The Council of State Governments is a nonprofit, nonpartisan organization that serves all three branches of state government through leadership, education, research and information services.

Founded in 1933, this multibranch organization of the states and U.S. territories champions excellence in state government, working with state leaders across the nation and through its regions to put the best ideas and solutions into practice.

To this end, The Council of State Governments:
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Foreword

The Council of State Governments (CSG) is pleased to bring you this volume of Suggested State Legislation, the 56th 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 1996
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 28 years ago in the introduction to the 28th volume of *Suggested State Legislation*.

For 56 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 56th 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 1995 in San Juan, Puerto Rico, again, in April 1996 in Portland, Oregon, and a third time in Salt Lake City, Utah in July 1996, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in July 1996 in Salt Lake City, Utah, the members of the full Committee examined the proposals referred by the Subcommittee on Scope and Agenda and selected the items that appear in this volume.

Although these items are published here as suggested legislation, neither The Council of State Governments nor the SSL Committee are in the position of advocating their enactment. Instead, the entries are offered as an aid to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.
In fact, throughout the SSL solicitation, review and selection processes, members of the Committee employ a specific set of criteria to determine which items will appear in the volume:

- Is the issue a significant one currently facing state governments?
- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill represent a practical approach to the problem?
- Does the bill represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill logically consistent?
- Are the language of 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 xvi and xvii. 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 style is arbitrary. Beginning with this volume, items presented in Suggested State Legislation will more closely reflect the style and form as they were submitted to the program. The word “act” refers to proposed and enacted bills. Attempts are made to ensure that items presented to committee members are the most recent versions. However, interested parties should contact the originating state for the ultimate disposition in the state of any item in question, including substitute acts and amendments.

Introductory Matter

The first component in a Suggested State Legislation draft is an abstract. Abstracts provide a brief description of the act, highlight unique features, and provide background about other states, if applicable. Copies of other state bills or laws referenced in abstracts or notes can be obtained by contacting the states directly.

Submitted As

This component indicates the state, title, bill number or legal citation and adoption date of the original bill or law as submitted to the Suggested State Legislation Program. Readers should be aware that although legislation presented in Suggested State Legislation is based on state bills and laws, the Committee on Suggested State Legislation does not guarantee that items presented on its dockets or in Suggested State Legislation volumes represent the exact versions of those items as enacted by a state.

Standardized Sections and Form

Items presented in this and future Suggested State Legislation volumes will retain, to the extent possible, the same enumeration as the bill or act as submitted by a state. This includes sections, subsections and, paragraphs. However, modifications such as adding: “Severability,” “Repealor,” and “Effective Date,” will be made to the draft as necessary.

Often it is also 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.
Sample Act
Criminal Rehabilitation Research Act

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

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

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

Suggested Legislation

(Title, enacting clause, etc.)

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

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

Comment: It is suggested that some commission members be ex-offenders.
Environmental Opportunity Zone

This act enables municipalities to designate areas of abandoned or underutilized properties as “Environmental Opportunity Zones” when such areas were created due to hazardous waste contamination. Property owners in these zones can get property tax relief by entering into a financial agreement with the state department of environmental protection to clean up the contaminated property. Payments under the agreement in lieu of real property taxes can be made on a scale defined in the act. This act also establishes criteria for disbursing money from an environmental remediation fund to help clean up hazardous waste sites.

Submitted as:
New Jersey
Assembly Committee Substitute for Assembly No.1631
Adopted June 12, 1995

Suggested Legislation

Section 1. [Short Title] This act shall be known and may be cited as the "Environmental Opportunity Zone Act."

Section 2. [Legislative Findings] The [legislature] finds that there are numerous properties that are underutilized or that have been abandoned and that are not being utilized for any commercial use because of contamination that exists at those properties; that abandoned contaminated properties harm society by causing a burden on municipal services while failing to contribute to the funding of those services; that a disproportionate percentage of these properties are located in older urban municipalities given the fact that these municipalities were once the center for industrial production; that the revitalization of these properties will not bring tax ratables to the municipality and other local governments, but will result in job creation and foster urban redevelopment; that one of the central tenets of the State Development and Redevelopment Plan is to redevelop urban areas with existing utilities and infrastructure and that the use of these now abandoned or underutilized sites for commercial purposes will make a significant contribution toward implementing the plan; that the federal "Clean Air Act" encourages the reindustrialization of urban areas as this would provide jobs near where people live thus reducing harmful air pollutants emitted from automobiles needed to travel distances to places of employment; and that it is in the economic interest of the state and the municipalities in which abandoned or underutilized contaminated proper-
ties are located to encourage the remediation of these properties so that they can be reused or fully used for commercial purposes.

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

“Assessor” means the municipal tax assessor.

“Contamination” or “contaminant” means any discharged hazardous substance as defined pursuant to [insert appropriate state citation;]
hazardous waste as defined pursuant to [insert appropriate state citation;]
or pollutant as defined pursuant to [insert appropriate state citation.]

“Environmental opportunity zone” means any qualified real property that has been designated by the governing body as an environmental opportunity.

“Qualified real property” means any parcel of real property that is now vacant or underutilized, which is in need of a remediation due to a discharge or threatened discharge of a contaminant.

“Remediation” means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action.

Section 4. [Designation of Property.] The governing body of a municipality may, by ordinance, designate [one (1)] or more qualified real properties in that municipality as an environmental opportunity zone. The ordinance adopted by the municipality shall list the qualified real properties designated as environmental opportunity zones. The designation of environmental opportunity zones shall be consistent with the permitted use of those properties pursuant to [insert appropriate state citation.]

Section 5. [Property Tax Exemption, Procedures.] The governing body of a municipality which has adopted an ordinance pursuant to Section 4 of this act, may, by ordinance, provide for exemptions of real property taxes for environmental opportunity zones. The governing body shall include the following items in its enabling ordinance:

(a) A property tax exemption term of [ten (10)] years;
(b) The application procedure for an exemption authorized under this act;
(c) The method of computing payments in lieu of real property taxes pursuant to subsection b of Section 7 of this act;
(d) An approval method for exemption applications by the assessor or by ordinance on a per application basis; and
(e) A requirement that the environmental opportunity zone will be remediated in compliance with the remediation standards adopted by the [department of environmental protection] and that the owner of the property will enter into a memorandum of agreement or administrative consent.
order with the [department] to perform the remediation and will complete the remediation pursuant to the agreement or order, and that, once remediated, the environmental opportunity zone will be used for a commercial or industrial purpose during the time period for which the real property tax exemption is given.

Section 6. [Applications.] No exemption shall be granted pursuant to this act except upon written application filed with the assessor of the taxing district wherein the environmental opportunity zone is located and is approved by the governing body by resolution or ordinance, as required by the enabling ordinance. Every application shall be on a form prescribed by the [director of the division of taxation,] in the [department of the treasury,] and provided for the use of claimants by the governing body of the municipality constituting the taxing district. Every application for an exemption may be approved and allowed by the governing body to the degree that the application is consistent with the provisions of the enabling ordinance. The exemption shall not be granted by the governing body until the owner of the property enters into a memorandum of agreement or administrative consent order with the [department of environmental protection] for the remediation. An exemption that is granted shall take effect upon the approval by the governing body and it shall be recorded and made a permanent part of the official tax records of the taxing district, which record shall contain a notice of the termination date of the exemption. The owner of the property shall deliver a copy of the approved exemption application to the [division of local government services] in the [department of community affairs.]

Section 7. [Financial Agreements.] (a) Each approved exemption shall be evidenced by a financial agreement between the municipality and the applicant. The agreement shall be prepared by the applicant and shall contain the representations that are required by the enabling ordinance. The agreement shall provide for the applicant to annually pay to the municipality an amount in lieu of real property taxes, to be computed according to subsection b of this section. With the approval of the governing body, the agreement may be assigned to a subsequent owner of the environmental opportunity zone.

(b) Payments in lieu of real property taxes may be computed as a portion of the real property taxes otherwise due, according to the following schedule:

(1) In the first tax year following execution of a memorandum of agreement or administrative consent order, no payment in lieu of taxes otherwise due;

(2) In the second tax year following execution of a memoran-
(3) In the third tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than [ten (10)] percent of taxes otherwise due;

(4) In the fourth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than [twenty (20)] percent of taxes otherwise due;

(5) In the fifth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than [thirty (30)] percent of taxes otherwise due;

(6) In the sixth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than [forty (40)] percent of taxes otherwise due;

(7) In the seventh tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than [fifty (50)] percent of the taxes otherwise due;

(8) In the eighth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than [seventy (70)] percent of the taxes otherwise due;

(9) In the ninth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than [eighty (80)] percent of the taxes otherwise due;

(10) In the tenth and all subsequent tax years following execution of a memorandum of agreement or administrative consent order, the exemption shall expire and the full amount of the assessed real property taxes, taking into account the value of the real property in its remediated state, shall be due.

(c) For the purposes of this section, the amount of “taxes otherwise due” shall be determined by using the assessed valuation of the environmental opportunity zone at the time of the approval by the assessor of the exemption, regardless of any improvement made to the environmental opportunity zone thereafter.

(d) Notwithstanding any other provision in this act, if at any time the governing body of the municipality finds that the memorandum of agreement for remediation of the environmental opportunity zone has been terminated at the option of the applicant, unless if an administrative consent order is issued in its place, or that any of the conditions in the ordinance as required by subsection e of Section 5 of this act are not met, the period of the property tax exemption shall end.

Section 8. [Payments.] The payments required pursuant to Section 7 of this act shall be made in quarterly installments according to the same
schedule as real property taxes are due and payable. Failure to make these payments shall result in the termination of the exemption. In addition to the remedy set forth herein, the requirements imposed pursuant to Section 7 of this act shall be enforced in the same manner as is provided for real property taxes pursuant to [insert appropriate state citation.]

Section 9. [Remedial Action Workplan.]

(a) The [department of environmental protection] shall take final action on a technically complete remedial action workplan, submitted pursuant to a remediation on an environmental opportunity zone, within [forty-five (45)] days of receipt of the submission in the case of soil remediations, and within [ninety (90)] days of receipt of the submission in the case of remediations involving groundwater or surface water.

(b) The [department of environmental protection] shall waive any and all fees or other charges of any kind it would impose relating to a remediation where the remediation is being conducted on an environmental opportunity zone.

(c) Any owner or operator of an environmental opportunity zone shall be exempt from the requirement to establish a remediation funding source pursuant to [insert appropriate state citation.]

Section 10. [Liability.]

(a) Notwithstanding any provision of any law, rule, or regulation to the contrary, whenever contamination at any environmental opportunity zone, as defined pursuant to Section 3 of this act, is remediated in compliance with any soil, groundwater, or surface water remediation standard that was in effect when the [department of environmental protection] approved the remedial action workplan for that real property, the owner and operator of the property, the persons performing the remediation, and all of their successors, shall not be liable for the cost of any additional remediation that may be required (1) by a subsequent adoption by the [department] of a more stringent remediation standard for any particular containment; or (2) a subsequent discovery of a contaminant on the environmental opportunity zone that existed, but was not discovered, prior to the approval by the [department] of the remedial action workplan.

(b) Notwithstanding any provisions of any law, rule or regulation to the contrary, the owner or operator of any environmental opportunity zone, who has acquired or begun operation of that real property subsequent to it being designated as an environmental opportunity zone, shall have no liability for any actions, claims, or damages for on-site contamination, off-site contamination, or third party actions arising from contamination existing at the environmental opportunity zone prior to the owner or operator taking title to the property, or commencing operations on the property. The provisions of this subsection shall only apply where (1) an owner or opera-
tor implements a remedial action workplan approved by the [department] for the remediation of that environmental opportunity zone as required by an ordinance adopted pursuant to Section 5 of this act; and (2) if the remedial action workplan involves the use of institutional or engineering controls, that those controls are continually maintained in the manner required by the [department] in its approval of the remedial action workplan. Nothing in this subsection shall be construed to limit the liability of any person who discharged a contaminant or was in any way responsible for the discharge of that contaminant. Nothing in this subsection shall be construed to limit the liability of any person for the discharge of any contaminant occurring after the implementation of the remedial action workplan and the approval of that implementation by the [department of environmental protection].

Section 11. [Financial Assistance]

(a) Except for moneys deposited in the remediation fund for specific purposes, financial assistance and grants from the remediation fund shall be rendered for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written joint determination by the authority and the [department] that it is in the public interest, financial assistance and grants dedicated for the purposes and in the percentages set forth in paragraph (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the [senate environment committee] and the [assembly energy and hazardous waste committee] or their successors.

(1) At least [fifteen (15)] percent of the moneys shall be allocated for financial assistance to persons, other than governmental entities, for remediation of real property located in a qualifying municipality.

(2) At least [ten (10)] percent of the moneys shall be allocated for financial assistance and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the [department;]

(3) At least [fifteen (15)] percent of the moneys shall be allocated for financial assistance to persons or municipal governmental entities...
for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) A least [ten (10)] percent of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the [department] or by a court;

(5) At least [twenty (20)] percent of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities who are required to perform remediation activities at an industrial establishment as a condition of the closure, transfer, or termination of operations at that industrial establishment;

(6) At least [twenty (20)] percent of the moneys shall be allocated for grants to persons, other than municipal governmental entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to [insert date,] the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to [fifty (50)] percent of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed [one million (1,000,000)] dollars.

(7) At least [five (5)] percent of the moneys shall be allocated for loans to persons, other than municipal governmental entities, who own and plan to remediate an environmental opportunity zone as provided in this act; and [five (5)] percent of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for financial assistance or a grant pursuant to this paragraph, the authority shall give priority to financial assistance applications that meet the criteria enumerated in paragraph (3) of this subsection.

(b) Loans issued from the remediation fund shall be for a term not to exceed [ten (10)] years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest
rate equal to the Federal Discount Rate at the time of approval or at the
time of the loan closing, whichever is lower, except that the rate shall be no
lower than [five (5)] percent. Financial assistance and grants may be is-
sued for up to [one hundred (100)] percent of the estimated applicable
remediation cost, except that the cumulative maximum amount of finan-
cial assistance which may be issued to a person other than a governmental
entity in any calendar year, for [one (1)] or more properties, shall be [one
million (1,000,000).] Financial assistance and grants to any one municipal
governmental entity may not exceed [two million (2,000,000)] in any calen-
dar year. Repayments of principal and interest on the loans issued from
the remediation fund shall be paid to the authority and shall be deposited
into the remediation fund.

(c) No person, other than a municipal governmental entity, or
a person engaging in a voluntary remediation; shall be eligible for finan-
cial assistance from the remediation fund to the extent that person is ca-
pable of establishing a remediation funding source for the remediation as
required pursuant to [insert appropriate state citation.]

(d) The authority may use a sum that represents up to [two
(2)] percent of the moneys issued as financial assistance or grants from the
remediation fund each year for administrative expenses incurred in con-
nection with the operation of the fund and the issuance of financial assis-
tance and grants.

(e) Prior to [insert date] of each year, the authority shall sub-
mit to the [senate environment committee] and the [assembly energy and
hazardous waste committee,] or their successors, a report detailing the
amount of money that was available for financial assistance and grants
from the remediation fund for the previous calendar year, the amount of
money estimated to be available for financial assistance and grants for the
current calendar year, the amount of financial assistance and grants issued
for the previous calendar year and the category for which each financial
assistance and grant was rendered, and any suggestions for legislative ac-
tion the authority deems advisable to further the legislative intent to facili-
tate remediation and promote the redevelopment and use of existing in-
dustrial sites.

Section 12. [Effective Date] [Insert effective date.]
Conservation and Use of Sewage Effluent

This act gives government entities which own and operate sewage plants the rights to apply effluent from the treatment process to agricultural crops, lawns and gardens.

Submitted as:
Utah
HB 105
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the “Conservation and Use of Sewage Effluent Act.”

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

(1) “DEQ” means the [department of environmental quality.]

(2) “POTW” means a publicly-owned treatment works as defined by [insert appropriate state citation.]

(3) “Regional POTW” means a publicly-owned treatment works that serves more than [one (1)] governmental entity.


(5) “Water Right” means:

(a) A right to use water evidenced by any means identified in [insert appropriate state citation.]

(b) A right to use water under an approved application:

(I) To appropriate;

(II) For a change of use; or

(III) For the exchange of water; or

(c) A contract authorizing the use of water from a water wholesaler or other water supplier having a valid water right under Utah law.

Section 3. [Municipal Application.] (1) Any municipality or other governmental entity owning and operat-
ing a POTW that treats sewage and other pollutants contained in water collected from water supplied under the governmental entity's water rights may apply the resulting sewage effluent to a beneficial use consistent with, and without enlargement of, those water rights.

(2) The governmental entity must file a change application with the state engineer if it proposes to use sewage effluent:

(a) outside the defined place of use or for purposes other than those authorized in the underlying water rights; or

(b) in a manner otherwise inconsistent with the underlying water rights.

Section 4. [Contracting with Regional POTW's.]

(1)(a) Any municipality or other governmental entity served by a regional POTW that treats sewage and other pollutants contained in water collected from water supplied under the governmental entity's water rights may contract with the person responsible for administration of the regional POTW to act as its agent for the purpose of using sewage effluent discharged from the regional POTW.

(b) The sewage effluent may be applied to a beneficial use consistent with, and without enlargement of, the governmental entity's water rights referred to in subsection (a).

(2) The person administering the regional POTW, as agent for an individual municipality or other governmental entity served by it, must file a change application with the state engineer if the person administering the POTW proposes to use sewage effluent:

(a) outside the defined place of use or for purposes other than those authorized in the underlying water rights; or

(b) in a manner otherwise inconsistent with the underlying water rights.

Section 5. [Consideration and Approval of Change Applications to Effect the Use of Effluent.] Any change application filed to effect the use of sewage effluent shall be considered and approved in accordance with [insert appropriate state citation.]

Section 6. [Priority of a Use of Sewage Effluent.]

(1) The priority of any use of sewage effluent shall be consistent with the priorities of the underlying water rights, except as provided in subsection (2).

(2) If the [state engineer] approves a change application filed in accordance with Section 2(2) or Section 3(2), the priority of the sewage effluent use shall be the date the change application was filed.
Section 7. [Sewage Inflow That Consists of Unappropriated Water — Application to Appropriate May Be Made.] If a portion of the sewage inflow to any POTW consists of any unappropriated water of the state, the person owning or administering the POTW or any other person may apply to the [state engineer] to appropriate the water to a beneficial use.

Section 8. [Change of Point of Discharge of Sewage Effluent.]  
(1) The point of discharge of sewage effluent from a POTW may be changed, if:  
   (a) the change in point of discharge is required for treatment purposes as a matter of public health, safety, or welfare under [DEQ] rules and the POTW's discharge permit; and  
   (b)(I) The sewage effluent is discharged into waters of the state and not applied to a beneficial use; or  
      (II) The sewage effluent is applied to a beneficial use consistent with, and without enlargement of, the underlying water rights as provided in Section 2(1) or Section 3(1).

Section 9. [Notification of a Sewage Effluent Use or Change in Point of Discharge Engineer to Make Rules.]  
(1) Any person intending to apply sewage effluent to a beneficial use pursuant to Section 2(1) or Section 3(1) or change the point of discharge or sewage effluent pursuant to Section 7(1) shall notify the [state engineer] of the use or change in point of discharge as provided by rules of the [state engineer].  
(2)(a) The [state engineer] shall publish the notification in a newspaper of general circulation in the county where downstream water users may be affected by the use or change in point of discharge.  
   (b) The notification:  
      (I) shall be published once a week for [two (2)] successive weeks; and  
      (II) may be published in more than [one (1)] newspaper.

Section 10. [Effective Date] [Insert effective date.]
Ozone Transport Oversight Act

This act requires legislative review and approval of any proposed inter-state memorandum of understanding or other agreement related to the transport of ozone that results from the Ozone Transportation Assessment Group or similar groups. Specifically, it states that the director of the state division of environmental protection must submit a proposed agreement related to the transport of ozone to the president of the senate and the speaker of the house within 10 days of the development of such an agreement. The president and speaker must refer the proposed agreement to one or more legislative committees with the request that public hearings are convened to solicit comments on its potential economic and environmental impacts on the state. The committee(s) must write a report addressing findings on the proposed agreement’s impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment and offering recommendations for action on the proposed agreement. This report must be forwarded to the president and speaker and then to the governor.

This act is in reaction to efforts by the U.S. Environmental Protection Agency to encourage state environmental officials and governors in twenty-five states to participate in negotiations through the Ozone Transport Assessment Group. These negotiations are expected to result in an interstate memorandum of understanding which requires reductions of emissions in addition to those specified by the federal Clean Air Act Amendments of 1990. In addition, the act points to the Northeast Ozone Transport Commission (OTAG), which did not seek legislative approval before proposing emission control requirements for northeastern states and the District of Columbia. The constitutionality of the Northeast Ozone Transport Commission has been challenged by Virginia and other parties.

Submitted as:
West Virginia
HB 4523
Enacted 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be referred to as the “Interstate Ozone Transport Oversight Act.”
Section 2. [Legislative Findings.] The [legislature] hereby finds that:

(1) The federal Clean Air Act, as amended, contains a comprehensive regulatory scheme for the control of emissions from mobile and stationary sources, which will improve ambient air quality and health and welfare in all parts of the nation.

(2) The number of areas unable to meet national ambient air quality standards for ozone has been declining steadily and will continue to decline with air quality improvements resulting from implementation of the federal Clean Air Act Amendments of 1990, and the mobile and stationary source emission controls specified therein.

(3) Scientific research on the transport of atmospheric ozone across state boundaries is proceeding under the auspices of the United States Environmental Protection Agency (U.S. EPA), state agencies, and private entities, which research will lead to improved scientific understanding of the causes and nature of ozone transport, and emission control strategies potentially applicable thereto.

(4) The Northeast Ozone Transport Commission established by the federal Clean Air Act Amendments of 1990 has proposed emission control requirements for stationary and mobile sources in certain northeastern states and the District of Columbia in addition to those specified by the federal Clean Air Act Amendments of 1990.

(5) Membership of the Northeast Ozone Transport Commission includes, by statute, representatives of state environmental agencies and governors' offices; similar representation is required in the case of other ozone transport commissions established by the Administrator of the United States Environmental Protection Agency pursuant to Section 176A of the federal Clean Air Act, as amended.

(6) The Northeast Ozone Transport Commission neither sought nor obtained state legislative oversight or approval prior to reaching its decisions on mobile and stationary source requirements for states included within the Northeast Ozone Transport Region.

(7) The Commonwealth of Virginia and other parties have challenged the constitutionality of the Northeast Ozone Transport Commission and its regulatory proposals under the Guarantee Compact, and Joinder Clauses of the United States Constitution.

(8) The United States Environmental Protection Agency, acting outside of the aforementioned statutory requirements for the establishment of new interstate transport commissions, is encouraging this state and other states outside of the Northeast to participate in multistage negotiations through Ozone Transport Assessment Groups; such negotiations are intended to provide the bases for an interstate memorandum of understanding or other agreement on ozone transport requiring reductions of emissions of nitrogen oxides or volatile organic compounds in addition to those specified by the federal Clean Air Act Amendments of 1990, membership of the Ozone...
Transport Assessment Group consists of state and federal air quality officials, without state legislative representation or participation by the governor.

(9) Emission control requirements exceeding those specified by federal law can adversely affect state economic development, competitiveness, employment, and income without corresponding environmental benefits; in the case of electric utility emissions of nitrogen oxides, it is estimated that control costs in addition to those specified by the federal Clean Air Act could exceed [five billion (5,000,000,000)] dollars annually in a [thirty-seven (37)] state region of the eastern United States, including [insert state.]

(10) Requiring certain eastern states to meet emission control requirements more stringent than those otherwise applicable to other states and unnecessary for environmental protection would unfairly affect interstate competition for new industrial development and employment opportunities.

Section 3. [Procedures.] It is therefore directed that:

(1) Not later than [ten (10)] days subsequent to the development of any proposed memorandum of understanding or other agreement by the Ozone Transport Assessment Group, or similar group, potentially requiring the [state] to undertake emission reductions in addition to those specified by the federal Clean Air Act, the [director of the division of environmental protection] shall submit such proposed memorandum or other agreement to the [president of the senate] and the [speaker of the house] for consideration.

(2) Upon receipt of the aforesaid memorandum of understanding or agreement, the [president] and the [speaker] shall refer the understanding or agreement to [one (1)] or more appropriate legislative committees with a request that such committees convene [one (1)] or more public hearings to receive comments from agencies of government and other interested parties on its prospective economic and environmental impacts on the state and its citizens, including impacts on energy use, taxes economic development, utility costs and rates, competitiveness, and employment.

(3) Upon completion of the public hearings required by the preceding subdivision, the committees(s) shall forward to the [president] and the [speaker] a report containing its findings and recommendations concerning any proposed memorandum of understanding or other agreement related to the interstate transport of ozone. The report shall make findings with respect to the economic and environmental impacts on the state and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(4) Upon receipt of the report required by the preceding subdivision, the [president] and [speaker] shall thereafter transmit the report to the [governor] for such further consideration of action as may be warranted.
(5) Nothing in this act shall be construed to preclude the legislature from taking such other action with respect to any proposed memorandum of understanding or other agreement related to the interstate transport of ozone as it deems appropriate.

(6) No person is authorized to commit the state to the terms of any such memorandum or agreement unless specifically approved by an act of the legislature.

Section 4. [Effective Date] [Insert effective date.]
ATM Safety Act

The proliferation of Automatic Teller Machines (ATMs) has prompted states to pass measures to ensure the public can use them safely. California (Financial Code, sec. 13020 [Stats. 1990 ch. 825 sec 1, and AB 244]), Florida, (Banks and Banking laws, secs. 655.960 - 655.965 [Laws 1994, ch. 94-343, sec. 1]), New York (ch.9, sec.75-A, et. Seq.), and Texas (HB 2745 [enacted in 1995]) are examples.

Generally, these states require ATM owners and operators to evaluate the safety of the ATM locations and take actions to ensure they are safe. These include analyzing violent crimes in neighborhoods surrounding ATMs, installing adequate lighting in the areas surrounding ATMs, limiting the height of vegetation and other physical obstructions around ATMs, and issuing safety instructions to ATM card holders.

The act featured in this SSL volume is based on New York law. It addresses ATM security measures such as surveillance cameras, lighting, entry doors equipped with magnetic locking devices, at least one exterior wall to provide an unobstructed view of the interior of an ATM facility, mirrors in the facility, and signs warning customers to close the entry door when they are in enclosed ATMs. Banks must also list their ATM locations with the state banking department.

Submitted as:
New York
ATM Safety Act
ch.9, sec.75-A, et. seq.
Adopted February 6, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Legislative Intent.] The legislature hereby finds that automated teller machines are an integral part of consumers’ lives and that automated teller machines are used by millions of people statewide, on a daily basis. It is the legislature’s intent to ensure the convenience and safety of automated teller machine use by establishing security measures for automated teller machine facilities.
Section 3. [Definitions.] For purposes of this act, the following terms shall have the following meanings:

1. “Access device” means a card, code, or other means of access to a consumer’s account, or any combination thereof, that may be used by the consumer for the purpose of initiating electronic fund transfers.

2. “Automated teller machine” means a device which is linked to the accounts and record of a banking institution and which enables consumers to carry out banking transactions, including, but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and loan payments.

3. “Automated teller machine facility” means an area within the dominion and control of a banking institution comprised of [one (1)] or more automated teller machines and any adjacent space which is made available to banking customers after regular banking hours.

4. “Adequate lighting” means:
   (a) with respect to an automated teller machine facility located within the interior of a building, lighting, on a [twenty-four (24)] hour basis, which permits a person entering such facility to readily and easily see all persons occupying such facility, and which permits a person inside such facility to readily and easily see all persons at the entry door of such facility.
   (b) with respect to an open and operating automated teller machine facility open to the outdoor air, and any defined parking area, lighting during nighttime hours according to the following standards:
      (i) a minimum illuminance of [ten (10)] candlefoot power is maintained on a horizontal plane at a point [five (5)] feet outward from and [five (5)] feet above the ground surface from the automated teller machine;
      (ii) a minimum illuminance of [two (2)] candlefoot power is maintained on a horizontal plane at a point [fifty (50)] feet in all unobstructed directions from the automated teller machine, measured at a point [five (5)] feet above the ground surface; and
      (iii) if an outdoor automated teller machine is located within [ten (10)] feet of the corner of a building and the automated teller machine facility is generally accessible from the adjacent side, there shall be a minimum illuminance of [two (2)] candlefoot power along the first [forty (40)] unobstructed feet of the adjacent side of the building.
   (c) with respect to a defined parking area, a minimum of [two (2)] candlefoot power in that portion of the parking area within [sixty (60)] feet of the automated teller machine facility.

5. “Banking institution” means any state or federally chartered bank, trust company, savings bank, savings and loan association, or credit union, whether headquartered within or outside of the state, that operates [one (1)] or more automated teller machine facilities within the state.

6. “Candlefoot power” means the light intensity of candles measured on a horizontal plane [thirty-six (36)] inches above ground level and [five (5)] feet in front of the area to be measured.
7. “Regular banking hours” means the time at which an office of a banking institution is open to the banking public for normal transaction of businesses.

8. “Nighttime hours” means the period of time beginning [thirty (30)] minutes after sunset and ending [thirty (30)] minutes before sunrise.

9. (a) “Defined parking area” means that portion of any parking area open for and accessible to customers of a banking institution which is:

(1) contiguous to any paved walkway or sidewalk within [fifty (50)] feet of an automated teller machine facility;

(2) regularly, principally and lawfully used for parking by users of the automated teller machine facility while conducting transactions at such automated teller machine facility; and

(3) owned or leased by the operator of the automated teller machine facility, or owned or otherwise controlled by the party leasing the automated teller machine facility site to the banking institution.

(b) The term “defined parking area” does not include any parking area which is not open or regularly used for parking by the users of the automated teller machine facility or the conduct of transactions during nighttime hours. For this purpose, the parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed.

Section 4. [Security Measures.] Every banking institution shall maintain the following security measures with respect to each of the automated teller machine facilities within its dominion and control:

1. A surveillance camera or cameras, which shall view and record all persons entering an automated teller machine facility located within the interior of a building, or which shall view and record all activity occurring within a minimum of [three (3)] feet in front of an automated teller machine located outside a building and open to the outdoor air. Such camera or cameras need not record banking transactions made at the automated teller machines. The recordings made by such cameras shall be preserved by the banking institution for at least [thirty (30)] days.

2. Adequate lighting.

3. With respect to an indoor automated teller machine facility:

   (a) Entry doors equipped with locking devices which permit entry to such facility only to persons using a magnetic-strip plastic card or similar access device.

   (b) To the extent practicable, as determined by an expert with competence in such matters as permitted by local building codes, at least [one (1)] exterior wall which provides an unobstructed view of the interior of the automated teller machine facility.
(c) A reflective mirror or mirrors, as necessary, placed in such a manner as to permit a person entering an indoor automated teller machine facility to view areas within such facility that are otherwise concealed to plain view.

(d) A clearly visible sign which, at a minimum, provides the following information:

1. the activity of the automated teller machine facility is being recorded by a surveillance camera or cameras;
2. customers should close the entry door completely upon entering and exiting;
3. customers should not permit any unknown persons to enter after regular banking hours;
4. customers should place withdrawn cash securely upon their person before exiting the automated teller machine facility;
5. complaints concerning security in the automated teller machine facility should be directed to the banking institution's security department or the [banking department,] together with telephone numbers for such complaints, and that the nearest available public telephone should be used to call the police if emergency assistance is needed.

Section 5. [List of Facilities.] Any banking institution which operates an automated teller machine facility shall file a list of such facilities with the [department] including the street addresses, intersecting streets, hours of operation, and the telephone number of the banking institution's security department. Such information shall also be filed with the [department] with respect to each additional automated teller machine facility within a reasonable time, as specified by the [superintendent] from the date upon which such facility commences operation. The [department] shall make such list available on request of local law enforcement agencies and other local governmental entities.

Section 6. [Consumer Safety Information.] Upon the original issuance or reissuance of an automated teller machine facility access device, the issuing banking institution shall provide its customers with written information concerning safety precautions to be employed while using an automated teller machine facility. Such written information shall include, at a minimum, the information described in paragraph (d) of subdivision three of Section 4 of this act.

Section 7. [Enforcement and Statistics.]
1. The [department] is authorized to enforce this article.
2. Statistics of crimes associated with the use of automated teller machine facilities compiled and maintained by any law enforcement agency
Section 8. [Report of Compliance] Within [one (1)] year after the effective date of this act, and each year thereafter, every banking institution which has an automated teller machine facility which is in operation on such date and such date every year thereafter shall submit a written report to the [department] on a form prescribed by the [superintendent] certifying that such automated teller machine facility is in compliance with the provisions of this act or any variance or exemption that has been granted, or if such facility is not in compliance with such provisions, such report shall state the manner in which such facility fails to meet such requirements, the reasons for such non-compliance and a plan to remedy any such non-compliance.

Section 9. [Compliance with Local Building Code and All Other Applicable Provisions of Law.] Unless otherwise provided in this act, nothing contained in this act shall be construed to exempt or relieve any banking institution from complying with all relevant provisions of the local building code and all other applicable provisions of law.

Section 10. [Facilities Not Subject to this Act.] The provisions of this act shall not apply to any unenclosed automated teller machine located in any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports, school building, and public buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure, or space in which such machine is located.

Section 11. [Civil Penalties.]

1. Any banking institution found to be in violation of any provision of Section 4 of this act shall correct the violation within [ten (10)] business days after such finding. Where a banking institution fails to correct said violation within such periods of time, the [superintendent] may in a proceeding after notice and a hearing, require any banking institution to pay a civil penalty in a sum not to exceed [two thousand five hundred (2,500)] dollars for each and every offense, provided, however that the aggregate penalty for all offenses with respect to any [one (1)] automated teller machine facility in any [one (1)] proceeding shall not exceed [ten thousand (10,000)] dollars. For the purposes of this act, each violation of Section 4 of this act shall be considered a separate and distinct violation.

2. Any banking institution found to be in violation of the provisions of Section 8 of this act shall be liable for a civil penalty of not more than [one-
thousand (1,000) dollars for each automated teller machine facility for which a report has not been filed. Any banking institution which makes a material false statement or material omission in any report filed pursuant to Section 8 of this act shall be liable for a civil penalty of not more than [five-thousand (5,000)] dollars for each such report.

3. Whenever payment of a civil penalty is required under this act, the [superintendent] shall execute a written order to that effect. A copy of such order shall be filed in the [office of the department] and a second copy shall, within [three (3)] days of execution, by served upon such banking institution either personally or by registered or certified mail, return receipt requested, directed to the banking institution's principal place of business. Such order may be reviewed in the manner provided by [insert appropriate state citation.] Such special proceedings for review as authorized by such section must be commenced within [thirty (30)] days from the service of such order. Such section shall in no way limit any of the powers granted to the [superintendent] under any provision of this act.

Section 12. [Collection of Penalties.] The [superintendent] shall have the discretion to report to the [attorney general] any failure, after due notice, to make payments of penalties incurred under this act. The [attorney general] shall, thereupon, in the name of the [superintendent,] or of the people of the state, institute such actions or proceedings as the facts may warrant.

Section 13. [Preemption.]

1. Except as provided in subdivision 2 of this section, this act shall supersede and preempt all rules, regulations, codes, statutes or ordinances of all cities, counties, municipalities, and local agencies regarding customer safety at automated teller machine facilities.

2. To the extent that any security measures inconsistent with or in addition to the provisions of Section 4 of this act are in effect, on the date on which this act becomes a law, in any city having a population of [one million (1,000,000)] or more, pursuant to any rules, regulations, codes, statutes or ordinances regarding customer safety at automated teller machine facilities duly enacted by such city on or before the date on which this act becomes a law, such security shall continue to be required within such city; provided, however, that the enforcement of any such security measures shall be enforced by the [superintendent.]

Section 14. [Variances and Exemptions from Automated Teller Machine Security Measures.]

1. Except in cities having a population or [one million (1,000,000)] or more, and in accordance with the guidelines set forth in this act, the [superintendent,] pursuant to rules and regulations promulgated by the [super-
intended,] and upon written request of a banking institution, may approve
variances which provide substitute security measures that are substan-
tially as safe as the requirements of any of the security measures contained
in this act, or exemptions from such measures, with respect to an auto-
mated teller machine facility or facilities operated by such banking institu-
tion;

2. In no event, however, shall the [superintendent] vary or exempt any
such measures unless he or she shall have received the following items, in
form and substance satisfactory to him or her:

(a) a resolution or declaration of the governing body of the city, vil-

lage, or town in which such automated teller machine facility is located
consenting to any such variance or exemption; and

(b) written certification from the banking institution's security of-
oficer, appointed in accordance with federal law, that, in his or her profes-
sional judgment, either the variance will provide security measures which
are substantially as safe as this which are otherwise required by this act or
the exemption is warranted, as applicable; and

(c) in the event the request for any such variance or exemption is
premised upon the impracticability or burdensome expense that would re-
sult from compliance with the security provisions contained in this act, and
such impracticability or expense is attributable to the manner in which the
building in which such automated teller machine facility is, or is to be, lo-
cated, constructed, configured or otherwise situated, written certification
to such effect form an expert with competence in the areas of renovation
and/or design, as may be appropriate; and

(d) such other evidence or information as the [superintendent] may,
in his or her sole discretion, deem appropriate or necessary.

Section 15. [Rules and Regulations.] The [superintendent] shall pro-
mulgate such rules and regulations as necessary to define and implement
the provisions of this act.

Section 16. [Severability.] If any word, phrase, clause, sentence, para-
graph, section or part of this act shall be adjudged by any court of compe-
tent jurisdiction to be invalid, such judgment shall not affect, impair or
invalidate the remainder thereof, but shall be confined in its operation to
the word, phrase, clause, sentence, paragraph, section or part thereof di-
rectly involved in the controversy in which judgment shall have been ren-
dered.

A statement of banking institutions, as defined in [insert appropriate
state citation,] which have been granted a variance or exemption form au-
tomated teller machine security measures. The statement shall include a
listing of the number of variance or exemption applications received and
granted; the name of the banking institution which received a variance or exemption; the geographic location of the automated teller machines subject to the variance or exemption; and the general conditions or terms of the variance or exemption.

Section 17. [Effective Date] [Insert effective date.]
The Unfair Home Improvement Loans for Senior Citizens Act

This act prohibits home solicitation of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purpose of paying for home improvements, and that transaction violates provisions of federal law governing consumer loans as listed below.

Subsections (h) and (i) of Section 1639 of Title 15 of the U.S. Code:
(h) A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in Section 1602 (aa) of this title without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations and employment.
(i) A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in Section 1602 (aa) of this title, other than (1) in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or (2) at the election of the consumer, by a third party

Section 226.32 of Title 12 of the Code of Federal Regulations:
(e) A creditor extending mortgage credit subject to this section may not:
(1) Repayment ability. Engage in a pattern or practice of extending such credit to a consumer based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer will be unable to make the scheduled payments to repay the obligation.
(2) Home improvement contracts. Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by this section, other than:
   (ii) By an instrument payable to the consumer or jointly to the consumer and the contractor; or
   (ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement;
(3) Notice to assignee. Sell or otherwise assign a mortgage subject to this section without furnishing the following statement to the purchaser or assignee: “Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.”

A third party is not liable under certain provisions of this act unless there was an agency relationship between the party who engaged in home solicitation and the third party or the third party had knowledge of or par-
The Unfair Home Improvement Loans for Senior Citizens Act

ticipated in the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under certain provisions of the act.

Submitted as:
California
Ch. 255
SB 320
Enacted 1995

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the "Unfair Home Improvement Loans for Senior Citizens Act."

Section 2. [Definitions.]
(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property whether or not severable therefrom.
(b) "Services" means work, labor, and services for other than a commercial or business and including services furnished in connection with the sale or repair of goods.
(c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.
(d) "Consumer" means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.
(e) "Transaction" means an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.
(f) "Senior citizen" means a person who is [sixty (65)] years of age or older.
(g) "Disabled person" means any person who has a physical or mental impairment which substantially limits one or more major life activities.
(h) "Home solicitation" means any transaction made at the consumer's primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation.
Section 2. [HomeSolicitation.] The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (1) there was an agency relationship between the party who engaged in home solicitation, and the third party or (2) the third party had actual knowledge of, or participated in the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

Section 3. [Applicability.] The provisions of this act shall be applicable to contracts entered into on or after [insert date.]

Section 4. [Effective Date.] [Insert effective date.]
Critical Industries Development Account

This act establishes a “Critical Industries Development Account” as a separate, non-lapsing account within a state's General Fund. The account would be used to fund loans, loan guarantees, interest rate subsidies and other forms of loan assistance to customers of businesses in critical industries which businesses are based in the state. These funds may include federal funds, state bond proceeds, private venture capital and investments by people, firms or corporations. Businesses and their subcontractors which receive assistance under this act must carry out a specified percentage of the development and manufacturing work for the product in the state.

Submitted as:
Connecticut
Public Act 95-288
Sub. SB 1147
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the “Critical Industries Development Act.”

Section 2. [Establishment and Criteria.]
(a) As used in this act “critical industry” means an industry that uses emerging technologies to develop and manufacture nondefense products for future sale, has the potential to create or retain jobs in the state and is critical to the state economy.

(b) There is established an account to be known as the critical industries development account, which shall be a separate, nonlapsing account within the general fund. The account shall contain any moneys invested pursuant to the provisions of this act. The state [innovations, incorporated] may use funds from the account to provide loans, loan guarantees, interest rate subsidies and other forms of loan assistance to customers of businesses in critical industries which businesses are based in the state. The state [innovations, incorporated] may solicit and receive funds from any public and private sources for the program. Such funds may include, without limitation, federal funds, state bond proceeds, private venture capital, and investments by persons, firms or corporations. Private capital investments may be made either in the account as a whole or in one or more individual technologies or projects.
(c) No product may receive assistance under this act unless its manufacturer agrees to enter into a contract to: (1) Carry out a specified percentage of the development and manufacturing work for the product in the state; and (2) when subcontracting is required to conduct a specified percentage of such work with companies based in the state. The [state innovations, incorporated] shall determine such percentage for the purposes of this program.

(d) Any funds invested by a corporation in the critical industries development account pursuant to this act shall be eligible for a credit against the tax imposed by [insert appropriate state citations] of the general statutes in an amount determined by multiplying the amount invested in the account by such corporation by [four (4)] percentage points less than the average cost of capital for development projects financed by the [state development authority] as determined by the authority.

(e) Any person who or firm or corporation which invests funds in the critical industries development account pursuant to this act shall receive a portion of the interest paid and principal repayment by the interest paid and principal repayment by the recipient of the loan in proportion to the ration of the amount of the investment of such person, firm or corporation or the total loan amount.

(f) The [commissioner of economic development] may adopt regulations in accordance with the provisions of [insert appropriate state citations] of the general statutes to carry out the purposes of this act.

Section 3. [Effective Date] [Insert effective date.]

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Uniform Tobacco Products Sales Laws

This act enables a state to clarify and make uniform laws regulating the sale and distribution of tobacco products to people under 18 years old. It provides that a person who knowingly distributes or aids in distributing tobacco products or cigarette wrapping papers to a person under 18 years old or who knowingly purchases these products on behalf of such person is guilty of a misdemeanor. People under 18 who attempt to purchase or purchase tobacco products or cigarette wrapping papers also commit an infraction. Finally, this act makes it a misdemeanor to send a person under 18 to purchase tobacco products.

Submitted as:
North Carolina
HB 766
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the "Uniform Tobacco Products Sales Laws."

Section 2. [Youth Access to Tobacco Products.]
(a) Definitions — The following definitions apply in this act:
(1) Distribute. — To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.
(2) Proof of age. — A drivers license or other documentary or written evidence that purports to establish that the person is [eighteen (18)] years of age or older.
(3) Sample. — A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.
(4) Tobacco product. — Any product that contains tobacco and is intended for human consumption.
(b) Sale or distribution to persons under the age of [eighteen (18)] years. — If any person shall knowingly distribute, or knowingly aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of [eighteen (18)] years, or if any person shall knowingly purchase tobacco products or cigarette wrapping papers on behalf of a person, less than [eighteen (18)] years, the person shall be
Suggested State Legislation

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under [eighteen (18)] years of age. Failure to demand proof of age as required by this subsection is a [Class 2 misdemeanor.]

(c) Purchase by persons under the age of [eighteen (18)] years. — If any person under the age of [eighteen (18)] years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, the person shall be guilty of an infraction as provided in [insert appropriate state citation.]

(d) Send or assist person less than [eighteen (18)] years to purchase or receive tobacco product. — If any person shall knowingly send or assist a person less than [eighteen (18)] years to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a [Class 2 misdemeanor;] provided, however, persons under the age of [eighteen (18)] may be enlisted by police or local sheriffs’ departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the [department of human resources] shall have the authority, pursuant to a written plan prepared by the [secretary of human resources,] to use persons under [eighteen (18)] years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the state has achieved in reducing the availability of tobacco products to persons under the age of [eighteen (18),] and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC Section 300x-26).

(e) Statewide uniformity. — It is the intent of the [general assembly] to prescribe this uniform system for the regulation of tobacco products to ensure the eligibility for and receipt of any federal funds or grants that the state now receives or may receive relating to the provisions of this act. To ensure uniformity, no political subdivisions, boards, or agencies of the state nor any county, city, municipality, municipal corporation, town, township village, nor any department or agency thereof, may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of to-
bacco products or cigarette wrapping papers on or after [inset date.] This subsection does not apply to the regulation of vending machines, nor does it prohibit the [secretary of revenue] form adopting rules with respect to the administration of the tobacco products taxes levied under [insert appropriate state citation.]

Section 3. [Effective Date] [Insert effective date.]
Multiracial Classification Act

This act requires that employers and educational institutions include “multiracial” as a classification on business and other forms or correspondence which require people to designate their racial background. It replaces the “other,” category. “Multiracial” means having parents of different races.

The act requires that if a federal agency requires an employer or educational institution in the state to transmit information about someone's race or ethnicity but rejects the classification of “multiracial,” the employer or educational institution shall redesignate those individuals to racial or ethnic classifications approved by the federal agency in the same ratio that those classifications occur within the general population of the group from which the information was solicited.

Submitted as:
Michigan
Act 88
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Multiracial Classification Act.”

Section 2. [Designation of Racial or Ethnic Classifications in Writing Developed by Employer; Transmission of Information to Federal Agency; “Writing” Defined.]

