The Council of State Governments, the multibranch association of the states and U.S. territories, works 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:

- Builds leadership skills to improve decision-making;
- Advocates multistate problem-solving and partnerships;
- Interprets changing national and international conditions to prepare states for the future; and
- Promotes the sovereignty of the states and their role in the American federal system.

Council Officers

Chair: Sen. Jeffrey Wells, Colo.  
President: Gov. George Pataki, N.Y.  
Chair-Elect: Rep. Charlie Williams, Miss.  
President-Elect: Gov. Pedro Rossello, P.R.  
ViceChair: Sen. Kenneth McClintock, P.R.

Council Offices

Headquarters
2760 Research Park Drive  
P.O. Box 11910  
Lexington, KY 40578-1910  
Phone: (606) 244-8000  
FAX: (606) 244-8001  
E-mail: info@csg.org  
Internet: www.csg.org and gopher.csg.org

Daniel M. Sprague, Executive Director  
Shari M. Hendrickson, Deputy Executive Director/Chief Executive Officer  
Bob Silvanik, Director of Program, Policy and Membership Services

Eastern: Alan V. Sokolow, Director  
5 World Trade Center, Suite 9241  
New York, NY 10048, (212) 912-0128  
FAX: (212) 912-0549, E-mail: csg@csg.org

Midwestern: Michael H. McCabe, Director  
641 E. Butterfield Road, Suite 401  
Lombard, IL 60148, (630) 810-0210  
FAX: (630) 810-0145, E-mail: csgm@csg.org

Southern: Colleen Cousineau, Director  
3355 Lenox Road, Suite 1050  
Atlanta, GA 30326, (404) 266-1271  
FAX: (404) 266-1273

Western: Kent Briggs, Director  
121 Second Street, 4th Floor  
San Francisco, CA 94105, (415) 974-6422  
FAX: (415) 974-1747  
E-mail: csgw@csg.org  
Denver, CO (303) 572-5454,  
FAX: (303) 572-5499

Washington: Abe Frank, Director  
444 N. Capitol St., N.W., Suite 401  
Washington, DC 20001, (202) 624-5460  
FAX: (202) 624-5452,  
E-mail: dcinfo@csg.org
Foreword

The Council of State Governments (CSG) is pleased to bring you this volume of Suggested State Legislation, the 57th 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; 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.

November 1997
Lexington, Kentucky

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

CSG Committee on Suggested State Legislation 1997 ................................... vii
Introduction .................................................................................................... xiii
Suggested State Legislation Style ............................................................... xv
Sample Act ..................................................................................................... xvii

Suggested Legislation

Emissions Reduction Market System ............................................................. 1
Net Energy Metering ...................................................................................... 9
Guaranteed Energy Contracts ...................................................................... 12
Alzheimer’s Care Disclosure, Nursing Home Violations ............................... 16
Physician Discipline and Physician Information (Note) ............................... 19
Interstate Emergency Management Assistance Compact ........................... 21
Land Use Mediation ..................................................................................... 27
Waiving Construction Permit Fees to Promote Accessibility ..................... 32
Smart Growth ............................................................................................... 35
Urban Area Revitalization .......................................................................... 44
Electricity Deregulation (Note) ................................................................... 45
Public Access to Legislative Documents ..................................................... 49
Federal Mandates for State Action (Note) .................................................... 52
Airbag Safety and Anti-theft ........................................................................ 61
Counterfeit Cellular Telephones ................................................................. 66
Controlled Substances Excise Tax Act ......................................................... 71
International Terrorism .............................................................................. 73
Youth Mentor Program ............................................................................... 75
Ephedrine and Pseudoephedrine ................................................................ 79
State Concealed Weapons Laws (Note) ...................................................... 85
Teen Courts .................................................................................................. 87
Increasing Homeownership Opportunities For Police .................................... 92
Death Penalty: Unitary Review ................................................................... 96
Service Dogs ............................................................................................... 106
Special Education Mediation ..................................................................... 108
School Discipline (Note) ........................................................................... 113
Prepaid Tuition Plans and College Savings Plans (Note) ............................ 115
Higher Education Performance Standards ............................................... 118
Home School Interscholastic Activities ...................................................... 136
Prenatal Care - HIV Testing (Note) .............................................................. 138
Health (Note) ............................................................................................. 140
Unauthorized Use of Sperm, Ova or Embryos ........................................... 145
Child Health Insurance (Note) .................................................................. 147
Telemedicine ............................................................................................... 148
## CSG Committee on Suggested State Legislation 1997

### Co-Chair
* Senator Robert R. Cupp, Ohio  
* Senator Kemp Hannon, New York

### Vice Chair
* Joyce Honaker, Committee Staff Administrator, Legislative Research Commission, Kentucky

### Alabama
* Rep. Albert Hall  
* Robert McCurley, Director, Alabama Law Institute  
Rep. Tony Petelos

### Alaska
Tamara Brandt Cook, Director, Legal Services, Legislative Affairs Agency  
Sen. Rick Halford  
* Terri Lauterbach, Legislative Counsel, Legislative Affairs Agency

### Arizona
Elizabeth Stewart, Assistant Attorney General, Office of the Attorney General

### Arkansas
* Sen. Mike Beebe  
Sen. Allen Gordon

### California
George DeLeon, Reciprocity Officer, State Controller's Office  
Sen. Quentin Kopp  
* Fred Silva, Chief Fiscal Advisor, California Senate

### Colorado
Charles S. Brown, Director, Legislative Council  
* Sen. Ray Powers  
Sen. Jeff Wells

### Connecticut
Sharon Brais, Assistant Director, Legislative Commissioner’s Office

### Delaware
Robert F. Gilligan  
Sen. Thomas B. Sharp

---

*Member, Subcommittee on Scope and Agenda
Florida
Theresa Frederick, Staff Director, Committee on Rules and Calendar
*Rep. Edward J. Healey
James R. Lowe, Staff Director, House Bill Drafting Services
Mitch Rubin, Executive Assistant and Counsel, House of Representatives
Mario L. Taylor, Staff Director, House Community Affairs Committee

Georgia
Attorney General Michael Bowers
Debra Elovich, Executive Director of Policy, Office of the Lieutenant Governor
Joy Hawkins, Director, Senate Research
Sen. Mark Taylor

Hawaii
Yen Lew, Administrative Assistant, Office of the Senate President
Sen. Norman Mizuguchi

Idaho
Treasurer Lydia Justice Edwards
Rep. Celia Gould

Illinois
*Sen. John J. Cullerton
John M. McCabe, Legislative Leader, National Conference of Commissioners on Uniform State Laws
Donald R. Vonnahme, Director, Division of Water Resources, Department of Transportation

Indiana
Rep. John R. Gregg
Sen. Jim Merritt

Iowa
Rep. Richard Arnold
Sen. Steve Hansen
Rep. Keith Krieman
Rep. Janet Metcalf

Kansas
Sen. Steve Morris

Kentucky
Rep. Thomas Robert Kerr
Sen. David Williams

Louisiana
Jerry J. Guillot, Administrator, Senate Research Services

*Member, Subcommittee on Scope and Agenda
Maine  Sen. Jeffrey Butland

Maryland  Del. Ann Marie Doory
William R. Miles, Principal Analyst, Department of Fiscal Affairs
Sen. Thomas V. Mike Miller Jr.
Sen. Ida G. Ruben
William G. Somerville, Revisor of Statutes and Deputy Director for Legislative Drafting, Department of Legislative Reference
Michael I. Volk, Director, Legislative Services Division

Massachusetts  Sen. William R. Keating
*Richard Walsh, Associate Counsel, Office of House Counsel

Michigan  Attorney General Frank Kelley
*William J. Pierce, Executive Director, National Conference of Commissioners on Uniform State Laws

Minnesota  Rep. Mary Jo McGuire
Sen. Tom Neuville
*Rep. James I. Rice
*Sen. Allan H. Spear

Mississippi  Joy Fergus, Office Supervisor, Senate
Charles J. Jackson Jr., Clerk of the House
Rep. Percy Maples
Rep. Clem Nettles

Missouri  Rep. Wayne Crump
B. Darrell Jackson, Director, House Research Office

Nebraska  *Sen. Chris Abboud
Patrick J. O’Donnell, Clerk of the Legislature

Nevada  Sen. Bob Coffin
Kim Morgan, Principal Deputy Legislative Counsel, Legislative Counsel Bureau
Sen. Randolph J. Townsend

*Member, Subcommittee on Scope and Agenda
New Hampshire  Donald R. Hunter, Research Director, Research Division, Office of Legislative Services

New Jersey  Kathleen Crotty, Executive Director, Senate Minority Office  Sen. Donald T. DiFrancesco


New York  Sen. Caesar Trunzo


Ohio  Sen. Bruce Johnson  Sen. Rhine L. McLin

Oklahoma  Scott Emerson, Chief Counsel, Legal Division  Rep. Jim Glover  Sen. Darryl Roberts  Patricia Sommer, House Staff Attorney  Tom Stanfill, Director, Senate Committee Staff Division  Sen. Gerald Wright

Oregon  Kathleen Beaufait, Chief Deputy, Legislative Counsel

Pennsylvania  Joseph K. Hoffman, Assistant Director, Bureau of Water Resources Management  Edward C. Hussie, Chief Counsel, Office of the Republican Leader  *Louis B. Kozloff, Coordinator, Legislative Floor Activities, House of Representatives  Stephen MacNett, Counsel, Office of the Senate Majority  Joseph W. Murphy, Chief Counsel, House Republican Caucus  *Virgil F. Puskarich, Executive Director, Local Government Commission

*Member, Subcommittee on Scope and Agenda
Rhode Island  Rep. Vincent Mesolella

South Carolina  Frank Caggiano, Clerk of the Senate
*Michael N. Couick, Attorney, Senate
Rep. Michael L. Fair
*Peden B. McLeod, Code Commissioner and Director, Legislative Council
Thomas Wyatt, Chief, Bureau of Drug Control, Department of Health and Environment Control

South Dakota  Sen. James B. Dunn
Sen. Harold W. Halverson

Tennessee  James A. Clodfelter, Director, Office of Legal Services
Sen. Steve I. Cohen
Rep. Lois DeBerry
Sen. Joe M. Haynes

Texas  Rep. Clyde Alexander
Rep. Hugo Berlanga
Steve Bresnen, Special Assistant, Office of the Lieutenant Governor
Steve Collins, Director of Legal Division, Legislative Council

Utah  William A. Arseneau, Director, Division of Surplus Property
*Rep. Don E. Bush
*Rep. Raymond W. Short
*Richard V. Strong, Director and General Counsel, Legislative Research

Virginia  Virginia A. Adkins, Staff Attorney, Division of Legislative Services
John M. Bennett, Staff Director, Senate Finance Committee
Del. Glenn R. Croshaw
Sen. R. Edward Houck
Del. Thomas M. Jackson Jr.
E.M. Miller Jr., Director, Division of Legislative Services

Washington  Sen. Jim Hargrove
Rep. Ken Jacobsen
Sen. Shirley J. Winsley

*Member, Subcommittee on Scope and Agenda
West Virginia
Del. E.W. Anderson
Del. Jerry L. Mezzatesta
Del. Rick Staton
Sen. Earl Ray Tomblin

Wyoming
Sen. April Brimmer Kunz
Sen. Frank Prevedel

American Samoa
Sen. Togiola T. Tulafono

Guam
Sen. Joe T. San Agustin

Puerto Rico
Sen. Mercedes Otero de Ramos
Sen. Rolando A. Silva

Former CSG, Chairmen and Presidents
(Ex Officio Voting Members)

Gov. Terry Branstad, Iowa
Rep. John Connors, Iowa
Gov. Jim Edgar, Illinois
Sen. Jeannette Hamby, Oregon
Rep. Roy Hausauer, North Dakota
Rep. John E. Miller, Arkansas
Gov. Zell Miller, Georgia
Spkr. Thomas B. Murphy, Georgia
Gov. Ben Nelson, Nebraska
Sen. W. Paul White, Massachusetts

*Member, Subcommittee on Scope and Agenda
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 29 years ago in the introduction to the 28th volume of Suggested State Legislation.

For 57 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policy makers on a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype on interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to internal security. The result was a program of suggested state legislation published as A Legislative Program for Defense. The Committee reconvened following the nation’s entry into World War II in order to develop a general program of state war legislation. By 1946, the volume of Suggested State War Legislation and Suggested State 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 57th compilation of Suggested State Legislation, represent the culmination of a year-long process in which legislation submitted by state officials and staff, CSG Associates and CSG staff was received and reviewed by members of the SSL Committee. The Committee also considers legislation from other sources, but only when that legislation is submitted through a state official. Other sources include public interest groups and members of the corporate community who are not CSG Associates.

During this process, members of the SSL Subcommittee on Scope and Agenda met on three separate occasions: first, in December 1996 in Cleveland, Ohio, again, in April 1997 in Lexington, Kentucky and a third time in Portland, Maine in July 1997, to screen and recommend legislation for final consideration by the SSL Committee. At their annual meeting in July 1997 in Portland, Maine, 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 or act represent a practical approach to the problem?
- Does the bill or act represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill or act logically consistent?
- Are the language of and style of the bill or act clear and unambiguous?

All items selected for publication in the annual volume are presented in a general format as shown in the Suggested State Legislation Style Manual and Sample Act which follow on pages xiv and xv. However, beginning with the 1997 volume, items presented in Suggested State Legislation volumes will more closely reflect the style and form as they were submitted to the program.

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. Readers should note that Suggested State Legislation drafts typically do not duplicate actual state legislation.

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

Although a formal solicitation of the states is conducted annually to gather legislation for consideration by the SSL Committee, state officials and staff, CSG Associates and CSG staff are encouraged to submit - at any time - legislation which is likely to be of interest and relevance to other states. In order to facilitate the selection and review process, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, Policy, Program & Membership Services, The Council of State Governments, 2760 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. SSL entries have the same general components. These are listed below. However, beginning with the 1997 edition, items presented in Suggested State Legislation will more closely reflect the style and form as they were submitted to the program.

Introductory Matter

The first component of 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 SSL Program. Interested parties should contact the originating state if they want to obtain a copy of an original bill or act.

Readers should also be aware that the SSL program does not guarantee that the bills or acts presented on its dockets or in Suggested State Legislation volumes are the most recent version of those bills or acts as proposed or enacted by a state. Interested parties should contact the originating state to determine whether bills or acts in the SSL dockets or volumes have been modified by that originating state.

Standardized Sections and Form

Beginning with the 1997 edition, items presented in 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 drafts as necessary.

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

To avoid an abundance of capitalization, which can prove distracting, most words are lower case. For example, “director,” “commissioner,” and “agency” are not capitalized.
Suggested State Legislation Drafts typically contain the following sections:

- (Title, enacting clause, etc.)
- Section # [Short Title.] This act may be cited as
- Section # [Legislative Findings/ Intent.]
- Section # [Definitions.] As used in this act
- Section # [Establishment Clause.]
- Section # [Severability.] [Insert severability clause.]
- Section # [Repealor.] [Insert repealor clause.]
- Section # [Effective Date.] [Insert effective date.]

The severability and repealor sections appear only when these sections are included in the legislation on which the entry is based. All entries, however, include the effective date section.

In editing the legislation, it is often necessary to indicate a state alternative to the name of an agency, position, number of appointees, punishment for an offense, etc. In such cases, this language is enclosed in brackets. For example, [board of county commissioners], [department of education], [five (5)] members, [thirty (30)] days, [commissioner of corrections], etc.

More general, bracketed language also is used in cases where the state-specific information would not be illustrative or useful for the reader.

Example:
(b) No licensee’s or certified school psychologist’s right to use his title as provided in [insert reference to appropriate section of state code] shall be denied.

Example:
(1) there are [insert number of children in the state of [state] under the age of three, [insert number] percent of whom experience developmental disabilities.

Comment sections are used in lieu of footnotes.
Sample Act
Criminal Rehabilitation Research Act

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

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

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

Suggested Legislation

(Title, enacting clause, etc.)

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

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

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

Comment: It is suggested that some commission members be ex-offenders.
Emissions Reduction Market System

This act promotes economic incentives and market-based approaches to achieve clean air compliance in an innovative and effective manner, particularly regarding federal clean air standards. It directs the state environmental protection agency to design an emissions market system to help the state meet applicable post-1996 provisions under the federal Clean Air Act Amendments of 1990. Parameters include a market-based emissions reduction, banking and trading system for stationary pollution sources.

The act establishes a five-year program enabling the state environmental protection agency to enter voluntary environmental management agreements with businesses. It includes provisions for public notice and hearings regarding the agreements. Permits and related conditions will be replaced by the executed agreements, and the businesses will sign innovative environmental performance guarantees.

Submitted as:
Illinois
HB 3161 (enrolled version)
PA 89-0465
Enacted, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Emissions Reduction Market System Act.”

Section 2. [Legislative Findings.] The [legislature] finds that:

(a) Emissions reductions market system:

(1) That achieving compliance with the ozone attainment provisions of federal Clean Air Act Amendments (CAAA) of 1990 calls for innovative and cost-effective implementation strategies.

(2) That economic incentives and market-based approaches can be used to achieve clean air compliance in an innovative and cost-effective manner.

(3) That development and operation of an emissions market system should significantly lessen the economic impacts associated with implementation of the federal Clean Air Act Amendments of 1990 and still achieve the desired air quality for the area.

(b) The [agency] shall design an emissions market system that will assist the state in meeting applicable post-1996 provisions under the CAAA

Suggested State Legislation - 1
of 1990, provide maximum flexibility for designated sources that reduce emissions, and that takes into account the findings of the national ozone transport assessment, existing air quality conditions, and resultant emissions levels necessary to achieve or maintain attainment.

(c) The [agency] may develop proposed rules for a market-based emissions reduction, banking, and trading system that will enable stationary sources to implement cost-effective, compliance options. In developing such a market system, the [agency] may take into consideration a suitable ozone control season and related reconciliation period, seasonal allotments of actual emissions and adjustments thereto, phased participation by size of source, suitable emissions and compliance monitoring provisions, an annual allotment set-aside for market assurance, and suitable means for the market system to be provided for in an appropriate state implementation plan. The proposal shall be filed with a [board] and shall be subject to the rulemaking provisions of this act. The rules adopted by the [board] shall include provisions that:

1. Assure that compliance with the required emissions reductions under the market system shall be, at a minimum, as cost-effective as the traditional regulatory control requirements in this state.

2. Assure that emissions reductions under the market system will not be mandated unless it is necessary for the attainment and maintenance of the National Ambient Air Quality Standard for ozone in a nonattainment area, as required of this state by applicable federal law or regulation.

3. Assure that sources subject to the program will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emission reductions required of all emission sources, including mobile and area sources, to attain and maintain the National Ambient Air Quality Standard for ozone in the Chicago nonattainment area.

4. Assure that credit is given or exclusion is granted for those emission units which have reduced emissions, either voluntarily or through the application of maximum available control technology or national emissions standards for hazardous air pollutants, such that those reductions would be counted as if they had occurred after the initiation of the program.

5. Assure that unusual or abnormal operational patterns can be accounted for in the determination of any source's baseline from which reductions would be made.

6. Assure that relative economic impact and technical feasibility of emissions reductions under the banking and trading program, as compared to other alternatives, is considered.

