered by the expungement order shall be deleted from the [State database or databank]. If the entry in the [State DNA database] reflects more than one conviction, that entry shall not be expunged unless and until the person has obtained an order of expungement for each conviction on the grounds contained in this act. If one of the bases for inclusion in the [State DNA database] was other than conviction, that entry shall not be subject to expungement.

Section 10. [Disclosure.] Any person who by virtue of employment, or official position, has possession of, or access to, individually identifiable DNA information contained in the [State DNA database or databank] and who purposely discloses it in any manner to any person or agency not entitled to receive it is guilty of a [disorderly persons offense].

Section 11. [Confidentiality.] All DNA profiles and samples submitted to the [division] pursuant to this act shall be treated as confidential except as provided in Section 8 of this act.

Section 12. [Funding.] The [attorney general] shall use funds obtained through seizure, forfeiture or abandonment pursuant to any federal or state statutory or common law, and the proceeds of the sale of any such confiscated property or goods, as may be available and appropriate for the costs of implementing this act during the first year following enactment.

Section 13. [Effective Date.] [Insert effective date.]
Revision of Attorney Guardian Ad Litem Program

This act is based on Utah legislation enacted in 1994. This act comprehensively reforms the state’s guardian ad litem system. Under this legislation, attorney guardians ad litem must represent the best interest of children in all proceedings, be properly trained, conduct thorough and independent investigations, and perform other duties necessary to protect and serve children in juvenile court proceedings. The act allows attorney guardians ad litem to use trained volunteers and establishes standards for that training. Except for being subject to legislative subpoena, all records of a guardian ad litem are confidential.

The act establishes an Office of Guardian Ad Litem Director, under the direction of the Judicial Council, to manage the statewide guardian ad litem program.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Revision of Guardian Ad Litem Program Act.

Section 2. [Judicial Council.] (a) The judicial council is established and shall be composed of:

1. the chief justice of the supreme court;
2. one member elected by the justices of the supreme court;
3. one member elected by the judges of the court of appeals;
4. three members elected by the judges of the district courts;
5. two members elected by the judges of the circuit courts;
6. two members elected by the judges of the juvenile courts;
7. two members elected by the justice court judges; and
8. a member or ex officio member of the board of commissioners of the state Bar who is an active member of the Bar in good standing elected by the board of commissioners.

(b)(1) The chief justice of the supreme court shall act as presiding officer of the council and chief administrator for the courts. The chief justice shall vote only in the case of a tie.

(2) All members of the council shall serve for three year terms. If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to
complete the term of office. In courts having more than one member, the
members shall be elected to staggered terms. The person elected to the
[judicial council] by the [board of commissioners] shall be a member or [ex
officio] member of the [board of commissioners] and an active member of
the Bar in good standing at the time the person is elected. The person may
complete a [three (3)] year term of office on the [judicial council] even though
the person ceases to be a member or [ex officio] member of the [board of
commissioners]. The person shall be an active member of the Bar in good
standing for the entire term of the [judicial council].
(3) Elections shall be held under rules made by the [judicial council].

Section 3. [Office of Guardian Ad Litem Director - Establishment.] The
[judicial council] shall establish and supervise the [office of guardian ad
litem director], in accordance with the provisions of this act, and assure
compliance of the [guardian ad litem] program with state and federal law,
regulation, and policy, and court rules.

Section 4. [Appointment of Attorney Guardian Ad Litem.]
(a) The [court] may appoint an [attorney guardian ad litem] to represent
the best interest of a child involved in any case before the [court], and shall
consider only the best interest of a child in determining whether to appoint
a [guardian ad litem].
(b) The [court] shall appoint an [attorney guardian ad litem] to represent
the best interest of each child named in a petition alleging abuse, neglect,
or dependency.

Section 5. [Attorney Guardian Ad Litem, Duties.] Each [attorney guard-
ian ad litem] shall:
(1) represent the best interest of the child in all proceedings;
(2) be trained in applicable statutory, regulatory, and case law, and in
accordance with the United States Department of Justice National Court
Appointed Special Advocate Association guidelines, prior to representing
any child before the [court];
(3) conduct a thorough and independent investigation;
(4) personally or through a trained volunteer, determine the extent of
contact the child or his family has had with the [division of family services];
(5) personally or through a trained volunteer, determine whether there
are relatives or close family friends who would be appropriate and willing
to take the child;
(6) personally or through a trained volunteer, determine whether there
are alternatives to continued removal of the child, including in-home ser-
vices or removal of the perpetrator;
(7) personally or through a trained volunteer, review the [division of fam-
ily services'] records regarding the child and his family, and all other neces-
sary and relevant records pertaining to the child, including medical, psychological, and school records;

(8) personally meet with the child, personally interview the child if the child is old enough to communicate, determine the child's goals and concerns regarding placement, develop a meaningful trust relationship with the child, and assess the appropriateness and safety of the child's environment in each placement;

(9) file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interest of a child;

(10) either personally or through a trained volunteer, conduct interviews with the child's parents, foster parents, caseworkers, therapists, counselors, school personnel, mental health professionals, where applicable and, if any injuries or abuse have occurred or are alleged, review photographs, available video or audio tape of interviews with the child, and contact appropriate health care facilities and health care providers;

(11) either personally or through a trained volunteer, identify appropriate community resources and advocate for those resources, when appropriate, to protect the best interest of the child;

(12) personally attend all administrative hearings and reviews pertaining to the child's case;

(13) prepare for hearings;

(14) present witnesses and exhibits when necessary to protect the best interest of the child;

(15) participate in all appeals unless excused by order of the court;

(16) ensure that administrative hearings and periodic reviews are scheduled and held in accordance with the requirements of state and federal law and regulation;

(17) conduct interviews with potential witnesses and review relevant exhibits and reports;

(18) make clear and specific recommendations to the [court] concerning the best interest of the child at every stage of the proceeding, including all placement decisions, and ask that clear and specific orders be entered for the provision of services, treatment provided, and for the evaluation, assessment, and protection of the child and his family;

(19) be familiar with local experts who can provide consultation and testimony regarding reasonableness and appropriateness of efforts made by the [division of family services] to maintain a child in his home or to reunify a child with his parent;

(20) to the extent possible, and unless it would be detrimental to the child, personally or through a trained volunteer, keep the child advised of the status of his case, all court and administrative proceedings, discussions and proposals made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic services that are to be provided to the child;
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(21) ensure that clear and specific orders are entered for the provision of services, treatment provided, and for the evaluation, assessment, and protection of the child and his family;

(22) personally or through a trained volunteer monitor implementation of a child's treatment plan and any dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and are accomplishing their intended goal; and

(23) inform the court promptly, orally or in writing, if:

(i) court-ordered services are not being made available to the child and his family;

(ii) the child's family fails to take advantage of court-ordered services:

(iii) court-ordered services are not achieving their purpose;

(iv) the [division] fails to hold administrative hearings or reviews as required by state and federal law and regulation; or

(v) any violation of orders, new developments, or changes have occurred that justify a review of the case.

Section 6. [Volunteers.]

(a) An [attorney guardian ad litem] may utilize trained volunteers, in accordance with [insert appropriate state citation], to assist in investigation and preparation of information regarding the cases of individual children before the [court]. An [attorney guardian ad litem] may not, however, delegate his responsibilities described in Section 5 of this act.

(b) All volunteers shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(c) The [court] may utilize volunteers trained in accordance with the requirements of Section 6 (b) to assist in investigation and preparation of information regarding the cases of individual children within the jurisdiction.

(d) When possible and appropriate, the [court] may use a volunteer who is a peer of the child appearing before the [court], in order to provide assistance to that child, under the supervision of an [attorney guardian ad litem] or trained volunteer.

(e) The [attorney guardian ad litem] shall continue to represent the best interest of the child until released from his duties by the [court].

Section 7. [Costs.]

(a) The [juvenile court] is responsible for all costs resulting from the appointment of an [attorney guardian ad litem] and the costs of volunteer training, and shall use funds appropriated by the [legislature] for the [guardian ad litem] program to cover those costs.

(b) An [attorney guardian ad litem] appointed under this act, when serving in the scope of his duties as [guardian ad litem] is considered an em
Section 8. [Determining the Interests of a Child.]

(a) An [attorney guardian ad litem] shall represent the best interest of a child. If the child's wishes differ from the [attorney's] determination of the child's best interest, the [attorney guardian ad litem] shall communicate the child's wishes to the [court] in addition to presenting his determination of the child's best interest. A difference between the child's wishes and the [attorney's] determination of best interest shall not be considered a conflict of interest for the [attorney].

(b) An [attorney guardian ad litem] is responsible to formulate an independent position, after considering all relevant evidence, in accordance with the requirements of this Section 5 of this act. His recommendations to the [court] shall be a result of his independent investigation.

(c) An [attorney guardian ad litem] shall be provided access to all [division of family services] records regarding the child at issue and his family.

(d) An [attorney guardian ad litem] shall maintain current and accurate records regarding the number of times he has had contact with each child and the actions he has taken in representation of the child's best interest.

Section 9. [Records.]

(a) Except as provided in Section 9 (b), all records of an [attorney guardian ad litem] are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes [insert appropriate state citation].

(b) All records of an [attorney guardian ad litem] are subject to [legislative subpoena], under [insert appropriate state citation], and shall be released to the [legislature].

(c) Records released in accordance with Section 9 (b) shall be maintained as confidential by the [legislature]. The [office of the legislative auditor general] may, however, include summary data and nonidentifying information in its audits and reports to the [legislature].

(d) Because of the unique role of an [attorney guardian ad litem] described in Section 7 of this act, and the state's role and responsibility to provide a [guardian ad litem program] and, as parens patriae, to protect children, Section 9 (b) constitutes an exception to [state rules of professional conduct]. A claim of attorney-client privilege does not bar access to the records of an [attorney guardian ad litem] by the [legislature], through [legislative subpoena].
of this act.
(b) The [judicial council] shall appoint one person to serve full time as the [guardian ad litem director] for the state.
(c) The [director] shall be an attorney licensed to practice law in this state, and shall be selected on the basis of:
(1) professional ability;
(2) experience in abuse, neglect, and dependency proceedings;
(3) familiarity with the role, purpose, and function of guardians ad litem in both [juvenile] and [district courts]; and
(4) ability to develop training curricula and reliable methods for data collection and evaluation.
(d) The [director] shall be trained in the United States Department of Justice National Court Appointed Special Advocate program prior to or immediately after his appointment.

Section 11. [Director's Duties.] The [guardian ad litem director] shall:
(1) establish policy and procedure for the management of a statewide [guardian ad litem] program;
(2) manage the [guardian ad litem] program to assure that minors receive qualified [guardian ad litem] services in abuse, neglect, and dependency proceedings in accordance with state and federal law and policy;
(3) develop contract standards, and contract with attorneys licensed to practice law in this state, to act as [attorney guardians ad litem] in accordance with this act; those contracts shall provide that [attorney guardians ad litem] in the [second, third, and fourth judicial districts] devote their full time and attention to the role of [attorney guardian ad litem], having no clients other than the children whose interest they represent within the [guardian ad litem] program;
(4) develop and provide training programs for [attorney guardians ad litem] and volunteers in accordance with the United States Department of Justice National Court Appointed Special Advocates Association standards;
(5) update and develop the [guardian ad litem] manual, combining elements of the National Court Appointed Special Advocates Association manual with specific information about the law and policy of this state;
(6) develop and provide a library of materials for the continuing education of [attorney guardians ad litem] and volunteers;
(7) educate court personnel regarding the role and function of [guardians ad litem];
(8) develop needs assessment strategies, perform needs assessment surveys, and ensure that [guardian ad litem] training programs correspond with actual and perceived needs for training;
(9) design and implement evaluation tools based on specific objectives targeted in the needs assessments described in Section 11 (8); and
(10) prepare and submit an annual report to the [judicial council] and
the [legislative interim human services committee] regarding the development, policy, and management of the statewide [guardian ad litem] program, and the training and evaluation of [attorney guardians ad litem] and volunteers.

Section 12. [Appointment of Guardian Ad Litem in Child Abuse and Neglect Proceedings.]

(a) If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any [state court], the [court] shall upon its own motion or that of any party to the proceeding appoint an [attorney guardian ad litem] to represent the best interest of the child, in accordance with this act.

(b) The [court] may appoint an [attorney guardian ad litem], when it considers it necessary and appropriate, to represent the best interest of the child in all related proceedings conducted in any state court involving the alleged abuse, child sexual abuse, or neglect.

(c) The [attorney guardian ad litem] shall be appointed in accordance with and meet the requirements of Sections 4 and 5 of this act.

(d) If an [attorney guardian ad litem] has been appointed for the child by any [court] in the state in any prior proceeding or related matter, the [court] may continue that appointment or may reappoint that [attorney guardian ad litem], if still available, to act on behalf of the child.

(e) The [court] is responsible for all costs resulting from the appointment of an [attorney guardian ad litem] and shall use funds appropriated by the [legislature] for the [guardian ad litem] program to cover these costs.

(f) The [court] may assess the costs for recoupment in an action if a party is found impecunious.

(g) An [attorney guardian ad litem] appointed in accordance with this act is, when serving in the scope of his duties as [attorney guardian ad litem], considered an employee of this state for purposes of indemnification under the [state governmental immunity act].

Section 13. [Effective Date.] [Insert effective date.]
Concerning Imposition of the Death Penalty

This act is based on Colorado legislation enacted in 1995. The act provides that in a death penalty case, a panel of three judges, not the jury, shall determine whether to sentence a defendant to death or to life imprisonment, using the same procedures required of a jury under current law. It describes the composition and the selection of the panel of judges. It requires that the sentencing hearing be held no later than sixty days after the trial verdict. The act specifies that, if a death sentence is overturned on grounds other than unconstitutionality or insufficiency of evidence, the case is remanded to the trial court for a new sentencing hearing. If a death sentence is declared invalid based on unconstitutionality or insufficiency of evidence or if the prosecutor on remand informs the court that the death penalty would no longer serve the interest of justice, the defendant is sentenced to life imprisonment.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This may be cited as Imposition of the Death Penalty Act.

Section 2. [Imposition of Sentence in Class 1 Felonies - Appellate Review.]

(a) Upon conviction of guilt of a defendant of a [class 1 felony], a panel of three judges, as soon as practicable, shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of [eighteen (18)] years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to [insert appropriate state citation], in either of which cases, the defendant shall be sentenced to life imprisonment.

1. The panel of judges that conducts the sentencing hearing shall consist of the judge who presided at the trial or before whom the guilty plea was entered, or a replacement for said judge in the event he or she dies, resigns, is incapacitated, or is otherwise disqualified, and two additional [district court judges] designated by the [chief justice] of the [state supreme court]. The [chief justice] may select the two additional [district court judges], and any necessary replacement for the [trial judge], from any [judicial district] in the state but is encouraged to select from the [judicial district] in
Concerning Imposition of the Death Penalty

which the case was filed or from adjoining [judicial districts]. In selecting
the [district court judges] for the panel, the [chief justice] shall select only
those [district court judges] who are regularly sitting judges; except that
the [chief justice], pursuant to [insert appropriate state citation], may se-
lect a [retired justice] of the [supreme court] or a retired judge as one of the
additional judges for the panel.

(2) The judge who presided at the trial and any [district court judge]
who is appointed to serve on the panel may be subject to disqualification as
provided in [insert appropriate state citation].

(3) The [trial judge] shall be the presiding judge for purposes of the
sentencing hearing. If a replacement judge has been appointed for the [trial
judge], the [district court judges] appointed to the panel shall choose a pre-
siding judge from among themselves.

(4) At the sentencing hearing, in addition to the evidence presented by
the parties, the three-judge panel shall consider the certified transcripts of
the trial. The sentencing hearing shall be held as soon as practicable fol-
lowing the trial, but not later than [sixty (60)] days after the trial verdict is
returned, unless for good cause shown.

(b) All admissible evidence presented by either the prosecuting attorney
or the defendant that the panel of judges deems relevant to the nature of
the crime and the character, background and history of the defendant, in-
cluding any evidence presented in the guilt phase of the trial, and any
matters relating to any of the aggravating or mitigating factors enumer-
ated in [insert appropriate state citation] may be presented. Any such evi-
dence which the panel of judges deems to have probative value may be
received, as long as each party is given an opportunity to rebut such evi-
dence. The prosecuting attorney and the defendant or the defendant's counsel
shall be permitted to present arguments for or against a sentence of death.

(c) Both the prosecuting attorney and the defense shall notify each other
of the names and addresses of any witnesses to be called in the sentencing
hearing and the subject matter of such testimony. Such discovery shall be
provided within a reasonable amount of time as determined by order of the
panel of judges and shall be provided not less than [twenty-four (24)] hours
prior to the commencement of the sentencing hearing. Unless good cause is
shown, noncompliance with this Section 2(c) shall result in the exclusion of
such evidence without further sanction.

Section 3. [Determination of Sentence]

(a) After hearing all the evidence and arguments of the prosecuting attor-
eey and the defendant, the panel of judges shall unanimously determine
whether to impose a sentence of death based upon the following consider-
ations:

(1) Whether at least one aggravating factor has been proved as enumer-
ated in [insert appropriate state citation];
(2) Whether sufficient mitigating factors exist which outweigh any aggravating factor or factors found to exist; and

(3) Based on the considerations in Section 3(a)(1) and Section 3(a)(2), whether the defendant should be sentenced to death or life imprisonment.

(b)(1) In the event that no aggravating factors are found to exist as enumerated in [insert appropriate state citation], the panel of judges shall sentence the defendant to life imprisonment.

(2) The panel of judges shall not impose a death sentence unless it unanimously finds and specifies in writing that:

(i) At least one aggravating factor has been proved; and

(ii) There are insufficient mitigating factors to outweigh the aggravating factor or factors that were proved.

(iii) The sentence of the panel of judges, whether to death or to life in prison, shall be supported by specific written findings of fact based upon the circumstances as set forth in this act and [insert appropriate state citations], and upon the records of the trial and the sentencing hearing.

(c) If the panel of judges cannot unanimously agree on a sentence, it shall make a record of each judge's position and shall then sentence the defendant to life imprisonment.

Section 4. [Remanding Case to Trial Court] If any death sentence imposed upon a defendant pursuant to the provisions of this section and the imposition of such death sentence upon such defendant is held invalid for reasons other than unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, the case shall be remanded to the trial court to set a new sentencing hearing; except that, if the prosecutor informs the panel of judges that, in the opinion of the prosecutor, capital punishment would no longer be in the interest of justice, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment. If a death sentence imposed pursuant to this section is held invalid based on unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment.

Section 5. [Effective Date] [Insert effective date.]
Guardianship of Minors and Estates of Minors

This act establishes procedures to appoint guardians for children and their estates. Generally, guardians are nominated in a will or by petition. The act requires petitions to include information about a child's character, personal property, and proceedings concerning adoption, domestic violence, marriage dissolution, domestic relations, paternity or related issues. It requires petitioners to prove that guardianship is in the best interests of the child (minor). It addresses parental objections to petitions for guardianship.

Suggested Legislation

(Title, Enacting clauses, etc.)

Section 1. [Short Title.] This act may be cited as Guardianship of Minors and Estates of Minors Act.

Section 2. [Statement of Purpose.] It is the purpose of this act to secure for a minor an environment of stability and security by providing for the appointment of a guardian of the person when such appointment is in the best interests of the minor; and to provide for the appointment of a guardian of the estate for the proper management of the property and financial affairs of the minor. This act is designed to provide procedural and substantive safeguards for the rights of parents and their minor children. Implicit in this act shall be the recognition that the interests of the minor are generally best promoted in the minor's own home unless the best interests of the minor require substitution or supplementation of parental care and supervision.

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

1. "Authorized agency" means an agency licensed as a child-placing agency pursuant to [insert appropriate state citation].
2. "Court" means the [probate court] unless otherwise specified.
3. "Division" means the [division for children, youth, and families] of the [department of health and human services].
4. "Guardian" means the individual or entity appointed by the court as provided in this act and includes joint and successor guardians. Unless otherwise indicated, the term "guardian" means guardian of the person and of the estate of the minor.
Suggested State Legislation

(5) “Minor” means a child under [eighteen (18)] years of age who is unmarried and unemancipated.

(6) “Parent” means mother, father, or adoptive parent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

Section 4. [Parents’ Rights.]
(a) The father and mother of every minor are joint guardians of the person of such minor, and the powers, rights, and duties of the father and mother in regard to such minor shall be equal. Upon the death of either parent, the survivor shall be the sole guardian of the person of the minor.
(b) Nothing in this act shall prevent the [probate court] from appointing a guardian of the person or of the estate or both, and the custody of any minor may be awarded to either parent by such court.

Section 5. [Jurisdiction and Venue.]
(a) The [probate court] shall have exclusive jurisdiction over the appointment of a guardian of the person or of the estate or of both of any minor.
(b) The venue for guardianship proceedings for a minor is in the county where the minor resides, the county where the minor is physically present when the proceedings are commenced, or the county in which the authorized agency is providing services to the minor. In proceedings to create a guardianship of the estate containing real property, venue may also be in a county in which the real property or a portion thereof is located.

Section 6. [Procedure for Appointment.]
(a) Any person may nominate a guardian of the person or of the estate or of both of the person’s minor child in a will, by petition, or by written consent to a petition by another. The [judge of probate] may, for cause, refuse to appoint a person so nominated.
(b) A minor [fourteen (14)] years of age or older, or any person or authorized agency interested in the welfare of the minor, may petition for appointment of a guardian of the person or of the estate or of both.
(c) The petition shall:
(1) Be verified;
(2) Request that a guardian of the person, of the estate, or both, be appointed;
(3) Specify the name, age, address, and occupation of the proposed guardian and the relationship of the proposed guardian to the minor;
(4) Specify the name and date of birth of the minor; and
(5) State that the appointment is in the best interests of the minor.
(d) The petition shall set forth, so far as is known to the petitioner:
(1) Alternate names and addresses of the minor; the names and addresses of the parents of the minor, and any person or persons alleged to
Guardianship of Minors and Estates of Minors

have had the principal care and custody of the minor during the [sixty (60)]
days preceding the filing of the petition; and any person named as testa-
mentary guardian of the person or of the estate of the minor in the will of a
decedent parent.

(2) The probable value and general character of the minor’s real and
personal property including the minor’s right to receive local, state, or fed-
eral benefits and entitlements, and the probable amount of the minor’s
debts.

(3) The existence of any pending adoption, juvenile proceedings, in-
cluding those pursuant to [insert appropriate state citation], or other pend-
ing proceedings affecting the minor or the parents of the minor
including, but not limited to, domestic violence, marriage dissolution,
domestic relations, paternity, legitimation, custody, or other similar
proceeding.

(4) Whether an adoption of the minor by the proposed guardian or
guardians is contemplated.

(e) The petition shall include a statement describing specific facts con-
cerning actions or omissions or actual occurrences involving the minor which
are claimed to demonstrate that the guardianship of the person or of the
estate or both is in the best interests of the minor.

Section 7. [Notice]

(a) After the filing of a petition, the court shall set a date for hearing and
shall give notice of the time and place of hearing to:

(1) Both parents of the minor.

(2) The minor, if [fourteen (14)] years of age or older and not the peti-
tioner.

(3) Any person or persons alleged to have had the principal care and
custody of the minor during the [sixty (60)] days preceding the filing of the
petition.

(4) The person nominated in the petition to be the guardian.

(5) Any person named as a testamentary guardian of the person or of
the estate or of both of the minor in the will of a decedent parent.

(6) Any person who claims to be the father and who has filed notice of
his claim of paternity with the [office of child support enforcement]
upon the forms supplied by the [office.]

(7) The [division], if the petition identifies any juvenile proceeding
affecting the minor.

(8) Any parent or any sibling, aunt, uncle, or adult child of the parents
of the minor if both parents are deceased.

(9) The petitioner or petitioners.

(b) A written consent to the petition is submission to the jurisdiction
of the court and waiver of notice of the petition.
Section 8. [Ex Parte and Temporary Orders.]

(a) Upon entry of a petition seeking guardianship of the person or of the estate or both of a minor, the court may issue orders for ex parte and temporary guardianship as follows:

(1) Ex parte orders may issue at any time prior to notice to the persons required to receive notice under Section 7 (a), if on a petition or request asking for such relief which includes a sworn affidavit or verified pleading alleging facts involving the circumstances of the minor which establish that unless the ex parte relief is granted the minor will or is likely to suffer immediate or irreparable harm or injury.

(ii) If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the court and request a hearing. Such a hearing shall be held no later than [five (5)] days after the request is received by the court.

(ii) Notwithstanding Section 8 (a)(i), any ex parte order entered expires [fourteen (14)] days after the date of the order; however, any ex parte order may be extended pending notice on persons required to receive notice under Section 7 (a), if the party or parties seeking guardianship or appointed guardian ex parte provide proof satisfactory to the court that they have undertaken a due and diligent effort to provide notice. In the event of such an extension, the court may enter such limitations on the extension as it deems reasonable and appropriate. Any further extension shall be only upon like request and proof. In the case of any extension, the court shall enter an express finding that the petitioner or petitioners for guardianship, or the person or persons appointed ex parte, have made a due and diligent effort to effect required service and that the minor is still at risk.

(2) Temporary orders may be entered pending hearing and ruling on the merits, provided, however, that no temporary order shall carry with it any presumptive weight in the court's adjudication of the merits or affect the legal rights of the parent other than as specified in the court order.

(b) Ex parte or temporary orders issued may include the appointment of a guardian or co-guardian, injunctive relief, support orders, restraining orders, or such other orders as the court may enter on the merits.

(c) Any ex parte or temporary orders entered by the court may be modified for cause upon petition or the court's own motion and such notice as the court may deem reasonable or appropriate.

Section 9. [Conduct of Hearing.]

(a) In any hearing under this act, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material.

(b) A minor [fourteen (14)] years of age or older shall attend the hearing unless attendance is excused by the court. All other minors may attend
the hearing if authorized or ordered by the court.

(c)(1) Except as set forth in Section 9 (c)(2), the burden of proof shall be on
the petitioner to establish by a preponderance of the evidence that a guard-
ianship of the person is in the best interests of the minor.

(2) If a parent objects to the establishment of the guardianship of the
person requested by a non-parent, the burden of proof shall be on the peti-
tioner to establish by clear and convincing evidence that the best interests
of the minor require substitution or supplementation of parental care and
supervision to provide for the essential physical and safety needs of the
minor or to prevent specific, significant psychological harm to the minor.

(3) The burden of proof shall be on the petitioner for the guardianship
of the estate of a minor to establish by a preponderance of the evidence that
the guardianship is necessary to provide for the proper management of the
property and financial affairs of the minor.

(d) The consent of the minor shall not be necessary for the appoint-
ment of a guardian, but the court shall in all cases ascertain the minor’s
preference, and give to it such weight as under the circumstances may
seem just.

(e) The court may appoint a guardian of the person or of the estate or of
both as requested if, upon hearing, it finds based on the applicable burden
of proof:

(1) In the case of guardianship of the person, guardianship is in the best
interests of the minor as provided in Section 9 (c) and the person nomi-
nated is appropriate.

(2) In the case of guardianship of the estate, that the guardianship
is necessary to provide for the proper management of the property and
financial affairs of the minor and the person nominated is appropriate.

(f) If a parent objects to the appointment or continuation of a guardian-
ship, the court shall issue written findings concerning the petitioner’s
compliance with the relevant burden of proof under Section 9 (e).

Section 10. [Confidentiality of Proceedings.]

(a) Proceedings to determine whether a guardian should be appointed
for the proposed minor, and any subsequent proceedings relating to the
personal history or circumstances of the minor and the minor’s family shall
be held in a closed court. Only the parties, their witnesses, counsel, and
representatives of the agencies present to perform their official duties
and such other persons as the court may deem appropriate shall be admit-
ted.

(b) Records, reports, and evidence submitted to the court or recorded
by the court shall be confidential insofar as they relate to the personal
history or circumstances of the minor and the minor’s family. For cause
shown, the court may authorize disclosure under such terms and
conditions as the court may deem appropriate.
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(c) All case records, as defined in [insert appropriate state citation], relating to the personal history or circumstances of the minor and the minor’s family, shall be confidential and access shall be provided pursuant to [insert appropriate state citation].