(1) An employer shall do both of the following if that employer lists racial or ethnic classifications in a writing developed or printed [ninety (90)] or more days after the effective date of this act, and if that employer requests that an individual select a classification to designate his or her race or ethnicity:

(a) Include in the writing the term “multiracial” as a classification, and a definition of that term that substantially provides that “multiracial” means having parents of different races.

(b) Exclude from the writing the term “other” as a classification.

(2) If a federal agency requires an employer to transmit information obtained from an individual pursuant to a writing described in subsection (1), but rejects the classification “multiracial,” the employer shall redesignate the individuals identified as multiracial by allocating those individu-
(3) As used in this act, “writing” means that term as defined in [insert appropriate state citation.]

Section 3. [Effective Date] [Insert effective date.]
Federal Telecommunications Act of 1996*
(Note)


The telecommunications’ revolution moved to the nation’s statehouses with signing of the Telecommunications Act of 1996 in February. While the federal act substantially deregulated the communications industry, it also charged the Federal Communications Commission and state public service commissions with implementing more than 80 regulatory mandates.

In the congressional battle, states largely succeeded in avoiding federal preemption. Now they face the massive job of settling disputes between local telecommunications competitors. While the act essentially abolished the historical monopolies enjoyed by large and small local telephone companies, it left it to the states to deal with competition in newly open local markets. In addition, states will have the opportunity to set and enforce universal service standards that will provide the kind of communications infrastructure desired by educators, business and citizens.

State communications agencies also must continue to efficiently serve the public and other state agencies while working with a tumultuous and, for now, chaotic industry.

Highlights of the act

The Telecommunications Act of 1996, among other things:

- makes telephone companies and other telecommunications carriers responsible for interconnecting with one another. A telecommunications carrier may be a cable company, personal communications network or public utility;
- opens local markets by removing state or local barriers that keep out competition;
- opens long distance markets to further competition from the Bell companies;
- maintains state and local authority over zoning and land-use decisions;
- gives principles for devising a federal definition of universal service;
- opens local-service areas to competition between existing and new carriers;
• defines conditions that regional Bell companies must meet to enter in-region long-distance markets; and,
• deregulates cable rates and provides guidelines for local exchange cable and video services.

FCC rulemaking

Two issues are at the top of the rulemaking heap. Because many different networks are involved in handling calls, the FCC must sort out a lot of technical issues in making its rules. For example, when someone in New York calls Seattle, the networks that the call travels over must interconnect and there must be rules for paying the networks that carry the call, including the Seattle telephone company.

To end the local phone companies' monopoly, the FCC must write rules ensuring that competitors can interconnect, originate and terminate (carry to the call's destination) traffic across a variety of local networks. The rules must ensure companies will be compensated for calls they carry. The FCC addressed many of these issues in an August “interconnection” order. The FCC will outline new universal services in May 1997 after it receives recommendations from a joint state-federal board. In addition, the commission will establish discounted prices for universal services to qualifying educational institutions and hospitals.

States charged with reform

Depending on FCC rules defining interconnection and universal service, the states may find themselves with narrow or wide latitude to carry out reform. Nonetheless, the telecommunications act gives the states monumental responsibility for reform. Since the states must review every interconnection agreement reached by competing telephone companies, the stage is set for a major state role in determining the shape of the communications markets.

However, under the Telecommunications Act, no state or local regulations can prohibit an entity's provision of telecommunications services which enhance competition in the provision of such legal service. While the states are permitted to impose competitively neutral regulations to preserve and advance universal service, protect the public interest, ensure quality, and safeguard consumers, the FCC can preempt state action which violates or is inconsistent with the act.¹

The states must approve all agreements that companies doing business in that state negotiate with one another. And states must arbitrate disputes between carriers that fail to reach such agreements. All the time, states must keep in mind whether the agreements are consistent with the public interest. Further, state decisions might be challenged by companies
Suggested State Legislation

that claim the rulings lean too heavily on the public interest standard or stray too far from interconnection obligations defined by the FCC.

To carry out reform, state public service commissions will have to display technical sophistication. For example, the act requires interconnection "at any technically feasible point" within a carrier's network. Public service commissions can be challenged on their judgments as to what is technically feasible.

In addition, competitors are likely to challenge state decisions that Bell companies have met required conditions to enter the long distance market. Disgruntled carriers are likely to challenge state rules that go beyond federal guidelines. The Council of Governors' Policy Advisors asked members to watch for "forum shopping" as companies seek the friendliest possible audience for their concerns — whether governor, legislature or public utility commission.

What's in a number?

The states will examine interconnection agreements to determine fair pricing for a menu of items made available by existing local and long-distance companies for purchase and resale. For example, state commissions will have to judge whether telephone company rates for "network elements" — facilities or equipment used to provide telecommunications services and their features — are just and reasonable.

In addition, the Telecommunications Act of 1996 requires regulators to set "wholesale" rates local telephone companies offer to resellers. Industry observers speculate that these decisions may determine the characteristics of local competition. What rate will encourage competition between facilities-based carriers and not create a system in which the dominant carrier merely provides services for resale to competitors?

For years, the states regulated telephone company profits (rate of return regulations) instead of service rates, thus hiding the true cost of providing network elements and services. Determining costs and the corresponding just and reasonable prices will test public service commission expertise across the country. Local telephone companies also will need to develop accurate cost estimates for a variety of services they offer to other carriers and the public. This is essential to future competitiveness. Many industry observers believe that this will not be easy after decades of monopoly control over the local exchange. However, since the act specifically requires that local exchange carriers provide "unbundled interconnection service to all carriers at rates which are cost based, reasonable and non-discriminatory expected resistance by the LEC's will be ameliorated by these legal requirements.\(^2\)
Universal service

The Telecommunications Act of 1996 lists several principles to guide a joint state-federal board in developing new universal service definitions. They include access to advanced telecommunications and information services and to comparable services in urban and rural areas. Because regulators must come up with specific funding mechanisms to support these advanced features, how feature-rich can universal service be? These provisions are the first comprehensive federal statutory mandate for universal telephone service since the Federal Communications Act of 1934. The goal of universal service is for all Americans to have access to basic telephone service at rates that are universally affordable. How can the goals of feature-rich universal service and universal affordability be effectively balanced?

The answer is crucial to schools, libraries and health institutions eligible for special discounts on universal services. The states will determine what in-state discounted rates ensure affordable access to universal services.

The discounts present a problem to managers of state networks, who must provide the most economical service to the public and other agencies. Many state networks get bargain telecommunications rates by representing a pool of large customers, often including higher education institutions. The new rules on discounts could force schools to choose between using an isolated and redundant public network to qualify for special rates or joining a collaborative state network, which may deliver more for less.

Service quality

Some states expect a time of uncertainty in operating their networks. Firms that have not previously bid on telecommunications contracts are expected to pitch products and services to states that by law must entertain all responses. With untested companies entering the market, service quality and reliability will be a concern over the next few years.

State telecommunications managers are raising concerns over service and support issues. They wonder, for example, whether new competitors will offer acting support that permits state telecommunications agencies to act agencies that use their services. They are concerned over whether new service providers will offer magnetic tape acting records in formats state agencies can use. States also have concerns over 24-hour trouble reporting and 911 functionality. Of most concern, however, is whether state requirements for buying from the low-bidder make state telecommunications agencies vulnerable to marginally qualified companies seeking state contracts.

State concerns are real because state telecommunications agencies represent a $1 action market, according to the most recent comprehensive sur-
survey conducted by the National Association of State Telecommunications Directors.

Telecommunications and information technology are the lifeblood of a modern society. With the telecommunications’ revolution squarely in the states’ hands, lots of questions remain. How aggressively will state regulators insist on interconnecting competing networks? How feature-rich will universal service be? What advanced services will children have in school?

Prospective state legislation

The Telecommunications Act of 1996 is aimed at creating a more competitive telecommunications market. Potential state legislation could:

• remove all state and local restrictions on the provision of local exchange service, allow certification of new entrants upon registration, and eliminate state and local rules that favor incumbent local exchange carriers;

• direct the state commission to establish predictable and competitively neutral intrastate mechanisms for the support of universal service, including the competitive carrier and carrier neutral collection and disbursement of universal funds;

• direct incumbent local exchange carriers to file immediately with the state commission all existing interconnection agreements, and to make those agreements available to all carriers on a non-discriminatory basis;

• direct all incumbent local exchange carriers to submit to the state commission total service long run incremental cost studies, and direct the state commission to set all carrier-to-carrier rates at total long run incremental costs;

• immediately remove all resale restrictions from local exchange carrier tariffs;

• require local exchange carriers to implement 1+intralLATA toll presubscription immediately, to the extent consistent with federal law;

• direct the state commission to implement all necessary regulations to protect competitive and potentially competitive activities from the exercise of monopoly power, including, in particular, requiring the structural separation of incumbent local exchange carrier bottleneck activities (e.g., the provision to other carriers of unbundled network elements and wholesale services) from competitive and potentially competitive activities, and otherwise to address concerns of market power, as in the context of yellow page offerings;

• direct the state commission to determine wholesale rates to be charged by incumbent LECs to new entrants, determining such wholesale rates on the basis of retail rates charged to subscribers for the telecommunications services requested, including the portion thereof attribut-
able to any marketing, acting, collection, and other costs that will be avoided by the incumbent LEC, as well as other appropriate discounts to foster competition and reflect LEC inefficiencies, quality differentials, etc.; and,

• direct the state commission to take all actions necessary to implement the provisions of the Telecommunications Act of 1996, as well as adopt all regulations needed to make genuine local exchange competition a reality.


2Couick, Michael N., Id. p. 16.

3Couick, Michael N., Id. p. 17.

*“Enhanced Competition Within the Telecommunications Industry” provides a more detailed analysis about the impact of the Telecommunications Act of 1996 upon states. This document was prepared by Michael N. Couick, Director or Research, and Attorney to the South Carolina Senate Judiciary Committee, in April 1996. Copies of the full-text of this briefing paper can be obtained by calling CSG at (606) 244-8249.
Retail Transmission of Electricity

Whether and how to deregulate public utilities is a major issue facing states in the nineteen nineties and beyond. This involves rates and commodities (e.g., electricity or telephone signals). At least four states have initiatives on the books: Indiana, Oregon, Nevada and New Hampshire.

Indiana IC 8-1-2.5 (P.L. 108-1995) concerns retail energy services provided by energy utilities.

Indiana empowers the state public service commission to "flexibly regulate and control the provision of energy services to the public." The commission may:

- adopt alternative regulatory practices, practices, procedures, and mechanisms;
- establish rates and charges that are in the public interest and enhance the value of an energy utility's retail energy services or property; and,
- establish rates and charges based on market or average prices, price caps, index-based prices, and prices that use performance based rewards or penalties, either related to or unrelated to the energy utility's return on property; and are designed to promote efficiency in the rendering of retail energy services.

Indiana established a regulatory flexibility committee to monitor changes in the electricity and telephone utility industries.

Oregon's enrolled HB 2846 (enacted 1995) appears to enable public utilities to bypass traditional procedures for establishing new rates if the utility has an approved alternative form of regulation plan. Alternative form of regulation plans are "plans adopted by the commission upon petition by a public utility" that "sets rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-service rate regulation."

Nevada SB 231 (a.k.a., the "Retail Wheeling Act") authorizes the state public service commission to allow retail transmission of additional electricity for certain new recycling businesses. This 1993 law authorizes the commission on economic development to participate in proceedings before the public service commission and exempts a percentage of the personal property of certain new recycling businesses from property taxes.

The item featured in this SSL volume is based on New Hampshire law. New Hampshire SB 168 directs the state public utilities commission to establish a committee to review and study retail electricity in the state, and restructuring the electric utility industry in the state. It defines retail wheeling as "a commercial transaction arrangement by which a retail electricity consumer contracts with a remote electric supplier to transmit energy through the electrical distribution system of the local utility to which the
customer is connected. The local utility physically continues to provide electric service to the retail consumer, who pays the local utility a regulated fee for the retail wheeling and distribution services provided, and who pays the remote supplier for the electricity in an unregulated market." The act directs the commission to establish a pilot program allowing the competitive retail purchase of electricity.

The New Hampshire act also directs the commission to establish procedures for reviewing and approving tariffs for electric service rates that foster attracting new businesses to the state and encourage existing businesses to stay or expand in the state.

Submitted as:
New Hampshire
1995 Laws of New Hampshire, Ch. 272
SB 168
Enacted into law, 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the "Retail Transmission of Electricity Act."

Section 2. [Findings.]
I. The [legislature] finds that the business of generating, transmitting and selling electricity for ultimate distribution to consumers within the [insert state] is a matter of public interest, and that reasonable, competitive electricity prices are necessary to promote the public health, safety, and economic welfare. Compared with consumers in other states, [insert state] electricity consumers pay significantly higher electricity prices, creating economic dislocations and hardships, including loss of jobs. If continued, the present de facto negotiation of special case rate reductions for large electricity consumers increases the pressure for an ultimate cost shift to smaller consumers. The [legislature] also finds that retail wheeling may provide a basis for determination of electricity price levels that relies to a greater extent upon competition than upon regulation. There are no apparent insurmountable technical barriers to the establishment of retail wheeling in [insert state].

II. The [legislature] further finds that [insert state] economy may be further handicapped if it lags behind other states in considering retail wheeling. While retail wheeling appears to be a highly desirable electricity mar-
ket paradigm, there are significant uncertainties, some unique to [insert state] that must be taken into account when determining a state policy for retail wheeling. Therefore, it is the purpose of this act to provide sufficient information to legislators so that they may make recommendations to the [legislature] regarding legislation for the 1996 session.

III. The [legislature] further finds that [insert state] economy may also benefit from studying the effectiveness of the current system of regulation of electric utilities, investigating alternative forms of service, and studying ways of restructuring the electric utility industry.

Section 3. [Retail Wheeling and Restructuring Committee Established; Members.] There is hereby established a committee to review and study the issues of retail wheeling and potential restructuring of the electric utility industry in [insert state.] The members of the committee shall be as follows:

I. At least [five (5)] but not more than [nine (9)] senators, appointed by the [president of the senate] at least [one (1)] of whom shall be a member of the minority party. The [president] shall first consider for appointment the senators currently appointed to the [public utilities commission roundtable on competition in the electric industry.]

II. [Nine (9)] house members, appointed by the [speaker of the house] at least [two (2)] of whom shall be a member of a minority party. The [speaker] shall first consider for appointment the house members currently appointed to the [public utilities commission roundtable on competition in the electric industry.]

Section 4. [Retail Wheeling Defined.] For the purposes of this act “retail wheeling” or “direct access” means a commercial transaction arrangement by which a retail electricity consumer contracts with a remote electric supplier to transmit energy through the electrical distribution system of the local utility to which the customer is connected. The local utility physically continues to provide electric service to the retail consumer and distribution services provided, and who pays the remote supplier for the electricity in an unregulated market.

Section 5. [Duties]

I. The committee shall be responsible for the following:

(a) Soliciting information and the viewpoints of all affected and involved parties which shall include but not be limited to:

   (1) The public utilities commission.
   (2) Large and small utilities.
   (3) Independent power producers.
   (4) Large business electricity consumers.
   (5) Small business electricity consumers.
(6) Residential consumers.
(7) Legislators.
(8) Regulatory personnel from other states and nations having enacted or contemplating retail wheeling legislation.

(b) Retaining an expert consultant, consultants, or services as necessary to assist in gathering, interpreting, and summarizing information for presentation in forms usable to all members of the legislature and to the citizens of [insert state] to be selected by members of the committee.

(c) Reviewing regulatory pricing mechanisms for the unbundled costs of necessary transmission and distribution.

(d) Reviewing the potential for the mitigation of cross subsidization among services and classes of consumers.

(e) Reviewing the environmental and conservation related effects of retail wheeling.

(f) Reviewing the reliability of retail wheeling and the impact of retail wheeling on electric service quality, reliability, and adequacy.

(h) Reviewing the following relative to retail wheeling:

(1) Power dispatch and the impact on [regional power agency] operations.

(2) Independent power producers and the Public Utilities Regulatory Policy Act (PURPA).

(3) Demand side management, integrated resource planning, and at least cost planning.

(4) The deferral accounts created in the rate agreement defined in [insert appropriate state citations] and the acquisition premium.

(5) Regulatory assets.

(6) Stranded costs recovery, if recoverable, and how much.

(7) Economic impact on the state and differing impacts on electricity consumers by class.

(8) Social costs of deregulation and the fate of present low-income subsidies.

(9) Special case reduced rate contracts

(10) Suggested public utilities commission generic ratemaking and rulemaking, which shall include the unbundling of the transmission, distribution, and generalization cost components of present rates.

(11) Sources of new capacity.

(12) Federal laws, including laws of the federal Energy Regulatory Commission.

(13) Litigation risks.

(14) Other states’ legislation and experience with retail wheeling.

(i) Reviewing the effectiveness of the current system of regulation of electric utilities.

(j) Examining possible alternative forms of regulation and related
Suggested State Legislation

restructuring of electric utility industry in [insert state.]

(k) Reviewing public policy issues relating to municipalization.

(l) Reviewing possible interim measures to foster increased competition.

(m) Reviewing economic development and retention rate policy.

II. The committee may draw upon the final report and information gathered by the [public utilities commission roundtable on competition in the electric industry] so as to avoid duplication of effort and resources.

Section 6. [Administrative Support.] The [president of the senate] and [speaker of the house] shall ensure that the committee is properly provided with secretarial help, legal counsel, and an administrative assistant.

Section 7. [Meetings; Mileage] The first-named senator shall call the first meeting which shall be held within [thirty (30)] days of the effective date of this act. The members shall elect a chairperson at the first meeting. Members shall receive legislative mileage.

Section 8. [Report.] The committee shall submit an interim or final report of its findings, including recommendations for legislation, to the [speaker of the house, the [senate president, the [house clerk, the [senate clerk, the [governor, and the state library no later than [insert date.]

Section 9. [Fund Established.] The committee shall establish a fund which shall not exceed [twenty-five thousand (25,000)] dollars to be held by the [state treasurer.] The fund shall consist of [twenty-five thousand (25,000)] dollars from assessments against the state's electric utilities made by the [public utilities commission] pursuant to the methodology defined in [insert appropriate state citation.] The fund shall be used to pay costs incurred pursuant to Section 5 of this act.

Section 10. [New Section; Economic Development and Retention Rates.] Notwithstanding any other provision of law to the contrary, the [commission] shall establish procedures for the review and approval of tariffs for electric service rates that foster economic development and of tariffs for retention of existing load within the state. For the purposes of this section the term "economic development rates" means rates, the purpose of which is to attract new industrial companies to the state and to encourage expansion of existing industrial companies that would otherwise not occur in the state. For the purposes of this section "retention rates" means rates, the purpose of which is to retain existing industrial companies that would otherwise leave the state. Such procedures shall provide that all electric public utilities serving retail customers may file with the [commission] generally available rate schedules for the provision of economic development rates.
Retail Transmission of Electricity

and/or retention rates to industrial customers. Such rates shall take into consideration eligibility criteria, the effect on the utility’s fixed and variable costs, the amount of new demand and energy for electric service involved, the effect on employment within the state, material adverse competitive impact on existing in-state firms, and end-user participation in conservation programs and other state established economic development enhancement programs. To ensure fairness in the application of the retention rate to industrial companies that are not planning to leave the state, if the [commission] finds that it is in the public good, the retention rate may also be offered to a direct competitor of a company that has qualified for such rate. For the purposes of ratemaking, a utility that adopts a retention rate shall not be allowed to recover from other ratepayers the difference between the regular tariffed rate and the retention rate unless and only to the extent that the [commission] determines that it is in the public interest and equitable to other ratepayers. For the purposes of ratemaking a utility that adopts an economic development rate shall not be allowed to recover from other ratepayers the difference between that regular tariffed rate and the economic development rate, and in any rate proceeding subsequent to approval of economic development rates the [commission] shall not impute the utility’s revenue requirement the difference between the regular tariffed rate and the economic development rates for those customers who qualify for the economic development rate.

Section 11. [Duration of Economic Development and Retention Rates.] The rates established pursuant to Section 10 shall not be available after [insert date.]

Section 12. [Establishment of Procedure.] The [commission] shall prepare and establish the procedure set out in Section 10 no later than [one-hundred fifty (150)] calendar days after the effective date of this act.

Section 13. [Retail Competition Pilot Program.] The commission shall establish a pilot program, under such terms and conditions as the [commission] shall deem appropriate, for the purpose of determining the implications of retail competition in the electric industry, provided that the [commission] determines that such a program is fair, lawful, constitutional and in the public good. This pilot program shall be open to all franchise areas and to all classes of customers.

Section 14. [Natural Gas Economic Development and Retention Rates.] Notwithstanding any provision of law to the contrary, following the establishment of the procedures required by Section 10. The [commission] shall initiate a proceeding to consider whether economic development and retention rates are appropriate for the sale and distribution of natural gas and
whether the [commission] should establish procedures for the review and approval of economic development and retention tariffs for the sale and distribution of natural gas, provided that if such procedures are established and are applicable at the option of the natural gas utility, such utility shall not be allowed to recover from other ratepayers the difference between the regular tariffed rate and the economic development rate or retention rate unless and only to the extent that the commission determines that it is in the public interest and equitable to other ratepayers.

Section 15. [Report by Public Utilities Commission.]
I. The [commission] shall submit an annual report on or before [insert date] for the next [five (5)] years to the [legislature,] the [governor,] and the [consumer advocate.]
II. The report shall include but not be limited to the following:
   (a) The number of utilities filing economic development and retention rates.
   (b) The number of customers being served by each utility under those rates.
   (c) The impact of the economic development and retention rates on:
      (1) The load of each utility;
      (2) The ratepayers of each utility; and
      (3) Participating customers to the extent that it can be determined.

Section 16. [Effective Date] [Insert effective date.]
Regulatory Reform - Comparative Risk Assessment and Cost/Benefit Analysis (Note)

A number of states have enacted laws to reform the process of adopting regulations. Many of these laws create methods to analyze and compare risks associated with the activity to be regulated, and cost-benefit analysis provisions of proposed regulations. The purpose of these laws is to provide a standard method of a regulatory agency to use in prioritizing actions, so that state regulatory systems are as effective as possible.

The laws of nine states are summarized here—Alabama, Arkansas, Kansas, Louisiana, Mississippi, Montana, Ohio, Oklahoma, and Washington. Each of these laws mandates that a particular analysis be performed by a state agency prior to adopting regulations. Two states, Alabama and Washington, enacted comprehensive laws addressing many aspects of regulatory development. The other seven states enacted laws that are more limited in scope.

Alabama’s ch. 627 (1993) revises the state Administrative Procedures Act requiring the agency to prepare a fiscal note for any rule that has an economic impact. The fiscal note must contain a detailed cost/benefit analysis including consideration of the following:

- the need for the regulation and the expected benefit of the regulation;
- a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost-effective, efficient and feasible means for allocating public and private resources and for achieving the state purpose;
- the effect of the regulation on competition;
- the effect of the regulation on the cost of living and businesses in the area;
- the effect of the regulation on employment in the area;
- the source of revenue to be used for implementing and enforcing the regulation;
- an assessment of the short-term and long-term economic impact upon all people substantially affected by the regulation, including an analysis of which people will bear the costs of the regulation and which people will benefit directly and indirectly from the regulation;
- the uncertainties associated with the estimation of particular benefits and burdens, and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens;
- The effect of the regulation on the environment and public health; and the detrimental effect on the environment and public health that would result if the regulation was not implemented.
Alabama also establishes guidelines for the state Joint Legislative Committee on the Administrative Regulation Review to approve or disapprove a regulation. The guidelines require an analysis of the risks posed by the regulated conduct specified in the law. Specifically, the Committee must determine whether the absence of the rule would significantly harm or endanger the public health, safety or welfare of citizens.

Washington's ch. 403 (1995) also contains a number of reforms to the rule-making process. The legislation requires the Department to make the following determinations prior to adopting any rule:

- the rule is needed to achieve the goals and objectives of the statute that the rule-making implements;
- the probable benefits of the rule are greater than its probable costs (considering both quantitative and qualitative benefits and costs);
- the rule being adopted is the least burdensome alternative;
- the rule does not require the regulated community to take action that violates another federal or state law;
- the rule does not impose more stringent performance requirements on private entities than on public entities; and
- any variations from federal law are justified and coordinated.

In making the above determinations, the Department must place documentation in the rule-making file to justify the determinations.

There also are some unique provisions of this law which encourage voluntary compliance with regulations by emphasizing education and assistance prior to the imposition of penalties. Specifically, the bill mandates that each regulatory agency develop programs to promote voluntary compliance by providing technical assistance including technical assistance visits, telephone consultations and training meetings. In Section 605, if a violation is observed during a technical assistance visit, the regulatory agency must give the facility owner and operator a reasonable period of time to correct the violation prior to issuing any civil penalty.

Several states have enacted laws that are narrower in scope than the Washington and Alabama laws. Arkansas and Montana require analyses only for regulations that are more stringent than federal requirements. Louisiana requires analysis for regulations that could cost in excess of $1 million to the state or regulated community (in aggregate).

Arkansas' ch. 163 (1993) establishes a simple requirement that the state environmental agency consider both the economic and environmental benefits of the rule to the citizens of Arkansas, including the regulated community. The law applies only to environmental rules that are more stringent than federal regulations.

Montana's ch. 471 (1995) applies only to environmental rules that are more stringent than federal regulations. However, this law requires the Department to conduct a written analysis which must show the following:
• the proposed state standard or requirement protects public health or the environment of the state, and the state standard to be imposed can mitigate harm to the public health or environment; and
• the regulation is achievable using current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis of the conclusion. The determination must also include information regarding costs to the regulated community that are directly attributed to the proposed state standard or requirement.

Louisiana enacted two laws which contain comparative risk assessment and cost benefit analysis provisions. The laws apply only to proposed environmental policies, rules or final regulations that will cost the state or regulated community in excess of one million dollars to implement. The 1995 law (Act 642) requires the Department to publish a report prior to publishing notice of any regulatory action that falls within the scope of the law. The report must include the following:
• an analysis of the specific risks being addressed by the policy, standard or regulation;
• a comparative analysis of the risks addressed;
• an analysis of how the policy, standard or regulation will advance the purpose of protecting human health or the environment; and
• an analysis and statement that the policy, standard, or regulation presents the most cost-effective method practically achievable to produce the benefits intended regarding the risks identified.

The second Louisiana law, Act 600 (1995) requires the agency to submit a cost-benefit analysis to the legislative fiscal office prior to the proposal of any rule that will cost the state and affected people more than $1 million (in aggregate.) The analysis must include a written determination, based on sound scientific information, that the environmental and public health benefits to be derived from the proposed rule outweigh the social and economic costs reasonable expected to result from the rule.

Four other states, Kansas, Mississippi, Ohio, and Oklahoma, have adopted regulatory reform laws that require a comparative risk assessment. These laws apply only to environmental regulatory proposals.

Kansas HB 2120 (enacted 1995) requires the agency to submit an environmental benefit statement to the Secretary of State with adopted environmental regulations. The environmental benefit statement must include a description of the need for the environmental benefits which will likely accrue as the result of the proposed rules. The description must summarize research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rule. When specific contaminants are to be controlled by the proposed rule, the description must
indicate the level at which the contaminants are considered harmful according to currently available research.

Mississippi ch 598 (1994) requires the state Commission on Environmental Quality to “consider the economic impact and environmental benefits” of a new environmental rule or regulation to the citizens of the state and the fiscal impacts on state and local government agencies. These considerations must be addressed in a report to be developed prior to rule promulgation. The report must include estimates of capital costs to the regulated community, initial costs to state and local government, descriptions of the need for the environmental benefit and reasonable alternatives. A detailed statement of the date and methodology used is also required.

Ohio HB 106 (enacted 1996) requires the Ohio EPA to do the following prior to adopting a rule that affects environmental regulations:

• consult with organizations representing political subdivisions, environmental interests, business interests, and others affected by the proposed rule or amendment;
• consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment; and
• rationalize any rule that are more stringent than federal counterparts.

Oklahoma ch. 145 (1993) requires a rule impact statement to be issued within 15 days after publication of the notice of proposed environmental rule adoption. The rule impact statement must include the following:

• a description of the rule;
• a description of the classes of people who will be affected by the rule;
• a description of the classes of people who will benefit from the proposed rule;
• a description of the probable economic impact of the proposed rule upon affected classes of people (including a separate justification for each fee change);
• the probable costs to the agency of the implementation and enforcement of the proposed rule; and
• a determination of whether there are less costly, less intrusive or nonregulatory methods for achieving the purpose of the proposed rule.
Filing Liens

This act:

• expands the offense of intimidation to include a prohibition against filing, recording or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner;
• expands the offense of falsification to include knowingly making a false statement, or knowingly swearing or affirming the truth of a false statement previously made, in a document or instrument or writing that is filed or recorded with a county recorder or the clerk of a court of record;
• creates the offense of knowingly using sham legal process;
• makes a person who intimidates, falsifies, or knowingly uses a sham legal process liable to the victim in a civil action for damages incurred as a result of these actions;
• permits a county recorder to refuse to record an instrument if the Revised Code does not require or authorize the recording of the instrument or the recorder has reasonable cause to believe the instrument is materially false or fraudulent;
• permits the clerk of a court of record to refuse to accept a document for filing or for docketing and indexing if the document is not required or authorized to be filed or to be docketed and indexed with the clerk or the clerk has reasonable cause to believe the document is materially false or fraudulent;
• allows for judicial review of a county recorder’s refusal to record an instrument and of the refusal of the clerk of a court of record to accept a document for filing or for docketing and indexing;
• provides qualified civil immunity for a county recorder who reasonably and in good faith improperly refuses to record an instrument and for a clerk of a court or record who reasonably and in good faith improperly refuses to accept a document for filing or for docketing and indexing.

Submitted as:
Ohio
Sub. HB 644
Signed into law by governor, August 7, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the “Filing Liens Act.”
Section 2. [Filing Materially False or Fraudulent Documents.]

(A) Notwithstanding any other provision of [state law], if a person presents a document to the [secretary of state] for filing or recording, the [secretary of state] may refuse to accept the document for filing or recording if the document is not required or authorized to be filed or recorded with the [secretary of state] or the [secretary of state] has reasonable cause to believe the document is materially false or fraudulent. This division does not create a duty upon the [secretary of state] to inspect, evaluate, or investigate a document that is presented for filing or recording.

(B) If the [secretary of state,] pursuant to division (A) of this section, refuses to accept a document for filing or recording, the person who presented the document to the [secretary of state] may commence an action in, or apply for an order from the [court of claims] to require the [secretary of state] to accept the document for filing or recording. If the court determines that the document is appropriate for filing or recording, it shall order the [secretary of state] to accept the document for that purpose.

(C) If the [secretary of state,] acting under this section in a manner that does not subject the [secretary of state] to personal liability under [insert appropriate state citation,] improperly refuses to accept a document for filing or recording, the [secretary of state] shall not be personally liable on account of the improper refusal and the sureties that issued the bond shall not have a right of subrogation against the [secretary of state] on account of a claim made on the [secretary of state's] bond as a result of the improper refusal.

Section 3. [Local Government Record Keeping.] Except as provided in division (F) of this section, the [county recorder] shall keep [six (6)] separate sets of records as follows:

(A) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices as provided for in sections [insert appropriate state citation,] all judgments or decrees in actions brought under [insert appropriate state citation,] all declarations and bylaws as provided for in [insert appropriate state citation,] affidavits as provided for in [insert appropriate state citation,] all certificates as provided for in [insert appropriate state citation,] all articles dedicating archaeological preservers accepted by the [director of the [insert state] historical society] under [insert appropriate state citation,] all articles dedicating nature preserves accepted by the [director of natural resources] under [insert appropriate state citation,] all agreements for the registration of lands as archaeological or historic landmarks under [insert appropriate state citation,] all conveyances of conservation easements under [insert appropriate state citation,] all instruments or orders described in [insert appropriate state citation,] all no further action letters issued under [insert
Filing Liens

appropriate state citation;] all covenants not to sue issued under [insert appropriate state citation;] and any restrictions on the use of property identified pursuant to [insert appropriate state citation;] and all memoranda of trust, as described in [insert appropriate state citation;] that describe specific real property;

(B) A record of mortgages, in which shall be recorded all of the following:

(1) All mortgages, including amendments, supplements, modifications, and extensions of mortgages, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered;

(2) All executory installment contracts for the sale of land executed after [insert date,] that by their terms are not required to be fully performed by [one (1)] or more of the parties to them within [one (1)] year of the date of the contracts;

(3) All options to purchase real estate, including supplements, modifications, and amendments of the options, but no option of that nature shall be recorded if it does not state a specific day and year of expiration of its validity.

(C) A record of powers of attorney, including all memoranda of trust, as described in [insert appropriate state citation,] that do not describe specific real property;

(D) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision of town lots, and of other divisions or surveys of lands, any center line survey of a highway located within the county, the plat of which shall be furnished by the [director of transportation] or county engineer, and all drawings as provided for in [insert appropriate state citation;]

(E) A record of leases, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments of leases and memoranda of leases;

(F) A record of declarations executed pursuant to [insert appropriate state citation] and durable powers of attorney for health care executed pursuant to [insert appropriate state citation.]

All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in [one (1)] volume unemployment compensation liens, internal revenue tax liens and other liens in favor of the United States as described in [insert appropriate state citation,] personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, and liens provided for in [insert appropriate state citations] of the Revised Code.
The recording of an option to purchase real estate, including any supplement, modification, and amendment of the option, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the option.

(G) In lieu of keeping the [six (6)] separate sets of records required in divisions (A) to (F) of this section and the records required in division (H) of this section, a [county recorder] may record all the instruments required to be recorded by this section in [two (2)] separate sets of record books. [One (1)] set shall be called the "official records" and shall contain the instruments listed in divisions (A), (B), (C), (E), (F), and (H) of this section. The second set of records shall contain the instruments listed in division (D) of this section.

(H) Except as provided in division (G) of this section, the [county recorder] shall keep a separate set of records containing all corrupt activity lien notices filed with the [recorder] pursuant to [insert appropriate state citation] and a separate set of records containing all medicaid fraud lien notices filed with the [recorder] pursuant to [insert appropriate state citation.]

Section 4. [Record Keeping: Authorized Processes.] The (A) except as otherwise provided in division (B) of this section, the [county recorder] shall record in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic or electronic process, all deeds, mortgages, plats, or other instruments of writing that are required or authorized by state law to be recorded and that are presented to the [recorder] for that purpose. The [recorder] shall record the instruments in regular succession, according to the priority of presentation, and shall enter the file number at the beginning of the record. On the record of each instrument, the [recorder] shall record the date and precise time the instrument was presented for record. All records made, prior to [insert date,] by means authorized by this section or by [insert appropriate state citation] shall be deemed properly made.

(B) The [county recorder] may refuse to record an instrument of writing presented to the [recorder] for recording if the instrument is not required or authorized by state law to be recorded or the [recorder] has reasonable cause to believe the instrument is materially false or fraudulent. This division does not create a duty upon a [recorder] to inspect, evaluate, or investigate an instrument of writing that is presented for recording.

(C) If a person presents an instrument of writing to the [county recorder] for recording and the [recorder,] pursuant to division (B) of this section, refuses to record the instrument, the person may commence an action in or apply for an order from the [court of common pleas] in the county that the [recorder] serves to require the [recorder] to record the
instrument. If the court determines that the instrument is required or authorized by [state law] to be recorded and is not materially false or fraudulent, it shall order the [recorder] to record the instrument.

Section 5. [County Recorder: Fees for Services.] The [county recorder] shall charge and collect the following fees for the [recorder’s] services:

(A) For recording and indexing an instrument when the photocopy or any similar process is employed, [fourteen (14)] dollars for the first [two (2)] pages and [four (4)] dollars for each subsequent page, size [eight and one-half inches (8.5)] by [fourteen (14)] inches, or fraction of a page, including the caption page, of such instrument;

(B) For certifying a photocopy from the record previously recorded, [one (1)] dollar per page, size [eight and one-half (8.5)] inches by [fourteen (14)] inches, or fraction of a page; for each certification where the [recorder’s] seal is required, except as to instruments issued by the armed forces of the United States, [fifty (50)] cents;

(C) For manual or typewritten recording of assignment or satisfaction of mortgage or lease or any other marginal entry, [four (4)] dollars;

(D) For entering any marginal reference by separate recorded instrument, [two (2)] dollars for each marginal reference set out in that instrument, in addition to the recording fee set forth in division (A) of this section;

(E) For indexing in the real estate mortgage records, pursuant to [insert appropriate state citation,] financing statements covering crops growing or to be grown, timber to be cut, minerals or the like, including oil and gas, accounts subject to [insert appropriate state citation,] or fixture filings made pursuant to [insert appropriate state citations,] [two (2)] dollars for each name indexed;

(F) For recording manually any plat not exceeding [six (6)] lines, [two (2)] dollars, and for each additional line, [ten (10)] cents;

(G) For filing zoning resolutions, including text and maps, in the office of the [recorder] as required under [insert appropriate state citation,] [fifty (50)] dollars, regardless of the size or length of the resolutions;

(H) For filing zoning amendments, including text and maps, in the office of the [recorder] as required under [insert appropriate state citation,] [ten (10)] dollars for the first page and [four (4)] dollars for each additional page;

(I) For photocopying a document, other than at the time of recording and indexing as provided for in division (A) of this section, [one (1)] dollar per page, size [eight and one-half (8.5)] inches by [fourteen (14)] inches, or fraction thereof;

(J) For local facsimile transmission of a document, [one (1)] dollar per page, size [eight and one-half (8.5)] inches by [fourteen (14)] inches, or fraction thereof; for long distance facsimile transmission of a document, [two (2)] dollars per page, size [eight and one-half (8.5)] inches by [fourteen (14)] inches, or fraction thereof.
inches, or fraction thereof;

(K) For recording a declaration executed pursuant to [insert appropriate state citation] or a durable power of attorney for health care executed pursuant to [insert appropriate state citation] or both a declaration and a durable power of attorney for health care, at least [fourteen (14)] dollars but not more than [twenty (20)] dollars.

In any county in which the [recorder] employs the photostatic or any similar process for recording maps, plats, or prints he shall determine, charge, and collect for the recording or rerecording of any map, plat, or print, a fee of [five (5)] cents per square inch, for each square inch of the map, plat, or print filed for that recording or rerecording, with a minimum fee of [twenty (20)] dollars; for certifying a copy from a fee of [two (2)] cents per square inch of the record, with a minimum fee of [two (2)] dollars.

The fees provided in this section shall be paid upon the presentation of the instruments for record or upon the application for any certified copy of the record, excepting fees associated with the filing and recording of, or the copying of, notices of internal revenue tax liens and notices of other liens infavor of the United States as described in division (A) of [insert appropriate state citation] and certificates of discharge or release of those liens, the payment for which shall be governed by [insert appropriate state citation.]

Section 6. [Recorder's Liability.]

(A) Except as otherwise provided in division (B) of this section, if a [county recorder] refuses to accept a deed or other instrument of writing presented to the [recorder] for recording, the legal fee for recording it being paid or tendered; or refuses to give a receipt therefor, when required; or fails to number consecutively all deeds or other instruments of writing upon receipt; or fails to index a deed or other instrument of writing, by the morning of the day next after it is filed for record; or neglects, without reasonable cause, to record a deed or other instrument of writing within [twenty (20)] days after its received for record; or demands and receives a greater fee for the [recorder's] services than that allowed by law; or knowingly endorses on a deed or other instrument of writing a different date from that on which it was presented for record, or a different date from that on which it was recorded; or refuses to make out and certify a copy of any record in the [recorder's] office, when demanded, the [recorder's] legal fee for the copy being paid or tendered; or purposely destroys, defaces, or injures any book, record, or seal belonging to the [recorder's] office, or any deed or other instrument of writing deposited in the [recorder's] office for record, or negligently suffers it to be destroyed, defaced, or injured; or does or omits any other act, contrary to [insert appropriate state citation], the [recorder] shall be liable on the [recorder's] bond to any party harmed by the improper conduct.
Filing Liens

(B) If a [county recorder,] acting under division (B) of [insert appropriate state citation,] improperly refuses to record an instrument of writing in a manner that is not described in [insert appropriate state citation,] the [recorder] shall not be personally liable on account of the improper refusal and the surety that issued the [recorder's] bond shall not have a right of subrogation against the [recorder] on account of a claim made on the [recorder's] bond as a result of the improper refusal.

Section 7. [Fees Exemptions.] A [county recorder,] upon request, may distribute to any person free of charge a copy of the printed form of the declaration described in [insert appropriate state citation] and a copy of the printed form of the durable power of attorney for health care described in [insert appropriate state citation.]

Section 8. [Clerks of Courts of Record.]

(A) Notwithstanding any other provision of state law, if a person presents a document to the [clerk of a court of record] for filing or for docketing an indexing, the [clerk] may refuse to accept the document for filing or refuse to docket and index the document if the document is not required or authorized to be filed or to be docketed and indexed with the [clerk] or the [clerk] has reasonable cause to believe the document is materially false or fraudulent. This division does not create a duty upon the [clerk] to inspect, evaluate, or investigate a document that is presented for filing or for docketing and indexing.

(B) If the [clerk of a court of record,] pursuant to division (A) of this section, refuses to accept a document for filing or refuses to docket and index a document, the person who presented the document to the [clerk] may commence an action in or apply for an order from the court that the [clerk] serves to require the [clerk] to accept the document for filing or to docket and index the document. If the court determines that the document is appropriate for filing or for docketing and indexing, it shall order the [clerk] to accept the document for that purpose.

(C) If the [clerk of a court of record,] acting under this section in a manner that is not described in [insert appropriate state citation,] improperly refuses to accept a document for filing or refuses to docket and index a document, the [clerk] shall not be personally liable on account of the improper refusal and the surety that issued the bond shall not have a right of subrogation against the [clerk] on account of a claim made on the [clerk's] bond as a result of the improper refusal.

Section 9. [Violations/ Penalties.]

(A) No person, knowingly and by force or, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a
wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant, party official, or witness in the discharge of the person's duty.

(B) Whoever violates this section is guilty of intimidation, a felony of the third degree.

(C) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

Section 10. [False Statements.]

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

(1) The statement is made in any official proceeding.
(2) The statement is made with purpose to incriminate another.
(3) The statement is made with purpose to mislead a public official in performing the public official's official function.
(4) The statement is made with purpose to secure the payment of unemployment compensation, aid to dependent children, disability assistance, retirement benefits, economic development assistance, as defined in [insert appropriate state citation,] or other benefits administered by a governmental agency or paid out of a public treasury.
(5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release, or provider agreement.
(6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths.
(7) The statement is in writing on or in connection with a report or return that is required or authorized by law.
(8) The statement is in writing and is made with purpose to induce another to extend credit to or employ the offender, to confer any degree, diploma, certificate of attainment, award of excellence, or honor on the offender; or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom the statement is directed relies upon it to that person's detriment.
(9) The statement is made with purpose to commit or facilitate the commission of a theft offense.
(10) The statement is knowingly made to a [probate court] in connection with any action, proceeding, or other material written within its jurisdiction, either orally or in a written document, including, but not lim-
Filing Liens

(11) The statement is made on an application for a marriage license under [insert appropriate state citation.]

(12) The statement is made, either orally or in writing, in connection with an application for legal representation submitted to a court, the [state public defender,] a [county public defender,] or a [joint county public defender] by a defendant in a criminal case for the purpose of a determination of indigency and eligibility for legal representation by the [state public defender,] a [county public defender,] a [joint county public defender,] or court-appointed counsel.

(13) The statement is made on a fireworks purchaser form under division (C) of [insert appropriate state citation.]

(14) The statement is made to a newspaper employee in the course of the employee's duty.

(15) The statement is made in the records or accounts of a licensed agricultural commodity handler that are required to be kept pursuant to [insert appropriate state citation.]

(16) The statement is made on a stamp or label on a tank car, barrel, keg, can, or other vessel containing flaxseed or linseed oil.

(17) The statement is made on a return, application, or permit under [insert appropriate state citation.]

(18) The statement is made in connection with the purchase of a firearm, as defined in [insert appropriate state citation,] and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(19) The statement is made in a document or instrument of writing that purports to be a judgment, lien, or claim of indebtedness and is filed or recorded with the [secretary of state,] a [county recorder,] or the [clerk of a court of record.]

(B) No person, in connection with the purchase of a firearm, as defined in [insert appropriate state citation,] shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) It is no defense to a charge under division (A)(4) of this section that the oath or affirmation was administered or taken in an irregular manner.

(D) Where contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false but only that one or the other was false.
(E) (1) Whoever violates division (A)(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (19) of this section is guilty of falsification, a [misdemeanor of the first degree.]
(2) Whoever violates division (A)(9) of this section is guilty of falsification in a theft offense.
 Except as otherwise provided in this division, falsification in a theft offense is a [misdemeanor of the first degree.] If the value of the property or services stolen is [five hundred (500)] dollars or more and is less than [five thousand (5,000)] dollars, falsification in a theft offense is a [felony of the fifth degree.] If the value of the property services stolen is [five thousand (5,000)] dollars or more and is less than [one hundred thousand (100,000)] dollars, falsification in a theft offense is a [felony of the fourth degree.] If the value of the property or services stolen is [one hundred thousand (100,000)] dollars or more, falsification in a theft offense is a [felony of the third degree.]
(3) Whoever violates division (A)(12) of this section is guilty of falsification, a [misdemeanor of the first degree.] If, as a result of the false statement that is the basis of the conviction under division (A) (12) of this section the offender received legal representation to which the offender was not entitled from the [state public defender,] [county public defender,] [joint county public defender,] or [court appointed counsel,] the court shall order the offender to make restitution, in an amount equal to the value of the legal representation provided by the [state public defender,] [county public defender,] [joint county public defender,] or [court-appointed counsel,] to the public entity that paid for the legal representation.
(4) Whoever violates division (A)(18) or (B) of this section is guilty of falsification to purchase a firearm, a [felony of the fourth degree.]
(F) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action commenced under this section is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

Section 11. [Definitions.]

(A) As used in this section:
(1) "Lawfully issued" means adopted, issued, or rendered in accordance with the United States constitution, the constitution of a state, and the applicable statutes, rules, regulations, and ordinances of the United States, a state, and the political subdivisions of a state.
(2) "State" means a state of the United States, including without limitation, the state [legislature,] the highest court of the state that has statewide jurisdiction, the offices of all elected state officers, and all depart-
ments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. "State" does not include the political subdivisions of the state.

(3) "Political subdivisions" means municipal, corporations, townships, counties, school districts, and all bodies corporate and politic that are organized under state law and are responsible for governmental activities only in geographical areas smaller than that of a state.