7. Assure that the feasibility of measuring and quantifying emissions is considered in developing and adopting the banking and trading program.

(d) Notwithstanding the other provisions of this act, any source or
other authorized person that participates in an emissions market system shall be eligible to exchange allotment trading units with other sources provided that established rules are followed.

(e) There is hereby created within the [state treasury] an interest-bearing special fund to be known as the [Alternative Compliance Market Account Fund,] which shall be used and administered by the [agency] for the following public purposes:

(1) To accept and retain funds from persons who purchase allotment trading units from the [agency] pursuant to regulatory provisions and payments of interest and principal.

(2) To purchase services, equipment, or commodities that help generate emissions reductions in or around an ozone nonattainment area in the state.

Section 3. [Purpose]

(a) Establishing a voluntary, pilot program:

(1) During the last decade, considerable expertise in pollution prevention, sophisticated emissions monitoring and tracking techniques, compliance auditing methods, stakeholder involvement, and innovative approaches to control pollution have been developed.

(2) Substantial opportunities exist to reduce the amount of or prevent adverse impacts from emissions or discharges of pollutants or wastes through the use of innovative and cost effective measures not currently recognized by or allowed under existing environmental laws, rules, and regulations.

(3) There are people regulated under this act who have demonstrated excellence and leadership in environmental compliance or stewardship or pollution prevention and, through the implementation of innovative measures, who can achieve further reductions in emissions or discharges of pollutants or wastes or continued environmental stewardship.

(4) Current environmental laws and regulations have, in some instances, resulted in burdensome transactional requirements that are unnecessarily costly and complex for regulated entities and have proven to be frustrating to the public that is concerned about environmental protection.

(5) The goals of environmental protection will be best served by promoting and evaluating the efforts of those people who are ready to achieve measurable and verifiable pollution reductions in excess of the otherwise applicable statutory and regulatory requirements or who can demonstrate real environmental risk reduction, promote pollution prevention, foster superior environmental compliance by other persons regulated under this act, and who can improve stakeholder involvement in environmental decision making.

(6) The United States Environmental Protection Agency is operating a pilot program entitled “Regulatory Reinvention (XL) Pilot Project,”
Federal Register 27282 (May 23, 1995) (Federal XL Program), to allow members of the regulated community the flexibility to develop alternative strategies that will replace specific regulatory requirements on the condition that they produce greater environmental benefits, reduce administrative burdens, and enhance public participation. There should be a process that allows a proposal accepted under the Federal XL Program to be implemented at the state level if the proposal achieves one or more of the purposes of this section and is acceptable to the [agency.]

(7) A process for implementing and evaluating innovative environmental measures on a pilot project basis should be developed and implemented in this state.

(b) It is the purpose of this section to create a voluntary pilot program by which the [agency] may enter into Environmental Management System Agreements with people regulated under this act to implement innovative environmental measures not otherwise recognized or allowed under existing laws and regulations of this state if those measures:

(1) achieve emissions reductions or reductions in discharges or wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or

(2) achieve real environmental risk reduction or foster environmental compliance by other people regulated under this act in a manner that is clearly superior to the existing regulatory system.

These agreements may include proposals accepted under the Federal XL Program, provided the proposals achieve one or more purposes of subsection (b)(1) or (2) of this section and are acceptable to the [agency.]

(c) This program is a voluntary pilot program. Participation is at the discretion of the [agency], and any decision by the [agency] to reject an initial proposal under this section is not appealable. The [agency's] authority to execute initial agreements under this section shall terminate on [insert date.] An initial agreement may be renewed for [five (5)] year periods after [insert date] if the [agency] finds the agreement continues to meet applicable requirements and the purposes of this section.

(d) The [agency] shall develop and make publicly available a program guidance document regarding participation in the pilot program. A draft document shall be distributed for review and comment by interested parties and a final document shall be completed by [insert date.] At a minimum, this document shall include the following:

(1) The approximate number of projects that the [agency] envisions being part of the pilot program.

(2) The types of projects and facilities that the [agency] believes would be most useful to be a part of the pilot program.

(3) A description of potentially useful environmental management systems, such as ISO 14000.

(4) A description of suitable Environmental Performance Plans, in-
including appropriate provisions or opportunities for promoting pollution prevention and sustainable development.

(5) A description of practices and procedures to ensure that performance is measurable and verifiable.

(6) A characterization of less-preferred practices that can generate adverse consequences such as multi-media pollutant transfers.

(7) A description of suitable practices for productive stakeholder involvement in project development and implementation that may include, but need not be limited to, consensus-based decision making and appropriate technical assistance.

(e) The [agency] has the authority to develop and distribute written guidance, fact sheets, or other documents that explain, summarize, or describe programs operated under this act or regulations. The written guidance, fact sheets, or other documents shall not be considered rules and shall not be subject to the [state] Administrative Procedure Act.

Section 4. [Agency Authority; Scope of Agreement.]

(a) On or before [insert date,] the [agency] may enter into initial Environmental Management System Agreements with any person regulated under this act to implement innovative environmental measures that relate to or involve provisions of this act, even if one or more of the terms of such an agreement would be inconsistent with an otherwise applicable statute or regulation of this state. Participation in this program is limited to those people who have submitted an Environmental Management System Agreement that is acceptable to the [agency] and who are not currently subject to enforcement under this act.

(b) The [agency] may adopt rules to implement this section if less than [six (6)] agreements are executed, but shall adopt rules to implement this section if [six (6)] or more agreements are executed. Without limiting the generality of this authority, those regulations may, among other things:

(1) Specify the criteria an applicant must meet to participate in this program.

(2) Specify the minimum contents of a proposed Environmental Management System Agreement, including, without limitation, the following:

(A) requiring identification of all state and federal statutes, rules, and regulations applicable to the facility;

(B) requiring identification of all statutes, rules, and regulations that are inconsistent with one or more terms of the proposed Environmental Management System Agreement;

(C) requiring a statement of how the proposed Environmental Management System Agreement will achieve one or more of the purposes of this section;

(D) requiring identification of those members of the general public, representatives of local communities, and environmental groups who
may have an interest in the Environmental Management System Agree-
ment; and

(E) requiring identification of how a participant will demonstrate
ongoing compliance with the terms of its Environmental Management Sys-
tem Agreement, which may include an evaluation of a participant’s perfor-
mance under the Environmental Management System Agreement by a third
party acceptable to the [agency.] Compliance with the agreement shall be
determined not less than annually.

(3) Specify the procedures for review by an [agency of environmen-
tal management system agreements.]

(4) Specify the procedures for public participation in, including no-
tice of and comment on, Environmental Management System Agreements
and stakeholder involvement in design and implementation of specific
projects that are undertaken.

(5) Specify the procedures for voluntary termination of an Environ-
mental Management System Agreement.

(6) Specify the type of performance guarantee to be provided by an
applicant for participation in this program. The nature of the performance
guarantee shall be directly related to the complexity of an environmental
risk associated with the proposed Environmental Management System
Agreement.

(c) The [agency] shall propose by [insert date,] and the [board] shall
promulgate, criteria and procedures for involuntary termination of Envi-
rornental Management System Agreements. The [board] shall complete
such rulemaking no later than [one hundred eighty (180)] days after re-
ceipt of the [agency’s] proposal.

(d) On or before [insert date,] the [agency] may enter into initial
Environmental Management System Agreements prior to adopting rules
under this section, if the proposals for the agreements have been accepted
under the Federal XL Program, in accordance with the following:

(1) An applicant shall submit, in writing, a proposed Environmental
Management System Agreement to the [director] of the [agency.]
(2) The [agency] shall have [one hundred twenty (120)] days to re-
view a proposed Environmental Management System Agreement.
(3) The [agency’s] failure to notify an applicant in writing that it
has accepted a proposal shall be deemed a rejection.
(4) A rejection of a proposed Environmental Management System
Agreement by the [agency] shall not be appealable.
(5) The [agency] shall provide notice to the public, including an op-
portunity for public comment and hearing in accordance with the proce-
dures set forth in [insert citation,] on each proposal accepted by one [agency]
under this subsection (d). The [agency] shall provide such notice, including
an opportunity for public comment and hearing, prior to executing an Envi-
rornental Management System Agreement.
(6) Prior to promulgation of rules under this section, each agreement shall specify the terms and conditions under which the [agency] may terminate the agreement.

(7) Each agreement shall provide for appropriate stakeholder involvement in a manner that is conducive to productive participation, equitable decision making and open exchange of information in developing and implementing the agreement.

Section 5. [Effect of Environmental Management System Agreements.]
(a) An Environmental Management System Agreement shall operate in lieu of all applicable requirements under [state] and federal environmental statutes, regulations, and existing permits that are identified in the agreement. Any environmental statute, regulation, or condition in an existing permit that differs from a term or condition in an agreement shall cease to apply from the effective date of an initial or renewed agreement until it is terminated or expires.
(b) Notwithstanding the other provisions of this section, no agreement entered into by the [agency] may allow a participant to cause air or water pollution or an unauthorized release in violation of this act.
(c) Nothing in this section shall reduce, eliminate, or in any way affect any fees that a participant in this program may be subject to under any federal environmental statute or regulation or under this act or any rule promulgated hereunder.
(d) Applicants for participation in the Environmental Management System Agreement Program shall pay all costs associated with public notice and hearings.

Section 6. [Performance Assurance]
(a) The [agency] shall ensure that each Environmental Management System Agreement contains appropriate provisions for performance assurance. Those provisions may specify types of performance guarantees to be provided by the participant to assure performance of the terms and conditions of the agreement.
(b) In the case of deficient performance of any term or condition in an Environmental Management System Agreement that prevents achievement of the stated purposes in subsection (b) of section 3-1, the [agency] may terminate the agreement and the participation may be subject to enforcement in accordance with applicable state law or administration regulations.
(c) If the agreement is terminated, the facility shall have sufficient time to apply for and receive any necessary permits to continue the operations in effect during the course of the Environmental Management Systems Agreement. Any such application shall also be deemed a timely and complete application for renewal of an existing permit under applicable law.
(d) The [agency] may adopt rules that are necessary to carry out its duties under this section including, but not limited to, rules that provide mechanisms for alternative dispute resolution and performance assurance.

Section 7. [Effective Date] [Insert effective date.]
Net Energy Metering

As the debate about deregulating public utilities heats up, so do efforts to help consumers conserve energy and cut costs. Net energy metering is one way to accomplish both. At least three states enacted laws in 1997 on net energy metering; Maryland, Oregon and Nevada.

Maryland HB 869 (CH 484, Laws of 1997) promotes the use of solar energy electricity generation in the state. It requires a certain type of meter for net energy metering. It directs the state public service commission to develop related contracts or tariffs for certain customer-generators. The act also establishes billing calculations, customer-generator standards and prohibits electric companies from requiring additional controls, tests or liability insurance for solar customer-generators.

Oregon SB 892 (signed into law, July 1997) requires utilities that supply electric power to develop a system for net energy metering for those customers with their own solar power generating facilities. It extends the property tax exemption for property equipped with an alternative energy system until July 1, 2008.

The draft act in this SSL volume is based on Nevada law. It provides for net energy metering for electric utility’s customers who have installed photovoltaic systems. The legislation requires electric utilities to make available to customers who install photovoltaic systems an energy meter that is capable of registering the flow of electricity in two directions. It prohibits electric utilities from charging higher rates for these type of systems and sets safety and power quality standards for photovoltaic systems.

Submitted as:
Nevada
SB255 (enrolled version)
Enacted as Chapter 218, in 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Net Energy Metering Act.”

Section 2. [Purpose.] It is hereby declared to be the purpose and policy of the [legislature] in enacting of this act to:

(1) Encourage private investment in renewable energy resources;
(2) Stimulate the economic growth of this state; and
(3) Enhance the continued diversification of the energy resources used in this state.
Section 3. [Definitions.] As used in this act:
(a) “Customer-generator” means a user of a net metering system;
(b) “Net metering” means measuring the difference between the electricity supplied by a utility and the electricity generated by a customer-generator which is fed back to the utility over the applicable billing period.
(c) “Net metering system” means a facility for the production of electrical energy that:
   (1) Uses wind or solar energy as its primary source of fuel;
   (2) Has a generating capacity of not more than [ten (10)] kilowatts;
   (3) Is located on the customer-generator’s premises;
   (4) Operates in parallel with the utility’s transmission and distribution facilities; and
   (5) Is intended primarily to offset part or all of the customer-generator’s requirements for electricity.
(d) “Utility” means a public utility that supplies electricity in this state.

Section 4. [Net Metering: Availability.]
(a) A utility shall offer net metering, as set forth in section 10 of this act, to the customer-generators operating within its service area until [one hundred (100)] of those customer-generators have accepted the offer.
(b) A utility;
   (a) Shall offer to make available to each of its customer-generators who has accepted its offer for net metering an energy meter that is capable of registering the flow of electricity in [two (2)] directions.
   (b) May, at its own expense and with the written consent of the customer-generator, install [one (1)] more additional meter to monitor the flow of electricity in each direction.
   (c) Shall not charge a customer-generator any fee or charge that would increase the customer-generator’s minimum monthly charge to an amount greater than that of other customers of the utility in the same rate class as the customer-generator.

Section 5. [Net Metering Safety Standards.]
(a) A net metering system used by a customer-generator must meet all applicable safety and power quality standards established by:
   (1) The National Electrical Code;
   (2) Underwriter’s Laboratories, Inc.; and
   (3) The Institute of Electrical and Electronic Engineers.
(b) A customer-generator whose net metering system meets such safety and quality standards must not be required by the utility to:
   (1) Comply with additional standards or requirements;
   (2) Perform additional tests;
   (3) Install additional controls; or
   (4) Purchase additional liability insurance, arising solely from his
status as a customer-generator.

Section 6. [Billing.]
(a) The billing period for net metering may be either a monthly period or, with the written consent of the customer-generator, an annual period.
(b) Except as otherwise provided in subsection 3, the net energy measurement must be calculated in the following manner:
  (1) The utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.
  (2) If the electricity supplied by the utility exceeds the electricity generated by the customer-generator which is fed back to the utility during the billing period, the customer-generator must be billed for the net electricity supplied by the utility.
  (3) If the electricity generated by the customer-generator which is fed back to the utility exceeds the electricity supplied by the utility during the billing period, neither the utility nor the customer-generator is entitled to compensation for electricity provided to the other during the billing period.

Section 7. [Effective Date] [Insert effective date.]
Guaranteed Energy Contracts

This act enables state agencies and local government agencies to enter into “guaranteed energy savings contracts” to weatherize their buildings to conserve energy. The act require contractors who do the weatherization to include a written quarantine that the agencies will realize a savings in energy costs that meet or exceed the cost of the work performed under the contract.

Submitted as:
Pennsylvania
Act 29 of 1996
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Guaranteed Energy Savings Act.”

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

“Energy conservation measure.” A training program or facility alteration designed to reduce energy consumption or operating costs. The term may include, without limitation:

1. Insulation of the building structure or systems within the building.
2. Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heatabsorbing or heatreflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption.
3. Automated or computerized energy control systems.
4. Heating, ventilating or airconditioning system modifications or replacements.
5. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made.
(7) Systems that produce steam or forms of energy such as heat, as well as electricity, for use within a building or complex of buildings.

(8) Energy conservation measures that provide operating cost reductions based on lifecycle cost analysis.

“Governmental unit.” Any contracting body as defined in [insert citation.]

“Guaranteed energy savings contract.” A contract for the evaluation and recommendation of energy conservation measures and for implementation of [one (1)] or more such measures.

“Qualified provider.” A person or business which is responsible and capable of evaluating, recommending, designing, implementing and installing energy conservation measures as determined by the governmental unit.

“Request for proposals (RFP).” A type of competitive procurement.

Section 3. [Contracting Procedures.]

(a) General rule. Notwithstanding any other contrary or inconsistent provision of law, a governmental unit may enter into a guaranteed energy savings contract with a qualified provider in accordance with the provisions of this act or in accordance with another statutorily authorized competitive process.

(b) Guaranteed contract. If, in accordance with applicable law, the award of a contract by a governmental unit requires action at a public meeting, a governmental unit may award a guaranteed energy savings contract at a public meeting if it has provided public notice in the manner prescribed by state law or regulation, the notice including the names of the parties to the contract and the purpose of the contract. For governmental units that are not required to take actions on contracts at public meetings, the governmental unit may award a guaranteed energy savings contract in accordance with the protocol for action on contracts adopted by the governmental unit and the requirements of this act.

(c) Request for proposals. Before entering into a guaranteed energy savings contract under this section, a governmental unit shall issue a request for proposals. The governmental unit shall evaluate any proposal that meets the requirements of the governmental unit and is timely submitted by a qualified provider. The RFP shall be announced through a public notice from the governmental unit which will administer the program. The request for proposal shall include all of the following:

(1) The name and address of the governmental unit.

(2) The name, address, title and phone number of a contact person.

(3) Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
(4) The date, time and place where proposals must be received.
(5) The information to be included in the proposal.
(6) Any other stipulations and clarifications the governmental unit may require.

(d) Selection and notice. The governmental unit shall select the qualified provider that best meets the needs of the governmental unit in accordance with criteria established by the governmental unit. For governmental units that are not required to take actions on contracts at public meetings, the governmental unit shall provide public notice of the award of the guaranteed energy savings contract within [thirty (30)] days. The notice shall include the names of the parties to the contract and the purpose of the contract. For governmental units that are required to take actions on contracts at public meetings, the public notice shall be made at least [ten (10)] days prior to the meeting. After reviewing the proposals pursuant to subsection (e), a governmental unit may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in both energy and operational costs within a [ten (10)] year period from the date of installation, if the recommendations in the proposal were followed and the qualified provider provides a written guarantee that the energy of operating cost savings will meet or exceed the cost of the contract.

(e) Report. (1) Before the award of a guaranteed energy savings contract, the qualified provider shall provide a report as part of its proposal which shall be available for public inspection summarizing estimates of all costs of installation, maintenance, repairs and debt service, and estimates of the amounts by which energy or operating costs will be reduced.
(2) The report shall contain a listing of contractors and subcontractors to be used by the qualified provider with respect to the energy conservation measures.

(f) Bond. A qualified provider to whom a contract is awarded shall give a sufficient bond to the governmental unit for its faithful performance in accordance with [insert citation.]

(g) Award of contract. Notwithstanding any other provision of law governing the letting of public contracts, a governmental unit may enter into a single guaranteed energy savings contract with each responsible provider selected through the request for proposals process in accordance with the provisions of this act.

Section 4. [Contract Provisions.]
(a) General rule. A guaranteed energy savings contract may provide that all payments, except obligations on termination of the contract before its scheduled expiration, shall be made over a period of time. Every guaranteed energy savings contract shall provide that the savings in any year are...
guaranteed to the extent necessary to make payments under the contract during that year.

(b) Written guarantee. A guaranteed energy savings contract shall include a written guarantee that savings will meet or exceed the cost of the energy conservation measures to be evaluated, recommended, designed, implemented or installed under the contract.

(c) Payments. A guaranteed energy savings contract may provide for payments over a period of time, not to exceed [ten (10)] years, and for the evaluation, recommendation, design, implementation and installation of energy conservation measures on an installment payment or lease purchase basis.