Section 11. [Who May Be Appointed Guardian.]
(a) The court may appoint as guardian of the person of this minor any person or authorized agency whose appointment is appropriate.
(b) The court may appoint as guardian of the estate any person or entity whose appointment is appropriate.
(c) Co-guardians may be appointed when in the best of the minor. Co-guardians shall share jointly and equally the authority granted, except as otherwise ordered by the court.
(d) No person, authorized agency, or entity shall be appointed guardian of the person or of the estate or of both unless the person, authorized agency, or entity receives written notice of the proceedings and consents in writing to the appointment.

Section 12. [Letters of Guardianship and Other Orders.]
(a) Letters of guardianship shall issue to the guardian and shall contain:
   (1) The name, address, and telephone number of the guardian of the person and estate, or of the person or of the estate;
   (2) The name, address, and telephone number of the minor;
   (3) The nature and scope of the guardianship, whether over the person and estate, or the person, or the estate; and
   (4) Limitations imposed by the court on the guardian.
(b) At the time of the issuance of the letters of guardianship the court may issue such other orders as may be requested or required.

Section 13. [Powers and Duties of Guardians of the Person of the Minor.]
(a) Except as otherwise expanded or limited by statute or order of court as provided in Section 13 (d) a guardian of the person of a minor has the powers and responsibilities of a parent regarding the minor’s support, care and education, but a guardian is not personally liable for the minor’s expenses and is not liable to third person by reason of the relationship for acts of the minor. The guardian shall not be liable for injury to the minor resulting from the negligent acts or omissions of third persons unless a parent would have been liable in the same circumstances.
(b) In particular and without qualifying the provisions of Section 13 (a), a guardian shall:
   (1) Become or remain personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor’s capacities, limitations, needs, opportunities, and physical and mental health.
   (2) Take reasonable care of the minor’s personal effects and com-
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mence protective proceedings if necessary to protect other property of the
minor.

(3) Apply any available money of the minor to the minor’s current needs
for support, care, and education.

(4) Conserve any excess money of the minor for the minor’s future needs,
but if a guardian of the estate has been appointed for the minor, the guard-
ian of the person, at least quarterly, shall pay to the guardian of the estate
the money of the minor to be conserved for the minor’s future needs.

(5) Report the condition of the minor and of the minor’s estate that has
been subject to the guardian’s possession or control, as ordered by the court
on petition of any person interested in the minor’s welfare or as required by
court rule.

(6) File an annual report on the general welfare of the minor, including
but not limited to the residence, mental and physical health, education,
and financial status of the minor.

(c) A guardian may:

(1) Receive money payable for the support of the minor to the minor’s
parent, guardian, or custodian under the terms of any statutory benefit or
insurance system or any private contract, devise, trust, conservatorship,
or custodianship and money or property of the minor paid or delivered pur-
suant to Sections 20 and 21 of this act.

(2) If consistent with the terms of any order by a court of competent
jurisdiction relating to the custody, placement, detention or commitment
of the minor, take custody of the person of the minor and establish the
minor’s place of abode within or without this state.

(3) If no guardian of the estate of the minor has been appointed, insti-
tute proceedings, including administrative proceedings, or take other ap-
propriate action to compel the performance by any person of a duty to sup-
port the minor or to pay sums for the welfare of the minor.

(4) Give any necessary consent or approval to enable the minor to re-
cieve medical or other professional care, counsel, treatment, or service.
However, no guardian may give consent for psychosurgery, electroshock,
sterilization, or experimental treatment of any kind unless the procedure
is first approved by order of the court.

(5) Consent to the marriage or adoption of the minor as provided in
[insert appropriate state citation].

(6) If reasonable under all of the circumstances, delegate to the minor
certain responsibilities for decisions affecting the minor’s well-being.

(d) The court may limit or restrict the powers of the guardian or impose
additional duties if it deems them desirable in the best interests of the
minor.

Section 14. [Order for Support for the Benefit of a Minor Under Guard-
ianship.]
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(a) The appointment of a guardian over the person or over the estate of a minor shall not relieve the minor’s parents or any other persons liable for the support of the minor from their obligation to provide for such support. The court, at the time of such appointment, or at any time thereafter, may order and require such parent, parents, or other persons to contribute to the support and maintenance of the minor in such amounts and at such times as the court determines to be just and reasonable.

(b) The court may from time to time, upon application of the guardian or any other party interested, and notice to the party having the duty to provide support, revise or alter such order, or to make such new order or decree as the circumstances of the party or parties having the duty to support and maintain or the benefit of the minor may require.

Section 15. [Resignation or Removal of Guardian.]

(a) Any person appointed as guardian over the person or of an estate or both shall serve until resignation accepted by the court, removal by the court for cause, death of the guardian, or termination of the guardianship pursuant to this Section.

(b) A guardian desiring to resign shall request court approval of such resignation in writing.

(c) Resignation of a guardian is not effective until accepted by the court and until a successor guardian is appointed or the guardianship is terminated.

(d) Any person interested in the welfare of the minor may petition for the removal of the guardian of the person or of the estate or of both for cause.

(e) The resignation, removal, or death of the guardian shall not terminate the guardianship unless expressly so ordered by the court. If the guardianship is not terminated by order of the court, the court shall appoint a successor guardian.

(f) The resignation accepted by the court, removal, death of the guardian, or termination of the guardianship shall terminate the authority of the guardian, but shall not release the guardian from responsibility for any act or omission occurring during the period of the guardian’s appointment.

(g) Any resignation or removal may be conditioned on such requirements or occurrences as the court may specify in the exercise of its reasonable discretion. The court may make such further orders as may be appropriate, including the requiring of the filing of a report on the general welfare of the minor, including but not limited to the residence, mental and physical health, and education of the minor.

Section 16. [Termination of Guardianship.]

(a) A guardianship of the person or of the estate of a minor shall terminate upon order of the court, the death of the minor, the minor’s [eighteenth (18th)] birthday, a finding by the court that the minor has been
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emancipated under relevant state law, or upon the issuance of a final decree of adoption. The guardian shall provide written notice to the court of termination resulting from the death of the minor, or the minor’s [eighteenth (18th)] birthday, within [thirty (30)] days of the event giving rise to termination. Failure to provide timely notice does not imply consent to the extension of jurisdiction pursuant to Section 16 (b).

(b) Notwithstanding the provisions of Section 16 (a), the court may, with the continuing consent of the minor, retain jurisdiction over a minor:

(1) For whom the [division] has recommended extension of the court’s jurisdiction;

(2) Who has, prior to the minor’s [eighteenth (18th)] birthday, consented to the court retention of jurisdiction;

(3) Who is attending high school and who is considered likely to complete high school; and

(4) For whom the [division] has previously been appointed guardian.

(c)(1) Retention of the court’s jurisdiction shall continue until the conditions of either Section 16 (c)(1)(i) or Section 16 (c)(1)(ii) are met, whichever occurs first:

(i) When the minor:

(A) Revokes consent in writing and the revocation has been approved by the court;

(B) Completes high school;

(C) Attains [twenty-one (21)] years of age; or

(D) Dies.

(ii) The division revokes its consent to extended jurisdiction in writing and the revocation is accepted by the court.

(2) The court shall approve the minor’s revocation of consent if it finds that the minor, in seeking to do so, is acting intelligently, knowledgeably and in acceptance of the legal consequence.

(d) Any person interested in the welfare of the minor may petition for the termination of the guardianship of the estate. Any minor under guardianship of the person who is [fourteen (14)] years of age or older, or any person interested in the welfare of the minor, may petition for the termination of the guardianship of the person.

(e) The guardianship of the person shall be terminated upon a showing that substitution or supplementation of parental care and supervision is no longer necessary to provide for the essential physical and safety needs of the minor and termination of the guardianship will not adversely affect the minor’s psychological well-being.

Section 17. [Modification of Guardianship.] The court may from time to time, upon application of any person interested in the welfare of the minor, and notice to all parties, revise or alter any prior orders or make such new order or decree relative to the guardianship of the person or of the estate or
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both as the best interests of the minor or the prudent management of the
estate may require.

Section 18. [Annual Court Review.] The status of all minors for whom
guardianship or co-guardianship has been granted to the [division], or to
whom the [division] provides services, shall be reviewed at least once every
year following the initial decree.

Section 19. [Consent to Service.] By accepting appointment as guardian,
a guardian submits personally to the jurisdiction of the court in any
proceeding relating to the guardianship that may be instituted by any
interested person.

Section 20. [General Powers and Duties of a Guardian of the Estate of a
Minor.]
(a) Except as otherwise ordered by the court, the guardian of the estate
shall take possession of all of the minor’s real and personal property,
and of all rents, incomes, and benefits from such property, whether accru-
ing before or after appointment, and of the proceeds arising from the sale,
mortgage, lease or exchange of such property. Subject to such possession,
the title of all such estate, and to the increment and proceeds thereof, shall
be in the minor or in the guardian on behalf of the minor. It is the duty of
the guardian of the estate to protect and preserve it, to retain, sell and
invest it as provided in this subdivision, to prosecute or defend actions,
claims or proceedings in any jurisdiction for the protection of the estate’s
assets, to account for it faithfully, to perform all other duties required by
law, and at the termination of the guardianship to deliver the assets of the
minor to the persons entitled to such assets. The guardian may institute
proceedings to compel any person or agency under a duty to support the
minor, or duty to pay sums or to provide benefits for the welfare of the
minor, to perform the duty.
(b) Except as limited by statute or order of the court, the guardian of the
estate shall have the power to perform, without court authorization, every
act which persons of prudence, discretion and intelligence, and exercis-
ing judgment and care as in the management of their own affairs, would
perform, including but not limited to, the powers specified in the [state
Uniform Trustee’s Powers Act] pursuant to [insert appropriate state cita-
tion].
(c) The guardian of the estate shall file an inventory of the estate of the
minor in the same manner and subject to the same requirements as inven-
tories of the estates of persons deceased are made pursuant to [insert ap-
propriate state citation]. An appraisal of all or any part of the minor’s
estate shall be made whenever ordered by the court.
(d) Every guardian of the estate shall take a receipt of the minor or of the
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minor's legal representative, to whom the guardian shall pay or deliver the
property of the minor, and shall file the same with the court. Any guardian
may be cited by the court for failure to file such receipt. If the guardian
neglects or refuses to do so, the guardian may be found in contempt and
fined up to [five (5)] dollars per day.

(e) The guardian of the estate shall file with the court an annual account
of administration and management of the guardianship estate, within
[ninety (90)] days after the anniversary date of the guardianship appoint-
ment unless otherwise ordered by the court. The account shall specify the
amount and type of real and personal property received, remaining in the
guardian's control, and invested by the guardian and the nature of such
investment, and the guardian's receipts of money disbursed and expendi-
tures, during the preceding time. Upon request of the court, the guardian
shall produce for examination by the court, all securities, evidences of
deposit, and investments reported, and any other information or document-
tation which the court may consider relevant to the accounting of the finan-
cial and property transactions of the estate.

(f) The court may limit or restrict the powers of the guardian of the estate
or impose additional duties if it deems them desirable in the best interests
of the minor or of the minor's estate.

Section 21. [Sales and Purchase; General Procedure.]

(a) The court, upon petition of the guardian of the estate or of any other
person interested in the estate of the minor, may direct or license the guard-
ian to sell, mortgage, pledge, lease or exchange any property of the guard-
ianship estate, including goods and chattels, real estate, or wood and tim-
ber growing thereon, upon such terms as the court may order for any pur-
pose which is in the best interests of the minor or of the minor's estate.

(b) No guardian of the estate shall purchase property of the minor, or sell
property of the guardian to the minor, unless the price and manner of sale
are approved by the court.

(c) If the court is not satisfied that the guardian has already given bond
sufficient to ensure the guardian's prudent conduct in a sale and to account
for the proceeds of the sale, the court shall, before granting authorization
or issuing a license, require of the guardian a bond sufficient for that pur-
pose.

(d) All sales shall be made within [two (2)] years after the grant of a
license.

Section 22. [Oath Upon Sale or Disposal.] Before a license for the sale of
any property of the minor shall be granted, the guardian of the estate shall
take the following oath and file a certificate of the oath with the court:
"I, , guardian of the estate of , a minor, do solemnly swear that in disposing of the estate of the minor, for

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which I have applied for license, I will use my best care and judgment,
exercise the prudence, intelligence and discretion which I would in the
management of my own affairs and will act in the best interests of the
minor and the minor's estate so that property shall be sold to the utmost
advantage to the minor or the minor's estate, without any self-interest
whatever."

Section 23. [Conveyance.] Every guardian of the estate so licensed and
sworn, having advertised and sold as may be required by the license, may
execute a valid conveyance of the estate sold to the purchaser.

Section 24. [Purchase of Undivided Fractional Part of Real Estate.] If a
minor is seized of an undivided fractional part of real estate, the court may
authorize the guardian of the estate to purchase any other fractional part
of the real estate whenever it will be conducive to the minor's interests to
do so; and when so licensed, the guardian of the estate may make the pur-
chase and use funds of the minor to pay the purchase money.

Section 25. [Purchase of Homestead for Minor.]
(a) The court, on petition after notice, may authorize the guardian of the
estate to purchase, with the minor's funds, real estate situated in the state
as a home for the minor.
(b) The petition shall state the value of the minor's property and the
license shall limit the sum to be expended for such homestead as the court
may deem proper.

Section 26. [Oath Upon Purchase.] Before making any purchase under
any license or authorization, the guardian of the estate shall take the
following oath and file a certificate of the oath with the court:
"I, ______________________ , guardian of estate of  ____________________ ,
swear that in purchasing a homestead for the minor, I am acting in the best
interest and to the utmost advantage of the minor, without any self-inter-
est whatever."

Section 27. [Investments.] Every guardian of the estate shall invest, in
the name of the minor, or in the guardian's own name as guardian of the
minor, the money and the proceeds of all real and personal property of the
minor not required for the minor's support in the following described classes
of property only, unless authorized or directed by the court:
(1) In notes secured by mortgage of real estate at least double in value of
the notes, or in notes or bonds secured by mortgage insured by the United
States Secretary of Housing and Urban Development and guaranteed by
the United States of America.
(2) By deposit in some incorporated savings bank in this state or in the
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savings department of a national bank or trust company located in this
state, or in shares of any building and loan association or cooperative bank,
incorporated and doing business under the laws of this state, or in the-
shares of any federal savings and loan association, located and doing busi-
ness in this state.

(3) In such other stocks, bonds, or securities as are legal investments
for savings banks in this state; provided, however, that no guardian of the
estate of a minor who is a beneficiary of the [Department of Veterans Af-
fairs] shall invest any funds of the minor under this paragraph without the
written consent of the court, except that the guardian may invest without
prior consent in direct unconditional interest bearing obligations the
interest and principal of which are unconditionally guaranteed by the
United States.

(4) With the consent of the court, in life, death, and annuity contracts
of life insurance companies authorized to do business in this state.

(5) In such stocks, bonds or other securities, including the shares of an
open-end or closed-end management type investment company or
investment trust which is registered under the Federal Investment Com-
pany Act of 1940 as from time to time amended and which may be sold
under the rules and exemptions of the [insurance department of the
state], as a prudent person would purchase for the person's own invest-
ment, having primarily in view the preservation of the principal and the
amount and regularity of the income to be derived from it; provided, how-
ever, that no guardian of the estate of a beneficiary of the [Department of
Veterans Affairs] shall invest funds of the minor's estate under this
paragraph.

Section 28. [Bond of Guardian of the Estate of a Minor.] Upon appoint-
ment, the guardian of the estate shall give bond to the [probate court],
with sufficient sureties, in such sum as the court shall approve. In the
discretion of the court, a bond without sureties may be given if the gross
value of the minor's estate does not exceed [two thousand five hundred
(2,500)] dollars.

Section 29. [Sale of Property of Absent Person Charged With Duty to Sup-
port a Minor.] If a person absent from the state, for whose minor child a
guardian has been appointed, neglects to make provision for the child, and
leaves property within the state, the court, upon petition of the guardian
and notice, may authorize the guardian to sell at auction or private sale
such portion of the property as the court deems necessary for the comfort-
able support, education, and maintenance of the minor.

Section 30. [Right of Waiver by Guardian of the Estate of a Minor.] The
guardian of the estate of a minor shall have the right to waive provisions of
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Section 31. [Foreign Guardianships of the Estate] Any person who has been appointed guardian of the estate of a minor by a court of competent jurisdiction in any other state shall, upon petition and filing of a certified copy of that appointment with the court, be appointed guardian of the estate of the minor situated in this state without further notice or hearing. Upon such appointment, the foreign guardian may deal with the estate of the minor in the same manner as a resident guardian of the estate and in accordance with Sections 20 through 30 of this act. The foreign guardian shall account to the court of original appointment for the proceeds from the sale of any of the minor’s estate situated in this state. A certified copy of the approved account shall be filed with the court in this state prior to discharge of the guardian. The court, as a condition of appointment, may require the guardian to post an adequate surety bond to ensure the faithful performance of the guardian’s duties.

Section 32. [Proceedings Under [insert appropriate state citation].] Nothing in this act shall preclude institution of proceedings relating to the minor under [insert appropriate state citation].

Section 33. [Prior Guardianships.] Guardianships established prior to the effective date of this act shall be reviewed in the [probate court] in accordance with Section 17 of this act.

Section 34. [Effective Date.] [Insert effective date.]
Individual Development Accounts Act

This act amends provisions related to Arizona’s Aid to Families with Dependent Children (AFDC) program and establishes individual development accounts (IDAs) for recipients of AFDC. Arizona enacted this legislation in 1994 and obtained a federal waiver for the IDA program in May 1995.

Some of the changes made to the AFDC program include exempting AFDC recipients from the requirement of entering a job opportunities and basic skills training program if they provide care to a child under one year of age (reduced from two years of age). In addition, a principal wage earner who works 100 or more hours per month will no longer be denied AFDC assistance.

A financial instrument called an individual development account is established in the name of an AFDC and food stamp recipient. The purpose of an IDA is to assist beneficiaries to become self-sufficient.

Deposits to an IDA may be made by the account holder, a member of the account holder’s assistance unit, a nonprofit organization, and individual contributors. An account must be administered by a licensed financial institution, and will earn interest at a competitive rate. Only one account may be established per assistance unit. The total amount of an account cannot exceed $9,000 at any one time. Total deposits over the life of the account are limited to $12,000, and deposits from income earned by a member or members of an assistant unit cannot exceed $200 per month. Fifty percent of deposits made into an account will be disregarded in calculating earned income, up to $100. Deposits made into accounts and account balances will be disregarded in determining eligibility for assistance, except that if the recipient has a break in eligibility and then subsequently reapplies, any account monies, unless otherwise excludable, will be countable assets, including future deposits.

An account holder may make a withdrawal from an IDA for education or training costs at an accredited higher education institution or an accredited, licensed or certified training program. If a withdrawal is made for any other purpose, it will be counted as income to the assistance unit. An account holder whose assistance unit no longer receives AFDC grants and food stamp program benefits may withdraw money from the account for any purpose. The account holder is responsible to abide by the regulations or guidelines for any nonprofit or governmental grants.

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(Title, enacting clause, etc.)
Section 1. [Short Title.] This act may be cited as the Individual Development Accounts Act.

Section 2. [Definitions.] In this act, unless the context otherwise requires:
(1) “AFDC” means the Aid to Families with Dependent Children program.
(2) “Fixed sequence JOBS model” means a prescribed course of employment, work experience, education and training activities under the JOBS program as established in this act.
(3) “JOBS” means the Job Opportunities and Basic Skills training program established in the [department] and as modified under this act.
(4) “Mandatory JOBS participant” means any AFDC recipient who is required to participate in the JOBS program except:
   (i) Any person exempt from participation under the [state family support act].
   (ii) Any parent or other relative who is personally providing care for a child under the age of [one (1)] year unless otherwise required to participate under the [state family support act].
(5) “Participant” means any AFDC recipient who is a mandatory participant in the JOBS program and any AFDC recipient who is not a mandatory participant and volunteers to participate in the JOBS program.

Section 3. [Eligibility for Assistance]
(a) Assistance shall be given under this act to any dependent child:
   (1) Who has established residence in [state] at the time of application and is either a citizen by birth or naturalization or an alien legally admitted for permanent residence or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7), or Section 212(d)(5) of the Immigration and Nationality Act.
   (2) Whose parent or parents or person or persons acting in the parents’ place, if employable, shall not refuse to accept available employment and if any employable child in the family does not refuse to accept available employment. The determination of employability and the conditions under which employment shall be required shall be determined by the [state department], except that claimed unemployability because of physical or mental incapacity shall be determined by the [state department] in accordance with the provisions of this act. Assistance shall not be denied or terminated under this act because the principal wage earner works [one hundred (100)] or more hours per month.
   (3) Whose parent or parents or other relatives who are applying for or receiving assistance on behalf of the child have not, within [one (1)] year prior to application, or while a recipient, transferred or assigned real or personal property with the intent to evade federal or state eligibility requirements. Transfer of property with retention of a life estate for the pur-
pose of qualifying for assistance is prohibited. Where fair consideration for
the property was received, no inquiry into motive is necessary. A person
found ineligible under this section shall be ineligible for such time as the
(state department) determines.
(b) A parent or any other relative who applies for or receives assistance
under this act on behalf of a child shall cooperate with the [department] by
providing information, if known, regarding the identity of the child’s father
and mother and other pertinent information including their names, social
security numbers and current addresses unless the [department] deter-
mines good cause exists for failure to cooperate pursuant to title IV-A of the
Social Security Act.

Section 4. [Individual Development Accounts; Definition.]
(a) A financial instrument known as an individual development account
is established. An individual development account shall be in the name of
an individual account holder who is a member of an assistance unit that is
receiving Aid to Families with Dependent Children grants and food stamp
program benefits.
(b) Deposits to an individual development account may be made by:
   (1) The individual account holder.
   (2) A member of the individual account holder’s assistance unit.
   (3) A nonprofit organization.
   (4) Individual contributors.
(c) The [department] shall:
   (1) Adopt rules regarding:
      (i) The establishment and administration of the individual develop-
          ment accounts. These rules shall include provisions which stipulate that
          the [department] may not qualify an assistance unit for benefits by pro-
          spectively budgeting the availability of an individual development account.
      (ii) The criteria a nonprofit organization must satisfy before mak-
          ing deposits to individual development accounts.
      (iii) Penalties for fraud or abuse with respect to the individual de-
          velopment account.
   (2) Not approve more than one individual development account per
       assistance unit.
   (3) Issue a request for proposals to financial institutions to establish
       and, together with the [department], administer individual development
       accounts.
   (4) Not approve an individual development account for any recipient
       who has been found by either the [department] or a court of law to have
       committed any act of fraud or abuse with respect to any cash or in-kind
       benefit program including Aid to Families with Dependent Children, food
       stamps or Medicaid.
   (5) Investigate all cases for possible fraud or abuse when there is evi-
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dence or other reason to believe that income sources for an account holder’s
deposits were previously available to the account holder but undeclared
during application or subsequent redetermination for assistance, or that
individual contributions to an account should have been declared as in-
come or child support payments or represent proceeds from illegal activi-
ties.

(d) The individual development accounts shall be administered by a fi-
nancial institution that is licensed by the [state banking department]. These
accounts shall earn interest at rates that are competitive with savings ac-
count rates.

(e) The balance of an individual development account at any one time
may not exceed [nine thousand (9,000)] dollars. Total deposits to an indi-
vidual development account over the life of the account shall not exceed
[twelve thousand (12,000)] dollars. Deposits from income earned by a mem-
ber or members of an assistance unit may not exceed [two hundred (200)]
dollars per month.

(f) The account holder whose assistance unit is receiving Aid to Families
with Dependent Children grants and food stamp program benefits from
the [department] may withdraw monies from his individual development
account for:

1. Educational costs at an accredited institution of higher education.
2. Training costs for an accredited, licensed or certified training pro-
gram.

(g) Unless the monies would have been otherwise disregarded from an
income calculation, the [department] shall consider withdrawals from an
individual development account, for purposes other than those established
in Section 4 (f), by an account holder whose assistance unit is receiving Aid
to Families with Dependent Children grants and food stamp program ben-
efits, as income to the assistance unit in the month that it is withdrawn.

(h) The [department] shall disregard from an assistance unit’s earned
income calculation [fifty (50)] percent of a deposit made to an individual
development account from the proceeds of an account holder’s or assis-
tance unit member’s earned income. The maximum monthly disregard under
this subsection shall not exceed [one hundred (100)] dollars.

(i) Subject to the limitations prescribed in this section, deposits made
into an individual development account and the account balance, including
interest earned, shall be disregarded by the [department] in determining
the account holder’s and the assistance unit’s eligibility for the Aid to Fam-
ilies with Dependent Children and food stamp programs as well as any
other assistance or services in which eligibility for receipt is directly linked
to eligibility for the Aid to Families with Dependent Children and food stamp
programs. If an assistance unit with an individual development account
experiences any break in eligibility for the Aid to Families with Dependent
Children or food stamp programs, and then subsequently reapplies for ei-
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other program, the [department] shall consider any remaining account monies, unless otherwise excludable, as countable assets and shall not disregard, for purposes of eligibility in either program, future deposits into an individual development account.

(j) The account holder shall name contingent beneficiaries at the time he establishes the account and may change beneficiaries at any time after the account is established. If the named beneficiary is deceased or otherwise cannot accept the transfer, the monies shall be deemed unclaimed property.

(k) A holder of an individual development account whose assistance unit is no longer receiving Aid to Families with Dependent Children grants and food stamp program benefits from the [department] may withdraw his deposited monies from his account for any purpose. The account holder is responsible to abide by any regulations or guidelines regarding the use of any monies contained in the account which are from a nonprofit or governmental organization.

(l) For purposes of this section “[department]” means the [department of economic security].

(m) The [legislature] intends by this section to address the problem faced by many assistance beneficiaries of being unable to achieve educational goals or accumulate resources during a stay on welfare due to the effects of financial eligibility criteria. The inability to meet educational goals or accumulate some financial resources is a significant reason why many beneficiaries do not permanently transition off of welfare programs and instead shuttle back and forth between periods of eligibility and ineligibility. The purpose of the individual development accounts is to provide an additional tool to assistance beneficiaries to use during and after a stay on welfare, in order to help facilitate a permanent transition off of welfare programs and into self-sufficiency.

Section 5. [Waivers; Conditional Enactment; Reports.]

(a) The [director] of the [department of economic security] shall submit complete waiver proposals necessary to implement the provisions of Sections 3 and 4 of this act to the appropriate departments within the federal government within [ninety (90)] days after the [legislature] passes this act.

(b) Sections 3 and 4 of this act do not become effective unless the federal government grants, by [date], the appropriate waivers necessary to implement the provisions of those sections.

(c) The [director] of the [department of economic security] shall implement the provisions of Sections 3 and 4 of this act within [one hundred eighty (180)] days of the receipt of federal approval of the waiver proposals, but no earlier than [date]. If the federal government approves waiver proposals for only one of the referenced sections, the [department] shall implement that section subject to the limitations of this subsection.
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(d) The [director] of the [department of economic security] shall report to the [speaker of house of representatives] and the [president of the senate] regarding the waiver proposals' contents, the date of the proposals' submission to the federal departments and the federal government's response to the proposals.

(e) If federal waivers are granted, the [director] shall report to the [governor], the [speaker of the house of representatives] and the [president of the senate] regarding the individual development account program [eighteen (18)] months after the implementation of the program.

(f) The [director] of the [state health care cost containment system administration] shall cooperate with the [director] of the [department of economic security] in any aspect of the waiver proposals that affect eligibility for services provided pursuant to title XIX of the Social Security Act.

Section 6. [Effective Date] [Insert effective date.]
Child Welfare Legislation (Note)

A number of states have adopted reforms directed toward regulation of child placement activities, including those in which adoption attorneys engage. Responding to studies showing pervasive problems in child placement in both adoptive and foster homes, including abuses in the areas of advertising and fees for such services, recent state legislation has imposed licensing requirements upon those involved in the child placement process. The provisions of four states – Kentucky, Michigan, Minnesota and Texas – are summarized here. Readers interested in the full text of these items 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) 244-8248.

In addition to imposing licensing requirements, the Kentucky law (HB 191) clarifies the rights of biological parents of children who may be placed for an adoption, requiring informed and voluntary consent before the adoption occurs, but it also establishes a process for adoption of abused or neglected children to be permitted without the consent of a biological parent. In addition, the 1994 law requires adopting attorneys to qualify as "child-placing" agencies and prohibits representation of both the biological parents and prospective adoptive parents.