(4) "Sham legal process" means an instrument that meets all of the following conditions:

(a) it is not lawfully used.
(b) it purports to do any of the following:
   (i) to be a summons, subpoena, judgment, or order of a court, a law enforcement officer, or a legislative, executive, or administrative body.
   (ii) to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges or any person or property.
   (iii) to require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property.
(c) It is designed to make another person believe that it is lawfully issued.

(B) No person shall, knowing the sham legal process to be sham legal process, do any of the following:

(1) Knowingly issue, display, deliver, distribute, or otherwise use sham legal process;
(2) Knowingly use sham legal process to arrest, detain, search, or seize any person or the property of another person;
(3) Knowingly commit or facilitate the commission of an offense, using sham legal process;
(4) Knowingly commit a felony by using sham legal process.

(C) It is an affirmative defense to a charge under division (B) (1) or (2) of this section that the use of sham legal process was for a lawful purpose.

(D) Whoever violates this section is guilty of using sham legal process. A violation of division (B)(1) of this section is a [misdemeanor of the fourth degree.] A violation of division (B)(2) or (3) of this section is a [misdemeanor of the first degree,] except that, if the purpose of a violation of division (B)(3) of this section is to commit or facilitate the commission of a felony, a violation of division (B)(3) of this section is a [felony of the fourth degree.] A violation of division (B)(4) of this section is a [felony of the third degree.]

(E) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death,
or loss to person or property as a result of a violation of this section.

Section 12. [Effective Date] [Insert effective date.]
Federal Mandates for State Action (Note)

Federal mandates for state government action have increased in number and scope throughout the 1980's and 1990's. Federal preemptive power has expanded while funding for federal programs to states has been reduced.

The Committee on Suggested State Legislation has for the last several years attempted to provide state policy makers with updates concerning recent federal measures requiring state legislative action for additional expenditures. This note describes federal activity in the first session (1995) of the 104th Congress. Readers should take caution, this note 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 SSL volume included a note on enactments from the second session of the 102nd Congress (1992); and the 1995 volume included a note on enactments from the first session of the 103rd Congress (1993). The 1996 volume of Suggested State Legislation included a note on the second session of the 103rd Congress (1994). The Committee on Suggested State Legislation intends to continue providing updates as to federal activity regarding federal mandates. However, this is not intended to be an exhaustive mechanism for tracking such enactments.

104th Congress

During the first session of the 104th Congress, the primary focus of federal action was the adoption of the Unfunded Federal Mandates Reform Act of 1995 (P.L. 104-4). This act represents a bipartisan agreement that something is wrong with American federalism as it has evolved in recent years. The act requires the United States Advisory Commission on Intergovernmental Relations (ACIR) “to investigate and review the role of federal mandates in intergovernmental relations and to make recommendations to the President and the Congress as to how the federal government should relate to state, local, and tribal governments.”

The primary mandate bills under the new law provide for minimum wage increase legislation, mental health coverage expansion under health insurance reform, and certain requirements contained in immigration reform legislation.

Under the Boren Amendment, states are required to establish reimbursement rates to pay hospitals, nursing home facilities and intermediate care facilities for services provided the recipient is eligible for assistance through the Medicaid Program. The mandated federal criteria provide that
reimbursement rates must be “reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations and quality and safety standards...”

The Unfunded Mandates Reform Act of 1995 prohibits the application of this bill to any provision of legislation before the Congress or proposed or final federal legislation that 1) enforces constitutional rights of individuals, 2) establishes or enforces any statutory rights that prohibit discrimination on the basis of age, race, color, religion, sex, national origin, handicap or disability, 3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the federal government, 4) provides for emergency assistance or relief at the request of any state, local or tribal government, 5) is necessary for the national security or the ratification or implementation of treaty obligations, 6) is designated as emergency legislation or necessary for national security or international treaty purposes, or 7) relates to old age survivors and disability insurance.

Among the other provisions of the federal mandates act include requirements that all legislation containing federal mandates, with the exception of those outlined above, must be reviewed by the Congressional Budget Office (CBO) which will analyze and report information to include: 1) statements on whether the legislation is intended to preempt any state, local or tribal law and the effect of such preemption, 2) individual mandate descriptions, 3) cost/benefit analysis, and 4) statements regarding the federal financial assistance state, local, and tribal governments for meeting mandate costs.

The legislation also requires each federal agency, unless otherwise prohibited by law to assess the effects of federal regulatory actions on state, local and tribal governments and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law.)

The legislation directs the ACIR: 1) to study the issues involved in calculating the total costs and benefits to state, local and tribal governments of compliance with federal laws, 2) to investigate and review the role of federal mandates in intergovernmental relations and their impact on state, local and tribal governments, the private sector, and on working men and women, as well as the role of unfunded state mandates on local governments, 3) make appropriate recommendations to the President and Congress with regard to, among other things, allowing flexibility with the terms of compliance which are unnecessarily rigid or complex and consolidating or simplifying federal mandates in order to facilitate compliance and 4) to periodically submit to the Congress and the President a report on any federal Court case which requires a state, local or tribal government to under-
take responsibilities or activities beyond those which the government would authorize.

Under the provisions of legislation as outlined above, 186 bills have been reviewed for possible mandate and preemptions in 1996. Of this number, 31 bills had some measure of impact on state and local governments with eight bills exceeding the $50 million cost threshold under the law. It should be noted that not all 186 bills had reached the stage in the legislative process which law required CBO review. Some bills were reviewed at the request of Congressional sponsors. This highlights the fact that this new law may have an indirect impact as well (i.e. the enforcement procedure may effect legislative behavior before proposals reach the Committee floor and vote stages.)

Another large mandate/preemption issue was muted before it was subjected to the statutory provisions of the new law. This was the legislation and debate on telecommunications reform earlier this year. The threat of a “point of order” under the Unfunded Mandate Reform Act of 1995 apparently persuaded negotiators to modify the draft proposal and remove provisions which would have imposed costly, unfunded mandates/preemptions on state and local governments as defined by the unfunded mandate law. In other words, it appeared likely that the “point of order” would have blocked consideration of the act so the provisions in questions were removed before it was time for Congressional Budget Office review. As a result, the measure was not reviewed and scored for purposes of state/local mandate (It was reviewed, however, for the federal impact under existing budget law.)

The Council of State Governments (CSG) will continue to track developments in this area particularly under the Unfunded Mandates Reform Act of 1995 and will be working with the Congressional Budget Office to assimilate and distribute updated information on federal mandates as it becomes available. For further information, contact Bert Waisanen with the CSG Washington office at Hall of the States, 444 North Capitol Street, Northwest, Suite 401, Washington, DC 20001. Telephone (202) 624-5460, Fax (202) 624-5452.
Driver License Revocation and Ignition Interlock Devices

This act:

• imposes a two-year period of license revocation for a person’s second refusal to take a test to determine the alcoholic content of the person’s breath or blood and a three-year revocation for a third or subsequent refusal;

• establishes a pilot program whereby a probationary driver license may be issued to someone whose driver’s license has been suspended for alcohol-related offenses if that person agrees to install and use an ignition interlock device in their car;

• sets fees to lease ignition interlock devices and requiring the revenue to cover the costs of the program;

• imposes penalties for bypassing or interfering with ignition interlock devices; and

• limits the use of points to suspend driver’s licenses.

Submitted as:
Colorado
SB 95-11
Signed by the governor June 5, 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Drivers License Revocation and Ignition Interlock Devices Act.”

Section 2. [Revocation of License Based on Administrative Determination.]

(1) The period of license revocation for a second refusal shall be [two (2)] years.

(2) The period of license revocation for a third or subsequent refusal shall be [three (3)] years.

(3) The periods of revocation specified by this section are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances, and no probationary license shall be issued during the revocation period; except that:

(a) A person whose privilege to drive a commercial motor vehicle has been revoked because the person drove a commercial motor vehicle when the person’s blood alcohol content was [0.04] or greater, but less than...
Driver License Revocation and Ignition Interlock Devices

[0.10,] grams of alcohol per hundred milliliters of blood or per [two hundred
ten liters (210)] of breath may apply for a probationary license of another
class or type for the period during which the privilege to drive a commercial
motor vehicle is revoked, as long as there is no other statutory reason to
deny the person such a license;

(b) A person may obtain a probationary license if the person has
leased an approved ignition interlock device pursuant to the requirements
of Section 3.

Section 3. [Probationary Licenses for Persons Convicted of Alcohol-Re-
lated Driving Offenses - Ignition Interlock Devices - Fees - Interlock Fund -
Violations of Probationary License - Repeal.]

(1) A person whose driver's license or provisional driver's license has
been revoked because of a violation of [insert appropriate state citation]
may apply for a probationary license under the provisions of this section as
follows:

(a) Any person subject to a [three (3)] month revocation may not
apply until [one (1)] month has elapsed from the beginning of the revoca-
tion period.

(b) Any person subject to a [one (1)] year revocation may not apply
until [three (3)] months have elapsed from the beginning of the revocation
period.

(c) Any person subject to a [two (2)] year revocation may not apply
until [six (6)] months has elapsed from the beginning of the revocation pe-
dium.

(d) Any person subject to a [three (3)] year revocation may not ap-
ply until [nine (9)] months have elapsed from the beginning of the revoca-
tion period.

(e) Any person subject to a [four (4)] year revocation may not apply
until [one (1)] year has elapsed from the beginning of the revocation period.

(f) Any person subject to a [five (5)] year or greater revocation may
not apply until [two (2)] years have elapsed from the beginning of the revo-
cation period.

(2) The [hearing officer] shall have the authority to hear an application
by any person for a probationary license under the provisions of this section
at a probationary license hearing. The [hearing officer] may approve the
application if:

(a) The person's license revocation was imposed primarily because
of alcohol-related offenses;

(b) The person has agreed to have a license revocation converted to
a license suspension with a period that is twice the length of the remaining
license revocation with a minimum suspension period of [six (6)] months;

(c) The person has obtained at the person's own expense a signed
lease agreement for the installation and use of an approved ignition inter-
lock device in the person's motor vehicle and the period of the lease extends through the required suspension period;

(d) The person has obtained the written consent of any other owner or co-owner, if any, of the motor vehicle in which the approved ignition interlock device is installed;

(e) The person agrees that, during the period of suspension, the person will not drive any motor vehicle other than the motor vehicle in which the approved ignition interlock device is installed and will not allow any other person to drive such vehicle other than another owner or co-owner, if any, of the vehicle;

(f) The person agrees to drive only during the hours and under the terms prescribed by the [hearing officer] at the probationary license hearing and the person is enrolled in and agrees to complete an [alcohol education and treatment program] if required by court order or statute; and

(g) The person has provided and maintains proof of financial responsibility for the future pursuant to [insert appropriate state citation.]

(2.5) The leasing agency for any approved ignition interlock device shall remit a filing fee in the amount of [thirty-three (33)] dollars for each person leasing a device to cover program start-up and operational costs incurred by the [department of revenue] and the [department of public health and environment.] The leasing agency shall remit the fees to the [state treasurer] who shall credit the fees to the [interlock fund] which fund is hereby created. Any federal grant moneys received for purposes of supporting this pilot program also shall be remitted to the [interlock fund.] The moneys in the fund shall be subject to annual appropriation by the [general assembly] for the direct and indirect costs of the administration of this act. Any interest received from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund on [insert date] shall be transferred to the [highway users tax fund] created pursuant to [insert appropriate state citation.]

(3) The leasing agency for any approved ignition interlock device shall provide monthly monitoring reports for the device to the department in order to monitor compliance with restrictions of the probationary license. The leasing agency shall check the device at least once every [sixty (60)] days to ensure that the device is operating and that there has been no tampering with the device.

(4) If any person who has obtained a probationary license under the provisions of this act violates any provision of this act or violates the terms of the probationary license, the license suspension shall become a license revocation with a period equal to the remaining period of the license suspension or [six (6)] months, whichever is greater. The person shall be entitled to a hearing on the question of whether a license suspension shall be converted to a license revocation.
(5) The department may promulgate regulations to implement the provisions of this act.

(6) (a) For the purposes of this act, “Approved Interlock Device” means a device approved by [the department of public health and environment] that is installed in a motor vehicle and that measures the breath alcohol content of the driver before a vehicle is started and that periodically requires additional breath samples during vehicle operation. The device may not allow a motor vehicle to be started or to continue normal operation if the device measures an alcohol level above the level established by the [department of public health and environment].

(b) The [department of public health and environment] may promulgate regulations to implement the provisions of this act concerning approved ignition interlock devices.

(7) The [office of transportation safety] in the [department of transportation] shall conduct an assessment of the ignition interlock device program established pursuant to this act. The [department] shall prepare a written report regarding the results of the assessment and shall provide the report to the [general assembly] on or before [insert date].

(8) This section is repealed, effective [insert date].

Section 4. [Tampering with an Ignition Interlock Device.]

(1) No person may intercept, bypass, or interfere with or aid any other person in intercepting, bypassing, or interfering with an ignition interlock device for the purpose of preventing or hindering the lawful operation or purpose of the ignition interlock device under Section 3.

(2) No person may drive a motor vehicle in which an ignition interlock device is installed pursuant to Section 3 if the person has knowledge that any person has intercepted, bypassed, or interfered with the ignition interlock device.

(3) Any person violating any provision of this section commits a [class 1 misdemeanor] and shall be punished as provided in [insert appropriate state citation.]

Section 5. [Authority to Suspend License - to Deny License - Type of Conviction - Points.]

(1) Except as provided in this section, the [department] has the authority to suspend the license of any driver who, in accordance with the schedule of points set forth in this section, has been convicted of traffic violations resulting in the accumulation of [twelve (12)] points within any [twelve (12)] consecutive months or [eighteen (18)] points within any [twenty-four (24)] consecutive months, or, in the case of a provisional driver, who has accumulated [nine (9)] points within any [twelve (12)] consecutive months, or [twelve (12)] points within any [twenty-four (24)] consecutive months, or [fourteen (14)] points within the time period for which the license was is-
sued, or, in the case of a minor driver, who has accumulated more than [five]
(5) points within any [twelve (12)] consecutive months or more than [six]
(6) points within the time period for which the license was issued; except
that the accumulation of points causing the subject to suspension of the
license of a chauffeur who, in the course of employment, has as a principal
duty the operation of a motor vehicle shall be [sixteen (16)] points in [one]
(1) year, [twenty-four (24)] points in [two (2)] years, or [twenty-eight (28)]
points in [four (4)] years, if all the points are accumulated while said chauf-
feur is in the course of employment. Any provision of this section to the
contrary notwithstanding, the license of a chauffeur who is convicted of a
violation of [insert appropriate state citation] or leaving the scene of an
accident shall be suspended in the same manner as if the offense occurred
outside the course of employment. Whenever a minor driver receives a sum-
mons for a traffic violation, the minor’s parents or guardian, the person
who signed the minor driver’s application for a license shall immediately be
notified by the court from which summons was issued.

(2)(a) Except as otherwise provided in this section, whenever the
department’s records show that a licensee has accumulated a sufficient
number of points to be subject to license suspension, the [department] shall
notify the licensee that a hearing will be held not less than [twenty (20)]
days after the date of the notice to determine whether the licensee’s driver’s
license should be suspended. The notification shall be given to the licensee
in writing by regular mail, addressed to the address of the licensee as shown
by the records of the [department.]

(b)(I) If the [department's] records indicate that a driver has accu-
mulated a sufficient number of points to cause a suspension under subsec-
tion (1) of this section and the driver is subject to a current or previous
license restraint with a determined reinstatement date for the same of-
fense or conviction that caused the driver to accumulate sufficient points to
warrant suspension, the [department] may not order a point suspension of
the license of the driver unless the license or driving privilege of the driver
was revoked pursuant to Section 2.

(II) If the [department] does not order a point suspension against
the license of a driver because of the existence of a current or previous
license restraint with a determined reinstatement date under the provi-
sions of subparagraph (I) of this paragraph (b), the [department] shall uti-
lize the points that were assessed against the driver in determining whether
to impose any future license suspension if the driver accumulates any more
points against the driver’s license.

(3)(a) Whenever the [department] receives notice that a person has pled
guilty to, or been found guilty by a court or a jury of, a violation of [insert
appropriate state citation,] and receives the license surrendered by the per-
son to the court pursuant to [insert appropriate state citation] the [depart-
ment] shall immediately suspend the license of the person for a period of
not less than [one (1)] year. If the [department] is also required to enter a license revocation for a period of [one (1)] year or longer under any provision of [insert appropriate state citation] based on the same conviction, the suspension shall not be entered.

Section 6. [Appropriation.]

(1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the [interlock fund] created pursuant to Section 3 (2.5), not otherwise appropriated, to the [department of revenue,] for the fiscal year beginning [insert date] the sum of [insert amount] or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the [interlock fund] created pursuant to Section 3 (2.5), not otherwise appropriated, to the [department of public health and environment,] for the fiscal year beginning [insert date] the sum of [insert amount] or so much thereof as may be necessary, for the implementation of this act.

Section 7. [Effective Date] This act shall take effect [insert effective date.]

Section 8. [Safety Clause] The [general assembly] hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
Motor Vehicles - Weight Limits - Review of Bills Establishing Exceptions

This act is based on a Wisconsin law that addresses special permits on truck size and weight limits. Various shippers and trucking companies usually under the pretext of economic development routinely support increases above the federal weight limit of 80,000 lbs. to accommodate the transport of commodities or manufactured items to the marketplace. Various state legislatures and some state departments of transportation have the authority to grant special permits for the operation of trucks over the legal size and weight limits. While highway cost allocation studies show the impact of increased truck traffic and damage estimates, these grants are generally made without consideration of the impact special permits will have on existing infrastructure.

This act requires the state department of transportation (DOT) to develop an impact report on proposed state legislation that would alter vehicle weight limitations even on a limited or temporary basis. DOT must prepare, within six weeks of introduction, a report on any act that directly or indirectly establishes an exception to the vehicle weight limits. This report must contain a statement of the problem addressed by the exception including whether the current vehicle weight limit causes hardship and if so to what degree, the cost associated with complying with the current weight limit and anticipated savings likely to result from the proposed exception. The description of the proposed exception including gross weight limitations and gross axle and axle combination weight limits with height and length limitations and the application of the exception to the transportation of particular commodities is contained in the act.

Wisconsin's law was tested in 1995 when the potato transporters requested a special permit for 90,000 lbs. gross vehicle weight (which is 10,000 lbs. over the legal limit) for a fee of $100. The Wisconsin DOT estimated this overweight movement would impose an annual cost of $1.5 million to repair or replace bridges and resurface or recondition pavement in excess of anticipated maintenance, yet generate revenues of only $15,000.

Submitted as:
Wisconsin
Wis. Act 282
Enacted 1993.
Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Motor Vehicles-Weight Limits-Review of Bills Establishing Exceptions.”

Section 2. [Review of Bills Establishing Vehicle Weight Limit Exceptions.]

(1) Definition. In this act, “department” means the [department of transportation.]

(2) Report on bills establishing vehicle weight limit exceptions.

(a) If any bill that is introduced in either house of the [legislature] directly or indirectly establishes an exception to the vehicle weight limits specified in [insert appropriate state citation,] the [department] shall prepare a report on the bill within [six (6)] weeks after it is introduced. The department shall request information from any individual, organization or local government that the [department] considers likely to be affected by the proposed vehicle weight limit exceptions. Individuals, organizations and local governments shall comply with requests by the [department] for information that is reasonably necessary for the department to prepare this report. To the greatest extent possible, reports under this section shall be based on the information obtained by the [department] from individuals, organizations and local governments under this paragraph.

(b) A bill that requires a report by the [department] under this act shall have that requirement noted on its jacket when the jacket is prepared. When a bill that requires a report under this section is introduced, the legislative reference bureau shall submit a copy of the bill to the [department.]

(c) The report prepared under this act shall be printed as an appendix to that applicable bill and shall be distributed in the same manner as amendments. The report shall be distributed before any vote is taken on the bill by either house of the [legislature] if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee.

(3) Findings of the [department] to be contained in the report. The report of the [department] shall contain the following information with respect to each exception to a vehicle weight limit specified in [insert appropriate state citation]:

(a) A statement of the problem addressed by the proposed vehicle weight limit exception, including all of the following:

1. Whether the current vehicle weight limit creates a hardship and, if so, the degree of the hardship.
2. The costs associated with complying with the current vehicle weight limit and any anticipated savings likely to result from the proposed vehicle weight limit exception.

3. Whether any other efforts have been made to resolve the problem addressed by the proposed vehicle weight limit exception.

4. The degree of control by motor carriers over the weight and weight distribution of the vehicle or load.

(b) A description of the proposed vehicle weight limit exception, including any changes on all of the following:

1. Gross weight limitations and gross axle and axle combination weight limitations.

2. Width, height and length limitations.

3. The transportation of particular commodities.

4. Any highway, highway route or area of the state substantially affected by the proposed vehicle weight limit exception.

5. Seasonal transportation patterns.

(c) Any other special considerations concerning the proposed vehicle weight limit exception, such as the frequency of use of the proposed exception, the support and involvement of businesses, industries and local authorities affected by the proposed exception.

(4) Rule-making authority. The [department] may promulgate any rules necessary for the administration of this act.

Section 3. [Initial Applicability.] This act first applies to a bill introduced on the effective date of this section.

Section 4. [Effective Date.] [Insert effective date.]
Digital Signatures

This act is based on Utah SB 188. It establishes a method to facilitate electronic commerce through the use of public and private keys using algorithms to provide a secure key pair which creates a digital signature with similar legal effect as a handwritten signature on paper.

SB 188 (signed by the governor on 3/12/96) amended the 1995 “Utah Digital Signature Act” (Title 46, Chs. 3, 2 and 1 Utah Code, 1953). That act set criteria for defining, using and certifying digital signatures. It discussed licensing and qualifying certification authorities, duties of certification authorities and subscribers, effects of a digital signature and state services and recognized repositories.

California, (West’s Ann.Cal.Gov.Code & 16.5 and Corp.Code & 25612.5) and Washington state (ch. 250, Laws of 1996) have also enacted digital signature laws. Virginia’s Digital Signature Act (HB 822) was introduced in the legislature in January 1996. The Virginia act was continued to 1997 in the Corporations, Insurance & Banking Committee.

Submitted as:
Utah
SB 188
Enacted 1996.

Suggested Legislation

(Title, encating clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Digital Signatures Act.”

Section 2. [Purposes and Construction.] This act shall be construed consistent with what is commercially reasonable under the circumstances and to effectuate the following purposes:

(1) to facilitate commerce by means of reliable electronic messages;
(2) to minimize the incidence of forged digital signatures and fraud in electronic commerce;
(3) to implement legally the general import of relevant standards, such as X.509 of the International Telecommunication Union (formally International Telegraph and Telephone Consultative Committee or CCITT); and
(4) to establish, in coordination with multiple states, uniform rules regarding the authentication and reliability of electronic messages.
Section 3. [Definitions.] For purposes of this act, and unless the context expressly indicates otherwise:

1. “Accept a certificate” means:
   (a) to manifest approval of a certificate, while knowing or having notice of its contents; or
   (b) to apply to a licensed certification authority for a certificate, without canceling or revoking the application, if the certification authority subsequently issues a certificate based on the application.

2. “Asymmetric cryptosystem” means an algorithm or series of algorithms which provide a secure key pair.

3. “Certificate” means a computer-based record which:
   (a) identifies the certification authority issuing it;
   (b) names or identifies its subscriber;
   (c) contains the subscriber’s public key; and
   (d) is digitally signed by the certification authority issuing it.

4. “Certification authority” means a person who issues a certificate.

5. “Certification authority disclosure record” means an on-line, publicly accessible record which concerns a licensed certification authority and is kept by the [division.] A certification authority disclosure record has the contents specified by rule of the [division] pursuant to Section 4.

6. “Certification practice statement” means a declaration of the practices which a certification authority employs in issuing certificates generally, or employs in issuing a material certificate.

7. “Certify” means the declaration of material facts by the certification authority regarding a certificate.

8. “Confirm” means to ascertain through appropriate inquiry and investigation.

9. “Correspond,” with reference to keys, means to belong to the same key pair.

10. “Digital signature” means a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer’s public key can accurately determine whether:
    (a) the transformation was created using the private key that corresponds to the signer’s public key; and
    (b) the message has been altered since the transformation was made.

11. “Division” means the [division of corporations and commercial code] within the state [department of commerce.]

12. “Forge a digital signature” means either:
    (a) to create a digital signature without the authorization of the rightful holder of the private key; or
    (b) to create a digital signature verifiable by a certificate listing as subscriber a person who either:
        (i) does not exist; or
        (ii) does not hold the private key corresponding to the public
key listed in the certificate.

(13) “Hold a private key” means to be able to utilize a private key.
(14) “Incorporate by reference” means to make one (1) message a part
of another message by identifying the message to be incorporated and ex-
pressing the intention that it be incorporated.
(15) “Issue a certificate” means the acts of a certification authority in
creating a certificate not notifying the subscriber listed in the certificate of
the contents of the certificate.
(16) “Key pair” means a private key and its corresponding public key in
an asymmetric cryptosystem, keys which have the property that the public
key can verify a digital signature that the private key creates.
(17) “Licensed certification authority” means a certification authority
to whom a license has been issued by the [division] and whose license is in
effect.
(18) “Message” means a digital representation of information.
(19) “Notify” means to communicate a fact to another person in a man-
er reasonably likely under the circumstances to impart knowledge of the
information to the other person.
(20) “Operative personnel” means one (1) or more natural persons act-
ing as a certification authority or its agent, or in the employment of or
under contract with a certification authority, and who have:
   (a) managerial or policy-making responsibilities for the certifica-
tion authority; or
   (b) duties directly involving the issuance of certificates, creation of
private keys, or administration of a certification authority’s computing fa-
cilities.
(21) “Person” means a human being or any organization capable of sign-
ing a document, either legally or as a matter of fact.
(22) “Private key” means the key of a key pair used to create a digital
signature.
(23) “Public key” means the key of a key pair used to verify a digital
signature.
(24) “Publish” means to record or file in a repository.
(25) “Qualified right to payment” means an award of damages against
a licensed certification authority by a court having jurisdiction over the
certification authority in a civil action for violation of this chapter.
(26) “Recipient” means a person who receives or has a digital signature
and is in a position to rely on it.
(27) “Recognized repository” means a repository recognized by the [di-
vision] pursuant to Section 25.
(28) “Recommended reliance limit” means the limitation on the mon-
etary amount recommended for reliance on a certificate pursuant to Sec-
tion 17(1).
(29) “Repository” means a system for storing and retrieving certificates
and other information relevant to digital signatures.

(30) "Revoke a certificate" means to make a certificate ineffective permanently from a specified time forward. Revocation is affected by notation or inclusion in a set of revoked certificates, and does not imply that a revoked certificate is destroyed or made illegible.

(31) "Rightfully hold a private key" means to be able to utilize a private key:

(a) which the holder or the holder’s agents have not disclosed to any person in violation of Section 13(1); and

(b) which the holder has not obtained through theft, deceit, eavesdropping, or other unlawful means.

(32) "Signer" means a person who creates a digital signature for a message.

(33) "Subscriber" means a person who:

(a) is the subject listed in a certificate;

(b) accepts the certificate; and

(c) holds a private key which corresponds to a public key listed in that certificate.

(34)(a) “Suitable guaranty” means either a surety bond executed by a surety authorized by the [insurance department] to do business in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state by the [department of financial institutions], which, in either event, satisfies all of the following requirements, that it:

(i) is issued payable to the [division] for the benefit of persons holding qualified rights of payment against the licensed certification authority named as the principal of the bond or customer of the letter of credit;

(ii) is in an amount specified by rule of the [division] pursuant to Section 4;

(iii) states that it is issued for filing pursuant to this act;

(iv) specifies a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority; and

(v) is in a form prescribed by rule of the [division].

(b) A suitable guaranty may also provide that the total annual liability on the guaranty to all persons making claims based on it may not exceed the face amount of the guaranty.

(c) A financial institution acting as a certification authority may satisfy the requirements of this subsection from its assets or capital, to the extent of its lending limit as provided in [insert appropriate state citation.]

(35) “Suspend a certificate” means to make a certificate ineffective temporarily from a specified time forward.

(36) “Time-stamp” means either:

(a) to append or attach to a message, digital signature, or certificate a digitally signed notation indicating at least the date and time the notation was appended or attached, and the identity of the person append-
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(37) “Transactional certificate” means a valid certificate incorporating by reference [one (1)] or more digital signatures.

(38) “Trustworthy system” means computer hardware and software which:

(a) are reasonably secure from intrusion and misuse;

(b) provide a reasonable level of availability, reliability, and correct operation; and

(c) are reasonably suited to performing their intended functions.

(39)(a) “Valid certificate” means a certificate which:

(i) a licensed certification authority has issued;

(ii) the subscriber listed in it has accepted;

(iii) has not been revoked or suspended; and

(iv) has not expired.

(b) A transactional certificate is a valid certificate only in relation to the digital signature incorporated in it by reference.

(40) “Verify a digital signature” means, in relation to a given digital signature, message, and public key, to determine accurately that:

(a) the digital signature was created by the private key corresponding to the public key; and

(b) the message has not been altered since its digital signature was created.

Section 4. [Role of the Division.]

(1) The [division] shall be a certification authority, and may issue, suspend, and revoke certificates in the manner prescribed for licensed certification authorities in this act.

(2) The [division] shall maintain a publicly accessible database containing a certification authority disclosure record for each licensed certification authority. The [division] shall publish the contents of the database in at least [one (1)] recognized repository.

(3) In accordance with [insert appropriate state citation,] the [division] shall make rules as required by this act and in furtherance of its purposes, including rules:

(a) governing licensed certification authorities, their practice, and the termination of a certification authority’s practice;

(b) determining an amount appropriate for a suitable guaranty, in light of:

(i) the burden a suitable guaranty places upon licensed certification authorities; and

(ii) the assurance of financial responsibility it provides to persons who rely on certificates issued by licensed certification authorities;

(c) for reviewing software for use in creating digital signatures and
publish reports concerning software;
(d) specifying reasonable requirements for the form of certificates issued by licensed certification authorities, in accordance with generally accepted standards for digital signature certificates;
(e) specifying reasonable requirements for recordkeeping by licensed certification authorities;
(f) specifying reasonable requirements for the content, form, and sources of information in certification authority disclosure records, the updating and timeliness of such information, and other practices and policies relating to certification authority disclosure records; and
(g) specifying the form of certification practice statements.

Section 5. [Licensure and Qualifications of Certification Authorities.]
(1) To obtain or retain a license a certification authority shall:
(a) be the subscriber of a certificate published in a recognized repository;
(b) employ as operative personnel only persons who have not been convicted of a felony or crime involving fraud, false statement, or deception;
(c) employ as operative personnel only persons who have demonstrated knowledge and proficiency in following the requirements of this act;
(d) file with the [division] a suitable guaranty, unless the certification authority is the [governor,] a department or division of state government, the [attorney general,] [state auditor,] [state treasurer,] the [judicial council,] a city, a county, or the [legislature] or its staff offices provided that:
(i) each of the above-named governmental entities may act through designated officials authorized by ordinance, rule, or statute to perform certification authority functions; and
(ii) [one (1)] of the above-named governmental entities is the subscriber of all certificates issued by the certification authority;
(e) have the right to use a trustworthy system, including a secure means for controlling usage of its private key;
(f) present proof to the [division] of having working capital reasonably sufficient, according to rules of the [division,] to enable the applicant to conduct business as a certification authority;
(g) maintain an office in the state or have established a registered agent for service of process in the state; and
(h) comply with all other licensing requirements established by [division] rule.
(2) The [division] shall issue a license to a certification authority which:
(a) is qualified under subsection (1).
(b) applies in writing to the [division] for a license; and
(c) pays the required filing fee.
(3)(a) The [division] may classify and issue licenses according to speci-
fied limitations, such as a maximum number of outstanding certificates, cumulative maximum of recommended reliance limits in certificates issued by the certification authority, or issuance only within a single firm or organization.

(b) A certification authority acts as an unlicensed certification authority when issuing a certificate exceeding the limits of the license.

(4)(a) The [division] may revoke or suspend a certification authority's license for failure to comply with this chapter, or for failure to remain qualified pursuant to subsection (1).

(b) The [divisions] under this subsection are subject to the procedures for adjudicative proceedings in [insert appropriate state citation] of the Administrative Procedures Act.

(5) The [division] may recognize by rule the licensing or authorization of certification authorities by other governmental entities, provided that those licensing or authorization requirements are substantially similar to those of this state. If licensing by another governmental entity is so recognized:

(a) Presumptions and legal effects apply to certificates issued by the certification authorities licensed or authorized by that governmental entity in the same manner as they apply to licensed certification authorities of this state; and

(b) the liability limits of Section 17 apply to the certification authorities licensed or authorized by that governmental entity in the same manner as they apply to licensed certification authorities of this state.

(6) Unless the parties provide otherwise by contract between themselves, the licensing requirements in this section do not affect the effectiveness, enforceability, or validity of any digital signature except that [insert appropriate state citation] does not apply to a digital signature which cannot be verified by a certificate issued by a licensed certification authority. Further, the liability limits of Section 17 do not apply to unlicensed certification authorities.

Section 6. [Performance Audits and Investigations.]

(1) A certified public accountant having expertise in computer security, or an accredited computer security professional, shall audit the operations of each licensed certification authority at least once each year to evaluate compliance with this chapter. The [division] may specify qualifications for auditors in greater detail by rule.

(2)(a) Based on information gathered in the audit, the auditor shall categorize the licensed certification authority's compliance as one of the following:

(i) full compliance, which means the certification authority appears to conform to all applicable statutory and regulatory requirements;

(ii) substantial compliance, which means the certification au-
authority generally appears to conform to all applicable statutory and regula-
tory requirements; however, [one (1)] or more instances of noncompliance
or inability to demonstrate compliance were found in the audited sample,
but were likely to be inconsequential;

(iii) partial compliance, which means the certification author-
ity appears to comply with some statutory and regulatory requirements,
but was found not to have complied or not to be able to demonstrate compli-
ance with one or more important safeguards; or

(iv) noncompliance, which means the certification authority
complies with few or none of the statutory and regulatory requirements,
fails to keep adequate records to demonstrate compliance with more than a
few requirements, or refused to submit to an audit.

(b) The auditor shall report the date of the audit of the licensed
certification authority and resulting categorization to the [division.]

(c) The [division] shall publish in the certification authority disclo-
sure record it maintains for the certification authority, the date of the audit,
and the resulting categorization of the certification authority.

(3)(a) The [division] may exempt a licensed certification authority from
the requirements of subsection (1) if:

(i) the certification authority to be exempted requests exemp-
tion in writing;

(ii) the most recent performance audit, if any, of the certifica-
tion authority resulted in a finding of full or substantial compliance; and

(iii) the certification authority declares under oath or affirma-
tion that [one (1)] or more of the following is true with respect to the certifi-
cation authority:

(A) the certification authority has issued fewer than [six
(6)] certificates during the past year and the total of the recommended reli-
ance limits of all such certificates does not exceed [ten thousand (10,000)]
dollars;

(B) the aggregate lifetime of all certificates issued by the
certification authority during the past year is less than [thirty (30)] days
and the total of the recommended reliance limits of all such certificates
does not exceed [ten thousand (10,000)] dollars; or

(C) the recommended reliance limits of all certificates out-
standing and issued by the certification authority total less than [one thou-
sand (1,000)] dollars.

(b) If the certification authority's declaration pursuant to subsec-
tion (3)(a) falsely states a material fact, the certification authority shall
have failed to comply with the performance audit requirement of this sub-
section.

(c) If a licensed certification authority is exempt under this subsec-
tion, the [division] shall publish in the certification authority disclosure
record it maintains for the certification authority a statement that the cer-
Digital Signatures

Section 7. [Enforcement of Requirements for Licensed Certificate Authorities.]

(1) The [division] may investigate the activities of a licensed certification authority material to its compliance with this act and issue orders to a certification authority to further its investigation and insure compliance with this act.

(2) As provided in Section 5, the [division] may restrict a certification authority's license for its failure to comply with an order of the [division], or may suspend or revoke the license of a certification authority.

(3) Any person who knowingly or intentionally violates an order of the [division] issued pursuant to this section or Section 8 is subject to a civil penalty of not more than [five thousand (5,000)] dollars per violation or [ninety (90)] percent of the recommended reliance limit of a material certificate, whichever is less.

(4) The [division] may order a certification authority in violation of this act to pay the costs incurred by the [division] in prosecuting and adjudicating proceedings relative to, and in enforcement of, the order.

(5) Pursuant to [insert appropriate state citation] of the state Administrative Procedures Act:

(a) the [division] shall exercise its authority under this section in accordance with procedures for adjudicative proceedings;

(b) a licensed certification authority may obtain judicial review of the [division's] actions under this section; and

(c) if the [division] seeks injunctive relief, as provided in Section 8, to compel compliance with any of its orders, the [division] may collect the cost of enforcement as provided in [insert appropriate state citation.]

Section 8. [Dangerous Activities by any Certification Authority Prohibited.]

(1) A certification authority, whether licensed or not, may not conduct its business in a manner that creates an unreasonable risk of loss to subscribers of the certification authority, to persons relying on certificates issued by the certification authority, or to a repository.

(2)(a) The [division] may publish in [one (1)] or more recognized repositories brief statements advising subscribers, persons relying on digital signatures, and repositories about any activities of a licensed or unlicensed certification authority, of which the [division] has actual knowledge, which creates a risk prohibited by subsection (1).

(b) The certification authority named in a statement as creating such a risk may protest the publication of the statement by filing a brief, written defense. Upon receipt of such a protest, the [division] shall:

(i) publish the written defense along with the [division's] state-
(ii) publish notice that a hearing has been scheduled to determine the facts and to decide the matter; and
(iii) promptly give the protesting certification authority notice and a hearing as provided in [insert appropriate state citation] of the state Administrative Procedures Act.

(c)(i) Following the hearing, the [division] shall:
(A) rescind the advisory statement if its publication was unwarranted pursuant to this section;
(B) cancel the advisory statement if its publication is no longer warranted;
(C) continue or amend the advisory statement if it remains warranted; or
(D) take further legal action to eliminate or reduce a risk prohibited by Subsection (1).

(ii) The [division] shall publish its decision in [one (1)] or more recognized repositories.

(3) As provided in [insert appropriate state citation] Administrative Procedures Act, the [division] may issue orders and obtain injunctions or other civil relief to prevent or restrain a certification authority from violating this section, regardless of whether the certification authority is licensed. This section does not create a right of action in any person other than the [division.]

Section 9. [General Requirements for Certification Authorities.]
(1) A licensed certification authority or subscriber shall use only a trustworthy system:
(a) to issue, suspend, or revoke a certificate;
(b) to publish or give notice of the issuance, suspension, or revocation of a certificate; and
(c) to create a private key.

(2) A licensed certification authority shall disclose any material certification practice statement, and any fact material to either the reliability of a certificate which it has issued or its ability to perform its services. A certification authority may require a signed, written, and reasonably specific inquiry from an identified person, and payment of reasonable compensation, as conditions precedent to effecting a disclosure required in this subsection.

Section 10. [Issuance of a Certificate]
(1) A licensed certification authority may issue a certificate to a subscriber only after all of the following conditions are satisfied:
(a) the certification authority has received a request for issuance signed by the prospective subscriber; and
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(b) the certification authority has confirmed that:
   (i) the prospective subscriber is the person to be listed in the certificate to be issued;
   (ii) if the prospective subscriber is acting through [one (1)] or more agents, the subscriber authorized the agent or agents to have custody of the subscriber's private key and to request issuance of a certificate listing the corresponding public key;
   (iii) the information in the certificate to be issued is accurate after due diligence;
   (iv) the prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the certificate;
   (v) the prospective subscriber holds a private key capable of creating a digital signature; and
   (vi) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber.

(c) The requirements of the subsection may not be waived or disclaimed by the licensed certification authority or the subscriber.

(2)(a) If the subscriber accepts the issued certificate, the certification authority shall publish a signed copy of the certificate in a recognized repository agreed upon by the certification authority and the subscriber named in the certificate, unless the contract between the certification authority and the subscriber provides otherwise.

(b) If the subscriber does not accept the certificate, a licensed certification authority shall not publish the certificate or shall cancel its publication if the certificate has already been published.

(3) Nothing in this section precludes a licensed certification authority from conforming to standards, certification practice statements, security plans, or contractual requirements more rigorous than, but consistent with, this act.

(4)(a) A licensed certification authority which has issued a certificate:
   (i) shall revoke a certificate immediately upon confirming that it was not issued as required by this section; or
   (ii) may suspend, for a reasonable period of time not to exceed [forty-eight (48)] hours, a certificate which it has issued in order to conduct an investigation to confirm grounds for revocation under subsection (i).

(b) The certification authority shall give notice of the revocation or suspension to the subscriber as soon as practicable.

(5)(a) The [division] may order the licensed certification authority to suspend or revoke a certificate which the certification authority issued if, after giving the certification authority and subscriber any required notice and opportunity for a hearing in accordance with [insert appropriate state citation] Administrative Procedures Act, the [division] determines that:
   (i) the certificate was issued without substantial compliance
with this section; and
(ii) the noncompliance poses a significant risk to persons rea-
sonably relying on the certificate.
(b) The [division] may suspend a certificate for a reasonable period
of time not to exceed [forty eight (48)] hours upon determining that an
emergency requires an immediate remedy and in accordance with [insert
appropriate state citation] of the state Administrative Procedures Act.

Section 11. [Warranties and Obligations of Certification Authority Upon
Issuance of a Certificate]
(1)(a) By issuing a certificate, a licensed certification authority war-
rants to the subscriber named in the certificate that:
(i) the certificate contains no information known to the certifi-
cation authority to be false;
(ii) the certificate satisfies all material requirements of this act;
and
(iii) the certification authority has not exceeded any limits of
its license in issuing the certificate.
(b) The certification authority may not disclaim or limit the war-
ranties of this subsection.
(2) Unless the subscriber and certification authority otherwise agree, a
certification authority, by issuing a certificate, shall:
(a) act promptly to suspend or revoke a certificate in accordance
with Sections 14 and 15; and
(b) notify the subscriber within a reasonable time of any facts known
to the certification authority which significantly affect the validity or reli-
ability of the certificate once it is issued.
(3) By issuing a certificate, a licensed certification authority certifies to
all who reasonably rely on the information contained in the certificate that:
(a) the information in the certificate and listed as confirmed by the
certification authority is accurate;
(b) all foreseeable information material to the reliability of the cer-
tificate is stated or incorporated by reference within the certificate;
(c) the subscriber has accepted the certificate; and
(d) the licensed certification authority has compiled with all appli-
cable laws of this state governing issuance of the certificate.
(4) By publishing a certificate, a licensed certification authority certi-
fies to the repository in which the certificate is published and to all who
reasonably rely on the information contained in the certificate that the
certification authority has issued the certificate to the subscriber.

Section 12. [Representations and Duties Upon Acceptance of a Certifi-
cate]
(1) By accepting a certificate issued by a licensed certification author-
ity, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that:

(a) the subscriber rightfully holds the private key corresponding to the public key listed in the certificate;

(b) all representations made by the subscriber to the certification authority and material to information listed in the certificate are true;

(c) all material representations made by the subscriber to a certification authority or made in the certificate and not confirmed by the certification authority in issuing the certificate are true.

(2) An agent, requesting on behalf of a principal that a certificate be issued naming the principal as subscriber, certifies that the agent:

(a) holds all authority legally required to apply for issuance of a certificate naming the principal as subscriber; and

(b) has authority to sign digitally on behalf of the principal, and, if that authority is limited in any way, that adequate safeguards exist to prevent a digital signature exceeding the bounds of the person's authority.

(3) A person may not disclaim or contractually limit the application of this section, nor obtain indemnity for its effects, if the disclaimer, limitation, or indemnity restricts liability for misrepresentation as against persons reasonably relying on the certificate.

(4) (a) By accepting a certificate, a subscriber undertakes to indemnify the issuing certification authority for any loss or damage caused by issuance or publication of a certificate in reliance on a false and material representation of fact by the subscriber, or the failure by the subscriber to disclose a material fact if the representation or failure to disclose was made either with intent to deceive the certification authority or a person relying on the certificate or was made with negligence.

(b) If the certification authority issued the certificate at the request of an agent of the subscriber, the agent personally undertakes to indemnify the certification authority pursuant to subsection (a) as if the agent was an accepting subscriber in his own right. The indemnity provided in subsection (a) may not be disclaimed or contractually limited in scope, however, a contract may provide consistent, additional terms regarding the indemnification.

(5) In obtaining information of the subscriber material to issuance of a certificate, the certification authority may require the subscriber to certify the accuracy of relevant information under oath or affirmation of truthfulness and under penalty of criminal prohibitions against false, sworn statements.

Section 13. [Control of the Private Key.]

(1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclo-
sure to any person not authorized to create the subscriber's digital signa-
ture.

(2) A private key is the personal property of the subscriber who right-
fully holds it.

(3) If a certification authority holds the private key corresponding to a
public key listed in a certificate which it has issued, the certification au-
thority holds the private key as a fiduciary of the subscriber named in the
certificate, and may use that private key only with the subscriber's prior,
written approval, unless the subscriber expressly grants the private key to
the certification authority and expressly permits the certification authority
to hold the private key according to other terms.

Section 14. [Suspension of a Certificate - Criminal Penalty.]

(1)(a) Unless the certification authority and the subscriber agree other-
wise, the licensed certification authority which issued a certificate which is
not a transactional certificate shall suspend the certificate for a period not
exceeding [forty-eight (48)] hours:

(i) upon request by a person identifying himself as the sub-
scriber named in the certificate, or as a person in a position likely to know
of a compromise of the security of a subscriber's private key, such as an
agent, business associate, employee, or member of the immediate family of
the subscriber; or

(ii) by order of the [division] pursuant to Section 10 (5).

(b) The certification authority need not confirm the identity or agency
of the person requesting suspension under subsection (1)(a)(i).

(2)(a) Unless the certificate provides otherwise or the certificate is a
transactional certificate, the [division,] a court clerk, or a county clerk may
suspend a certificate issued by a licensed certification authority for a pe-
riod of [forty-eight (48)] hours, if:

(i) a person requests suspension and identifies himself as the
subscriber named in the certificate or as an agent, business associate, em-
ployee, or member of the immediate family of the subscriber; and

(ii) the requester represents that the certification authority
which issued the certificate is unavailable.

(b) The [division,] court clerk, or county clerk may:

(i) require the person requesting suspension under subsection
(2)(a) to provide evidence, including a statement under oath or affirmation,
regarding any information described in subsection (2)(a); and

(ii) suspend or decline to suspend the certificate in its discre-
tion.