Section 5. [Funding.]
(a) General rule. Guaranteed energy savings contracts which have terms which extend beyond [one (1)] fiscal year of the governmental unit must include a provision which allows the governmental unit to terminate the contract if, in any fiscal year during the term of the contract, the governmental unit does not receive sufficient funds in its annual appropriations to make the payments required under the contract.

(b) Funds. A governmental unit may use funds designated for operating, utilities or capital expenditures for any guaranteed energy savings contract, including, without limitation, for purchases on an installment payment or lease purchase basis.

(c) Grants, subsidies or other payments. Grants, subsidies or other payments from the [state] to a governmental unit shall not be reduced as a result of energy savings obtained as a result of a guaranteed energy savings contract during the life of the contract.

Section 6. [State Contracts.] In connection with the letting of any guaranteed energy savings contract for the [state] under this act, the [department of general services] shall have the power to waive the process for selection of architects or engineers otherwise prescribed under [insert citation.] In exercising its discretion under this section, the [department of general services] shall consider the best interests of this [state] and any relevant circumstances peculiar to the proposed contract.

Section 7. [Construction.] This act shall not be construed to abrogate any duty to comply with prevailing wage or residency requirements contained in any other act or part thereof.

Section 8. [Repealer.] Insert repealer clause. All acts and parts of acts are repealed insofar as they are inconsistent with this act.

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

Suggested State Legislation - 15
Alzheimer’s Care Disclosure, Nursing Home Violations

This act requires any facility offering special services for people with Alzheimer’s Disease or dementia to disclose the distinguishing care or treatment. Disclosure is made to the department which licenses the facility, agency or center. At the time the patient is admitted, a copy of the disclosure is also to be given to the designee, or guardian. The licensing department will review the disclosure for accuracy as part of the regular license renewal procedure. The state department of social services and health department are to develop a single disclosure form to be completed by the facility, agency, or center providing the special care. The type of information disclosed includes an explanation of how the care for Alzheimer’s or dementia differs from the care provided by the rest of the unit or program, the assessment process, plan of care and its implementation, staff training, physical environment, resident activities, family involvement, costs and safety and security measures.

In addition, any facility with an Alzheimer’s special care unit or program is required to submit an informational document approved by the state division of aging. The document is to include updated information on selecting a special care unit or program, and is to be given to anyone seeking information about or placement in an Alzheimer’s special care unit or program.

The act in this SSL volume is based on Missouri HB 781. Enacted in 1996, HB 781 incorporates components from “The Alzheimer’s Special Care Disclosure Act,” a model by the National Alzheimer’s Association.

Submitted as:
Missouri
HB 781 [Truly Agreed To And Finally Passed Version]
Enacted, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the “Alzheimer’s Special Care Disclosure Act”.

2 Section 2. [Definitions.] For the purposes of this act, [insert citation] or “Alzheimer’s special care unit” or “Alzheimer’s special care program” means any facility as defined in [insert citation], or any home health agency, adult
Alzheimer’s Care Disclosure, Nursing Home Violations

day care center, hospice or adult foster home that locks, secures, segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer’s disease or a related disorder, to prevent or limit access by a resident outside the designated or separated area; and that advertises, markets or otherwise promotes the facility as providing specialized Alzheimer’s or dementia care services.

Section 3. [Disclosure Requirements.]
(1) Any facility which offers to provide or provides care for persons with Alzheimer’s disease by means of an Alzheimer’s special care unit or Alzheimer’s special care program shall be required to disclose the form of care or treatment provided that distinguishes that unit or program as being especially applicable, or suitable for persons with Alzheimer’s or dementia. The disclosure shall be made to the department which licenses the facility, agency or center giving the special care. At the time of admission of a patient requiring treatment rendered by the Alzheimer’s special care program, a copy of the disclosure made to the department shall be delivered by the facility to the patient and the patient’s next of kin, designee, or guardian. The licensing department shall examine all such disclosures in the department’s records and verify the information on the disclosure for accuracy as a part of the facility’s regular license renewal procedure.

(2) The department of social services and the department of health shall develop a single disclosure form to be completed by the facility, agency or center giving the special care. The information required to be disclosed by subsection (1) of this section on this form shall include, if applicable, an explanation of how the care is different from the rest of the facility in the following areas:

(a) The Alzheimer’s special care unit’s or program’s written statement of its overall philosophy and mission which reflects the need of residents afflicted with dementia;
(b) The process and criteria for placement in, transfer or discharge from the unit or program;
(c) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;
(d) Staff training and continuing education practices;
(e) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
(f) The frequency and types of resident activities;
(g) The involvement of families and the availability of family support programs;
(h) The costs of care and any additional fees; and
(i) Safety and security measures.
Section 4. [Informational Document.] Any facility which offers to provide or provides care for persons with Alzheimer’s disease by means of an Alzheimer’s special care unit or Alzheimer’s special care program shall be required to provide an informational document developed by or approved by the [division of aging.] The document shall include but is not limited to updated information on selecting an Alzheimer’s special care unit or Alzheimer’s special care program. The document shall be given to any person seeking information about or placement in an Alzheimer’s special care unit or Alzheimer’s special care program. The distribution of this document shall be verified by the licensing department as part of the facility’s regular license renewal procedure.

Section 5. [Effective Date.] [Insert effective date.]
Physician Discipline and Physician Information (Note)

The Federation of State Medical Boards of the United States says most states require certain information about medical providers to be public, including disciplinary actions. However, states apparently differ about the type of information that is designated as public and how easy it is to access that information. For example, in some states, records of disciplinary action are available only by request to the state medical board.

Florida, Illinois, Massachusetts, New York and North Carolina are five states that have recently acted on this issue.

Florida CS for SB 948 requires the state department of health to compile health care practitioner profiles beginning July 1999. The profiles will contain information about the education, experience, financial status, criminal record and disciplinary actions against the practitioners. The bill directs the department to make the profiles available through the World Wide Web. The Florida legislature passed the bill in May 1997.

Illinois’ department of professional regulation is building a database of licensing and disciplinary histories of the regulated professions in the state. The department expects to make the histories available on the Internet within a year. Pharmacists’ and optometrists’ histories are scheduled first. Information about the remaining 45 professions under the department’s jurisdiction will follow later. According to department staff, the database is being developed under the department’s general regulatory authority. Hence, there is no enabling legislation for the database project.

Massachusetts SB 2312 (Acts of 1996) directs a state board of registration in medicine to collect information and create profiles of health providers in the state. It directs the board to make the profiles available to the public and establishes procedures to accomplish same. Items collected include:

• criminal convictions for felonies and serious misdemeanors within the last 10 years;
• charges to which physicians plead no lo contendere;
• final board disciplinary actions within the last 10 years;
• final disciplinary actions by licensing boards in other states within the last 10 years;
• revocations or involuntary restrictions of hospital privileges; and
• medical malpractice court judgments and arbitration awards in which payments are awarded to a complaining party during the last ten 10 years.

The Massachusetts act directs the board to give providers a copy of their profile prior to releasing the profiles to the public and gives providers
a reasonable amount of time to correct errors in their profile.

It also charges a state commission to involve health care providers in developing the methodology and format for health care provider profiles. The commission is also responsible for developing safeguards to prevent unauthorized use or disclosure of the health care provider profiles.

Dealing mainly with physician discipline, New York CH 627, 1996 Laws of New York makes physician disciplinary orders public upon issuance. The act provides that hearing committee findings, determinations, conclusions and orders shall become public upon issuance in cases in which annulment, suspension without stay or revocation of the physician’s license is ordered by a hearing committee.

The New York act also authorizes publication of summary orders upon issuance and authorizes temporary summary suspension of physicians’ licenses based upon a felony conviction or disciplinary action in another state.

An article in the Spring 1997 CLEAR News (CLEAR is The Council on Licensure, Enforcement and Regulation) says North Carolina is listing information “on-line” about 32,000 professionals, including physicians, nurse practitioners and physician assistants. North Carolina’s medical society staff says that like Illinois, North Carolina’s state licensing agency is using its general regulatory authority to develop the project. There is no enabling legislation specific to the project.

Readers can contact the state legislatures to get copies of the Acts mentioned in this “Note.”
Interstate Emergency Management Assistance Compact

This law enacts an interstate compact that provides for mutual assistance between states in managing emergencies and disasters, whether natural or man-made. It provides for mutual cooperation in emergency-related exercises, testing or other training using equipment and personnel.

The compact is designed to facilitate emergency services through intergovernmental coordination. States are given responsibility for reviewing potential hazards, drafting plans, developing procedures and conducting exercises to simulate responses to emergencies.

The language contains procedures for requesting assistance between states and commanding disparate state personnel within a given disaster area. It provides limited immunity from tort liability to personnel from one state who are rendering aid in another.

This compact originated from the Southern states through the Southern Governors’ Association (SGA). This compact received Congressional consent in 1996 as H.J. Res.193. Delaware, Florida, Georgia, Louisiana, Maryland, Mississippi, Missouri, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia were members at that time.

Submitted as:
Virginia
CH 280, Laws of 1995 (S 1121)

Suggested Legislation

(Title, enacting clause, etc.)

Compact enacted into law; terms.
The Emergency Management Assistance Compact is hereby enacted into law and entered into by [state] with all other states legally joining therein, in the form substantially as follows:

Emergency Management Assistance Compact Article I. Purpose and Authorities
This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.
The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Article II. General Implementation.

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III. Party State Responsibilities

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states
Interstate Emergency Management Assistance Compact

Interstate Emergency Management Assistance Compact

1. Interstate Emergency Management Assistance Compact

Interstate Emergency Management Assistance Compact

might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;

2. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

3. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

4. Assist in warning communities adjacent to or crossing the state boundaries;

5. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

6. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

7. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

1. A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

3. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.
Article IV. Limitations.
Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

Article V. Licenses and Permits.
Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

Article VI. Liability.
Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.
Article VII. Supplemental Agreements.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein shall preclude any state entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII. Compensation.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX. Reimbursement.

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and providing further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

Article X. Evacuation.

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notifica-
tion of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come.

After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

Article XI. Implementation.
(A) This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon enactment by such state.
(B) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.
(C) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

Article XII. Validity.
This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

Article XIII. Additional Provisions.
Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18 of the United States Code.

Section 2. [Effective Date.] [Insert effective date.]
Land Use Mediation

This act establishes a mediation program to provide eligible private landowners with a prompt, independent, inexpensive and local forum for mediation of government land use actions as an alternative to court action. Eligible landowners are those who suffer significant harm as a result of a government action regarding land use, and fail, through administrative appeals at the state or local level, to get a permit, variance or approval for use of their land.

Submitted as:
Maine
CH 537, Laws of 1996
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “Land Use Mediation Program Act.”

Section 2. [Land Use Mediation; Obligation to Participate.] Agencies within the executive branch shall participate in mediation under this act, when requested to participate by the [court mediation service.]

Section 3. [Land Use Mediation Program; Administration.] The land use mediation program is a program within the [court mediation service.]
A. The [director] of the [court mediation service] shall administer the land use mediation program established by this act.
B. A land use mediation fund is established as a nonlapsing, dedicated fund within the state [administrative office of the courts.] Fees collected for mediation services pursuant to this act must be deposited in the fund. The [administrative office of the courts] shall use the resources in the fund to cover the costs of providing mediation services as required under this act.
Any balances remaining in the land use mediation fund must be transferred to a nonlapsing account within the [judicial department] to be used to defray mediation expenses.

Section 4. [Reporting on the Land Use Mediation Program.] The state [land and water resources council] shall report by [insert date] to the [Governor,] the [administrative office of the courts,] the [executive director] of
the [legislative council] and the [director] of the [court mediation service] on the operation and effectiveness of the land use mediation program established under section 5 of this act. The reports must list the number and type of mediation requests received, the number of mediation sessions conducted, the number of signed mediation agreements, a summary of the final disposition of mediation agreements, a narrative discussion of the effectiveness of the program as determined by the [council], a summary of deposits and expenditures from the land use mediation fund created by this act and any proposals by the [council] with respect to the operation, improvement or continuation of the mediation program.

Section 5. [Land Use Mediation Program Established.]

1. Program established. The land use mediation program is established to provide private landowners with a prompt, independent, inexpensive and local forum for mediation of governmental land use actions as an alternative to court action.

2. Provisions of mediation services; forms, filing and fees. The [court mediation service] created by [insert citation] shall provide mediation services under this act. The [court mediation] service shall:
   A. Assign mediators who are knowledgeable in land use regulatory issues and environmental law;
   B. Establish a simple and expedient application process. Not later than [insert date] of each year, the [court mediation service] shall send to the [chair] of the [land and water resources council] a copy of each completed application received and each agreement signed during the previous calendar year; and
   C. Establish a fee for services in an amount not to exceed [one hundred seventy five (175)] dollars for every [four (4)] hours of mediation services provided. In addition, the landowner is responsible for the costs of providing notice as required under this act.

3. Application; eligibility. A landowner may apply for mediation under this act if that landowner:
   A. Has suffered significant harm as a result of a governmental action regulating land use;
   B. Applies for mediation under subsection 4 within the time allowed under law or rules of the court for filing for judicial review of that governmental action;
   C. Has:
      (1) For mediation of municipal governmental land use action, sought and failed to obtain a permit, variance or special exception and has pursued all reasonable avenues of administrative appeal; or
      (2) For mediation of state governmental land use action, sought and failed to obtain governmental approval for a land use of that landowner’s land and has a right to judicial review under [insert citation] either due to
D. Submits to the [superior court clerk] all necessary fees at the
time of application.

4. Submission of application for mediation. A landowner may apply
for mediation under this act by filing an application for mediation with the
[superior court clerk in the county in which the land that is the subject of
the conflict is located. The [superior court clerk shall forward the applica-
tion to the [court mediation service.]

5. Stay of filing period. Notwithstanding any other provision of law,
the period of time allowed by law or by rules of the court for any person to
file for judicial review of the governmental action for which mediation is
requested under this act is stayed for [thirty (30)] days beyond the date the
mediator files the report required under subsection 12 with the [superior
court clerk,] but in no case longer than [one hundred twenty (120)] days
from the date the landowner files the application for mediation with the
[superior court clerk.]

6. Purpose; conduct of mediation. The purpose of a mediation under
this act is to facilitate, within existing land use laws, ordinances and regu-
lations, a mutually acceptable solution to a conflict between a landowner
and a governmental entity regulating land use. The mediator, whenever
possible and appropriate, shall conduct the mediation in the county in which
the land that is the subject of the conflict is located. When mediating that
solution, the mediator shall balance the need for public access to proceed-
ings with the flexibility, discretion and private caucus techniques required
for effective mediation.

7. Schedule; notice; participants. The mediator is responsible for sched-
uling all mediation sessions. The mediator shall provide a list of the names
and addresses and a copy of the notice of the mediation schedule to the
[superior court clerk,] who shall mail the notices. The mediator shall in-
dude on the list persons identified in the following ways.

A. The landowner and the governmental entity shall provide to the
mediator the names and addresses of the parties, intervenors and other
persons who significantly participated in the underlying governmental land
use action proceedings.

B. Any other person who believes that that person's participation in
the mediation is necessary may file a request with the mediator to be in-
duced in the mediation.

C. The mediator shall determine if any other person's participation
is necessary for effective mediation.

8. Parties to mediation. A mediator shall include in the mediation
process any person the mediator determines is necessary for effective me-
diation, including persons representing municipal, county or state agencies
and abutters, parties, intervenors or other persons significantly involved in
the underlying governmental land use action. A mediator may exclude or
limit a person’s participation in mediation when the mediator determines that exclusion or limitation is necessary for effective mediation. This subsection does not require a municipality to participate in mediation under this act.

9. Sharing of costs. Participants in the mediation may share the cost of mediation after the initial [four (4)] hours of mediation services have been provided.

10. Admissibility. The admissibility in court of conduct or statements made during mediation, including offers of settlement, is governed by [insert citation] for matters subsequently heard in a state court and Federal Rules of Evidence, Rule 408 for matters subsequently heard in a federal court.

11. Agreements. A mediated agreement must be in writing. The landowner, the governmental entity and all other participants who agree must sign the agreement as participants and the mediator must sign as the mediator.

A. An agreement that requires any additional governmental action is not self-executing. If any additional governmental action is required, the landowner is responsible for initiating that action and providing any additional information reasonably required by the governmental entity to implement the agreement. The landowner must notify the governmental entity in writing within [thirty (30)] days, after the mediator files the mediator’s report under subsection 12, that the landowner will be taking action in accordance with the agreement.

B. Notwithstanding any procedural restriction that would otherwise prevent reconsideration of the governmental action, a governmental entity may reconsider its decision in the underlying governmental land use action in accordance with the agreement as long as that reconsideration does not violate any substantive application or review requirement.

12. Mediator’s report. Within [ninety (90)] days after the landowner files an application for mediation, the mediator shall file a report with the [superior court clerk.] The mediator shall file the report as soon as possible if the mediator determines that a mediated agreement is not possible. The report must contain:

A. The names of the mediation participants, including the landowner, the governmental entity and any other persons;

B. The nature of any agreements reached during the course of mediation, which mediation participants were parties to the agreements and what further action is required of any person;

C. The nature of any issues remaining unresolved and the mediation participants involved in those unresolved issues; and

D. A copy of any written agreement under subsection 11.

13. Application. This act applies to final agency actions and failures and refusals to act occurring after the effective date of this act.
Section 6. [Attorney General Review and Approval.]

1. The [attorney general] may not approve a [rule] if it is reasonably expected to result in a taking of private property under the [state constitution] unless such a result is directed by law or sufficient procedures exist in law or in the [proposed rule] to allow for a variance designed to avoid such a taking.

2. For a [rule] that is reasonably expected to result in a significant reduction in property values, whether sufficient variance provisions exist in law or in the [rule] to avoid an unconstitutional taking, and whether, as a matter of policy, the expected reduction is necessary or appropriate for the protection of the public health, safety and welfare advanced by the [rule.]

Section 7. [Funding.] Insert program funding language.

Section 8. [Effective Date] [Insert effective date.]
Waiving Construction Permit Fees to Promote Accessibility

This act permits local governments to waive permit fees and surcharges for construction projects that are undertaken to promote accessibility for disabled people to existing buildings. The law also permits local governments to waive fees when disabled people take out permits to improve the accessibility of their own homes.

Submitted as:
New Jersey
CH 92, Laws of 1996 (S 912)
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “An Act to Waive Construction Permit Fees to Promote Accessibility.”

Section 2. [Waiving Construction Permit Fees and Enforcing Agency Fees for Work Done to Promote Accessibility by Disabled Persons.]

(a) Notwithstanding the provision of the [state building code,] or any rules, regulations or standards adopted pursuant thereto, to the contrary, the governing body of any municipality which has appointed an enforcing agency pursuant to [insert citation] may, by ordinance, provide that no person shall be charged a construction permit surcharge fee or enforcing agency fee for any construction, reconstruction, alteration or improvement designed and undertaken solely to promote accessibility by disabled persons to an existing public or private structure or any of the facilities contained therein.

(b) The ordinance may further provide that a disabled person, or parent or sibling of a disabled person, shall not be required to pay any municipal fee or charge in order to secure a construction permit for any construction, reconstruction, alteration or improvement which promotes accessibility to his own living unit.