The focus of the Michigan Foster Care and Adoptions Act (SB 721, SB 722 and SB 723) is concerned with assisting foster parents in providing stable family environments for children in foster care and eliminating barriers to the adoption of children. The 1994 law not only certifies individuals through a screening process but also requires the state Department of Social Services to produce a directory of children under its jurisdiction who are available for adoption and maintain a registry of adoptive homes that have been approved by this process. The act also creates the Office of Children’s Ombudsman who will monitor and assure compliance with the act.

The Minnesota law (Ch. 631, SF 2129) has a unique feature regulating advertisement and payments regarding adoption and child placement services to ensure that the best interests of the child are served in addition to licensing requirements for those providing such services.

The Texas act (HB 196) is much more narrowly drawn and focuses exclusively on prohibition of denial or delay of an adoption or placement in a foster care home of any child based on the race or ethnicity of the child or the prospective adoptive or foster parents.

The uniform law on which a number of the foregoing adoption reforms are based is known as the Uniform Adoption Act recently approved by the National Conference of Commissioners on Uniform State Laws. The uniform law is different from what now exists in most states because it recognizes...
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private adoptions as well as those through agencies and establishes procedures for recording crucial medical information, including quality of prenatal care and whether the mother took drugs during the pregnancy. The law would also allow a mother to revoke her adoption consent within eight days after birth. After that, the consent would be irrevocable.

Under the uniform law, procedures and time limits are established for biological fathers to assert custody rights to children put up for adoption. The law authorizes direct placement of children through lawyers and other private intermediaries as well as placement through adoption agencies. But the act requires pre-placement home visits by qualified evaluators in private and public agency adoptions and imposes other new regulations on private adoptions. The law also permits “open adoption” arrangements providing for continued contact between birth parents and adoptive children but with limits on the right of the birth parents to enforce visitation agreements. In addition, the uniform law seals adoption records to protect privacy but establishes a registry through which birth parents and adoptive children who reach adulthood can find each other with mutual consent.

Copies of the 150-page uniform law are available from The Council of State Governments or the National Conference of Commissioners on Uniform State Laws.
Charter schools appear to be an increasingly popular concept in the world of education reform. The concept originated in 1991 in Minnesota, where about ten such schools now operate, and spread to Arizona, California, Colorado, Georgia, Hawaii, Kansas, Massachusetts, Michigan, New Mexico and Wisconsin.

The Arizona act (HB 2002) has been touted as one of the most far-reaching of its kind because it establishes a special board for charter schools which includes community members and business people appointed by the governor and operates independent of state and district education officials. Under Arizona's statute, charter schools can apply for up to $200,000 in state funds to help cover start-up costs based on the number of students. Operating funds will be based on the same per-student formulas that apply to regular public schools.

In lieu of presenting this amendatory item in the standard format, the Committee of Suggested State Legislation approved the inclusion of a statement summarizing the major provisions of the act. Readers wishing to acquire a copy of the measure 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) 244-8248.

Although they resemble private schools, charter schools are public institutions receiving state funding which are obligated to comply with all federal, state and local laws pertaining to health, safety, civil rights, insurance and special education. However, charter schools are exempt from most of the burdensome state statutes and regulations imposed on regular public schools. Exemptions which exist under charter school statutes allow teachers to be hired and fired and permit salaries to be set without complying with union-negotiated contracts. Charter schools also operate independently of local school district administrators, freeing them to make their own decisions in such areas as curriculum. However, the schools are obligated to provide high quality education to their students or risk losing their charters.

Charter schools differ considerably from what have been referred to as "magnet schools" in other states which are traditional public schools with curriculum which has a special emphasis on math, science, business or the arts and which draw students from all over a district, not just a specific neighborhood. While magnet schools are headed by a principal and are accountable to central administrators and the school board, charter schools allow groups of parents, teachers and/or other community members to run the school in their own way with public money from the local school district. Typically, local school boards grant the charters, but then take a hands-off
approach. Charter schools can be located anywhere and, according to current laws, any child in the district is eligible to attend.

Generally, state legislation dealing with charter schools consist of several components, including charter schools, school councils, open enrollment, school report cards, capital needs assessment, and expanding the at-risk preschool expansion program.

The Arizona act defines charter schools as public schools established by contract with a district governing board, the state board of education or the newly established state board for charter schools. They are intended to provide a learning environment that will improve pupil achievement and provide additional academic choices for parents and pupils. They may consist of new schools or all or any portion of an existing school. A district governing board has no legal authority over or responsibility for a charter school sponsored by the state board of education or the state board for charter schools. By law, charter schools must: comply with federal, state and local rules, regulations and statutes relating to health, safety, civil rights and insurance; be nonsectarian in programs, admission policies, employment practices and all other operations; consist of a kindergarten program or any grade between one and 12; and design a method to measure pupil progress toward pupil outcomes adopted by the state board of education. These schools are exempted from all statutes and rules relating to schools, governing boards and school districts, except as provided in the enabling legislation and in the school's charter.

School councils are intended to give Arizonans who are affected by the outcome of school decisions the opportunity to provide input into the decision-making process. Each school must establish by a specific date a school council, which operates under the authority of the principal. School councils must reflect the ethnic composition of the local community and consist of parents, teachers, non-certified employees and community members as well as students if the school is a high school. The governing board of a school district may delegate curriculum-development responsibility to the school council as well as other powers reasonably necessary to accomplish decentralization.

Schools in Arizona are required to distribute an annual report card to assist parents in selecting a school for their children to attend. Information will include a description of the school's academic goals; a summary of pupils' test results for the prior three years; and a description of the school's regular, magnet and special instructional programs.

In the first school year following adoption of a charter school act, governing boards will permit pupils to enroll in any school within the district or in another school district. Governing boards will establish annually a pupil enrollment capacity for each school. If this capacity is exceeded, an equitable selection process, such as a lottery, will be used.
Intervention/Prevention Grants for Academically At-Risk Children (North Carolina)

This bill is the first of two bills in this volume dealing with academically at-risk children. Both are included because the SSL Committee believes each offers unique but important elements toward addressing the issue of academically at-risk children.

This act is based on North Carolina legislation enacted in 1994. This act establishes intervention/prevention grants to fund locally designed programs to enhance the educational attainment of at-risk children by providing coordinated services for these students and safe and secure learning environments.

A local school may apply for a grant; up to three schools may apply jointly. The applicant must consult with an inter-agency local task force to be appointed by the county commissioners. The task force should be representative of the racial and socioeconomic area to be served by the grant.

The superintendent of public instruction will appoint a task force to review grant applications and to make recommendations for funding to the state board. In selecting grant recipients, the state board is to consider the superintendent’s recommendations, the geographic location of the proposal and the demographic profile of the applicant proposal. Preference is to be given to locations with high juvenile crime rates.

The superintendent will administer the grant program. The department of public instruction will provide technical assistance to grant applicants and recipients. The department will also develop and implement an evaluation system for the program.

Suggested Legislation

(Title, enacting clause, etc.)

1   Section 1. [Short Title] This act may be cited as the Intervention/Prevention Grants for Academically At-Risk Children Act.

1   Section 2. [Establishment of Program; Purpose] There is established the Intervention/Prevention Grant Program for school children. The purpose of the program is to provide grants to local school administrative units for locally designed, innovative local programs that target juvenile crime by:

   (1) Enhancing educational attainment through coordinated services to re-
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- Respond to the needs of students who are at risk of school failure and at risk of participation in juvenile crime; and
- Providing for a safe and secure learning environment.

Section 3. [Applications for Grants.]
(a) A local school administrative unit may apply for a grant, or up to three adjacent local school administrative units may apply jointly for a grant.
(b) In preparing grant applications, an applicant shall consult with a local task force appointed by the [county board of commissioners] and comprised of educators, parents, students, community leaders, and representatives of the juvenile justice system, human services, and nongovernmental agencies providing services to children. To the extent possible, the task force shall be representative of the racial and socioeconomic composition of the geographic area to be served by the grant. If a local school administrative unit or the geographic area covered by a grant proposal is located in more than one county, the [board of commissioners] of the counties shall jointly appoint the task force.
(c) The application shall include the following information:
(1) Data on the incidence of juvenile crime in the geographical area to be served by the grant. Sources of data may include the [chief juvenile court counselor] in the judicial district, the [clerk of superior court] and local law enforcement officials.
(2) An assessment of local resources from all sources for, and local deficiencies with regard to, responding to the needs of children who live in conditions that place them at risk of school failure. This assessment shall be prepared by the local task force.
(3) A detailed plan for removing barriers to success in school that exist for these children and for minimizing disruptive and violent behavior among all students. This plan shall include proposed goals and anticipated outcomes, prepared after consultation with the task force. This plan shall provide for the establishment or expansion of programs that have components based on one or more of the following models or other collaborative models:
   (i) School-Based Resource Center Model – A School-Based Resource Center is a school-based center that coordinates the delivery of comprehensive and integrated services in or near a school to children from kindergarten through the eighth grade and their families. Services are provided through broad-based collaboration among governmental and nongovernmental agencies and persons reflective of the racial and socioeconomic diversity in a community. Services are designed to:
      (A) Prepare children to attain academic and social success;
      (B) Enhance the ability of families to become advocates for and supporters of education for the children in their families;
      (C) Provide parenting classes to the parents of children who are at risk of school failure; and
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(D) Otherwise enhance the ability of families to function as nurturing and effective family units.

(ii) After School Program Model – An After School Program is a program that provides high-quality, educationally appropriate and recreational activities to students after the regular school day. The program may be targeted toward providing academic support for students who perform significantly below their age-level peers or for students with learning disabilities. Local boards of education may permit teachers to adjust their work schedules so they can work in the program.

(iii) Cities in Schools Program Model – A Cities in Schools Program is a community partnership among public agencies, private nonprofit agencies, volunteer organizations, and local businesses that delivers services to students who are at risk of dropping out of school or who display discipline problems. Services offered are based on an assessment of local needs and resources.

(iv) Alternative Learning Program Model – An Alternative Learning Program is a program that provides individualized programs outside of a standard classroom setting in a caring atmosphere in which students learn the skills necessary to redirect their lives and return to a standard classroom setting. The program should maintain state standards and may include smaller classes and lower student-teacher ratios, school-to-work transition activities, modification of curriculum and instruction to meet individual needs, flexible scheduling, and necessary academic, vocational, and support services for students and their families. Services may also include appropriate measures to correct disruptive behavior, teach responsibility, good citizenship, and respect for rules and authority. The goals of the alternative school programs should be to:

(A) Reduce the school dropout rate through improved student attendance, behavior, and educational achievement; and

(B) Increase successful school-to-work transitions for students through educationally linked job internships, mentored job shadowing experiences, and the development of personalized education and career plans for participating students.

(v) Safe Schools Program Model – A Safe Schools Program is a locally designed program for making schools safe for students and school employees. The program may involve peer mediation and conflict resolution activities.

(4) A statement of whether and to what extent the local board of education intends to contract with local, private, nonprofit 501(c)(3) corporations to staff, operate, or otherwise provide services for one or more elements of the plan. Local boards are encouraged to contract for services, when appropriate.

(5) A statement of:

(i) How the grant funds would be used to address these local prob-
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(ii) What other resources would be used to address the problems; and
(iii) How all available community resources and the components of the proposed plan would be coordinated to enhance the effectiveness of existing services and of services proposed in the plan.

(6) A statement of how the proposed plan would assist a local school administrative unit in implementing the local school improvement plan.

(7) A process for assessing on an annual basis the success of the local plan in addressing problems.

Section 4. [Review of Applications.]

(a) The [superintendent of public instruction] shall appoint a [state task force] to assist the [superintendent] in reviewing grant applications. The [state task force] shall include representatives of the [department of public instruction], the [department of human resources], the local school administrative units, educators, parents, the juvenile justice system, social services and governmental agencies providing services to children and other members the [superintendent] considers appropriate. In appointing the [state task force] the [superintendent] shall consult with the [secretary of human resources] in an effort to coordinate the membership of this [state task force] and those appointed by the [secretary].

(b) In reviewing grant applications, the [superintendent] and the [state task force] shall consider the prevalence of underserved students and families in low-income neighborhoods and in isolated rural areas in the area for which the grant is requested, the severity of the local problems with regard to children at risk of school failure and with regard to school discipline, whether the proposed program meets state standards, and the likelihood that the locally designed plan will deal with the problems successfully. During the review process, the [superintendent] may recommend modifications in grant applications to applicants.

(c) The [superintendent] shall submit recommendations to the [state board of education] on which the applicants should receive grants and the amount they should receive.

Section 5. [Award of Grants.] In selecting grant recipients, the [state board] shall consider

(1) The recommendations of the [superintendent];
(2) The geographic location of the applicants; and
(3) The demographic profile of the applicants.

After considering these factors, the [state board] shall give priority to grant applications that will serve areas that have a high incidence of juvenile crime and that propose different approaches that can serve as models for other communities.
Intervention/Prevention Grants for Academically At-Risk Children

The [state board] shall select the grant recipients prior to [insert date], for local programs that will be in operation at the beginning of the [insert date] school year. The [state board] shall select the grant recipients prior to [insert date], for local programs that will be in operation after the beginning of the [insert date] school year.

Section 6. [Requests for Modifications of Grants or for Additional Funds to Implement Grants.] A grant recipient may request a modification of a grant or additional funds to implement a grant through the grant application process. The request shall be reviewed and accepted or rejected in the same manner as a grant application.

Section 7. [Administration of the Grant Program.] The [superintendent of public instruction] shall administer the grant program, under the direction of the [state board of education]. The [department of public instruction] shall provide technical assistance to grant applicants and recipients.

Section 8. [Cooperation of State and Local Agencies.] All agencies of the state and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, the [state university], the community college system, and cities and counties, shall cooperate with the [department of public instruction], local boards of education, and local nonprofit corporations that receive grants in coordinating the program at the state level and in implementing the program at the local level. The [superintendent] after consultation with the [secretary of human resources], shall develop a plan for ensuring the cooperation of state agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving state funds, in the coordination and implementation of the program.

Section 9. [Program Evaluation; Reporting Requirements.] (a) The [department of public instruction] shall develop and implement an evaluation system, under the direction of the [state board of education], that will assess the efficiency and effectiveness of the Intervention/Prevention Grant Program. The [department] shall design this system to:

(1) Provide information to the [department] and to the [general assembly] on how to improve and refine the programs;
(2) Enable the [department] and the [general assembly] to assess the overall quality, efficiency, and impact of the existing programs;
(3) Enable the [department] and the [general assembly] to determine whether to modify the Intervention/Prevention Grant Program; and
(4) Provide a detailed fiscal analysis of how state funds for these programs were used.
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(b) The [state board of education] shall report to the [general assembly] and the [joint legislative education oversight committee] by [insert date], on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to [insert date], on the evaluation system developed by the [department] and on program implementation. The [state board of education] shall present an annual report on [insert date], and annually thereafter to the [general assembly] and to the [joint legislative education oversight committee] on:

1. The implementation of the program;
2. The results of the program evaluation;
3. How the funds appropriated by the [general assembly] for the program are being used;
4. Additional funds required to implement the program; and
5. Any necessary modifications to the program.

(c) The [department of public instruction] shall use funds within its budget for travel and for supplies and materials for the [insert date] fiscal year to implement Section 9 (b) of this section prior to [insert date].

Section 10. [Effective Date.] [Insert effective date.]
Intervention/Prevention Grants for Academically At-Risk Children (Utah)

This act is based on Utah legislation enacted in 1993. This act appropriates $300,000 for gang prevention and intervention both inside and outside the school grounds. Staff trained in gang prevention and intervention will meet with gang members whose activities impact students in the program. They will conduct in-home visits designed to encourage parental involvement. Staff must also notify law enforcement personnel when necessary or required by law and must manage case files and profiles, including attendance records, academic records, and extra-curricular activities records of at-risk and high-risk students.

Staff members are required to demonstrate an understanding of the cultural backgrounds of gang members and an awareness of the potential for gang involvement in certain situations. They must have at least one year of experience or on-site training on gang related issues inside schools.

Individual schools must apply to their school board for 75% of the funding, with preference given to Chapter 1 schools. The other 25% of the funding must come from the school itself, and at least one-half of that amount must be provided through in-kind services, not including office space and support. Individual schools may also use the funding to contract with a private entity, providing that the program meets additional requirements.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as Intervention/Prevention Grants for Academically At-Risk Children Act.

Section 2. [Appropriation for Program – Distribution of Funds to School Districts.]

(a) There is appropriated from the [Uniform School Fund] to the [state board of education] for [fiscal year] [three hundred thousand (300,000)] dollars to be used for a gang prevention and intervention program designed to help at-risk students stay in school and enhance their self-esteem and intellectual and life skills.

(b) The program shall:

(1) provide independent gang intervention both inside and outside school grounds when necessary, including:

(i) meetings with gang members whose activities impact students in the
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program;

(ii) intervening in situations involving gangs that impact students in
the program;

(iii) in-home visits with families of students in the program designed
to encourage parents to become involved in their children's education; and

(iv) notifying law enforcement personnel when a particular problem
cannot be defused or when required by law; and

(2) manage case files and maintain profiles on at-risk and high-
risk students, including;

(i) attendance records;

(ii) academic records; and

(iii) extra-curricular activities.

(c) The program coordinator at each school must:

(1) be on the school grounds during school hours;

(2) have received training on gang prevention and intervention in
the schools;

(3) have an understanding of the cultural backgrounds of gang mem-
bers and be aware of the potential for gang involvement in situations; and

(4) have a minimum of (one (1)) year's experience or on-site train-
ing with gang related issues inside the schools.

(d)(1) Individual schools within each school district interested in provid-
ing a gang prevention and intervention program shall apply to the school
board for funds.

(2) Preference shall be given to [Chapter 1] schools.

(e) Individual schools shall be required to provide [twenty-five (25)] per-
cent of the funding necessary for the program in their school, at least one-
half of which must be provided through in-kind services. In-kind services
may not include office space and support.

(f) Individual schools receiving funds may provide the program to their
students by contracting with a private entity whose program meets the
requirements set out in this act.

Section 3. [Effective Date]. [Insert effective date.]
Medical Savings Accounts Act

This act is based on Colorado legislation that became effective in 1995. This act establishes medical savings accounts to pay the eligible medical expenses of an individual, his/her spouse and any dependent children. Employers may establish and contribute to a medical savings account in an amount not to exceed $3,000 each year. If an employer contributes less than $3,000 to the account, the employee may contribute the difference up to an amount not to exceed $3,000. An employee whose employer has not established a medical savings account for his/her may establish his/her own account in an amount not to exceed $3,000 each year. An account holder is the owner of the medical savings account and may change the account administrator when leaving his/her employer.

Employee contributions to a medical savings account are made on a pre-tax basis. Employer contributions are deducted from the employer's federal taxable income. Any amount drawn from a medical savings account by cashing out the balance in the account of a deceased account holder or cashing out an account holder's prior years' balance is subject to federal taxable income. An account holder may withdraw the balance in his/her account after the end of the contribution year; however, this amount is subject to state income tax. Account moneys, including interest income, are not subject to state income tax if they are in an employee's medical savings account or withdrawn to pay eligible medical expenses.

An account holder may not use account money to fund a policy that covers the deductible for a qualified higher deductible health plan. A qualified higher deductible health plan is defined as a health coverage policy, certificate or contract that provides for the payment of covered benefits that exceed the deductible, which may not exceed $3,000, and that is purchased by an employer for the benefit of an employee who makes deposits into a medical savings account.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the Medical Savings Account Act.

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

3 (1) "Account administrator" means:

4 (i) A state chartered bank, savings and loan association, credit union, or trust company authorized to act as a fiduciary and under the supervision of
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the financial institutions bureau of the United States Department of Commerce;
(ii) A national banking association, federal savings and loan association, or credit union authorized to act as a fiduciary in this state;
(iii) An insurance company; or
(iv) An employer if such employer maintains a self-insured health plan meeting the requirements of the federal “Employee Retirement Income Security Act,” as amended.

(2) “Account holder” means an employee on whose behalf a medical savings account is established.

(3) “Dependent child” means any person who is:
(i) Under the age of [twenty-one (21)] years;
(ii) Legally entitled to or the subject of a court order for the provision of proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being and who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or
(iii) So mentally or physically incapacitated that he or she cannot provide for himself or herself.

(4) “Eligible medical expense” means any medical expense that is deductible for purposes of section 213 (d) of the Internal Revenue Code.

(5) “Employee” means the individual for whose benefit a medical savings account is established.

(6) “Employer” means a person or entity employing one or more persons in this state, excluding the federal government.

(7) “Medical savings account” means an account established to pay the eligible medical expenses of an account holder and his or her spouse and dependent children, if any.

(8) “Qualified higher deductible health plan” means a health coverage policy, certificate or contract that provides for the payment of covered benefits that exceed the deductible, which shall not exceed [three thousand (3,000)] dollars, and that is purchased by an employer for the benefit of an employee who makes deposits into a medical savings account.

Section 3. [Accounts - Establishment.]

(a)(1) On or after the effective date of this act, an employer may offer to establish medical savings accounts.

(2) An employee on whose behalf a medical savings account has not been established by his or her employer may establish such an account on his or her own behalf.

(b)(1) Each year an employer may contribute to an employee’s medical savings account an amount that does not exceed [three thousand (3,000)] dollars.

(2) If an employer establishes a medical savings account for an em-
Medical Savings Accounts Act

employee but contributes less than the maximum set forth in Section 3(b)(1), the employee may contribute the difference in accordance with the provisions of Section 4 of this act.

(3) An employee who establishes his or her own medical savings account may contribute to such account an amount that does not exceed the maximum set forth in Section 3(b)(1). Any such contribution is to be made in accordance with the provisions of Section 4 of this act.

Section 4. [Employee Contributions – Pre-tax.]
(a) All employee contributions to medical savings accounts are made on a pre-tax basis, pursuant to [insert appropriate state citation]. Such contributions are subject to the same limitations as employer contributions.
(b) An employee shall elect to make contributions to his or her medical savings account by signing a written election. Such election is to be in the form prescribed by the [executive director] of the [department of revenue] and is to be signed prior to the date the employer withholds the first contribution.

Section 5. [Employer Contributions – Tax Deduction.] Employer contributions to employee medical savings accounts constitute a deduction from the employer’s federal taxable income, pursuant to [insert appropriate state citation].

Section 6. [Distributions.]
(a) An account holder shall submit documentation of eligible medical expenses paid during the tax year to the [account administrator] and the [account administrator] shall reimburse the account holder for such expenses.
(b) Moneys may be distributed from a medical savings account only for the purpose of:
   (1) Reimbursing the eligible medical expenses of the account holder or his or her spouse or dependent child;
   (2) Cashing out the balance in the account of a deceased account holder; or
   (3) Cashing out an account holder’s prior years’ balance.
   (c) An account holder may withdraw the balance in his or her account for any reason if such withdrawal occurs after the end of the year in which the moneys were contributed; however, such distributed moneys are subject to state income tax pursuant to Section 8 of this act.

Section 7. [Restrictions.] An account holder may not use account moneys to fund a policy that covers the deductible for a qualified higher deductible health plan, as defined in Section 2 of this act.
Suggested State Legislation

Section 8. [Taxation.]
(a) Account moneys, including interest income, are not to be taxed as [state] adjusted gross income if they are:
   (1) In an employee's medical savings account; or
   (2) Withdrawn to pay eligible medical expenses.
(b) Account moneys are to be taxed as [state] adjusted gross income when such moneys are withdrawn for purposes other than the payment of eligible medical expenses.
(c) Upon the death of the account holder, the account principal, as well as any accumulated interest, is to be distributed to and taxed as part of the decedent's estate, as provided by law.

Section 9. [Portability.] An account holder is the owner of his or her medical savings account and may change the account administrator of such account upon leaving the employ of his or her employer.

Section 10. [Effective Date.] [Insert effective date.]
Hospital Cooperation Act

The following 1992 statute from the state of Maine is illustrative of various attempts by several states to exempt cooperative actions among hospitals from state and federal anti-trust liability. These statutes attempt to create state regulatory programs sufficient to meet the state action immunity doctrine established by the U.S. Supreme Court based upon principles of federalism and sovereign immunity. These statutes attempts to provide immunity for private parties acting pursuant to state law. In order to achieve immunity, a two-pronged test has been established by the Court which must be met. First, the state must articulate a clear and affirmative policy allowing the “anti-competitive” conduct. Secondly, the state must provide “active supervision” of such activity.

In FTC vs. Ticor Title Insurance Co., 112 S. Ct. 2169 (1992), the Court provides a detailed analysis of the “active supervision” prong of this two-part test. In similar legislation which has been proposed, including a statute passed by the Ohio General Assembly, concerns have been raised about whether these state attempts to invoke this immunity are legally sufficient to provide immunity to hospitals. The Ticor decision reaffirms that extensive control by the state is essential in order to satisfy this “state action doctrine” and Ticor explicitly holds that the mere potential for state supervision is not adequate. Therefore, any state law which does not require ongoing supervision once the cooperative agreement among hospitals is approved could be insufficient to qualify for such immunity.

In addition, it should be noted that the dissenting opinion in Ticor raises questions about the inherent difficulties presented in such a statutory scheme where, in essence, immunity would rise and fall depending upon how vigorously the state exercised its supervisory powers. If adequate immunity is not achieved under federal anti-trust laws, hospitals cited for violations could be subject to criminal actions resulting in up to three years imprisonment for those involved in such violations and up to a $350,000 fine for each individual and up to $10,000,000 in fines against each hospital participating in the unlawful conduct. In addition, private anti-trust actions, if successful, could result in treble damages being awarded against the participants.

Therefore, all state attempts to invoke anti-trust immunity by statute must be viewed in the context of existing case law and federal constitutional and statutory powers. If a statutory enactment is insufficient on its face to provide immunity form private anti-trust and civil, criminal and federal anti-trust actions, it is questionable whether any institution would willingly risk participating in such arrangements. Any institution seeking to participate in such a cooperative would be well advised to carefully consider the legal implications of availing themselves of such legislation.
Suggested State Legislation

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be known and cited as the Hospital Cooperation Act.

Section 2. [Legislative Findings.] The legislature finds as follows.

1. Technological and scientific developments in hospital care have enhanced the prospects for further improvement in the quality of care provided by [state] hospitals to [state] citizens.

2. The cost of improved technology and improved scientific methods for the provision of hospital care is in significant part responsible for the increasing cost of hospital care. Cost increases make it increasingly difficult for hospitals in rural parts of [state] to offer care.

3. Changes in federal and state regulations governing hospital operation and reimbursement have constrained the ability of hospitals to acquire and develop new and improved machinery and methods for the provision of hospital and hospital-related care.

4. Cooperative agreements among hospitals in the provision of hospital and hospital-related services may foster further improvements in the quality of health care for [state] citizens, moderate increases in cost, improve access to needed services in rural parts of [state] and enhance the likelihood that smaller hospitals in [state] will remain open in service to their communities.

5. Hospitals are in the best position to identify and structure voluntary cooperative arrangements that enhance quality of care, improve access and achieve cost-efficiency in the provision of care.

6. Because competition is important to the health care sector and some cooperative agreements may have anti-competitive effects that would operate to the detriment of the public, regulatory and judicial oversight of cooperative agreements is necessary to ensure that the benefits of agreements outweigh any disadvantages attributable to any reduction in competition likely to result from the agreements.

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

1. "Cooperative agreement" means an agreement among two (2) or more hospitals for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals.

2. "Hospital" means:
(i) Any acute care institution required to be licensed as a hospital under [insert appropriate state citation].

(ii) Any nonprofit parent of a hospital, hospital subsidiary or hospital affiliate that provides medical or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services.

Section 4. [Certification for Cooperative Agreements.]

(a) Authority. A hospital may negotiate and enter into cooperative agreements with other hospitals in the state if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

(b) Application for certificate. Parties to a cooperative agreement may apply to the [department] for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the [attorney general] and the [department] at the same time.

(c) Procedure for [department] review. The [department] shall review the application in accordance with the standards set forth in Section 4 (d) and may hold a public hearing in accordance with rules adopted by the [department]. The [department] shall grant or deny the application within [ninety (90)] days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The [department] shall furnish a copy of the decision to the applicants, the [attorney general] and any intervenor.