(c) The [division,] [attorney general,] or county attorney may inves-
tigate suspensions by the [division,] a court clerk, or a county clerk for pos-
sible wrongdoing by persons requesting suspension under subsection (2)(a).

(3)(a) Immediately upon suspension of a certificate by a licensed certi-
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1. If a certificate is suspended by the [division, a court clerk, or a county clerk, the [division] or clerk shall give notice as required in subsection (3)(a) for a licensed certification authority, provided that the person requesting suspension pays in advance any fee required by a repository for publication of the notice of suspension.

2. A certification authority shall terminate a suspension initiated by request only:
   (a) if the subscriber named in the suspended certificate requests termination of the suspension and the certification authority has confirmed that the person requesting suspension is the subscriber or an agent of the subscriber authorized to terminate the suspension; or
   (b) when the certification authority discovers and confirms that the request for the suspension was made without authorization by the subscriber, provided that this subsection does not require the certification authority to confirm a request for suspension.

3. The contract between a subscriber and a licensed certification authority may limit or preclude requested suspension by the certification authority, or may provide otherwise for termination of a related suspension. However, if the contract limits or precludes suspension by the [division, a court clerk, or a county clerk when the issuing certification authority is unavailable, the limitation or preclusion shall be effective only if notice of the limitation or preclusion is published in the certificate.

4. A person may not knowingly or intentionally misrepresent to a certification authority his identify or authorization in requesting suspension of a certificate. Violation of this subsection is a [Class B Misdemeanor.]

5. While the certificate is suspended, the subscriber is released from the duty to keep the private key secure pursuant to subsection 13 (1).

Section 15. [Revocation of a Certificate]

(1) A licensed certification authority shall revoke a certificate which it issued, but which is not a transactional certificate, after:
   (a) receiving a request for revocation by the subscriber named in the certificate; and
   (b) confirming that the person requesting revocation is that subscriber, or is an agent of that subscriber with authority to request the revocation.

(2) A licensed certification authority shall confirm a request for revoca-
10 tion and revoke a certificate within [one (1)] business day after receiving
11 both a subscriber's written request and evidence reasonably sufficient to
12 confirm the identity and any agency of the person requesting the suspen-
13 sion.

14 (3) A licensed certification authority shall revoke a certificate which it
15 issued:
16 (a) upon receiving a certified copy of the subscriber's death certifi-
17 cate, or upon confirming by other evidence that the subscriber is dead; or
18 (b) upon presentation of documents effecting a dissolution of the
19 subscriber, or upon confirming by other evidence that the subscriber has
20 been dissolved or has ceased to exist.

21 (4) A licensed certification authority may revoke [one (1)] or more cer-
22 tificates which it issued if the certificates are or become unreliable, regard-
23 less of whether the subscriber consents to the revocation.

24 (5) Immediately upon revocation of a certificate by a licensed certifica-
25 tion authority, the licensed certification authority shall publish signed no-
26 tice of the revocation in any repository specified in the certificate for publi-
27 cation of notice of revocation. If any repository specified in the certificate no
28 longer exists or refuses to accept publication, or is no longer recognized
29 pursuant to Section 25, the licensed certification authority shall publish
30 the notice in any recognized repository.

31 (6) A subscriber ceases to certify the information, as provided in Sec-
32 tion 12, and has no further duty to keep the private key secure, as required
33 by Section 13, in relation to a certificate whose revocation the subscriber
34 has requested, beginning with the earlier of either:
35 (a) when notice of the revocation is published as required in sub-
36 section (5); or
37 (b) [two (2)] business days after the subscriber requests revocation
38 in writing, supplies to the issuing certification authority information rea-
39 sonably sufficient to confirm the request, and pays any contractually re-
40 quired fee.

41 (7) Upon notification as required by subsection (5), a licensed certifica-
42 tion authority is discharged of its warranties based on issuance of the re-
43 voked certificate and ceases to certify the information, as provided in Sec-
44 tion 11, in relation to the revoked certificate.

45 Section 16. [Expiration of a Certificate.] A certificate shall indicate the
46 date on which it expires. When a certificate expires, the subscriber and
47 certification authority cease to certify the information in the certificate as
48 provided in this act and the certification authority is discharged of its du-
49 ties based on issuance of that certificate.

Section 17. [Recommended Reliance Limits and Liability.]

(1) By specifying a recommended reliance limit in a certificate, the is-
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suing certification authority and the accepting subscriber recommend that persons rely on the certificate only to the extent that the total amount at risk does not exceed the recommended reliance limit.

(2) Unless a licensed certification authority waives application of this subsection, a licensed certification authority is:

(a) not liable for any loss caused by reliance on a false or forged digital signature of a subscriber, if, with respect to the false or forged digital signature, the certification authority complied with all material requirements of this act;

(b) not liable in excess of the amount specified in the certificate as its recommended reliance limit for either:

   (i) a loss caused by reliance on a misrepresentation in the certificate of any fact that the licensed certification authority is required to confirm; or

   (ii) failure to comply with Section 10 in issuing the certificate;

(c) liable only for direct, compensatory damages in any action to recover a loss due to reliance on the certificate, which damages do not include:

   (i) punitive or exemplary damages;

   (ii) damages for lost profits, savings, or opportunity; or

   (iii) damages for pain or suffering.

Section 18. [Collection Based on Suitable Guaranty.]

(1)(a) Notwithstanding any provision in the suitable guaranty to the contrary:

   (i) if the suitable guaranty is a surety bond, a person may recover from the surety the full amount of a qualified right to payment against the principal named in the bond, or, if there is more than [one (1)] such qualified right to payment during the term of the bond, a ratable share, up to a maximum total liability of the surety equal to the amount of the bond; or

   (ii) if the suitable guaranty if a letter of credit, a person may recover from the issuing financial institution the full amount of a qualified right to payment against the customer named in the letter of credit, or, if there is more than [one (1)] qualified right to payment during the term of the letter of credit, a ratable share, up to a maximum total liability of the issuer equal to the amount of the credit.

(b) Claimants may recover successively on the same suitable guaranty, provided that the total liability on the suitable guaranty to all persons making claims based upon qualified rights of payment during its terms may not exceed the amount of the suitable guaranty.

(2) In addition to recovering the amount of a qualified right to payment, a claimant may recover from the proceeds of the guaranty, until depleted, reasonable attorney fees and court costs incurred by the claimant in col-
Section 19. [Satisfaction of Signature Requirements.]

(1) Where a rule of law requires a signature, or provides for certain consequences in the absence of a signature, that rule is satisfied by a digital signature if:
(a) that digital signature is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority;
(b) that digital signature was affixed by the signer with the intention of signing the message; and
(c) the recipient has no knowledge or notice that the signer either:
   (i) breached a duty as a subscriber; or
   (ii) does not rightfully hold the private key used to affix the digital signature.

(2) Nothing in this chapter precludes any symbol from being valid as a signature under other applicable law, including Uniform Commercial Code, Subsection 70A-1-201(39).

(3) This section does not limit the authority of the [state tax commission] to prescribe the form of tax returns or other documents filed with the [state tax commission].

Section 20. [Unreliable Digital Signatures.] Unless otherwise provided by law or contract, the recipient of a digital signature assumes the risk that a digital signature is forged, if reliance on the digital signature is not reasonable under the circumstances. If the recipient determines not to rely on a digital signature pursuant to this section, the recipient shall promptly notify the signer of its determination not to rely on the digital signature.

Section 21. [Digitally Signed Document is Written.]

(1) A message is as valid, enforceable, and effective as if it had been written on paper, if it:
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(a) bears in its entirety a digital signature; and
(b) that digital signature is verified by the public key listed in a


certificate which:

(ii) was invalid at the time the digital signature was created.

(2) Nothing in this act precludes any message, document, or record from


being considered written or in writing under other applicable state law.

Section 22. [Digitally Signed Originals.] A copy of a digitally signed

message is as effective, valid, and enforceable as the original of the mes-

sage, unless it is evident that the signer designated an instance of the digi-

tally signed message to be a unique original, in which case only that in-

stance constitutes the valid, effective, and enforceable message.

Section 23. [Certificate as an Acknowledgment.] Unless otherwise pro-

vided by law or contract, a certificate issued by a licensed certification au-

thority is an acknowledgment of a digital signature verified by reference to

the public key listed in the certificate, regardless of whether words of an

express acknowledgment appear with the digital signature or whether the

signer physically appeared before the certification authority when the digi-

tal signature was created, if that digital signature is:

(1) verifiable by that certificate; and

(2) affixed when that certificate was valid.

Section 24. [Presumptions in Adjudicating Disputes.] In adjudicating a

dispute involving a digital signature, a court of this state shall presume

that:

(1) a certificate digitally signed by a licensed certification authority

and either published in a recognized repository or made available by the

issuing certification authority or by the subscriber listed in the certificate

is issued by the certification authority which digitally signed it and is ac-

cepted by the subscriber listed in it;

(2) the information listed in a valid certificate, as defined in Section 3,

and confirmed by a licensed certification authority issuing the certificate is

accurate;

(3) if a digital signature is verified by the public key listed in a valid

certificate issued by a licensed certification authority:

(a) that the digital signature is the digital signature of the sub-

scriber listed in that certificate;

(b) that the digital signature was affixed by the signer with the

intention of signing the message; and

(c) the recipient of that digital signature has no knowledge or no-

tice that the signer:

(i) breached a duty as a subscriber; or
(ii) does not rightfully hold the private key used to affix the
digital signature; and
(4) a digital signature was created before it was time stamped by a
disinterested person utilizing a trustworthy system.

Section 25. [Recognition of Repositories.]
(1) A repository may apply to the [division] for recognition by filing a
written request and providing evidence to the [division] that the repository
meets the requirements of subsection (2). The [division] shall determine
whether to grant or deny the request in the manner provided for adjudica-
tive proceedings in [insert appropriate state citation.] of the state Adminis-
trative Procedures Act.
(2) The [division] shall recognize a repository, after finding that the
repository;
(a) is operated under the direction of a licensed certification au-
thority;
(b) includes a database containing:
   (i) certificates published in the repository;
   (ii) notices of suspended or revoked certificates published by
licensed certification authorities or other persons suspending or revoking
certificates as provided in Sections 14 and 15;
   (iii) certification authority disclosure records for licensed certi-
fication authorities;
   (iv) all orders or advisory statements published by the [divi-
sion] in regulating certification authorities; and
   (v) other information as determined by the rule of the [di-
vision;]
(c) operates by means of a trustworthy system;
(d) contains no significant amount of information which the [divi-
sion] finds is known or likely to be untrue, inaccurate, or not reasonably
reliable;
(e) contains certificates published by certification authorities re-
quired to conform to rules of practice which the [division] finds to be sub-
stantially similar to, or more stringent toward the certification authorities,
than those of this state;
(f) keeps an archive of certificates that have been suspended or
revoked, or that have expired within at least the past [three (3)] years; and
(g) complies with other requirements prescribed by rule of the [di-
vision.]
(3) The [division’s] recognition of a repository may be discontinued upon
the repository’s written request for discontinuance filed with the [division]
at least [thirty (30)] days before discontinuance.
(4) The [division] may discontinue recognition of a repository:
(a) upon passage of an expiration date specified by the [division] in
granting recognition; or
(b) in accordance with the procedures for adjudicative proceedings
prescribed by [insert appropriate state citation] of the state Administrative
Procedures Act, if the [division] concludes that the repository no longer
satisfies the conditions for recognition listed in this section or in rules of the
[division.]

Section 26. [Liability of Repositories.]
(1) Notwithstanding any disclaimer by the repository or any contract to
the contrary between the repository, a certification authority, or a subscriber,
a repository is liable for a loss incurred by a person reasonably relying on a
digital signature verified by the public key listed in a suspended or revoked
certificate if:
(a) the loss was incurred more than [one (1)] business day after
receipt by the repository of a request to publish notice of the suspension or
revocation; and
(b) the repository had failed to publish the notice of suspension or
revocation when the person relied on the digital signature.
(2) Unless waived, a recognized repository or the owner or operator of a
recognized repository is:
(a) not liable:
(i) for failure to publish notice of a suspension or revocation,
unless the repository has received notice of publication and [one (1)] busi-
ness day has elapsed since the notice was received;
(ii) for any damages pursuant to subsection (1) in excess of the
amount specified in the certificate as the recommended reliance limit;
(iii) for misrepresentation in a certificate published by a licensed
certification authority;
(iv) for accurately recording or reporting information which a
licensed certification authority, the [division,] a county clerk, or court clerk
has published as provided in this act, including information about suspen-
sion or revocation of a certificate; or
(v) for reporting information about a certification authority, a
certificate, or a subscriber, if such information is published as provided in
this chapter or a rule of the [division,] or is published by order of the [divi-
sion] in the performance of its licensing and regulatory duties pursuant to
this act; and
(b) liable pursuant to subsection (1) only for direct compensatory
damages, which do not include:
(i) punitive or exemplary damages;
(ii) damages for lost profits, savings, or opportunity; or
(iii) damages for pain or suffering.
Section 27. [Definitions. Inclusion of “Writing,” or “Written.”] “Writing” or “written” includes any handwriting, typewriting, printing, electronic storage or transmission, or any other method of recording information or fixing information in a form capable of being preserved.

Section 28. [Forgery - “Writing” Defined.]
(1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:
   (a) alters any writing of another without his authority or utters any such altered writing; or
   (b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.
(2) As used in this section, “writing” includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:
   (a) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right privilege, or identification;
   (b) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or
   (c) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.
(3) Forgery is a [felony of the third degree.]

Section 29. [Effective Date] [Insert effective date.]
Rights-of-Way: Telecommunications Providers

This act limits the powers of municipalities to place conditions on the use of rights-of-way and prohibits discrimination against providers of certain types of telecommunications services (e.g., fees on gross receipts in accelerating percentages or requiring in-kind contributions such as dark fiber.)

Submitted as:
Colorado
SB 96-010
Enacted 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Rights-of-Way: Telecommunications Providers Act.”

Section 2. [Legislative Declaration.]
(1) The [general assembly] hereby finds, determines, and declares that:
   (a) It is the policy of this state to encourage competition among the various telecommunications providers, to reduce the barriers to entry for those providers, to authorize and encourage competition within the local exchange telecommunications market, and to ensure that all consumers benefit from such competition and expansion.
   (b) All citizens should have access to a wider range of telecommunications services at rates that are reasonably comparable within the state, that basic service be available and affordable to all citizens, and that universal access to advanced telecommunications services would be available to all consumers. Such goals are essential to the economic and social well-being of the citizens of this state and can be accomplished only if telecommunications providers are allowed to develop ubiquitous, seamless, statewide telecommunications networks. To require telecommunications companies to seek authority from every political subdivision within the state to conduct business is unreasonable, impractical, and unduly burdensome. In addition, the [general assembly] further finds and declares that since the public rights-of-way are dedicated to and held on a nonproprietary basis in trust for the use of the public, their use by telecommunications companies is consistent with such policy and appropriate for the public good.
   (2) The [general assembly] further finds, determines, and declares that nothing in this act shall be construed to alter or diminish the authority of
political subdivisions of the state to lawfully exercise their police powers
with respect to activities of telecommunications providers within their
boundaries, and, subject to such reservation of authority, that:
    (a) the construction, maintenance, operation, oversight, and regu-
lation of telecommunications providers and their facilities is a matter of
statewide concern and interest;
    (b) telecommunications providers operating under the authority of
the federal communications commission or the [public utilities commission]
pursuant to [insert appropriate state citation.] require no additional autho-
ration or franchise by any municipality or other political subdivision of
the state to conduct business within a given geographic area and that no
such political subdivision has jurisdiction to regulate telecommunications
providers based upon the content, nature, or type of telecommunications
service or signal they provide except to the extent granted by federal or
state legislation;
    (c) telecommunications providers have a right to occupy and utilize
the public rights-of-way for the efficient conduct of their business;
    (d) access to rights-of-way and oversight of that access must be
competitively neutral, and no telecommunications provider should enjoy
any competitive advantage or suffer a competitive disadvantage by virtue
of a selective or discriminatory exercise of the police power by a local gov-
ernment.

Section 3. [Definitions.] As used in this act, unless the context other-
wise requires:
    (1) “Political subdivision” means a county, city and county, city, town,
service authority, school district, local improvement district, law enforce-
ment authority, water, sanitation, fire protection, metropolitan, irrigation,
drainage, or other special district, or any other kind of municipal, quasi-
municipal, or public corporation organized pursuant to law.
    (2) “Public highway” or “highway” for purposes of this article includes
all roads, streets, and alleys and all other dedicated rights-of-way and util-
ity easements of the state or any of its political subdivisions, whether lo-
cated within the boundaries of a political subdivision or otherwise.
    (3) “Telecommunications provider” or “provider” means a person that
provides telecommunications service, as defined in [insert appropriate state
citation.] with the exception of cable services as defined by section 602(5) of
the federal “Cable Communications Policy Act of 1984,” 47 U.S.C. Sec. 522(c),
pursuant to authority granted by the [public utilities commission] of this
state or by the federal communications commission. “Telecommunications
provider” or “provider” does not mean a person or business using antennas,
support towers, equipment, and buildings used to transmit high power over-
the-air broadcast of AM and FM radio, VHF and UHF television, and ad-
vanced television services, including high definition television. The term
“telecommunications provider” is synonymous with “telecommunication provider.”

Section 4. [Use of Public Highways - Discrimination Prohibited - Content Regulation Prohibited.]

1 (1) Any domestic or foreign telecommunications provider authorized to do business under the laws of this state shall have the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities along, across, upon, and under any public highway in this state, subject to the provisions of this act [insert appropriate state citation:] and the construction, maintenance, operation, and regulation of such facilities, including the right to occupy and utilize the public rights-of-way, by telecommunications providers are hereby declared to be matters of statewide concern. Such facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel on such highway.

2 (2) No political subdivision shall discriminate among or grant a preference to competing telecommunications providers in the issuance of permits or the passage of any ordinance for the use of its rights-of-way, nor create or erect any such unreasonable requirements for entry to the rights-of-way for such providers.

3 (3) No political subdivision shall regulate telecommunications providers based upon the content or type of signals that are carried or capable of being carried over the provider's facilities; except that nothing in this subsection (3) shall be construed to prevent such regulation by a political subdivision when the authority to so regulate has been granted to the political subdivision under federal law.

Section 5. [Right-of-Way Across State Land.] Any domestic or foreign telecommunications provider authorized to do business under the laws of this state shall have the right to construct, maintain, and operate lines of communication, switches, and related facilities and obtain permanent right-of-way therefor over, upon, under, and across all public lands owned by or under the control of the state, upon the payment of such just compensation and upon compliance with such reasonable conditions as may be required by the [state board of land commissioners.]

Section 6. [Power of Companies to Contract.] Any domestic or foreign telecommunications provider shall have power to contract with any person or corporation, the owner of any lands or any franchise, easement, or interest therein over or under which the provider's conduits, cable, switches, and related appurtenances and facilities are proposed to be laid or created for the right-of-way for the construction, maintenance, and operation of such facilities and for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.
Section 7. [Consent Necessary to Use of Streets.]

(1)(a) Nothing in this article shall be construed to authorize any telecommunications provider to erect any poles or construct any conduit, cable, switch, or related appurtenances and facilities along, through, in, upon, under, or over any public highway within a political subdivision without first obtaining the consent of the authorities having power to give the consent of such political subdivision.

(b) A telecommunications provider that, on or before the effective date of this section, either has obtained consent of the political subdivision having power to give such consent or is lawfully occupying a public highway in a political subdivision shall not be required to apply for additional or continued consent of such political subdivision under this section.

(2) Consent for the use of a public highway within a political subdivision shall be based upon a lawful exercise of the police power of such political subdivision and shall not be unreasonably withheld, nor shall any preference or disadvantage be created through the granting or withholding of such consent.

Section 8. [Permissible Taxes, Fees, and Charges.]

(1)(a) No political subdivision shall levy a tax, fee, or charge for any right or privilege of engaging in a business or for use of a public highway other than:

(I) a license fee or tax authorized under [insert appropriate state citation;] and

(II) a street or public highway construction permit fee, to the extent that such permit fee applies to all persons seeking a construction permit.

(b) All fees and charges levied by a political subdivision shall be reasonably related to the costs directly incurred by the political subdivision in providing services relating to the granting or administration of permits. Such fees and charges also shall be reasonably related in time to the occurrence of such costs. In any controversy concerning the appropriateness of a fee or charge, the political subdivision shall have the burden of proving that the fee or charge is reasonably related to the direct costs incurred by the political subdivision. All costs of construction shall be borne by the provider.

(2)(a) Any tax, fee, or charge imposed by a political subdivision shall be competitively neutral among telecommunications providers.

(b) Nothing in this act or in [insert appropriate state citation.] shall invalidate a tax or fee imposed if such tax or fee cannot legally be imposed upon another provider or service because of the requirements of state or federal law or because such other provider is exempt from taxation or lacks a taxable nexus with the political subdivision imposing the tax or fee.
Rights-of-Way: Telecommunications Providers

(c) If a political subdivision imposes a tax on a provider and such tax does not apply to other providers of comparable telecommunications services due to the language of the ordinance or resolution that imposes the tax, then the governing body of the political subdivision shall take [one (1)] of the following [two (2)] courses of action:

(I) if it can do so without violating the election requirements of [insert appropriate state citation,] the governing body shall amend the ordinance or resolution that imposes the tax so as to extend the tax to providers of comparable telecommunications services; or

(II) if an election is required under [insert appropriate state citation,] the governing body shall cause an election to be held in accordance with said section to authorize the extension of the tax to providers of comparable telecommunications services. If the extension of the tax is not approved by the voters at such election, then the existing tax shall no longer apply to the providers that had been subject to the tax immediately before the election.

(3) Taxes, fees, and charges imposed shall not be collected through the provision of in-kind services by telecommunications providers, nor shall any political subdivision require the provision of in-kind services as a condition of consent to use a highway.

(4) The terms of all agreements between political subdivisions and telecommunications providers regarding use of highways shall be matters of public record and shall be made available upon request pursuant to [insert appropriate state citation.]

Section 9. [Pole Attachment Agreements - Limitations on Required Payments.]

(1) No municipally owned utility shall request or receive from a telecommunications provider or a cable television provider as defined in section 602(5) of the federal “Cable Policy Act of 1984,” in exchange for permission to attach telecommunications devices to poles, any payment in excess of the amount that would be authorized if the municipally owned utility were regulated pursuant to 47 U.S.C. Sec. 224, as amended.

(2) No municipality shall request or receive from a telecommunications provider, in exchange for or as a condition upon a grant of permission to attach telecommunications devices to poles, any in-kind payment.

Section 10. [Use of Public Highways.] Any domestic or foreign electric light power, gas, or pipeline company authorized to do business under the laws of this state or any city or town owning electric power producing or distribution facilities shall have the right to construct, maintain, and operate lines of electric light, wire or power or pipeline along, across, upon, and under any public highway in this state, subject to the provisions of this act. Such lines of electric light, wire or power, or pipeline shall be so constructed
and maintained as not to obstruct or hinder the usual travel on such high-
way.

Section 11. [Right-of-Way Across State Land.] Any domestic or foreign
electric light power, gas, or pipeline company authorized to do business
under the laws of this state, or any city or town owning electric power pro-
ducing or distribution facilities shall have the right to construct, maintain,
and operate lines of electric light wire or power or pipeline and obtain per-
manent right-of-way therefor over, upon, under, and across all public lands
owned by or under the control of the state, upon the payment of such com-
ensation and upon compliance with such reasonable conditions as may be
required by the [state board of land commissioners.]

Section 12. [Power of Companies to Contract.] Such electric light power,
gas, or pipeline company, or such city or town shall have power to contract
with any person or corporation, the owner of any lands or any franchise,
easement, or interest therein over or under which the line of electric light
wire power or pipeline is proposed to be laid or created for the right-of-way
for the construction, maintenance, and operation of its electric light wires,
pipes, poles, regulator stations, substations, or other property and for the
erection, maintenance, occupation, and operation of offices at suitable dis-
tances for the public accommodation.

Section 13. [Companies, Cities, and Towns Carrying High Voltage - Cross-
ings - Arbitration.]
(1) Any person, corporation, or city or town seeking to secure a right-of-
way for lines of electric light or for the transmission of electric power for
any purpose over, under, or across any right-of-way of any other person,
corporation, or city or town for such purposes or seeking to erect or con-
struct its lines of wire under or over the lines of wire already constructed by
such other person, corporation, or city or town for any such purposes upon,
under, along, or across any public highway or upon, under, along, or across
any public lands owned or controlled by this state before constructing such
lines or wires over, under or across such rights-of-way or wires of other
persons, corporations, or cities or towns, where either of said lines or wires
carry a current at an electrical pressure of [five thousand (5,000)] volts or
more, shall agree with such other persons, corporations, or cities or towns
as to the conditions under or upon which such overhead or underneath
construction or crossing shall be made, looking to the due protection and
safeguard of the wires of the person, corporation, or city or town already
having a right-of-way for such wires and looking to the safety of life, health,
and property. In case of an inability to agree upon the conditions under or
upon which such overhead or underneath crossings shall be made, the per-
son, corporation, or city or town owning and operating or controlling the
Rights-of-Way: Telecommunications Providers

lines of wires already built or constructed and the person, corporation, or city or town seeking to construct new lines or wires or to make said crossings shall each select a person as an arbitrator, which [two (2)] persons shall determine said conditions under or upon which such overhead or underneath construction or crossing shall be made. In case of a disagreement in regard thereto by the arbitrators, they shall select a third person to act with them, and the decision made by any [two (2)] of said arbitrators shall be final and binding upon the person, corporation, or city or town so seeking to make or construct the crossings, who shall construct in a manner determined by such arbitrators.

Section 14. [Consent Necessary to Use of Streets.] Nothing in this act shall be construed to authorize any person, partnership, association, corporation, or city or town to erect any poles, construct any electric light power line, or pipeline, or extend any wires or lines along, through, in, upon, under, or over any streets or alleys of any city or incorporated town without first obtaining the consent of the municipal authorities having power to give the consent of such city or incorporated town.

Section 15. [No Appropriation.] The [general assembly] has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purpose of this act.

Section 16. [Safety Clause.] The [general assembly] hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Section 17. [Effective Date.] [Insert effective date.]
Mail Ballot Elections

Increasing voter turnout and reducing the cost of elections are goals of most state and local governments. Two states have taken a proactive approach toward these goals, Colorado and Oregon.

Under ch. 493, Laws of 1993, Oregon granted county clerks and the secretary of state the option to conduct certain elections by mail. The law said statewide elections “held on any date other than the date of a biennial or presidential primary or general election may be conducted by mail.” It directed the secretary of state to adopt rules to provide for uniformity in the conduct of statewide elections by mail. Oregon used this 1993 law to conduct a statewide special election in February 1995 for a U.S. Senate seat. Voter turnout was reported as 65.8% with a reported savings of approximately $1 million to the state.

The act featured in this SSL volume is based on Colorado law. It permits voting by mail, defines the pre-election process forms and materials to be used, procedures for conducting the mail ballot election, and various warnings and legends required to appear on mail ballots. Provisions are also made for challenging votes cast pursuant to the mail ballot election act. The secretary of state is required to collect and analyze information concerning the implementation of the act to the general assembly.

Submitted as:
Colorado
Ch. 1-7.5-101

Suggested Legislation

(Title, enacting clause, etc.)

1  Section 1. [Short Title.] This act shall be known and may be cited as the
2  “Mail Ballot Election Act.”

1  Section 2. [Legislative Declaration.] The [general assembly] hereby finds,
2  determines, and declares that self-government by election is more legiti-
3  mate and better accepted as voter participation increases. The [general as-
4  sembly] further finds, determines, and declares that mail ballot elections
5  are cost-efficient and have not resulted in increased fraud. The [general
6  assembly] hereby concludes that it is appropriate to provide for mail ballot
7  elections under specified circumstances.
Mail Ballot Elections

Section 3. [Definitions.] As used in this act, unless the context otherwise requires:

1. "Designated election official" means official as defined in [insert appropriate state citation.]
2. "Election" means any election under [insert appropriate state citation] or the [insert appropriate state citation.]
3. "Election day" means the date either established by law or determined by the governing body of the political subdivision conducting the election, to be the final day on which all ballots are determined to be due, and the date from which all other dates in this act are set.
4. "Mail ballot election" means an election for which eligible electors may cast ballots by mail and in accordance with this act in an election that involves only nonpartisan candidates or ballot questions or ballot issues.
5. "Mail ballot packet" means the packet of information provided by the designated election official to eligible electors in the mail ballot election. The packet includes the ballot, instructions for completing the ballot, a secrecy envelope, and a return verification envelope.
6. "Political subdivision" means a governing subdivision of the state, including counties, municipalities, school districts, and special districts.
7. "Return verification envelope" means an envelope that contains the name, address, and birth date of an eligible elector voting in a mail ballot election, that contains a secrecy envelope and ballot for the elector, and that is designed to allow election officials, upon examining the signature, name, address, and birth date that appear on the outside of the envelope, to determine whether the enclosed ballot is being submitted by an eligible elector who has not previously voted in that particular election.
8. "Secrecy envelope" means the envelope used for a mail ballot election that contains the eligible elector's ballot for the election, and that is designed to conceal and maintain the confidentiality of the elector's vote until the counting of votes for that particular election.

Section 4. [Mail Ballot Elections - Optional.]

1. If the governing board of any political subdivision determines that an election shall be by mail ballot, the designated election official for the political subdivision shall conduct any election for the political subdivision by mail ballot under the supervision of the [secretary of state] and shall be subject to rules which shall be promulgated by the [secretary of state.]
2. Notwithstanding the provisions of subsection (1) of this section, a mail ballot election shall not be held for:
   a. Elections or recall elections that involve partisan candidates;
   b. Elections held in conjunction with, or on the same day as, a primary or congressional vacancy election.
(3) Notwithstanding any other provision of law to the contrary concern-
ing the type of election to be held, elections by mail ballot shall be con-
ducted as provided in this act.

Section 5. [Secretary of State - Duties and Powers.]
(1) In addition to any other duties prescribed by law, the [secretary of
state,] with advice from election officials of the several political subdivi-
sions, shall:
(a) Prescribe the form of materials to be used in the conduct of mail
ballot elections; except that all mail ballot packets shall include a ballot,
instructions for completing the ballot, a secrecy envelope, and a verification
return envelope;
(b) Establish procedures for conducting mail ballot elections; ex-
cept that the procedures shall be consistent with Section 7;
(c) Supervise the conduct of mail ballot elections by the election
officials as provided in Section 5 (3).
(2) In addition to other powers prescribed by law, the [secretary of state]
may adopt rules governing procedures and forms necessary to implement
this act and may appoint any county clerk and recorder as an agent of the
secretary to carry out the duties prescribed in this act.

Section 7. [Procedures for Conducting Mail Ballot Elections.]
(1) Official ballots shall be prepared and all other preelection proce-
dures followed as otherwise provided by law or rules promulgated by the
[secretary of state,] except that mail ballot packets shall be prepared in
accordance with this act.
(2)(a) Except for coordinated elections conducted as a mail ballot elec-
tion where the county clerk and recorder is the coordinated election official,
no later than [thirty (30)] days prior to election day, the county clerk and
recorder shall submit to the designated election official of the political sub-
division conducting the mail ballot election a full and complete preliminary
list of registered electors. For special district mail ballot elections, the county
derk and recorder and county assessor of each county in which a special
district is located shall certify and submit to the designated election official
a list of property owners and a list of registered electors residing within the
affected district.
(b) No later than [twenty (20)] days prior to election day, the county
derk and recorder are required to submit a preliminary list in accordance
with paragraph (a) of this subsection (2) shall submit to the appropriate
authority a supplemental list of the names of eligible electors whose names
were not included on the preliminary list.
(c) All lists of registered electors and lists of property owners pro-
vided to a designated election official under this section shall include the
last mailing address of each elector.
Mail Ballot Elections

(3)(a) Not sooner than [twenty-five (25)] days before an election, and no
later than [fifteen (15)] days before an election, the designated election offi-
cial shall mail to each eligible elector, at the last mailing address appearing
in the registration records and in accordance with United States postal
service regulations, a mail ballot packet, which shall be marked “DO NOT
FORWARD. ADDRESS CORRECTION REQUESTED,” or any other simi-
lar statement that is in accordance with United States postal service regu-
lations; except that with prior approval from the [secretary of state] the
packets shall be sent no later than [ten (10)] days before election day.

(b) The ballot or ballot label shall contain the following warning:

“WARNING:
Any person who, by use of force or other means, unduly influences an
eligible elector to vote in any particular manner or to refrain from voting, or
who falsely makes, alters, forges, or counterfeits any mail ballot before or
after it has been cast, or who destroys, defaces, mutilates, or tampers with
a ballot is subject, upon conviction, to imprisonment, or to a fine, or both.”

(c) No sooner than [twenty-five (25)] days prior to election day, nor
later than 7 p.m. on election day, mail ballots shall be made available at the
designated election official’s office, or the office designated in the mail bal-
lot plan filed with the [secretary of state] for eligible electors who are not
listed on the county voter registration records or, for special district mail
ballot elections, on the list of property owners or the registration list but
who are authorized to vote pursuant to [insert appropriate state citation,]
or other applicable law.

(d)(I) An eligible elector may obtain a replacement ballot if the bal-
lot was destroyed, spoiled, lost, or for some other reason not received by the
eligible elector. An eligible elector may obtain a ballot if a mail ballot packet
was not sent to the elector because the eligibility of the elector could not be
determined at the time the mail ballot packets were mailed. In order to
obtain a ballot in such cases, the eligible elector must sign a sworn state-
ment specifying the reason for requesting the ballot. The statement shall
be presented to the designated election official no later than 7 p.m. on elec-
tion day. The designated election official shall keep a record of each ballot
issued in accordance with this paragraph (d) together with a list of each
ballot obtained pursuant to paragraph (c) of this subsection (3).

(II) A designated election official shall not transmit a mail bal-
lot packet under this paragraph (d) unless a sworn statement requesting
the ballot is received on or before election day. A ballot may be transmitted
directly to the eligible elector requesting the ballot at the designated elec-
tion official’s office or the office designated in the mail ballot plan filed with
the [secretary of state] or may be mailed to the eligible elector at the ad-
dress provided in the sworn statement. Ballots may be cast no later than 7
p.m. on election day.

4(a) Upon receipt of a ballot, the eligible elector shall mark the ballot,
sign and complete the return-verification envelope, and comply with the instructions provided with the ballot.

(b) The eligible elector may return the marked ballot to the designated election official by United States mail or by depositing the ballot at the office of the official or any place designated by the official. The ballot must be returned in the return-verification envelope. If an eligible elector returns the ballot by mail, the elector must provide postage. The ballot shall be received at the office of the designated election official or a designated depository, which shall remain open until 7 p.m. on election day.

(5) Once the ballot is returned, an election judge shall first qualify the submitted ballot by examining the return-verification envelope and comparing the information on the envelope to the registration records to determine whether the ballot was submitted by an eligible elector who has not previously voted in the election. If the ballot so qualifies and is otherwise valid, the election judge shall indicate in the poll book that the eligible elector cast a ballot, open the return-verification envelope, remove the ballot stub, and deposit the ballot in an official ballot box.

(6) All deposited ballots shall be counted as provided in this act and by rules promulgated by the secretary of state. A mail ballot shall be valid and counted only if it is returned in the return-verification envelope, the affidavit on the envelope is signed and completed by the eligible elector to whom the ballot was issued, and the information on the envelope is verified in accordance with subsection (5) of this section. Mail ballots shall be counted in the same manner provided by counting [insert appropriate state citation] for counting paper ballots or [insert appropriate state citation] for counting electronic ballots. If the election official determines that an eligible elector to whom a replacement ballot has been issued has voted more than once, the official shall not count any ballot cast by the elector.Rejected ballots shall be handled in the same manner as provided in [insert appropriate state citation.]

Section 8. [Absentee Mail Ballots.] Provisions for the allowance of and procedures for absentee ballots shall be determined by rules promulgated by the [secretary of state.]

Section 9. [Write-In Candidates.] Write-in candidates shall be allowed on mail ballot elections provided that the candidate has filed an affidavit of intent with the designated election official pursuant to [insert appropriate state citation.] Ballots for write-in candidates are to be counted pursuant to [insert appropriate state citation.]

Section 10. [Challenges.] Votes cast pursuant to this act may be challenged pursuant to and in accordance with law. Any mail ballot election held pursuant to this act shall not be invalidated on the grounds that an
Mail Ballot Elections

eligible elector did not receive a ballot so long as the designated election official for the political subdivision conducting the election acted in good faith in complying with the provisions of this act or with rules promulgated by the [secretary of state].

Section 11. [Report to the General Assembly.] The [secretary of state] shall collect and analyze information concerning the implementation of this act and shall submit a report to the [general assembly] based on its findings no later than [insert date.] Election officials shall provide the [secretary of state] with such relevant information as the [secretary of state] requests.

Section 12. [Effective Date] [Insert effective date.]
Habeas Corpus Petitions

This act establishes procedures for litigating Writs of Habeas Corpus in death penalty cases. Eliminating unnecessary delays in carrying out valid death sentences is its goal. The act limits the forms of discovery which shall be allowed in such proceedings and requires the court to enter an order within 90 days after the parties have filed briefs following the close of evidence and preparation of a hearing transcript.

Submitted as:
Georgia
SB 113
Signed by the governor, April 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act shall be known and may be cited as the “Death Penalty Habeas Corpus Reform Act.”

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

(1) Through automatic direct appeal, sentence review procedures, and the writ of habeas corpus, state law currently provides defendants upon whom the death penalty has been imposed multiple and adequate opportunities to assert their constitutional rights, seek remedies, and raise objection to their convictions and sentences;

(2) The writ of habeas corpus in state courts should not be used by defendants upon whom the death penalty has been imposed simply as a delay tactic under the guise of asserting rights, seeking remedies, or raising objections and challenges to their convictions and sentences that should have been raised or asserted in the unified appeal procedure and the automatic direct appeal available under state law; and

(3) Strict compliance by the courts and all parties with fair and practical procedures for litigating writs of habeas corpus will prevent the waste of limited resources and will eliminate unnecessary delays in carrying out valid death sentences imposed in accordance with the law.

Section 3. [Petition Contents and Verification.] Therefore, a petition brought under this act shall identify the proceeding in which the petitioner was convicted, give the date of rendition of the final judgment complained of, and clearly set forth the respects in which the petitioner’s rights were
violated, and state with specificity which claims were raised at trial or on
direct appeal, providing appropriate citations to the trial or appellate record.
The petition shall have attached thereto affidavits, records, or other evi-
dence supporting its allegations or shall state why the same are not at-
tached. The petition shall identify any previous proceedings that the peti-
tioner may have taken to secure relief from his or her conviction and, in the
case of prior habeas corpus petitions, shall state which claims were previ-
ously raised. Argument and citations of authorities shall be omitted from
the petition; however, a brief may be submitted in support of the petition
setting forth any applicable argument. The petition must be verified by the
oath of the applicant or of some other person in his or her behalf.

Section 4. [Petition Dismissals.] Except in cases challenging a sentence
of death, within [twenty (20)] days after the filing and docketing of a peti-
tion under this act or within such further time as the court may set, the
respondent shall answer or move to dismiss the petition. The court shall
set the case for a hearing on the issues within a reasonable time after the
filing of defensive pleadings.

Section 5. [Procedures.]
(a) In cases filed under this act challenging for the first time state court
proceedings resulting in a death sentence, the court shall allow the proce-
dure set forth in this section:
(1) Within [ten (10)] days of the filing of the petition, the [chief
judge] of the circuit in which the petition is filed shall either make a re-
quest for judicial assistance under [insert appropriate state citation] or shall
enter an order assigning the case to a judge of the circuit;
(2) Within [twenty (20)] days of the filing and docketing of the peti-
tion, or within such further time as the court may set, the respondent shall
answer or move to dismiss the petition;
(3) Within [one-hundred twenty (120)] days of the filing and dock-
eting of the petition, the petitioner shall file any amendments to the peti-
tion. No extensions for filing amendments shall be granted absent a show-
ing of extraordinary circumstances. No further amendments shall be al-
lowed absent leave of court which shall require a showing of extraordinary
circumstances;
(4) The petitioner shall file any necessary motions at the time of
filing any amendments. The respondent shall file any necessary motions
within [twenty (20)] days of receipt of any amendments and petitioner’s
motions or within [one-hundred forty (140)] days of the filing of the peti-
tion, whichever is later. Any responses to motions filed by either party shall
be filed within [ten (10)] days of receipt of the motion or at any hearing on
the petition, whichever is earlier. Unless the motion requires evidentiary
development, the court may rule on the motion without argument and any
such ruling shall be made within [thirty (30)] days of the filing of the mo-
tion or at any hearing, whichever is earlier; and

(5) If the court determines that an evidentiary hearing is neces-
sary, the court shall conduct such hearing is necessary, the court shall con-
duct such hearing within [one-hundred eighty (180)] days after the date on
which the petition was filed unless providentially hindered or unless either
party makes a showing of good cause for delaying the hearing beyond that
date.

(b) In cases filed under this act challenging for a second or subsequent
time a state court proceeding resulting in a death sentence, the petitioner
shall not be entitled to invoke any of the provisions set forth in subsection
(a) to delay the proceedings. To the extent the court deems it necessary to
have an evidentiary hearing on any such petition, the court shall expedite
the proceedings and the time limits shall not exceed those set for initial
petitions.

Section 6. [Discovery.]

(a) The court may receive proof by depositions, oral testimony, sworn
affidavits, or other evidence. No other forms of discovery shall be allowed
except upon leave of court and a showing of exceptional circumstances.

(b) The taking of depositions or depositions upon written questions by
either party shall be governed by [insert appropriate state citations] pro-
vided, however, that the time allowed in [insert appropriate state citation]
for service of cross-questions upon all other parties shall be [ten (10)] days
from the date the notice and written questions are served.

(c) If sworn affidavits are intended by either party to be introduced into
evidence, the party intending to introduce such an affidavit shall cause it to
be served upon the opposing party at least [ten (10)] days in advance of the
date set for a hearing in the case. The affidavit so served shall include the
address and telephone number of the affiant, home or business, to provide
the opposing party a reasonable opportunity to contact the affiant; failure
to include this information in any affidavit shall render the affidavit inad-
missible. The affidavit shall also be accompanied by a notice of the party's
intention to introduce it into evidence. The [superior court judge] consider-
ing the petition for writ of habeas corpus may resolve disputed issues of
fact upon the basis of sworn affidavits standing by themselves.

(d) The court shall review the trial record and transcript of proceedings
and consider whether the petitioner made timely motion or objection or
otherwise complied with [insert state] procedural rules at trial and on ap-
peal; and absent a showing of cause for noncompliance with such require-
ment, and of actual prejudice, habeas corpus relief shall not be granted. In
all cases habeas corpus relief shall be granted to avoid a miscarriage of
justice. If the court finds in favor of the petitioner, it shall enter an appro-
priate order with respect to the judgment or sentence challenged in the
proceeding and such supplementary orders as to rearraignment, retrial, custody, or discharge as may be necessary and proper.

(e) A petition may be dismissed if it appears that the respondent has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he or she could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the respondent occurred.

Section 7.  [Findings.]

(a) After reviewing the pleadings and evidence offered at the trial of the case, the [judge] of the [superior court] hearing the case shall make written findings of fact and conclusions of the law upon which the judgment is based. The findings of fact and conclusions of law shall be recorded as part of the record of the case.

(b) In cases filed for the purpose of challenging for the first time state court proceedings resulting in a sentence of death, the court shall enter the order required by this Code section within [ninety (90)] days of the close of evidence, preparation of the hearing transcript, and filing of any allowed briefs.

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

Section 9.  [Repeal or] All laws and parts of laws in conflict with this act are repealed.
DNA Database and Databank Act

This act declares that it is the policy of the state to help federal, state and local criminal justice and law-enforcement agencies identify criminals by using DNA as evidence. It directs the state division of public safety to establish and administer a DNA identification system consisting of a state DNA database and state DNA databank compatible with the procedures specified by the FBI. State DNA database means all DNA identification records included in the state system. State DNA databank means the repository of DNA samples collected under the act.

The act requires people convicted of certain crimes or jailed for certain crimes to submit to a blood test for the purpose of DNA typing and testing. The records from these tests are kept by the division of public safety.

Submitted as:
West Virginia
SB 252

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “DNA Database and Databank Act.”

Section 2. [Policy.] It is the policy of this state to assist federal, state and local criminal justice and law-enforcement agencies in the identification, detection and exclusion of individuals who are subjects of the investigation or prosecution of violent crimes, sex-related crimes and other crimes against the person. In furtherance of such assistance, the [legislature] finds:

That the analysis of DNA contained in biological evidence that may be recovered from a crime scene facilitates such identification, detection and exclusion;

That the comparison of DNA data recovered from a crime scene with existing DNA records maintained in a central DNA database further facilitates such identification, detection and exclusion; and

That requiring individuals convicted of certain crimes to provide a blood sample for DNA analysis with the resulting DNA records maintained in a central DNA database will likewise further facilitate the aforementioned identification, detection and exclusion and may serve to discourage recidivism.
Therefore, the [legislature] finds that assisting federal, state and local criminal justice and law-enforcement agencies through the use and development of DNA analysis is of the utmost importance and urgency in this state and that a DNA identification system shall be established as described in this article.

Section 3. [Definitions.] As used in this act the following terms have the meanings specified:

(a) “DNA” means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual’s personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(b) “DNA record” means DNA identification information stored in any state DNA database pursuant to this act. The DNA record is the result obtained from DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual’s DNA sample are also included as a “DNA record.”

(c) “DNA sample” means the DNA extracted from a blood sample provided by any person convicted of offenses covered by this article or submitted to the division laboratory for analysis pursuant to a criminal investigation.

(d) “FBI” means the federal bureau of investigation.

(e) “State DNA database” means all DNA identification records included in the system administered by the [division of public safety.]

(f) “State DNA databank” means the repository of DNA samples collected under the provisions of this act.

(g) “Division” means the [division of public safety.]

Section 4. [Division of Public Safety] to Establish and Administer DNA Identification System; Inspection of Laboratories.

(a) The [division] shall establish a DNA identification system consisting of a state DNA database and a state DNA databank compatible with the procedures specified by the FBI.

(b) The [division] shall be the administrator of the state DNA databank and database and the DNA identification system.