(c) For the purposes of this section, “disabled person” means a person who has total and permanent inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, including blindness, and shall include, but not be limited to, any resident of this state who is disabled pursuant to the federal Social Security Act (42 U.S.C. & 416), or the federal Railroad Retirement Act of 1974 (45 U.S.C. & 231 et seq.), or is rated as having a 60% disability or higher.
pursuant to any federal law administered by the United States Veterans' Act. For purposes of this paragraph "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than [twenty (20)] degrees shall be considered as having a central visual acuity of 20/200 or less.

Section 2. [Municipal fees; exemptions.]

(a) Every municipal agency shall adopt and may amend reasonable rules and regulations, not inconsistent with this act or with any applicable ordinance, for the administration of its functions, powers and duties, and shall furnish a copy thereof to any person upon request and may charge a reasonable fee for such copy. Copies of all such rules and regulations and amendments thereto shall be maintained in the office of the [administrative officer.]

(b) Fees to be charged to (1) an applicant for review of an application for development by a municipal agency, and to (2) an appellant pursuant to [insert citation] shall be reasonable and shall be established by ordinance.

(c) A municipality may by ordinance exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. & 501(c) or (d)) from the payment of any fee charged under this act.

(d) A municipality shall exempt a [board of education] from the payment of any fee charged under this act.

(e) A municipality may by ordinance exempt, according to uniform standards, a disabled person, or a parent or sibling of a disabled person, from the payment of any fee charged under this act in connection with any application for development which promotes accessibility to his own living unit.

(f) For the purposes of this section, “disabled person” means a person who has the total and permanent inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, including blindness, and shall include, but not be limited to, any resident of this state who is disabled pursuant to the federal Social Security Act (42 U.S.C. & 416), or the federal Railroad Retirement Act of 1974 (45 U.S.C. & 231 et seq.), or is rated as having a [sixty (60)] percent disability or higher pursuant to any federal law administered by the United States Veterans’ Act. For purposes of this paragraph “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than [twenty (20)] degrees shall be considered as having a central visual acuity
Waiving Construction Permit Fees to Promote Accessibility

37 of 20/200 or less.

1 Section 4. [Effective Date] [Insert effective date.]
Smart Growth

This act establishes priority funding areas in the state in order to preserve existing neighborhoods and agricultural, natural, and rural resources. It prohibits state agencies from approving specified projects that are not in priority funding areas. It establishes a certification process to designated eligible funding areas.

Submitted as:
Maryland
SB 389 (enrolled version)
Enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

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

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

(1) State policy provides that development shall be concentrated in suitable areas and that in rural areas, growth shall be directed to existing population centers and resource areas shall be protected;

(2) Investment in the revitalization of older neighborhoods, and encouraging quality growth and development through funding programs, will reduce the outward pressure for sprawl and leapfrogging;

(3) If current patterns of development continue unchanged, the state will lose thousands of acres of farms and open spaces, will have abandoned many existing and historic neighborhoods, and will spend millions of taxpayer dollars building costly new infrastructure;

(4) State spending plays a significant role in guiding growth and facilitating development;

(5) State policy requires certain projects funded through state or federal funds to be consistent with the local plans of the jurisdictions in which the projects are located;

(6) Targeted funding by the state of certain projects that serve to foster or influence growth in those areas most suitable for growth or that meet other statewide goals will serve to build on and complement the act and will accelerate the preservation of open space and existing neighborhoods;

(7) Rural villages and communities are an integral part of the character of the state and the state is committed to continuing to sustain rural villages and communities; and

(8) The state needs to focus spending in those areas, including those parts of
locally designated growth areas that constitute the most efficient and effective use of taxpayer dollars which will serve best to preserve existing neighborhoods, fields, farms and open space.

Section 3. [Municipal Corporations.]
(1) The mayor and city council, by whatever name known, of every municipal corporation in this state is authorized and empowered to lend or provide, upon such terms as may be agreed upon, the use of tools, vehicles, implements, materials, consultants, services, and other assistance to another political subdivision for purposes deemed to be public and of benefit to the municipal corporation and the other political subdivision.

(2) If a county provides for the levy and collection of a development impact fee on new residential construction to finance the costs of school construction, a municipal corporation shall assist the county in the collection of the fee for new residential construction within the municipal corporation by:
   (i) Collecting and remitting the fee to the county; or
   (ii) Requiring the fee to be paid to the county.
(b) The application of any impact fees paid under this subsection shall have a rational nexus to the project for which the fees are assessed.
(c) The provisions of this subsection may not be construed to affect any existing agreements between a county and collection of development impact fees.

Section 4. [Definitions.]
(1) “Major capital project” means any new, expanded, or significantly improved facility or service that involves planning, environmental studies, design, right-of-way, construction, or purchase of essential equipment related to the facility or service.

(2) “Minor capital project” means any project for the preservation or rehabilitation of an existing facility or service, including the planning, design, right-of-way, construction, or purchase of essential equipment related to the facility or service.

(3) “Project planning phase” means the phase in which engineering and environmental studies and analyses are conducted with full participation of the public, in addition to local, state, and federal agencies, to determine the scope and location of a proposed highway project.

(4) “Initial project planning phase” means that portion of the project planning phase which includes:
   (a) Notification of local, state, and federal officials;
   (b) Initial interagency review;
   (c) Initial systems planning;
   (d) Identification of alternatives, as set forth in [insert citation,] for the scope and the location of the project;
(e) Estimates of right-of-way requirements, including available detail with respect to specific properties affected, and of cost;
(f) Public meetings for discussion of the foregoing; and
(g) Reports of consultants, if any have been retained for the analysis of preliminary alternatives.
(5) “Locally designated growth area” means an area determined by the county to be suitable for development in compliance with [insert citation.]
(6) “Funding” includes any form of assurance, guarantee, grant payment, credit, tax credit, or other assistance, including a loan, loan guarantee, or reduction in the principal obligation of, or rate of interest payable on, a loan or a portion of a loan.
(7) “Growth-related project” means only the items set forth below:
   (a) Any major capital project as defined in Section 4 (1);
   (b) Funding by the [department of housing and community development] for:
      (I) Construction or purchase of newly constructed single family homes or purchase of loans for newly constructed single family homes under [insert citation;]
      (II) Acquisition or construction of newly constructed multifamily rental housing under [insert citation;]
      (III) State-funded neighborhood revitalization projects under [insert citation;]
   (c) Funding by the [department of business and economic development] under [insert citation;]
   (d) Funding by the [department of the environment] for any project under [insert citation;]
   (e) Funding by [the department of general services] for:
      (I) Leases of property by the state governed under [insert citation;]
      (II) Public improvements governed by [insert citation;]
      (III) Land acquisition governed by [insert citation;]
(8) “Growth-related project” does not include:
   (a) Projects by the [department of general services] for maintenance, repair, additions, or renovations to existing facilities, conservation and open spaces, and acquisition of agricultural, conservation, and historic easements.
   (b) Funding by the [department of housing and community development] for any project financed with the proceeds of revenue bonds issued by the [community development administration] if:
      (I) The [secretary of housing and community development] determines that application of this section:
         (A) Conflicts with any provision of federal or state law applicable to the issuance or tax-exempt status of the bonds;
         (B) Conflicts with any provision of any trust agreement between the [community development administration] and any trustee; or
Section 5. [Designation of Priority Funding Areas.] The following areas shall be considered priority funding areas under this act:

(1) A municipal corporation that satisfies requirements relating to density and service by water and sewer set forth in [insert citation;]

(2) A designated neighborhood, as defined in [insert citation;]

(3) An enterprise zone as designated under [insert citation], or by the United States government;

(4) A certified heritage area as defined in [insert citation] that is located within a locally designated growth area;

(5) Those areas of the state located between interstate highway [number] and [city;]

(6) An area designated by the governing body of a county as:
   (a) Zoned or, if applicable, classified by [insert date] principally for industrial use;
   (b) Zoned or if applicable, classified after [insert date] as industrial if the area is served by a public or community sewer system;
   (c) An area where the principal uses of the area are for employment if:
      (I) The area is served by public or community sewer systems; or
      (II) Public or community sewer systems are planned in an approved [ten (10)-year] water and sewer plan;
   (d) Zoned or, if applicable, classified after [insert date] as industrial, or where the principal uses are for employment in addition to meeting the criteria set forth in [insert citation,] shall be located within a locally desig-
nated growth area.

(7) A community in existence prior to [insert date] that is within a locally designated growth area may be designated as a priority funding area if the community:

(a) Is served by a public or community sewer system and is in that part of the community designated by the local government for residential use or development;

(b) There is an average density of at least [two (2)] units per acre; or

(c) If a portion of the community is undeveloped, the permitted average density is not less than [two (2)] units per acre; or

(d) Except as provided in [insert citation,] is served by a public or community water system and in that part of the community designated by the local government for residential use or development there is an average density of at least [two (2)] units per acre.

(8) The provisions of this section do not apply to mobile home parks or communities with less than [ten (10)] units.

(9) Funding for a growth-related project under this section is to be provided only if the project serves to maintain the character of the community and does not serve to increase the growth capacity of the community except for limited peripheral or in-fill development.

(10) If an existing community receives a public or community sewer system, an area beyond the periphery of the developed portion of the existing community may be designated as a priority funding area if the development of the area beyond the periphery:

(a) Has a permitted average density of at least [three and one half (3.5)] units per acre; and

(b) Is served by a public or community sewer system.

(11) The [department of the environment] may provide funding for a sewer system in an existing community beyond the periphery of the developed portion of the community if the expansion has a permitted average density of at least (three and one half (3.5)) units per acre.

(12) An area, other than an existing community under subsection 7 of this section, may be designated as a priority funding area if the area:

(a) Is planned to be served under the approved [ten (10)] year water and sewer plan;

(b) The designation represents a long-term development policy for promoting an orderly expansion of growth and an efficient use of land and public services; and

(c) In that part of the area designated by the local government for residential use or development, there is permitted an average density of not less than [three and one half (3.5)] units per acre.

(13) A rural village may be designated as a priority funding area under this section if:

(a) The village is designated in the county comprehensive plan as of
(14) Funding for a growth-related project under this section is to be provided only if the project serves to maintain the character of the community and does not serve to increase the growth capacity of the village except for limited peripheral or in-fill development.

(15) The designation by a county of a priority funding area under this section shall be based on:

(a) An analysis of the capacity of land areas available for development, including in-fill and redevelopment; and

(b) An analysis of the land area needed to satisfy demand for development at densities consistent with the master plan.

(14) For the purposes of this section, average density shall be calculated based on the total acreage of all parcels in the area for which the principal permitted use is residential, excluding land:

(a) Dedicated for public use by easement in perpetuity or fee acquisition;

(b) Dedicated recreational use;

(c) Subject to an agricultural easement under [insert citation;]

(d) Subject to an agricultural easement under a county agricultural land preservation program certified under [insert citation;]

(e) Used for cemetery purposes;

(f) Identified by a local government as:

(I) Streams and their buffers:

(II) [One hundred (100)] year flood plains;

(III) Habitats of threatened and endangered species; and

(IV) Steep slopes; and

(g) On which development is prohibited by local law or ordinance;

(h) Identified by a local government as delineated nontidal wetlands on which development is prohibited by state or local law or ordinance.

Section 6. [School Capacity Standards.]

(1) Except as otherwise provided in this section, beginning [insert date,] the state may not provide funding for a growth-related project if the project is not located within a priority funding area.

(2) In a priority funding area established under Section 5 of this act in which water and sewer service is planned, a commitment for funding for a growth-related project shall be contingent upon nonstate funding for planned water and sewer service moving forward in advance of or concurrent with the state funding.

(3) A growth-related project may not be funded by the state in a municipal corporation exercising zoning authority unless the municipal corporation has first adopted residential development standards relating to pub-
lic school adequacy. These standards shall be substantially similar to:

(a) The state rated capacity standards established [insert citation;]

or

(b) The school capacity standards established in [insert citation;]

(4) The requirement contained in paragraph (3) of this section does not apply:

(a) In a municipal corporation exercising zoning authority located in a county in which no adequate school capacity standards have been established by the county governing body; or

(b) To a residential development project where an impact fee has been paid or other monetary or nonmonetary contributions have been provided that defray the local cost of school construction attributable to the project.

(5) After [insert date,] prior to establishing or changing the school capacity standards in a county's adequate public facilities ordinance, the county shall confer with the governing bodies of the municipal corporations that exercise zoning authority located within the county.

(6) For planning purposes, each county board of education shall annually provide to the county and each municipal corporation exercising zoning authority in the county:

(a) A list of projected student enrollments for a [five (5)] year period for each school serving students in or near that municipal corporation; and

(b) Information relating to the student capacity of each school.

Section 7. [Exceptions.]

(1) The state may provide funding for a growth-related project not in a priority funding area if:

(a) The [board of public works] determines that extraordinary circumstances exist in accordance with the requirements of this section; or

(b) The [board of public works] approves the project as a transportation project that meets the requirements of this section.

(2) In order to determine that extraordinary circumstances exist, the [board] shall determine by a majority vote that:

(a) The failure to fund the project in question creates an extreme inequity, hardship, or disadvantage that clearly outweighs the benefits from locating a project in a priority funding area; and

(b) There is no reasonable alternative for the project in a priority funding area in another location within the county or an adjacent county.

(3) The [board of public works] may approve a transportation project under this section if the transportation project:

(a) Maintains the existing transportation system, if the [department of transportation] and the [office of planning] determine the project does not serve to significantly increase highway capacity;

(b) Serves to connect priority funding areas; and
(c) The [department of transportation] and the [office of planning] determine that adequate access control or other measures are in place to:

(I) Prevent development that is inconsistent with this act; and

(II) Maintain the viability of the project while concomitantly constraining development which potentially detracts from main street business areas; and

(III) The [department of transportation] and the [office of planning] have first determined whether alternative transportation modes, such as mass transit and transportation demand management, provide a reasonable alternative to the project and that no reasonable alternative exists;

(IV) Has the sole purpose of providing control of access by the [department of transportation] along as existing highway corridor; or

(V) Due to its operational or physical characteristics, must be located away from other development.

(4) A request for approval by the [board] under this section may be made at the request of the governing body of the local jurisdiction in which the project is located or the [secretary] with approval authority over the project.

(5) When making a request to the [board of public works], the applicant shall:

(a) Identify the extraordinary circumstances that require state funds for the project; and

(b) Demonstrate that no feasible alternatives exist to making an exception to the requirements of this act.

(6) The [board of public works], at its discretion, may require remedial actions to mitigate any negative impacts of the proposed project.

(7) When a request is made to the [board of public works] for an exception under this section, the [board of public works] may request from the state [economic growth, resource protection, and planning commission] an advisory opinion on the request for the exception.

(8) Upon receiving a request for an advisory opinion under this subsection, the [commission] if requested by a member of the public, shall hold a public meeting to gather information relevant to the advisory opinion.

Section 8. [Miscellaneous.]

(1) The state may provide funding for a growth-related project not in a priority funding area without receiving approval from the [board of public works] as provided under this act for:

(a) A project that is required to protect public health or safety;

(b) A project involving federal funds, to the extent compliance with this subtitle would conflict or be inconsistent with federal law; or

(c) A growth-related project related to a commercial or industrial activity which, due to its operational or physical characteristics, shall be located away from other development, including:
(I) A natural resource based industry;
(II) An industry relating to:
   (A) Agricultural operations, as defined in [insert citation];
   (B) Forestry activities; or
   (C) Mineral extraction;
(III) An industry that is proximate to:
   (A) An airport facility;
   (B) A port facility;
   (C) A railroad facility;
   (D) A transit facility; or
   (E) A major highway interchange; or
(IV) A tourism facility or museum that is required to be located
away from other development due to necessary proximity to specific his-
toric, natural, or cultural resources.

(2) A procedure for notification, review, and comment on exceptions
proposed under this section shall be established jointly by the [department
of transportation] and the [office of planning].

Section 9. [School Construction.]
(1) It shall be the policy of the state that the emphasis of funding for
public school construction projects shall be to target the rehabilitation of
existing schools to ensure that facilities in established neighborhoods are
of equal quality to new schools.
(2) This section may not be construed to prohibit the provision of school
construction funding outside a priority funding area.
(3) The [public school interagency committee on school construction]
shall review and make recommendations on school funding projects to the
[board of public works.]

Section 10. [Office of Planning.]
(1) Upon receipt of certification for a priority funding area under [in-
sert citation.] the [office of planning] shall review and comment on the cer-
tified priority funding area for consistency with the requirements of this
act.

Section 10. [Effective Date.] [Insert effective date.]
Urban Area Revitalization (Statement)

Abandoned properties and urban decay are problems in most major American cities. New Jersey CH 62, Laws of 1996 [SB 800, (2R)] is a recent state effort to address both. This comprehensive act reconstitutes the state urban development corporation as a state redevelopment authority which is charged with revitalizing urban areas in the state. It also:

• creates a framework under which abandoned properties can be acquired in an abbreviated manner and redeveloped;
• authorizes the use of payments in lieu of taxes as a financing method for redevelopment projects;
• establishes an empowerment neighborhood program through which certain municipalities may be made eligible for financial assistance for the authority; and
• sets forth procedures for remediating contaminated properties.

Readers can contact the New Jersey Legislature to get a copy of the act.
Electricity Deregulation (Note)

The 1997 “Suggested State Legislation” features a draft based on a New Hampshire law to review deregulating retail electricity. The abstract to that law also mentions related actions in Indiana, Oregon and Nevada. This “Note” reflects the Committee on Suggested State Legislation’s intention to keep readers informed about ongoing developments on this issue. It highlights California, Iowa, Montana and Pennsylvania laws. California’s act is one of the most comprehensive state laws.

Traditionally, monopolies have been granted to power companies in return for reliable service to all consumers. But in response to rising costs, Congress passed the Energy Policy Act of 1992 (Public Law 102-486.) This law encourages an open, wholesale electrical market that is meant to stimulate competition among public utilities and lower costs for residential and commercial consumers. This year, the Federal Energy Regulatory Commission strengthened the national effort to create competition by ruling that discount competitors be allowed to use long-distance power grids to carry electricity across state lines. This opens the possibility of direct interstate service to both large and small consumers and has opened the floodgates on deregulatory legislation in the states. The introduction of competition into the electric power industry is now being explored in forty states.

On September 24, 1996 California passed Assembly Bill 1890 (AB 1890) to deregulate the state’s power industry and increase competition in the provision of electricity. The California act is a comprehensive piece of legislation that should help set standards for electricity deregulation in other states. AB 1890 addresses seven major concerns with deregulation: stranded costs, consumer rates, job protections for utility employees, a governing or oversight structure, system reliability, public service, the environment and consumer protection.

Stranded costs, or “transitional costs” as they are described in the California Act, are costs that power companies have incurred due to experimental or defunct power purchase contracts, and nuclear/alternative fuel programs. Because many of these costs were incurred under regulatory authority, the state is establishing a financing plan to reimburse utility companies that now face competition. Under the old regulatory structure, stranded costs were passed onto the consumer. The new law applies a “competition transition charge” (CTC) to the bills of all customers in proportion to their consumption of electricity. Those who choose to leave their current utility system will be charged a “severance fee.” A rate cap will be imposed to keep consumer rates at or below their June 10, 1996 level. Public utilities have until December 31, 2002 to recover their stranded costs.