(d) Standards for certification. The [department] shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(1) In evaluating the potential benefits of a cooperative agreement the [department] shall consider whether one or more of the following benefits may result from the cooperative agreement:

(i) Enhancement of the quality of hospital and hospital-related care provided to [state] citizens;

(ii) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities;

(iii) Gains in the cost efficiency of services provided by the hospitals involved;

(iv) Improvements in the utilization of hospital resources and equipment; and
(v) Avoidance of duplication of hospital resources.
(2) The [department's] evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:
   (i) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;
   (ii) The extent of any reduction in competition among physicians, allied health professionals, other health providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from this hospital cooperative agreement;
   (iii) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and
   (iv) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.
(e) Review by [attorney general]. The [department] shall consult with the [attorney general] regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.
(f) Certificate termination. If the [department] determines that the likely benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the [department] may initiate proceedings to terminate the certificate of public advantage in accordance with [insert appropriate state citation].
(g) Recordkeeping. The [department] shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the [department] within [thirty (30)] days after termination.

Section 5. [Judicial Review of Department Action.] Any applicant or intervenor aggrieved by a decision of the [department] in granting or denying an application, refusing to act on an application or terminating a certificate is entitled to judicial review of the decision in accordance with the [state administrative act].

Section 6. [Attorney General Authority.]
(a) Investigative powers. The [attorney general], at any time after an application is filed under [insert appropriate state citation], may require by subpoena the attendance and testimony of witnesses and the production
of documents in [insert country], or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in Section 6 (d). All documents produced and testimony given to the [attorney general] are investigative records under [insert appropriate section of state open records law]. The [attorney general] may seek to order from the [superior court] compelling compliance with a subpoena issued under this section.

(b) Court action; time limits. The [attorney general] may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in [superior court]. The [attorney general] may file an action before or after the [department] acts on the application for a certificate but, except as provided in Section 6 (e), the action must be brought no later than [forty (40)] days following the [department's] approval of an application for a certificate of public advantage.

(c) Automatic stay. Upon the filing of the complaint in an action under Section 6 (b), the [department's] certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The [attorney general] may apply to the court for any ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case.

(d) Standard for adjudication. In any action brought under Section 6 (b), the applicants for a certificate bear the burden of establishing by clear and convincing evidence that, in accordance with Section 6 (d), the likely benefits resulting from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and state courts concerning unreasonable restraint of trade under 15 U.S.C., Sections 1 and 2 and [insert appropriate state citation].

(e) Change of circumstances. If, at any time following the [forty (40)] day period specified in Section 6 (b), the [attorney general] determines that as a result of changed circumstances the benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the [attorney general] may file suit in the [superior court] seeking to cancel the certificate of public advantage. The standard for adjudication for an action brought under this subsection is as follows:

(1) Except as provided in Section 6 (e)(2), in any action brought under this subsection the [attorney general] has the burden of establishing by a preponderance of the evidence that, as a result of changed circumstances, the benefits resulting from the agreement and the unavoidable costs of
cancelling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement.

(2) In any action under this subsection, if the [attorney general] first establishes by a preponderance of evidence that the [department's] certification was obtained as a result of material misrepresentation to the [department] or the [attorney general] or as the result of coercion, threats or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to any reduction in competition resulting from the agreement.

(f) Fees and costs. If the [attorney general] prevails in an action under this section, the [department of the attorney general] is entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the investigation or litigation and reasonable attorney's fees, expert witness fees and court costs incurred in litigation.

(g) Resolution by consent decree. The [superior court] may resolve any action brought by the [attorney general] under this act by entering an order that with the consent of the parties, modifies the cooperative agreement. Upon the entry of such an order, the parties to the cooperative agreement have the protection specified in Section 7 and the cooperative agreement has the effectiveness specified in Section 7.

Section 7. [Effect of Certification; Applicability.]

(a) Validity of certified cooperative agreements. Notwithstanding [insert appropriate state citation] or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding [insert appropriate state citation] or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the [department], the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this subsection immunizes any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

(b) Validity of cooperative agreements determined not in public interest. If the [department] or, in any action by the [attorney general], the [superior court] determines that the applicants have not established by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

(c) Other laws specifically regulating hospitals. Nothing in this act ex-
empts hospitals or other health care providers from compliance with laws
governing certificates of need or hospital cost reimbursement.
(d) Mergers and consolidations involving licensed hospitals. The provi-
sion of this act do not apply to any agreement among hospitals by which
ownership or control over substantially all of the stock, assets or activities
of one or more previously licensed and operating hospitals is placed under
the control of another licensed hospital or hospitals.
(e) Contract disputes. Any dispute among the parties to a cooperative
agreement concerning its meaning or terms is governed by normal prin-
ciples of contract law.

Section 8. [Assessment.] Except for state-operated mental health hospi-
tals, all hospitals licensed by the [department] are subject to an annual
assessment under this act. The [department] shall collect the assessment.
The amount of the assessment must be based upon each hospital’s gross
patient service revenue. For any fiscal year the aggregate amount raised
by the assessment must be equal to the amount allocated by law to carry
out the purposes of this act in that fiscal year. The [department] shall
deposit funds collected under this section into a [dedicated revenue account].
Funds remaining in the account at the end of each fiscal year do not lapse
but carry forward into subsequent years. Funds deposited into the account
must be allocated to carry out the purposes of this act.

Section 9. [Review.] The [department] may not accept any application
under this act after [date]. By [date], the [attorney general] and the [de-
partment] shall submit recommendations, along with any necessary legis-
lation, to the [joint standing committee of the legislature] having jurisdic-
tion over [human resources matters] regarding whether this act should be
amended.

Section 10. [Effective Date.] [Insert effective date.]
Health Insurance Coverage for Off-Label Uses

This act is based on Maryland legislation enacted in 1994. This act prohibits health insurance contracts or policies that provide coverage for drugs from excluding coverage of an “off-label” use of drugs if the drug is recognized for treatment of the condition in certain reference compendia or medical literature. “Off-label use of drugs” is defined as when drugs are prescribed for treatments other than those stated in the labeling approved by the federal Food and Drug Administration (FDA). The act requires the secretary of health and mental hygiene to appoint a panel of medical experts to review off-label uses of drugs and to advise the secretary whether a particular off-label use is medically appropriate.

The act does not alter any provisions limiting the coverage of drugs that have not been approved by the FDA. It also does not require coverage for any drug when the FDA has determined its use to be contra-indicated or for experimental drugs not yet approved by the FDA for any indication.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Health Insurance for Off-Label Uses of Drugs Act.

Section 2. [Legislative Intent.]
(a) The citizens of [state] rely on health insurance to cover the cost of obtaining health care and it is essential that the citizens’ expectation that their health care costs will be paid by their insurance policies is not disappointed and that they obtain the coverage necessary and appropriate for their care within the terms of their insurance policies; and
(b) Some insurers deny payment for drugs that have been approved by the federal Food and Drug Administration (FDA) when the drugs are used for indications other than those stated in the labeling approved by the FDA (off-label) use while other insurers with similar coverage terms do pay for off-label use; and
(c) Denial of payment for off-label use can interrupt or effectively deny access to necessary and appropriate treatment for a person being treated for a life-threatening illness; and

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(d) Equity among employers who obtain insurance coverage for their employees and fair competition among insurance companies require that insurance companies assure citizens reimbursement for drugs in the same way and in the way citizens expect; and

(e) Off-label use of an FDA approved drug is legal when prescribed in a medically appropriate way and is often necessary to provide needed care, with approximately [fifty (50)] percent of cancer drug treatment for off-label indications; and

(f) The FDA and the federal Department of Health and Human Services recognize the wide variety of effective uses of FDA approved drugs for off-label indications; and

(g) Information on the appropriate off-label use of FDA approved drugs is obtained from compendia published by the United States Pharmacopoeial Convention, the American Medical Association, and the American Society of Hospital Pharmacists; in addition, scientific studies of off-label use of drugs published in recognized peer-reviewed professional journals provide information on appropriate use of drugs for off-label indications; the Omnibus Budget Reconciliation Act of 1990 recognizes these three compendia and peer-reviewed literature as appropriate sources for reimbursement and requires Medicaid agencies to pay for off-label use of drugs prescribed for Medicaid patients if the use is stated in any of these sources; and the Omnibus Budget Reconciliation Act of 1993 applies the same criteria and coverage to Medicare patients; and

(h) Ten (10) states have passed legislation similar to this act; and

(i) Use of FDA approved drugs for off-label indications provided efficacious drugs at a lower cost; to require that all appropriate uses of a drug undergo approval by the FDA would substantially increase the cost of drugs, and delay or even deny patients' ability to obtain medically effective treatment; FDA approval for each use would require substantial expenditure and time to undergo the clinical trials necessary to obtain FDA approval, particularly when a drug is off patent and in generic production, and consequently is available at a lower price; once a drug is in generic production by multiple manufacturers, it is not economically feasible for a manufacturer to incur the cost of FDA approval; and

(j) Reimbursement for off-label indications of FDA approved drugs is necessary to conform to the way in which appropriate medical treatment is provided, to make needed drugs available to patients, and to contain health care costs; now, therefore it is the intent of the [state legislature] to enact legislation addressing the above considerations.

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

(1) "Medical literature" means scientific studies published in a peer-reviewed national professional medical journal.
Suggested State Legislation

(2) “Off-label use of drugs” means when drugs are prescribed for treat-
ments other than those stated in the labeling approved by the federal Food 
and Drug Administration (FDA).

(3) “Standard Reference Compendia” means:
   (i) The United States Pharmacopoeia Drug Information;
   (ii) The American Medical Association drug evaluations; or
   (iii) The American Hospital Formulary Service Drug Information.

Section 4. [Contract or Policy of Health Insurance; Exclusion Prohibited.]
(a)(1) Each contract or policy of health insurance delivered or issued for 
delivery within the state to an employer or an individual on a group or 
individual basis that provides coverage for drugs may not exclude coverage 
of a drug for a particular indication on the ground that the drug has not 
been approved by the FDA for that indication if the drug is recognized for 
treatment of the indication in one of the standard reference compendia or 
in the medical literature.

(2) Coverage of a drug required by this subsection also includes medi-
cally necessary services associated with the administration of the drug.

(b) The [secretary of health and mental hygiene] has the authority to 
direct a person that issues a contract or policy of health insurance to make 
payments required by this section.

Section 5. [Review Panel; Establishment.]
(a) The [secretary of health and mental hygiene] shall appoint a panel of 
medical experts to review off-label uses of drugs not included in any of the 
standard reference compendia or in the medical literature and to advise 
the [secretary] whether a particular off-label use is medically appropriate.

(b) The panel shall consist of:
   (1) [Three (3)] medical oncologists chosen by the [state medical oncology 
association];
   (2) [Two (2)] specialists in the management of AIDS patients chosen by 
the [state AIDS medical provider organizations];
   (3) [One (1)] specialist in heart disease appointed by the [state univer-
sity medical system]; and
   (4) [One (1)] physician chosen by the [state medical association].

(c) The panel shall make recommendations from time to time and when-
ever a particular dispute about payment for off-label use is brought to the 
[secretary of health and mental hygiene].

Section 6. [Limitations of Act.] This act may not be construed to:
(1) Alter existing law with regard to provisions limiting the coverage of 
   drugs that have not been approved by the FDA;
(2) Require coverage for any drug when the FDA has determined its use 
to be contraindicated; or
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(3) Require coverage for experimental drugs not otherwise approved for any indication by the FDA.

Section 7. [Effective Date] [Insert effective date.]
Medical Practices Diversion Program

This act is based on Minnesota legislation enacted in 1994. This act authorizes two or more health-related licensing boards to work together in establishing a health professionals services program to protect the public from health care providers who suffer from impairment resulting from illness, chemical dependency or a mental condition. Health professionals who voluntarily report their impairment to this board and volunteer to participate in treatment and monitoring may be allowed to continue their practice. If there is concern that the public would be at risk, a practitioner may be asked to stop practicing for a time period while going through treatment. Other persons who are ineligible to participate in a health professional services program include persons who: have diverted controlled substances for other than self-administration, are accused of sexual misconduct, or are currently under board disciplinary order or corrective action agreement. Participants are required to pay for their own treatment and health care costs. Uncooperative people would be reported to their respective licensing board and go through normal discipline procedures.

A committee made up of a member from each regulating board will appoint a manager to help work out the specifics of the program. If needed, each licensure board can increase licensure fees to pay for the costs of the program.

Reports and information on an individual are confidential. Any individual, agency, institution, facility, business or organization that submits a report in good faith is immune from civil liability and criminal prosecution.

Suggested Legislation

(Title, enacting clause, etc.)

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

2 Section 2. [Authority.] [Two (2)] or more of the health-related licensing boards listed in [insert appropriate state citation] may jointly conduct a health professionals services program to protect the public from persons regulated by the boards who are unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition. The program does not affect a board’s authority to discipline violations of a board’s practice act.
Medical Practices Diversion Program

Section 3. [Program Management.]
(a) A health professionals services program committee is established, consisting of one person appointed by each participating board, with each participating board having one vote. The committee shall designate one board to provide administrative management of the program, set the program budget and the pro rata share of program expenses to be borne by each participating board, provide guidance on the general operation of the program, including hiring of program personnel, and ensure that the program's direction is in accord with its authority. No more than half plus one of the members of the committee may be of one gender.

(b) The designated board, upon recommendation of the health professionals services program committee, shall hire the program manager and employees and pay expenses of the program from funds appropriated for that purpose. The designated board may apply for grants to pay program expenses and may enter into contracts on behalf of the program to carry out the purposes of the program. The participating boards shall enter into written agreements with the designated board.

(c) An advisory committee is established to advise the program committee consisting of:

(1) [one (1)] member appointed by each of the following: the [state academy of physician assistants], the [state dental association], the [state chiropractic association], the [state licensed practical nurse association], the [state medical association], the [state nurses association], and the [state podiatric medicine association];

(2) [one (1)] member appointed by each of the professional associations of the other professions regulated by a participating board not specified in Section 3 (c)(1); and

(3) [two (2)] public members, as defined by [insert appropriate state citation].

(d) Members of the advisory committee shall be appointed for [two (2)] years and members may be reappointed.

(e) No more than half plus one of the members of the committee may be of one gender.

(f) The advisory committee expires [date].

Section 4. [Services.]
(a) The program shall provide the following services to program participants:

(1) Referral of eligible regulated persons to qualified professionals for evaluation, treatment, and a written plan for continuing care consistent with the regulated person's illness. The referral shall take into consideration the regulated person's financial resources as well as specific needs;

(2) Development of individualized program participation agreements between participants and the program to meet the needs of participants.
and protect the public. An agreement may include, but need not be limited to, recommendations from the continuing care plan, practice monitoring, health monitoring, practice restrictions, random drug screening, support group participation, filing of reports necessary to document compliance, and terms for successful completion of the regulated person’s program; and

(3) Monitoring of compliance by participants with individualized program participation agreements or board orders.

(b) The program may develop services related to this act for employers and colleagues of regulated persons from participating boards.

Section 5. [Participant Costs.] Each program participant shall be responsible for paying for the costs of physical, psychosocial, or other related evaluation, treatment, laboratory monitoring, and random drug screens.

Section 6. [Eligibility.] Admission to the health professional services program is available to a person regulated by a participating board who is unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition. Admission in the health professional services program shall be denied to persons:

(1) who have diverted controlled substances for other than self-administration;

(2) who have been terminated from this or any other state professional services program for noncompliance in the program;

(3) currently under a board disciplinary order or corrective action agreement, unless referred by a board;

(4) regulated under [insert appropriate state citation], unless referred by a board or by the [commissioner of health];

(5) accused of sexual misconduct; or

(6) whose continued practice would create a serious risk of harm to the public.

Section 7. [Completion; Voluntary Termination; Discharge.] A regulated person completes the program when the terms of the program participation agreement are fulfilled. A regulated person may voluntarily terminate participation in the health professionals service program at any time by reporting to the person’s board. The program manager may choose to discharge a regulated person from the program and make a referral to the person’s board at any time for reasons including, but not limited to: the degree of cooperation and compliance by the regulated person, the inability to secure information or the medical records of the regulated person, or indication of other possible violations of the regulated person’s practice act. The regulated person shall be notified in writing by the program manager of any change in the person’s program status. A regulated person who has
been terminated or discharged from the program may be referred back to
the program for monitoring.

Section 8. [Reporting.]
(a) A person who has personal knowledge that a regulated person has the
inability to practice with reasonable skill and safety by reason of illness,
use of alcohol, drugs, chemicals or any other materials, or as a result of any
mental, physical, or psychological condition may report that knowledge to
the program or to the board. A report to the program under this subdivi-
sion fulfills the reporting requirement contained in a regulated person's
practice act.
(b) A person regulated by a participating board who is unable to practice
with reasonable skill and safety by reason of illness, use of alcohol, drugs,
chemicals, or any other materials, or as a result of any mental, physical, or
psychological condition shall report to the person's board or the program.

Section 9. [Program Manager.] The program manager shall report to the
appropriate participating board a regulated person who does not meet pro-
gram admission criteria, violates the terms of the program participation
agreement, or leaves the program except upon fulfilling the terms for suc-
cessful completion of the program as set forth in the participation agree-
ment. The program manager shall report to the appropriate participating
board a regulated person who is alleged to have committed violations of the
person's practice act that are outside the authority of the health profession-
als services program as described in this act. The program manager shall
inform any reporting person of the disposition of the person's report to the
program.

Section 10. [Board Referrals.] A board may refer any regulated person to
the program consistent with Section 6 of this act, if the board believes the
regulated person will benefit and the public will be protected.

Section 11. [Immunity.]
(a) Any individual, agency, institution, facility, business, or organization
is immune from civil liability or criminal prosecution for submitting a re-
port in good faith to the program under this section or for cooperating with
an investigation of a report or with staff of the program. Reports are confi-
dential and are privileged communication.
(b) Members of the participating boards and persons employed by the
boards and program, program consultants, and members of advisory bod-
ies for the program are immune from civil liability and criminal prosecu-
tion for any actions, transactions, or reports in the execution of, or relating
to, their duties under this act.
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Section 12. [Data Classification.] All data collected and maintained and any agreements with regulated persons entered into as part of the program is classified as active investigative data under [insert appropriate state citation] while the individual is in the program, except for monitoring data which is classified as private. When a regulated person successfully completes the program, the data and participation agreement become inactive investigative data which shall be classified as private or non-public data under [insert appropriate state citation]. Data and agreements shall not be forwarded to the board unless the program reports a participant to a board as described in Section 9 of this act.

Section 13. [Board Participation.] Participating boards may, by mutual agreement, implement the program upon enactment. Thereafter, health-related licensing boards desiring to enter into or discontinue an agreement to participate in the health professionals services program shall provide a written resolution indicating the board's intent to the designated board by [date] preceding the start of a biennium.

Section 14. [Rulemaking.] By [date], the participating boards shall adopt joint rules relating to the provisions of this act in consultation with the advisory committee and other appropriate individuals. The required rule writing does not prevent the implementation of this act upon enactment.

Section 15. [Appropriation.] [Amount of appropriation] is appropriated from the [special revenue fund] for the fiscal year ending [date], to the [board of medical practice] for the purposes of this act. The pro rata share of program expenses to be borne by each participating board shall be determined by the participating boards through an interagency agreement and funds equal to the appropriation shall be deposited into the [special revenue fund].

Section 16. [Effective Date.] [Insert effective date.]
Regulation of Health Care and Mental Health Services

This act relates to the regulation of the provision of health care services and mental health services to certain persons and the referrals of certain persons for such services.

Any person, including an employee, health care professional, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation service must report any violations of abuse and neglect to the agency that licenses the facility or to the appropriate state health care regulatory agency. The facility must provide as a condition of continued licensure a minimum of eight hours of in-service training to assist its employees in identifying patient abuse or neglect in the facility.

The act prohibits sexual exploitation of a patient by a mental health services provider. The mental health services provider is liable for damages to the patient, along with the employer or former employer under certain circumstances. A mental health services provider or an employee of a mental health services provider must report any instances of sexual exploitation to the prosecuting attorney in the county and the appropriate state licensing board.

The state mental health authority must appoint an advisory committee to review treatment methods and recommend treatment methods that should not be allowed. The standards of care in private psychiatric hospitals and psychiatric units of general hospitals must not be less restrictive than what is applicable to mental hospitals.

Article 5 of this act prohibits any person from referring a patient or accepting referral of a patient to an inpatient mental health or chemical dependency treatment facility in exchange for payment and establishes penalties for violations (this section was also passed separately as SB 211). Prior to the passage of this act, the illegal remuneration law prohibited persons licensed, certified or registered by a state health care regulatory agency from intentionally or knowingly offering to pay, or agreeing to accept, any remuneration for securing patients or patronage. This act expands the authority of the existing illegal remuneration law to encompass individuals not regulated by state health care agencies (e.g., probation officers, ministers, and school counselors) that make referrals to inpatient mental health facilities or chemical dependency treatment facilities.
Suggested State Legislation

Suggested Legislation

(Title, enacting clause, etc.)

ARTICLE I

Section 1. [Short Title.] Articles 1 through 5 may be cited as the Health Care and Mental Health Services Regulation Act.

Section 2. [Definitions.] As used in this Article:
(1) “Abuse” has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986.
(2) “Comprehensive medical rehabilitation” means the provision of rehabilitation services that are designed to improve or minimize a person’s physical or cognitive disabilities, maximize a person’s functional ability, or restore a person’s lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.
(3) “Hospital” has the meaning assigned by [insert appropriate state citation].
(4) “Illegal conduct” means conduct prohibited by law.
(5) “Inpatient mental health facility” has the meaning assigned by [insert appropriate state citation].
(6) “License” means a state agency permit, certificate, approval, registration, or other form of permission required by state law.
(7) “Mental health facility” has the meaning assigned by [insert appropriate state citation].
(8) “Neglect” has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986.
(9) “State health care regulatory agency” means a state agency that licenses a health care professional.
(10) “Treatment facility” has the meaning assigned by [insert appropriate state citation].
(11) “Unethical conduct” means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.
(12) “Unprofessional conduct” means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Section 3. [Reports of Abuse and Neglect or of Illegal, Unprofessional, or
Regulation of Health Care and Mental Health Services

(a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person, shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by [state family code], and [state human resources code].

(d) The [state board of mental health and mental retardation], [state board of health], [state commission on alcohol and drug abuse], and each state health care regulatory agency by rule shall:

(1) prescribe procedures for the investigation of reports received under subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) Each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity ex-
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tends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

(h) A person commits an offense if the person:
(1) intentionally, maliciously, or recklessly reports false material information under this section; or
(2) fails to report as required by subsection (a).

(i) An offense under subsection (h) is a [Class A misdemeanor].

(j) In this section, “abuse” includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Section 4. [Memorandum of Understanding on Inservice Training.]
(a) The [state board of mental health and mental retardation], [state board of mental health], and [state commission on alcohol and drug abuse] by rule shall adopt a joint memorandum of understanding that requires each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of [eight (8)] hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional or unethical conduct by or in the facility.

(b) The memorandum must prescribe:
(1) minimum standards for the training program; and
(2) a means for monitoring compliance with the requirement.

(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

Section 5. [Retaliation Against Employees Prohibited.]
(a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee’s supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this act, a rule adopted under this act, or a rule adopted by the [state board of mental health and mental retardation], the [state board of health], or the [state commission on alcohol and drug abuse].

(b) A hospital, mental health facility, or treatment facility that violates subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual
Regulation of Health Care and Mental Health Services

damages, including damages for mental anguish, even if an injury other than mental anguish is not shown.
(d) In addition to an award under subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.
(e) In addition to amounts recovered under subsections (c) and (d), a plaintiff is entitled to, if applicable:
(1) reinstatement in the plaintiff’s former position;
(2) compensation for lost wages; and
(3) reinstatement of lost fringe benefits or seniority rights.
(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff’s involvement was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the [sixtieth (60th)] day after the date on which the plaintiff made a report in good faith.
(g) A suit under this section may be brought in the district court of the county in which:
(1) the plaintiff was employed by the defendant; or
(2) the defendant conducts business.
(h) A person who alleges a violation of subsection (a) must sue under this section before the [one hundred eightieth (180th)] day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.
(i) This section does not abrogate any other right to sue or interfere with any other cause of action.
(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Section 6. [Retaliation Against Nonemployees Prohibited.]
(a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this act, a rule adopted under this act, or a rule adopted by the [state board of mental health and mental retardation], the [state board of health], or the [state commission on alcohol and drug abuse].
(b) A hospital, mental health facility, or treatment facility that violates subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of subsection (a) may sue for injunctive relief, damages, or both.
(c) A person suing under this section has the burden of proof, except that
it is a rebuttable presumption that the plaintiff was retaliated against if:

1. before the [sixtieth (60th)] day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:
   - (i) discriminates in violation of Section 5 of Article 1 against a relative who is an employee of the facility;
   - (ii) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the [state department of mental health and mental retardation];
   - (iii) commits or threatens to commit, without justification, the person or a relative of the person; or
   - (iv) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or
2. a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the [district court] of the county in which:
   - (1) the plaintiff received care or treatment;
   - (2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section (5)(i) of Article 1.

Section 7. [Brochure Relating To Sexual Exploitation.]

(a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.
(b) The brochure shall include:
   (1) procedures for filing a complaint relating to sexual exploitation, in-
   cluding any toll-free telephone number available; and
   (2) the rights of a victim of sexual exploitation.
(c) In this section, “mental health services provider” has the meaning
assigned by [state civil practice and remedies code].

Section 8. [Penalties.] In addition to the penalties prescribed by this act, a
violation of a provision of this act by an individual or facility that is licensed
by a state health care regulatory agency is subject to the same consequence
as a violation of the licensing law applicable to the individual or facility or
of a rule adopted under that licensing law.

Section 9. [Prospective Effect.] The changes in law made by this article
apply only to a cause of action that accrues on or after the effective date of
this article. A cause of action that accrues before the effective date of this
article is governed by the law in effect on the date the cause of action ac-
crues, and that law is continued in effect for this purpose.

ARTICLE 2

Section 1. [Definitions]. As used in this Article:
(1) “Mental health services” means assessment, diagnosis, treatment, or
counseling in a professional relationship to assist an individual or group in:
   (i) alleviating mental or emotional illness, symptoms, conditions, or dis-
   orders, including alcohol or drug addiction;
   (ii) understanding conscious or subconscious motivations;
   (iii) resolving emotional, attitudinal, or relationship conflicts; or
   (iv) modifying feelings, attitudes, or behaviors that interfere with effec-
tive emotional, social, or intellectual functioning.
(2) “Mental health services provider” means an individual, licensed or
unlicensed, who performs or purports to perform mental health services,
including a:
   (i) “certified social worker” as defined by [state human resources code];
   (ii) “chemical dependency counselor” as defined by [insert appropriate
state citation];
   (iii) “licensed professional counselor” as defined by [state licensed pro-
fessional counselor act];
   (iv) “licensed marriage and family therapist” as defined by [state
licensed marriage and family therapist act];
   (v) member of the clergy;
   (vi) “physician” who is “practicing medicine” as defined by [state medi-
cal practice act]; and
   (vii) “psychologist” offering “psychological services” as defined by [state

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psychologists' certification and sensing act].

(3) “Patient” means an individual who seeks or obtains mental health services.

(4) “Sexual contact” means:
   (i) "deviate sexual intercourse" as defined by [state penal code];
   (ii) "sexual contact" as defined by [state penal code];
   (iii) "sexual intercourse" as defined by [state penal code]; or
   (iv) requests by the mental health services provider for conduct described by paragraph (4)(i), (ii) or (iii). “Sexual contact” does not include conduct described by paragraph (4)(i) or (ii) that is a part of a professionally recognized medical treatment of a patient.

(5) “Sexual exploitation” means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(6) “Therapeutic deception” means a representation by a mental health services provider that sexual contact with, or sexual exploitation by, the mental health services provider is consistent with, or a part of, a patient's or former patient's treatment.

(7) “Mental health services,” as defined by this section, provided by a member of the clergy does not include religious, moral, and spiritual counseling, teaching, and instruction.

Section 2. [Sexual Exploitation Cause of Action.] A mental health services provider is liable to a patient or former patient of the mental health services provider for damages for sexual exploitation if the patient or former patient suffers, directly or indirectly, a physical, mental, or emotional injury caused by, resulting from, or arising out of:
   (1) sexual contact between the patient or former patient and the mental health service provider;
   (2) sexual exploitation of the patient or former patient by the mental health services provider; or
   (3) therapeutic deception of the patient or former patient by the mental health services provider.