(c) The [division] shall supervise all DNA forensic laboratories in this state to ensure that such laboratories are acting in compliance with applicable provisions of state and federal law. The [division] may inspect or monitor such facilities and may prohibit any such laboratory from participating in the exchange of information when the [division] finds that the facility has not acted in conformity with state and federal laws. The [superintendent of the division] shall further promulgate a legislative rule pursuant to [insert appropriate state citation] regarding the monitoring, inspection and
prohibition on the exchange of information.

(d) The [superintendent] of the [division] shall further establish standards for testing and quality assurance of DNA testing and the exchange of information through the promulgation of a legislative rule pursuant to [insert appropriate state citation.]

(e) The [superintendent] of the [division of public safety] shall promulgate additional legislative rules pursuant to [insert appropriate state citation] necessary to establish and administer the DNA database and databank consistent with the requirements of state and federal law and consistent with the systems employed by the FBI.

Section 5. [Authority of Division to Enter into Cooperative Agreements.] The [division] may enter into cooperative agreements with public or private agencies or entities to provide any service or facility associated with the administration of the DNA database and databank: Provided, That the [division] is authorized only to contract services and/or facilities for DNA typing, testing and research with [Marshall] university.

Section 6. [Blood Sample Required for DNA Analysis Upon Conviction; Blood Sample Required for Certain Prisoners.]

(a) Any person convicted of an offense described in [insert appropriate state citation] when that offense constitutes a felony shall provide a blood sample to be used for DNA analysis as described in this act. Further, any person convicted of any offense described in [insert appropriate state citation] shall provide a blood sample to be used for DNA analysis as described in this act.

(b) All persons incarcerated in the state penitentiary or any regional jail in this state who are incarcerated due to the conviction of any offense listed in subsection (a) of this section who are incarcerated on the first day of [insert date] or who are convicted of any such offense on or after the first day of [insert date] shall have a blood sample drawn for purposes of analysis and storage of the DNA.

(c) When a person who is required to submit to blood testing as required by this section refuses to comply with any blood testing, the state shall apply to a circuit court for an order requiring the prisoner to permit a blood sample to be withdrawn for the purpose of DNA typing and testing. The circuit court shall order the prisoner to submit to blood testing in conformity with the provisions of this act.

Section 7. [Tests to be Performed on Blood Sample.] The tests to be performed on each blood sample shall analyze and type the genetic markers contained in or derived from the DNA sample in accordance with rules promulgated under this article. Any such rule regarding the typing and
analysis of the blood sample shall be consistent with any specifications required by federal law.

Section 8. [Maintenance of DNA Samples and Records.] DNA records and samples shall be stored and maintained by the [division] in the state DNA database and databank respectively. DNA samples, without personal identifying information, may also be stored in any DNA typing, testing and research laboratory selected by the [division] pursuant to Section five of this act.

Section 9. [Procedures for Withdrawal of Blood Sample for DNA Analysis and for Conducting Analysis.]
(a) Upon incarceration, the [division of corrections,] regional jails, county jails and felon facilities shall insure that the blood is drawn from all persons described in Section six of this act. When any person convicted of an offense described in said section is not incarcerated, the sheriff in such county where the person is convicted shall insure that blood is drawn from such person at the regional facility. Provided, That blood may be drawn at a county jail or at a prison, regional facility or local hospital unit when so ordered by the sentencing court. The sheriff shall transport such persons who are not incarcerated to the facility where the blood is drawn.

(b) The [superintendent] of the [division] shall promulgate a legislative rule pursuant to [insert appropriate state citation] this code establishing which persons may withdraw blood and further establishing procedures to withdraw blood. At a minimum, these procedures shall require that the DNA require that when blood is withdrawn for the purpose of DNA identification testing, a previously unused and sterile needle and sterile vessel shall be used, the withdrawal shall otherwise be in strict accord with accepted medical procedures employing universal precautions as may be outlined by the national centers for disease control and prevention. No civil liability attaches to any person when the blood was drawn according to recognized medical procedures employing such universal precautions. No person is relieved of liability for negligence in the drawing of blood for purposes of DNA testing.

(c) The [superintendent] of the [division] shall promulgate legislative rules pursuant to [insert appropriate state citation] governing the procedures to be used in the withdrawal of blood samples, submission, identification, analysis and storage of DNA samples and typing results of DNA samples submitted under this article which shall be compatible with recognized federal standards.

Section 10. [DNA Database Exchange.]
(a) The [division] shall receive DNA samples, store, analyze, classify and file the DNA records consisting of all identification characteristics of
DNA profiles from blood samples submitted pursuant to the procedures for conducting DNA analysis of blood samples.

(b) The [division] may furnish DNA records to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the [insert state] upon proper request stating that the DNA records requested will be used solely:

(1) For law-enforcement identification purposes by criminal justice agencies;

(2) In judicial proceedings, if otherwise expressly permitted by state or federal laws; or

(3) If personal identifying information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) The [superintendent] of the [division] shall promulgate further legislative rules pursuant to [insert appropriate state citation] governing the methods by which any law-enforcement agency or other authorized entity may obtain information from the state DNA database consistent with this section and federal law.

(d) The [division] may release DNA samples, without personal identifying information, to any agency or entity with which the [division] contracts pursuant to Section five of this act.

Section 11. [Expungement.]

(a) Any person whose DNA record or profile has been included in the state database and whose DNA sample is stored in the state databank or the state’s designated DNA typing, testing and research laboratory may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person’s DNA record or profile in the state database or the inclusion of the person’s DNA sample in the state databank has been reversed and the case dismissed. The person requesting expungement, 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 prosecuting attorney for the judicial district in which the felony 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 of expungement.

(b) Upon receipt of an order of expungement, the [division] shall purge the DNA record and all other identifiable information from the state database and the DNA sample stored in the state databank covered by the order. If the individual has more than [one (1)] entry in the state database and databank, then only the entry covered by the expungement order shall be deleted from the state database or databank.
Section 12. [Confidentiality; Unauthorized Uses of DNA Databank; Penalties.]

(a) All DNA profiles and samples submitted to the [division of public safety] pursuant to this act shall be treated as confidential except as provided in this act.

(b) 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 willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than [fifty (50)] dollars nor more than [five-hundred (500)] dollars or be imprisoned in the county or regional jails for a period not to exceed [one (1)] year, or both fined and imprisoned.

(c) Any person who, without authorization, willfully obtains individually identifiable DNA information from the state DNA database or databank is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than [fifty (50)] dollars nor more than [five-hundred (500)] dollars or be imprisoned in the country or regional jails for a period not to exceed [one (1)] year, or both fined and imprisoned.

Section 13. [Neglect of Duties; Destruction of Samples; Penalties.]

(a) Any person who neglects or refuses to do or perform any act on his or her part to be done or performed in connection with the operation of this act, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than [fifty (50)] dollars nor more than [two-hundred (200)] dollars or be imprisoned in the county or regional jail for a period of not more than [sixty (60)] days, or both fined and imprisoned. Further, such neglect constitutes misfeasance in office and may subject that person to removal from office.

(b) Any person who willfully removes, destroys or mutilates any of the DNA samples, records or other information acquired or stored pursuant to this act, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than [fifty (50)] dollars nor more than [five-hundred (500)] dollars or be imprisoned in the county or regional jail not to exceed [one (1)] year, or both fined and imprisoned.

Section 14. [Effective Date] [Insert effective date.]
Filing Fees for Criminal Offenders

This act requires payment of a filing fee by offenders in an action against the state department of corrections. It also provides that an offender committed to the department of corrections must file an administrative complaint with the department to recover compensation for loss of the offender's personal property alleged to have occurred during the offender's confinement as the result of an act or omission by the department or any of its agents, officers, employees or contractors. It provides that such a claim must be filed within 180 days after the alleged loss. It provides for a procedure for consideration of such a claim. The act also provides that a person may be deprived of any credit time he has served in any penal institution in the state if the court determines that a civil claim brought by the person in the state or administrative court is frivolous, unreasonable or groundless.

Submitted as:
Indiana
HB 1492
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “Filing Fees for Criminal Offenders.”

Section 2. [Procedure]
   (a) As used in this section, “offender” means a person confined by the department of correction.
   (b) When an offender commences an action or a proceeding without paying fees or court costs under [insert appropriate state citation,] the offender shall obtain from the appropriate official of the correctional facility or facilities at which the offender is or was confined, a certified copy of the prisoner’s trust fund account statement for the [six (6)] months immediately preceding submission of the complaint or petition. The offender shall file the trust fund account statement in addition to the statement required under [insert appropriate state citation.]
   (c) The offender shall pay a partial filing fee that is [twenty (20)] percent of the greater of:
      (1) the average monthly deposits to the offender’s account; or
(2) the average monthly balance in the offender’s account; for the
[six (6)] months immediately preceding the filing of the complaint or peti-
tion. However, the fee may not exceed the full statutory fee for the com-
 mencement of actions or proceedings.

d) If the offender claims exceptional circumstances that render the
offender unable to pay the partial filing fee required by this section, in
addition to the statement required by [insert appropriate state citation]
and the statement of account required by subsection (b), the offender shall
submit an affidavit of special circumstances setting forth the reasons and
circumstances that justify relief from the partial filing fee requirement.

(e) If the court approves the application to waive all fees, the court shall
give written notice to the offender that all fees and costs relating to the
filing and service will be waived. If the court denies the application to
waive all fees, the court shall give written notice to the offender that the
offender’s case will be dismissed if the partial filing fee is not paid within
[forty-five (45)] days after the date of the order, or within an additional
period that the court may, upon request, allow. Process concerning the
offender’s case may not be served until the fee is paid.

Section 3. [Claims Against (Correction Department).]

(a) As used in this section, “department” refers to the [department of
correction.]”

(b) As used in this section, “offender” means a person who is committed
to the [department of correction] or was committed to the [department of
correction.]

(c) An offender must file an administrative claim with the [department] to recover compensation for the loss of the offender’s personal property al-
eged to have occurred during the offender’s confinement as a result of an
act or omission of the [department] or any of its agents, former officers,
employees, or contractors. A claim must be filed within [one-hundred eighty
(180)] days after the date of the alleged loss.

(d) The [department] shall evaluate each claim filed under subsection
(c) and determine the amount due, if any. If the amount due is not more
than [five thousand (5,000)] dollars, the [department] shall approve the
demand for payment and recommend to the [attorney general] payment un-
der subsection (e). The [department] shall submit all claims in which the
amount due exceeds [five thousand (5,000)] dollars, with any recommenda-
tion the [department] considers appropriate, to the [attorney general.] The
[attorney general.] in acting upon the claim, shall consider recommendations
of the [department] to determine whether to deny the claim or recom-
mend the claim to the [governor] for approval of payment.

(e) Payment of claims under this section shall be made in the same
manner as payment of claims under [insert appropriate state citation.]
Suggested State Legislation

(f) The [department of correction] shall adopt rules necessary to carry out this section.

Section 4. [Effective Date] [Insert effective date.]
Amendments to the Uniform Anatomical Gift Act

This act changes the way hospitals handle organ and tissue donor referrals and expands opportunities for the public to learn about organ and tissue donation. This legislation requires that hospitals, on or before each death, call a representative of the regional transplant program who, in consultation with the patient’s physician, determines the suitability for organ, eye and tissue donation. If the patient is a candidate for anatomical donation, a request for donation can be made by the regional transplant program or by a hospital employee who has been trained in how to approach potential donor families.

Consent of the next-of-kin is not necessary if a donor card, donor driver’s license, living will, durable power of attorney or other document evidencing an anatomical gift has been validly executed by the patient or, if applicable, the attorney-in-fact. Police and emergency personnel are required to take reasonable steps to insure that the driver’s license or donor card accompany the individual to the hospital after an accident or trauma.

Hospitals also are required to select at least one tissue procurement provider to handle recovery of tissues. Guidelines will be developed to facilitate anatomical donations and to assist hospitals in the selection and designation of tissue procurement providers.

The state department of health is given the authority to conduct annual reviews of patient records of all deaths to determine a hospital’s compliance with the new provisions. The department may impose a fine of up to $500 for each instance of noncompliance. Fines collected will be deposited into a Donor Awareness Trust Fund. In addition, residents are able to donate to the Donor Awareness Trust Fund when obtaining a driver’s license or on their state income tax return.

Submitted as:
Pennsylvania
SB 1662
Enacted 1995.
Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title]

Section 2. [Definitions.] The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Acute care general hospital.” Any hospital which has an emergency room facility.

“Advisory committee.” The organ donation advisory committee established under Section 14 (relating to organ donation awareness trust fund).

“Bank or storage facility.” A facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

“Board.” The humanity gifts registry.

“Descendent.” A deceased individual, including a stillborn infant or fetus.

“Donor.” An individual who makes a gift of all or part of his body.

“Fund.” The organ donation awareness trust fund established under Section 14 (relating to organ donation awareness trust fund).

“Hospital.” An institution licensed in this commonwealth having an organized medical staff established for the purpose of providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for the care of persons who are injured, disabled, pregnant, diseased, sick or mentally ill or rehabilitation services for the rehabilitation of persons who are injured, disabled, pregnant, diseased, sick or mentally ill. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties. The term does not include facilities caring exclusively for the mentally ill.

“Organ procurement organization.” An organization that meets the requirements of Section 371 of the public health service act (58 stat. 682, 42 U.S.C. Section 273).

“Part.” Organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

“Person.” An individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

“Physician” or “Surgeon.” A physician or surgeon licensed or authorized to practice under the laws of any state.

“State.” Any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

“Unlawful competition.” Conduct declared unlawful under [insert ap-
Amendments to the Uniform Anatomical Gift Act

Section 3. [Persons who May Execute Anatomical Gift.]

(a) General rule. — Any individual of sound mind and eighteen (18) years of age or more may give all or any part of his body for any purpose specified in Section 4 (relating to persons who may become donees; purposes for which anatomical gifts may be made,) the gift to take effect upon death. Any individual who is a minor and sixteen (16) years of age or older may effectuate a gift for any purpose specified in Section 4, provided parental or guardian consent is deemed given. Parental or guardian consent shall be noted on the minor's donor card, application for the donor's learner's permit or driver's license or other document of gift. A gift of the whole body shall be invalid unless made in writing at least fifteen (15) days prior to the date of death.

(b) Others entitled to donate anatomy of descendent. — Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the descendent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the descendent's body for any purpose specified in Section 4:

(1) The spouse.
(2) An adult son or daughter.
(3) Either parent.
(4) An adult brother or sister.
(5) A guardian of the person of the decedent at the time of his death.
(6) Any other person authorized or under obligation to dispose of the body.

(c) Donee not to accept in certain cases. — If the donee has actual notice of the contrary indications by the descendent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subscription (b) may make the gift after or immediately before death.

(d) Examinations. — A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) Rights of donee paramount. — The rights of the donee created by the gift are paramount to the rights of others except as provided by Section 8 (d) (relating to rights and duties at death).

Section 4. [Persons who May Become Donees; Purposes for Which Anatomical Gifts May be Made.] The following persons may become donees of gifts of bodies or parts thereof for any of the purposes stated:

(1) Any hospital, surgeon or physician for medical or dental education, research, advancement of medical or dental science, therapy or trans-
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(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy.

(3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.

(4) Any specified individual for therapy or transplantation needed by him.

(5) The board.

Section 5. [Manner of Executing Anatomical Gifts.]

(a) Gifts by will.— A gift of all or part of the body under Section 3 (a) (relating to persons who may execute anatomical gift) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) Gifts by other documents. — A gift of all or part of the body under Section 3 (a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of [two (2)] witnesses who must sign the document in his presence. If the donor is mentally competent to signify his desire to sign the document but is physically unable to do so, the document may be signed for him by another at his direction and in his presence in the presence of [two (2)] witnesses who must sign the document in his presence. Delivery of the document of gift during the donor’s lifetime is not necessary to make the gift valid.

(c) Specified and unspecified donees. — The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon the following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Designation of person to carry out procedures. — Notwithstanding Section 8 (b) (relating to rights and duties at death), the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose, or, in the case of a gift of eyes, he may employ or authorize a person who is a funeral director licensed by the state board of funeral directors, an eye
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bank technician or medical student, if the person has successfully com-
pleted a course in eye enucleation approved by the [state board of medical
education and licensure] or an eye bank technician or medical student
trained under a program in the sterile technique for eye enucleation ap-
proved by the [state board of medical education and licensure] to enucleate
eyes for an eye bank for the gift after certification of death by a physician. A
qualified funeral director, eye bank technician or medical student acting in
accordance with the terms of this subsection shall not have any liability,
civil or criminal, for the eye enucleation.

(e) Consent not necessary. — If a donor card, donor driver’s license,
living will, durable power of attorney or other document of gift evidencing a
gift of organs or tissue has been executed, consent of any person designated
in Section 3 (b) at the time of the donor’s death or immediately thereafter is
not necessary to render the gift valid and effective.

(f) Documentation of gifts by others. — Any gift by a person designated
in Section 3 (b) shall be made by a document signed by him or made by his
telegraphic, recorded telephonic or other recorded message.

Section 6. [Delivery of Document of Gift.] If the gift is made by the donor
to a specified donee, the will, card or other document, or an executed copy
thereof, may be delivered to the donee to expedite the appropriate proce-
dures immediately after death. Delivery is not necessary to the validity of
the gift. The will, card or other document, or an executed copy thereof, may
be deposited in any hospital, bank or storage facility that accepts it for
safekeeping or for facilitation of procedures after death. On request of any
interested party upon or after the donor’s death, the person in possession
shall produce the document for examination.

Section 7. [Amendment or Revocation of Gift.]

(a) Document delivered to donee. — If the will, card or other document,
or executed copy thereof, has been delivered to a specified donee, the donor
may amend or revoke the gift by any of the following:

1. The execution and delivery to the donee of a signed statement.
2. An oral statement made in the presence of [two (2)] persons and
   communicated to the donee.
3. A statement during a terminal illness or injury addressed to an
   attending physician and communicated to the donee.
4. A signed card or document found on his person or in his effects.

(b) Document not delivered to donee. — Any document of gift which has
not been delivered to the donee may be revoked by the donor in the manner
set out in subsection (a) or by destruction, cancellation or mutilation of the
document and all executed copies thereof.

(c) Gifts by will. — Any gift made by a will may also be amended or
revoked in the manner provided for amendment or revocation of wills, or
Section 8. [Rights and Duties at Death.]
(a) Donees and relatives. — The donee may accept or reject the gift. If
the donee accepts a gift of the entire body, he shall, subject to the terms of
the gift, authorize embalming and the use of the body in funeral services if
the surviving spouse or next of kin as determined in Section 3 (b) (relating
to persons who may execute anatomical gift) requests embalming and use
of the body for funeral services. If the gift is of a part of the body, the donee,
upon the death of the donor and prior to embalming, shall cause the part to
be removed without unnecessary mutilation. After removal of the part, cus-
tody of the remainder of the body vests in the surviving spouse, next of kin
or other persons under obligation to dispose of the body.
(b) Physicians. — The time of death shall be determined by a physician
who tends the donor at his death or, if none, the physician who certifies the
death. The physician or person who certifies death or any of his profes-
sional partners or associates shall not participate in the procedures for re-
moving or transplanting a part.
(c) Certain liability limited. — A person who acts in good faith in accor-
dance with the terms of this subchapter or with the anatomical gift laws of
another state or a foreign country is not liable for damages in any civil
action or subject to prosecution in any criminal proceeding for his act.
(d) Law on autopsies applicable. — The provisions of this subchapter
are subject to the laws of this commonwealth prescribing powers and du-
ties with respect to autopsies.

Section 9. [Requests for Anatomical Gifts.]
(a) Procedure. — On or before the occurrence of each death in an acute
care general hospital, the hospital shall make contact with the regional
organ procurement organization in order to determine the suitability for
organ, tissue and eye donation for any purpose specified under this act.
This contact and the disposition shall be noted on the patient’s medical
record.
(b) Limitation. — If the hospital administrator or his designee has re-
ceived actual notice of opposition from any of the persons named in Section
3 (b) (relating to persons who may execute anatomical gift) and the dece-
dent was not in possession of a validly executed donor card, the gift of all or
any part of the decedent’s body shall not be requested.
(c) Donor Card. — Notwithstanding any provision of law to the con-
trary, the intent of a decedent to participate in an organ donor program as
evidenced by the possession of a validly executed donor card, donor driver’s
license, living will, durable power of attorney or other document of gift shall
not be revoked by any member of any of the classes specified in Section 3(b).
(d) Identification of potential donors. — Each acute care general hospi-
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tal shall develop within [one (1)] year of the date of final enactment of this
section, with the concurrence of the hospital medical staff, a protocol for
identifying potential organ and tissue donors. It shall require that, at or
near the time of every individual death, all acute care general hospitals
contact by telephone their regional organ procurement organization to de-
termine suitability for organ, tissue and eye donation of the individual in
question. The person designated by the acute care general hospital to con-
tact the organ procurement organization shall have the following informa-
tion available prior to making the contact:
(1) The patient’s identifier number.
(2) The patient’s age.
(3) The cause of death.
(4) Any past medical history available.
The organ procurement organization, in consultation with the patient’s at-
tending physician or his designee, shall determine the suitability for dona-
tion. If the organ procurement organization in consultation with the patient’s
attending physician or his designee determines that donation is not appro-
priate based on established medical criteria, this shall be noted by hospital
personnel on the patient’s record, and no further action is necessary. If the
organ procurement organization in consultation with the patient’s attend-
ing physician or his designee determines that the patient is a suitable can-
didate for anatomical donation, the acute care general hospital shall ini-
tiate a request by informing the persons and following the procedure desig-
nated under section 3 (b) of the option to donate organs, tissues or eyes. The
person initiating the request shall be an organ procurement organization
representative or a designated requestor. The organ procurement organiza-
tion representative or designated requestor shall ask persons pursuant to
section 3 (b) whether the deceased was an organ donor. If the person desig-
nated under section 3 (b) does not know, then this person shall be informed
of the option to donate organs and tissues. The protocol shall encourage
discretion and sensitivity to family circumstances in all discussions regard-
ing donations of tissue or organs. The protocol shall take into account the
deceased individual’s religious beliefs or nonsuitability for organ and tis-
sue donation.
(e) Tissue procurement. —
(1) The first priority use for all tissue shall be transplantation.
(2) Upon [department of health] approval of guidelines pursuant to
subsection (f)(1)(II), all acute care general hospitals shall select at least
[one (1)] tissue procurement provider. A hospital shall notify the regional
organ procurement organization of its choice of tissue procurement provid-
ers. If a hospital chooses more than one tissue procurement provider, it may
specify a rotation of referrals by the organ procurement organization to the
designated tissue procurement providers.
(3) Until the [department of health] has approved guidelines pur-
suant to subsection (f)(1)(II), tissue referrals at each hospital shall be ro-
tated in a proportion equal to the average rate of donors recovered among
the tissue procurement providers at that hospital during the [two (2)] year
period ending [insert date].

(4) The regional organ procurement organization, with the assis-
tance of tissue procurement providers, shall submit an annual report to the
general assembly on the following:

   (I) The number of tissue donors.
   (II) The number of tissue procurements for transplantation.
   (III) The number of tissue procurements recovered for research
by each tissue procurement provider operating in this commonwealth.

(f) Guidelines. —

   (1) The [department of health,] in consultation with organ procure-
ment organizations, tissue procurement providers and the hospital asso-
ciation of [insert state,] donor recipients and family appointed pursuant to
Section 14 (c) (3) (Relating to organ donation awareness trust fund) shall,
within [six (6)] months of the effective date of this chapter, do all of the
following:

      (I) Establish guidelines regarding efficient procedures facili-
tating the delivery of anatomical gift donations from receiving hospitals to
procurement providers.
      (II) Develop guidelines to assist hospitals in the selection and
designation of tissue procurement providers.

   (2) Each organ procurement organization and each tissue procure-
ment provider operating within this commonwealth shall, within [six (6)]
months of the effective date of this chapter , file with the [department of
health,] for public review, its operating protocols.

(g) Death record review. —

   (1) The [department of health] shall make annual death record re-
views at acute care general hospitals to determine their compliance with
subsection (d).

   (2) To conduct a review of an acute care general hospital, the fol-
lowing apply:

      (I) The [department of health] shall select, to carry out the re-
view, the Commonwealth licensed organ procurement organization design-
ated by the health care financing administration for the region within
which the acute care general hospital is located. For an organ procurement
organization to be selected under this subparagraph, the organization must
not operate nor have an ownership interest in an entity which provides all
of the functions of a tissue procurement provider.

      (II) If there is no valid selection under subparagraph (I) or if
the organization selected under subparagraph (I) is unwilling to carry out
the review, the department shall select, to carry out the review, any other
commonwealth licensed organ procurement organization. For an organ pro-

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…

(1) If there is no valid selection under subparagraph (II) or if the organization selected under subparagraph (II) is unwilling to carry out the review, the department shall carry out the review using trained department personnel.

(3) There shall be no cost assessed against a hospital for a review under this subsection.

(4) If the department finds, on the basis of a review under this subsection, that a hospital is not in compliance with subsection (d), the department may impose an administrative fine of up to [five hundred (500)] dollars for each instance of noncompliance. A fine under this paragraph is subject to [insert appropriate state citation] (relating to practice and procedure of commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of commonwealth agency action). Fines collected under this paragraph shall be deposited into the fund.

(h) Definitions. — As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Designated requestor." A hospital employee completing a course offered by an organ procurement organization on how to approach potential donor families and request organ or tissue donation.

"Noncompliance." Any failure on the part of a hospital to contact an organ procurement organization as required under subsection (d).

Section 10. [Voluntary Contribution System.]

(a) Voluntary designation. — The [department of revenue] shall provide a space on the face of the state individual income tax return form for the [insert date] tax year and [insert date] tax year whereby an individual may voluntarily designate a contribution of any amount desired to the fund established in Section 14 (relating to organ donation awareness trust fund).

(b) Deduction from refund. — The amount so designated by an individual on the state individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due the commonwealth.

(c) Transfer of funds. — The [department of revenue] shall annually determine the total amount designated pursuant to this section and shall report that amount to the [state treasurer,] who shall transfer that amount to the fund.

(d) Form instructions. — The [department of revenue] shall, in all taxable years following the effective date of this act, provide on its form or in its instructions which accompany state individual income tax return forms adequate information concerning the organ donor awareness trust fund which shall include the listing of an address, furnished to it by the advisory...
Section 11. [Use of Driver’s License or Identification Card to Indicate Organ or Tissue Donation.] Beginning as soon as practicable, but no later [insert date,] or [one (1)] year following the effective date of this section, whichever is later, the [department of transportation] shall redesign the driver’s license and identification card application system to process requests for information regarding consent of the individual to organ or tissue donation. The following question shall be asked:

Do you wish to have the organ donor designation printed on your driver’s license?

Only an affirmative response of an individual shall be noted on the front of the driver’s license or identification card and shall clearly indicate the individual’s intent to donate his organs or tissue. A notation on an individual’s driver’s license or identification card that he intends to donate his organs or tissue is deemed sufficient to satisfy all requirements for consent to organ or tissue donation.

Section 12. [Police and Emergency Personnel Responsibilities.] Police and emergency personnel responding to the scene of an accident or trauma shall take reasonable steps to insure that the driver’s license or personal identification card, donor card or other document of gift and medical alert bracelet, if any, of the individual involved in the accident or trauma accompanies the individual to the hospital or other health care facility. The hospital or other health care facility shall, within [five (5)] days, if practicable, return the driver’s license or identification card to the [department of transportation,] accompanied by a form prescribed by the [department of transportation,] if the individual involved in the accident is deceased.

Section 13. [Organ Donation Awareness Trust Fund Contributions.] Beginning as soon as practicable, but no later than [insert date,] the [department of transportation] shall provide an applicant for an original or renewal driver’s license or identification card the opportunity to make a contribution of [one (1)] dollar to the fund. The contribution shall be added to the regular fee for an original or renewal driver’s license or identification card. One contribution may be made for each issuance or renewal of a license or identification card. Contributions shall be used exclusively for the purposes set out in Section 14 (relating to organ donation awareness trust fund). The [department of transportation] shall monthly determine the total amount designated under this section and shall report that amount to the [state treasurer,] who shall transfer that amount to the organ donation
Section 14. [Organ Donation Awareness Trust Fund.]

(a) Establishment. — All contributions received by the [department of transportation] under Section 13 (relating to organ donation awareness trust fund contributions) and the [department of revenue] under Section 10 (relating to voluntary contribution system) and the [department of health] under Section 9 (f) (relating to requests for anatomical gifts) shall be deposited into a special fund in the state treasury to be known as the organ donation awareness trust fund, which is hereby established.

(b) Appropriation. — All moneys deposited in the fund and interest which accrues from those funds are appropriated on a continuing basis subject to the approval of the governor to compensate the [department of transportation,] the [department of health] and the [department of revenue] for actual costs related to implementation of this act, including all costs of the organ donation advisory committee created in subsection (c). Any remaining funds are appropriated subject to the approval of the governor for the following purposes:

(1) [Ten (10)] percent of the total fund may be expended annually by the [department of health] for reasonable hospital and other medical expenses, funeral expenses and incidental expenses incurred by the donor or donor’s family in connection with making a vital organ donation. Such expenditures shall not exceed [three thousand (3,000)] dollars per donor and shall only be made directly to the funeral home, hospital or other service provider related to the donation. No part of the fund shall be transferred directly to the donor’s family, next of kin or estate. The advisory committee shall develop procedures, including the development of a pilot program, necessary for effectuating the purposes of this paragraph.

(2) [Fifty (50)] percent may be expended for grants to certified organ procurement organizations for the development and implementation of organ donation awareness programs in this commonwealth. The [department of health] shall develop and administer this grant program, which is hereby established.

(3) [Fifteen (15)] percent may be expended by the [department of health,] in cooperation with certified organ procurement organizations, for the project-make-a-choice program, which shall include information pamphlets designed by the department of health relating to organ donor awareness and the laws regarding organ donation, public information and public education about contributing to the fund when obtaining or renewing a driver’s license and when completing a state individual income tax return form.

(4) [Twenty-five (25)] percent may be expended by the [department of education] for the implementation of organ donation awareness programs in the secondary schools in this commonwealth.
Suggested State Legislation

(c) Advisory Committee. — The organ donation advisory committee is hereby established, with membership as follows:

(1) [Two (2)] representatives of organ procurement organizations.
(2) [Two (2)] representatives of tissue procurement providers.
(3) [Six (6)] members representative of organ, tissue and eye recipients, families of recipients and families of donors.
(4) [Three (3)] representatives of acute care hospitals.
(5) [One (1)] representative of the [department of health.]
(6) [One (1)] representative of eye banks.

All members shall be appointed by the [governor.] Appointments shall be made in a manner that provides representation of the northwest, north central, northeast, southwest, south central and southeast regions of this commonwealth. Members shall serve [five (5)] year terms. The [governor] may reappoint advisory committee members for successive terms. Members of the advisory committee shall remain in office until a successor is appointed and qualified. If vacancies occur prior to completion of a term the [governor] shall appoint another member in accordance with this subsection to fill the unexpired term. The advisory committee shall meet at least biannually to review progress in the area of organ and tissue donation in this commonwealth, recommend education and awareness training programs, recommend priorities in expenditures from the fund and advise the [secretary of health] on matters relating to administration of the fund. The advisory committee shall recommend legislation as it deems necessary to fulfill the purposes of this chapter. The advisory committee shall submit a report concerning its activities and progress to the general assembly within [thirty (30)] days prior to the expiration of each legislative session. The department of health shall reimburse members of the advisory committee for all necessary and reasonable travel and other expenses incurred in the performance of their duties under this section.

(d) Reports. — The [department of health] and the [department of education] shall submit an annual report to the general assembly on expenditures of fund moneys and any progress made in reducing the number of potential donors who were not identified.

(e) Definition. — As used in this section, the term “vital organ” means a heart, lung, liver, kidney, pancreas, small bowel, large bowel or stomach for the purpose of transplantation.

Section 15. [Confidentiality Requirement.] The identity of the donor and of the recipient may not be communicated unless expressly authorized by the recipient and next of kin of the decedent.

Section 16. [Prohibited Activities.]
(a) Affiliates. — No organ procurement organization selected by the [department of health] under section 9 (g) (relating to requests for ana-
Amendments to the Uniform Anatomical Gift Act

tomical gifts) to conduct annual death reviews may use that review authority or any powers or privileges granted thereby to coerce or attempt to coerce a hospital to select the organization or any tissue procurement provider contractually affiliated with the organization as a designated tissue procurement provider under Section 9 (e).

(b) Unfair acts. — No organ procurement organization or tissue procurement provider may disparage the services or business of other procurement providers by false or misleading representations of fact, engage in any other fraudulent conduct to influence the selection by a hospital of a qualified tissue procurement provider nor engage in unlawful competition or discrimination. This paragraph is not intended to restrict or preclude any organ procurement organization or tissue procurement provider from marketing or promoting its services in the normal course of business.

Section 17. [Removal of Corneal Tissue Permitted Under Certain Circumstances.]

(a) General rule. — On a request from an authorized official of an eye bank for corneal tissue, a coroner or medical examiner may permit the removal of corneal tissue if all of the following apply:

1. The decedent from whom the tissue is to be removed died under circumstances requiring an inquest.

2. The coroner or medical examiner has made a reasonable effort to contact persons listed in Section 3 (relating to persons who may executed anatomical gift).

3. No objection by a person listed in Section 3 is known by the coroner or medical examiner.

4. The removal of the corneal tissue will not interfere with the subsequent course of an investigation or autopsy or alter the decedent's postmortem facial appearance.

(b) Definition. — As used in this section, the term “eye bank” means a nonprofit corporation chartered under the laws of this commonwealth to obtain, store and distribute donor eyes to be used by physicians or surgeons for corneal transplants, research or other medical purposes and the medical activities of which are directed by a physician or surgeon in this commonwealth.

Section 18. [Limitation of Liability.] A person who acts in good faith in accordance with the provisions of this act shall not be subject to criminal or civil liability arising from any action taken under this act. The immunity provided by this section shall not extend to persons if damages result from the gross negligence, recklessness or intentional misconduct of the person.

Section 19. [Upon Availability of Funding Established Under [insert appropriate citation].] [The department of education,] in cooperation with
Suggested State Legislation

the [department of health] and organ procurement organizations, shall es-

(1) Information about state law relating to anatomical gifts, includ-

(2) General information about organ transplantation in the United

States.

Section 20. [Effective Date] [Insert effective date.]
Uniform Correction of Clarification of Defamation Act

This act creates incentives for people to settle alleged defamations without costly litigation. It provides potential plaintiffs an opportunity to secure quick and complete vindication of their reputation. It provides publishers with a quick and effective means to correct or clarify alleged mistakes. The act applies to all defamations, whether public or private, media or non-media.

This act was submitted as North Dakota legislation. North Dakota based their legislation on a model from the National Conference of Commissioners on Uniform State Laws (ULC). According to the ULC, North Dakota is the first and only state to adopt a version of the uniform act (as of February 1996). The ULC says North Dakota made only minor changes to the uniform act.

Submitted as:
North Dakota
SB 2101
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title.] This act may be cited as the “Uniform Correction or Clarification of Defamation Act.”

2. Section 2. [Definitions.] In this act:
   1. “Defamatory” means tending to harm reputation.
   2. “Economic loss” means special, pecuniary loss caused by a false and defamatory publication.
   3. “Person” includes any legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

3. Section 3. [Scope.] This act applies to any claim for relief, however characterized, for damages arising out of defamation caused by the false content of a publication that is published on or after the effective date of
Suggested State Legislation

Section 4. [Request for Correction or Clarification.]

1. A person may maintain an action for defamation only if the person has made a timely and adequate request for correction or clarification from the defendant or the defendant has made a correction or clarification.

2. A request for correction or clarification is timely if made within the period of limitation for commencement of an action for defamation. However, a person who, within [ninety (90)] days after knowledge of the publication, fails to make a good faith attempt to request a correction or clarification may recover only provable economic loss.

3. A request for correction or clarification is adequate if the request:
   a. Is made in writing and reasonably identifies the person making the request;
   b. Specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
   c. Alleges the defamatory meaning of the statement;
   d. Specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and
   e. States that the alleged defamatory meaning of the statement is false.

4. In the absence of a previous adequate request, service of a summons and complaint stating a claim for relief for defamation and containing the information required in subsection 3 constitutes an adequate request for correction or clarification.

5. The period of limitation for commencement of a defamation action is tolled during the period allowed in Section 7 of this act for responding to a request for correction or clarification.

Section 5. [Disclosure of Evidence of Falsity.] A person who has been requested to make a correction or clarification may ask the requester to disclose reasonably available information material to the falsity of the allegedly defamatory statement. If a correction or clarification is not made, a person who unreasonably fails to disclose the information after a request to do so may recover only provable economic loss. A correction or clarification is timely if published within [twenty-five (25)] days after receipt of information disclosed under this section or [forty-five (45)] days after receipt of a request for correction or clarification, whichever is later.
Section 6. [Effect of Correction or Clarification.] If a timely and sufficient correction or clarification is made, a person may recover only provable economic loss, as mitigated by the correction or clarification.

Section 7. [Timely and Sufficient Correction or Clarification.]
1. A correction or clarification is timely if it is published before, or within [forty-five (45)] days after, receipt of a request for correction or clarification, unless the period is extended under Section 5 of this act.
2. A correction or clarification is sufficient if it:
   a. Is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of:
      b. Refers to the statement being corrected or clarified and:
         (1) Corrects the statement;
         (2) In the case of defamatory meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or
         (3) In the case of a statement attributed to another person, disclaims an intent to assert the truth of the statement; and
   c. Is communicated to the person who has made a request for correction or clarification.
3. A correction or clarification is published in a medium reasonably likely to reach substantially the same audience as the publication complained of if it is published in a later issue, edition, or broadcast of the original publication.
4. If a later issue, edition, or broadcast of the original publication will not be published within the time limits established for a timely correction or clarification, a correction or clarification is published in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:
   a. It is timely published in a reasonably prominent manner in another medium likely to reach an audience reasonably equivalent to the original publication or if the parties cannot agree on another medium, in the newspaper with the largest general circulation in this region in which the original publication was distributed;
   b. Reasonable steps are taken to correct undistributed copies of the original publication, if any; and
   c. It is published in the next practicable issue, edition, or broadcast, if any, of the original publication.
5. A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient.

Section 8. [Challenges to Correction or Clarification or to Request for Correction or Clarification.]
1. If a defendant in an action governed by this act intends to rely on a timely and sufficient correction or clarification, the defendant’s intention to do so, and the correction or clarification relied upon, must be set forth in a notice served on the plaintiff within [sixty (60)] days after service of the summons and complaint or [ten (10)] days after the correction or clarification is made, whichever is later. A correction or clarification is deemed to be timely and sufficient unless the plaintiff challenges its timeliness or sufficiency within [twenty (20)] days after the notice is served.

2. If a defendant in an action governed by this act intends to challenge the adequacy or timeliness of a request for correction or clarification, the defendant must set forth the challenge in a motion to declare the request inadequate or untimely served within [sixty (60)] days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial.

Section 9. [Offer to Correct or Clarify.]

1. If a timely correction or clarification is no longer possible, the publisher of an alleged defamatory statement may offer, at any time before trial, to make a correction or clarification. The offer must be made in writing to the person allegedly defamed by the publication and:
   a. Contain the publisher’s offer to publish, at the person’s request, a sufficient correction or clarification and to pay the person’s reasonable expenses of litigation, including attorney’s fees, incurred before publication of the correction or clarification; and
   b. Be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

2. If the person accepts in writing an offer to correct or clarify made pursuant to subsection 1, the person is barred from commencing an action against the publisher based on the statement or if an action has been commenced, the court shall dismiss the action against the defendant with prejudice after the defendant complies with the terms of the offer.

3. A person who does not accept an offer made in conformance with subsection 1 may recover in an action based on the statement only damages for provable economic loss and reasonable expenses of litigation, including attorney’s fees, incurred before the offer, unless the person failed to make a good faith attempt to request a correction or clarification in accordance with subsection 2 of Section 4 of this act or failed to disclose information in accordance with Section 5 of this act.

4. On request of either party, a court shall promptly determine the sufficiency of the offered correction or clarification.

5. The court shall determine the amount of reasonable expenses of litigation, including attorney’s fees, specified in subsections 1 and 3.
Uniform Correction of Clarification of Defamation Act.

Section 10. [Scope of Protection.] A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher. However, a correction or clarification that is sufficient only under paragraph 3 of subdivision b of subsection 2 of Section 7 of this act does not constitute a correction or clarification made by the person to who the statement is attributed.

Section 11. [Admissibility of Evidence of Correction or Clarification.]

1. The fact of a request for correction or clarification under this act, the contents of the request, and its acceptance or refusal are not admissible in evidence at trial.

2. The fact that a correction or clarification under this act was made and the contents of the correction or clarification are not admissible in evidence at trial except in mitigation of damages pursuant to Section 6 of this act. If the fact that a correction or clarification was made or the contents of the correction or clarification are received in evidence, the fact of the request may also be received.

3. The fact of an offer of correction or clarification, or the fact of its refusal, and the contents of the offer are not admissible in evidence at trial.

Section 12. [Effective Date] [Insert effective date.]
Nitrous Oxide

This act makes it a crime to possess nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale or ingest, or for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupification or dulling of the senses or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual or mental processes or who knowingly with the intent to do so is under the influence of nitrous oxide or any material containing nitrous oxide. A crime under this statute is classified as a Class B misdemeanor. The act does not apply to a person under the influence of nitrous oxide or any material containing nitrous oxide pursuant to an administration for the purpose of medical, surgical or dental care by a person duly licensed to administer such agent.

Submitted as:
Illinois
Public Act 89-354
Enacted 1995, effective 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] An act concerning “Nitrous Oxide.”

2 Section 2. [Unlawful Possession.] Any person who possesses nitrous oxide or any substance containing nitrous oxide, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction or dulling of the senses or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes or who knowingly and with the intent to do so is under the influence of nitrous oxide or any material containing nitrous oxide is guilty of a [Class B misdemeanor]. This act shall not apply to any person who is under the influence of nitrous oxide or any material containing nitrous oxide pursuant to an administration for the purpose of medical, surgical, or dental care by a person duly licensed to administer such an agent.

3 Section 3. [Unlawful Sale or Distribution.] Any person, firm, corporation, co-partnership, limited liability company, or association that intentionally sells, offers for sale, distributes, or gives away nitrous oxide for any purpose prohibited under [insert appropriate state citation] is guilty of a [Class B misdemeanor].
1 Section 4. [Effective Date] [Insert effective date.]
Health Care – Elderly and Disabled Adults – Pilot Long-Term Care Program

This act requires the state department of health services to administer a pilot program until its repeal on January 1, 2001 for the establishment of not more than 5 pilot project sites around the state which will be required to develop an administrative action plan to enhance programs for the care of elderly and disabled adults. Local project sites will be required to have long term care services agencies that will be responsible for implementing the plan. The purpose of the legislation is to coordinate an array of categorical programs offering medical, social and other support services for long term care of elderly and disabled adults and to develop a long term care system that provides dignity and maximum independence for the consumer, creates home and community based alternatives to unnecessary out-of-home placement and is cost effective.

Submitted as:
California
CH. 874
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Long-Term Care Integration Pilot Program.”

Section 2. [Legislative Findings.] The [legislature] finds and declares that:
(a) Long-term care services in [insert state] include an uncoordinated array of categorical programs offering medical, social, and other support services that are funded and administered by a variety of federal, state, and local agencies and are replete with gaps, duplication, and little or no emphasis on the specific concerns of individual consumers.
(b) Although the need for a coordinated continuum of long-term care services has long been apparent, numerous obstacles prevent its development, including inflexible and inconsistent funding sources, economic incentives that encourage the placement of consumers in the highest level of care, lack of coordination between aging, health, and social service agencies at both state and local levels, and inflexible state and federal regulations.
(c) The [office of legislative analyst] and others have pointed out that [insert state] systems of service delivery in a number of areas are dysfunctional, due to the fragmentation of responsibility and funding for interrelated services. Principles proposed by the [legislative analyst] to guide the restructuring of these systems include recognizing program linkages, coordinating service delivery mechanisms, removing barriers to innovation, and instilling financial incentives to promote prevention and coordination.

(d) It is both more efficient and more humane to restructure long-term care services so that duplicative and confusing eligibility criteria, assessments, intake forms, and service limitations will not inhibit consumer satisfaction, impede improvements in consumer health status, and result in the ineffective use of resources.

(e) There is a growing interest in community-directed systems of funding and organizing the broad array of health, support, and community living services needed by persons of all ages with disabilities.

(f) It is in the interest of those in need of long-term care services, and the state as a whole, to develop a long-term care system that provides dignity and maximum independence for the consumer, creates home and community-based alternatives to unnecessary out-of-home placement, and is cost-effective.

(i) It is the intent of the [legislature] to establish the Long-Term Care Integration Pilot Program that will integrate the financing and administration of long-term care services in up to [five (5)] pilot project sites in the state. Contingent upon a state approved administrative action plan, at least [one (1)] site shall be in a rural or underserved part of the state.

(ii) It is further the intent of the [legislature] to support, in each pilot project site, the development of a model integrated service delivery system that meets the needs of all beneficiaries, both those in out-of-home placements, in a humane, appropriate, and cost-effective manner.

Section 3. [Pilot Program Goals.] The goals of this pilot program shall be to:

(a) Provide a continuum of social and health services that foster independence and self-reliance, maintain individual dignity, and allow consumers of long-term care services to remain an integral part of their family and community life.

(b) If out-of-home placement is necessary, to ensure that it is at the appropriate level of care, and to prevent unnecessary utilization of acute care hospitals.

(c) If family caregivers are involved in the long-term care of an individual, to support caregiving arrangements that maximize the family’s ongoing relationship with, and care for, that individual.

(d) Deliver long-term care services in the least restrictive environment appropriate for the consumer.
(e) Encourage as much self direction as possible by consumers, given their capability and interest, and involve them and their family members as partners in the development and implementation of the pilot project.

(f) Identify performance outcomes that will be used to evaluate the appropriateness and quality of the services provided, as well as the efficacy and cost-effectiveness of each pilot project, including but not limited to, the use of acute and out-of-home care, consumer satisfaction, the health status of consumers, and the degree of independent living maintained among those served.

(g) Test a variety of models intended to serve different geographic areas, with differing populations and service availability.

(h) Achieve greater efficiencies through consolidated screening and reporting requirements.

(i) Allow each pilot project site to use existing funding sources in a manner that it determines will meet local need and that is cost-effective.

(j) Allow the pilot project sites to determine other services that may be necessary to meet the needs of eligible beneficiaries.