AB 1890 protects the interests of residential and small commercial consumers. California’s plan mandates that residential consumer rates drop
10 percent by 1998 and an additional 10 percent by 2002. The government will ensure the savings by revenue bond financing the CTC for 10 years. Policymakers hope that issuing revenue bonds will provide utilities with the capital needed to restructure debt created by strandable long-term investments and speed consumer savings.

Employees that might be displaced by the restructuring process cannot be laid off for two years. The utilities may recover the costs of severance packages, retraining, job placement and counseling through the CTC.

The California act calls for two state-run, nonprofit institutions, an independent system operator (ISO) and a Power Exchange or pool. A 5 member oversight board will monitor the activities of both the ISO and the Power Exchange. The ISO will ensure the proper use of California's electrical transmission grid and, along with other western states, assure the dependability of the regional power grid. The California Power Exchange will operate as a “competitive auction” for the buying and selling of electricity and will be open to all suppliers.

The ISO is responsible for system inspection, maintenance, repair and replacement standards for transmission and distribution systems. ISO responsibilities include portions of the western regional power grid that lie outside of California. The California Public Utilities Commission (CPUC) will seek a “compact” with other western states to promote quality standards that protect the reliability of the regional transmission system.

Programs for low-income electricity consumers will be funded at levels not less than current levels, based on customer need. The act specifies that California's Renewable Energy, Energy Efficiency and New Technology programs will be funded, in part, by contributions from the state's three private utility companies. The CPUC and the California Energy Commission will determine the most efficient use of utility contributions.

The CPUC will be responsible for protecting consumers against unfair sales practices and other unsavory business practices involved in opening the electric industry to widespread competition. Marketers and sellers of electrical services must register with the CPUC and all service contracts must describe the price, terms, and CTC rate. Consumers will be given 3 days after signing a contract to switch back to their previous electricity provider.

Iowa's SF 2370 repeals existing state energy efficiency requirements for rate-regulated gas and electric utilities. The 1996 act strikes requirements that an electric rate-regulated utility spend at least 2 percent and a gas-regulated utility spend at least 1.5 percent of gross operating revenues to implement energy efficiency plans and budgets. It also strikes requirements that energy efficiency plans must include specific programs and services, and that a utility be assessed a reward or penalty based on energy efficiency performance.

Iowa's law provides that gas and electric utilities required to be rate-
regulated must file energy efficiency plans with the state utilities board. The plan must include a range of programs, tailored to meet the needs of all customer classes and include programs for low-income people. Affected utilities are required to assess potential energy capacity savings from actual and projected customer usage and submit this assessment to the board. The board must consult with the state energy department to develop specific capacity and energy savings performance standards for each utility. The utilities must then submit energy efficiency plans which are designed to attain these energy capacity performance standards.

The Iowa act permits regulated gas and electric utilities to automatically adjust rates to reflect the costs of an energy efficiency plan approved by the board. The act establishes a revolving loan program to make loans for alternate energy production facilities and small hydro facilities within the state, and requires regulated gas and electric utilities to remit a percentage of their gross operating revenues to the program. It appears to prohibit regulated gas and electric utilities from directly installing or repairing residential or commercial gas and electric HVAC systems, interior lighting systems and fixtures, or related equipment.

Montana’s 1997 Electric Utility Industry Restructuring Act (SB 390) establishes restructuring requirements for the state’s electric utility industry and electricity cooperatives. The act:

• directs utilities to conduct pilot programs to determine effective ways to offer their customers a choice of electricity suppliers under the deregulated system;
• authorizes waivers under certain circumstances;
• requires public utilities to submit transition plans to the state public service commission;
• directs the utilities to develop a method for customers to choose an electric supplier and to educate customers about the customer’s choice;
• directs public utilities to functionally separate their electricity supply, retail transmission and distribution, and regulated and unregulated options in the state;
• make transmission services available for nondiscriminatory and comparable use by all electric suppliers; by distribution services providers, and by customers;
• creates universal benefits programs for low-income energy assistance during the transition period and the future;
• prohibits unauthorized switching of customers from one supplier to another; and
• sets guidelines for licensing and taxing electricity suppliers.

Pennsylvania Act 1996-138 (HB 1509) contains two chapters about deregulating electric power companies, Chapter 28 and Chapter 74. Generally, the act calls for a statewide, market-based, electric power system by January 1, 2001.
Chapter 28 of this Pennsylvania law addresses restructuring the electric utility industry in the state to ensure a market-driven system. It requires electric power utilities to unbundle their rates and services and provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in the state. It caps the rates that companies may charge in the deregulated market. The chapter defines 4 types of electricity suppliers in the deregulated market; aggregators, brokers, electric distribution companies, and electric generation suppliers.

The chapter also contains provisions allowing electric utilities to recover transition or stranded costs, including imposing “competitive transition charge(s)” on customers. It encourages the state public service commission and electric power companies to work with other states in the region and the federal government to ensure reliable electric service to state residents.

Chapter 74 of this Pennsylvania act establishes guidelines to deregulate electric power cooperatives in the state. This includes a schedule to phase-in retail access to electricity for consumers of co-op generated electricity. This chapter establishes procedures to enable co-op power customers to switch to other utilities. The act enables electric power co-ops to provide electric service to people outside the co-op’s traditional service area. It contains provisions to exempt small electric power co-ops from some of the regulations imposed on larger power companies.

Another Pennsylvania law, Pennsylvania Act 1996-94 (HB 2446), enables electric public utilities in the state to restructure, buy down or buy out a non-utility generation contract from which the utility has an obligation to purchase electricity and affirms the rate recovery of certain electric utility payments for such purposes. The act also requires the state public utilities commission to ensure that utility rates reflect the costs and savings to utilities that arise from such buy-outs.

Like Ma Bell before, the move to deregulate electric power companies is picking up steam around the country. Who benefits and loses under the new structure remains to be seen. The next few years should tell the tale.

Readers can contact the state legislatures to get copies of the legislation mentioned in this “Note.”
Public Access to Legislative Documents

This act clarifies which legislative documents are considered public record. It also clarifies when elected officials can release information that is prepared for them.

Submitted as:
Colorado
SB237
Enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as “An Act Concerning Public Access to Documents Prepared for Elected Officials.”

Section 2. [Requests for Drafting Bills and Amendments - Confidential Nature Thereof - Lobbying for Bills.]
(a) Prior to the introduction of a bill or amendment in the [general assembly], no employee of the [office] shall reveal to any person outside the [office] the contents or nature of such bill or amendment, except with the consent of the person making the request. Nothing in this section shall prohibit the disclosure to the staff of any [legislative service agency] of such information concerning bills or amendments prior to introduction as is necessary to expedite the preparation of fiscal notes, as provided by the rules of the [general assembly], but such staff shall not reveal the contents or nature of such bills or amendments to any other person without the consent of the person making the request.

(b) All documents prepared or assembled in response to a request for a bill or amendment, other than the introduced version of a bill or amendment that was in fact introduced, shall be considered work product, as defined in [insert citation].

(c) (1) The final version of all documents prepared or assembled by the [office] for a member of the [general assembly] but not in response to a request for a bill or amendment and not containing legal analysis or expressing a legal opinion or conclusion shall not be considered work product as defined in [insert citation] except as otherwise provided in paragraph (e) of this section, the final version of such documents shall be a public record. These documents include, but are not limited to:

(A.) Comparisons of existing law with the provisions of any bill or amendment, comparisons of any bills or amendments with other bills or
Public Access to Legislative Documents

amendments, comparisons of different versions of bills or amendments, and
comparisons of the laws of this state with laws of other jurisdictions;
(B.) Compilations of existing public information, statistics, or data;
(C.) Compilations or explanations of general areas or bodies of law,
legislative history, or legislative policy.

(I.I.) Prior to delivery of the final version of such a document to the
member who requested it, no employee of the [office] shall reveal to any
person outside the [office] the contents or nature of the document, except
with the consent of the member making the request.

(d) If a member of the [general assembly] requests a legal opinion or
document from the [office] that is the same as or substantially similar to a
legal opinion or document previously requested by another member, the
[office] may produce an identical or substantially similar legal opinion or
document for the second member. The [office] shall not disclose the identity
of any member who made a previous request.
(e) A member may request that the final version of a document that
would otherwise become a public record in accordance with paragraph (c)
of this section remain work product.

Section 3. [Definitions.]
(a) “Public records” does not include work product prepared for elected
officials. However, elected officials may release, or authorize the release of,
all or any part of work product prepared for them.
(b) A work product also includes all documents relating to the draft-
ing of bills or amendments, pursuant to section (2)(b), of this act, but it does
not include the final version of documents prepared or assembled pursuant
to section (2)(c), of this act a work product also includes all research projects
conducted by staff of [legislative council] pursuant to [insert citation] if the
research is requested by a member of the [general assembly] and identified
by the member as being in connection with pending or proposed legislation
or amendments thereto. However, the final product of any such research
project shall become a public record unless the member specifically requests
that it remain work product. In addition, if such a research project is re-
quested by a member of the [general assembly] and the project is not iden-
tified as being in connection with pending or proposed legislation or amend-
ments thereto, the final product shall become public record.
(c) (I) In addition, a work product does not include any final version
of a document prepared or assembled for an elected official that consists
solely of factual information compiled from public sources. The final ver-
sion of such a document shall be a public record. These documents include,
but are not limited to:
(A) Comparisons of existing laws, ordinances, rules, or regulations
with the provisions of any bill, amendment, or proposed law, ordinance,
rule, or regulation; comparisons of any bills, amendments, or proposed laws,
ordinances, rules, or regulations with other bills, amendments, or proposed
laws, ordinances, rules, or regulations; comparisons of different versions of
bills, amendments, or proposed laws, ordinances, rules, or regulations; and
comparisons of the laws, ordinances, rules, or regulations of the jurisdiction
of the elected official with the laws, ordinances, rules, or regulations of other
jurisdictions;

(B) Compilations of existing public information, statistics, or data;
(C) Compilations or explanations of general areas or bodies of law,
ordinances, rules, or regulations, legislative history, or legislative policy.

(II) This paragraph (c) shall not apply to documents prepared or as-
sembled for members of the [general assembly] pursuant to paragraph (b)
of this section.

Section 4. [Effective Date] [Insert effective date.]
Federal Mandates for State Action (Note)

Congress continues to enact legislation which imposes significant requirements and costs to state governments. Recently, however, there has been some movement to reduce federal requirements on states. This note highlights legislation from the 104th Congress that either impose or reduce mandates. This note also includes recent Supreme Court action arising from the Brady Handgun Violence Prevention Act.


These summaries provide an overview, but should not be the primary source of information about the federal laws and requirements. The Committee intends to incorporate such reviews in future volumes of Suggested State Legislation not only as a mechanism for tracking major enactment’s, but also as an historical reference for the states.

The 104th Congress

During the first session of the 104th U. S. Congress, several enactment’s affect state action. Each is listed here with a brief description of its impact upon state governments.

The Unfunded Federal Mandates Reform Act of 1995 (UMRA) (P.L. 104-4)

UMRA is an attempt to define and restrain federal legislative and regulatory actions impinging on the states.

Title I: Legislative Accountability and Reform

This title amends Title IV of the Congressional Budget and Impoundment Act of 1974 by adding “Part B - Federal Mandates.”

This title requires Congressional authorization committees to provide the CBO Director with any legislation ordered to be reported, identifying any federal mandate in it and including certain information in the report accompanying such legislation, information such as: (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 analyses; and (4) statements regarding federal financial assistance to state, local, and tribal governments for meeting mandate costs.

The CBO Director must prepare appropriate statements for legislation passed or reported by a conference committee in an amended form with a mandate not previously considered or with an increase in the direct cost of a previously considered mandate.

The CBO Director, for each piece of passed or reported legislation, must prepare and submit to the authorization committee, when feasible, statements estimating the direct costs of mandate compliance and the amount of authorization or budget authority for new or increased federal financial assistance provided to state, local, or tribal governments to meet such costs, if the estimates indicate at least a $50 million per fiscal year direct cost of all intergovernmental mandates in the legislation, or a $100 million per fiscal year direct cost of private sector mandates. The CBO Director must also report on the reasons where it is not feasible to make such estimates in appropriate cases.

The act makes it out of order for the House or Senate to consider: (1) any reported legislation unless it has a CBO Director report (not including supplemental statements); or (2) any reported legislation that would increase the direct costs of federal intergovernmental mandates by an amount that exceeds applicable thresholds, unless it provides new budget, entitlement, or direct spending authority or includes an authorization of appropriations in an amount equal to or exceeding the direct costs of the mandate and makes other specified arrangements for each fiscal year with regards to the mandate. It disallows the application of such provisions to any appropriations legislation, with certain exceptions for any legislative provision increasing direct costs of a federal intergovernmental mandate in any legislation reported by an appropriations committee. It is also out of order in the House to consider a rule or order that waives the application of such provisions.

If requested, the CBO Director shall, to the extent practicable, prepare an estimate of the direct costs of a federal intergovernmental mandate contained in an amendment of the Senator.

The provisions apply to most actions of Congress resulting in a: (1) net reduction in or elimination of authorization of appropriations for federal financial assistance that would be provided to state, local, or tribal governments for use for the purpose of complying with any federal intergovernmental mandate, or to the private sector for use to comply with any federal private sector mandate, and would not eliminate or reduce duties established by the federal mandate by a corresponding amount; or (2) net increase in the aggregate amount of direct costs of federal intergovernmental mandates or federal private sector mandates other than as described above.

It requires any congressional committee that anticipates considering
any legislative proposal establishing, amending, or re-authorizing any fed-
eral program likely to have a significant impact on any state, local, or tribal
governments or on the private sector to include its views and estimates on
that proposal to the applicable budget committee.

It declares that at the request of: (1) a committee chairman or rank-
ing minority member, the CBO Director shall, if practicable, prepare a com-
parison between agency and CBO mandate cost estimates; (2) the CBO
Director, the Director of Office Management and Budget (OBM), shall coop-
erate in providing mandate cost estimates and related data.

Title II: Regulatory Accountability and Reform

This title 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).

It requires federal agencies, unless otherwise prohibited by law, to
prepare written statements before promulgating any general notice of pro-
posed rulemaking that is likely to result in promulgation of any rule that
includes any federal mandate that may result in state, local, or tribal gov-
ernment and private sector expenditures, in the aggregate, of $100 million
or more in any one year, and before promulgating any final rule for which a
general notice of proposed rulemaking was published.

The title requires such statements to: (1) identify the provision of fed-
eral law under which the rule is being promulgated; and (2) contain speci-
fied estimates and analyses.

It requires agencies to have developed an appropriate plan for notify-
ing affected small governments of applicable regulatory requirements and
allowing officials of such governments to provide input on the development
of regulatory proposals with intergovernmental mandates before establish-
ing any regulatory requirements having a potential significant or unique
affect on small governments.

The title directs each agency, to the extent permitted in law, to permit
elected officials and other representatives of state, local, and tribal govern-
ments to provide input on development of regulatory proposals containing
significant federal intergovernmental mandates.

General UMRA Statistics

CSG’s Washington Office reports that after UMRA, the CBO increased
the number of bills it reviewed for state and local government costs, 718
bills in 1996 versus 530 in 1995. Using UMRA’s criteria, 90 percent of the
bills reviewed by the CBO for the 104th Congress had no state and local
impact, and only 1.5 percent of the total had a “significant” cost impact.
Eleven apparently met the UMRA threshold. Of these, six dealt with the minimum wage (H.R. 940, 940 Amended, H.R. 1127, H.R. 3136, H.R. 3265 and H.R. 3265 Amended). One bill dealt with state securities regulation (H.R. 3005), one dealt with mental health insurance (H.R. 3103), one dealt with immigrant driver’s licenses (S. 269) and one dealt with occupational safety and health standards (S. 1423).

According to CSG’s DC office, the number of final regulations reported by CBO as exceeding the UMRA cap was lower in 1996 and 1995 than in 1994. The CBO identified 10 final regulations in 1996 that went over the $100 million threshold, 7 in 1995 and 14 in 1994.

HEALTH COVERAGE

Medicare Select Expansion Act of 1995 (P.L. 104-18)

This act extends a 15-state Medicare Select demonstration program under which insurers can market supplemental Medicare (Medigap) policies. It permits Medicare Select policies to be offered in all states, at the state’s option, until June 30, 1998.

Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191)

This act contains a host of measures that restrain health insurance companies from limiting or denying health insurance coverage to people with pre-existing medical conditions or who leave their jobs. Provisions affecting the states include:

• state enforcement against fraud and abuse;
• measures to encourage the states to reform their individual health insurance markets;
• exempting state insurance pools for medically high-risk people from federal taxes;
• state “look-back” provisions for pre-existing conditions; and
• a process leading to uniform privacy standards for health care information and basic minimum standards to be used for health care provider billing.

TRANSPORTATION


This act repeals the national speed limit compliance program we well as penalties on the states for not complying with federal motorcycle helmet requirements. It repeals a requirement under ISTEA that states must use a minimum amount of asphalt containing recycled rubber in highway surfacing projects. Section 205, entitled “Relief from mandates,” authorizes
states to decline to implement all or part of certain NHS “management systems.”

Conversely, this law directs the federal transportation secretary to establish programs requiring states to analyze the life-cycle costs and perform “value engineering” on projects within the national highway system that are estimated to cost more than $25 million.

The act also directs the states to enact and enforce a law that sets a blood alcohol content of .02 as the legal definition of drunken driving for anyone younger than age 21. States that do not comply with this provision could have a portion of their federal highway funds withheld. Finally, it requires states to certify or otherwise demonstrate that they meet a federal requirement to have a statewide program for roadside sobriety checkpoints.

**Amendments to the Clean Air Act of 1990 (P.L. 104-70)**

This amendment allows states to decide whether or not carpooling is used as a tool in their clean air plans. It eliminates a part of the 1990 Clean Air Act that required states to enforce the carpooling requirement for employees of certain size companies that are located in ozone non-attainment areas. Known as the “Employee Trip-Reduction Component,” states that did not enforce the provision stood to lose federal highway funds.

**SOCIAL SERVICES**


A detailed and extensive enactment generally replacing AFDC with block grants to the states, lending them some flexibility, but there are requirements that necessitate state action. For example, states must:

- determine how to implement key components such as ensuring that at least 50 percent of their case load is participating in at least 30 hours of work a week by the year 2002;
- decide whether to continue, terminate, or modify existing state waivers;
- understand the penalties and bonuses in the law for the states that apply to things as reducing illegitimacy or failing to meet the work participation rates;
- identify changes in the federal law that will require state legislative action and which can be made administratively; and
- change their automated systems that monitor and evaluate their public assistance case loads.
OTHER

The Telecommunications Act of 1996 (P.L. 104-104)

This act is intended to permit competition in local telephone service markets. It amends the Communications Act of 1934 to establish a general duty of telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other carriers.

It states that nothing precludes the enforcement of state regulations that are consistent with those requirements.

Title I: Telecommunications Services 9 to Subtitle A

Rural telephone companies are exempt from requirements on incumbent local exchange carriers until state public service commissions determine that such requirements are not unduly economically burdensome, are technologically feasible and are consistent with universal service provisions in the act.