Section 3. [Liability of Employer.] (a) An employer of a mental health services provider is liable to a patient or former patient of the mental health services provider for damages if the patient or former patient is insured as described by Section 2 of Article 2 and the employer:
   (1) fails to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed
the mental health services provider as a mental health services provider
within the (five (5)) years before the date of disclosure, concerning the pos-
sible occurrence of sexual exploitation by the mental health services pro-
vider of patients or former patients of the mental health services provider;

or

(2) knows or has reason to know that the mental health services pro-
vider engaged in the sexual exploitation of the patient or former patient
and the employer failed to:

(i) report the suspected sexual exploitation as required by Section 6 of
Article 2; or

(ii) take necessary action to prevent or stop the sexual exploitation by
the mental health services provider.

(b) An employer or former employer of a mental health services provider
is liable to a patient or former patient of the mental health services pro-
vider for damages if the patient or former patient is injured as described by
Section 2 of Article 2, and the employer or former employer:

(1) knows of the occurrence of the sexual exploitation by the mental
health services provider of the patient or former patient;

(2) receives a specific request by an employer or prospective employer
of the mental health services provider, engaged in the business of providing
mental health services, concerning the possible existence or nature of sexual
exploitation by the mental health services provider; and

(3) fails to disclose the occurrence of the sexual exploitation.

(c) An employer or former employer is liable under this section only to the
extent that the failure to take the action described by subsection (a) or (b)
was a proximate and actual cause of damages sustained.

(d) If a mental health professional who sexually exploits a patient or former
patient is a member of the clergy and the sexual exploitation occurs when
the professional is acting as a member of the clergy, liability if any under
this section is limited to the church, congregation, or parish in which the
member of the clergy carried out the clergy member’s pastoral duties:

(1) at the time the sexual exploitation occurs if the liability is based on
a violation of subsection (a); or

(2) at the time of the previous occurrence of sexual exploitation, if the
liability is based on a violation of subsection (b).

(e) Nothing in subsection (d) shall prevent the extension of liability under
this section beyond the local church, congregation, or parish where the cur-
rent or previous sexual exploitation occurred, as appropriate under subsec-
tion (d), if the patient proves that officers or employees of the religious
denomination in question at the regional, state, or national level:

(1) knew or should have known of the occurrences of sexual exploita-
tion by the mental health services provider;

(2) received reports of such occurrences and failed to take necessary
action to prevent or stop such sexual exploitation by the mental health
services provider and that such failure was a proximate and actual cause of
the damages; or
(3) knew or should have known of the mental health professional’s pro-
pensity to engage in sexual exploitation.

Section 4. [Damages.]
(a) A plaintiff who prevails in a suit under this section may recover actual
damages, including damages for mental anguish even if an injury other
than mental anguish is not shown.
(b) In addition to an award under subsection (a), a plaintiff who prevails
in a suit under this section may recover exemplary damages and reason-
able attorney fees.

Section 5. [Defenses.]
(a) It is not a defense to an action brought under Section 2 or 3 of Article
2 that the sexual exploitation of the patient or former patient occurred:
(1) with the consent of the patient or former patient; or
(2) outside the therapy or treatment sessions of the patient or former
patient; or
(3) off the premises regularly used by the mental health services pro-
vider for the therapy or treatment sessions of the patient or former patient.
(b) It is a defense to an action brought under Section 2 or 3 of Article 2 by
a former patient that the person was not emotionally dependent on the
mental health services provider when the sexual exploitation began and
the mental health services provider terminated mental health services with
the patient more than [two (2)] years before the date the sexual exploita-
tion began.
(c) A person is considered not emotionally dependent for purposes of this
act if the nature of the patient’s or former patient’s emotional condition and
the nature of the treatment provided by the mental health services pro-
vider are not such that the mental health services provider knows or has
reason to believe that the patient or former patient is unable to withhold
consent to the sexual exploitation.

Section 6. [Duty to Report.]
(a) If a mental health services provider or the employer of a mental health
services provider has reasonable cause to suspect that a patient has been
the victim of sexual exploitation by a mental health services provider dur-
ing the course of treatment, or if a patient alleges sexual exploitation by a
mental health services provider during the course of treatment, the mental
health services provider or the employer shall report the alleged conduct
not later than the [thirtieth (30th)] day after the date the person became
aware of the conduct or the allegations to:
(1) the prosecuting attorney in the county in which the alleged sexual
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exploitation occurred; and
(2) any state licensing board that has responsibility for the mental health
services provider’s licensing.

(b) Before making a report under this section, the reporter shall inform
the alleged victim of the reporter’s duty to report and shall determine if the
alleged victim wants to remain anonymous.

(c) A report under this section need contain only the information needed
to:
(1) identify the reporter;
(2) identify the alleged victim, unless the alleged victim has requested
anonymity; and
(3) express suspicion that sexual exploitation has occurred.
(d) Information in a report is privileged information and is for the exclu-
sive use of the prosecuting attorney or state licensing board that receives
the information. A person who receives privileged information may not dis-
close the information except to the extent that disclosure is consistent with
the authorized purposes for which the person first obtained the informa-
tion. The identity of an alleged victim of sexual exploitation by a mental
health services provider may not be disclosed by the reporter, or by a per-
son who has received or has access to a report or record, unless the alleged
victim has consented to the disclosure in writing.
(e) A person who intentionally violates subsection (a) or (d) is subject to
disciplinary action by that person’s appropriate licensing board and also
commits an offense. An offense under this subsection is a [Class C misde-
meanor].

Section 7. [Limited Immunity From Liability.]
(a) A person who, in good faith, makes a report required by Section 6 of
Article 2 is immune from civil or criminal liability resulting from the filing
of that report.
(b) Reporting under this act is presumed to be done in good faith.
(c) The immunity provided by this section does not apply to liability re-
sulting from sexual exploitation by a mental health services provider of a
patient or former patient.

Section 8. [Admission of Evidence.]
(a) In an action for sexual exploitation, evidence of the plaintiff’s sexual
history and reputation is not admissible unless:
(1) the plaintiff claims damage to sexual functioning; or
(2)(i) the defendant requests a hearing before trial and makes an offer
of proof of the relevancy of the history or reputation; and
(ii) the court finds that the history or reputation is relevant and that
the probative value of the evidence outweighs its prejudicial effect.
(b) The court may allow the admission only of specific information or
examples of the plaintiff’s conduct that are determined by the court to be relevant. The court’s order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Section 9. [Limitations.]
(a) Except as otherwise provided by this section, an action under this act must be filed before the third anniversary of the date the patient or former patient understood or should have understood the conduct for which liability is established under Section 2 or 3 of Article 2.
(b) If a patient or former patient entitled to file an action under this act is unable to bring the action because of the effects of the sexual exploitation, continued emotional dependence on the mental health services provider, or threats, instructions, or statements by the mental health services provider, the deadline for filing an action under this act is tolled during that period, except that the deadline may not be tolled for more than [fifteen (15)] years.
(c) This section does not apply to a patient who is a “child” or a “minor” as defined by [insert appropriate state citation], until that patient or former patient has reached the age of [eighteen (18)]. If the action is brought by a parent, guardian, or other person having custody of the child or minor, it must be brought within the period set forth in this section.

Section 10. [Sexual Exploitation By Mental Health Services Provider; Definitions.]
(a) As used in this section:
(1) “Mental health services” means assessment, diagnosis, treatment, or counseling in a professional relationship to assist an individual or group in:
   (i) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;
   (ii) understanding conscious or subconscious motivations;
   (iii) resolving emotional, attitudinal, or relationship conflicts; or
   (iv) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.
(2) “Mental health services provider” means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:
   (i) “certified social worker” as defined by [state human resources code];
   (ii) “chemical dependency counselor” as defined by [insert appropriate state citation];
   (iii) “licensed professional counselor” as defined by [insert appropriate state citation];
   (iv) “licensed marriage and family therapist” as defined by [insert appropriate state citation];
   (v) member of the clergy;
(vi) "physician" who is "practicing medicine" as defined by [insert appropriate state citation]; and
(vii) "psychologist" offering "psychological services" as defined by [insert appropriate state citation].

(3) "Patients" means an individual who seeks or obtains mental health services.

(4) "Sexually exploitive behavior" means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(b) A person commits an offense if the person is a mental health services provider and intentionally:
(1) engages in sexual contact with a patient or former patient; or
(2) engages in sexually exploitive behavior with a patient or former patient.

(c) It is not a defense to prosecution under this section that the sexual contact or sexually exploitive behavior with the patient or former patient occurred:
(1) with the consent of the patient or former patient,
(2) outside the therapy or treatment sessions of the patient or former patient; or
(3) off the premises regularly used by the mental health services provider for the therapy or treatment sessions of the patient or former patient.

(d) It is a defense to prosecution under this section that the former patient was not emotionally dependent on the mental health services provider when the sexual contact occurred or the sexually exploitive behavior began and the mental health services provider terminated psychotherapy with the patient more than [two (2)] years before the date the sexual contact occurred or the sexually exploitive behavior began.

(e) A person is considered emotionally dependent for purposes of this section if the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the mental health services provider are such that the mental health services provider knows or has reason to believe that the patient or former patient is unable to withhold consent to the sexual contact or the sexually exploitive behavior.

(f) It is a defense to prosecution under this section that the sexual contact is a part of a professionally recognized medical treatment of a patient.

(g) Except as provided by subsection (h) of this section, an offense under this section is a [felony of the third degree].

(h) If it is shown on the trial of an offense under this section that the defendant has been previously convicted of an offense under this section, the offense is a [felony of the second degree].
Section 11. [Revocation And Suspension.] The [department] may refuse to issue or to renew a certificate or order of recognition, may place on probation a person whose certificate or order of recognition has been suspended, may reprimand a person with a certificate or order of recognition, or may revoke or suspend a certificate or order of recognition issued under this act for any of the following reasons:

1. violating a provision of this act or a rule of the [department];
2. circumventing or attempting to circumvent this act or a rule of the [department];
3. participating, directly or indirectly, in a plan, scheme, or arrangement attempting or having as its purpose the evasion of this act or a rule of the [department];
4. engaging in unethical conduct;
5. engaging in conduct which discredits or tends to discredit the profession of social work;
6. performing an act, allowing an omission, or making an assertion or representation that is fraudulent, deceitful, or misleading or that in any manner tends to create a misleading impression;
7. knowingly associating with or permitting or allowing the use of any certified person's professional services or professional identification in a project or enterprise that the person knows or with the exercise of reasonable diligence should know is a practice that violates this act or a rule of the [department] pertaining to the practice of social work;
8. knowingly associating with or permitting the use of a certified person's name, professional services, professional identification, or endorsement in connection with a venture or enterprise that the person knows or with the exercise of reasonable diligence should know is a trade, business, or professional practice of a fraudulent, deceitful, misleading, or dishonest nature;
9. revealing, directly or indirectly, or causing to be revealed a confidential communication transmitted to the certified person by a client or recipient of his services except as may be required by law;
10. having a certificate or a license to practice social work in another jurisdiction denied, suspended, or revoked for reasons or causes the [department] finds would constitute a violation of this act or a rule pertaining to the practice of social work adopted by the [department];
11. having been convicted of a felony in an American jurisdiction; or
12. refusing to do or perform any act or service for which the person is certified under this act solely on the basis of the recipient's age, sex, race, religion, national origin, color, or political affiliation; or
13. committing an act in violation of the [state penal code], or for which liability exists under [state civil practice and remedies code].

Section 12. [License Refusal; Disciplinary Actions.] The [commission] may
refuse to issue or renew a license, place on probation a license holder whose license has been suspended, reprimand a license holder, or revoke or suspend a license issued under this act for:

(1) violating or assisting another to violate this act or a rule of the [commission] adopted under this act;

(2) circumventing or attempting to circumvent this act or a rule of the [commission] adopted under this act;

(3) participating, directly or indirectly, in a plan the purpose of which is the evasion of this act or a rule of the [commission] adopted under this act;

(4) engaging in false, misleading, or deceptive conduct as defined by the [state business & commerce code];

(5) engaging in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(6) revealing or causing to be revealed, directly or indirectly, a confidential communication made to the licensed chemical dependency counselor by a client or recipient of services, except as required by law;

(7) having a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the commission finds would constitute a violation of this act or a commission rule established under this act;

(8) refusing to perform an act or service for which the person is licensed to perform under this act on the basis of the client's or recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(9) committing an act in violation of [state penal code], or for which liability exists under [state civil practice and remedies code].

Section 13. [Denial, Suspension, or Revocation of License] After a hearing, the [board] may deny, suspend, or revoke a license or otherwise discipline a license holder if the applicant for license or the license holder has:

(1) been convicted of a felony or a misdemeanor involving moral turpitude;

(2) obtained or attempted to obtain registration by fraud or deception;

(3) used drugs or alcohol to an extent that affects professional competence;

(4) been grossly negligent in performing professional duties;

(5) been adjudicated mentally incompetent by a court of competent jurisdiction;

(6) practiced in a manner detrimental to the public health or welfare;

(7) advertised in a manner that tends to deceive or defraud the public;

(8) had a license or certification revoked by a licensing agency or by a certifying professional organization;

(9) otherwise violated this act or a rule or code of ethics adopted under this act; or

(10) committed an act in violation of [state penal code], or for which
liability exists under [state civil practice and remedies code].

Section 14. [Licensed Professional Counselors.]
(a) The board may revoke, suspend, or refuse to renew the license of a counselor on proof that the counselor:
(1) has committed an act in violation of [state penal code], or for which liability exists under [state civil practice and remedies code];
(2) has violated this act or a rule or code of ethics adopted by the [board]; or
(3) is legally committed to an institution because of mental incompetence from any cause.

Section 15. [Licensed Psychologists.] The [state board of examiners of psychologists] shall have the right to cancel, revoke, suspend, or refuse to renew the license or certification of any psychologist or the certificate of any psychological associate or reprimand any psychologist upon proof that the psychologist:
(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state;
(2) uses drugs or intoxicating liquors to an extent that affects his professional competency;
(3) has been guilty of fraud or deceit in connection with his services rendered as a psychologist;
(4) except as provided by this act, has aided or abetted a person, not a licensed psychologist, in representing that person as a psychologist within this state;
(5) except as provided by this act, has represented himself or herself to be a psychologist licensed in this state at a time he or she was not licensed to practice psychology in this state, or practiced psychology in this state without a license to practice psychology in this state;
(6) has been guilty of unprofessional conduct as defined by the rules established by the board;
(7) for any cause for which the board shall be authorized to take that action by another section of this act; or
(8) has committed an act in violation of [state penal code], or for which liability exists under [state civil practice and remedies code].

Section 16. [Accrual of Course of Action.] [state civil practice and remedies code], applies only to a cause of action accruing on or after the effective date of this article. A cause of action accruing before that date is governed by the law in effect at the time the cause of action accrued, and that law is continued in effect for that purpose.
ARTICLE 3

Section 1. [Treatment Methods Advisory Committee.]

(a) The board shall appoint an advisory committee on treatment standards that is composed of at least the following persons:

1. [one (1)] licensed psychiatrist;
2. [one (1)] licensed psychologist;
3. [one (1)] certified social worker;
4. [one (1)] licensed professional counselor;
5. [one (1)] licensed chemical dependency counselor;
6. [one (1)] licensed occupational therapist;
7. [two (2)] persons who have received mental health services, either voluntarily or involuntarily;
8. [one (1)] member from each of [two (2)] private associations of persons who advocate on the behalf of or in the interest of persons with mental illness; and
9. [one (1)] person who has practiced rage therapy, trust development therapy, or rough signing as part of a professional practice for which the person is properly licensed or certified.

(b) The [board] may appoint additional members as it considers appropriate.

(c) The [committee] shall:

1. Review treatment methods used in mental health facilities;
2. Recommend to the board the treatment methods that should not be allowed, such as “rage therapy,” “trust development therapy,” “rough signing,” and any other treatment method that the committee determines is physically or emotionally abusive and not clearly defined in established, professionally accepted clinical standards; and
3. Consider reports from state agencies on possible abusive treatment methods and on complaints relating to treatment methods.

(d) The committee shall meet at least once every [six (6)] months.

(e) The board shall either adopt by rule or reject a committee recommendation not later than the [one hundred twentieth (120th)] day after the date on which the recommendation is made. A standard established by rule under this section that applies to a private mental hospital may not be less restrictive than a standard that applies to a state mental hospital.

(f) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the committee.

(g) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the [board] under this section or that the [board] specifically refuses by rule to prohibit
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(h) Not later than [insert date], the [state board of mental health and mental retardation] shall appoint the advisory committee on treatment standards as prescribed by [state health and safety Code], as added by this section. The [committee] shall make its initial recommendations to the [board] not later than [insert date].

Section 2. [Standards for Care for Mental Health and Chemical Dependency.]
(a) The care and treatment of a patient receiving mental health services in a facility licensed by the [department] under this act are governed by the standards adopted by the [state department of mental health and mental retardation] to the same extent as if the standards adopted by that [department] were rules adopted by the [board] under this act.
(b) The care and treatment of a patient receiving chemical dependency treatment in a facility licensed by the [department] under this act are governed by the same standards that govern the care and treatment of a patient receiving treatment in a treatment facility licensed under [state law] and that are adopted by the [state commission on alcohol and drug abuse], to the same extent as if the standards adopted by the [commission] were rules adopted by the [board] under this act.
(c) The [department] shall enforce the standards provided by Section 2 (a) and (b) of Article 3. A violation of a standard is subject to the same consequence as a violation of a rule adopted by the [board] under this act. The [department] is not required to enforce a standard if the enforcement violates a federal law, rule, or regulation.

Section 3. [Treatment of Minors.]
(a) A facility may admit a minor for treatment and rehabilitation if:
(1) the facility is:
   (i) a treatment facility licensed by the [commission] to provide the necessary services to minors; or
   (ii) a facility licensed or operated by the [state department of mental health and mental retardation];
(2) the admission is appropriate under the facility's admission policies; and
(3) the admission is requested by:
   (i) a parent, managing conservator, or guardian if the minor is younger than [sixteen (16)] years of age; or
   (ii) the minor, without parental consent, if the minor is [sixteen (16)] years of age or older.
(b) A person or agency appointed as the guardian or a managing conservator of a minor younger than [sixteen (16)] years of age and acting as an employee or agent of the state or a political subdivision of the state may
request admission of the minor only with the minor's consent.

(c) The changes in law made by this section apply only to consent for a
minor's admission to a treatment facility or mental health facility given on
or after the effective date of this section. Valid consent for a minor's admis-
sion given before the effective date of this section remains valid and contin-
ues in effect until withdrawn by the person who consented or by the minor,
if the minor is [sixteen (16)] years of age or older.

ARTICLE 4

Section 1. [Definitions.] As used in this article:
(1) "Inpatient mental health facility" means a mental health facility
that can provide [twenty-four (24)] hour residential and psychiatric ser-
vices and that is:
(i) a facility operated by the [department];
(ii) a private mental hospital licensed by the [state department of
health];
(iii) a community center;
(iv) a facility operated by a community center or other entity the [de-
partment] designates to provide mental health services;
(v) an identifiable part of a general hospital in which diagnosis, treat-
ment, and care for persons with mental illness is provided and that is li-
censed by the [state department of health]; or
(vi) a hospital operated by a federal agency.

Section 2. [License Required.] A person or political subdivision may not operate a mental hospital
without a license issued by the [department] under this act.
(b) A community center or other entity designated by the [state depart-
ment of mental health and mental retardation] to provide mental health
services may not operate a mental health facility that provides court-or-
dered mental health services without a license issued by the [department]
under this act.

Section 3. [Exemptions From Licensing Requirement.] A mental health
facility operated by the [state department of mental health and mental
retardation] or a federal agency need not be licensed under this act.

Section 4. [Additional License Not Required.] A mental hospital licensed
under this act that the [state department of mental health and mental
retardation] designates to provide mental health services is not required to
obtain an additional license to provide court-ordered mental health ser-

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Section 5. [Limitations on Certain Contracts.] A community center or other entity the [state department of mental health and mental retardation] designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the [department].

Section 6. [state board of mental health and mental retardation.]
(a) The [state board of mental health and mental retardation] shall adopt rules and standards the [board] considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this act.

Section 7. [Function, Powers and Duties of Board.]
(a) Not later than [insert date], all functions, powers, duties, funds, and obligations of the [state department of mental health and mental retardation] relating to the licensure of mental health facilities, other than the power and duty to prescribe standards for those facilities, all employees who perform those duties, and all relevant records are transferred to the [state department of health]. A rule, form, or policy relating to this function is a rule, form, or policy of the [state department of health] on transfer of the functions under this section and remains in effect until altered by the [department].
(b) A power or duty assigned to the [state department of mental health and mental retardation], relating to licensing a facility under [state health and safety code], including a power or duty to bring an action to enforce state law or to collect a penalty for a violation of state law, is a power or duty of the [state department of health].
(c) Section 7 (b) of Article 4 does not apply to a power or duty assigned to the [state department of mental health and mental retardation] that relates to prescribing standards for a facility.

ARTICLE 5

Section 1. [Prohibition On Illegal Remuneration.]
(a) A person commits an offense if the person intentionally or knowingly offers to pay or agrees to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.
(b) It is a rebuttable presumption that a person has violated this section if:
(1) the person refers or accepts a referral of a person to an inpatient mental health facility or chemical dependency treatment facility;
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(2) before the patient is discharged or furloughed from the inpatient facility, the person pays the referring person or accepts payment from the inpatient facility for outpatient services to be provided by the referring person after the patient is discharged or furloughed from the inpatient facility; and

(3) the referring person does not provide the outpatient services for which payment was made and does not return to the inpatient facility the payment for the services not provided.

(c) This section shall not be construed to prohibit advertising except that which is false, misleading, or deceptive or that which advertises professional superiority or the performance of a professional service in a superior manner and that is not readily subject to verification.

(d) Except as provided by this section, an offense under this section is a [Class A misdemeanor]. If it is shown on the trial of a person under this section that the person has previously been convicted of an offense under this section or that the person was employed by a federal, state, or local government at the time the offense occurred, the offense is a [felony of the third degree]. In addition to any other penalties or remedies provided, a violation of this section shall be grounds for disciplinary action by a regulatory agency that has issued a license, certification or registration to the person.

(e) This section shall be construed to permit any payment, business arrangements, or payments practice permitted by 42 U.S.C. Section 1320a - 7 b (b), or any regulations promulgated pursuant thereto.

(f) This section shall not apply to licensed insurers, governmental entities, including intergovernmental risk pools established under [state local government code], and institutions as defined in the [state college and university employees uniform insurance benefits act], group hospital service corporations, or health maintenance organizations which reimburse, provide, offer to provide, or administer hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor.

Section 2. [Exemption.]

(a) This act does not apply to a health care information service that:

(1) provides its services to a consumer only by telephone communication on request initiated by the consumer and without charge to the consumer;

(2) provides information about health care providers to enable consumer selection of health care provider services without any direct influence by a health care provider on actual consumer selection of those services;

(3) in response to each consumer inquiry, on a nondiscriminatory basis, provides information identifying health care providers who substantially meet the consumer's detailed criteria based on consumer responses to standard questions designed to elicit a consumer's criteria for a health care provider, including criteria concerning location of the practice, practice spe-
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dicalities, costs and payment policies, acceptance of insurance coverage, general background and practice experience, and various personal characteristics;

(4) does not attempt through its standard questions for solicitation of consumer criteria or through any other means or methods to steer or lead a consumer to select or consider selection of a particular health care provider for health care provider services;

(5) identifies to a consumer:

(i) all health care providers who substantially meet the consumer’s stated criteria and who are located within the zip code area in which the consumer elects to obtain services from a health care provider; or

(ii) all health care providers substantially meeting the consumer’s stated criteria who are located in zip code areas in the closest proximity to the elected zip code area if no health care provider substantially meeting the consumer’s criteria is located within that zip code area;

(6) discloses to each consumer the relationship between the health care information service and health care providers participating in its services;

(7) does not provide or represent itself as providing diagnostic or counseling services or assessment of illness or injury and does not make any promises of cure or guarantees of treatment;

(8) does not provide or arrange for transportation of a consumer to or from the location of a health care provider;

(9) does not limit the scope of or direct its advertising or other marketing of its services to a particular health care provider specialty, to a particular segment of the population, or to persons suffering from a particular illness, condition, or infirmity;

(10) charges to and collects fees from a health care provider participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or on the value of or a percentage of the value of a professional service provided by the health care provider;

(11) does not limit participation by a health care provider in its services to a particular health care specialty or to a particular service provided by a health care provider;

(12) does not limit participation by a health care provider in its services for a reason other than:

(i) failure to have a current, valid license without limitation to practice in this state;

(ii) failure to maintain professional liability insurance while participating in the service;

(iii) significant dissatisfaction of consumers of the health care information service that is documented and can be proved;

(iv) a decision by a peer review committee that the health care pro-
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vider has failed to meet prescribed standards or has not acted in a professional or ethical manner; or
(v) termination of the contract between the health care provider and
the health care information service by either party under the terms of the
contract;
(13) maintains a customer service department to handle complaints
and answer questions for consumers;
(14) maintains a customer follow-up system to monitor consumer sat-
isfaction; and
(15) does not use, maintain, distribute, or provide for any purpose any
information that will identify a particular consumer, such as a name,
address, or telephone number, obtained from a consumer seeking its ser-
VICES other than for the purposes of:
(i) providing the information to the health care provider with whom
an appointment is made;
(ii) performing administrative functions necessary to operate the
health care information service;
(iii) providing directly to a consumer, at the request of that con-
sumer on that consumer’s initial contact with the health care information
service, information relating to health-related support groups or provid-
ers of health-care-related services or equipment within the area or areas
of interest requested by the consumer; or
(iv) conducting analytical research on data obtained through provi-
sion of services and preparing statistical reports that generally analyze
that data but do not in any manner identify one or more specific consum-
ers.
(b) In this section:
(1) “Health care information service” means a person who provides
information to a consumer regarding health care providers that can enable
the consumer to select one or more health care providers to furnish health
care services.
(2) “Health care provider” means a person licensed, certified, or regis-
tered by a state health care regulatory agency other than a:
(i) mental health facility as defined by [insert appropriate state cita-
tion].
(ii) treatment facility as defined by [insert appropriate state citation].

Section 3. [Notification of Remuneration.] (a) A person commits an of-
fense if:
(1) the person in a manner otherwise permitted under Section 1 of Ar-
ticle 5 accepts remuneration to secure or solicit patients or patronage for a
person licensed, certified, or registered by a state health care regulatory
agency; and
(2) does not, at the time of initial contact and at the time of referral,
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disclose to the patient:

(i) the person's affiliation, if any, with the person for whom the pa-
tient is secured or solicited; and

(ii) that the person will receive remuneration, directly or indirectly,
for securing or soliciting the patient.

(b) Except as otherwise provided by this section, an offense under this
section is a [Class A misdemeanor]. If it is shown on the trial of a person
under this section that the person has previously been convicted of an of-
fense under this section or that the person was employed by a federal, state,
or local government at the time the offense occurred, the offense is a [felony
of the third degree].

(c) In addition to other penalties or remedies provided by this act, a viola-
tion of this section is grounds for disciplinary action by a regulatory agency
that has issued a license, certification, or registration to the person.

Section 4. [Injunction.]

(a) The [attorney general] or the appropriate district or county attorney,
in the name of the state, may institute and conduct an action in a district
court or of a county in which any part of the violation occurs for an injunc-
tion or other process against a person who is violating this act.

(b) The district court may grant any prohibitory or mandatory relief war-
ranted by the facts, including a temporary restraining order, temporary
injunction, or permanent injunction.

Section 5. [Civil Penalties.]

(a) A person who violates this act is subject to a civil penalty of not more
than [ten thousand (10,000)] dollars for each day of violation and each act
of violation. In determining the amount of the civil penalty, the court shall
consider:

(1) the person's previous violations;

(2) the seriousness of the violation, including the nature, circumstances,
extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the
violation;

(4) the demonstrated good faith of the person; and

(5) the amount necessary to deter future violations.

(b) The [attorney general] or the appropriate district or county attorney,
in the name of the state, may institute and conduct an action authorized by
this section in a district court or of a county in which any part of the viola-
tion occurs.