(k) Identify ways to expand funding options for the pilot program to include Medicare and other funding sources.

Section 4. [Costs.] It is the intent of the [legislature] that the costs of this pilot program to the General Fund will not exceed the direct and indirect costs that existing programs would expect to incur had the integrated services not been provided through this pilot program. If the [department of finance] determines, and informs the director in writing, that the implementation of this pilot program will result in any additional costs to the state relative to the provision of long-term care services to eligible beneficiaries, the [department] may terminate the operation of all or any part of this pilot program. The state shall not be held liable for any additional costs incurred by a pilot project site. Any such determination made by the [department of finance] shall be available to any party upon request.

Section 5. [Contracts.]

(a) Any contract entered into pursuant to this act may be renewed if the long-term care services agency continues to meet the requirements of this act and the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The [department] may condition renewal on timely completion of a mutually agreed upon plan of corrections of any deficiencies.

(b) The [department] may terminate or decline to renew a contract in whole or in part, when the director determines that the action is necessary to protect the health of the beneficiaries or the funds appropriated to [insert appropriate state citation.] The administrative hearing requirements of [insert appropriate state citation] do not apply to the nonrenewal or ter-
mination of a contract under this act.
(c) In order to achieve maximum cost savings the [legislature] hereby
determines that an expedited contract process for contracts under this act
is necessary. Therefore, contracts under this act shall be exempt from [in-
sert appropriate state citation.] The contracts shall not take effect unless
they are approved by the [department of finance.]

Section 6. [Lead Agency Responsibilities.] The [department of health
services] shall serve as the lead agency for the administration of this act.
The [department's] responsibilities shall include, but are not limited to:
(a) Development of criteria for the selection of pilot project sites.
(b) Selection of the pilot project sites to participate in the pilot program.
(c) Providing, or arranging for, technical assistance to participating sites.
(d) Development of specific performance outcome measures by which
the program can be evaluated.
(e) Development of standards for complying with reporting requirements
specified in state law for the programs integrated within the pilot program
implemented pursuant to this act. The standards developed pursuant to
this subdivision shall apply in lieu of any existing reporting obligations for
the programs. The existing individual reporting requirements for programs
integrated within the pilot program shall be deemed to have been met
through the reports required by this section. Existing requirements for re-
ports to the [office of statewide health planning and development] shall not
be eliminated.
(f) Seeking all federal waivers necessary for full implementation of the
pilot program.
(g) Setting a payment rate consistent with Section 26.
(h) Approval or disapproval of administrative action plans.

Section 7. [Funding Assistance.] The [department] may accept funding
from federal agencies, foundations, or other nongovernmental sources and
may contract with qualified consultants to assist with the provision of tech-
nical assistance, the development of data collection, reporting, and analysis
systems, or any other purposes that further the goals of this demonstration
program. The [department] shall not accept funds from any entity that stands
to gain financially from implementation of the pilot program. In contract-
ing with consultants to assist with the pilot program, the [department]
shall specify timelines and delivery dates so as to ensure the continued
implementation of the pilot program.

Section 8. [Working Group.]
(a) The [department] shall convene a working group that shall include
the [director of health services,] the [director of social services,] and the
[director of aging,] or the program staff from each of those departments who have direct responsibility for the programs listed in subdivision (b) of Section 14, and may include the [director of mental health] and the [director of rehabilitation,] or program staff from those departments with direct responsibilities for programs that may be included as a service in any pilot project site, and representatives from each pilot project site upon its selection.

(b) The [department] shall consult with the working group during the designing of the pilot program, in the selection of the pilot project sites, and in the monitoring of the program under this act, and shall utilize the working group as a resource for problem-solving and a means of maintaining interdepartmental and intersite communication.

(c) The working group shall strive to ensure that the pilot program under this act makes maximum use of home-based and community-based services, and throughout the continuum of care for each beneficiary, encourages the use of the least restrictive environment in which the beneficiary can receive appropriate care.

Section 9. [Program Administration: Interagency Agreements.] Upon the implementation of the pilot program, responsibility for administering the programs integrated within the pilot program shall be transferred to the [department,] and shall be specified in an interagency agreement between participating departments. Prior requirements for any program integrated within this pilot program shall be deemed to have been met through compliance with the requirements established by this act, by the [department] for the pilot program by each county's approved plan, and by the approved applicable federal waivers.

Section 10. [Federal Waivers.] The [department] shall seek all federal waivers necessary to allow for federal financial participation in the pilot program implemented pursuant to this act. This act shall not be implemented unless and until the director has executed a declaration that the approval of all necessary federal waivers has been obtained by the [department.]

Section 11. [Other Costs.] Notwithstanding any other provision of this act, costs to the General Fund shall not exceed the amount that would have been expended in the absence of the pilot program.

Section 12. [Pilot Project Cites] (a) Pilot project sites may be comprised of a single county, a multicounty unit, or a subcounty unit.
(b) Each selected site shall do all of the following:

(1) Establish a consolidated long-term care services fund that shall accommodate state and federal fiscal and auditing requirements, shall be used solely for the purposes described in this article, and shall not be used for any county pooled investment fund.

(2) Identify a local entity, that may be either a governmental entity or a not-for private agency, to administer the fund. The local entity may be one that already exists but may be established for the express purpose of administering the fund. This agency shall be designated as the long-term care services agency and shall contract with the [department] to carry out this act.

(3) Develop and provide to the [department] an administrative action plan that shall include, but is not limited to:

(A) A complete description of the covered scope of services and programs to be integrated.

(B) A complete description of the proposed long-term care delivery system and how it will improve system efficiency and enhance service quality.

(C) Demonstration of a willingness and commitment by the long-term care services agency to work with local community groups, providers, and consumers to obtain their input.

(D) Proposed measurable performance outcomes and the pilot program is designed to achieve.

(E) A description of the expected impact on current program services to [Medi-Cal] eligible beneficiaries and consumers of [non-Medi-Cal] services included in the integrated system.

(F) Assurance of minimal disruption to current recipients of long-term care services during the phase-in of the pilot project.

(G) Reasonable assurance that services provided will be responsive to the religious, cultural, and language needs of beneficiaries.

(H) Assurances that providers who serve the needs of special populations such as religious and cultural groups or residents of multilevel facilities as defined in [insert appropriate state citation,] will be able to continue to serve those persons when willing to contract under the same terms and conditions as similar providers.

(I) Specific alternative concepts, requirements, staffing patterns, or methods for providing services under the pilot project.

(J) A process to assure that [Medi-Cal] dollars are appropriately expended in accordance with federal requirements.

(K) A description of how the pilot project site will maintain adequate fiscal control and ensure quality of care for beneficiaries.

(L) A description of how the pilot project site will coordinate, relate to, or integrate with medicaid managed care plans, local managed care plans, and other organizations which provide services not part of the
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(M) A proposed timeline for planning and startup of the pilot project.

(N) An estimate of costs and savings.

(O) Demonstration of the financial viability of the plan.

(c) The administrative action plan shall reflect a planning process that includes long-term care consumers, their families, and representatives of organizations that represent them, organizations that provide long-term care services, and employees who deliver direct long-term care services. The planning process may include, but is not limited to, the members of the local advisory committee required pursuant to Section 13.

(d) The administrative action plan shall receive the approval of the county board of supervisors before it is submitted to the [department] for final state approval. The board of supervisors shall present evidence of the commitment to the administrative action plan of all publicly funded agencies that currently serve consumers who will be eligible under the pilot project, and all publicly and nonpublicly funded agencies that will be responsible for providing services under the pilot project. This evidence may include resolutions adopted by agency governing bodies, memoranda of understanding, or other agreements pertinent to the implementation of the plan.

Section 13. [Site Selection.] In order to be selected, a pilot project site shall demonstrate that it has an active advisory committee that includes consumers of long-term care services, representatives of local organizations of persons with disabilities, seniors, representatives of local senior organizations, representatives of employees who deliver direct long-term care services, and representatives of organizations that provide long-term care services. At least [one-half (1/2)] of the members of the advisory committee shall be consumers of services provided under this act, or their representatives.

Section 14. [Consolidated Long-Term Care Services Fund.] (a) The administrative action plan shall identify the funds to be transferred into the consolidated long-term care services fund.

(b) The funds shall include [Medi-Cal] long-term institutional care, the [Medi-Cal Personal Care Services Program,] and the [In-Home Supportive Services Program] and may include funds from the following programs and services:

(1) [Multipurpose Seniors Services Program.]

(2) [Alzheimer's Day Care Resources Centers Program.]

(3) [Linkages Program.]

(4) [Respite Program.]

(5) [Adult Day Health Care Program.]
Health Care – Elderly and Disabled Adults – Pilot Long-Term Care Programs

(6) [Medi-Cal] home health agency services.
(7) [Medi-Cal] home-based and community-based waiver programs.
(8) [Medi-Cal] hospice services.
(9) [Medi-Cal] acute care hospital services.
(10) Other [Medi-Cal] services, including, but not limited to, primary, ancillary, and acute care.

(c) Optional program funds enumerated in subdivision (b) of Section 14 shall be included in the long-term care services fund in any case where a program was funded prior to its integration into the pilot project.

(d) In determining which project sites to select for participation in the pilot program, the [department] shall give preference to those sites that include funds from the largest number of programs existing within the project site at the time the site applies for selection, provided the administrative action plan meets all other selection criteria. With the exception of up to [one (1)] rural county, preference shall be given to project sites that include primary, ancillary, and acute care in the consolidated fund, provided their administrative action plan meets all other selection criteria.

Selection 15. [Base Services to Eligible Beneficiaries.] The administrative action plan shall delineate the services to be provided to all eligible beneficiaries. At a minimum, services to be provided shall include all of the following:

(a) Care or case management, including assessment, development of a service plan in conjunction with the consumer and other appropriate parties, authorization and arrangement for purchase of services or linkages with other appropriate entities, service coordination activities, and follow-up to determine whether the services received were appropriate and consistent with the service plan. Service coordination activities shall ensure that the records of each beneficiary are maintained in a consistent and complete manner and are accessible to the beneficiary of his or her family, and providers involved in his or her care. This shall be the case whether a beneficiary resides in his or her own home or in a licensed facility.

(b) Education of beneficiaries, their families, and others in their informal support network, including independent living skills training to maximize the independence of the beneficiary.

(c) In-home services.

(d) Adult day services.

(e) Institutional long-term care.

(f) Hospice services.

(g) Linkages to acute care services and primary care services if they are not included in the integrated plan as determined in the administrative action plan.

Section 16. [Optional Services.] The administrative action plan may
also include any of the following services:

(a) Transportation.
(b) Home modification.
(c) Medical services, including, but not limited to, primary, ancillary, and acute care.
(d) Housing and residential services.
(e) Other services determined by the pilot project to be necessary to meet the needs of eligible beneficiaries.

Section 17. [Exemptions.] The [department] may exempt a pilot project site from the requirements of subdivisions (d) and (f) of Section 15 if both the following conditions are met:

(a) State funds were not being used in the geographic area covered by the pilot projects to provide those services at the time of application to the pilot program.
(b) The pilot project site can demonstrate to the [department] how it plans to develop these services, and within what timeframe, during the pilot program.

Section 18. [Primary, Ancillary and Acute Care]

(a) If primary, ancillary, and acute care are not included among the services offered by a pilot project site, the administrative action plan shall include all of the following:

(1) A mechanism for tracking the use of these services by beneficiaries of the plan.
(2) Provisions for the future inclusion of those services in the integrated plan, including the process and timeline by which they will be integrated.

(b) The [department] shall, in consultation with the pilot project sites, apply to the federal health care financing administration for a waiver that allows the pilot projects to include Medicare funds in the long-term care services fund. Upon receipt of such a waiver, within a time period to be designated by the [department] specific to each site, each pilot project site shall assume responsibility for primary, ancillary, and acute care services.

Section 19. [Pooled Funds.] The administrative action plan shall delineate specifically how the pooled funds will be used to deliver services to all eligible recipients in the geographic area covered by the pilot project site.

Section 20. [Counties.] Participating counties shall continue their financial maintenance of effort for each of the programs integrated within the pilot program under this act. The amount of a county’s maintenance of effort shall be the same as if the program were not integrated within the pilot program pursuant to this act, and funds equal to this amount shall be
Section 21. [Long-Term Care Services Agency: Duties.]

(a) The long-term care services agency shall be responsible and at risk for implementing the administrative action plan. The long-term care services agency shall do all of the following:

(1) Respond, or provide for response to, consumer needs on a [twenty-four (24)] hour, [seven (7)] day a week basis.

(2) Conduct comprehensive assessments.

(3) Determine eligibility for long-term care services based on the assessment information.

(4) Provide for contractual arrangements for the provision of, and payment for, sufficient services to meet the long-term care needs of the eligible beneficiary in his or her home, community, residential facility, nursing facility, or other location based on the mix of programs or services included in the administrative action plan.

(5) Provide linkages to acute care hospitals.

(6) Maintain control over utilization of services that are authorized.

(7) Monitor the quality of care provided to consumers.

(8) Maintain a consumer grievance process.

(9) Manage the overall cost-effectiveness of the pilot project for its duration.

(b) Services may be provided through contracts with community-based providers. In instances where a specific service does not exist in the community, the long-term care services agency may facilitate the development of local programs that provide these services or may provide the services directly, if doing so can be demonstrated to be cost-effective.

Section 22. [Eligible Beneficiaries: Defined.]

(a) For purposes of this act, “eligible beneficiaries” shall be defined as persons meeting all the following criteria:


(2) Are functionally or cognitively impaired. For purposes of this paragraph “cognitively impaired” means having an impairment caused by organic brain disorder or disease.

(3) Are adults.

(4) Need assistance with [two (2)] or more activities of daily living or are unable to remain living independently without the long-term care services provided through the pilot program operated pursuant to this act.

(b) To the extent eligible beneficiaries also receive services from a regional center that serves a pilot project site, the pilot project shall delineate in its administrative action plan how services will be coordinated by the [two (2)] agencies.
Section 23. [Non-Medi-Cal Beneficiaries.]
(a) Each pilot project site shall serve all eligible beneficiaries who live
in the geographic area served by the long-term care services agency. In
order to eliminate duplicative administrative costs and achieve a more effi-
cient delivery system, pilot project sites shall also serve [non-Medi-Cal] eligible individuals who, but for the implementation of the pilot project,
would have received services from programs whose funds are included in
the consolidated long-term care services fund.
(b) Funding sources allocated for person who are not eligible for [Medi-
Cal] benefits may be integrated into the consolidated long-term care ser-
vices fund. To the extent those funds are spent on services for persons who
are not eligible for [Medi-Cal] benefits, they shall be segregated from
capitated funds for [Medi-Cal] beneficiaries. No funds derived from the
capitated [Medi-Cal] rate may be used for persons who are not eligible for
[Medi-Cal.]

Section 24. [Additional Agreements.] This act shall not preclude a long-
term care services agency from entering into additional agreements, sepa-
rate from the pilot project, to serve additional individuals or populations.

Section 25. [Provider Reimbursement Rates.] Pilot project sites shall
ensure provider reimbursement rates that are adequate to maintain com-
pliance with applicable federal and state requirements.

Section 26. [Capitated Rated.] The [department] shall set a capitated
rate of payment that is actuarially sound that is based on the number of
beneficiaries who are eligible for [Medi-Cal] benefits to be enrolled in the
pilot project, the mix of provided services and programs being integrated,
and past [Medi-Cal] expenditures for services. The rate shall reflect, and
the contract shall delineate, the rate at which the local long-term care ser-
vices agency shall assume the total risk and the mechanisms that shall be
used, which may include, but are not limited to, risk corridors, reinsurance,
or alternative methods of risk assumption.

Section 27. [Noncapitated Funds.] If the [department] determines that
a program or programs cannot reasonably be capitated, funds may be trans-
sferred separately from the capitation payment. The amount of those
noncapitated funds shall be based an amounts that would have been ex-
pended by the state for those programs in the absence of the pilot program
implemented under this act.

It is the intent of the [legislature] that, if any local pilot project experi-
ences net savings, those savings shall be used for project expansion and
improvement, or to build the required tangible net equity, or if there is no
need for expansion and improvement, or to build the required tangible net
equity, or if there is no need for expansion or improvement or to build tan-
gible net equity, may be shared by the long-term care services agency and
the state.

Section 28. [Fiscal Solvency.]
(a) The [department] shall develop criteria to ensure that pilot project
sites maintain fiscal solvency, including but not limited to, the following:
(1) The capability to achieve and maintain sufficient fiscal tangible
net equity within a timeframe to be specified by the [department] for each
pilot project site.
(2) The capability to maintain prompt and timely provider pay-
ments.
(3) A management information system that is approved by the [de-
partment] and is capable of meeting the requirements of the pilot program.
(b) Any pilot project established under this act shall immediately notify
the [department] in writing of any fact or facts that are likely to result in
the pilot project or the long-term care services agency being unable to meet
its financial obligations. The written notice shall describe the fact or facts,
the anticipated financial consequences, and the actions that will be taken
to address the anticipated consequences, and shall be made available upon
request unless otherwise prohibited by law.

Section 29. [Program Implementation.]
(a) It is the intent of the [legislature] that local entities that are poten-
tial participants in this pilot program shall be assured of sufficient time to
plan their pilot projects, and that the selected pilot project sites shall be
assured of sufficient time to phase in the implementation of their programs.
To that end, it is the intent of the [legislature] that the [department] in
consultation with potential pilot project sites and the pilot program work-
ing group, shall develop a realistic timeline with guidelines for the plan-
ning and implementation of pilot projects.
(b) Nothing in this act shall prohibit the [department] in consultation
with the pilot program working group, from establishing a [two (2)] stage
selection process in which local pilot project sites may be selected on a pre-
liminary basis. Final selection of local pilot project sites shall be based on
the completion of an administrative action plan that the [department] de-
determines satisfactorily meets the selection criteria.

Section 30. [Emergency Regulations.] The [department] may adopt emer-
gency regulations as necessary to implement this act in accordance with
the [insert appropriate state citation.] The initial adoption of emergency
regulations shall be deemed to be an emergency and considered by the
[office of administrative law] as necessary for the immediate preservation
of the public peace, health and safety, or general welfare. Emergency regu-
lations adopted pursuant to this section shall remain in effect for no more
than [one hundred eighty (180)] days.

Section 31. [Evaluation.] The [department] shall evaluate the effective-
ness of the Long-Term Care Integration Pilot Program.

Section 32. [Effective Date] [Insert effective date.] This act shall re-
main in effect only until [insert date] and as of that date is repealed, unless
a later enacted statute, that is enacted before [insert date] deletes or ex-
tends that date.
Mandatory Educational Course on Children's Needs for Divorcing Parents

This act is based on Utah law. It creates a mandatory Educational Course for Divorcing Parents that is designed to sensitize divorcing parents to their children's needs. Training includes:

- the impact of divorce on children;
- how parents can help children through the divorce process;
- the stages of growth and development of children relative to divorce;
- ways to communicate with children about divorce;
- grieving stages common to divorce;
- ways to encourage cooperative behavior with the ex-spouse.

The pilot program established by this act applied to only two state judicial districts, from 1992-1994. Subsequently, due to the success of the pilot, Utah SB 50 (ch. 167, Laws of Utah 1994) expanded the program on a statewide basis to all eight judicial districts. The 1994 law says attendance at a divorce education course is mandatory for all parties to a divorce action who have a child under age 18 unless the court waives the requirement.

The current, expanded program is governed by a steering committee of judges, court administrators, members of the state Bar and community mental health professionals. The steering committee reports to the state administrative office of the courts (AOC). The AOC contracts with providers to do the training. A $35 per person fee is charged to program participants. Classes last approximately 2 1/2 hours. Parents are required to attend one session. The program now accommodates non-English speaking parents.

The current program has received a National Children's Rights Award. Ninety-two percent of the 7,100 participants have rated the course worthwhile. Seventy-nine percent think the course should be mandatory.

Submitted as:
Utah
HB 78
Enacted 1992

Copies of HB 78 or SB 50 can be obtained from the:
Utah Office of Legislative Research and General Counsel
436 State Capitol
Salt Lake City, UT 84114
(801) 538-1032
Suggested State Legislation

**Suggested Legislation**

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the “Mandatory Educational Course on Children’s Needs for Divorcing Parents - Pilot Program Act.”

Section 2. [Pleadings - Findings - Decree Sealing.]

(1)(a) The complaint shall be in writing and signed by the plaintiff or plaintiff’s attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause.

(c) If the plaintiff and the defendant have a child or children and the plaintiff has filed an action in the judicial district as defined in [insert appropriate state citation] where the pilot program shall be administered, a decree of divorce may not be granted until both parties have attended a mandatory course provided in Section 5 and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of [one (1)] of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the [court commissioner] as provided by [insert appropriate state citation] and rules of the [judicial council.] The court or the commissioner in all divorce cases shall make and file findings and decree upon the evidence.

(2) The file, except the decree of divorce, may be sealed by the court upon the written request of either party and payment of a [five (5)] dollar fee. The file is then available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the [office of recovery services] if a party to proceedings has applied for or is receiving public assistance, the commissioner, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce the decree or amend its terms.

Section 3. [When Decree Becomes Absolute.]

(1) The decree of divorce becomes absolute:

(a) on the date it is signed by the court and entered by the clerk in the register of actions if both the parties who have a child or children and the plaintiff has filed an action in the judicial district as defined in [insert appropriate state citation] where the pilot program is administered and have completed attendance at the mandatory course provided in Section 5 except if the court waives the requirement, on its own motion or on the motion of [one (1)] of the parties, upon determination that course atten-
Mandatory Educational Course on Children's Needs for Divorcing Parents

dance and completion are not necessary, appropriate, feasible, or in the best
interest of the parties;
(b) at the expiration of a period of time the court may specifically
designate, unless an appeal or other proceedings for review are pending; or
(c) when the court, before the decree becomes absolute, for suffi-
cient cause otherwise orders.
(2) The court, upon application or on its own motion for good cause
shown, may waive, alter, or extend a designated period of time before the
decree becomes absolute, but not to exceed [six (6)] months from the sign-
ing and entry of the decree.

Section 4. [Terms of Joint Legal Custody Order.]
(1) Unless the court orders otherwise, before a final order of joint legal
custody is entered when the plaintiff has filed an action in the judicial dis-
trict as defined in [insert appropriate state citation] where the pilot pro-
gram is administered as provided under Section 5, both parties shall at-
tend the mandatory course and present a certificate of completion from the
course to the court.
(2) An order of joint legal custody shall provide terms the court deter-
mines appropriate, which may include specifying:
(a) either the county of residence of the child, until altered by fur-
ther order of the court, or the custodian who has the sole legal right to
determine the residence of the child;
(b) that the parents shall exchange information concerning the
health, education, and welfare of the child, and where possible, confer be-
fore making decisions concerning any of these areas;
(c) the rights and duties of each parent regarding the child's present
and future physical care, support, and education;
(d) provisions to minimize disruption of the child's attendance at
school and other activities, his daily routine, and his association with friends;
and
(e) as necessary, the remaining parental rights, privileges, duties,
and powers to be exercised by the parents solely, concurrently or jointly.
(3) The court shall, where possible, include in the order the terms agreed
to between the parties.
(4) Any parental rights not specifically addressed by the court order
may be exercised by the parent having physical custody of the child the
majority of the time.
(5) (a) The appointment of joint legal custodians does not impair or
limit the authority of the court to order support of the child, including pay-
ments by [one (1)] custodian to the other.
(b) An order of joint legal custody, in itself, is not grounds for modi-
ifying a support order.
(c) The agreement may contain a dispute resolution procedure the
parties agree to use before seeking enforcement or modification of the terms and conditions of the order of joint legal custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

Section 5. [Mandatory Educational Course for Divorcing Parents - Pilot Program - Purpose - Curriculum - Exceptions]

(1) There is established a mandatory course for divorcing parents as a pilot program in the third and fourth judicial districts to be administered by the [administrative office of the courts] from [insert date.] The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The [judicial council] shall adopt rules to implement and administer this pilot program.

(3) As used in this section, both parties to a divorce action who have a child or children and the plaintiff has filed an action in the judicial district as defined in [insert appropriate state citations] where the pilot program is administered are governed by this section. As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number unless waived under Section 2. If waived, the court may permit the divorce action to proceed.

(4) The mandatory course shall instruct both parties about divorce and its impacts on:
   (a) their child or children;
   (b) their family relationship; and
   (c) their financial responsibilities for their child or children.

(5) The [administrative office of the courts] shall administer the course pursuant to [insert appropriate state citation.] through private or public contracts and organize the pilot program in the third and fourth judicial districts as defined in [insert appropriate state citation.]

(6) The certificate of completion shall constitute evidence to the court of course completion by the parties.

(7)(a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the [administrative office of the courts] to the "Mandatory Educational Course for Divorcing Parents Program."

Before a decree of divorce shall be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(8) Appropriations form the General Fund for the "Mandatory Educa-
Mandatory Educational Course on Children’s Needs for Divorcing Parents

41 tional Course for Divorcing Parents Program shall be used to pay for the
42 costs for the indigent parent who makes a showing as provided in subsec-
43 tion 7(b).
44 (9) The [administrative office of the courts] shall adopt a program to
45 evaluate the effectiveness of the mandatory course. Progress reports shall
46 be provided semi-annually on the date of implementation of this section
47 and on the results beginning [insert date.] The results shall be reported to
48 the [judicial interim committee] on a bi-annual basis.

Section 6. [Commissioners - Powers.] Commissioners shall:
1 (1) secure compliance with court orders;
2 (2) require attendance at the mandatory course as provided in Section
3 5.
4 (3) serve as judge pro tempore, master, or referee on:
5 (a) assignment of the court; and
6 (b) with the written consent of the parties:
7 (i) orders to show cause where no contempt is alleged;
8 (ii) default divorces where the parties have had marriage coun-
9 seling but there has been no reconciliation;
10 (iii) uncontested actions under the [Uniform Act on Paternity;]
11 (iv) actions under the [Uniform Civil Liability for Support Act;]
13 and
14 (v) actions under the [Reciprocal Enforcement of Support Act;]
15 (4) represent the interest of children in divorce or annulment actions
16 and the parties in appropriate cases;
17 (5) act with the domestic relations counselors in the screening and re-
18 ferral of applicants for counseling; and
19 (6) assist the domestic relations counselors in custody investigations
20 and the presentation, where necessary, of their reports to the court.

Section 7. [Waiting Period for Hearing After Filing for Divorce - Use of
1 Counseling and Education Services Not To Be Concluded or Promotion.]
4 (1) Unless the court, for good cause shown and set forth in the findings,
5 otherwise orders, no hearing for decree of divorce shall be held by the court
6 until:
7 (a) [ninety (90)] days shall have elapsed from the filing of the com-
8 plaint, except in the third and fourth judicial districts where the pilot pro-
9 gram is administered, provided the court may make such interim orders as
10 may be just and equitable; and
11 (b) both parties, who have a child or children and the plaintiff has
12 filed an action in the judicial district as defined in [insert appropriate state
13 citation] where the pilot program is administered as provided in Section 5,
14 have attended the mandatory course and presented a certificate of comple-
Suggested State Legislation

Section 8. [Appropriation.] There is appropriated for [insert date] [insert amount] from the General Fund to the [administrative office of the courts] for the Mandatory Educational Course for Divorcing Parents Program. Appropriations for this program shall be established as a separate appropriation. If the pilot program ends, any unexpended appropriation shall lapse to the General Fund.

Section 9. [Expiration of Program.] The pilot program as created in Section 5 shall expire when the funds are spent. The [administrative office of the courts] shall immediately notify the [judiciary interim committee] when the funds have been spent.

Section 10. [Effective Date.] [Insert effective date.]
Pilot After-School Programs in the Public Schools [After-School Plus or (A+) Program]

This act is based on Hawaii law. This act creates a state-wide pilot after-school program in the public schools to provide affordable and quality after-school supervision for students enrolled in kindergarten through sixth grade who would be without supervision of an adult after the end of the instructional school day as a result of their parents' employment. The program is partially funded by the state and partially funded by the parents of participants. About twenty-seven thousand children currently participate at an annual cost to the state of approximately $15 million.

Submitted as:
Hawaii
SB 2330
Enacted 1990.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Pilot After-School Programs in the Public Schools [After-School Plus or (A+) Program.]”

Section 2. [Purpose.] The purpose of this act is to establish a statewide pilot after-school program in the public schools to provide affordable and quality after-school supervision for students enrolled in kindergarten through grade [six (6)] who could be without the supervision of an adult after the end of the instructional school day as a result of their single parent's or both parents' employment.

For many parents, especially single parents, finding quality and affordable after-school services to provide supervision for their children until the end of their work day is a major concern and challenge. For some, either because of cost or unavailability of services, it has been an insurmountable problem which has resulted in their children being left alone after school to fend for themselves. Because of the lack of adult supervision, these children are exposed to higher risks of physical injury at the hands of others or themselves. A recent study also found that children unsupervised for at least [one (1)] hour per school day are at greater risk of substance abuse with the attendant possibility of criminal activities to support the habit.

The community as a whole also suffers from the limited availability of quality and affordable after-school supervision for children. Productivity
at work is adversely affected by telephone calls to or from children at home, general preoccupation about what their unsupervised children may be doing, and a rush to end the workday. In searching for solutions to these direct and indirect problems, the legislature finds that sufficient resources to adequately address them may be available only from the state, more particularly through a comprehensive program administered by the centralized public school system. Productive after-school activities could be organized to support, complement, and enhance the instructional program public schools provide during regular school hours, maximize use of school facilities, and, most importantly, increase the availability of quality and affordable after-school services to children of working parents of our community.

Pursuant to its existing authority to establish after-school activities programs under [insert appropriate state citation], the [department of education] has developed and is ready to implement a pilot state-subsidized after-school program which would begin [insert date] and operate for the balance of the current school year. This statewide program, to be known as the “After-School Plus Program,” or “A+ Program” would make affordable after-school supervision available to kindergarten through grade [six (6)] children form households headed by a single working parent or [two (2)] working parents.

The legislature finds that the after-school program developed by the [department of education] as a pilot program may be an appropriate means of addressing the problems of latchkey children and a distracted work force described above. The pilot A+ Program should be implemented immediately to test not only its feasibility as an after-school program of limited participation but also as a model for broader based after-school activities programs. Further, its implementation will allow the state to determine how a state-subsidized, after-school program may support, enhance, and even complement existing privately operated after-school programs which presently are available and affordable but only to a limited segment of our community.

Section 3. [Funding.] There is appropriated out of the general revenues to implement the pilot after-school program known as the A+ Program, which was developed by the [department of education] pursuant to [insert appropriate state citation.] The sum appropriated shall be expended by the [department of education] solely and only to implement the pilot A+ Program; provided further that students’ eligibility for and continued enrollment in the program is determined in accordance with the criteria set out in Section 4 of this act, and the program is operated in accordance with the standards and procedures set out in Section 6 of this act.
Section 4. [Eligibility.] Participation in the pilot A+ Program shall be limited to students enrolled in kindergarten through grade [six (6)] who, unless otherwise exempt, pay a non-refundable fee of [twenty-three (23)] dollars in advance each month, and come from households headed by a single parent or [two (2)] parents who work during all or a portion of the period that the A+ Program is in session or are the children of persons who staff the program. If the program is not available at the school they attend, eligible students may enroll in a program at a different site but the parent or parents of the student must arrange for and assume full responsibility for the cost of transportation to that program site.

Section 5. [Hours and Days of Operation.] The pilot A+ Program shall operate from [insert date] through the last full school day of the current school year, on each regular school day form the close of the regular school day until 5:30 p.m., or a time determined by the [department of education.] The program will not operate during public school vacation periods, holidays, or when the regular public school day is only for half of a day. Students, including those exempt from payment of the monthly fee, may be assessed a [five (5)] dollars late pick-up fee for every [fifteen (15)] minute interval after the official daily closing time that a child is picked up late. Students may be precluded from continued participation in the program for failure to pay the monthly non-refundable fee, chronic late pick-ups, or conduct which disrupts the program's activities or jeopardizes the safety or welfare of the program's staff or participants. The site coordinator at each school site shall meet with the students and parents of students whose continued participation in the program may be questionable, to appraise them of the problems which may result in termination and to afford them a reasonable time in which to take corrective action.

Section 6. [Severability.] If any provision of this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 7. [Effective Date] [Insert effective date.]
Intractable Pain Treatment

This act prohibits a physician from being subject to disciplinary action by the state board of medical licensure solely for prescribing, administering or dispensing controlled substances to treat a condition resulting in "intractable pain." "Intractable pain" is defined as pain whose cause cannot be removed or otherwise treated, and in which, in the generally accepted course of medical practice, no relief or cure is possible, or none has been found after reasonable efforts.

The act provides that drug dependency and the possibility of drug dependency should not be the sole reasons to withhold or prohibit the prescribing, administering or dispensing of a controlled substance to treat intractable pain. It prohibits the state board from subjecting a physician to disciplinary action solely due to prescribing, administering or dispensing controlled substances for treating intractable pain of drug-dependent people.

Submitted as:
Missouri
SB 125
Enacted into law, 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act shall be known and may be cited as the "Intractable Pain Treatment Act."

Section 2. [Definitions.] For purposes of this act, the following terms mean:

(1) "Board," the state [board of registration for the healing arts;]

(2) "Intractable pain," a pain state in which the cause of pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts that have been documented in the physician’s medical records;

(3) "Physician," physicians and surgeons licensed pursuant to this act by the [board;]

(4) "Therapeutic purpose," the use of controlled substances in acceptable doses with appropriate indication for the treatment of pain. Any other use is nontherapeutic.
Section 3. [Controlled Substances.]

(1) Notwithstanding any other provision of law to the contrary, a physician may prescribe, administer or dispense controlled substances for a therapeutic purpose to a person diagnosed and treated by a physician for a condition resulting in intractable pain, if such diagnosis and treatment has been documented in the physician's medical records. No physician shall be subject to disciplinary action by the [board] solely for prescribing, administering or dispensing controlled substances when prescribed, administered or dispensed for a therapeutic purpose for a person diagnosed and treated by a physician for a condition resulting in intractable pain, if such diagnosis and treatment has been documented in the physician's medical records.

(2) The provisions of subsection (1) of this section shall not apply to those persons being treated by a physician for chemical dependency because of their use of controlled substances not related to the therapeutic purposes of treatment of intractable pain.

(3) The provisions of subsection (1) of this section provide no authority to a physician to prescribe, administer or dispense controlled substances to a person the physician knows or should know to be using controlled substances which use is not related to the therapeutic purpose.

(4) Drug dependency or the possibility of drug dependency in and of itself is not a reason to withhold or prohibit the prescribing, administering or dispensing of controlled substances for the therapeutic purpose of treatment of a person for intractable pain, nor shall dependency relating solely to such prescribing, administering or dispensing subject a physician to disciplinary action by the [board.]

(5) Nothing in this section shall deny the right of the [board] to deny, revoke or suspend the license of any physician or otherwise discipline any physician who:

(1) Prescribes, administers or dispenses a controlled substance that is nontherapeutic in nature or nontherapeutic in the manner in which it is prescribed, administered or dispensed, or fails to keep complete and accurate on-going records of the diagnosis and treatment plan;

(2) Fails to keep complete and accurate records of controlled substances received, prescribed, dispensed and administered, and disposal of drugs listed in the [insert appropriate state citation] or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 USC 801, et seq. A physician shall keep records of controlled substances received, prescribed dispensed and administered, and disposal of these drugs shall include the date of receipt of the drugs, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person;

(3) Writes false or fictitious prescriptions for controlled substances as defined in [insert appropriate state citation] or for controlled substances
Suggested State Legislation


(4) Prescribes or administers, or dispenses in a manner which is inconsistent with provisions of [insert appropriate state citation,] or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 USC 801, et seq.

Section 4. [Effective Date] [Insert effective date.]
Emergency Medical Services for Children

This act is specifically directed towards the treatment of traumatic injuries to children resulting from automobile accidents, bicycle accidents, drowning and poisoning since these are found by the legislature to be the most common causes of death of children over the age of one and that children have a high death rate as the result of emergency situations. The legislative intent also finds that children react differently to stress, metabolize drugs differently, and suffer different illnesses and injuries, and that education of emergency medical personnel typically focuses on adults and offers few hours of pediatric training.

The act calls for continuing education programs for emergency services personnel, including training for the emergency care of infants and children; develops guidelines for referring children to the appropriate emergency treatment facilities; provides pediatric equipment and guidelines for pre-hospital care; provides guidelines for hospital-based emergency departments appropriate for pediatric care to assess, stabilize and treat critically ill infants and children either to resolve the problem or prepare the child for transfer to a pediatric intensive care unit or pediatric trauma center; provides guidelines for pediatric intensive care units, pediatric trauma centers, and intermediate care facilities, fully equipped and staffed by appropriately trained critical care physicians, surgeons, nurses and therapists; provides an inter-hospital transfer system for critically ill or injured children, as well as pediatric rehabilitation units staffed by trained personnel.

The act also creates an Emergency Medical Services for Children Advisory Council to advise the state department of health and hospitals concerning all matters pertaining to medical emergency services for children. The council consists of 17 public members appointed by the governor, subject to confirmation by the Senate, for a term of three years, including a board-certified pediatric surgeon and practicing pediatrician, a pediatric critical care physician, certified pediatric emergency physician, and pediatric psychiatrist, as well as an emergency room physician, an emergency medical technician, a paramedic, and a family practice physician.

Submitted as:
Louisiana
SB 1298
Approved June 29, 1995.
Suggested State Legislation

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act shall be known and may be cited as the “Emergency Medical Services for Children Program.”

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

(1) Traumatic injuries, such as automobile accidents, bicycle accidents, drownings, and poisonings, are the most common cause of death in children over the age of [one (1),] and children have a high death rate in these emergency situations.

(2) Children react differently than adults to stress, metabolize drugs differently, and suffer different illnesses and injuries. Because of these differences, children's emergency medical needs should be recognized.

(3) Emergency medical services training programs focus on adults and, therefore, offer fewer hours of pediatric training. In addition, many emergency medical services personnel have no clinical experience with children, indicating the need to improve training of these personnel in pediatric emergencies.

(4) It is the public policy of this state that children are entitled to comprehensive emergency services, including pre-hospital, hospital, and rehabilitative care.

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

(1) “Advanced life support” means an advanced level of pre-hospital, interhospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized in writing by the secretary pursuant to department regulations.

(2) “Advisory council” means the Emergency Medical Services for Children Advisory Council.

(3) “Basic life support” means a basic level of pre-hospital care which includes patient stabilization, airway clearnace, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization, and other techniques and procedures authorized by the secretary.

(4) “Coordinator” means the person coordinating the EMSC program.

(5) “Department” means the [Department of Health and Hospitals.]

(6) “EMSC program” means the Emergency Medical Services for Children Program.

(7) “Emergency medical services personnel” means persons trained and certified or licensed to provide emergency medical care, whether on a paid
Emergency Medical Services for Children

or volunteer basis, as part of a basic life support or advanced life support, pre-hospital emergency care service or in an emergency department or pediatric critical care or specialty unit in a licensed hospital. Nothing in this paragraph shall be deemed or construed to expand the duties or functions of emergency medical services personnel as established by other provisions of law.

(8) “Pre-hospital care” means the provision of emergency medical care or transportation by trained and certified or licensed emergency medical services personnel at the scene of an emergency and while transporting sick or injured persons to a medical care facility or provider.

(9) “Secretary” means the secretary of the [Department of Health and Hospitals.]

Section 4. [Emergency Medical Services for Children Program; Establishment; Administration; Functions.]

A. There is established within the [Department of Health and Hospitals,] the Emergency Medical Services for Children Program.

B. The secretary shall hire a full-time coordinator for the EMSC program in consultation with, and by the recommendation of, the advisory council, who:

(1) Shall implement the EMSC program following consultation with, and at the recommendation of, the advisory council. The coordinator shall serve as a liaison to the advisory council.

(2) May employ professional, technical, research, and clerical staff as necessary within the limits of available appropriations.

(3) May solicit and accept grants of funds from the federal government and from other public and private sources.

C. The EMSC program shall include, but not be limited to, the establishment of the following:

(1) Initial and continuing education programs for emergency medical services personnel that include training in the emergency care of infants and children.

(2) Guidelines for referring children to the appropriate emergency treatment facility.

(3) Pediatric equipment guidelines for pre-hospital care.

(4) Guidelines for hospital-based emergency departments appropriate for pediatric care to assess, stabilize, and treat critically ill infants and children, either to resolve the problem or to prepare the child for transfer to a pediatric intensive care unit or a pediatric trauma center.

(5) Guidelines for pediatric intensive care units, pediatric trauma centers, and intermediate care units fully equipped and staffed by appropriately trained critical care pediatric physicians, surgeons, nurses, and therapists.
Suggested State Legislation

(6) An inter-hospital transfer system for critically ill or injured children.

(7) Pediatric rehabilitation units staffed by rehabilitation specialist and capable of providing any service required to assure maximum recovery from the physical, emotional, and cognitive effects of critical illness, and severe trauma.

Section 5. [Advisory Council; Appointment; Terms of Office; Membership.]

A. There is created an Emergency Medical Services for Children Advisory Council to advise the [department] and the coordinator of the EMSC program on all matters concerning emergency medical services for children. The advisory council shall assist in the formulation of policy and regulations to effectuate the purposes of this act.

B. The advisory council shall consist of a minimum of [seventeen (17)] public members to be appointed by the [governor] subject to confirmation by the senate, for a term of [three (3)] years. Membership of the advisory council shall include: [one (1)] board certified pediatric surgeon, [one (1)] practicing pediatrician, [one (1)] pediatric critical care physician, [one (1)] board certified pediatric emergency physician and [one (1)] pediatric psychiatrist, [one (1)] emergency physician, [one (1)] emergency medical technician and [one (1)] paramedic, [one (1)] family practice physician, [two (2)] registered emergency nurses, [one (1)] person representing the nursing schools, [one (1)] person representing vocational technical emergency medical services education, [one (1)] administrator of an ambulance service company, and [three (3)] members, each with a non-medical background, [two (2)] of whom are parents with children under the age of [eighteen (18)].

C. Vacancies on the advisory council shall be filled for the unexpired term by appointment of the [governor] in the same manner as originally filled. The members of the advisory council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties. The advisory council shall elect a chairperson, who may select from among the members a vice-chairperson and other officers or subcommittees which are deemed necessary or appropriate. The council may future organize itself in any manner it deems appropriate and enact bylaws as deemed necessary to carry out the responsibilities of the council.

Section 6. [Implementation; Rules and Regulations.] The secretary shall, pursuant to the Administrative Procedure Act, adopt rules and regulations necessary to implement this act.

Section 7. [Costs.] The cost of compliance with the requirements of the act shall be provided for in the existing budget allocation for the [department.]
Section 8. [Effective Date] [Insert effective date.]
Health Service Plans – Dispute Resolution

This act requires all health service plans offered within a state to have a dispute resolution system for enrollees or subscribers. It enables enrollees or subscribers to grieve to state agencies. Generally, grievances are submitted to the state department of corporations. This department refers them to other agencies as necessary. Generally, the state must resolve such grievances within 60 days.

Submitted as:
California
1995 Laws of California, Ch. 788
SB 454
Enacted, October 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Health Service Plans – Dispute Resolution.”

Section 2. [Health Care Service Plans: Requirements.] Each health care service plan, and where applicable, each specialized health care service plan, shall meet the following requirements:

(a) All facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the state [department of health services] where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice.

(e) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.
Health Service Plans – Dispute Resolution

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the [department] that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this act. All contracts with providers shall contain provisions requiring a dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in [insert appropriate state citation,] except that the [commissioner of corporations] may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The [commissioner] shall by rule define the scope of each basic health care service which health care service plans shall be required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the [commissioner] and set forth to the subscriber or enrollee pursuant to the disclosure provisions of [insert appropriate state citation.]

Nothing in this section shall be construed to permit the [commissioner] to establish the rates charged subscribers and enrollee for contractual health care services.

The [commissioner’s] enforcement of [insert appropriate state citation] shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

Section 3. [Grievance System.]

(a) Every plan shall do all of the following:

(1) Establish and maintain a grievance system approved by the [department] under which enrollees may submit their grievances to the plan. Each system shall provide reasonable procedures in accordance with
Suggested State Legislation

[department] regulations which shall insure adequate consideration of enrollee grievances and rectification when appropriate.

(2) Inform its subscribers and enrollees upon enrollment in the plan and annually thereafter of the procedure for processing and resolving grievances. The information shall include the location and telephone number where grievances may be submitted.

(3) Provide forms for complaints to be given to subscribers and enrollees who wish to register written complaints. The forms used by plans licensed pursuant to [insert appropriate state citation] shall be approved by the commissioner in advance as to format.

(4) Keep in its files all copies of complaints, and the responses thereto, for a period of [five (5)] years.

(b)(1)(A) After either completing the grievance process described in subdivision (a), or participating in the process for at least [sixty (60)] days, a subscriber or enrollee may submit the grievance or complaint to the department for review. In any case determined by the [department] to be a case involving an imminent and serious threat to the health of the patient, including, but not limited to, the potential loss of life, limb, or major bodily function, or origin any other case where the [department] determines that an earlier review is warranted, a subscriber or enrollee shall not be required to complete the grievance process or participate in the process for at least [sixty (60)] days.

(B) A grievance or complaint may be submitted to the [department] for review and resolution prior to any arbitration.

(C) Notwithstanding subparagraphs (A) and (B), the [department] may refer any grievance or complaint to the state [department of health services,] the [department of aging,] the federal Health Care Financing Administration, or any other appropriate governmental entity for investigation and resolution, and shall refer any grievance or complaint involving a [Medicaid] enrollee to the [department of health services] for investigation and resolution.

(2) If the subscriber or enrollee is a minor, or is incompetent or incapacitated, the parent, guardian, conservator, relative, or other designee of the subscriber or enrollee, as appropriate, may submit the grievance or complaint to the [department] as the agent of the subscriber or enrollee. Further, a provider may join with, or otherwise assist, a subscriber or enrollee, or the agent, to submit the grievance or complaint to the [department.] In addition, following submission of the grievance or complaint to the department, the subscriber or enrollee, or the agent, may authorize the provider to assist, including advocating on behalf of the subscriber or enrollee. For purposes of this section, a “relative” includes the parent, step-parent, spouse, adult son or daughter, grandparent, brother, sister, uncle, or aunt of the subscriber or enrollee.

(3) Every health care service plan regulated by the [department] shall
prominently display in every plan contract, on enrollee and subscriber evidence of coverage forms, on the complaint forms required under paragraph (3) of subdivision (a), and on all written responses to grievances and complaints, a notice of the right to submit unresolved grievances and complaints to the [department] for review.