The act preempts any state and local statutes, regulations, or requirements that prohibit any entity from providing interstate or intrastate telecommunications services.

It preempts any state and local statutes, regulations, or requirements that prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services.

The act authorizes a state, without violating the prohibition on barriers to entry, to require a competitor seeking to provide service in a rural market to meet the requirements for designation as an eligible carrier.

The act requires: (1) the FCC to institute and refer to a federal-state joint board a proceeding to recommend changes to any of its regulations to implement specified requirements including the definition of the services that are supported by federal universal service support mechanisms.

It grants states authority to adopt regulations not inconsistent with the FCC's rules. Requires all providers of intrastate telecommunications to contribute to universal service within a state in an equitable and nondiscriminatory manner, as determined by the state. It permits states to adopt additional requirements with respect to universal service in that state as long as such requirements do not rely or burden federal universal service support mechanisms.

Requires the FCC to establish procedures for its oversight of coordinated network planning by carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide such service. Authorizes the FCC to participate in the development by industry standards-setting organizations of public telecommunications networks used to provide service,
network capabilities and services by individuals with disabilities, and information services by subscribers or rural telephone companies.

It directs the FCC to: (1) complete a proceeding for the purpose of identifying and eliminating market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of such services; (2) seek to promote the policies and purposes of the act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest; and (3) periodically review and report to the Congress on any regulations prescribed to eliminate such barriers and the statutory barriers that it recommends be eliminated, consistent with the public interest.

The law prohibits a carrier from submitting or executing a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the FCC shall prescribe. It makes any carrier that violates such procedures and collects charges for such a service from a subscriber liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation.

It directs the FCC to prescribe regulations that require incumbent LECs to share network facilities, technology, and information with qualifying carriers where the qualifying carrier requests such sharing for the purpose of providing telecommunications services or access to information services in areas where the carrier is designated as an essential carrier. The law establishes the terms and conditions of such regulations. It requires LECs sharing infrastructure to provide information to sharing parties about deployment of services and equipment, including software.

The law prohibits any LEC subject to interconnection requirements under the act from: (1) subsidizing its telemessaging service directly or indirectly from its telephone exchange service or its exchange access; and (2) preferring or discriminating in favor of its telemessaging service operations in its provision of telecommunications services. Directs the FCC to establish procedures or regulations thereunder for the expedited receipt and review of complaints alleging violations that result in material financial harm to providers of telemessaging services.

Section 102 of this title specifies that a common carrier designated as an "eligible telecommunications carrier" shall: (1) be eligible to receive universal service support; and (2) throughout the service area for which the designation is received, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services, and advertise the availability of such services and the charges therefor using media of general distribution.

The law requires a state commission to designate such a carrier for
the service area. Authorizes (in the case of an area served by a rural telephone company) or requires (in case of all other areas) the state commission to designate more than one common carrier as an eligible carrier for a service area designated by the state commission, as long as each additional requesting carrier meets the requirements of this section and such designation is in the public interest.

Megan’s Law (P.L. 104-145)

The Violent Crime Control and Law Enforcement Act of 1994 offered money to the states to encourage them to set up programs to register sex offenders. This 1996 amendment to that law requires states to establish registries that provide information to the public about violent sex offenders.

Safe Drinking Water Act Revisions (P.L. 104-182)

Continues and extensively amending the original Safe Drinking Water Statute with an intricate structure of minimum requirements, prohibitions, grants and mixed federal-state regulation.

Defense of Marriage Act (P.L. 104-199)

This act amends the federal judicial code to provide that no state, territory, or possession of the United States or Indian tribe shall be required to give effect to any marriage between persons of the same sex under the laws of any other such jurisdiction or to any right or claim arising from such relationship.

It establishes a federal definition of: (1) “marriage” as only a legal union between one man and one woman as husband and wife; and (2) “spouse” as only a person of the opposite sex who is a husband or wife.

The National Securities Market Improvement Act of 1996 (P.L. 104-290)

Title 1: Capital Markets

This title amends the Securities Act of 1933 to preempt state regulation of “covered securities,” including: (1) nationally traded securities and investment company securities subject to federal registration requirements; (2) securities transactions with certain “qualified purchasers”; (3) securities offered or sold to qualified purchasers; and (4) certain securities whose offer or sale is exempt from registration and report-filing requirements.

Section 102 of this title retains state investigation and enforcement authority with respect to: (1) securities fraud or deceit; and (2) certain no-
tice filings and fee requirements. The act allows continued state collection of filing and registration fees as in effect before enactment of this Act, until state law or regulation adopted after enactment of this act provides otherwise. It provides a three-year period after enactment of this act during which a state securities commission may require the registration of securities whose issuer refuses to pay such fees.

Section 103 amends the Securities Exchange Act of 1934 to preempt state law with respect to capital, margin, recordkeeping, bonding, and reporting requirements.

**Title III: Investment Advisers Supervision Coordination Act**

Section 303 of this title amends the Investment Advisers Act of 1940 to exempt from SEC registration requirements investment advisers subject to a state securities regulator, unless they: (1) manage at least $25 million in assets; and (2) serve as advisers to certain federally registered investment companies.

It exempts from state regulation advisers subject to SEC regulation, or excepted from the SEC definition of investment adviser. It permits states, in such cases, to: (1) require the filing of documents for notice purposes, and (2) investigate fraud or deceit and bring enforcement actions.

Section 304 prohibits the enforcement of any state law or regulation that sets recordkeeping or capital and bond requirements in addition to those of the state in which an adviser maintains its principal place of business and is in compliance with applicable requirements.

Section 307 declares that nothing in this title prohibits a state securities commission (or similar agency) from requiring the filing of any documents filed with the SEC pursuant to securities laws solely for notice purposes, together with consent to service of process and any required fee.

It allows continued state collection of filing and registration fees as in effect before enactment of this act, until state law or regulation adopted after enactment of this act provides otherwise. It provides a three-year period after enactment of this act during which a state securities commission may require the registration of securities whose issuer refuses to pay such fees.
Airbag Safety and Anti-theft

It’s no secret that there is a market for stolen automobile parts. It’s no secret that people pay higher insurance premiums because of insurance fraud. Unfortunately, the market for stolen parts and incentives to commit fraud were enhanced when manufacturers began installing airbags in cars. However, two states, Colorado and New York, are taking steps to deter airbag theft, reduce insurance fraud and ensure that consumers get quality parts if their car is repaired.

Colorado HB 97-1098 (LLS 97-0041.01) requires people to replace airbags in their motor vehicle when they have received payment from an insurance company on their claim that their motor vehicle’s airbag was stolen or deployed. The 1997 Colorado act enables insurance companies to inspect motor vehicles involved in such claims to verify whether the vehicle’s airbag system was stolen or deployed.

Colorado’s law also prohibits motor vehicle repair shops from returning any replaced components of motor vehicle airbag systems to consumers.

The act in this SSL volume is based on New York law. It sets up mechanisms to deter the theft of inflatable restraint systems (airbags) and other fraudulent activities which are occurring with increasing frequency in and around the replacement and installation of airbags after collisions. These include:
• requirements that motor vehicle repair shops keep records that identify whether replacement airbag systems are from the original manufacturer or contain after-market parts or salvaged parts;
• criteria to enable insurance companies and car owners to inspect repaired or replaced airbag systems; and
• requirements that the police include in their accident reports information as to whether airbags inflated and deployed.

Submitted as:
New York
CH 161, Laws of 1996 (SB 5766-C)
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the “Airbag Safety and Anti-theft Act.”
Section 2. [Payment of Claims Involving Inflatable Restraint Systems.] Payment of a physical damage claim shall not be conditioned upon the repair of the automobile, provided, however, the insured shall replace any inflatable restraint system (airbag), as defined in subparagraph (b) of S 4.1.5.1 of standard 208 of part 571 of title 49 of the code of federal regulations, that inflated and deployed, or that was stolen, which is included in a physical damage or theft claim. The insurer may request that the automobile be made available for inspection whether or not the automobile is repaired. The results of such inspection may form a basis for determining the value of the automobile in the event of a subsequent loss. If the automobile is repaired the insurer shall request the repair invoice and shall require the insured and the automobile repairer to certify, under penalties of perjury, whether the applicable deductible has been paid to the automobile repairer, whether any repairs have been made and whether the repairs did not include all items allowed by the insurer.

Section 3. [Definitions.]
(a) An inflatable restraint system means an air bag, as defined in subparagraph (b) of S 4.1.5.1 of standard 208 of part 571 of title 49 of the code of federal regulations, that is designed and installed to be activated in a crash.
(b) Readiness indicator light means an indicator monitoring the inflatable restraint system’s readiness and such light is clearly visible from the driver’s designated seating position.

Section 4. [Safety Inspection.] In the case any passenger car manufactured on or after [insert date.] during the course of a vehicle safety inspection, as required by [insert citation] the readiness of the inflatable restraint system, by means of the readiness indicator, shall be noted on a form that is supplied to the consumer. The system’s lack of readiness shall not be considered grounds for the vehicle to fail the safety inspection provided for in [insert citation.]

Section 5. [Motor Vehicle Repair Shops: Invoices and Work Inspections.] All work done by a motor vehicle repair shop shall be recorded on an invoice and shall describe all service work done and parts supplied. If any used parts are supplied, the invoice shall clearly state that fact, such invoice shall clearly state that fact. If any body parts are supplied to a vehicle with a gross vehicle weight not in excess of [eighteen thousand (18,000)] pounds, the invoice shall clearly state whether such parts were manufactured as original equipment parts for the vehicle, or were manufactured as non-original replacement parts or are used parts. [One (1)] copy of the invoice shall be given to the customer and [one (1)] copy shall be retained by the motor vehicle repair shop. For the purposes of insuring that the repairs
described on the work invoice have been performed, every customer and his
representative or a representative of an insurance company where such
company has paid or is liable to pay a claim for damage to such customer's
motor vehicle shall have a right to inspect the repaired motor vehicle. Such
right of inspection shall also include the right to inspect all replaced parts
and components thereof, except warranty or exchange parts. Provided, how-
ever, the exception for warranty or exchange parts from the right of inspec-
tion shall not apply to replacement inflatable restraint systems. Any such
inspection by an insurer shall be made in a manner consistent with the
requirements of [insert citation]. The motor vehicle repair shop shall make
available to the customer, upon timely written demand, or for such work
authorized over the telephone, shall keep until the customer's motor ve-
hicle is retrieved, all replaced parts, components or equipment excepting
any parts, components or equipment normally sold on an exchange basis or
subject to a warranty.

Section 6. [Salvaged Inflatable Restraint Systems: Installation.]
   (a) In addition to the requirements of section 5 of this act, if an
   inflatable restraint system is replaced, the motor vehicle repair shop shall
   state on the repair invoice the name and tax identification number from
   whom such replacement inflatable restraint system was purchased. The
   vehicle repair shop shall, in the case of any salvaged inflatable restraint
   system installed, also state on the repair invoice the number of the vehicle
dismantler's registration number, the vehicle identification number of the
   vehicle from which the inflatable restraint system was salvaged and the
   part number of the salvaged inflatable restraint system. The insurer and
   the consumer shall receive a copy of the purchase invoice for such replace-
   ment inflatable restraint systems.
   (b) An inflatable system which has been activated in a crash or
   stolen shall be replaced only with an inflatable restraint system newly manu-
factured for first-time use.
   (c) Notwithstanding the provisions of paragraph (b) of this subdi-
   vision, an inflatable restraint system may be replaced by one salvaged and
   sold by a vehicle dismantler registered pursuant to [insert citation] pro-
   vided, however, that the salvaged inflatable restraint system has been sold
   in accordance with [insert citation.]
   (d) Notwithstanding any other provisions of law to the contrary, a
   consumer has the right to seek installation of a salvaged inflatable restraint
   system as provided in paragraph (c) of this subdivision, provided however,
   nothing shall require any facility to install a salvaged inflatable restraint
   system. A salvage installation shall only be done with the specific authori-
   zation of the customer. The invoice must prominently state, “Salvage inflat-
   able restraint system.” No other terms such as “used” or “as is” shall be
   used. The invoice must clearly state the terms of the warranty or guaran-
A salvaged inflatable restraint system must be of the exact same type as the unit with which the vehicle was originally equipped.

(f) On and after [insert date], in no case shall any inflatable restraint system be replaced with anything other than a newly manufactured inflatable restraint system or a salvaged inflatable restraint system certified according to standards established by a nationally recognized testing, engineering and research body as provided for in [insert citation.]

Section 7. [Log Books.] Each motor vehicle repair shop which either removes or installs inflatable restraint systems shall maintain a log book containing the following information: (a) the date of installation, (b) the vehicle identification number, license plate number, and make and model of the repaired vehicle, (c) the replacement inflatable restraint system's part number, (d) in the case of a salvaged inflatable restraint system, (1) the vehicle identification number of the vehicle from which the replacement inflatable restraint system was salvaged, and (2) the name, tax identification number, and registration number of the automobile dismantler from whom such salvaged inflatable restraint system was purchased, (e) in the case of a new replacement inflatable restraint system, the name and tax identification number of the supplier. Such records shall be maintained in a manner and form prescribed by the commissioner. Upon request of an agent of the commissioner or of any police officer and during its regular and usual business hours, the motor vehicle repair shop shall produce such records and permit said agent or police officer to examine them.

Section 8. [Inspecting Deployed Airbags.] In accordance with regulations of the [superintendent] insurers shall, except where the insured is permitted to retain the automobile as part of the claim settlement, take possession of any salvage and the certificate of title, properly endorsed to them of private automobiles whenever a loss is determined by the insurer to be a total loss or a constructive total loss. Insurers, in disposing of the salvage, shall fully comply with the requirements of [insert citation.] An insurer shall also have the right, where a claim is filed for the replacement of an inflated and deployed or stolen inflatable restraint system (air bag), as defined in subparagraph (b) of § 4.1.5.1 of standard 208 of part 571 of title 49 of the code of federal regulations, to inspect the vehicle for which the claim is being filed to verify that the air bag did inflate and deploy or was stolen. The insurer shall also have the right to take possession of a deployed airbag.

Section 9. [Major Vehicle Components.] Any records required by this section shall apply only to vehicles or parts of vehicles for which a certificate of title has been issued by the [commissioner] or which would be
eligible to have such a certificate of title issued. Every person required to be
registered pursuant to this section shall maintain a record of all motor
vehicles, trailers, and major component parts thereof, coming into his pos-
session together with a record of the disposition of any such motor vehicle,
trailer or part thereof and shall maintain proof of ownership for any motor
vehicle, trailer or major component part thereof while in his possession. For
the purposes of this article an inflatable restraint system shall be a major
component part. Such records shall be maintained in a manner and form
prescribed by the [commissioner]. The [commissioner] may, regulate exempt
vehicles or major component parts of vehicles from all or a portion of the
record keeping requirements based upon the age of the vehicle if the [com-
missioner] deems that such record keeping requirements would not further
the purposes of the motor vehicle theft prevention program established by
[insert citation.] Upon request of an agent of the [commissioner] or of any
police officer and during his regular and usual business hours, a vehicle
dismantler shall produce such records and permit said agent or police of-
fecto examine them and any vehicles or parts of vehicles which are sub-
jective to the record keeping requirements of this section and which are on the
premises. Upon request of any agent of the [commissioner] and during his
regular and usual business hours, a salvage pool, mobile car crusher or
itinerant vehicle collector shall produce such records and permit said agent
or police officer to examine them and any vehicles or parts of vehicles which
are subject to the record keeping requirements of this section and which
are on the premises. The failure to produce such records or to permit such
inspection on the part of any person required to be registered pursuant to
this section as required by this paragraph shall be a [class A misdemeanor.]

Section 10. [Sale of Salvaged Inflatable Restraint Systems: Restric-
tions.]

(a) On and after [insert date.] prior to offering any salvaged inflat-
able restraint system for sale such salvaged inflatable restraint system
part identification number and the vehicle identification number of the
vehicle from which the salvaged inflatable restraint system was taken shall
be referred to a nationally recognized theft index bureau approved by the
[commissioner] in consultation with the [superintendent of insurance] for
the purposes of determining prior to sale that neither the salvaged inflat-
able restraint system nor the motor vehicle were stolen, as determined at
the time of inquiry. The sales invoice shall state the date and the result of
the inquiry to such theft index bureau.

(b) On and after [insert date.] prior to offering any salvaged inflat-
able restraint system for sale such salvaged inflatable restraint system shall
be certified according to standards established by a nationally recognized
testing, engineering and research body approved by the [commissioner] in
consultation with the [superintendent of insurance.]
Section 11. [Reporting Deployment of Inflatable Restraint Systems.]

(a) Every police or judicial officer to whom an accident resulting in injury to a person shall have been reported, pursuant to the foregoing provisions of state law, shall immediately investigate the facts, or cause the same to be investigated, and report the matter to the [commissioner] forthwith; provided, however, that the report of the accident is made to the police officer or judicial officer within [five (5)] days after such accident. Every coroner, or other official performing like functions, shall likewise make a report to the commissioner with respect to all deaths found to have been the result of motor vehicle or motorcycle accidents. Such report shall include information on the width and length of trucks, tractors, trailers and semitrailers, which are in excess of [ninety-five (95)] inches in width or [thirty-four (34)] feet in length and which are involved in such accidents, whether such accident took place in a work area and whether it was being operated with an overweight or over dimension permit. Such report shall distinctly indicate and include information as to whether an inflatable restraint system inflated and deployed.

(b) The report required by this section shall be made in such form and number as the [commissioner] may prescribe. Such report shall include information on the width and length of trucks, tractors, trailers and semitrailers, which are in excess of [ninety-five (95)] inches in width or [thirty-four (34)] feet in length and which are involved in such accidents, whether such accident took place in a work area and whether it was being operated with an overweight or over dimension permit. Such report shall distinctly indicate and include information as to whether an inflatable restraint system inflated and deployed.

Section 12. [Effective Date] [Insert effective date.]
Counterfeit Cellular Telephones

This act provides criminal penalties for possessing, manufacturing, or selling of a cloned cellular phone or cellular phone cloning paraphernalia, and increases the penalty to a second degree felony when a cloned cellular phone is used to facilitate the commission of a felony.

It defines cloned cellular telephones as cellular telephones whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

Submitted as:
Utah SB 31 (enrolled version)
Enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “The Cellular Telephone Fraud Act.”

Section 2. [Definitions.]
(1) “Access device” means any telecommunications device including the telephone calling card number, electronic serial number, account number, mobile identification number, or personal identification number that can be used to obtain telephone service.

(2) “Clone cellular telephone” or “counterfeit cellular telephone” means a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

(3) “Cloning paraphernalia” means materials that, when possessed in combination, are capable of the creation of a cloned cellular telephone. These materials include scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned telephone with a false electronic serial number and mobile identification number combination, a computer containing such software, and lists of electronic serial number and mobile identification number combinations.

(4) “Electronic serial number” means the unique number that:
(a) was programmed into a cellular telephone by its manufacturer;
(b) is transmitted by the cellular telephone; and
(c) is used by cellular telephone providers to validate radio trans-
missions to the system as having been made by an authorized device.