(c) The party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with suit for
injunctive relief brought under Section 4 of Article 5; or

(2) file a suit to assess and recover civil penalties independently of a
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suit for injunctive relief.

(d) The party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(e) A penalty collected under this section by the [attorney general] shall be deposited to the credit of the [general revenue fund]. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the [general fund] of the county in which the suit was heard.

(f) The civil penalty and injunction authorized by this act are in addition to any other civil, administrative, or criminal action provided by law.

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

Section 7. [Prospective Effect].

(a) The changes in law made by this act apply only to an offense committed or a violation that occurs on or after the effective date of this act. For the purposes of this act, an offense is committed or a violation occurs before the effective date of this act if any element of the offense or violation occurs before that date.

(b) An offense committed or violation that occurs before the effective date of this act is covered by the law in effect when the offense was committed or the violation occurred, and the former law is continued in effect for this purpose.

Section 8. [Emergency Clause].
Statewide Immunization Program

This act is based on Texas legislation enacted in 1993. This act establishes a statewide immunization program targeted at children from birth through two years of age. Previous law required the immunization of children prior to entering day care, kindergarten or elementary school.

Hospitals are required to refer newborns for immunization at the time the newborn screening test is performed, to review the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic and to administer needed vaccinations or refer the child for immunization. Physicians are responsible for reviewing the immunization history of every child examined and administering any needed vaccinations or referring the child for immunization. Upon admission of a child to a facility of the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice or the Texas Youth Commission, the facility physician must review the child's immunization history and administer any needed vaccinations or refer the child for immunization.

Children are exempted from immunization if it conflicts with the religious beliefs of their parents or if the physician believes it is contraindicated based on an examination of the child.

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Statewide Immunization of Children.]

(a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted by the [state board of health].

(b) Hospitals shall be responsible for:

(1) referring newborns for immunization at the time the newborn screening test is performed;

(2) reviewing the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic; and

(3) administering needed vaccinations or referring the child for immunization.

(c) Physicians shall be responsible for reviewing the immunization history
of every child examined and administering any needed vaccinations or referring the child for immunization.

(d) A child is exempt from an immunization required by this section if:

(1) immunization conflicts with the tenets of an organized religion to which a parent, managing conservator, or guardian belongs; or

(2) the immunization is medically contraindicated based on an examination of the child by a physician licensed by any state in the United States.

(e) For purposes of this section, “child” means a person under [eighteen (18)] years of age.

(f) The [state board of health] shall adopt rules that are necessary to administer this act.

(g) A parent, managing conservator, or guardian may choose the health care provider who administers the vaccine or immunizing agent under this act.

Section 3. [Liability of Person Who Orders or Administers Immunization.]

(a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by the [board] or is otherwise required by law or rule.

(b) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable or responsible for the failure to immunize a child because of the failure or refusal of a parent, managing conservator, or guardian to consent to the vaccination or immunization required under this act. Consent to the vaccination or immunization must be given in the manner authorized by [insert appropriate state citation].

(c) A person who fails to comply with Section 2 is not liable or responsible for that failure, and that failure does not create a cause of action.

(d) This section does not apply to a negligent act in administering the vaccine or immunizing agent.

Section 4. [Immunizations Required.]

(a) On admission of a child to a facility of the [state department of mental health and mental retardation], the [state department of criminal justice], or the [state youth commission], the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The [department] and the [board] have the same powers and duties under this section as those entities have under [state education code].

(c) A facility covered by this section shall keep an individual immunization record during the individual’s period of admission, detention, or commitment in the facility, and the records shall be open for inspection at all reasonable times by a representative of the [local health department] or
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(d) This section does not affect the requirements of the [state education code] or the [state human resources code].

Section 5. [Types of Immunizations Required.]
The [department] shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, mumps, rubella, and rubeola. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

Section 6. [Applicability to Child Care Facilities.](a) Except as provided by Section 6 (b), this act applies to a child admitted to a child-care facility as defined by [insert appropriate state citation], on or after [date].
(b) This act may not apply to a child admitted to a child-care facility as defined by [insert appropriate state citation] before [date].

Section 7. [Department Immunization Service.] The [department], to the extent permitted by law, is authorized to pay employees who are exempt or not exempt for purposes of the Fair Labor Standards Act of 1938 on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business operations. Authorization for payment under this section is limited to work directly related to immunizations.

Section 8. [Agency Appropriations.] An agency is not required to carry out the duties relating to this act except to the extent that funds for those purposes are appropriated to the agency or are otherwise available.

Section 9. [Distribution and Administration of Certain Vaccines and Sera.] (a) Except as otherwise provided by this section, the [board] by rule shall charge fees for the distribution and administration of vaccines and sera provided under [insert appropriate state code citations].
(b) Except as otherwise provided by this section, the [board] by rule may require a [department] contractor to charge fees for public health services provided by a contractor participating in a [department] program under the laws specified by Section 9 (a).
(c) Provided the [board] finds that the monetary savings of this subsection are greater than any costs associated with administering it, the [board] by rule shall establish a fee schedule for fees under this section. In establishing the fee schedule, the [board] shall consider a person's financial ability to pay all or part of the fee, including the availability of health insurance.
coverage. In the event the fee schedule conflicts with any federal law or
regulation, the board shall seek a waiver from the applicable federal law or
regulation to permit the fee schedule. In the event the waiver is denied,
the fee schedule shall not go into effect.
(d) The [commissioner] may waive the fee requirement for any type of
vaccine or serum if the [commissioner] determines that:
(1) a public health emergency exists; and
(2) the vaccine or serum is needed to meet the emergency.
(e) The [department] may not deny an immunization to an individual re-
quired to be immunized under a law specified by Section 9 (a) because of
the individual’s inability to pay for the immunization. The [department]
shall provide the immunization at a reduced charge or no charge according
to the financial ability of the individual or a person with a legal obligation
to support the individual to pay for the immunization. The [department]
shall give priority to those persons least able to pay for immunization.

Section 10. [Effective date] [Insert effective date.]
Health Care Reform Legislation (Note)

A variety of state health care reform initiatives have been adopted in the wake of unsuccessful federal efforts. Recent legislative activities across the states continue to focus on improving citizens' access to health care and controlling health care costs. However, several states which adopted comprehensive health care reforms in the past are paring back their efforts.

The most popular strategy which states have taken both to control health care costs and to improve access seems to be insurance market reform, which includes legislation requiring portability of health insurance from one job to another and guaranteed renewal of insurance. By 1995, 45 states had enacted some type of small group insurance reform, and 23 states had passed some version of individual market reform, according to the Blue Cross and Blue Shield Association. Another common approach in the states is managed care. In the past two to three years, more than 40 states have opted for managed care programs, and nearly a quarter of all Medicaid recipients have been enrolled in such programs, according to CSG's State Trends & Forecasts report on "State Health Care Cost Containment."

Other health care reform efforts include creating purchasing alliances to leverage the public's power to acquire health care services, improving health data collection and information systems and creating medical savings accounts.

The Committee on Suggested State Legislation has reviewed a number of initiatives in the area of health care and is offering a sampling of recent state legislative activity in the 1996 edition of Suggested State Legislation. This note highlights legislative efforts in eight states, including Colorado, Florida, Kentucky, Maryland, New York, Oregon, Tennessee, Vermont and Washington.

Such an overview of legislation related to health care has been included in the past four volumes of Suggested State Legislation. The 1992 edition (Vol. 51) reviewed some of those enactments in the Access to Health Care note (pp. 1-5). The 1993 edition (Vol. 52) contained a Health Care Legislation note (pp. 1-5), the 1994 edition (Vol. 53) included a Health Insurance Reform Legislation note (pp. 1-11) and the 1995 edition had a Health Care Reform Legislation note (pp. 26-28).

Managed Care

In the face of growing opposition by employees and consumers, the Washington Legislature repealed much of the state's landmark health care reform law known as the Washington Health Services Act of 1993. One of the
many health care reform acts passed in 1995 (HB 1046) replaces the five-member state Health Services Commission, which was established by the 1993 act, with the Washington Healthcare Policy Board to assure fair competition and to decrease administrative overhead. The extensive amendments also modify community rating for small groups and individuals and include provisions relating to portability of benefits, pre-existing condition limitations, and guaranteed issue and renewability of coverage. In addition, this legislation repeals the employer mandate, uniform benefits package, health insurance purchasing cooperatives, and maximum premium, or cap. The amended law also contains small group insurance reform provisions and adds authorization for medical savings accounts as well as providing protection for “whistleblowers.” Further, the 1995 act expands access to the Basic Health Plan (BHP) to 200,000 adult Medicaid enrollees and 130,000 children enrollees.

The Washington Legislature also modified the Nursing Home Reimbursement System in 1995 to provide expanded long-term care community residential options for the disabled and elderly as well as quality of care, safety and educational requirements for all care providers. In addition, the act (HB 1908) allows nurses to have limited authority in delegating nursing tasks, extends the interval for required nursing home inspections from 12 to 18 months and provides nursing homes an additional extension of up to 60 months to apply for a certificate of need if a project is located in certain areas.

Also in 1995, the Legislature approved the Washington Public Health Improvement Plan (SB 5253), which provides the public health system with the necessary capacity to improve the health outcomes of Washington's population and establish the methodology by which improvement in the health outcomes and delivery of public health activities will be assessed (SB 5253). The Washington Legislature also clarified statutes for public employee benefits (HB 1566), modified provisions on health data and quality assurance (HB 1589), corrected legal anomalies in the recently adopted dentist initiative (SB 5365 and SB 5386), expanded BHP benefits to include chemical dependency, mental health and organ transplant services (SB 5386), and required health carriers to insure women's access to women's health specialists (SB 5854).

New York has developed a pilot program to determine whether the cost of treating occupational injury and disease can be reduced by use of managed care. This legislation (Ch. 729, 1993, and Ch. 285, 1994) sets up a seven-member Labor/Management Committee to develop policy recommendations for the Workers’ Compensation Board to follow in implementing the pilot program, to oversee the approval of employers to participate in the program and to study the cost savings associated with utilizing man-
Suggested State Legislation

Managed care. Representation on the committee is designed to reflect both public and private sector labor and management with the Commissioners of Health and Insurance designated as ex-officio members. The committee must analyze safety and loss prevention data and issue a report after the 24-month pilot period.

Managed care providers in New York must abide by certain standards of care and must be certified by the Department of Health to participate. Emergency care and second medical opinions must be provided in a manner designated by the Workers’ Compensation Board. Employers are to be chosen from diverse geographic regions, where choice of managed care providers is available. Employers also must represent the various ways through which workers’ compensation is provided to employees: a collective bargaining agreement, membership in a State Insurance Fund safety group, self-insured multi-employer associations or small-business multi-employer associations. The maximum number of employees enrolled in the managed care pilot program may constitute no more than 15 percent of the total labor force in the first year of the pilot program and 24 percent in the second year. Employers must give 60-day notice to affected employees that they will be participating in the program. If dissatisfied, an employee may choose another managed care organization or opt out of managed care 14 days after first receiving treatment.

The Florida Health Care and Insurance Reform Act (Ch. 93-129) was enacted to help uninsured working residents purchase private health insurance. The 1993 legislation creates a voluntary system of managed care competition built on existing pools of health care purchasing alliances; the creation of “Med Access” as a backup for those at 250 percent of the poverty level; and 11 Community Health Purchasing Alliances, each with a minimum of three plans to be offered to employers, Medicaid buy-in participants and the uninsured.

Tennessee adopted a state managed care program through enabling legislation (Ch. 358 and Ch. 492, 1993) and a federal waiver. TennCare covers Medicaid recipients as well as an additional 500,000 uninsured residents under one insurance program. Like the state employees’ health care plans, TennCare relies on a network of managed care plans to provide services.

Purchasing Alliances

In 1994, Kentucky adopted legislation which creates a health policy board as an independent agency of state government to develop standard and supplemental health benefit plans, authorize pilot projects of 24-hour coverage, review and approve certificate-of-need applications and establish cooperatives for the purchase of medical supplies, equipment and medica-
Health Care Reform Legislation (Note)

The act (HB 250) also provides for collection, analysis, dissemination of information on the costs, quality and outcomes of the services; development of an annual report on health-care changes and quality, including comparisons for each hospital and ambulatory facility; and creation of a health purchasing alliance, stipulating that it is the only entity permitted to operate as a statewide health purchasing alliance. The act mandates membership in the alliance for state employees as of a certain date, including state employees of other health departments, school districts, local governments, the judiciary and state universities and makes membership voluntary for individuals and employers of 100 or fewer employees or affiliated groups or associations of 100 individuals or less. Medicaid recipients, to the extent the basic plan covers mandatory Medicaid services, are included as of July 15, 1995.

The functions of Kentucky's purchasing alliance are to negotiate and contract with health plans to get the best price for persons covered through the alliance, establish conditions for participation of members, enroll individuals in qualified health plans and insure that all areas are adequately served. The health plans must be renewable, except in the cases of nonpayment of premiums, fraud or misrepresentation; noncompliance with the plan's provisions; or cessation of business by the insurer. Pre-existing condition provisions cannot exclude or limit coverage for more than six months. Health benefit plans are required to use modified community rating systems, and those which provide family coverage must include coverage for legally adopted children of the insured or any child for which the insured is appointed guardian. In addition, various medical information reforms are designed to provide incentives for location in areas of greater need for access to health care and to encourage an increase in the number of family practitioners. Financial incentives also are provided to medical students through scholarships and loans.

Insurance Reform and Health Data Collection

Maryland's Health Insurance Reform Act represents one of the most sweeping insurance reform initiatives in the country. The 1993 act eliminates pre-existing condition limitations of more than six months and includes guaranteed issue and renewal to any small employer seeking coverage as well as community ratings, which are initially adjusted for age and geography. This legislation (HB 1359) also creates a Health Care Access and Cost Commission, which is charged with establishing a statewide health care data base; developing a uniform benefits plan to be offered in the small group market; creating a "report card" system, allowing quality assessment and comparisons among HMOs; developing a physician fee-setting system; and regulating insurance rates.
Suggested State Legislation

In 1995, Maryland’s General Assembly passed legislation (HB 8) which expands the definition of small employer in the 1993 act to include self-employed individuals and nonprofit organizations as well as local governing bodies, boards and municipal corporations. The new law requires a carrier to provide coverage to any requesting small employer if at least 75 percent of its employees are participating and to offer coverage to all eligible employees, including part-time employees at the election of the small employer.

Colorado’s Health Care Coverage Reform Act requires small employer health insurance carriers, as a condition of transacting business in the state, to offer small employers the choice of either a basic health benefit plan or a standard health benefit plan. “Small employers” are defined as those employing between two and 50 employees on at least 50 percent of the working days during the preceding calendar quarter. After January 1, 1996, eligibility will extend to businesses with at least one employee. This legislation (Act 10-16-101 through 10-16-512, 1992) applies to any health benefit plan currently in place and extends the period of conversion and continuation to new policies. Premium rates, based on a single same index rate applicable to all small employers, are established in the act and certain multiple employer health trusts or welfare arrangements are exempted.

The Colorado act creates a Health Benefit Plan Advisory Committee which is required to submit recommendations for the components of basic and standard health plans. The insurance commissioner is charged with implementing and enforcing the program, including review and approval of the plans.

Universal Coverage

Vermont committed to comprehensive reform of its systems of health planning, oversight and regulation. The goal of the statute (Act 160) is universal coverage for all Vermonters through an integrated health care system overseen by a single state agency. Key elements include: creating a health data collection and analysis system; establishing the Vermont Health Care Authority, which is responsible for designing two alternative universal health care plans, one single-payer and one regulated multi-payer; designing a uniform benefits package; developing a uniform system of purchasing medical supplies; setting annual health expenditure targets; developing a Health Revenue Management Plan; and conducting hospital budget reviews. However, due to the high cost of attaining universal coverage, the Vermont Legislature adopted more incremental reforms in 1995, including a Medicaid expansion initiation.

Oregon’s Basic Health Services Act (SB 27, SB 935 and SB 534) includes universal access provisions, particularly for the uninsured, those below 100 percent of the federal poverty level, the working poor and the chronically
Health Care Reform Legislation (Note)

ill. Key elements include: an employer mandate, expansion of public assistance medical coverage, a high-risk insurance pool, a basic benefits package including most primary and preventative care services, and cost containment recommendations. The state's employer mandate, however, will sunset January 1, 1996 unless Congress modifies the Employer Retirement Income Security Act (ERISA) this year.
Riverboat Gambling Act

This act is based on Illinois legislation enacted in 1994. This act permits playing traditional casino games on a limited number of licensed riverboat casinos. It establishes a State Gaming Board to regulate gaming activities. The Board consists of five Governor-appointed and Senate-approved members with broad administrative, regulatory and enforcement powers. The Act targets economically depressed river communities as home ports for riverboat casinos but requires a proactive vote by a county or town board prior to legalization in the community.

The Board is authorized to issue up to ten licenses for riverboat casinos. Each license permits an operator to accommodate a maximum of 1,200 gaming participants, either aboard a single vessel or aboard two vessels. A rigorous background check and license is required of any person, firm or corporation with greater than 5 percent ownership interest in the riverboat casino. Applicants must demonstrate good character, experience, reputation and integrity. The Board may approve or deny applications for licenses for any reasonable cause.

Prospective casino owners must compete for licenses. The Board must consider prospective revenues, suitability of proposed facilities, affirmative action plans and the adequacy of capitalization and liability and casualty insurance in determining the recipients of owners' licenses. The act also provides comprehensive guidelines for occupational and supplier licenses and prohibits issuance of an owner's license to any person, firm or corporation owning at least 10 percent interest in any entity already holding an owner's license.

The act requires that gaming vessels be modern casino cruise ships or recreated 19th century riverboats. Gaming is permitted for short periods while the boat is docked (between cruises), and when navigational, mechanical or safety-related conditions require the boat to remain docked. The act does not limit customer wagers or losses, but it does require the use of a cashless wagering system.

The act provides for a variety of taxes. A $2.00 per passenger admission tax is assessed; proceeds are split equally between state and local government. A 20 percent tax on adjusted gross gaming receipts is established, 25 percent of which is returned to the local government and the remaining balance, after expenses, is allotted to the state's Educational Assistance Fund. Riverboat owners are required to pay an initial $25,000 annual license fee and a $5,000 license fee in subsequent years. Owners are also required to post a $200,000 bond to ensure compliance with all rules and regulations.

The act establishes penalties for cheating, for using counterfeit chips or tokens, and for other offenses of the act's provisions. Persons under the age
of 21 are prohibited from wagering and being in the area where gaming is being conducted. Every casino is required to adopt and maintain an internal control system which ensures that assets are safeguarded, that financial records are accurate and reliable, that all transactions are performed only as authorized, and that all transactions are recorded adequately to ensure proper reporting of gaming revenue and of fees and taxes.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act shall be known and may be cited as the Riverboat Gambling Act.

Section 2. [Legislative Intent.]
(a) This act is intended to benefit the people of [state] by assisting economic development and promoting [state] tourism.
(b) While authorization of riverboat gambling will enhance investment, development and tourism in [state], it is recognized that it will do so successfully only if public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process is maintained. Therefore, regulatory provisions of this act are designed to strictly regulate the facilities, persons, associations and practices related to gambling operations pursuant to the police powers of the state, including comprehensive law enforcement supervision.
(c) The [state gaming board] established under this act should, as soon as possible, inform each applicant for an owners license of the [board's] intent to grant or deny a license.

Section 3. [Riverboat Gambling Authorized.]
(a) Riverboat gambling operations and the system of wagering incorporated therein, as defined in this act, are hereby authorized to the extent that they are carried out in accordance with the provisions of this act.
(b) This act does not apply to the pari-mutuel system of wagering used or intended to be used in connection with the horse-race meetings as authorized under the [state horse racing act], lottery games authorized under the [state lottery law], bingo authorized under the [bingo license and tax act], charitable games authorized under the [charitable games act] or pull tabs and jar games conducted under the [state pull tabs and jar games act].
(c) Riverboat gambling conducted pursuant to this act may be authorized upon any navigable stream within the [state] or any navigable stream other than [insert appropriate state waterway] which constitutes a boundary of the [state]; however, this act does not authorize riverboat gambling.
within a county having a population in excess of [three million (3,000,000)],
and this act does not authorize riverboats conducting gambling under this
act to dock at any location in a county having a population in excess of
[three million (3,000,000)].

Section 4. [Definitions]. As used in this act:
(1) “Board” means the [state gaming board].
(2) “Occupational license” means a license issued by the [board] to a per-
son or entity to perform an occupation which the [board] has identified as
requiring a license to engage in riverboat gambling in [state].
(3) “Gambling game” includes, but is not limited to, baccarat, twenty-
one, poker, craps, slot machine, video game of chance, roulette wheel,
klondike table, punch board, faro layout, keno layout, numbers ticket, push
card, jar ticket, or pull tab which is authorized by the [board] as a wagering
device under this act.
(4) “Riverboat” means a self-propelled excursion boat on which lawful
gambling is authorized and licensed as provided in this act.
(5) “Gambling excursion” means the time during which gambling games
may be operated on a riverboat.
(6) “Dock” means the location where an excursion riverboat moors for the
purpose of embarking passengers for and disembarking passengers from a
gambling excursion.
(7) “Gross receipts” means the total amount of money exchanged for the
purchase of chips, tokens or electronic cards by riverboat patrons.
(8) “Adjusted gross receipts” means the gross receipts less winnings paid
to wagerers.
(9) “Cheat” means to alter the selection of criteria which determine the
result of a gambling game or the amount or frequency of payment in a
gambling game.
(10) “Department” means the [department of revenue].
(11) “Gambling operation” means the conduct of authorized gambling
games upon a riverboat.

Section 5. [Gaming Board.]
(a)(1) There is hereby established within the [department of revenue] a
[state gaming board] which shall have the powers and duties specified in
this act, and all other powers necessary and proper to fully and effecti-
vely execute this act for the purpose of administering, regulating, and enforcing
the system of riverboat gambling established by this act. Its jurisdiction
shall extend under this act to every person, association, corporation, part-
nership and trust involved in riverboat gambling operations in [state].
(2) The [board] shall consist of [five (5)] members to be appointed by the
[governor] with the advice and consent of the [senate], one of whom shall be
designated by the [governor] to be [chairman]. Each member shall have a
Riverboat Gambling Act

(1) Each member shall either be a resident of [state] or shall certify that he will become a resident of [state] before taking office. At least [one (1)] member shall be experienced in law enforcement and criminal investigation, at least [one (1)] member shall be a certified public accountant experienced in accounting and auditing, and at least [one (1)] member shall be a lawyer licensed to practice law in [state].

(3) The terms of office of the [board members] shall be [three (3)] years, except that the terms of office of the initial [board members] appointed pursuant to this act will commence from the effective date of this act and run as follows: [one (1)] for a term ending [date], [two (2)] for a term ending [date], and [two (2)] for a term ending [date]. Upon the expiration of the foregoing terms, the successors of such members shall serve a term for [three (3)] years and until their successors are appointed and qualified for like terms. Vacancies in the [board] shall be filled for the unexpired term in like manner as original appointments. Each member of the [board] shall be eligible for reappointment at the discretion of the [governor] with the advice and consent of the [senate].

(4) Each member of the [board] shall receive [three hundred (300)] dollars for each day the [board] meets and for each day the member conducts any hearing pursuant to this act. Each member of the [board] shall also be reimbursed for all actual and necessary expenses and disbursements incurred in the execution of official duties.

(5) No person shall be appointed a member of the [board] or continue to be a member of the [board] who is, or whose spouse, child or parent is, a member of the [board of directors] of, or a person financially interested in, any gambling operation subject to the jurisdiction of this [board], or any race track, race meeting, racing association or the operations thereof subject to the jurisdiction of the [state racing board]. No [board] member shall hold any other public office for which he shall receive compensation other than necessary travel or other incidental expenses. No person shall be a member of the [board] who is not of good moral character or who has been convicted of, or is under indictment for, a felony under the laws of [state] or any other state, or the United States.

(6) Any member of the [board] may be removed by the [governor] for neglect of duty, misfeasance, malfeasance, or nonfeasance in office.

(7) Before entering upon the discharge of the duties of his office, each member of the [board] shall take an oath that he will faithfully execute the duties of his office according to the laws of the state and the rules and regulations adopted therewith and shall give bond to [state], approved by the [governor], in the sum of [twenty-five thousand (25,000)] dollars. Every such bond, when duly executed and approved, shall be recorded in the office of the [secretary of state]. Whenever the [governor] determines that the bond of any member of the [board] has become or is likely to become
invalid or insufficient, he shall require such member forthwith to renew his
bond, which is to be approved by the [governor]. Any member of the [board]
who fails to take oath and give bond within [thirty (30)] days from the date
of his appointment, or who fails to renew his bond within [thirty (30)] days
after it is demanded by the [governor], shall be guilty of neglect of duty and
may be removed by the [governor]. The cost of any bond given by any
member of the [board] under this section shall be taken to be a part of the
necessary expenses of the [board].

(8) Upon the request of the [board], the [department] shall employ such
personnel as may be necessary to carry out the functions of the [board]. No
person shall be employed to serve the [board] who is, or whose spouse,
parent or child is, an official of, or has a financial interest in, or financial
relation with, any operator engaged in gambling operations within this
state or any organization engaged in conducting horse racing within this
state. Any employee violating these prohibitions shall be subject to termi-
nation of employment.

(9) An administrator shall perform any and all duties that the [board]
shall assign him. The salary of the [administrator] shall be determined by
the [board] and approved by the [director] of the [department] and, in addi-
tion, he shall be reimbursed for all actual and necessary expenses incurred
by him in discharge of his official duties. The [administrator] shall keep
records of all proceedings of the [board] and shall preserve all records, books,
documents and other papers belonging to the [board] or entrusted to its
care. The [administrator] shall devote his full time to the duties of the
office and shall not hold any other office or employment.

(b) The [board] shall have general responsibility for the implementation
of this act. Its duties include, without limitation, the following:

(1) To decide promptly and in reasonable order all license applications.
Any party aggrieved by an action of the [board] denying, suspending, re-
voking, restricting or refusing to renew a license may request a hearing
before the [board]. A request for a hearing must be made to the [board] in
writing within [five (5)] days after service of notice of the action of the [board].
Notice of the action of the [board] shall be served either by personal deliv-
ery or by certified mail, postage prepaid, to the aggrieved party. Notice
served by certified mail shall be deemed complete on the business day fol-
lowing the date of such mailing. The [board] shall conduct all requested
hearings promptly and in reasonable order;

(2) To conduct all hearings pertaining to civil violations of this act or
rules and regulations promulgated hereunder;

(3) To promulgate such rules and regulations as in its judgment may be
necessary to protect or enhance the credibility and integrity of gambling
operations authorized by this act and the regulatory process hereunder;

(4) To provide for the establishment and collection of all license and
registration fees and taxes imposed by this act and the rules and regula-
Riverboat Gambling Act

tions issued pursuant hereto. All such fees and taxes shall be deposited into the [state gaming fund];

(5) To provide for the levy and collection of penalties and fines for the violation of provisions of this act and the rules and regulations promulgated hereunder. All such fines and penalties shall be deposited into the [education assistance fund], created by [insert appropriate state citation];

(6) To be present through its inspectors and agents any time gambling operations are conducted on any riverboat for the purpose of certifying the revenue thereof, receiving complaints from the public, and conducting such other investigations into the conduct of the gambling games and the maintenance of the equipment as from time to time the [board] may deem necessary and proper;

(7) To review and rule upon any complaint by a licensee regarding any investigative procedures of the [state] which are unnecessarily disruptive of gambling operations. The need to inspect and investigate shall be presumed at all times. The disruption of a licensee's operations shall be proved by clear and convincing evidence, and establish that:

(i) the procedures had no reasonable law enforcement purposes, and

(ii) the procedures were so disruptive as to unreasonably inhibit gambling operations;

(8) To hold at least [one (1)] meeting each quarter of the fiscal year. In addition, special meetings may be called by the [chairman] or any [two (2)] [board members] upon [seventy-two (72)] hours written notice to each member. All [board] meetings shall be subject to the [open meetings act]. [Three (3)] members of the [board] shall constitute a quorum, and [three (3)] votes shall be required for any final determination by the [board]. The [board] shall keep a complete and accurate record of all its meetings. A majority of the members of the [board] shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power which this act requires the [board members] to transact, perform or exercise en banc, except that, upon order of the [board], one of the [board members] or an [administrative law judge] designated by the [board] may conduct any hearing provided for under this act or by [board] rule and may recommend findings and decisions to the [board]. The [board member] or [administrative law judge] conducting such hearing shall have all powers and rights granted to the [board] in this act. The record made at the time of the hearing shall be reviewed by the [board], or a majority thereof, and the findings and decision of the majority of the [board] shall constitute the order of the [board] in such case;

(9) To maintain records which are separate and distinct from the records of any other [state board] or [commission]. Such records shall be available for public inspection and shall accurately reflect all [board] proceedings;

(10) To file a written annual report with the [governor] on or before [date] each year and such additional reports as the [governor] may request. The
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annual report shall include a statement of receipts and disbursements by
the [board], actions taken by the [board], and any additional information
and recommendations which the [board] may deem valuable or which the
[governor] may request;

(11) To review the patterns of wagering and wins and losses by persons
on riverboat gambling operations under this act, and make recommenda-
tions to the [governor] and the [general assembly], by [date], as to whether
limits on wagering losses should be imposed; and

(12) To assume responsibility for the administration and enforcement of
the [bingo license and tax act], the [charitable games act], and the [pull
tabs and jar games act] if such responsibility is delegated to it by the [director
of revenue].