(4) The [department] shall review the written documents submitted with the subscriber's or the enrollee's request for review, or submitted by the agent on behalf of the subscriber or enrollee. The [department] may ask for additional information, and may hold an informal meeting with the involved parties, including providers who have joined in submitting the grievance or complaint, or who are otherwise assisting or advocating on behalf of the subscriber or enrollee. The [department] shall send a written notice of the final disposition of the grievance or complaint, and the reasons therefor, to the subscriber or enrollee, the agent, to any provider that has joined with or is otherwise assisting the subscriber or enrollee, and to the plan, within [sixty (60)] calendar days of receipt of the request for review unless the commission, in his or her discretion, determines that additional time is reasonably necessary to fully and fairly evaluate the relevant grievance or complaint. Distribution of the written notice shall not be deemed a waiver of any exemption or privilege under existing law, including, but not limited to [insert appropriate state citation,] for any information in connection with and including the written notice, nor shall any person employed or in any way retained by the [department] be required to testify as to that information or notice. On or before [insert date,] the [commissioner] shall establish and maintain a system of aging of complaints that are pending and unresolved for [sixty (60)] days or more, which system shall include a brief explanation of the reasons each complaint is pending and unresolved for [sixty (60)] days or more.

(5) A subscriber or enrollee, or the agent acting on behalf of a subscriber or enrollee, may also request voluntary mediation with the plan prior to exercising the right to submit a grievance or complaint to the department. The use of mediation services shall not preclude the right to submit a grievance or complaint to the [department] upon completion of mediation. In order, to initiate mediation, the subscriber or enrollee, or the agent acting on behalf of the subscriber or enrollee, and the plan shall voluntarily agree to mediation. Expenses for mediation shall be borne equally by both sides. The [department] shall have no administrative or enforcement responsibilities in connection with the voluntary mediation process authorized by this paragraph.

(c) The plan's grievance system shall include a system of aging of complaints that are pending and unresolved for [thirty (30)] days or more. On or before [insert date,] the plan shall provide a quarterly report to the commissioner with a brief explanation of the reasons each complaint is pending and unresolved for [thirty (30)] days or more.
Suggested State Legislation

(d) Subject to subparagraph (C) of paragraph (1) of subdivision (b), the grievance, complaint, or resolution procedures authorized by this act shall be in addition to any other procedures that may be available to any person, and failure to pursue, exhaust, or engage in the procedures described in this act shall not preclude the use of any other remedy provided by law.

(e) Nothing in this act shall be construed to allow the submission to the department of any provider complaint or grievance under this act. However, as part of a provider’s duty to advocate for medically appropriate health care for his or her patients pursuant to [insert appropriate state citation,] nothing in this subdivision shall be construed to prohibit a provider from contacting and informing the [department] about any concerns he or she has regarding compliance with or enforcement of this act.

Section 4. [Medical Consultants.] The [commissioner] may contract with necessary medical consultants to assist with the health care program. These contracts shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

Section 5. [Effective Date] [Insert effective date.]
Registration of Durable Powers of Attorney for Health Care

This act directs the secretary of state to establish a system by which anyone who has executed a durable power of attorney for health care may register in a central information center regarding the durable power of attorney for health care, making that information available upon request to any health care provider, the public guardian, or other person authorized by the registrant. Information that may be received and released is limited to the registrant's name, social security or driver's license or other individual identifying number established by law, if any, address, date and place of birth, the intended place of deposit or safekeeping of the durable power of attorney for health care, and the name and telephone number of the attorney in fact.

At least 27 states have adopted a “Uniform Durable Power of Attorney Act” which appears to standardize the language or forms granting durable powers of attorney. Examples include Alabama, Arizona, California, Colorado and Delaware. California appears to be the only state to establish a central registry related to health.

Submitted as:
California
Statutes of 1994, Ch. 1280

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] Registration of the durable powers of attorney
2 for health care.

1 Section 2. [Registry System.] The [secretary of state] shall establish a
2 registry system by which any person who has executed a durable power of
3 attorney for health care may register in a central information center infor-
4 mation regarding the durable power of attorney for health care, making
5 that information available upon request to any health care provider, the
6 public guardian, or other person authorized by the registrant. Information
7 that may be received and released is limited to the registrant's name, social
8 security or driver's license or other individual identifying number estab-
9 lished by law, if any, address, date and place of birth, the intended place of
10 deposit or safekeeping of durable power of attorney for health care, and the
Suggested State Legislation

name and telephone number of the attorney in fact and any alternative
attorney in fact. The [secretary of state] at the request of the registrant,
may transmit the information it receives regarding the durable power of
attorney for health care to the registry system of another jurisdiction as
identified by the registrant. The [secretary of state] may charge a fee to
each registrant in an amount such that, when all fees charged to regis-
trants are aggregated, the aggregated fees do not exceed the actual cost of
establishing and maintaining the registry.

Section 3. [Identity Verification.] The [secretary of state] shall establish
procedures to verify the identities of health care providers, the public guard-
ian, and other authorized persons requesting information pursuant to Sec-
tion 2. No fee shall be charged to any health care provider, the public guard-
ian, or other authorized person requesting information pursuant to Section
2.

Section 4. [Procedures.] The [secretary of state] shall establish proce-
dures to advise each registrant of the following:
(a) A health care provider may not honor a durable power of attorney
for health care until it receives a copy from the registrant.
(b) Each registrant must notify the registry upon revocation of the du-
rable power of attorney for health care.
(c) Each registrant must reregister upon execution of a subsequent
durable power of attorney for health care.

Failure to register with the [secretary of state] shall not invalidate any
durable power of attorney for health care.
Registration with the [secretary of state] shall not affect the ability of
the registrant to revoke that durable power of attorney or a later executed
power, nor shall registration raise any presumption of validity or superior-
ity among any competing powers or revocations.

Nothing in this section shall be construed to require a health care pro-
vider to request from the registry information about whether a patient has
executed a durable power of attorney for health care. Nothing in this sec-
tion shall be construed to affect the duty of a health care provider to provide
information to a patient regarding advance health care directive pursuant
to any provision of federal law.

Section 5. [Effective Date] [Insert effective date.]
Do Not Resuscitate

This act enables people to formally declare that they do not wish to be resuscitated in the event they experience cardiac or respiratory arrest. Generally, interested parties must have their physician fill out and sign a state-approved “Do Not Resuscitate Order” form, whereby they are issued medical condition bracelets or necklaces with the inscription of the patient’s name, date of birth and ‘do not resuscitate’ on it. “Do Not Resuscitate Orders” are revocable.

The act also contains language protecting people who carry out in good faith a “do not resuscitate order” or who act contrary to the order when they are unaware of it or believe it has been revoked. It appears that this act arose from efforts to reconcile patients’ wishes with conflicting emergency medical services protocols, and particularly when patients have a living will. At least one other state, Maryland, (ch. 372, Laws of 1993) has introduced “do not resuscitate” language in its statutes.

Submitted as:
West Virginia
Code Sec. 16-30C-2
Enacted into law, 1993.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] The act may be cited as the “Do Not Resuscitate Act.”

Section 2. [Legislative Findings and Purposes.]
(a) Findings - The [legislature] hereby finds that:
(1) Although cardiopulmonary resuscitation has saved the lives of persons experiencing sudden, unexpected death, present medical data indicates that cardiopulmonary resuscitation rarely leads to prolonged survival in persons with chronic illnesses in whom death is expected;
(2) In many circumstances, the performance of cardiopulmonary resuscitation on persons may cause infliction of unwanted and unnecessary pain and suffering;
(3) All persons have a right to make health care decisions including the right to refuse cardiopulmonary resuscitation;
(4) Persons with incapacity have the right to have health care decisions made for them by surrogate decision-makers;
(5) Existing emergency medical services protocols require their
personnel to proceed with cardiopulmonary resuscitation when they find a
person in a cardiac or respiratory arrest even if such person has completed
a living will or medical power of attorney, indicating that he/she does not
wish to receive cardiopulmonary resuscitation; and

(6) The administration of cardiopulmonary resuscitation by emer-
gency medical services personnel to persons who have indicated by a living
will or medical power of attorney or other means that they do not wish to
receive such resuscitation offends the dignity of the person and conflicts
with standards of accepted medical practice.

(b) Purpose - It is the purpose of this act to ensure that the right of a
person to self-determination relating to cardiopulmonary resuscitation is
protected. It is the intent of the [legislature] by enacting this act to give
direction to emergency medical services personnel and other health care
providers in regard to the performance of cardiopulmonary resuscitation.

Section 3. [Definitions.] As used in this act, unless the context dearly
requires otherwise, the following definitions apply:

(a) “Attending physician” means the physician selected by or assigned
to the person who has primary responsibility for treatment or care of the
person and who is a licensed physician. If more than [one (1)] physician
shares that responsibility, any of those physicians may act as the attending
physician under the provisions of this act.

(b) “Cardiopulmonary resuscitation” means those measures used to re-
store or support cardiac or respiratory function in the event of a cardiac or
respiratory arrest.

(c) “Do not resuscitate identification” means a standardized identifica-
tion necklace, bracelet or card as set forth in this act that signifies that a do
not resuscitate order has been issued for the possessor.

(d) “Do not resuscitate order” means an order issued by a licensed phy-
sician that cardiopulmonary resuscitation should not be administered to a
particular person.

(e) “Emergency medical services personnel” means paid or volunteer
firefighters, law-enforcement officers, emergency medical technicians, para-
medics, or other emergency services personnel, providers or entities, acting
within the usual course of their professions.

(f) “Health care decision” means a decision to give, withhold, or with-
draw informed consent to any type of health care including, but not limited
to, medical and surgical treatments including life-prolonging interventions,
nursing care, hospitalization, treatment in a nursing home or other ex-
tended care facility, home health care, and the gift or donation of a body
organ or tissue.

(g) “Health care facility” means a facility established to administer and
provide health care services and which is commonly known by a wide vari-
ety of titles, including, but not limited to, hospitals, medical centers, ambu-
Do Not Resuscitate

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Do Not Resuscitate

latory health care facilities, physicians’ offices and clinics, extended care
facilities, operated in connection with hospitals, nursing homes, and ex-
tended care facilities operated in connection with rehabilitation centers.

(h) “Health care provider” means any physician, dentist, nurse, para-
medic, psychologist or other person providing medical, dental, nursing, psy-
chological or other health care services of any kind.

(i) “Home” means any place of residence other than a health care facil-
ity and includes residential board and care homes and personal care homes.

(j) “Incapacity” or words like import, means the inability because of
physical or mental impairment, to appreciate the nature and implications
of a health care decision, to make an informed choice regarding the alterna-
tives presented and to communicate that choice in an unambiguous man-
ner.

(k) “Representative” means a person designated by a principal to make
health care decisions in accordance with [insert appropriate state citation.]

(l) “Surrogate decision-maker” means a person or persons over [eigh-
teen (18)] years of age with mental capacity who is reasonably available, is
willing to make health care decisions on behalf of an incapacitated person,
and is identified by the attending physician in accordance with applicable
provisions of this code as the person or persons who is to make decisions
pursuant to this article: Provided, That a representative named in the inca-
pacitated person’s medical power of attorney, if such document has been
completed, shall have priority over a surrogate decision-maker.

(m) “Trauma” means blunt or penetrating bodily injuries from impact
which occur in situations including, but not limited to, motor vehicle colli-
sions, mass casualty incidents and industrial accidents.

Section 4. [Applicability.] The provisions of this act apply to all persons
regardless of whether or not they have completed a living will or medical
power of attorney. For the purposes of direction to emergency medical ser-
vice personnel, a do not resuscitate order does not apply to treatment ren-
dered at the site where trauma has occurred to persons who experience a
 cardiac or respiratory arrest as the result of severe trauma.

Section 5. [Presumed Consent to Cardiopulmonary Resuscitation; Health
Care Facilities not Required to Expand to Provide Cardiopulmonary Resus-
citation.]

(a) Every person shall be presumed to consent to the administration of
cardiopulmonary resuscitation in the event of cardiac or respiratory arrest,
unless [one (1)] or more of the following conditions, of which the health care
provider has actual knowledge, apply:

(1) A do not resuscitate order in accordance with the provisions of
this article has been issued for that person;

(2) A completed living will for that person is in effect, pursuant to
Suggested State Legislation

[insert appropriate state citation.] and the person is in a terminal condition or a persistent vegetative state; or

(3) A completed medical power of attorney for that person is in effect, pursuant to [insert appropriate state citation.] in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation.

(b) Nothing in this act shall require a nursing home, personal care home, or extended care facility operated in connection with hospitals to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing equipment, facilities or personnel to provide cardiopulmonary resuscitation: Provided, That if a health care facility does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person, representative or surrogate decision-maker prior to admission.

Section 6. [Issuance of a Do Not Resuscitate Order; to be Written by a Physician.]

(a) It shall be lawful for the attending physician to issue a do not resuscitate order for persons who are present in or residing at home or in a health care facility, provided that the person, representative, or surrogate has consented to the order. A do not resuscitate order shall be issued in writing in the form as described in this section for a person not present or residing in a health care facility. For persons present in health care facilities, a do not resuscitate order shall be issued in accordance with the policies and procedures of the health care facility or in accordance with the provisions of this article.

(b) Persons may request their physicians to issue do not resuscitate orders for them.

(c) The representative or surrogate decision-maker may consent to a do not resuscitate order for a person with incapacity. A do not resuscitate order written by a physician for a person with incapacity with the consent of the representative or surrogate decision-maker is valid and shall be respected by health care providers.

(d) A parent may consent to a do not resuscitate order for his or her minor child, provided that a second physician who has examined the child concurs with the opinion of the attending physician that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards. If the minor is between the ages of [sixteen (16)] and [eighteen (18)], and in the opinion of the attending physician, the minor is of sufficient maturity to understand the nature and effect of a do not resuscitate order, then no such order shall be valid without the consent of such minor. In the event of a conflict between the wishes of the parents or guardians and the wishes of the mature minor, the wishes of the mature minor shall prevail.
For purposes of this section, no minor less than [sixteen (16)] years of age shall be considered mature. Nothing in this act shall be interpreted to conflict with the provisions of the Child Abuse Prevention and Treatment Act and implementing regulations at 45 CFR 1340. In the event conflict is unavoidable, federal law and regulation shall govern.

(e) If a surrogate decision-maker is not reasonably available or capable of making a decision regarding a do not resuscitate order, an attending physician may issue a do not resuscitate order for a person with incapacity in a health care facility: Provided, That a second physician who has personally examined the person concurs in the opinion of the attending physician that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(f) For persons not present or residing in a health care facility, the do not resuscitate order shall be in the following form on a card suitable for carrying on the person.

Do Not Resuscitate Order

"As treating physician of .................and a licensed physician, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest. This order has been discussed with...........or his/her representative.............or his/her surrogate decision-maker.............who has given consent as evidenced by his/her signature below.

Physician Name...................................................
Physician Signature............................................
Address................................................................
Person Signature..................................................
Address.................................................................
Surrogate Decision-maker Signature.................
Address.................................................................

Section 7. [Compliance With a Do Not Resuscitate Order.]

(a) Health care providers shall comply with the do not resuscitate order when presented with:

(1) A do not resuscitate order completed by a physician on a form as specified in Section six of this act;
(2) Do not resuscitate identification as set forth in Section thirteen of this act; or
(3) A do not resuscitate order for a person present or residing in a health care facility issued in accordance with the health care facility's policies and procedures.

(b) Pursuant to this act, health care providers shall respect do not resuscitate orders for persons in health care facilities, ambulances, homes and communities within this state.
Section 8. [Revocation of Do Not Resuscitate Order.]
(a) At any time a person in a health care facility may revoke his or her previous request for or consent to a do not resuscitate order by making either a written, oral or other act of communication to a physician or other professional staff of the health care facility.
(b) At any time a person residing at home may revoke his/her do not resuscitate order by destroying such order and removing do not resuscitate identification on his or her person. The person is responsible for notifying his or her physician of the revocation.
(c) At any time a representative or surrogate decision-maker may revoke his or her consent to a do not resuscitate order for a person with incapacity in a health care facility by notifying a physician or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician in the presence of a witness [eighteen (18)] years of age or older.
(d) At any time a representative or surrogate decision-maker may revoke his or her consent for a person with incapacity residing at home by destroying such order and removing do not resuscitate identification from the person. The representative or surrogate decision-maker is responsible for notifying the person’s physician of the revocation.
(e) The attending physician who is informed of or provided with a revocation of consent pursuant to this section shall immediately cancel the do not resuscitate order and notify the professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician in the presence of a witness [eighteen (18)] years of age or older.
(f) Only a licensed physician may cancel the issuance of a do not resuscitate order.

Section 9. [Protection of Persons Carrying Out in Good Faith Do Not Resuscitate Order; Notification of Representative or Surrogate Decision-Maker by Physician Refusing to Comply With Do Not Resuscitate Order.]
(a) No health care provider, health care facility, or individual employed by, acting as the agent of, or under contract with any of the foregoing shall be subject to criminal prosecution or civil liability for carrying out in good faith a do not resuscitate order authorized by this article on behalf of a person as instructed by the person, representative or surrogate decision-maker or for those actions taken in compliance with the standards and procedures set forth in this act.
(b) No health care provider, health care facility, individual employed by, acting as agent of, or under contract with any of the foregoing or other individual who witnesses a cardiac or respiratory arrest shall be subject to
criminal prosecution or civil liability for providing cardiopulmonary resuscitation to a person for whom a do not resuscitate order has been issued, provided that such physician or individual:

(1) Reasonably and in good faith was unaware of the issuance of a do not resuscitate order; or

(2) Reasonably and in good faith believed that consent to the do not resuscitate order had been revoked or canceled.

(c) Any physician who refused to issue a do not resuscitate order at a person’s request or to comply with a do not resuscitate order entered pursuant to this act shall take reasonable steps to advise promptly the person, representative, or surrogate decision-maker of the person that such physician is unwilling to effectuate the order. The attending physician shall thereafter at the election of the person, representative or surrogate decision-maker permit the person, representative or surrogate decision-maker to obtain another physician.

Section 10. [Insurance.]

(a) No policy of life insurance shall be legally impaired, modified, or invalidated in any manner by the issuance of a do not resuscitate order notwithstanding any term of the policy to the contrary.

(b) A person may not prohibit or require the issuance of a do not resuscitate order for an individual as a condition of such individual’s being insured or receiving health care services.

Section 11. [Interinstitutional Transfers.] If a person with a do not resuscitate order is transferred from one health care facility to another health care facility, the existence of a do not resuscitate order shall be communicated to the receiving facility prior to the transfer, and the written do not resuscitate order shall accompany the person to the health care facility receiving the person and shall remain effective until a physician at the receiving facility issues admissions orders.

Section 12. [Preservation of Existing Rights.]

(a) Nothing in this act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding of cardiopulmonary resuscitation in any lawful manner. In such respect, the provisions of this act are cumulative.

(b) Nothing in this act shall be construed to preclude a court of competent jurisdiction from approving the issuance of a do not resuscitate order under circumstances other than those under which such an order may be issued pursuant to the provisions of this act.

Section 13. [Do Not Resuscitate Order Form; Do Not Resuscitate Identification; Public Education.]
Suggested State Legislation

(a) The [secretary of the department of health and human resources,] no later than [one (1)] year after the passage of this article, shall implement the statewide distribution of do not resuscitate forms as described in Section six of this act.

(b) Do not resuscitate identification as set forth in this act shall consist of either a medical condition bracelet or necklace with the inscription of the patient’s name, date of birth in numerical form, and “WV do not resuscitate” on it. No other identification or wording shall be deemed to comply with the provisions of this article. Such identification shall be issued only upon presentation of a properly executed do not resuscitate order form as set forth in Section six of this act or a do not resuscitate order properly executed in accordance with a health care facility’s written policy and procedure.

(c) The [secretary of the department of health and human resources,] no later than [one (1)] year after the passage of this article, shall be responsible for establishing a system for the distribution of the do not resuscitate identification bracelets and necklaces.

(d) The [secretary of the department of health and human resources,] no later than [one (1)] year after the passage of this article, shall develop and implement a statewide educational effort to inform the public of their right to accept or refuse cardiopulmonary resuscitation and to request their physician to write a do not resuscitate order for them.

Section 14. [Not Suicide or Murder.] The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this act does not, for any purpose, constitute suicide or murder. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this act, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person’s condition. Nothing in this act shall be construed to legalize, condone, authorize or approve mercy killing or assisted suicide.

Section 15. [Full Faith and Credit.] It is the intention of the [legislature] to recognize that existence of do not resuscitate identification correctly expresses the will of any person who bears it and that foreign courts recognize this expression and give full faith and credit to do not resuscitate identification.

Section 16. [Severability.] The provisions of this act are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionally or inapplicability shall not affect or impair any other remaining provisions contained herein.
Section 17. [Effective Date] [Insert effective date.]
Genetic Discrimination

This act prohibits health plan companies, in determining eligibility for coverage, establishing premiums, limiting coverage, renewing coverage or any other underwriting decision from:

• requiring or requesting people or their relatives to take a genetic test;
• inquiring whether a person or their relatives have taken or refused a genetic test, or requiring the results of any such test; and,
• taking into consideration the results of any genetic test taken by a person or their blood relatives.

The act requires life insurance companies which require genetic tests for policy-holders to get the person’s written informed consent and to instruct them about the availability of genetic counseling.

Submitted as:
Minnesota
Ch. 251-S.F.No.259
Enacted 1995, effective January 1, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act shall be known and may be cited as the “Genetic Discrimination Act.”

Section 2. [Definitions.]
(a) As used in this section “commissioner” means the [commissioner of commerce for health plan companies] and other insurers regulated by that commissioner and the [commissioner of health for health plan companies] regulated by that commissioner.
(b) As used in this section, a “genetic test” means a presymptomatic test of a person’s genes, gene products, or chromosomes for the purpose of determining the presence or absence of a gene or genes that exhibit abnormalities, defects, or deficiencies, including carrier status, that are known to be the cause of a disease or disorder, or are determined to be associated with a statistically increased risk of development of a disease or disorder. “Genetic test” does not include a cholesterol test or other test not conducted for the purpose of determining the presence or absence of a person’s gene or genes.
(c) As used in this section, “health plan” has the meaning given in [insert appropriate state citation.]
(d) As used in this section, “health plan company” has the meaning given in [insert appropriate state citation.]

(e) As used in this section, “individual” means an applicant for coverage or a person already covered by the health plan company or other insurer.

Section 3. [Prohibited Acts; Health Plan Companies.] A health plan company, in determining eligibility for coverage, establishing premiums, limiting coverage, renewing coverage, or any other underwriting decision, shall not, in connection with the offer, sale, or renewal of a health plan:

1. require or request an individual or a blood relative of the individual to take a genetic test;
2. make any inquiry to determine whether an individual or a blood relative of the individual has taken or refused a genetic test, or what the results of any such test were;
3. take into consideration the fact that a genetic test was taken or refused by an individual or blood relative of the individual; or
4. take into consideration the results of a genetic test taken by an individual or a blood relative of the individual.

Section 4. [Application.] Subdivisions 5, 6, and 7 apply only to a life insurance company or fraternal benefit society requiring a genetic test for the purpose of determining insurability under a policy of life insurance.

Section 5. [Informed Consent.] If an individual agrees to take a genetic test, the life insurance company or fraternal benefit society shall obtain the individual's written informed consent for the test. Written informed consent must include, at a minimum, a description of the specific test to be performed; its purpose, potential uses, and limitations; the meaning of its results; and the right to confidential treatment of the results. The written informed consent must inform the individual that the individual should consider consulting with a genetic counselor prior to taking the test and must state whether the insurer will pay for any such consultation. An informed consent disclosure form must be approved by the [commissioner] prior to its use.

Section 6. [Notification.] The life insurance company or fraternal benefit society shall notify an individual of a genetic test result by notifying the individual or the individual's designated physician. If the individual tested has not given written consent authorizing a physician to receive the test results, the individual must be urged, at the time that the individual is informed of the genetic test result described in this subdivision, to contact a genetic counselor or other health care professional.
Suggested State Legislation

Section 7. [Payment for Test.] As a life insurance company or fraternal benefit society shall not require an individual to submit to a genetic test unless the cost of the test is paid by the life insurance company or fraternal benefit society.

Section 8. [Enforcement.] A violation of this section is subject to the investigative and enforcement authority of the [commissioner,] who shall enforce this section.

Section 9. [Effective Date; Applicability.] [Insert effective date and applicability language.]
Individual Health Insurance Market Reform

This act promotes the availability of health insurance coverage to people regardless of their health status or claims experience. It is intended to prevent abusive rating practice, require disclosure of rating practices to purchasers, establish rules regarding renewing coverage and limit preexisting condition exclusions.

Submitted as:
Iowa
Ch. 513C
Enacted 1995.

Suggested Legislation
(Title, enacting clause, etc.)

Section 1. [Short Title] This act shall be known and may be cited as the “Individual Health Insurance Market Reform Act.”

Section 2. [Purpose] The purpose and intent of this act is to promote the availability of health insurance coverage to individuals regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding the renewal of coverage, to establish limitations on the use of preexisting condition exclusions, to assure fair access to health plans, and to improve the overall fairness and efficiency of the individual health insurance market.

Section 3. [Definitions] As used in this act, unless the context otherwise requires:
1. “Actuarial certification” means a written statement by a member of the American academy of actuaries or other individual acceptable to the [commission] that an individual carrier is in compliance with the provision of Section 5 which is based upon the actuary’s or individual’s examination, including a review of the appropriate records and the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable individual health benefit plans.
2. “Affiliate” or “affiliated” means any entity or person who directly or indirectly through [one (1)] or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.
Suggested State Legislation

3. “Basic or standard health benefit plan” means the core group of health benefits developed pursuant to Section 8.

4. “Block of business” means all the individuals uninsured under the same individual health benefit plan.

5. “Carrier” means any entity that provides individual health benefit plans in this state. For purposes of this act, carrier includes an insurance company, a group hospital or medical service corporation, a fraternal benefit society, a health maintenance organization, and any other entity providing an individual plan of health insurance or health benefits subject to state insurance regulation. “Carrier” does not include an organized delivery system.

6. “Commissioner” means the [commissioner of insurance.]

7. “Director” means the [director of public health.]

8. “Eligible individual” means an individual who is a resident of this state and who either has qualifying existing coverage or has had qualifying existing coverage within the immediately preceding [thirty (30)] days, or an individual who has had a qualifying event occur within the immediately preceding [thirty (30)] days.

9. “Established service area” means a geographic area, as approved by the [commissioner] and based upon the carrier’s certificate of authority to transact business in this state, within which the carrier is authorized to provide coverage or a geographic area, as approved by the [director] and based upon the organized delivery system’s license to transact business in this state, within which the organized delivery system is authorized to provide coverage.

10. “Filed rate” means, for a rating period related to each block of business, the rate charged to all individuals with similar rating characteristics for individual health benefit plans.

11. “Individual health benefit plan” means any hospital or medical expense incurred policy or certificate, hospital or medical service plan, or health maintenance organization subscriber contract sold to an individual, or any discretionary group trust or association policy, whether issued within or outside of the state, providing hospital or medical expense incurred coverage to individuals residing within this state. Individual health benefit plan does not include a self-insured group health plan, a self-insured multiple employer group health plan, a group conversion plan, an insured group health plan, accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance coverage, coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, or automobile medical payment insurance.

12. “Organized delivery system” means an organized delivery system licensed by the [director.]
13. “Premium” means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier or an organized delivery system, including any fees or other contributions associated with an individual health benefit plan.

14. “Qualifying event” means any of the following:
   a. Loss of eligibility for medical assistance provided pursuant to [insert appropriate state citation] or Medicare coverage provided pursuant to Title XVII of the federal Social Security Act.
   b. Loss or change of dependent status under qualifying previous coverage.
   c. The attainment by an individual of the age of majority.

15. “Qualifying existing coverage” or “qualifying previous coverage” means benefits or coverage provided under any of the following:
   a. Any group health insurance that provides benefits similar to or exceeding benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least [one (1)] year.
   b. An individual health insurance benefit plan, including coverage provided under a health maintenance organization contract, a hospital or medical service plan contract, or a fraternal benefit society contract, that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least [one (1)] year.
   c. An organized delivery system that provide benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that the benefits provided by the organized delivery system have been in effect for a period of at least [one (1)] year.

16. “Rating characteristics” means demographic characteristics of individuals which are considered by the carrier in the determination of premium rates for the individuals and which are approved by the [commissioner.]

17. “Rating period” means the period for which premium rates established by a carrier are in effect.

18. “Restricted network provision” means a provision of an individual health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier of the organized delivery system to provide health care services to covered individuals.

Section 4. [Applicability and Scope]

1. Except as provided in subsection 2, for purposes of this act, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as [one (1)] carrier and any restrictions or limitations imposed by this act shall apply as if all individual health benefit plans
Suggested State Legislation

1. Premium rates for any block of individual health benefit plan business issued on or after [insert date] or the date rules are adopted by the commissioner of insurance and the director of public health and become effective, whichever date is later, by a carrier subject to this act shall be limited to the composite effect of allocating costs among the following:

   a. After making actuarial adjustments based upon benefit design and rating characteristics, the filed rate for any block of business shall not exceed the filed rate for any other block of business by more than twenty (20) percent.

   b. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty (30) percent due to factors relating to rating characteristics.

   c. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty (30) percent due to any other factors approved by the commissioner.

   d. Premium rates for individual health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by the carrier pursuant to any reinsurance program or risk adjustment mechanism.

   e. An adjustment applied to a single block of business shall not exceed the adjustment applied to all blocks of business by more than fifteen (15) percent due to the claim experience or health status of that block of business.

   f. For purposes of this subsection, an individual health benefit plan that contains a restricted network provision shall not be considered similar to an individual health benefit plan that does not contain such a provision, provided that the differential in payments made to network providers results in substantial differences in claim costs.

2. Notwithstanding subsection 1, the commissioner, with the concurrence of the state board of individual health benefit reinsurance association established in Section 10 may by order reduce or eliminate the allowed rating bands provided under subsection 1, paragraphs “a”, “b”, “c”, and “e”, or otherwise limit or eliminate the use of experience rating. The commissioner shall also develop a recommendation for the elimination of age as a rating characteristic, and shall submit such recommendation by [insert date].
3. A carrier shall not transfer an individual involuntarily into or out of a block of business.

4. The [commissioner] may suspend for a specified period the application of subsection 1, paragraph “a”, as to the premium rates applicable to one (1) or more blocks of business of a carrier for one (1) or more rating periods upon a filing by the carrier requesting the suspension and a finding by the [commissioner] that the suspension is reasonable in light of the financial condition of the carrier.

5. A carrier shall make a reasonable disclosure at the time of the offering for sale of any individual health benefit plan of all of the following:
   a. The extent to which premium rates for a specified individual are established or adjusted based upon rating characteristics.
   b. The carrier's right to change premium rates, and the factors, other than claim experience, that affect changes in premium rates.
   c. The provisions relating to the renewal of policies and contracts.
   d. Any provisions relating to any preexisting condition.
   e. All plans offered by the carrier, the prices of such plans, and the availability of such plans to the individual.

6. A carrier shall maintain at its principal place of business a complete detailed description of its rating practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

7. A carrier shall file with the [commissioner] annually on or before [insert date,] an actuarial certification certifying that the carrier is in compliance with this act and that the rating methods of the carrier are actuarially sound. The certification shall be in a form and manner and shall contain information as specified by the [commissioner.] A copy of the certification shall be retained by the carrier at its principal place of business. Rate adjustments made in order to comply with this section are exempt from loss ratio requirements.

8. A carrier shall make the information and documentation maintained pursuant to subsection 5 available to the [commissioner] upon request. The information and documentation shall be considered proprietary and trade secret information and shall not be subject to disclosure by the [commissioner] to persons outside of the [division] except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

1. An individual health benefit plan is renewable at the option of the individual, except in any of the following cases:
   a. Nonpayment of the required premiums.
   b. Fraud or misrepresentation.
Suggested State Legislation

c. The insured individual becomes eligible for Medicare coverage under Title XVIII of the federal Social Security Act.

d. The carrier elects not to renew all of its individual health benefit plans in the state. In such case, the carrier shall provide notice of the decision not to renew coverage to all affected individuals and to the [commissioner] in each state in which an affected insured individual is known to reside at least [ninety (90)] days prior to the nonrenewal of the health benefit plan by the carrier. Notice to the [commissioner] under this paragraph shall be provided at least [three (3)] working days prior to the notice to the affected individuals.

e. The [commissioner] finds that the continuation of the coverage would not be in the best interests of the policyholders or certificate holders, or would impair the carrier's ability to meet its contractual obligations.

2. A carrier that elects not to renew all of its individual health benefit plans in this state shall be prohibited from writing new individual health benefit plans in this state for a period of [five (5)] years from the date of the notice to the [commissioner.]

3. With respect to a carrier doing business in an established geographic service area of the state, this section applies only to the carrier's operations in the service area.

Section 7. [Availability of Coverage]

1. A carrier or an organized delivery system, as a condition of issuing individual health benefit plans in this state, shall make available a basic or standard health benefit plan to an eligible individual who applies for a plan and agrees to make the required premium payments and to satisfy other reasonable provisions of the basic or standard health benefit plan. A carrier or an organized delivery system is not required to issue a basic or standard health benefit plan to an individual who meets any of the following criteria:

   a. The individual is covered or is eligible for coverage under a health benefit plan provided by the individual's employer.

   b. An eligible individual who does not apply for a basic or standard health benefit plan within [thirty (30)] days of a qualifying event or within [thirty (30)] days upon becoming ineligible for qualifying existing coverage.

   c. The individual is covered or is eligible for any continued group coverage under section 4980b of the Internal Revenue Code, sections 601 through 608 of the federal Employee Retirement Income Security Act of 1974, sections 2201 through 2208 of the federal Public Health Service Act, or any state-required continued group coverage. For purposes of this subsection, an individual who would have been eligible for such continuation of coverage, but is not eligible solely because the individual or other responsible party failed to make the required coverage election during the applicable time period, is deemed to be eligible for such group coverage until the
date on which the individual’s continuing group coverage would have expired had an election been made.

2. A carrier or an organized delivery system shall issue the basic or standard health benefit plan to an individual currently covered by an underwritten benefit plan issued by that carrier or an organized delivery system at the option of the individual. This option must be exercised within [thirty (30)] days of notification of a premium rate increase applicable to the underwritten benefit plan.

3. a. A carrier shall file with the [commissioner,] in a form and manner prescribed by the [commissioner,] the basic or standard health benefit plan. A basic or standard health benefit plan filed pursuant to this paragraph may be used by a carrier beginning [thirty (30)] days after it is filed unless the [commissioner] disapproves of its use.

   The [commissioner] may at any time, after providing notice and an opportunity for a hearing to the carrier, disapprove the continued use by a carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this act.

   b. An organized delivery system shall file with the [director,] in a form and manner prescribed by the [director,] the basic or standard health benefit plan to be used by the organized delivery system. A basic or standard health benefit plan filed pursuant to this paragraph may be used by the organized delivery system beginning [thirty (30)] days after it is filed unless the [director] disapproves of its use.

   The [director] may at any time, after providing notice and an opportunity for a hearing to the organized delivery system, disapprove the continued use by an organized delivery system of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this act.

4. a. The individual basic or standard health benefit plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than [twelve (12)] months following the effective date of coverage due to a preexisting condition. A preexisting condition shall not be defined more restrictively than any of the following:

   (1) A condition that would cause an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the [twelve (12)] months immediately preceding the effective date of coverage.

   (2) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the [twelve (12)] months immediately preceding the effective date of coverage.

   (3) A pregnancy existing on the effective date of coverage.

   b. A carrier or an organized delivery system shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time an individual was previously covered by qualify-
Suggested State Legislation

68. This is pervious coverage that provided benefits with respect to such services,
69. provided that the qualifying previous coverage was continuous to a date
70. not more than [thirty (30)] days prior to the effective date of the new cover-
71. age.

5. A carrier or an organized delivery system is not required to offer
73. coverage or accept applications pursuant to subsection 1 from any indi-
74. vidual not residing in the carrier's or the organized delivery system's estab-
75. lished geographic access area.

6. A carrier or an organized delivery system shall not modify a basic or
77. standard health benefit plan with respect to an individual or dependent
78. through riders, endorsements, or other means to restrict or exclude cover-
79. age for certain diseases or medical conditions otherwise covered by the health
80. benefit plan.

Section 8. [Health Benefit Plan Standards.] The [commissioner] shall
82. adopt by rule the form and level of coverage of the basic health benefit plan
83. and the standard health benefit plan for the individual market which shall
84. provide benefits substantially similar to those as provided for under [insert
85. appropriate state citation] with respect to small group coverage, but which
86. shall be appropriately adjusted to reflect the individual market.

Section 9. [Standards to Assure Fair Marketing.] 1. A carrier or an organized delivery system issuing individual health
89. benefit plans in this state shall make available the basic or standard health
90. benefit plan to residents of this state. If a carrier or an organized delivery
91. system denies other individual health benefit plan coverage to an eligible
92. individual on the basis of health status or claims experience of the eligible
93. individual, or the individual's dependents, the carrier or the organized del-
94. livery system shall offer the individual the opportunity to purchase a basic
95. or standard health benefit plan.

2. A carrier, or an organized delivery system, or an agent shall not do
97. either of the following:

a. Encourage or direct individuals to refrain from filing an applica-
99. tion for coverage with the carrier or the organized delivery system because
100. of the health status, claims experience, industry, occupation, or geographic
101. location of the individuals.

b. Encourage or direct individuals to seek coverage from another
102. carrier or another organized delivery system because of the health status,
103. claims experience, industry, occupation, or geographic location of the indi-
104. viduals.

3. Subsection 2, paragraph “a,” shall not apply with respect to infor-
107. mation provided by a carrier or an organized delivery system or an agent to an
108. individual regarding the established geographic service area of the carrier.
or the organized delivery system, or the restricted network provision of the
carrier or the organized delivery system.

4. A carrier or an organized delivery system shall not, directly or indi-
directly, enter into any contract, agreement, or arrangement with an agent
that provides for, or results in, the compensation paid to an agent for a sale
of a basic or standard health benefit plan to vary because of the health
status or permitted rating characteristics of the individual or the individual’s
dependents.

5. Subsection 4 does not apply with respect to the compensation paid to
an agent on the basis of percentage of premium, provided that the percent-
age shall not vary because of the health status or other permitted rating
characteristics of the individual or the individual’s dependents.

6. Denial by a carrier or an organized delivery system of an application
for coverage from an individual shall be in writing and shall state the rea-
son or reasons for the denial.

7. A violation of this section by a carrier or an agent is an unfair trade
practice under [insert appropriate state citation.]

8. If a carrier or an organized delivery system enters into a contract,
agreement, or other arrangement with a third-party administrator to pro-
vide administrative, marketing, or other services related to the offering of
individual health benefit plans in this state, the third-party administrator
is subject to this section as if it were a carrier or an organized delivery
system.

Section 10. [Individual Health Benefit Reinsurance Association.]

1. A nonprofit corporation is established to be known as the [insert
state] individual health benefit reinsurance association. All persons that
provide health benefit plans in this state including insurers providing acci-
dent and sickness insurance under [insert appropriate state citation;] fra-
ternal benefit societies providing hospital, medical, or nursing benefits un-
der [insert appropriate state citation;] health maintenance organizations,
organized delivery systems, and all other entities providing health insur-
ance or health benefits subject to state insurance regulation shall be mem-
bers of this association. The association shall be incorporated under [insert
appropriate state citation,] shall operate under a plan of operation estab-
lished an approved pursuant to [insert appropriate state citation,] and shall
exercise its powers through a board of directors established under this sec-
tion.

2. The initial board of directors of the association shall consist of [seven
(7)] members appointed by the [commissioner] as follows:

a. [Four (4)] members shall be representatives of the [four (4)] larg-
est domestic carriers of individual health insurance in the state as of the
calendar year ending [insert date.]
b. [Three (3)] members shall be representatives of the [three (3)] largest carriers of health insurance in the state, excluding Medicare supplement coverage premiums, which are not otherwise represented. In the event a carrier to be represented pursuant to this paragraph does not appoint a representative, the board member shall be a representative of the next largest carrier which satisfies the criteria.

After an initial term, board members shall be nominated and elected by the members of the association.

Members of the board may be reimbursed from the funds of the association for the expenses incurred by them as members, but shall not otherwise be compensated by the association for their services.

3. The association shall submit to the [commissioner] a plan of operation of the association and any amendments to the association's articles of incorporation necessary and appropriate to assure the fair, reasonable, and equitable administration of the association. The plan shall provide for the sharing of losses related to basic and standard plans, if any, or an equitable and proportional basis among the members of the association. If the association fails to submit a suitable plan of operation within [one hundred eighty (180)] days after the appointment of the board of directors, the [commissioner] shall adopt rules necessary to implement this section. The rules shall continue in force until modified by the [commissioner] or superseded by a plan submitted by the association and approved by the [commissioner.]

In addition to other requirements, the plan of operation shall provide for all of the following:

a. The handling and accounting of assets and funds of the association.

b. The amount of and method for reimbursing the expenses of board members.

c. Regular times and places for meetings of the board of directors.

d. Records to be kept relating to all financial transactions, and annual fiscal reporting to the [commissioner.]

e. Procedures for selecting the board of directors.

f. Additional provisions necessary or proper for the execution of the powers and duties of association.

4. The plan of operation may provide that the powers and duties of the association may be delegated to a person who will perform functions similar to those of the association. A delegation under this section takes effect only upon the approval of the board of directors.

5. The association has the general powers and authority enumerated by this section and executed in accordance with the plan of operation approved by the [commissioner] under subsection 3. In addition, the association may do any of the following:

a. Enter into contracts as necessary or proper to administer this act.
b. Sue or be sued, including taking any legal action necessary or proper for recovery of any assessments for, on behalf of, or against members of the association or other participating persons.

c. Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary.

d. Perform any other functions within the authority of the association.

6. Rates for basic and standard coverages as provided in this act shall be determined by each carrier or organized delivery system as the average of the lowest rate available for issuance by that carrier or organized delivery system adjusted for rating characteristics and benefits and the maximum rate allowable by law after adjustments for rate characteristics and benefits.

7. Following the close of each calendar year, the association, in conjunction with the [commissioner,] shall require each carrier or organized delivery system to report the amount of earned premiums and the associated paid losses for all basic and standard plans issued by the carrier or organized delivery system. The reporting of these amounts must be certified by an officer of the carrier or organized delivery system.

8. The board shall develop procedures and make assessments and distributions as required to equalize the individual carrier and organized delivery system gains or losses so that each carrier or organized delivery system receives the same ratio of paid claims to [ninety (90)] percent of earned premiums as the aggregate of all basic and standard plans insured by all carriers and organized delivery systems in the state.

9. If the statewide aggregate ratio of paid claims to [ninety (90)] percent of earned premiums is greater than [one (1),] the dollar difference between [ninety (90)] percent of earned premiums and the paid claims shall represent an assessable loss.

10. The assessable loss plus necessary operating expenses for the association, plus any additional expenses as provided by law, shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in [insert state] during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year, or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer any part of the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against the member of the association to meet the operating expenses of the association until the next calendar year is completed.
11. The board shall develop procedures for distributing the assessable loss assessments to each carrier and organized delivery system in proportion to the carrier's and organized delivery system's respective share of premium for basic and standard plans to the statewide total premium for all basic and standard plans.

12. The board shall ensure that procedures for collecting and distributing assessments are as efficient as possible for carriers and organized delivery systems. The board may establish procedures which combine, or offset, the assessment from, and the distribution due to, a carrier or organized delivery system.

13. A carrier or an organized delivery system may petition the association board to seek remedy from writing a significantly disproportionate share of basic and standard policies in relation to total premiums written in this state for health benefit plans. Upon a finding that a carrier or organized delivery system has written a disproportionate share, the board may agree to compensate the carrier or organized delivery system either by paying to the carrier or organized delivery system an additional fee not to exceed [two (2)] percent of earned premiums from basic and standard policies for that carrier or organized delivery system or by petitioning the [commissioner] or [director] as appropriate for remedy.

14. a. The [commissioner,] upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this act would place the carrier in a financially impaired condition, shall not require the carrier to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

b. The [director,] upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this act would place the organized delivery system in a financially impaired condition, shall not require the organized delivery system to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

Section 11. [Self-Funded Employer-Sponsored Health Benefit Plan Participation in [insert state] Individual Health Benefit Reinsurance Association.]

1. A self-funded employer-sponsored health benefit plan qualified under the federal Employee Retirement Income Security Act of 1974 may voluntarily elect to participate in the [insert state] individual health benefit reinsurance association established in Section 10 in accordance with the plan of operation and subject to such terms and conditions adopted by the board of the association to provide portability and continuity to its covered employees and their covered spouses and dependents subject to the same terms and conditions as a participating insurer.
Individual Health Insurance Market Reform

2. If the federal Employee Retirement Income Security Act of 1974 is amended such that the state may require the participation of a self-funded employer, the individual reinsurance requirements shall apply equally to such employers.

3. When and if the federal government imposes condition of portability and continuity on self-funded employers qualified under the federal Employee Retirement Income Security Act of 1974 that the [commissioner] deems are substantially similar to those required of this state's insurers, coverage under such qualified plan shall be deemed qualified prior coverage for purposes of [insert appropriate state citation.]

Section 12. [Effective Date] [Insert effective date.]
Tuberculosis-Specific Control Measures

Most states have statutes and procedures dealing with tuberculosis and infectious disease control. Some of these date back to the nineteen fifties. However, a resurgence of the disease, particularly in a drug-resistant form, in many urban areas, and among HIV patients and prisoners, has caused public health officials across the country to re-examine detection and treatment protocols. Public safety and patient civil rights are at issue, particularly when treatment plans are ignored or refused. This act clarifies treatment protocols and the authority of public agencies to commit someone with active TB.

This act defines the procedures which a public health official may take against a person suspected of or having active tuberculosis. The act authorizes public health officials to develop "enablers" and "incentives" to get TB patients to obtain and complete therapy. These include transporting patients to treatment and offering food or coupons as incentives to treatment. Other actions include issuing warnings to people who are suspected of having TB and recommendations for directly observed therapy. People who refuse treatment may ultimately be involuntarily committed for treatment.

Submitted as:
Connecticut
PA 95-138
Enacted 1995.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] An act concerning "Tuberculosis-Specific Control Measures."