(5) “EPROM” or “Erasable programmable read-only memory” means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light.

(6) “Intercept” means to electronically capture, record, reveal, or otherwise access, the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver, by means of any instrument, device or equipment.

(7) “Manufacture of an unlawful telecommunication device” means to produce or assemble an unlawful telecommunication device, or to modify, alter, program, or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider.

(8) “Mobile identification number” means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(9) “Possess” means to have physical possession or otherwise to exercise control over tangible property.

(10) “Sell” means to offer to, agree to offer to, or to sell, exchange, give, or dispose of an unlawful telecommunications device to another.

(11) “Telecommunications device” means:

(a) any type of instrument, device, machine, or equipment which is capable of transmitting or receiving telephonic, electronic, or radio communications; or

(b) any part of an instrument, device, machine, or equipment, or other computer circuit, computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications within the radio spectrum allocated to cellular radio telephony.

(12) “Telecommunication service” includes any service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, television optical or other electromagnetic system.

(13) “Telecommunication service provider” means any person or entity providing telecommunication service including a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment or telecommunication service.

(14) “Unlawful telecommunication device” means any telecommunication device that is capable of, or has been altered, modified, programmed, or reprogrammed, alone or in conjunction with another access device, so as to be capable of, acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. Unlawful devices include tumbler phones, counterfeit phones, tum-
bler microchips, counterfeit microchips, and other instruments capable of
disguising their identity or location or of gaining access to a communica-
tions system operated by a telecommunication service provider.

Section 3. [Use of Telecommunication Device to Avoid Lawful Charge
for Service – Penalty.]
(1) Any person who uses a telecommunication device with the intent
to avoid the payment of any lawful charge for telecommunication service or
with the knowledge that it was to avoid the payment of any lawful charge
for the telecommunication service is guilty of:
(a) a [class B misdemeanor,] if the value of the telecommunication
service is less than [three hundred (300)] dollars or cannot be ascertained;
(b) a [class A misdemeanor,] if the value of the telecommunication
service charge is or exceeds [three hundred (300)] dollars but is not more
than [one thousand (1,000)] dollars;
(c) a [third degree felony] if the value of the telecommunication
service is or exceeds [one thousand (1,000)] dollars but is not more than
[five thousand (5,000)] dollars;
(d) a [second degree felony,] if:
(i) the value of the telecommunication service is or exceeds [five
thousand (5,000)] dollars; or
(ii) the cloned cellular telephone was used to facilitate the com-
mission of a felony.
(2) Any person who has been convicted previously of an offense under
this section is guilty of a [second degree felony] upon a second conviction
and any subsequent conviction.

Section 4. [Possession of any Unlawful Telecommunication Device –
Penalty.]
(1) Any person who knowingly possesses an unlawful telecommunica-
tion device is guilty of a [class B misdemeanor.]
(2) Any person who knowingly possesses [five (5)] or more unlawful
telecommunication devices in the same criminal episode is guilty of a [third
degree felony.]
(3) Any person is guilty of a [second degree felony] who:
(a) knowingly and unlawfully possesses an instrument capable of
intercepting electronic serial number and mobile identification number com-
binations under circumstances evidencing an intent to clone; or
(b) knowingly and unlawfully possesses cloning paraphernalia un-
der circumstances evidencing an intent to clone.

Section 5. [Sale of an Unlawful Telecommunication Device – Penalty.]
(1) Any person is guilty of a [third degree felony] who intentionally
sells an unlawful telecommunication device or material, including hard-
ware, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use such material in the manufacture of an unlawful telecommunication device.

(2) If the offense under this section involves the intentional sale of [five (5)] or more unlawful telecommunication devices within a [six (6)] month period, the person committing the offense is guilty of a [second degree felony.]

Section 6. [Manufacture of an Unlawful Telecommunication Device – Penalty.]
(1) Any person who intentionally manufactures an unlawful telecommunication device is guilty of a [third degree felony.]

(2) If the offense under this section involves the intentional manufacture of [five (5)] or more unlawful telecommunication devices within a [six (6)] month period, the person committing the offense is guilty of a [second degree felony.]

Section 7. [Effective Date.] [Insert effective date.]
Controlled Substance Excise Tax Act
(Statement)

North Carolina HB 123 is a 1995 amendment to the state Controlled Substance Act revising the state excise stamp tax on controlled substances to bring it in line with the 1994 decision of the United States Supreme Court in Montana vs. Kurth Ranch, 114 S. Ct. 1937 (1994) in which the Court held that Montana's Department of Revenue tax on illegal drugs was unconstitutional. The Court held that the tax was not a true tax but was instead a punishment and thus violated the Fifth Amendment protection against double jeopardy.

While the Court acknowledged that a tax is not necessarily a punishment if it is at a high rate and is designed to deter unlawful conduct, the Court found that Montana's tax crossed the line from tax to multiple punishment for the same offense because in addition to being a tax on an illegal activity at a high rate designed to deter undesirable behavior, the tax was conditioned on the commission of a crime and was exacted only after the taxpayer was arrested and the taxed drugs were no longer in the taxpayer's possession. The Court based its decision in this regard on its finding that under Montana law a taxpayer has no obligation to file a return or pay taxes unless and until the taxpayer is arrested for the possession of illegal drugs.

Four justices dissented from the Court's decision. The North Carolina law levies an excise stamp tax on the possession of illegal drugs. The tax is at the rate of $3.50 for each gram of marijuana, $200 for each gram of any other drug sold by weight and $400 for each ten-dosage units of any drug not sold by weight.

The act makes the following changes to North Carolina's drug tax law to remove any potential unconstitutional impediments based on the Kurth Ranch decision:

• clarifies that the purpose of the tax is to raise revenue for law enforcement and for the general fund rather than to provide a second punishment;
• revises the tax rate so it does not exceed the market value of various illegal drugs and imposes a lower tax rate on low street value drugs which include steroids, depressants, and hallucinogens;
• imposes a lower tax rate on stems and stalks of marijuana that have been separated from other parts of the plant which are of much lesser value in this form;
• provides the tax to apply to any actual or constructive possession of the drugs, with an exemption for a person authorized by law to possess the drugs;
Controlled Substance Excise Tax Act (Note)

• repeals a special law that makes failure to pay the drug tax a felony;
• makes the drug tax subject to the same penalty provisions as other tax laws;
• reduces the civil penalty for failure to pay the tax from 100 percent of the tax to 50 percent of the tax due, so it would be the same as the failure to pay the tobacco tax;
• repeals the provisions that require state and local law enforcement agencies to report drug arrests to the state Bureau of Investigations, which in turn, had to report them to the Department of Revenue (these law enforcement agencies plan to continue to cooperate with the Department of Revenue on a voluntary basis);
• repeals the tax on counterfeit controlled substances which do not have the same value as controlled substances; and
• clarifies that the proceeds of the tax may be distributed more frequently than quarterly.

In State of North Carolina vs. Moran, 455 S.E. 2d 490 (1995), the North Carolina Court of Appeals held that a conviction under the Controlled Substance Excise Tax Act does not constitute double jeopardy under the Fifth Amendment to the Constitution when the prosecution for failure to pay the drug excise tax is part of the same prosecution as the drug trafficking offense. Thus, the court held the application of the act to be consistent with the decision of the U.S. Supreme Court in Department of Revenue of Montana vs. Kurth Ranch, 114 S. Ct. 1937, 128 L.Ed. 2d 767 (1994).
International Terrorism

This act makes it a felony offense under state law for people, charitable organizations, professional fund raisers or professional solicitors to solicit or provide material support or resources in support of international terrorism.

Submitted as:
Illinois
PA 89-515, Laws of 1996 (HB 3233)
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the “International Terrorism Crimes Act.”

Section 2. [Definitions.] “International terrorism” means activities that:

(i) involve a violent act or acts, perpetrated by a private person or non-governmental entity, dangerous to human life that would be a felony under the laws of the [state] if committed within the jurisdiction of the [state]; and

(ii) occur outside the United States; and

(iii) are intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government by assassination or kidnapping.

“Material support or resources” means currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets.

“Charitable organization,” “professional fund raiser” and “professional solicitor” have the meanings ascribed to them in [insert citation.]

Section 3. [Solicitation of Material Support or Resources in Support of International Terrorism.]

(a) A person, charitable organization, professional fund raiser, or professional solicitor commits solicitation of material support or resources in support of international terrorism when he, she, or the charitable organization raises, solicits, or collects material support or resources intending that the material support or resources will be used, in whole or in part, to plan,
Section 4. [Providing Material Support or Resources for International Terrorism.]

(a) A person commits providing material support or resources for international terrorism when he or she provides material support or resources to a person or an organization, intending that the material support or resources will be used, in whole or in part, to plan, prepare, carry out, or escape from an act or acts of international terrorism.

(b) Investigations.

(1) Within this state, an investigation may be initiated or continued under this section only when the facts reasonably indicate that:

(A) in the case of an individual, the individual knowingly or intentionally engages or has engaged in the violation of this or any other criminal law of this state; and

(B) in the case of a group of individuals, the group knowingly or intentionally engages or has engaged in the violation of this or any other criminal law of this state.

(2) An investigation may not be initiated or continued under this section based on activities protected by the First Amendment to the United States Constitution, including expressions of support or the provision of financial support for the nonviolent political, religious, philosophical, or ideological goals or beliefs of any person or group.

(C) Providing material support or resources for international terrorism is a [Class 1 felony.]

Section 5. [Effective Date] [Insert effective date.]
Youth Mentor Program

This act requires the attorney general to establish a youth mentor program for non-violent offenders. The program will be under the jurisdiction of the state’s family court and consists of a church mentor program and a community mentor program. This includes churches, mosques, masjids and synagogues. Participation in the church mentor program is voluntary. Participation in the program may be required as a pretrial diversion option. Mentors must monitor the academic and personal development of their assigned children for six months to a year. Proceedings in family court against a child are dismissed when they complete the program.

Submitted as:
South Carolina
GB 1033, PA 334
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

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

(A) The [attorney general’s office] shall establish a Youth Mentor Program to serve juvenile offenders under the jurisdiction of the [family court.] The program shall consist of a church mentor program and a community mentor program. Participation in the program may be required as a pretrial diversion option by a [solicitor] or as an optional, alternative disposition by a [family court judge.] The [circuit solicitor] may charge a juvenile offender who participates in the Youth Mentor Program a fee to offset the actual cost of administering the program; however, no juvenile offender is barred from the program because of indigence. This program must be available for juveniles who commit nonviolent offenses. For purposes of this subsection, nonviolent offenses mean all offenses not listed in [insert citation.]

(B) When a child is charged with a nonviolent offense which places him under the jurisdiction of the [family court] and the [solicitor] is of the opinion that justice would be better served if the child completed a church mentor program, the [solicitor] may divert the child to such a program. Upon completion of the program, the proceedings in family court must be dismissed.

Participation in the church mentor program is voluntary, and the child or his parents or guardians may refuse to participate based upon their
Youth Mentor Program

...religious beliefs or for any other reason.

The [attorney general] must establish guidelines for the program, the mentors, and the churches, mosques, masjids, synagogues, and other religious organizations that participate in the church mentor program.

(C) When a child is adjudicated delinquent for a nonviolent offense in [family court,] the [family court judge] may order the child to participate in the community mentor program. When a child is ordered to participate in the community mentor program, he must be assigned to a community organization which shall assign a mentor to the child. The mentor shall monitor the academic and personal development of the child for a minimum period of [six (6)] months and a maximum period not exceeding [one (1)] year as ordered by the court. Failure to complete the program shall result in the child being brought before the [family court] for appropriate sanctions or revocation of suspended commitment.

The [attorney general] must establish guidelines for the program, the mentors, and the community organizations that participate in the community mentor program.

Section 2. [Court may Order Participation in Community Mentor Program.] When a child is found by decree of the [court] to be subject to the provisions of [insert citation,] the [court] must in its decree make a finding of the facts upon which the [court] exercises its jurisdiction over the child. Following the decree, the [court] may, by order:

(a) place the child on probation or under supervision in the child's own home or in the custody of a suitable person elsewhere, upon conditions as the [court] may determine. A child placed on probation by the [court] remains under the authority of the [court] only until the expiration of the specified term of the child's probation. This specified term of probation may expire before but not after the [eighteenth (18th)] birthday of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child's family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child's personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in of this act. The court may impose restitution or participation in supervised work or community service as a condition of probation. The [department of juvenile justice,] in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. If the court imposes as a condition of probation a requirement that restitution in a specified amount be paid, the amount to be paid as restitution may not exceed [five hundred
(500)]] dollars. The [department of juvenile justice] shall develop a system
for the transferring of court-ordered restitution from the child to the victim
or owner of property injured, destroyed, or stolen.

(b) as a condition of probation impose upon the juvenile a fine not
exceeding [two hundred (200)] dollars when the offense is one in which a
magistrate, municipal, or circuit court judge has the authority to impose a
fine. A fine may be imposed when commitment is suspended but not in
addition to commitment;

(c) commit the child to the custody or to the guardianship of a pub-
lic or private institution or agency authorized to care for children or to
place them in family homes or under the guardianship of a suitable person.
Commitment must be for an indeterminate period but in no event beyond
the child's [twenty-first (21)] birthday;

(d) cause a child concerning whom a petition has been filed to be
examined or treated by a physician, psychiatrist, or psychologist and for
that purpose place the child in a hospital or other suitable facility;

(e) order the child to participate in a community mentor program
as provided in this act;

(f) order other care and treatment as it considers best, except as
otherwise provided in this section. In support of an order, the [court] may
require the parents or other persons having custody of the child, or any
other person who has been found by the court to be encouraging, causing, or
contributing to the acts or conditions which bring the child within the pur-
view of this act, to do or omit to do acts required or forbidden by law, when
the judge considers the requirement necessary for the welfare of the child.

In case of failure to comply with the requirement, the court may proceed
against those persons for contempt of [court;]

(g) dismiss the petition or otherwise terminate its jurisdiction at
any time, on the motion of either party or on its own motion.

No adjudication by the [court] of the status of a child is a conviction,
 nor does the adjudication operate to impose civil disabilities ordinarily re-
 sulting from conviction, nor may a child be charged with crime or convicted
 in a court, except as provided in [insert citation.] The disposition made of a
child, or any evidence given in court, does not qualify the child in a future
civil service application or appointment.

Whenever the [court] commits a child to an institution or agency, it
must transmit with the order of commitment a summary of its information
concerning the child, and the institution or agency must give to the [court]
information concerning the child which the court may require. Counsel of
record, if any, must be notified by the [court] of an adjudication under this
section, and in the event there is not counsel of record, the child, its parents,
or guardian must be notified of the adjudication by regular mail from the
court to the last address of the child, its parents, or guardian.
1 Section 3. [Effective Date] [Insert effective date.]
Ephedrine and Pseudoephedrine

This act excepts certain food products, dietary supplements and drug products containing limited quantities of ephedrine or pseudoephedrine from being classified as controlled substances. However, anyone who sells or distributes products containing ephedrine may not advertise these products as a legal way to get “high,” heighten sexual performance or build muscles.

The act permits the state pharmacy board to list, except or change the classification of products as controlled substances. It cites the potential for abuse and threat to public health as major criteria for determining whether and how products are classified as controlled substances.

Submitted as:
Ohio
1996 Ohio Laws, File 268 (HB 523)
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “An Act Concerning the Scheduling of Ephedrine & Pseudoephedrine Containing Products.”

Section 2. [Adding, Transferring or Removing Compounds from Controlled Substances Schedule]

(A) Pursuant to this section, and by rule adopted pursuant to [insert citation,] the [state board of pharmacy] may do any of the following with respect to [schedules I, II, III, IV, and V] established in [insert citation]:

(1) Add a previously unscheduled compound, mixture, preparation, or substance to any schedule;

(2) Transfer a compound, mixture, preparation, or substance from one schedule to another, provided the transfer does not have the effect under state law of providing less stringent control of compound, mixture, preparation, or substance than is provided under federal narcotic laws;

(3) Remove a compound, mixture, preparation, or substance from the schedules where the [board] had previously added the compound, mixture, preparation, or substance to the schedules, provided that the removal shall not have the effect under state law of providing less stringent control of the compound, mixture, preparation, or substance than is provided under federal narcotic laws;

(B) In making a determination to add, remove, or transfer pursuant
to division (A) of this section, the [board] shall consider the following:

1. The actual or relative potential for abuse;
2. The scientific evidence of the pharmacological effect of the sub-
   stance, if known;
3. The state of current scientific knowledge regarding the sub-
   stance;
4. The history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. The risk to the public health;
7. The potential of the substance to produce psychic or physiologi-
   cal dependence liability; or
8. Whether the substance is an immediate precursor.

(c) The [board] may add or transfer a compound, mixture, prepara-
    tion, or substance to [schedule I] when it appears that there is a high poten-
    tial for abuse, that it has no accepted medical use in treatment in this state,
    or lacks accepted safety for use in treatment under medical supervision.

(D) The [board] may add or transfer a compound, mixture, prepara-
    tion, or substance to [schedule II] when it appears that there is a high po-
    tential for abuse, that it has a currently accepted medical use in treatment
    in this state, or currently accepted medical use in treatment with severe
    restrictions, and that its abuse may lead to severe physical or severe psy-
    chological dependence.

(E) The [board] may add or transfer a compound, mixture, prepara-
    tion, or substance to [schedule III] when it appears that there is a potential
    for abuse less than the substances included in [schedules I and II,] that it
    has a currently accepted medical use in treatment in this state, and that its
    abuse may lead to moderate or low physical or high psychological depen-
    dence.

(F) The [board] may add or transfer a compound, mixture, prepara-
    tion, or substance to [schedule IV] when it appears that it has a low poten-
    tial for abuse relative to substances included in [schedule III,] and that it
    has a currently accepted medical use in treatment in this state, and that its
    abuse may lead to limited physical or psychological dependence relative to
    the substances included in [schedule III.]

(G) The [board] may add or transfer a compound, mixture, prepara-
    tion, or substance to [schedule V] when it appears that it has lower poten-
    tial for abuse than substances included in [schedule IV,] and that it has
    currently accepted medical use in treatment in this state, and that its abuse
    may lead to limited physical or psychological dependence relative to sub-
    stances included in [schedule IV.]

(H) Even though a compound, mixture, preparation, or substance does
    not otherwise meet the criteria in this section for adding or transferring it
    to a schedule, the [board] may nevertheless add or transfer it to a schedule
    as an immediate precursor when all of the following apply:
(1) It is the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;
(2) It is an immediate chemical intermediary used or likely to be used in the manufacture of such a controlled substance;
(3) Its control is necessary to prevent, curtail, or limit the manufacture of the scheduled compound, mixture, preparation, or substance of which it is the immediate precursor.

(I) Authority to control under this section does not extend to distilled spirits, wine, or malt beverages, as those terms are defined or used in [insert citation.]

(J) Authority to control under this section does not extend to any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act as defined in [insert citation] and the laws of this state, be lawfully sold over the counter without a prescription. Should a pattern of abuse develop for any nonnarcotic drug sold over the counter, the [board] may, by rule adopted in accordance with [insert citation,] after a public hearing and a documented study to determine that the substance actually meets the criteria listed in division (B) of this section, place such abused substance on a prescription basis.