(c) The [board] shall have jurisdiction over and shall supervise all gam-ling operations governed by this act. The [board] shall have all powers
necessary and proper to fully and effectively execute the provisions of this
act, including, but not limited to, the following:

(1) To investigate applicants and determine the eligibility of appli-
cants for licenses and to select among competing applicants the applicants
which best serve the interests of the citizens of [state].

(2) To have jurisdiction and supervision over all riverboat gambling
operations in this state and all persons on riverboats where gambling op-
perations are conducted.

(3) To promulgate rules and regulations for the purpose of adminis-
tering the provisions of this act and to prescribe rules, regulations and
conditions under which all riverboat gambling in the state shall be con-
ducted. Such rules and regulations are to provide for the prevention of
practices detrimental to the public interest and for the best interests of
riverboat gambling, including rules and regulations regarding the inspec-
tion of such riverboats and the review of any permits or licenses necessary
to operate a riverboat under any laws or regulations applicable to riverboats,
and to impose penalties for violations thereof.

(4) To enter the office, riverboats, facilities, or other places of business
of a licensee, where evidence of the compliance or noncompliance with the
provisions of this act is likely to be found.

(5) To investigate alleged violations of this act or the rules of the
[board] and to take appropriate disciplinary action against a licensee or a
holder of an occupational license for a violation, or institute appropriate
legal action for enforcement, or both.

(6) To adopt standards for the licensing of all persons under this act,
as well as for electronic or mechanical gambling games, and to establish
fees for such licenses.

(7) To adopt appropriate standards for all riverboats and facilities.

(8) To require that the records, including financial or other state-
ments of any licensee under this act, shall be kept in such manner as pre-
scribed by the [board] and that any such licensee involved in the ownership
or management of gambling operations submit to the [board] an annual
balance sheet and profit and loss statement, list of the stockholders or other
persons having a [one (1)] percent or greater beneficial interest in the gam-
bling activities of each licensee, and any other information the [board] deems
necessary in order to effectively administer this act and all rules, regula-
tions, orders and final decisions promulgated under this act.

(9) To conduct hearings, issue subpoenas for the attendance of witnesses
and subpoenas duces tecum for the production of books, records and other
pertinent documents in accordance with the [state administrative proce-
dure act], and to administer oaths and affirmations to the witnesses, when,
in the judgment of the [board], it is necessary to administer or enforce this
act or the [board] rules.

(10) To prescribe a form to be used by any licensee involved in the
ownership or management of gambling operations as an application for
employment for their employees.

(11) To revoke or suspend licenses, as the [board] may see fit and in
compliance with applicable laws of the state regarding administrative pro-
cedures, and to review applications for the renewal of licenses. The [board]
may suspend an owners license, without notice or hearing, upon a determi-
nation that the safety or health of patrons or employees is jeopardized by
continuing a riverboat's operation. The suspension may remain in effect
until the [board] determines that the cause for suspension has been abated.
The [board] may revoke the owners license upon a determination that the
owner has not made satisfactory progress toward abating the hazard.

(12) To eject or exclude or authorize the ejection or exclusion of, any
person from riverboat gambling facilities where such person is in violation
of this act, rules and regulations hereunder, or final orders of the [board],
or where such person's conduct or reputation is such that his presence within
the riverboat gambling facilities may, in the opinion of the [board], call into
question the honesty and integrity of the gambling operations or interfere
with orderly conduct thereof; provided that the propriety of such ejection
or exclusion is subject to subsequent hearing by the [board].

(13) To require all licensees of gambling operations to utilize a cash-
less wagering system whereby all players' money is converted to tokens,
electronic cards, or chips which shall be used only for wagering in the gam-
bling establishment.

(14) To authorize the routes of a riverboat and the stops which a
riverboat may make.

(15) To suspend, revoke or restrict licenses, to require the removal of
a licensee or an employee of a licensee for a violation of this act or a [board]
rule or for engaging in a fraudulent practice, and to impose civil penalties
of up to [five thousand (5,000)] dollars against individuals and up to [ten
thousand (10,000)] dollars or an amount equal to the daily gross receipts,
whichever is larger, against licensees for each violation of any provision of
this act, any rules adopted by the [board], any order of the [board] or any
other action which, in the [board's] discretion, is a detriment or impedi-
ment to riverboat gambling operations.

(16) To hire employees to gather information, conduct investigations
and carry out any other tasks contemplated under this act.

(17) To establish minimum levels of insurance to be maintained by
licensees.

(18) To authorize a licensee to sell or serve alcoholic liquors, wine or
beer as defined in the [insert appropriate state citation] on board a riverboat
and to have exclusive authority to establish the hours for sale and con-
sumption of alcoholic liquor on board a riverboat, notwithstanding any pro-
vision of the [insert appropriate state citation] or any local ordinance. The
establishment of the hours for sale and consumption of alcoholic liquor on
board a riverboat is an exclusive power and function of the state. A home
rule unit may not establish the hours for sale and consumption of alcoholic
liquor on board a riverboat. This [amendatory act of 1991] is a denial and
limitation of home rule powers and functions under [insert appropriate
section of state constitution].

(19) After consultation with the U.S. Army Corps of Engineers, to
establish binding emergency orders upon the concurrence of a majority of
the members of the [board] regarding the navigability of rivers in the event
of extreme weather conditions, acts of God or other extreme circumstances.

(20) To delegate the execution of any of its powers under this act for
the purpose of administering and enforcing this act and its rules and regu-
lations hereunder.

(21) To take any other action as may be reasonable or appropriate to
enforce this act and rules and regulations hereunder.

(d) The [board] may seek and shall receive the cooperation of the [depart-
ment of state police] in conducting background investigations of applicants
and in fulfilling its responsibilities under this section. Costs incurred by
the [department of state police] as a result of such cooperation shall be paid
by the [board] in conformance with the requirements of [insert appropriate
state citation].
(3) An identification of any business, including, if applicable, the state of incorporation or registration, in which an applicant or licensee or an applicant's or licensee's spouse or children has an equity interest of more than [five (5)] percent. If an applicant or licensee is a corporation, partnership or other business entity, the applicant or licensee shall identify any other corporation, partnership or business entity in which it has an equity interest of [five (5)] percent, or more, including, if applicable, the state of incorporation or registration. This information need not be provided by a corporation, partnership or other business entity that has a pending registration statement filed with the Securities and Exchange Commission.

(4) Whether an applicant or licensee has been indicted, convicted, pleaded guilty or nolo contendere, or forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor (except for traffic violations), including the date, the name and location of the court, arresting agency and prosecuting agency, the case number, the offense, the disposition and the location and length of incarceration.

(5) Whether an applicant or licensee has had any license or certificate issued by a licensing authority in [state] or any other jurisdiction denied, restricted, suspended, revoked or not renewed and a statement describing the facts and circumstances concerning the denial, restriction, suspension, revocation or non-renewal, including the licensing authority, the date each such action was taken, and the reason for each such action.

(6) Whether an applicant or licensee has ever filed or had filed against it a proceeding in bankruptcy or has ever been involved in any formal process to adjust, defer, suspend or otherwise work out the payment of any debt including the date of filing, the name and location of the court, the case and number of the disposition.

(7) Whether an applicant or licensee has filed, or been served with a complaint or other notice filed with any public body, regarding the delinquency in the payment of, or a dispute over the filings concerning the payment of, any tax required under federal, state or local law, including the amount, type of tax, the taxing agency and time periods involved.

(8) A statement listing the names and titles of all public officials or officers of any unit of government, and relatives of said public officials or officers who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of or hold any debt instrument issued by, or hold or have any interest in any contractual or service relationship with, an applicant or licensee.
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(9) Whether an applicant or licensee has made, directly or indirectly, any political contribution, or any loans, donations or other payments, to any candidate or office holder, within [five (5)] years from the date of filing the application, including the amount and the method of payment.

(10) The name and business telephone number of the counsel representing an applicant or licensee in matters before the [board].

(11) A description of any proposed or approved riverboat gaming operation, including the type of boat, home dock location, expected economic benefit to the community, anticipated or actual number of employees, any statement from an applicant or licensee regarding compliance with federal and state affirmative action guidelines, projected or actual admissions and projected or actual adjusted gross gaming receipts.

(12) A description of the product or service to be supplied by an applicant for a suppliers license.

(b) Notwithstanding any applicable statutory provision to the contrary, the [board] shall, on written request from any person, also provide the following information:

(1) The amount of the wagering tax and admission tax paid daily to the state by the holder of an owners license.

(2) Whenever the [board] finds an applicant for an owners license unsuitable for licensing, a copy of the written letter outlining the reasons for the denial.

(3) Whenever the [board] has refused to grant leave for an applicant to withdraw his application, a copy of the letter outlining the reasons for the refusal.

(c) Subject to the above provisions, the [board] shall not disclose any information which would be barred by:

(1) The [state freedom of information act]; or

(2) The statutes, rules, regulations or intergovernmental agreements of any jurisdiction.

(d) The [board] may assess fees for the copying of information in accordance with the [state freedom of information act].

Section 7. [Application for Owners License]

(a) A qualified person may apply to the [board] for an owners license to conduct a riverboat gambling operation as provided in this act. The application shall be made on forms provided by the [board] and shall contain such information as the [board] prescribes, including but not limited to the identity of the riverboat on which such gambling operation is to be conducted and the exact location where such riverboat will be docked, a certification that the riverboat will be registered under this act at all times during which gambling operations are conducted on board, detailed information regarding the ownership and management of the applicant, and detailed personal information regarding the applicant. Information pro-
vided on the application shall be used as a basis for a thorough background
investigation which the [board] shall conduct with respect to each appli-
cant. An incomplete application shall be cause for denial of a license by the
[board].

(b) Applicants shall submit with their application all documents, resolu-
tions, and letters of support from the governing body that represents the
municipality or county wherein the licensee will dock.

(c) Each applicant shall disclose the identity of every person, association,
trust or corporation having a greater than [one (1)] percent direct or indi-
direct pecuniary interest in the riverboat gambling operation with respect to
which the license is sought. If the disclosed entity is a trust, the applica-
tion shall disclose the names and addresses of the beneficiaries; if a corpo-
rating the names and addresses of all stockholders and directors; if a part-
nership, the names and addresses of all partners, both general and limited.

(d) An application shall be filed with the [board] by [date] of the year
preceding any calendar year for which an applicant seeks an owners li-
cense; however, applications for an owners license permitting operations
on [date] shall be filed by [date]. An application fee of [fifty thousand (50,000)]
dollars shall be paid at the time of filing to defray the costs associated with
the background investigation conducted by the [board]. If the costs of the
investigation exceed [fifty thousand (50,000)] dollars, the applicant shall
pay the additional amount to the [board]. If the costs of the investigation
are less than [fifty thousand (50,000)] dollars, the applicant shall receive a
refund of the remaining amount. All information, records, interviews, re-
ports, statements, memoranda or other data supplied to or used by the
[board] in the course of its review or investigation of an application for a
license under this act shall be privileged, strictly confidential and shall be
used only for the purpose of evaluating an applicant. Such information,
records, interviews, reports, statements, memoranda or other data shall
not be admissible as evidence, nor discoverable in any action of any kind in
any court or before any tribunal, board, agency or person, except for any
action deemed necessary by the [board].

(e) The [board] shall charge each applicant a fee set by the [department
of state police] to defray the costs associated with the search and classifica-
tion of fingerprints obtained by the [board] with respect to the applicant’s
application. These fees shall be paid into the [state police services fund].

(f) The licensed owner shall be the person primarily responsible for the
boat itself. Only one riverboat gambling operation may be authorized by
the [board] on any riverboat. The applicant must identify each riverboat it
intends to use and certify that the riverboat: (1) has the authorized capac-
ity required in this act; (2) is accessible to disabled persons; (3) is either a
replica of a 19th century [state] riverboat or of a casino cruise ship design;
and (4) is fully registered and licensed in accordance with any applicable
laws.
(g) A person who knowingly makes a false statement on an application is guilty of a [Class A misdemeanor].

Section 8. [Owners Licenses.]
(a) The [board] shall issue owners licenses to persons, firms or corporations which apply for such licenses upon payment to the [board] of the non-refundable license fee set by the [board], upon payment of a [twenty-five thousand (25,000)] dollar license fee for the first year of operation and a [five thousand (5,000)] dollar license fee for each succeeding year and upon a determination by the [board] that the applicant is eligible for an owners license pursuant to this act and the rules of the [board]. A person, firm or corporation is ineligible to receive an owners license if:

(1) the person has been convicted of a felony under the laws of this state, any other state, or the United States;
(2) the person has been convicted of any violation of [state criminal code], or substantially similar laws of any other jurisdiction;
(3) the person has submitted an application for a license under this act which contains false information;
(4) the person is a member of the [board];
(5) a person defined in Section 8 (a)(1), (2), (3) or (4) is an officer, director or managerial employee of the firm or corporation;
(6) the firm or corporation employs a person defined in Section 8 (a)(1), (2), (3) or (4) who participates in the management or operation of gambling operations authorized under this act;
(7) the person, firm or corporation owns more than a [ten (10] percent ownership interest in any entity holding an owners license issued under this act; or
(8) a license of the person, firm or corporation issued under this act, or a license to own or operate gambling facilities in any other jurisdiction, has been revoked.

(b) In determining whether to grant an owners license to an applicant, the [board] shall consider:

(1) the character, reputation, experience and financial integrity of the applicants and of any other or separate person that either:

   (i) controls, directly or indirectly, such applicant, or
   (ii) is controlled, directly or indirectly, by such applicant or by a person which controls, directly or indirectly, such applicant;

(2) the facilities or proposed facilities for the conduct of riverboat gambling;
(3) the highest prospective total revenue to be derived by the state from the conduct of riverboat gambling;
(4) the good faith affirmative action plan of each applicant to recruit, train and upgrade minorities in all employment classifications;
(5) the financial ability of the applicant to purchase and maintain ad-
equate liability and casualty insurance;

(6) whether the applicant has adequate capitalization to provide and maintain, for the duration of a license, a riverboat; and

(7) the extent to which the applicant exceeds or meets other standards for the issuance of an owners license which the [board] may adopt by rule.

c) Each owners license shall specify the place where riverboats shall operate and dock.

d) Each applicant shall submit with his application, on forms provided by the [board], [two (2)] sets of his fingerprints.

e) The [board] may issue up to [ten (10)] licenses authorizing the holders of such licenses to own riverboats. In the application for an owners license, the applicant shall state the dock at which the riverboat is based and the navigable stream on which the riverboat will operate. The [board] shall issue [five (5)] licenses to become effective not earlier than [date]. [Four (4)] of such licenses shall authorize riverboat gambling on [insert reference to appropriate waterway], [one (1)] of which shall authorize riverboat gambling from a home dock in [insert appropriate reference to appropriate waterway]. The other license shall authorize riverboat gambling on [insert reference to appropriate waterway]. The [board] shall issue [one (1)] additional license to become effective not earlier than [date], which shall authorize riverboat gambling on the [insert reference to appropriate state waterway]. The [board] shall consider the economic benefit which riverboat gambling confers on the state, and shall seek to assure that all regions of the state share in the economic benefits of riverboat gambling.

(1) In granting all licenses, the [board] may give favorable consideration to economically depressed areas of the state, to applicants presenting plans which provide for significant economic development over a large geographic area, and to applicants who currently operate non-gambling riverboats in [state]. The [board] shall review all applications for owners licenses, and shall inform each applicant of the [board’s] decision.

(2) The [board] may revoke the owners license of a licensee which fails to begin regular riverboat cruises within [twelve (12)] months of receipt of the [board’s] approval of the application if the [board] determines that license revocation is in the best interests of the state.

(f) The first [ten (10)] owners licenses issued under this act shall permit the holder to own up to [two (2)] riverboats and equipment thereon for a period of [three (3)] years after the effective date of the license. Holders of the first [ten (10)] owners licenses must pay the annual license fee for each of the [three (3)] years during which they are authorized to own riverboats.

(g) Upon the termination, expiration or revocation of each of the first [ten (10)] licenses, which shall be issued for a [three (3)] year period, all
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licenses are renewable annually upon payment of the fee and a determination by the [board] that the licensee continues to meet all of the requirements of this act and the [board's] rules.

(h) An owners license shall entitle the licensee to own up to [two (2)] riverboats. A licensee shall limit the number of gambling participants to [one thousand two hundred (1,200)] for any such owners license. Riverboats licensed to operate on [insert reference to appropriate waterway] shall have an authorized capacity of at least [five hundred (500)] persons. Any other riverboat licensed under this act shall have an authorized capacity of at least [four hundred (400)] persons.

(i) A licensed owner is authorized to apply to the [board] for and, if approved therefor, to receive all licenses from the [board] necessary for the operation of a riverboat, including a liquor license, a license to prepare and serve food for human consumption, and other necessary licenses. All use, occupation and excise taxes which apply to the sale of food and beverages in this state and all taxes imposed on the sale or use of tangible personal property apply to such sales aboard the riverboat.

(j) None of the first [five (5)] licenses issued by the [board] to become effective not earlier than [date] shall authorize a riverboat to dock in a municipality with a population of under [two thousand (2,000)]; however, this restriction does not apply to any additional licenses issued by the [board] to become effective not earlier than [date]. The [board] may issue a license authorizing a riverboat to dock in a municipality only if, prior to the issuance of the license, the governing body of the municipality has by a majority vote approved the docking of riverboats in the municipality. The [board] may issue a license authorizing a riverboat to dock in areas of a county outside any municipality only if, prior to the issuance of the license, the governing body of the county has by a majority vote approved of the docking of riverboats within such areas.

(k) Nothing in this act shall be interpreted to prohibit a licensed owner from operating a school for the training of any occupational licensee.

Section 9. [Suppliers Licenses.]

(a) The [board] may issue a suppliers license to such persons, firms or corporations which apply therefore upon the payment of a non-refundable application fee set by the [board], upon a determination by the [board] that the applicant is eligible for a suppliers license and upon payment of a [five thousand (5,000)] dollar annual license fee.

(b) The holder of a suppliers license is authorized to sell or lease, and to contract to sell or lease, gambling equipment and supplies to any licensee involved in the ownership or management of gambling operations.

(c) Gambling supplies and equipment may not be distributed unless supplies and equipment conform to standards adopted by rules of the [board].

(d) A person, firm or corporation is ineligible to receive a suppliers license
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(1) the person has been convicted of a felony under the laws of this state, any other state, or the United states;
(2) the person has been convicted of any violation of [state criminal code], or substantially similar laws of any other jurisdiction;
(3) the person has submitted an application for a license under this act which contains false information;
(4) the person is a member of the [board];
(5) the firm or corporation is one in which a person defined in Section 9 (d)(1), (2), (3) or (4) is an officer, director or managerial employee;
(6) the firm or corporation employs a person who participates in the management or operation of riverboat gambling authorized under this act;
(7) the license of the person, firm or corporation issued under this act, or a license to own or operate gambling facilities in any other jurisdiction, has been revoked.

(e) Any person that supplies any equipment, devices, or supplies to a licensed riverboat gambling operation must first obtain a suppliers license. A supplier shall furnish to the [board] a list of all equipment, devices and supplies offered for sale or lease in connection with gambling games authorized under this act. A supplier shall keep books and records for the furnishing of equipment, devices and supplies to gambling operations separate and distinct from any other business that the supplier might operate. A supplier shall file a quarterly return with the [board] listing all sales and leases. A supplier shall permanently affix its name to all its equipment, devices, and supplies for gambling operations. Any supplier's equipment, devices or supplies which are used by any person in an unauthorized gambling operation shall be forfeited to the state. A licensed owner may own its own equipment, devices and supplies. Each holder of an owners license under the act shall file an annual report listing its inventories of gambling equipment, devices and supplies.

(f) Any person who knowingly makes a false statement on an application is guilty of a [Class A misdemeanor].

(g) Any gambling equipment, devices and supplies provided by any licensed supplier may either be repaired on the riverboat or removed from the riverboat to an on-shore facility owned by the holder of an owners license for repair.

Section 10. [Occupational Licenses.]
(a) The [board] may issue an occupational license to an applicant upon the payment of a non-refundable fee set by the [board], upon a determination by the [board] that the applicant is eligible for an occupational license and upon payment of an annual license fee in an amount to be established. To be eligible for an occupational license, an applicant must:
(1) be at least [twenty-one (21)] years of age if the applicant will perform
any function involved in gaming by patrons. Any applicant seeking an oc-
(18) pational license for a non-gaming function shall be at least [eighteen
years of age;
(2) not have been convicted of a felony offense, a violation of [state crimi-
nal code], or a similar statute of any other jurisdiction, or a crime involving
dishonesty or moral turpitude;
(3) have demonstrated a level of skill or knowledge which the [board]
determines to be necessary in order to operate gambling aboard a riverboat;
and
(4) have met standards for the holding of an occupational license as
adopted by rules of the [board]. Such rules shall provide that any person or
entity seeking an occupational license to manage gambling operations here-
under shall be subject to background inquiries and further requirements
similar to those required of applicants for an owners license. Furthermore,
such rules shall provide that each such entity shall be permitted to manage
gambling operations for only one licensed owner.
(b) Each application for an occupational license shall be on forms pre-
scribed by the [board] and shall contain all information required by the
[board]. The applicant shall set forth in the application: whether he has
been issued prior gambling related licenses; whether he has been licensed
in any other state under any other name, and, if so, such name and his age;
and whether or not a permit or license issued to him in any other state has
been suspended, restricted or revoked, and, if so, for what period of time.
(c) Each applicant shall submit with his application, on forms provided
by the [board], [two (2)] sets of his fingerprints. The [board] shall charge
each applicant a fee set by the [department of state police] to defray the
costs associated with the search and classification of fingerprints obtained
by the [board] with respect to the applicant's application. These fees shall
be paid into the [state police services fund].
(d) The [board] may in its discretion refuse an occupational license to
any person: (1) who is unqualified to perform the duties required of such
applicant; (2) who fails to disclose or states falsely any information called
for in the application; (3) who has been found guilty of a violation of this act
or whose prior gambling related license or application therefor has been
suspended, restricted, revoked or denied for just cause in any other state;
or (4) for any other just cause.
(e) The [board] may suspend, revoke or restrict any occupational licensee:
(1) for violation of any provision of this act; (2) for violation of any of the
rules and regulations of the [board]; (3) for any cause which, if known to the
[board], would have disqualified the applicant from receiving such license;
or (4) for default in the payment of any obligation or debt due to the state of
[state]; or (5) for any other just cause.
(f) A person who knowingly makes a false statement on an application is
guilty of a [Class A misdemeanor].
(g) Any license issued pursuant to this section shall be valid for a period of one (1) year from the date of issuance.

(h) Nothing in this act shall be interpreted to prohibit a licensed owner from entering into an agreement with a school approved under the [state private business and vocational schools act] for the training of any occupational licensee. Any training offered by such a school shall be in accordance with a written agreement between the licensed owner and the school.

(i) Any training provided for occupational licensees may be conducted either on the riverboat or at a school with which a licensed owner has entered into an agreement pursuant to Section 10 (h).

Section 11. [Bond of Licensee.] Before an owner's license is issued, the licensee shall post a bond in the sum of two hundred thousand (200,000) dollars to [state]. The bond shall be used to guarantee that the licensee faithfully makes the payments, keeps his books and records and makes reports, and conducts his games of chance in conformity with this act and the rules adopted by the [board]. The bond shall not be canceled by a surety on less than thirty (30) days' notice in writing to the [board]. If a bond is canceled and the licensee fails to file a new bond with the [board] in the required amount or before the effective date of cancellation, the licensee's license shall be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

Section 12. [Conduct of Gambling.]

(a) Gambling may be conducted by licensed owners aboard riverboats, subject to the following standards:

(1) No gambling may be conducted while a riverboat is docked.

(2) Riverboat cruises may not exceed four (4) hours for a round trip, with the exception of any extended cruises, each of which shall be expressly approved by the [board].

(3) Minimum and maximum wagers on games shall be set by the licensee.

(4) Agents of the [board] and the [department of state police] may board and inspect any riverboat at any time for the purpose of determining whether this act is being complied with. Every riverboat, if under way and being hailed by a law enforcement officer or agent of the [board], must stop immediately and lay to.

(5) Employees of the [board] shall have the right to be present on the riverboat or on adjacent facilities under the control of the licensee.

(6) Gambling equipment and supplies customarily used in conducting riverboat gambling must be purchased or leased only from suppliers licensed for such purpose under this act.

(7) Persons licensed under this act shall permit no form of wagering on gambling games except as permitted by this act.
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(8) Wagers may be received only from a person present on a licensed riverboat. No person present on a licensed riverboat shall place or attempt to place a wager on behalf of another person who is not present on the riverboat.

(9) Wagering shall not be conducted with money or other negotiable currency.

(10) A person under age twenty-one (21) shall not be permitted on an area of a riverboat where gambling is being conducted, except for a person at least eighteen (18) years of age who is an employee of the riverboat gambling operation. No employee under age twenty-one (21) shall perform any function involved in gambling by the patrons. No person under age twenty-one (21) shall be permitted to make a wager under this act.

(11) Gambling excursion cruises are permitted only when the navigable stream for which the riverboat is licensed is navigable, as determined by the [board] in consultation with the U.S. Army Corps of Engineers.

(12) All tokens, chips or electronic cards used to make wagers must be purchased from a licensed owner either aboard a riverboat or at an onshore facility which has been approved by the [board] and which is located where the riverboat docks. The tokens, chips or electronic cards may be purchased by means of an agreement under which the owner extends credit to the patron. Such tokens, chips or electronic cards may be used while aboard the riverboat only for the purpose of making wagers on gambling games.

(13) Notwithstanding any other section of this act, in addition to the other licenses authorized under this act, the [board] may issue special event licenses allowing persons who are not otherwise licensed to conduct riverboat gambling to conduct such gambling on a specified date or series of dates. Riverboat gambling under such a license may take place on a riverboat not normally used for riverboat gambling. The [board] shall establish standards, fees and fines for, and limitations upon, such licenses, which may differ from the standards, fees, fines and limitations otherwise applicable under this act. All such fees shall be deposited into the [state gaming fund]. All such fines shall be deposited into the [education assistance fund].

(14) In addition to the above, gambling must be conducted in accordance with all rules adopted by the [board].

Section 13. [Collection of Amounts Owing under Credit Agreements.]
Notwithstanding any applicable statutory provision to the contrary, a licensed owner who extends credit to a riverboat gambling patron pursuant to Section 12 (12) of this act is expressly authorized to institute a cause of action to collect any amounts due and owing under the extension of credit, as well as the owner’s costs, expenses and reasonable attorney’s fees incurred in collection.

Section 14. [Admission Tax; Fees.]
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(a) A tax is hereby imposed upon admissions to gambling excursions authorized pursuant to this act at a rate of [two (2)] dollars per person admitted. This admission tax is imposed upon the licensed owner conducting the gambling excursion.

(1) If tickets are issued which are good for more than one gambling excursion, the admission tax shall be paid for each person using the ticket on each gambling excursion for which the ticket is used.

(2) If free passes or complimentary admission tickets are issued, the licensee shall pay the same tax upon those passes or complimentary tickets as if they were sold at the regular and usual admission rate.

(3) The riverboat licensee may issue tax-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the riverboat.