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

(1) "Active tuberculosis" means (A) a specimen has been taken from a pulmonary, laryngeal or other airway source, has tested positive for tuberculosis and the person tested has not subsequently completed a standard recommended course of medication for tuberculosis, (B) a specimen from an extra-pulmonary source has tested positive for tuberculosis and there is clinical evidence or clinical suspicion of pulmonary tuberculosis and the person tested has not subsequently completed a standard recommended course of medication for tuberculosis, or (C) where sputum smears or cultures are unobtainable, radiographic evidence, in addition to current clini-
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inal or laboratory evidence, is sufficient to establish a medical diagnosis of
pulmonary tuberculosis for which treatment is indicated and the person
diagnosed has not subsequently completed a standard recommended course
of medication for tuberculosis.

(2) “Infectious tuberculosis” means tuberculosis disease in a communi-
cable or infectious stage as determined by chest radiograph, the bacterio-
logic examination of body tissues or secretions, or other diagnostic pro-
dures. A person is considered infectious to others until such time as spu-
tum smears form a pulmonary, laryngeal or other airway source collected
on [three (3)] consecutive days have tested negative for tuberculosis and
the person shows significant clinical improvement, such as the resolution
of cough or fever.

(3) “Suspected of having active tuberculosis” means a person has signs
or symptoms of tuberculosis but diagnostic studies have not been completed.

(4) “Nonadherent” means not taking tuberculosis medications as pre-
scribed or not following the recommendations of the attending physician or
health officer for the management of tuberculosis.

(5) “Enablers” means anything that helps the patient to more readily
complete therapy including, but not limited to, assistance with transporta-
tion.

(6) “Incentive” means anything that motivates the patient to adhere to
treatment including, but not limited to, food or coupons.

(7) “Directly observed therapy” means a course of treatment for tuber-
culosis in which the prescribed anti-tuberculosis medication is adminis-
tered to the person or ingested by the person under direct observation, as
specified by the local [director of health.]

Section 3. [Treatment.] The health care provider responsible for the treat-
ment of any person with active tuberculosis shall devise, with the assis-
tance and acknowledgment of that person and the approval of the [director
of health] of the municipality in which the persons with tuberculosis re-
sides or, in the case of disagreement between the health care provider and
the [director of health] the [commissioner of public health and addiction
services] an appropriate individualized plan of treatment tailored to the
person’s medical and personal needs and identifying the method for effec-
tive treatment and prevention of transmission. The [director of health]
shall provide or ensure the provision of such enablers and incentives as are
within his means to provide and are reasonably appropriate in the indi-
vidual situation to help the person to complete his course of treatment. In
the event that the person with active tuberculosis is hospitalized or in state
custody the [director of health] shall be notified as required by law, and the
individualized plan of treatment shall be approved by the [director] prior to
discard, provided such discharge shall not be delayed more that [twenty-
four (24)] hours, excluding weekends, solely because of delay in obtaining
Section 4. [Warnings and Emergency Commitment Orders: Procedures for Issuing.] If any town, city or borough [director of health] determines that the public health is substantially and imminently endangered by a person with or suspected of having active tuberculosis, he may take the following actions as reasonably necessary to protect the public health: (1) issue a warning stating that the person should have a physician’s examination for tuberculosis to a person who has active tuberculosis or who is suspected of having active tuberculosis when that person is unable or unwilling voluntarily to submit to such examination despite demonstrated efforts to educate and counsel the person about the need for such examination; (2) issue a warning stating that the person should complete an appropriate prescribed course of medication for tuberculosis when that person has active tuberculosis but is unwilling or unable to adhere to an appropriate prescribed course of medication despite a demonstrated effort to educate and counsel the person about the need to complete the prescribed course of treatment and the offering of such enablers and incentives as are reasonably appropriate to facilitate the completion of treatment by that person; (3) issue a warning stating that the person should follow a course of directly observed therapy for tuberculosis that should be given in such a manner as shall minimize the time and financial burden on the person given that person’s individual circumstances, when that person has active tuberculosis, has been nonadherent to treatment for it and is unwilling or unable otherwise to adhere to an appropriate prescribed course of medication for tuberculosis despite a demonstrated effort to educate and counsel the person about the need to complete the course of treatment and the provision of such enablers and incentives to the person as are reasonable appropriate to facilitate the completion of treatment by that person; (4) issue an emergency commitment order which shall extend for no more than [ninety-six (96) hours] that authorizes the removal to or detention in a hospital or other medically-appropriate setting of a person: (A) who has active tuberculosis that is infectious or who presents a substantial likelihood of having active tuberculosis that is infectious based upon epidemiological, clinical, radiographic evidence and laboratory test results; (B) who poses a substantial and imminent likelihood of transmitting tuberculosis to others because of his or her inadequate separation from others, based on a physician’s professional judgment using recognized infection control principles; (C) who is unwilling or unable to behave so as not to expose others to risk of infection for tuberculosis despite a demonstrated effort to educate and counsel the person about the need to avoid exposing other and required contagion precautions; (D) who has expressed or demonstrated an unwillingness to adhere to the prescribed course of treatment that would render the person noninfectious despite being educated and counseled about the need to do so.
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and being offered such enablers and incentives as are reasonably appropriate to facilitate the completion of treatment; and (E) for whom emergency commitment is the least restrictive alternative to protect the public health. When issuing an emergency commitment order, the [director of health] may direct a police officer or other designated transport personnel to immediately transport the person with tuberculosis as so ordered by the [director of health.] The police officer shall take into custody and isolate the person in such a manner as required by the [director of health.] The [director of health] shall notify the police officer or other personnel concerning any necessary infection control procedures; (5) petition the probate court for a judicial commitment order that authorizes the removal to or detention in a hospital or other medically-appropriate setting for the purposes of facilitating completion of a prescribed course of treatment for tuberculosis of a person: (A) Who has active tuberculosis; (B) who is unwilling or unable to adhere to an appropriate prescribed course of treatment for tuberculosis despite a demonstrated effort to educated and counsel the person about the need to complete the course of treatment and to provide such enablers and incentives to the person as are reasonably appropriate to facilitate the completion of treatment by that person; (C) who has demonstrated a pattern of persistent nonadherence to treatment for tuberculosis; (D) for whom commitment for the purposes of completion of the prescribed course of treatment for active tuberculosis is necessary to prevent the development of drug-resistant tuberculosis organisms; and (E) for whom commitment for the purpose of treatment for active tuberculosis is the least restrictive course of action available to protect the public health in that other less restrictive alternatives to encourage that person's adherence to the prescribed course of treatment for tuberculosis have failed.

Section 5. [Warnings and Emergency Commitment Orders: Required Information.] Any warning or order issued by the [director] under subdivisions (1) to (4), inclusive, of Section (4) of this act, or a petition under subdivision (5) of Section (4) of this act shall be in writing setting forth: (1) The name of the person who is the subject of the warning, order or petition; (2) the factual basis for the director's professional judgment that the person has active tuberculosis or, in the case of a warning concerning examination, is suspected of having active tuberculosis; (3) in the case of a warning concerning examination under subdivision (1) of Section (4) of this act, the efforts that have been made to educate and counsel the person about the need for examination, the medical and legal consequences of failing to agree to it and the factual basis for the director's professional judgment that the person is unable or unwilling voluntarily to submit to such examination; (4) in the case of warnings and order under subdivision (2) to (4), inclusive of Section (4) of this act and a petition under subdivision (5) of Section (4) of this act, the efforts that have been made to educate and counsel the person...
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about the need to complete the appropriate prescribed course of treatment
and the medical and legal consequences of failing to do so, a description of
the enablers and incentives that have been offered or provided to the per-
son, and the factual basis for the director's professional judgment that the
person is unable or unwilling voluntarily to adhere to the appropriate pre-
scribed course of treatment; (5) in the case of an emergency commitment
order under Section (4) of this act, the factual basis for the director’s profes-
sional judgment that: (B) the person poses a substantial and imminent
likelihood of transmitting tuberculosis to others; (C) the person is unable or
unwilling to behave so as not to expose others to risk of infection; and (D)
emergency commitment is the least restrictive alternative available to pro-
tect the public health; (6) in the case of a petition for commitment under
Section (4) of this act, the factual bases for the director’s professional judg-
ment that: (A) The person has been persistently nonadherent to treatment
for tuberculosis; (B) commitment for the purpose of treatment for active
tuberculosis is necessary to prevent the development of drug-resistant tu-
berculosis organism; (C) commitment for the purpose of treatment for ac-
tive tuberculosis is the least restrictive alternative to protect the public
health in that other alternatives to encourage that person’s adherence to
treatment have failed. Any warnings or orders issued pursuant to Sections
(4) and (12) of this act shall specify the period of time that the warning or
order is to remain effective, provided: (i) Any order authorizing examina-
tion for tuberculosis shall not continue beyond the minimum period of time
required, with the exercise of all due diligence, to make a medical determi-
nation of whether the person who has active tuberculosis is infectious or
whether the person who is suspected of having tuberculosis has active tu-
berculosis; (ii) any warning concerning treatment or directly observed
therapy shall not continue beyond the conclusion of the prescribed course
of anti-tuberculosis treatment; and (iii) any order authorizing emergency
commitment shall not exceed [ninety-six (96)] hours. Any order for emer-
cyment commitment or petition for commitment shall specify the place of
confinement, which shall be in a facility approved by the [commissioner of
public health] and addiction services ad which shall not be a prison, jail or
other enclosure where those charged with a crime are incarcerated unless
the person who is the subject of the order is being held on a criminal charge.
Within [twenty-four (24)] hours of the issuance of the order or petition, the
[director of health] shall notify the [commissioner of public health] and ad-
diction services that such an order or petition has been issued.

Section 6. [Court Hearings; Application.] The [director of health] may
make application to the probate court for the district in which a person
subject to a warning issued under subdivision (1) of Section (4) of this act
resides for an enforcement order. A person concerning whom said applica-
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...tion is made shall have the right to a court hearing which shall be held by

the probate court within [three (3)] business days of receipt of such applica-
tion. The hearing shall be held to determine: (1) if the person has active
tuberculosis or is suspected of have active tuberculosis; (2) if the person is
unable or unwilling to be examined voluntarily; (3) if efforts have been
made to educate the person about the need for examination; (4) whether
the order is necessary and is the least restrictive alternative to protect the
public health. The probate court may issue a warrant for the apprehension
of a person who is the subject of an order for examination, and a police
officer for the town in which such court is located, or if there is no such
police officer then the state police or such other officer as the court may
determine, shall deliver the person to a facility for examination as directed
by the health director.

Section 7. [Three-Judge Court.] Immediately upon issuance of an emer-
gency commitment order under subdivision (4) of Section (4) of this act, the
[director of health] shall petition the probate court for the district in which
the person who is subject to the order resides to determine whether such
commitment shall be continued. The probate court administrator shall
appoint a three-judge court from among the several judges of probate to
conduct the hearing. Such three-judge court shall consist of at least [one
(1)] judge who is an attorney-at-law admitted to practice in this state. The
judge of probate having jurisdiction under the provisions of this section
shall be a member, provided such judge may disqualify himself, in which
case all [three (3)] members of such court shall be appointed by the probate
court administrator. Such three-judge court when convened shall be sub-
ject to all of the provisions of law as if it were a single-judge court. The
involuntary confinement of a person under this section shall not be ordered
by the court without the vote of at least [two (2)] of the [three (3)] judges
convened hereunder. The judges of such court shall designate a chief judge
from among their members. All records for any case before the three-judge
court shall be maintained by the court of probate having jurisdiction over
the matter as if the three-judge court had not been appointed. The hearing
shall be held within [ninety-six (96)] hours of the issuance of such order of
emergency commitment and the court shall cause such advanced notice as
it directs thereof to be given to the person who is the subject of the order
and such other person as it may direct. The court shall determine: (1) if the
person has active tuberculosis that is infectious or presents a substantial
likelihood of having active tuberculosis that is infectious based upon epide-
miological, clinical, or radiographic evidence, and laboratory test results;
(2) if the person poses a substantial and imminent likelihood of transmit-
ting tuberculosis to others because of inadequate separation from others,
based on a physician’s professional judgment using recognized infection
control principles; (3) if the person is unwilling or unable to behave so as to
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not expose others to risk of infection from tuberculosis; (4) if efforts have been made to educate and counsel the person about the need to avoid exposing others required contagion precautions; (5) if the person has expressed or demonstrated an unwillingness to adhere to the prescribed course of treatment that would render the person noninfectious; (6) if efforts have been made to educate and counsel about the need to complete treatment and if reasonably appropriate enablers and incentives have been offered to facilitate the completion of treatment; and (7) whether the order is necessary and is the least restrictive alternative to protect the public health.

Section 8. [Warranty.] A petition by a [director of health] for a commitment order pursuant to subdivision (5) of Section (4) of this act shall be heard by the probate court for the district in which the subject of such petition resides within [three (3)] business days of receipt of such petition. The probate court administrator shall appoint a three-judge court from among the several judges of probate to conduct the hearing. Such three-judge court shall consist of at least [one (1)] judge who is an attorney-at-law admitted to practice on this state. The judge of probate having jurisdiction under the provisions of this section shall be a member, provided such judge may disqualify himself, in which case all [three (3)] members of such court shall be appointed by the probate court administrator. Such three-judge court when convened shall be subject to all of the provisions of law as if it were a single-judge court. The involuntary confinement of a person under this section shall not be ordered by the court without the vote of at least [two (2)] of the [three (3)] judges convened hereunder. The judges of such court shall designate a chief judge from among their members. All records for any case before the three-judge court shall be maintained by the court of probate having jurisdiction over the matter as if the three-judge court had not been appointed. The court shall cause such advanced notice as it directs thereof to be given to the person who is the subject of the order and such other person as it may direct. The hearing shall be held to determine: (1) if the person has active tuberculosis; (2) if the person is unwilling or unable to adhere to an appropriate prescribed course of treatment for tuberculosis; (3) if efforts have been made to educate and counsel the person about the need to complete the course of treatment; (4) if reasonably appropriate enablers and incentives have been provided to the person to facilitate the completion of treatment by that person; (5) if the person has a demonstrated pattern of persistent nonadherence to treatment of tuberculosis; (6) if commitment for the purposes of completion of the prescribed course of treatment for active tuberculosis is necessary to prevent the development of drug-resistant tuberculosis organisms; and (7) whether the order is necessary and is the public health in that other less restrictive alternatives to encourage that person's adherence to the prescribed course of treatment for tuberculosis have failed. The probate court may issue a
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warrant for the apprehension of a person who is the subject of an order for
commitment, and a police officer for the town in which such courts located
or if there is no such police officer then the state police or such other officer
as the court may determine, shall deliver the person to the place for confi-

Section 9. [Rights] All orders by [health directors] and all applications
or petitions for a hearing under this act shall be hand-delivered to the per-
son subject to the order as quickly as reasonably possible and shall inform
him that: (1) He or his representative has a right to be present at the
hearing; (2) he has a right to counsel and, if indigent or otherwise unable to
pay for or to obtain counsel, he has a right to have counsel appointed to
represent him; (3) the court shall have the right to appoint and hear addi-
tional expert witnesses at the expense of the petitioner; (4) he has a right to
be present and to cross-examine witnesses testifying at the hearing; (5) the
proceedings before the probate court shall be recorded and shall be trans-
scribed if he appeals or files a writ of habeas corpus; (6) the proceedings
before the court shall be confidential and shall not be disclosed unless he or
his legal representative requests, or the probate court so orders for good
cause shown; (7) he has a right to appeal an order of the probate court to the
superior court; and (8) he has a right to apply to the probate court to termi-
nate or modify an order it has made under Section (12) of this act, as pro-
vided in Section (13) of this act. If the court finds that such person is indi-
gent or otherwise unable to pay for or to obtain counsel, the court shall
appoint counsel for him, unless such person refuses counsel and the court
finds that the person understands the nature of his refusal. If the person
does not select his own counsel, or if counsel selected by the person refuses
to represent him or is not available for such representation, the court shall
appoint counsel for the person from a panel of attorneys admitted to prac-
tice in this state provided by the probate court administrator in accordance
with regulations promulgated by the probate court administrator in accord-
ance with state law. The reasonable compensation of appointed counsel
for a person who is indigent or otherwise unable to pay for counsel shall be
established by and paid from the probate court administration fund.

Section 10. [Medical Records] Prior to any hearing under this act, such
person or his counsel shall be afforded access to all the person's medical
records including, without limitation, hospital records if such person is hos-
pitalized. If such person is hospitalized at the time of the hearing the hos-
pital shall provide the person or his counsel access to all records in its pos-
session relating to the condition of the person. Nothing in this subsection
shall prevent timely objection to the admissibility of evidence in accordance
with the rules of civil procedure.
Section 11. [Burden of Proof.] At any hearing held under this act, the [director of health] shall have the burden of showing by clear and convincing evidence that: (1) The person has active tuberculosis or, in the case of an examination order, is suspected of having active tuberculosis; (2) in the case of an enforcement order for examination, that efforts have been made to educate and counsel the person about the need for examination and that the person remains unable or unwilling voluntarily to submit to such examination; (3) in the case of an order under subdivision (4) of Section (4) of this act and a petition under subdivision (5) of said Section (4), that efforts that have been made to educate and counsel that person about the need to complete the appropriate prescribed course of treatment and that reasonably appropriate enablers and incentives have been offered or provided to the person, and that the person remains unable or unwilling voluntarily to adhere to the appropriate prescribed course of treatment; (4) in the case of continuation of an emergency commitment order under subdivision (4) of Section (4) of this act that: (A) The person is infectious or presents a substantial likelihood of being infectious, (B) the person poses a substantial and imminent likelihood of transmitting tuberculosis to others, (C) the person is unable or unwilling to behave so as not to expose others to risk of infection and (D) commitment is the least restrictive alternative available to protect the public health; (5) in the case of a petition for commitment under subdivision (5) of subsection (c) of this act, that (A) the person has been persistently nonadherent to treatment for tuberculosis, (B) commitment for the purpose of treatment for active tuberculosis is necessary to prevent the development of drug-resistant tuberculosis organisms, (C) commitment for the purpose of treatment for active tuberculosis is the least restrictive alternative to protect the public health in that other alternatives to encourage said person's adherence to treatment have failed; and (6) the order sought by the [director of health] is necessary and is the least restrictive alternative to protect the public health.

Section 12. [Orders.] If the court, at such hearing, finds by clear and convincing evidence that the [director of health] has met his burden of proof as set forth in subsection (11) of this act, it shall: (1) In the case of examination orders: (A) Order such person to be examined; or (B) enter an order with such terms and conditions as it deems appropriate to protect the public health in the manner least restrictive of the individual's liberty and privacy; (2) in the case of a continuation of an emergency commitment issued pursuant to subdivision (4) of Section (4) of this act, (A) enter an order, authorizing the continued commitment of such person only for so long as the person remains infectious and poses a risk of transmission to others or (B) enter an order with such terms and conditions as it deems appropriate to protect the public health in the manner least restrictive of the individual's liberty and privacy; and (3) in the case of a petition for a commitment order
for treatment issued pursuant to subdivision (5) of Section (4) of this act, (A) order the continued commitment but only for so long as is necessary to complete the prescribed course of treatment or to demonstrate adherence to treatment, or (B) enter an order with such terms and conditions as it deems appropriate to protect the public health in the manner least restrictive of the individual's liberty and privacy. If the court, at such hearing, find that the [director of health] has failed to meet his burden of proof, it shall enter no orders, provided, if the person has been subject to an emergency commitment, it shall order a release from such commitment.

Section 13. [Termination/ Modification of Orders.] Such person may, at any time, move the court to terminate or modify an order made under Section (12) of this act, in which case a hearing shall be held within [five (5)] business days in accordance with this subsection. In addition, the court shall, on its own motion, review at least every [six (6)] months any order of commitment issued under this act to determine if the conditions that required the commitment or restriction of the person still exist. If the court finds at such hearing, held on motion of the person or on its own motion, that the conditions that warranted the issuance of the order no longer exist, it shall dissolve said order. At such hearing, the [director of health] shall bear the burden of proof as specified in Section (11) of this act.

Section 14. [Appeals.] Any person aggrieved by an order of the court of probate under this act may take an appeal to the superior court. The probate court shall cause a recording of any hearing held pursuant to this act to be made, to be transcribed only in the event of an application for a writ of habeas corpus, or an appeal from the decree rendered hereunder. A copy of such transcript shall be furnished without charge to the appellant or applicant for the writ of habeas corpus whom the court of probate finds unable to pay for the same. In such case, the cost of preparing such transcript shall be paid by the original petitioner.

Section 15. [Forcible Administration of Medication.] The provisions of this act shall not be construed to permit or require the forcible administration of any medication.

Section 16. [Confidentiality.] All health directors' orders, applications or petitions for a hearing, notices of a hearing and proceedings of a hearing under this act shall be kept confidential and shall not be disclosed, except to the parties to the proceeding, or upon the request of the person who is the subject of the order or his legal representative, or upon order of the probate court for good cause shown.
Suggested State Legislation

1 Section 17. [Language] All health directors' emergency commitment orders and warnings shall be in a language that the person who is the subject of the warning or order can comprehend.

1 Section 18. [Regulations]The [commissioner] may adopt such regulations as are necessary to carry out and enforce the provisions of this act.

1 Section 19. [Effective Date] [Insert effective date.]
Ticket Scalping Act

Generally, this act declares it unlawful for people or companies to sell tickets to baseball games, football games, hockey games, theater establishments or any other amusement for a price more than the price printed on the face of the ticket. Ticket brokers are exempted from some of the act’s provisions if they meet the following requirements:

- they register with the secretary of state’s office;
- they are engaged in the resale of tickets on a regular ongoing basis from one or more locations;
- reselling tickets is the principal business activity at these locations;
- neither the ticket brokers nor any of their employees have been convicted of violating the act within the preceding twelve months;
- they maintain a state wide toll free number for consumer complaints and inquiries;
- they adopt a minimum standard refund policy and standards of professional conduct;
- they adopt procedures for binding resolution of consumer complaints by an independent party
- they establish and maintain a fund in excess of $100,000, at least fifty percent of which must be cash and available to pay valid customer complaints.

Submitted as:
Illinois
Public Act 89-406
This law became effective on November 15, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title] This act may be cited as the “Ticket Scalping Act.”

2. Section 2. [Unlawful Ticket Sales.]
   (a) Except as otherwise provided in subsection (b) of this section and in Section 6, it is unlawful for any person, persons, firm or corporation to sell tickets for baseball games, football games, hockey games, theatre entertainments, or any other amusement for a price more than the price printed upon the face of said ticket, and the price of said ticket shall correspond with the same price shown at the box office or the office of original distribution.
(b) This act does not apply to the sale of tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind for a price in excess of the printed box office ticket price by a ticket broker who meets all of the following requirements:

1. The ticket broker is duly registered with the [office of the secretary of state] on a registration form provided by that office. The registration must contain a certification that the ticket broker:
   1. Engages in the resale of tickets on a regular and ongoing basis from [one (1)] or more permanent or fixed locations located within this state;
2. Maintains as the principal business activity at those locations the resale of tickets;
3. Displays at those locations the ticket broker’s registration;
4. Maintains at those locations a listing of the names and addresses of all persons employed by the ticket broker;
5. Is in compliance with all applicable federal, state, and local laws relating to its ticket selling activities, and that neither the ticket broker nor any of its employees within the preceding [twelve (12)] months have been convicted of a violation of this act; and
6. Meets the following requirements:
   i. Maintains a statewide toll free number for consumer complaints and inquiries;
   ii. Has adopted a code that advocates consumer protection that includes, at a minimum:
      a. Consumer protection guidelines;
      b. A standard refund policy; and
      c. Standards of professional conduct;
   iii. Has adopted a procedure for the binding resolution of consumer complaints by an independent, disinterested third party; and
   iv. Has established and maintains a consumer protection rebate fund in an amount in excess of [one hundred thousand (100,000)] dollars, at least [fifty (50)] percent of which must be cash available for immediate disbursement for satisfaction of valid consumer complaints.

Alternatively, the ticket broker may fulfill the requirements of subparagraph (F) of this subsection(b) if the ticket broker certifies that he or she belongs to a professional association organized under the laws of this state, or organized under the laws of any other state and authorized to conduct business in [insert state] that has been in existence for at least [three (3)] years prior to the date of that broker’s registration with the [office of the secretary of state] and is specifically dedicated, for and on behalf of its members, to provide and maintain the consumer protection requirements of subparagraph (F) of subsection (b) to maintain the integrity of the ticket brokerage industry.
Section 3. [Sitting or Standing Near Facilities.] The ticket broker and his employees must not engage in the practice of selling, or attempting to sell, tickets for any event while sitting or standing near the facility at which the event is to be held or is being held.

Section 4. [Taxes.] The ticket broker must comply with all requirements of the Retailers’ Occupation Tax Act and all other applicable federal, state and local laws in connection with his ticket selling activities.

Section 5. [Registration.] Beginning [insert date,] no ticket broker shall advertise for resale any tickets within this state unless the advertisement contains the name of the ticket broker and the [insert state] registration number issued by the [office of the secretary of state] under this section. Each ticket broker registered under this act shall pay an annual registration fee of [one-hundred (100)] dollars.

Section 6. [Service Charges.] Nothing contained in this act was ever intended to prohibit nor shall ever be deemed to prohibit a ticket seller, with consent of the sponsor of such baseball game, football game, hockey game, theatre entertainment or other amusement, from collecting a reasonable service charge, in addition to the printed box office ticket price, from a ticket purchaser in return for service actually rendered.

Section 7. [Effective date.] [Insert effective date.]
In-line Skates Safety Requirements

This act establishes safety requirements for in-line skates. Generally, it requires in-line skates manufactured after a specified date to have a stopping device and a warning label. Companies which sell in-line skates must also offer protective head gear to customers who buy in-line skates. Protective gear includes helmets which meet American National Standards Institute or Snell Memorial Foundation Standards, wrist guards, elbow and knee pads. Generally, a warning label means a shield or plate advising skaters to wear protective gear.

The act also applies to how and when people can skate. For example, it prohibits in-line skaters from carrying packages which obstruct their vision. It prohibits in-line skaters from skating more than two abreast and requires them to skate single file when they are being overtaken by a vehicle. It prohibits skating at night unless the skaters wear reflective clothing.

*Submitted as:
New York
CH. 694 (A. 5954-C)
Enacted 1995.
*New York S. 5753 and A. 8427 (ch. 16, Laws of 1996) amended Ch. 694 to modify the definitions of skate, stopping device and warning label. Readers can obtain copies of the 1996 law by contacting the New York legislature.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the “In-line Skates - Safety Requirements Act.”

Section 2. [Legislative Findings and Declaration of Purpose] The [legislature] finds that the design and construction of in-line skates, so as to minimize friction upon contact with the ground, thereby enabling ever more faster speeds to be attained, poses a special safety hazard, particularly to children, which must be addressed.

The [legislature] further finds that the unregulated sale of in-line skates to, and their subsequent use by, state residents have resulted in many serious injuries to various body parts of residents and children, most notably, the heads, ankles, knees, elbows and wrists, as shown by statistics obtained from hospital emergency room physicians. Although the dangers from the unregulated manufacture, sale and use of in-line skates have gone largely
In-line Skates Safety Requirements

unrecognized by the public, these physicians have found that: (a) the design and construction of in-line skates inhibit the ability of users to stop, thereby increasing the likelihood of damaging collisions, and (b) the attachment of a stopper part to the boot-blade together with the use of protective headgear and ankle, knee, elbow and wrist padding largely eliminate or significantly reduce the extent of the injuries caused by the use of such in-line skates.

Accordingly, the [legislature] declares this act to be necessary for the protection of the public health, safety and welfare, and to be in the public interest.

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

(a) “Protective gear” shall mean the following: a helmet meeting the standards of the American National Standards Institute (Ansi Z 90.4 bicycle helmet standards) or the Snell Memorial Foundation’s Standards for Protective Headgear for use in Bicycling and wrist guards, elbow pads, and knee pads of such standards, designs, sizes, strengths, and thicknesses as will protect the wearer against serious physical injury caused by impact to the body part on which such protective gear is designed to be worn, such as, but not limited to, from falls and collisions.

(b) “In-line skates” shall mean manufactured or assembled devices each consisting of a shoe boot with a bladelike metal runner approximately [three (3)] to [four (4)] inches in thickness mounted or permanently attached thereto in a frame across the length of such shoe boot, with such bladelike metal runner containing [three (3),] [four (4),] or [five (5)] metal ball bearing wheels designed to minimize friction with any surface with which they come in contact and which are aligned along the length of the runner in more or less a straight line, and used to skate or glide, by means of human foot and leg power.

(c) “Stopper” or “stopping device” shall mean a part which is attached to each bladelike metal runner or boot or both, of in-line skates and designed to increase friction with the ground and enable users of in-line skates to brake or stop moving.

(d) “Warning label” shall mean a label, shield or plate with substantially the following notice printed in clear and conspicuous type: “Warning: Use of these in-line skates without protective gear - a helmet, wrist guards, elbow pads, and knee pads - may result in serious injury!”

Section 4. [Manufacture and Sale of In-line Skates; Regulation of.]

(a) No person, firm, corporation, or other legal entity which manufactures or assembles in-line skates to be sold, offered for sale, or distributed in this state on or after [insert date] shall manufacture, assemble, sell, offer to sell, or distribute in this state such in-line skates unless such in-line skates are manufactured and assembled with a stopping device and warn-
Suggested State Legislation

such warning label, shield, or plate shall be permanently affixed to each in-line skate in such a manner that the printed notice is readily visible and such warning label cannot be removed without being defaced or destroyed.

(b) No person, firm, corporation, or other legal entity which is regularly engaged in the sale or offering for sale at retail, for consumer use, of in-line skates shall, after [insert date], sell in-line skates which do not contain a stopping device and warning label as defined in this section.

(c) On or after [insert date], no person, firm, corporation or other legal entity which is regularly engaged in the business of selling, offering for sale, or distributing in-line skates at retail, for consumer use, shall offer such in-line skates for sale in the normal course of business in this state unless such person, firm, corporation or other legal entity contemporaneously offers for sale upon the same premises protective gear, as defined in this section.

(d) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than [five (5)] days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in [insert appropriate state citation,] and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than [five-hundred (500)] dollars for such violation. In connection with any such proposed application, the [attorney general] is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(e) No person, firm, corporation or other legal entity which is regularly engaged in the business of manufacturing, distributing, selling, or offering for sale in-line skates shall be deemed to have violated the provisions of this subdivision, if such person, firm, corporation or other legal entity shows by a preponderance of evidence that the violation was not intentional and resulted from bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(f) This subdivision shall not apply to the sale of in-line skates or protective gear sold or offered for sale by consumers for consumer use.

Section 5. [Helmets.] Notwithstanding any other provision of law to the contrary, the commissioner is authorized to establish a statewide in-line
In-line Skates Safety Requirements

skate and bicycle helmet public education and awareness program and a
statewide in-line skate and bicycle helmet distribution program. The pur-
pose of the statewide in-line skate and bicycle helmet public education and
awareness program is to provide a plan for the coordination of county, city,
town and village efforts to reduce in-line skate and bicycle related injuries
and fatalities. The purpose of the statewide in-line skate and bicycle hel-
met distribution program is to provide a plan for the coordination of county,
city, town and village efforts to distribute helmets to persons who can dem-
onstrate an economic hardship that precludes them from purchasing such
helmet. The commissioner shall make all necessary efforts to ensure that
an in-line skates and bicycle helmet distribution program is instituted in
each county of the state. The commissioner is authorized to promulgate
such rules and regulations as may be necessary to implement the provi-
sions of this subdivision.

Section 6. [In-line Skates and Roller Skates.] (a) In-line skates are manufactured or assembled devices each consist-
ing of a shoe boot with a bladelike metal runner approximately [three (3)]
to [four (4)] inches in thickness mounted or permanently attached thereto
in a frame across the length of such shoe boot, with such bladelike metal
runner containing [three (3),] [four (4),] or [five (5)] metal ball bearing wheels
designed to minimize friction with any surface with which they come in
contact and which are aligned along the length of the runner in more or less
a straight line, and used to skate or glide, by means of human foot and leg
power.
(b) Roller skates are manufactured or assembled devices each consist-
ing of a frame or shoe having clamps or straps or both or fastening, with a
pair of small wheels near the toe and another pair at the heel mounted or
permanently attached thereto, for skating or gliding by means of human
foot and leg power.

Section 7. [Operation of Bicycles and Play Devices.] The regulations
applicable to bicycles or to in-line skates shall apply whenever a bicycles is,
or in-line skates are, operated upon any highway, upon private roads open
to public motor vehicle traffic and upon any path set aside for the exclusive
use of bicycles, or in-line skates, or both.

Section 8. [Traffic Laws Apply to Persons Riding Bicycles or Skating or
Gilding on In-line Skates.] Every person riding a bicycle or skating or glid-
ing on in-line skates upon a roadway shall be granted all of the rights and
shall be subject to all of the duties applicable to the driver of a vehicle by
this act, except as to special regulations in this article and except as to
those provisions of this act which by their nature can have no application.
No person riding upon any bicycle, coaster, in-line skates, roller skates, sled
or any vehicle shall attach the same or himself to any vehicle being operated upon a roadway.

Section 9. [Riding on Roadways, Shoulders, Bicycle or In-line Skates Lanes and Bicycle or In-line Skates Paths]
(a) Upon all roadways, any bicycle or in-line skates shall be driven either on a usable bicycle or in-line skates lane or, if a usable bicycle or in-line skates lane has not been provided, near the right-hand curb or edge of the roadway or upon a usable right-hand shoulder in such a manner as to prevent undue interference with the flow of traffic except when preparing for a left turn or when reasonably necessary to avoid conditions that would make it unsafe to continue along near the right-hand curb or edge. Conditions to be taken into consideration include, but are not limited to, fixed or moving objects, vehicles, bicycles, in-line skates, pedestrians, animals, surface hazards or traffic lanes too narrow for a bicycle or person on in-line skates and a vehicle to travel safely side-by-side within the lane.
(b) Persons riding bicycles or skating or gliding on in-line skates upon a roadway shall not ride more than [two (2)] abreast. Persons riding bicycles or skating or gliding on in-line skates shall be driven either on a usable bicycle or in-line skates lane or, if a usable bicycle or in-line skates lane has not been provided, near the right-hand curb or edge of the roadway or upon a usable right-hand shoulder in such a manner as to prevent undue interference with the flow of traffic except when preparing for a left turn or when reasonably necessary to avoid conditions that would make it unsafe to continue along near the right-hand curb or edge. Conditions to be taken into consideration include, but are not limited to, fixed or moving objects, vehicles, bicycles, in-line skates, pedestrians, animals, surface hazards or traffic lanes too narrow for a bicycle or person on in-line skates and a vehicle to travel safely side-by-side within the lane.
(c) Any person operating a bicycle or skating or gliding on in-line skates who is entering the roadway form a private road, driveway, alley or over a curb shall come to a full stop before entering the roadway.

Section 10. [Carrying Articles.] No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least [one (1)] hand upon the handlebars. No person skating or gliding on in-line skates shall carry any package, bundle, or article which obstructs his or her vision in any direction.

Section 11. [Age Limits.] No person, [one (1)] or more years of age and less than [fourteen (14)] years of age, shall skate or glide on in-line skates unless such person is wearing a helmet meeting the standards of the American National Standards Institute (Ansi A 90.4 bicycle helmet standards) or the Snell Memorial Foundation’s Standards for Protective Headgear for use in Bicycling. For the purposes of this subdivision, wearing a helmet means having a helmet of good fit fastened securely on the head with the
Section 12. [Fines.]
(a) Any person who violates the provisions of Sections 9 through 12 of this act shall pay a civil fine not exceeding [fifty (50)] dollars.
(b) The court may waive any fine for which a person who violates Section 9 through 12 of this act would be liable if the court finds that due to reasons of economic hardship such person was unable to purchase a helmet or due to such economic hardship such person was unable to obtain a helmet from the statewide in-line skate and bicycle helmet distribution program or a local distribution program.

Section 13. [Summons.] A police officer shall only issue a summons for violations of this act by a person less than [fourteen (14)] years of age to the parent or guardian of such person if the violation by such person occurs in the presence of such person’s parent or guardian and where such parent or guardian, is [eighteen (18)] years of age or more. Such summons shall only be issued to such parent or guardian, and shall not be issued to the person less than [fourteen (14)] years of age.

Section 14. [Local Laws.] Sections 9 through 12 of this act shall not be applicable to any county, city, town or village that has enacted a local law or ordinance prior to the effective date of this act that prohibits a person who is [one (1)] or more years of age and less than [fourteen (14)] years of age from operating a bicycle or skating or gliding on in-line skates without wearing a bicycle helmet meeting the standards of the American National Standards Institute (Ansi A 90.4 bicycle helmet standards) or the Snell Memorial Foundation’s Standards for Protective Headgear for use in Bicycling or that prohibits a person operating a bicycle from allowing a person [five (5)] or more years of age and less than [fourteen (14)] years of age to ride as a passenger on a bicycle unless such passenger is wearing a bicycle helmet that meets such standards. The failure of any person to comply with any such local law or ordinance shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action. The legislative body of a county, city, town, or village may enact a local law or ordinance that prohibits a person who is [fourteen (14)] or more years of age from skating or gliding on in-line skates or from operating or riding as a passenger on a bicycle without wearing a bicycle helmet.
Suggested State Legislation

1 Section 15. [Reflective Clothing.] No person shall skate or glide on in-line skates outside during the period of time between [one-half (1/2)] hour after sunset and [one-half (1/2)] hour before sunrise unless such person is wearing an outer jacket or other clothing made of laminated or reflective material and which is of a light or bright color.

1 Section 16. [Effective Date] [Insert effective date.]
Uniform Motor Vehicle Records Disclosure

This act regulates how the state motor vehicle department, its officers, employees, agents or contractors can disclose personal information from motor vehicle records. Personal information from state motor vehicle records may be disclosed after the department has provided notice that the information collected may be disclosed to any person in a clear and conspicuous manner on forms for issuance or renewal of the driver's licenses, registrations, titles or identification documents and has provided an opportunity on such forms for a person to prohibit such disclosure.

Disclosure is permitted to carry out the purposes of federal legislation and to use in connection with other matters such as driver safety and motor vehicle theft and in cases where the requester has obtained and demonstrates the written consent of the person who is the subject of the information. In addition, information may be disclosed for use by any government agency, including a court or law enforcement agency, in carrying out its functions; any insurer or insurance support organization or a self-insured entity; any licensed private investigator agency or licensed security service; an employer to obtain or verify information; and in research and in producing statistical reports.

This act is intended to help states implement the federal Driver’s Privacy Protection Act of 1994 (Title XXX of Public Law 103-322). It is originally based on a model from the American Association of Motor Vehicle Administrators (AAMVA).

Submitted as:
West Virginia
Enr. Com. Sub. for S.B. No. 381
Enacted 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the “Uniform Motor Vehicle Records Disclosure Act.”
2

1 Section 2. [Statement of Intent and Purpose] The purpose of this act is to implement the federal Driver’s Protection Act of 1994 (Title XXX of Public Law 103-322) in order to protect the interest of individuals in their personal privacy by prohibiting the disclosure and use of personal information contained in their motor vehicle record, except as authorized by the individual or by law.
Suggested State Legislation

Section 3. [Definitions.] As used in this article:
(a) "Division" means the [division of motor vehicles;]
(b) "Disclose" means to make available or make known information con-
tained in a motor vehicle record to any person, organization, or entity;
(c) "Individual record" is a motor vehicle record which contains per-
sonal information about a designated person who is the subject of the record
as identified in a request;
(d) "Motor vehicle record" means any record that pertains to a motor
vehicle operator's or driver's license or permit, a motor vehicle registration,
a motor vehicle title or an identification document issued by the [division of
motor vehicles] or other state or local agency authorized to issue any such
form of credential;
(e) "Person" means an individual, organization or entity, but does not
include the state or an agency thereof;
(f) "Personal information" means information that identifies a person,
including his or her photograph or computerized image, social security num-
ber, driver identification number, name, address excluding the [five (5)] digit
zip code, telephone number and medical or disability information. Per-
personal information does not include information on vehicle accidents, driv-
ing or equipment related violations and driver's license or registration sta-
tus;
(g) "Record" includes any book, paper, photograph, photostat, card, film,
tape, recording, electronic date, printout or other documentary material
regardless of physical form or characteristic.

Section 4. [Prohibition on Disclosure and Use of Personal Information
from Motor Vehicles Records.] Notwithstanding any other provision of law
to the contrary, and except as provided in Sections 5 through 8, both inclu-
sive, of this act, the [division,] and any officer, employee, agent or contractor
thereof may not disclose any personal information obtained by the [divi-
sion] in connection with a motor vehicle record. Notwithstanding the pro-
visions of this act or any other provision of law to the contrary, finger im-
ages obtained and stored by the [division of motor vehicles] as part of the
driver's licensing process may not be disclosed to any person or used for any
purpose other than the processing and issuance of driver's licenses and
associated legal action unless the disclosure or other use is expressly au-
thorized by law.

Section 5. [Required Disclosures.] Personal information as defined in
Section 3 of this act shall be disclosed for use in connection with matters of
motor vehicles or driver safety and theft, motor vehicle emissions, motor
vehicle product alterations, recalls or advisories, performance monitoring
of motor vehicles and dealers by motor vehicle manufacturers and removal
of nonowner records from the original owner records of motor vehicle manu-
facturers to carry out the purposes of the federal Automobile Information
1901 et seq.), the National Traffic and Motor Vehicle Safety Act of 1966,
“Public Law 89-563” (U.S.C. 1381 et seq.), the Anti Car Theft Act of 1922,
“Public Law 102-519” (15 U.S.C. 2021 et seq.), and the Clean Air Act, “Public
Law 88-206” (42 U.S.C. 7401 et seq.), as amended, and all statutes and
agency compliance with, the said acts of the Congress of the United States.

Section 6. [Disclosure with Consent.] Personal information as defined
in Section 3 of this act shall be disclosed upon request if the person making
the request demonstrates in such form and manner as the department pre-
scribes that he or she has obtained the written consent of the person who is
the subject of the information.

Section 7. [Permitted Disclosures.] The [division] or its designee shall
disclose personal information as defined in Section 3 of this act to any per-
son who requests the information if the person:

(a) Has proof of his or her identity; and (b) verifies that the use of the
personal information will be strictly limited to [one (1)] or more of the fol-
lowing:

(1) For use by any governmental agency, including any court or
law-enforcement agency, in carry out its functions, or any private person or
entity acting on behalf of a governmental agency in carrying out its func-
tions;

(2) For use in connection with matters of motor vehicle or driver
safety and theft, motor vehicle product alterations, recalls or advisories,
performance monitoring of motor vehicles, motor vehicle parts and dealers,
motor vehicle market research activities including survey research and re-
moval of nonowner records from the original owner records of motor vehicle
manufacturers;

(3) For use in the normal course of business by a legitimate busi-
ness or its agents, employees or contractors;

(A) For the purpose of verifying the accuracy of personal infor-
mation submitted by the individual to the business or its agents, employees
or contractors; and

(B) If the information as submitted is not correct or is no longer
correct, to obtain the correct information, but only for the purposes of pre-
venting fraud by, pursuing legal remedies against or recovering on a debt
or security interest against the individual;

(4) For use in conjunction with any civil, criminal, administrative
or arbitral proceeding in any court or governmental agency or before any
self-regulatory body, including the service of process, investigation in an-
ticipation of litigation, the execution or enforcement of judgments and or-
Suggested State Legislation

(5) For use in research and producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(6) For use by any insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting;

(7) For use in providing notice to the owners of towed or impounded vehicles;

(8) For use by any licensed private investigator agency or licensed security service for any purpose permitted under this section;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver’s license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.);

(10) For use in connection with the operation of private tool transportation facilities;

(11) For bulk distribution for surveys, marketing or solicitations after the [division] has implemented methods and procedures to ensure that:

(A) Persons are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

(B) The information will be used, rented or sold solely for bulk distribution for surveys, marketing and solicitations and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that the material not be directed at them; and

(12) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

Section 8. [Disclosure of Individual Records.] Personal information as defined in Section 3 of this act that is contained in an individual record may be disclosed to any person making a request, without regard to intended use, after the [division] has provided in a clear and conspicuous manner on forms for issuance or renewal of operator or driver licenses, registrations, titles or identification documents, notice that personal information collected by the [division] may be disclosed to any person making a request for an individual record, and has provided in a clear and conspicuous manner on the forms an opportunity for each person who is the subject of a record to prohibit such disclosure.

Section 9. [Fees.] Any person making a request for disclosure of personal information required or permitted under Sections 5 through 8 of this act, both inclusive, shall pay to the [division] all reasonable fees related to providing the information: Provided, that all fees under this section shall
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be set by legislative rule.

Section 10. [Additional Conditions.] Prior to disclosing personal inform-
mation the [division] may require the person making the request to: (a)
Verify his or her identity; (b) verify that the information will be used only as
authorized, or that the consent of the person who is the subject of the infor-
mation has been obtained; and (c) make and file a written application in
such form and containing certification requirements as the [division] may
prescribe.

Section 11. [Resale or Redisclosure]
(a) An authorized recipient of personal information, except a recipient
under subsection 11; Section 7of this act or Section 8 of this act, may resell
or redisclose the information for any use permitted under said Section 7
except the use for bulk distribution for surveys, marketing or solicitations
as provided in said subsection 11.
(b) An authorized recipient of an individual record under Section 8 of
this act may resell or redisclose personal information for any purpose.
(c) An authorized recipient of personal information for bulk distribu-
tion for surveys, marketing or solicitations, under subsection 11, Section 7
of this act may resell or disclose personal information only in accordance
with the terms of said subsection concerning the right of individuals who
have requested in a timely manner, not to have the surveys, marketing or
solicitations directed at them.
(d) Any authorized recipient who resells or discloses personal informa-
tion shall: (1) Maintain for a period of not less than [five (5)] years, records
as to the person or entity receiving information, and the permitted use for
which it was obtained; and (2) make the records available for inspection by
the [division,] upon request.

Section 12. [Rules.] The [division] may promulgate rules in accordance
with the provisions of [insert appropriate state citation] to carry out the
purposes of this act.

Section 13. [Penalty for False Representation.] Any person who requests
the disclosure of personal information from [division] records and misrep-
resents his or her identity or makes a false statement on any application
required by the [division] pursuant to this act is guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not more than [one-thousand
(1,000)] dollars or confined in jail for not more than [one (1)] year, or both
fined and confined.

Section 14. [Effective Date] [Insert effective date.]
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The following cumulative index covers volumes of *Suggested State Legislation* since 1978 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.

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