(4) The number and issuance of tax-free passes is subject to the rules of the [board], and a list of all persons to whom the tax-free passes are issued shall be filed with the [board].

(b) From the [two (2)] dollar tax imposed under Section 14 (a), a municipality shall receive from the state [one (1)] dollar for each person embarking on a riverboat docked within the municipality, and a county shall receive [one (1)] dollar for each person embarking on a riverboat docked within the county but outside the boundaries of any municipality. The municipality's or county's share shall be collected by the [board] on behalf of the state and remitted quarterly by the state, subject to appropriation, to the treasurer of the unit of local government for deposit in the [general fund].

(c) The licensed owner shall pay the entire admission tax to the [board]. Such payments shall be made daily. Accompanying each payment shall be a return on forms provided by the [board] which shall include other information regarding admissions as the [board] may require. Failure to submit either the payment or the return within the specified time may result in suspension or revocation of the owners license.

(d) The [board] shall administer and collect the admission tax imposed by this section, to the extent practicable, in a manner consistent with the provisions of the retailers' occupation tax act.

Section 15. [Wagering Tax; Rate; Distribution.]

(a) A tax is imposed on the adjusted gross receipts received from gambling games authorized under this act at the rate of [twenty (20)] percent. The taxes imposed by this section shall be paid by the licensed owner to the [board] after the close of the day when the wagers were made.

(b) [Twenty-five (25)] percent of the tax revenue deposited in the [state gaming fund] under this section shall be paid, subject to appropriation by the [general assembly], to the unit of local government which is designated as the home dock of the riverboat.

(c) Appropriations, as approved by the [general assembly], may be made from the [state gaming fund] to the [department of revenue] and the [de-
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part of state police] for the administration and enforcement of this
act.
(d) The remainder of the funds generated by this act shall be paid into the
[education assistance fund].
(e) Nothing in this act shall prohibit the unit of local government design-
nated as the home dock of the riverboat from entering into agreements
with other units of local government in this state or in other states to share
its portion of the tax revenue.

Section 16. [Licensees - Records - Reports - Supervision.]
(a) A licensed owner shall keep his books and records so as to clearly show
the following:
(1) The amount received daily from admission fees.
(2) The total amount of gross receipts.
(3) The total amount of the adjusted gross receipts.
(b) The licensed owner shall furnish to the [board] reports and informa-
tion as the [board] may require with respect to its activities on forms de-
signed and supplied for such purpose by the [board].
(c) The books and records kept by a licensed owner as provided by this
section are public records and the examination, publication, and dissemi-
nation of the books and records are governed by the provisions of the [state
freedom of information act].

Section 17. [Audit of Licensee Operations.] Within [ninety (90)] days after
the end of each quarter of each fiscal year, the licensed owner shall trans-
mit to the [board] an audit of the financial transactions and condition of the
licensee's total operations. All audits shall be conducted by certified public
accountants selected by the [board]. Each certified public accountant must
be registered in the state of [state] under the [state public accounting act].
The compensation for each certified public accountant shall be paid directly
by the licensed owner to the certified public accountant.

Section 18. [Annual Report of Board.] The [board] shall make an annual
report to the [governor], for the period ending [date] of each year. Included
in the report shall be an account of the [board] actions, its financial position
and results of operation under this act, the practical results attained under
this act and any recommendations for legislation which the [board] deems
advisable.

Section 19. [Administrative Procedures.] The [state administrative pro-
cedure act] shall apply to all administrative rules and procedures of the
[board] under this act, except that:
(1) [insert appropriate sections of the state administrative procedure act]
does not apply to final orders, decisions and opinions of the [board];

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(2) [insert appropriate section of the state administrative procedure act] does not apply to forms established by the [board] for use under this act; and

(3) the provisions of the [state administrative procedure act] regarding proposals for decision are excluded under this act; and

(4) the provisions of the [state administrative procedure act] do not apply so as to prevent summary suspension of any license pending revocation or other action, which suspension shall remain in effect unless modified by the [board] or unless the [board's] decision is reversed on the merits upon judicial review.

Section 20. [Judicial Review.]
(a) Jurisdiction and venue for the judicial review of a final order of the [board] relating to owners, suppliers or special event licenses is vested in the [appellate court] of the judicial district in which [insert reference to appropriate jurisdiction] is located. A petition for judicial review of a final order of the [board] must be filed in the [appellate court], within [thirty-five (35)] days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.

(b) Judicial review of all other final orders of the [board] shall be conducted in accordance with the [administrative review law].

Section 21. [Prohibited Activities - Penalty.]
(a) A person is guilty of a [Class A misdemeanor] for doing any of the following:

(1) Operating a gambling excursion where wagering is used or to be used without a license issued by the [board].

(2) Operating a gambling excursion where wagering is permitted other than in the manner specified by Section 12 of this act.

(b) A person is guilty of a [Class B misdemeanor] for doing any of the following:

(1) permitting a person under [twenty-one (21)] years to make a wager; or

(2) violating Section 12 (12) of this act.

(c) A person wagering or accepting a wager at any location outside the riverboat is subject to the penalties in [insert appropriate state citation].

(d) A person commits a [Class 4 felony] and, in addition, shall be barred for life from riverboats under the jurisdiction of the [board], if the person does any of the following:

(1) Offers, promises, or gives anything of value or benefit to a person who is connected with a riverboat owner including, but not limited to, an officer or employee of a licensed owner or holder of an occupational license pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the
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outcome of a gambling game, or to influence official action of a member of the [board].

(2) Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with a riverboat including, but not limited to, an officer or employee of a licensed owner, or holder of an occupational license, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the [board].

(3) Uses or possesses with the intent to use a device to assist:

(i) In projecting the outcome of the game.

(ii) In keeping track of the cards played.

(iii) In analyzing the probability of the occurrence of an event relating to the gambling game.

(iv) In analyzing the strategy for playing or betting to be used in the game except as permitted by the [board].

(4) Cheats at a gambling game.

(5) Manufactures, sells, or distributes any cards, chips, dice, game or device which is intended to be used to violate any provision of this act.

(6) Alters or misrepresents the outcome of a gambling game on which wagers have been made after the outcome is made sure but before it is revealed to the players.

(7) Places a bet after acquiring knowledge, not available to all players, of the outcome of the gambling game which is subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome.

(8) Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

(9) Uses counterfeit chips or tokens in a gambling game.

(10) Possesses any key or device designed for the purpose of opening, entering, or affecting the operation of a gambling game, drop box, or an electronic or mechanical device connected with the gambling game or for removing coins, tokens, chips or other contents of a gambling game. Section 21 (d)(10) does not apply to a gambling licensee or employee of a gambling licensee acting in furtherance of the employee's employment.

(e) The possession of more than one of the devices described in Section 21 (d) (3), (5) or (10) permits a rebuttable presumption that the possessor intended to use the devices for cheating. An action to prosecute any crime occurring during a gambling excursion shall be tried in the county of the dock at which the riverboat is based.
Section 22. [Forfeiture of Property.]
(a) Except as provided in Section 22 (b), any riverboat used for the conduct of gambling games in violation of this act shall be considered a gambling place in violation of [state criminal code], as now or hereafter amended. Every gambling device found on a riverboat operating gambling games in violation of this act shall be subject to seizure, confiscation and destruction as provided in [state criminal code], as now or hereafter amended.
(b) It is not a violation of this act for a riverboat or other watercraft which is licensed for gaming by a contiguous state to dock on the shores of this state if the municipality having jurisdiction of the shores, or the county in the case of unincorporated areas, has granted permission for docking and no gaming is conducted on the riverboat or other watercraft while it is docked on the shores of this state. No gambling device shall be subject to seizure, confiscation or destruction if the gambling device is located on a riverboat or other watercraft which is licensed for gaming by a contiguous state and which is docked on the shores of this state if the municipality having jurisdiction of the shores, or the county in the case of unincorporated areas, has granted permission for docking and no gaming is conducted on the riverboat or other watercraft while it is docked on the shores of this state.

Section 23. [Prohibited Activities - Civil Penalties.] Any person who conducts a gambling operation without first obtaining a license to do so, or who continues to conduct such games after revocation of his license, or any licensee who conducts or allows to be conducted any unauthorized gambling games on a riverboat where it is authorized to conduct its riverboat gambling operation, in addition to other penalties provided, shall be subject to a civil penalty equal to the amount of gross receipts derived from wagering on the gambling games, whether unauthorized or authorized, conducted on that day as well as confiscation and forfeiture of all gambling game equipment used in the conduct of unauthorized gambling games.

Section 24. [Limitation on Taxation of Licensees.] Licensees shall not be subjected to any excise tax, license tax, permit tax, privilege tax, occupation tax or excursion tax which is imposed exclusively upon the licensee by the state or any political subdivision thereof, except as provided in this act.

Section 25. [Criminal History Record Information.] Whenever the [board] is authorized or required by law to consider some aspect of criminal history record information for the purpose of carrying out its statutory powers and responsibilities, the [board] shall, in the form and manner required by the [department of state police] and the Federal Bureau of Investigation, cause to be conducted a criminal history record investigation to obtain any information currently or thereafter contained in the files of the [department of...
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8 state police] or the Federal Bureau of Investigation. The [department of
9 state police] shall provide, on the [board's] request, information concerning
10 any criminal charges, and their disposition, currently or thereafter filed
11 against an applicant for or holder of an occupational license. Information
12 obtained as a result of an investigation under this section shall be used in
13 determining eligibility for an occupational license under Section 10 of this
14 act. Upon request and payment of fees in conformance with the require-
15 ments of the [state civil administrative code], the [department of state po-
16 lice] is authorized to furnish, pursuant to positive identification, such infor-
17 mation contained in state files as is necessary to fulfill the request.

Section 26. [The State Gaming Fund.] On or after the effective date of
2 this act, all of the fees and taxes collected pursuant to this act shall be
3 deposited into the [state gaming fund], a special fund in the [state trea-
4 sury], which is hereby created. Fines and penalties collected pursuant to
5 this act shall be deposited into the [education assistance fund].

Section 27. [Effective Date.] [Insert effective date.]
Livestock Exhibitions

This act is based on Ohio legislation enacted in 1995. This act allows the Director of the Ohio Department of Agriculture to adopt rules governing livestock exhibitions. It creates an Advisory Committee on Livestock Exhibitions. The bill authorizes the Director of the Department of Agriculture to inspect and investigate livestock exhibitions or matters involving livestock that are registered, entered in or raised for exhibitions. The bill prohibits tampering with or using unapproved drugs on livestock to change the true confirmation or condition of an animal.

Livestock means cattle, sheep, goats, rabbits, poultry, swine or any animal used for food or in the production of food. Livestock exhibits include shows or sales at the state or county fairs. Tampering refers to surgically altering an animal for cosmetic purposes or injecting it with drugs such as steroids for cosmetic purposes.

This act may be of interest to states where large monetary rewards are offered for champion livestock which are shown at fairs. Similar legislation has also been adopted in the state of Colorado.

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(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Livestock Exhibitions Act.

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

(1) “Exhibition” means any of the following:

(i) A show or sale of livestock at a fair or elsewhere that is sponsored by or under the control of a county or independent agricultural society organized under [insert appropriate state citation];

(ii) A show or sale of livestock at the [state] State Fair;

(iii) A livestock show at a fair or elsewhere or a livestock sale at or associated with a fair or livestock show that is assembled for any length of time;

(iv) A livestock show at a fair or elsewhere or a livestock sale at or associated with a fair or livestock show that includes livestock with origins outside [state];

(v) Any show or sale of livestock at a fair or elsewhere that is specified by rule of the [director of agriculture] adopted under Section 4 of this act.

(2) “Livestock” means any animal generally used for food or in the production of food, including cattle, sheep, goats, rabbits, poultry, swine, and any other animal included by the [director] by rules adopted under Section
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4 of this act.

(3) “Sponsor” means any of the following:

(i) A county or independent agricultural society organized under [insert appropriate state citation];

(ii) The [state] State Fair;

(iii) Any other public or private entity sponsoring an exhibition.

Section 3. [Livestock Exhibitions Committee; Compensation; Powers.]

(a) There is hereby created the [advisory committee on livestock exhibitions] consisting of not more than [twenty-one (21)] members, as follows:

(1) The [director of agriculture] or the [director’s designee], who may be the [chief of the division of fairs];

(2) The [state veterinarian], or the [state veterinarian's designee];

(3) A representative of the state cattlemen’s association, the state pure-bred dairy cattle association, the state pork producers council, the state poultry association, the state sheep improvement association, the state fair managers association, the state farm bureau federation, the state farmers union, the [state department of education's agricultural education service], the [state university extension], the national farmers organization, and the state grange, or their designees. Each of these members shall be chosen by the organization the member represents;

(4) The [chairperson] of the [state expositions commission], or the [chairperson's designee];

(5) [Three (3)] persons who shall be appointed by the [director], each of whom shall serve as a member of a board of directors of a county or independent agricultural society organized under [insert appropriate state citation]. Of the initial appointments made by the [director], [one (1)] shall be for a term ending on [date]; [one (1)] shall be for a term ending on [date]; and [one (1)] shall be for a term ending on [date];

(6) Not more than [three (3)] additional members appointed at the option of the [director]. If the [director] appoints [one (1)] or more additional members, the first additional appointments shall be for a term ending on [date], the second additional appointment shall be for a term ending on [date], and the third additional appointment shall be for a term ending on [date]. Following the completion of the initial terms of the appointments made by the [director], each term of office shall be [three (3)] years, commencing on [date] and ending on [date]. A member appointed by the [director] shall hold office from the date of the member’s appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member’s predecessor was appointed shall hold office for the remainder of the unexpired term. Any member shall continue in office subsequent to the expiration date of the member’s term until the member’s successor takes office or
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until a period of [ninety (90)] days has elapsed, whichever occurs first.
Members may be removed from the [committee] only for misfeasance, mal-
feasance, or nonfeasance. A vacancy on the [committee] shall not impair
the right of the other members to exercise all of the functions of the [com-
mittee]. A simple majority constitutes a quorum for the conduct of busi-
ness of the [committee]. On request, each member shall be reimbursed for
the actual and necessary expenses incurred in the discharge of the member’s
duties as a [committee] member.

(b) The [committee] shall be considered a part of the [department of agri-
culture] for the administrative purposes required by this section, including
the payment of expenses authorized to each member of the [committee]
under this section. The [director] or the director’s designee shall serve as
[chairperson] of the [committee]. The [director] shall designate an employee
or official of the [department] to act as the [secretary of the committee].
The [secretary] shall keep the minutes of the [committee’s] meetings and a
permanent journal of all meetings, proceedings, findings, determinations,
and recommendations of the [committee], including an itemized statement
of the expenses allowed to each member of the [committee] under this sec-
tion. The [committee] may request from the [director], and the [director]
shall provide, meeting space, assistance, services, and information to en-
able the [committee] to carry out its duties.

(c) The [committee] shall meet at least once annually after [date] and
before [date]. The [committee] may meet at other times as the [chairper-
son] or a majority of the committee members considers appropriate, pro-
vided the [chairperson] gives members written notice of any meeting at
least [seven (7)] days prior to the meeting.

(d) The [committee] may propose rules and may advise and counsel the
[director] on all matters relating to the administration of exhibitions and
any other matters that the [committee] and the [director] consider appro-
priate in carrying out the provisions of [insert appropriate state citations].

Section 4. [Adoption of Health and Safety Rules.]
(a) The [director of agriculture], in accordance with [insert appropriate
state citation], may adopt rules for the governance and administration of
exhibitions, and to provide for related food safety and the health, safety,
and welfare of livestock, and may adopt by reference rules adopted by other
public or private agencies such as the [state farm animal care commission].
Rules of the [director] may specify those grooming, commercial, or medical
practices that are generally accepted within the community of persons ex-
hibiting livestock and may specify false, deceptive, misleading, unethical,
or unprofessional practices that constitute grounds for disciplinary action
under Section 6 of this act.

(b) Rules of the [director] that apply to exhibition-related food safety and
the health, safety, and welfare of livestock shall apply to every exhibition
operated within this state and to every sponsor. A sponsor may exempt itself from any other rules adopted by the [director] under this section that do not apply to food safety or the health, safety, or welfare of livestock, including, without limitation, rules for the governance and administration of exhibitions, by filing, not later than [thirty (30)] days before the commencement of its exhibition, with the [director], on a form prescribed and provided by the [director], a list of the rules that shall not apply to its exhibition.

(c) The [director] may provide mediation, dispute resolution, and arbitration services in any dispute involving an alleged violation of a rule adopted under Section 4 (a) of this section from which the sponsor could have exempted itself under Section 4 (b) of this section, but chose not to.

(d) Nothing in this section or in Sections 5 or 6 of this act precludes any sponsor from doing any of the following:

(1) Adopting rules or written policies for the governance and administration of its own exhibition, including, without limitation, the adoption of any rule by reference to a rule adopted by other public or private agencies;

(2) Adopting rules or written policies providing for appeals regarding alleged violations of rules or written policies adopted by the sponsor;

(3) Taking any disciplinary action established in the rules or written policies adopted by the sponsor in connection with violations of the sponsor's rules or written policies of the governance and administration of its exhibition. Any such disciplinary action taken by a sponsor in regard to its own exhibition is in addition to any disciplinary action taken by the [director] under Section 6 of this act;

(4) Establishing by rule or written policy criteria and procedures for the reinstatement of any person disqualified from participation in the sponsor's exhibition by a disciplinary action taken by the sponsor and for deciding requests for reinstatement submitted under those rules.

Section 5. [Random Investigation and Inspection of Livestock.]
(a)(1) The [director of agriculture] may inspect and investigate any matter involving livestock that is not present at an exhibition, but is registered or entered in an exhibition, or raised with the apparent intent of being so registered or entered, when the director reasonably suspects any of the following:

(i) There has been a violation of Section 8 or 10 of this act or a rule adopted under Section 4 of this act;

(ii) The livestock's health, safety, or welfare may be threatened;

(iii) The livestock constitutes a threat to or may adversely affect food safety.

(2) The [director] may conduct random inspections and investigations regarding any matter involving livestock present at an exhibition.

(3) With the consent of the property owner and the livestock owner, the
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[director] or the [director's designee] may enter at all reasonable times any premises, facility, pen, yard, vehicle, or means of conveyance for the purpose of sampling and testing livestock registered or entered in an exhibition or raised with the apparent intent of being so registered or entered. If the [director] or the [director's designee] is denied access to any premises, facility, pen, yard, vehicle, or means of conveyance by the property owner or livestock by the livestock owner, and if the [director] reasonably suspects that food safety or the health, safety, or welfare of livestock is threatened, the [director] may apply to a court of competent jurisdiction in the county where the premises, facility, pen, yard, vehicle, means of conveyance, or livestock are located for a search warrant authorizing access to the premises, facility, pen, yard, vehicle, means of conveyance, or livestock for the purposes of this section. The court shall issue the search warrant for the purposes requested if there is probable cause to believe that livestock is involved that is registered or entered in an exhibition or raised with the apparent intent of being so registered or entered, and that food safety or the health, safety, or welfare of livestock is threatened. The finding of probable cause may be based on hearsay, provided there is a substantial basis for believing that the source of the hearsay is credible and that there is a factual basis for the information furnished.

(4) The [director] may designate employees of the [department of agriculture], employees to the United States Department of Agriculture, licensed veterinarians, or employees or students of an approved or accredited veterinary school or college to perform the inspecting, sampling, and testing. The [director] may contract with laboratories, universities, or other persons or institutions, both public and private, to perform the livestock testing.

(b) While the [director] or the [director's designee] is sampling or testing the livestock, the owner or custodian of the livestock shall render assistance in accordance with [insert appropriate state citation]. Any person who refuses to cooperate with the [director] or the [director's designee] in the inspection, sampling, and testing of livestock may be prohibited by the [director] acting under Section 6 of this act from participating in any exhibition.

(c) A person may register, enter, or exhibit at an exhibition only livestock owned by that person for the length of time specified by rule of the [director], unless one of the following applies:

   (1) The livestock owner suffers from a recognized physical handicap that prevents the owner from showing the livestock;
   (2) The sponsor provides written permission to someone other than the livestock owner to register, enter, or exhibit the livestock;
   (3) A rule of the [director] provides that this subsection shall not apply to an exhibition.
Section 6. [Disciplinary Action.]

(a) Any person involved in any activity in connection with exhibiting livestock at any exhibition or with raising livestock with the apparent intent that the livestock eventually is to be entered in an exhibition is subject to disciplinary action by the [department of agriculture] for any of the following reasons:

(1) The person has been convicted of or pleaded guilty to a violation of Section 8 or 10 of this act, or has been found by the [director of agriculture] to have tampered with or sabotaged livestock;

(2) The [director] reasonably suspects that the person's conduct in regard to raising or exhibiting the livestock threatens, endangers, or adversely affects food safety or the health, safety, or welfare of livestock;

(3) The person has refused to cooperate with the [director] or the [director's designee] in the inspection, sampling, and testing of livestock under Section 5 of this act, unless the person withheld consent to the inspection, sampling, and testing and no search warrant was issued.

(4) The person has violated a rule adopted by the [director] under Section 4 of this act from which the sponsor of the exhibition at which the violation occurred could have exempted itself under that section, but chose not to.

(b) If one or more of the grounds for disciplinary action listed in Section 6 (a)(1), (2), or (3) exist, the [director], upon the [director's] own initiative, may conduct an adjudication in accordance with [insert appropriate state citation] and may take any disciplinary action established by the [director] by rules adopted in accordance with [insert appropriate state citation]. If one or more of the grounds for disciplinary action listed in Section 6 (a) exist, the [director], upon the request of a sponsor, may conduct an adjudication in accordance with [insert appropriate state citation] and may take any disciplinary action established by the [director] by rules adopted in [insert appropriate state citation]. Disciplinary action imposed under this section by the [director] may include disqualifying the person, the person's family, members of the person's household, or any other person associated with the activity resulting in the disciplinary action from participating in any class or with any species of livestock in any current or future exhibition.

(c) The [director], in accordance with [insert appropriate state citation], may adopt rules establishing the criteria and procedures for the reinstatement of any person disqualified from participation in an exhibition as a result of disciplinary action taken by the [director] under this section. Any person disqualified by disciplinary action of the [director] may file a written request with the [director] to seek reinstatement after the period of disqualification ends or at any other time established by rule. Upon the written request of the person seeking the reinstatement, the [director] shall conduct an adjudication in accordance with [insert appropriate state citation].
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Section 7. [Disqualification of Exhibitor.] No person shall exhibit livestock owned or raised by another person if the person owning or raising the livestock has been disqualified by the [director of agriculture] under Section 6 of this act or has been disqualified from exhibiting livestock by any court having jurisdiction.

Section 8. [Prohibition of Tampering and Sabotage of Livestock.]
(a) No person shall tamper with any livestock.
(b) No person shall sabotage any livestock exhibited at an exhibition.
(c) In addition to the penalties established in Section 9 of this act, whoever violates Section 8 (a) or (b) is subject to disciplinary action by the [director of agriculture] under Section 6 of this act.
(d) This section does not apply to either of the following:
   (1) Any action taken or activity performed or administered by a licensed veterinarian or in accordance with instructions of a licensed veterinarian if the action or activity was undertaken for accepted medical purposes during the course of a valid veterinarian-client-patient relationship;
   (2) Accepted grooming, commercial, or medical practices as defined by rules of the [director] adopted under Section 4 of this act.
(e) As used in this section:
   (1) “Tamper” means any of the following:
      (i) Treatment of livestock in such a manner that food derived from the livestock would be considered adulterated as defined in [insert appropriate state citation];
      (ii) The injection, use, or administration of any drug that is prohibited under any federal law or law of this state, or any drug that is used in any manner that is not authorized under any federal law or law of this state.
Whenever the Commissioner of the United States Food and Drug Administration or the Secretary of the United States Department of Agriculture, pursuant to the Federal Food, Drug, and Cosmetic Act, or the federal Virus-Serum-Toxin Act, as amended, approves, disapproves, or modifies the conditions of the approved use of a drug, the approval, disapproval, or modification automatically is effective for the purposes of Section 8 (e)(1)(ii), unless the [director], in accordance with [insert appropriate state citation], adopts a rule to alter for the purpose of this subsection the action taken by the [commissioner] or [secretary]. The [director] may adopt such a rule if the [director] considers it to be necessary or appropriate for the protection of food safety or the health, safety, or welfare of livestock or to prevent the use of a drug for the purpose of concealing, enhancing, transforming, or changing the true conformation, configuration, or condition of livestock. No such rule shall authorize the use of any drug the use of which is prohibited by, or authorize the use of any drug in a manner not authorized by, the [commissioner] or [secretary] under either of those acts;
   (iii) The injection, or other internal or external administration of any
product or material, whether gas, solid, or liquid, to livestock for the purpose of concealing, enhancing, transforming, or changing the true conformation, configuration, condition, or age of the livestock or making the livestock appear more sound than it actually is;

(iv) The use or administration, for cosmetic purposes, of steroids, growth stimulants, or internal artificial filling, including paraffin, silicone injection, or any other substance;

(v) The use or administration of any drug or feed additive affecting the central nervous system of the livestock;

(vi) The use or administration of diuretics for cosmetic purposes;

(vii) The surgical manipulation or removal of tissue so as to change, transform, or enhance the true conformation or configuration of, or to conceal the age of, the livestock.

(2) “Sabotage” means intentionally tampering with any livestock belonging to or owned by another person that has been registered, entered in, or exhibited in any exhibition, or raised with the apparent intent of being entered in an exhibition.

Section 9. [Penalties.]
(a) Whoever violates Section 7 or Section 5(c) of this act is guilty of a [misdemeanor of the first degree].
(b) Whoever violates Section 8 (a) of this act is guilty of a [felony of the fourth degree] on a first offense. On each subsequent offense, the offender is guilty of a [felony of the third degree].
(c) Whoever violates Section 8 (b) of this act is guilty of a [felony of the third degree].

Section 10. [Prohibition of Use of Unapproved Drugs.]
(a) No person shall administer, dispense, distribute, manufacture, possess, sell, or use any drug, other than a controlled substance, that is not approved by the United States Food and Drug Administration, or the United States Department of Agriculture, unless one of the following applies:

(1) The United States Food and Drug Administration has approved an application for investigational use in accordance with the federal Food, Drug, and Cosmetic Act, as amended, and the drug is used only for the approved investigational use;

(2) The United States Department of Agriculture has approved an application for investigational use in accordance with the federal Virus-Serum-Toxin Act, as amended, and the drug is used only for the approved investigational use;

(3) A practitioner, other than a veterinarian, prescribes or combines [two (2)] or more drugs as a single product for medical purposes;

(4) A pharmacist, pursuant to a prescription, compounds and dispenses [two (2)] or more drugs as a single product for medical purposes.
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(b) As used in this division,

(1) “Dangerous drug,” “prescription,” “sale at retail,” “wholesale distributor of dangerous drugs,” and “terminal distribution of dangerous drugs,” have the meanings set forth in [insert appropriate state citation].

(2) Except as provided in Section 10 (b)(3) of this section, no person shall administer, dispense, distribute, manufacture, possess, sell, or use any dangerous drug to or for livestock or any animal that is generally used for food or in the production of food, unless the drug is prescribed by a licensed veterinarian by prescription or other written order and the drug is used in accordance with the veterinarian’s order or direction.

(3) Section 10 (b)(2) does not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, possesses for sale, or sells, at retail, a drug in accordance with [insert appropriate state citation].

(c) Whoever violates Section 10 (a) or Section 10 (b)(2) is guilty of a [felony of the fourth degree] on a first offense. On each subsequent offense, the offender is guilty of a [felony of the third degree].

Section 11. [Effective Date.] [Insert effective date.]
Cumulative Index, 1977-1996

The following cumulative index covers volumes of Suggested State Legislation since 1977 and includes the legislation through this current edition.

This index uses extensive subject headings, sub-headings and cross references ("see" and "see also" entries). Draft legislation is listed by title under appropriate subjects. Individual bills are often included under several headings, if they cover more than one topic.

Specific entries are of two kinds:
(1) Titles of bills followed by the year of the volume in parentheses and the page numbers. To find the text of a draft bill, you should consult the volume for the specific year listed.
(2) References are also provided to parts of draft bills, by subject. These references do not list the full title of the draft bill, but cite only the year and the page numbers.

All entries under subject headings are listed in the order in which they were published. An index to volumes before 1977 may be found in Volume 44 (1985).

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