(K)(1) A drug product containing ephedrine that is known as one of the following and is in the form specified shall not be considered a [schedule V] controlled substance:
(a) Amesec capsules;
(b) Bronitin tablets;
(c) Bronkotabs;
(d) Bronkoliixir;
(e) Bronkaid tablets;
(f) Efedron nasal jelly;
(g) Guiaphed elixir;
(h) Haysma;
(i) Pazo hemorrhoid ointment and suppositories;
(j) Primatene “M” formula tablets;
(k) Primatene “P” formula tablets;
(l) Tedrigen tablets;
(m) Tedral tablets, suspension and elixir;
(n) T.E.P.;
(o) Vatronol nose drops.

(2)(a) A product containing ephedrine shall not be considered a controlled substance if the product is a food product or dietary supplement that meets all of the following criteria:
(i) It contains, per dosage unit or serving, not more than the lesser of [twenty-five (25)] milligrams of ephedrine alkaloids or the maximum amount of ephedrine alkaloids provided in applicable regulations adopted by the United States food and drug administration, and no other controlled substance.
(ii) It contains no hydrochloride or sulfate salts of ephedrine alkaloids.

(iii) It is packaged with a prominent label securely affixed to each package that states all of the following: the amount in milligrams of ephedrine in a serving or dosage unit; the amount of the food product or dietary supplement that constitutes a serving or dosage unit; that the maximum recommended dosage of ephedrine for a healthy adult human is the lesser of [one hundred (100)] milligrams in a [twenty-four (24)] hour period for not more than [twelve (12)] weeks or the maximum recommended dosage or period of use provided in applicable regulations adopted by the United States food and drug administration; and that improper use of the product may be hazardous to a person’s health.

(b)(i) Subject to division (K) (2) (b) (ii) of this section, no person shall dispense, sell, or otherwise give a product described in division (K) (2) (a) of this section to any individual under [eighteen (18)] years of age.

(ii) Division (K) (2) (b) (i) of this section does not apply to a physician or pharmacist who dispenses, sells, or otherwise gives a product described in division (K) (2) (a) of this section to an individual under [eighteen (18)] years of age, to a parent or guardian of an individual under [eighteen (18)] years of age who dispenses, sells, or otherwise gives a product of that nature to the individual under [eighteen (18)] years of age, or to a person who, as authorized by the individual’s parent or legal guardian, dispenses, sells, or otherwise gives a product of that nature to an individual under [eighteen (18)] years of age.

(c) No person in the course of selling, offering for sale, or otherwise distributing a product described in division (K) (2) (a) of this section shall advertise or represent in any manner that the product causes euphoria, ecstasy, a “buzz” or “high” or an altered mental state; heightens sexual performance; or, because it contains ephedrine alkaloids, increased muscle mass.

(3) A drug product that contains the isomer pseudoephedrine, or any of its salts, optical isomers, or salts of optical isomers, shall not be considered a controlled substance if the drug product is labeled in a manner consistent with federal law or with the product’s over-the-counter tentative final monograph or final monograph issued by the United States food and drug administration.

(4) At the request of any person, the [board] may except any product containing ephedrine not described in division (K) (1) or (2) of this section or any class of products containing ephedrine from being included as a [schedule V] controlled substance if it determines that the product or class of products does not contain any other controlled substance. The [board] shall make the determination in accordance with this section and by rule adopted in accordance with [insert citation.]

(L) As used in this section:

(1) “Food” has the same meaning as in [insert citation;]

(3) "Ephedrine alkaloids" means ephedrine, pseudoephedrine, norephedrine, norpseudeophedrine, methylephedrine, and methylpseudoephedrine.

Section 3. [Penalties.]
(A) Whoever violates [insert citation] is guilty of a [felony of the fifth degree.] If the offender previously has been convicted of a violation of [insert citation] or a drug abuse offense, a violation of [insert citation] is a [felony of the fourth degree.] If the violation involves the sale, offer to sell, or possession of a [schedule I or II] controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, division (D) of this section applies.

(B) Whoever violates [insert citation] is guilty of a [felony of the fifth degree.] If the offender previously has been convicted of a violation of [insert citation] or a drug abuse offense, a violation of [insert citation] is a [felony of the fourth degree.] If the violation involves the sale, offer to sell, or possession of a [schedule I or II] controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, division (D) of this section applies.

(C) Whoever violates [insert citation] is guilty of a [misdemeanor of the first degree.] If the offender previously has been convicted of a violation of [insert citation] or a drug abuse offense, a violation of [insert citation] is a [felony of the fourth degree.] If the violation involves the sale, offer to sell, or possession of a [schedule I or II] controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, division (D) of this section applies.

(D)(1) If an offender is convicted of or pleads guilty to a felony violation of [insert citation], if the violation involves the sale, offer to sell, or possession of a [schedule I or II] controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, the court that sentences the offender, in lieu of the prison term authorized or required by division (A), (B), or (C) of this section and [insert citation] and in addition to any other sanction imposed for the offense under [insert citation], shall impose upon the offender, in accordance [insert citation], the mandatory prison term specified in that division and may impose an additional prison term under division of that section.

(2) Notwithstanding any contrary provision of [insert citation], the [clerk of the court] shall pay any fine imposed for a felony violation of [insert citation.] The agency that receives the fine shall use the fine as specified in [insert citation.]

(E) Whoever violates [insert citation] is guilty of a [misdemeanor of the third degree.] If the offender previously has been convicted of a viola-
ation of [insert citation] or a drug abuse offense, a violation under [insert
citation] is a [misdemeanor of the first degree.]

(F) Whoever violates [insert citation] is guilty of a [misdemeanor of
the fourth degree.] If the offender previously has been convicted of a [insert
citation] or a drug abuse offense, a violation of [insert citation] is a [misde-
meanor of the third degree.]

(G) Whoever violates [insert citation] is guilty of a [minor misde-
meanor.]

(H) Whoever violates division (K) (2) (b) of this act is guilty of a [felony
of the fifth degree.]

(I) Whoever violates division (K) (2) (c) of this act is guilty of a [misde-
meanor of the second degree.]

(J) As used in this section, “major drug offender” has the same mean-
ning as in [insert citation.]

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

84 - The Council of State Governments
The right to keep and bear arms has been contested for many years in many government venues. Whether ordinary citizens can carry concealed weapons is one of the most hotly debated components.

Depending on the source, between 31 and 42 states are reported as having laws that enable citizens to carry concealed weapons. The variance depends on how the laws are interpreted. This is directly related to the criteria that citizens must meet to qualify to carry a weapon and the amount of discretion that authorities can use to deny a permit to carry a weapon. It appears states are moving to a more permissive stance in issuing concealed weapons permits, a trend started in 1987 in Florida. Common elements of state concealed weapons laws include:

- an application and permit process;
- background checks;
- training; and
- weapons bans for certain places (e.g., churches and schools).

Florida, Kentucky, South Carolina and Texas represent recent state efforts to enable citizens to carry concealed weapons and to regulate and refine the circumstances where that happens.

Florida's CS for SB 1582 amends existing law concerning concealed weapons. This 1995 law revises guidelines and time limits relating to licenses to carry concealed weapons. It removes provisions allowing licensees to carry copies of concealed weapons licenses. It revises the qualifications and application procedures for concealed weapons licenses. The law reduces license fees and revises the power and duties of the department of state and sheriffs concerning concealed weapons licenses.

In 1997 Florida HB 379 (CH 97-92) made it lawful to carry chemical sprays (e.g., pepper sprays) and non-lethal stun guns for the purposes of lawful self-defense. This act also made it a third degree felony to use such weapons against law enforcement officers.

Kentucky KRS 237.110 establishes a comprehensive state system for issuing concealed weapons permits. The 1996 statute defines circumstances whereby licenses are denied and when carrying concealed weapons is prohibited.

People who want to carry concealed weapons in Kentucky must complete a state application, pay a fee and furnish proof to the state law enforcement department that they have been trained in handling firearms. Permits are renewable every three years. They are valid statewide. Permit holders must carry their permits when they carry their weapons.

The act prohibits permit holders from carrying weapons into law enforcement offices, prisons, courthouses, schools and churches. Business own-
ers can prohibit license holders from bringing concealed weapons onto their premises. And in fact, it appears that many businesses throughout the state did establish such bans along with other “weapons” policies.

South Carolina GB 3730 (1996 Act A464) establishes a comprehensive state system for issuing concealed weapons permits. It defines circumstances when carrying concealed weapons is prohibited.

People who want to carry concealed weapons in South Carolina must complete a state application, pay a fee and furnish proof to the state law enforcement department that they have been trained in handling firearms. Permits are renewable every four years. They are valid statewide. Permit holders must carry their permits when they carry their weapons.

The South Carolina act prohibits permit holders from carrying weapons into law enforcement offices, prisons, courthouses, polling places, local government offices, schools, day care facilities and churches. Carrying concealed weapons into the personal residence of another person without their consent is also prohibited. Public and private employers can prohibit permittees from bringing concealed weapons onto their premises or while using the employer's machinery or equipment.

Texas' 1996 SB 60 establishes a comprehensive state system for issuing concealed handgun permits. It defines circumstances whereby licenses are denied and when carrying concealed handguns is prohibited.

People who want to carry concealed handguns in Texas must complete a state application, pay a fee and furnish proof to the state law enforcement department that they have been trained in handling firearms. Permits are renewable every four years. They are valid statewide. Permit holders must carry their permits when they carry their handguns.

The act prohibits permit holders from carrying handguns into facilities such as schools and churches. Employers can prohibit license holders from bringing concealed handguns onto their business premises.

Finally, state concealed weapons laws have also raised the issue of out-of-state licenses and reciprocity, i.e., whether a state will recognize the validity of a concealed weapons permit issued by another state. Between 1996 and 1997, at least five states considered or enacted legislation that dealt with this; Georgia, Idaho, Oklahoma, Mississippi and North Dakota. Generally, the legislation in these states would allow them to recognize valid permits issued to non-residents by their home state if that state accorded their residents the same privilege.

Readers can contact the states to get a copy of legislation mentioned in this “Note.”
Teen Courts

CSG Center for Law and Justice staff say teen courts are operating in 32 states and the District of Columbia. However, most were started through administrative action at the local level. The popularity of teen courts and desires to expand them statewide have prompted states to begin considering enabling legislation for teen courts. Illinois, Oregon, Mississippi, West Virginia and Minnesota are examples.

Illinois S 171 permits cities and counties to establish teen court programs. It permits cities or counties to contract with community-based organizations to run teen court programs. The bill sets the minimum age for participation on teen courts at 10. The bill also clarifies procedures for handling juveniles who are taken into custody by law enforcement officers. This bill had passed House and Senate as of May 1997.

Mississippi S 2766, which was enacted in 1997, provides for diversion of youthful offenders into a teen court pilot program. It requires a licensed attorney to preside over teen courts.

Oregon H 3323 authorizes the juvenile department in a county to create a teen court pilot program as a sentencing alternative for youth offenders who admit committing a minor offense. H 3323 had passed the House Children and Families Committee and was pending in the House Ways and Means Committee as of May 1997.

West Virginia HB 4735 (enrolled version, part 49-5-13d) establishes teen courts in three counties of the state. A governor’s committee on crime and delinquency administers the teen court program in conjunction with circuit courts.

The 1996 West Virginia law enables juveniles who commit certain types of crimes to choose teen courts to hear their case instead of traditional courts. Volunteer students from grades ten through twelve serve as jurors, prosecuting and defense attorneys, clerks and bailiffs at teen court proceedings. Retired circuit court judges or active members of the state bar serve as teen court judges. Juveniles who use teen courts must also agree to serve as teen court jurors after their cases are heard.

The American Probation and Parole Association (located within The Council of State Governments’ Center for Law and Justice) has developed Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Program to provide information to jurisdictions that are interested in establishing teen courts. Readers can call the Juvenile Justice Clearinghouse at 800-638-8736 to get a free copy. Additional training on teen courts is available from the APPA at (606) 244-8215.

The draft act in this SSL volume is based on Minnesota law. It establishes procedures to set up and operate teen courts in the state. It defines teens as anyone between 10 and 18 years old. Teen courts are defined as an
alternative procedure under which a local law enforcement agency, county attorney, school, or probation agency may divert from the juvenile court system a teen who has allegedly committed a minor offense, on condition that the teen voluntarily appear before and receive a disposition from a jury of the teen’s peers and successfully complete the terms and conditions of the disposition.

The act directs the state supreme court to adopt rules and procedures to govern the teen court program.

Submitted as:
Minnesota
CH 202, Laws of 1997
Enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “An Act to Permit Teen Courts.”

Section 2. [Definitions.]
(a) “Minor offense” means:
   (1) a [juvenile petty offense;]
   (2) a [petty misdemeanor;] or
   (3) any [misdemeanor;] other than a misdemeanor-level violation of [insert citation] (contempt of court), [insert citation] (fifth degree-assault), [insert citation] (domestic assault), [insert citation] (prostitution and related crimes), [insert citation] (prostitution) [insert citation] (arson in the third degree), [insert citation] (negligent fires, dangerous smoking), [insert citation] (dangerous weapons), or [insert citation] (indecent exposure), a major traffic offense, or an adult traffic offense.
(b) “Teen” means an individual who is at least [ten (10)] years old but less than [eighteen (18)] years old.
(c) “Teen court” and “teen court program” mean an alternative procedure under which a local law enforcement agency, county attorney, school, or probation agency may divert from the juvenile court system a teen who allegedly has committed a minor offense, on condition that the teen voluntarily appear before and receive a disposition from a jury of the teen’s peers and successfully complete the terms and conditions of the disposition. These programs also may be used by a school as an alternative to formal school disciplinary proceedings.

Section 3. [State Supreme Court Rules.] The [state supreme court] is
requested to adopt rules and procedures to govern the teen court program that are consistent with this section.

Section 4. [Application to Establish Teen Court.]
(a) Any group of two or more adult sponsors may apply to the [office of strategic and long-range planning] to establish a teen court. These sponsors must be affiliated with an agency, entity, or other organized program or group.

(b) An application to establish a teen court must include:
(1) the names, addresses, and telephone numbers of [two (2)] or more adult sponsors and a description of the entity, agency, or other organized program or group with which the adult sponsors are affiliated;
(2) the names, addresses, and telephone numbers of all teens who have signed letters of commitment to participate voluntarily as teen court members in the teen court program;
(3) a certification from the adult sponsors that adequate adult sponsorship exists and that there are a sufficient number of teen volunteers to make the functioning of the teen court feasible and meaningful; and
(4) a letter of support from the [judicial district court administrator] agreeing to help the teen court track the recidivism rates of teen court participants.

Section 5. [Referral to Teen Court Program.] Once the teen court program has been established, it may receive referrals for eligible teens from local law enforcement, county attorneys, school officials, and probation agencies. The process of referral is to be established by the individual teen court program, in coordination with other established teen court programs in the judicial district.

Section 6. [Fee] The teen court program may require a teen to pay a nonrefundable fee to cover the costs of administering the program. This fee must be reduced or waived for a participant who does not have the ability to pay the fee.

Section 7. [Teen Court Program Components.]
(a) Before a teen participates in the teen court program, a teen court sponsor or the referring source must:
(1) contact the victim, if any, of the offense, or make a good faith attempt to contact the victim, if any, and the victim must be advised that the victim may participate in the teen court proceedings; and
(2) at least [seven (7)] days before the teen participates in the program, provide to the county attorney of the teen's residence the teen's name, date of birth, and residential address and a description of the offense.

(b) Before a teen court disposes of a case, it must establish a range of
dispositional alternatives for offenses that is appropriate to the teen court's community. These dispositions may include the following:

(1) community service;
(2) mandatory participation in appropriate counseling, appropriate treatment, law-related educational classes, or other educational programs;
(3) a requirement that the teen defendant participate as a juror in future proceedings before the teen court;
(4) restitution where appropriate; and
(5) a fine, not to exceed the amount permitted in [insert citation.]

The fine permitted in [insert citation,] may only be imposed for misdemeanor level offenses.

The teen court does not have the power to place a teen outside the home.

(c) Except as provided in paragraph (d), the teen court program may be used only where:

(1) the teen acknowledges responsibility for the offense;
(2) the teen voluntarily agrees to participate in the teen court program;
(3) the judge of the teen court is a judge or an attorney admitted to practice law in this state;
(4) the teen's parent or legal guardian accompanies the teen in all teen court proceedings;
(5) the county attorney does not notify the teen court before the teen's participation that the offense will be handled in juvenile court or in a pre-trial diversion program established under [insert citation,] and
(6) the teen court program has established a training component for teen and adult volunteers.

(d) When a teen court operates as an alternative to a school disciplinary policy, the teen's parent or legal guardian must be notified of the teen's involvement in the program, according to the school district's disciplinary policy. The teen's parent or legal guardian does not need to accompany the teen in teen court proceedings.

(e) The teen court shall notify the referring source as soon as possible upon discovery that the teen has failed to comply with any part of the disposition imposed under paragraph (b). Either juvenile court proceedings or formal school disciplinary proceedings, where applicable, or both, may be commenced against a teen who fails to comply with the disposition under paragraph (b).

Section 8. [Evaluation and Reports.]

(a) The results of all proceedings in teen court must be reported to the [office of strategic and long-range planning] on a form provided by that office. The teen court must submit the report no later than [insert date] for all activity during the first [six (6)] months of the calendar year and by
[insert date] for all activity during the last [six (6)] months of the preceding calendar year. A copy of this report also must be provided to the county attorney of the county in which the teen court operates. Each report must include the following:

1. the number of cases handled by the teen court, including a breakdown of the number of cases from each referring agency;
2. a list of the offenses for which the teen court imposed a disposition, including a breakdown showing the number of teen court participants committing each type of offense;
3. a list of the dispositions imposed by the teen court, including a breakdown showing the number of times each particular disposition was imposed; and
4. information on the cases that were referred back to the referring agency under section 7, paragraph (e).

(b) Each teen court shall report to the [office of strategic and long-range planning] by [insert date] each year on its progress in achieving outcome measures and indicators. This report must include an analysis of recidivism rates for teen court participants, based upon a method for measuring these rates as determined by the [office of strategic and long-range planning].

(c) The [office of strategic and long-range planning] shall assist teen court programs in developing outcome measures and indicators. These outcome measures and indicators must be established before any teen court begins to impose dispositions and must allow for both evaluation of each teen court program and for statewide evaluation of the teen court program.

Section 9. [Administration.] The [office of strategic and long-range planning] has authority to administer funds to teen court programs that comply with this section and the [state supreme court] rules adopted under this section. The [office of strategic and long-range planning] may receive and administer public and private funds for the purpose of this section.

Section 10. [Effective Date] [Insert effective date.]
Increasing Home Ownership Opportunities For Police

This act directs the state housing finance authority to work with local governments to establish a pilot program to offer low interest loans to encourage police officers to buy homes in and live in high crime areas in the state. It is part of a strategy to promote community policing.

The act is based on Connecticut's law. Connecticut's program began operating in January 1997. Before loans can be offered, a city or town must pass a resolution to participate in the program and designate where an increased police presence is needed within the city or town.

As of September 1997, 14 municipalities were participating in Connecticut's program. Of those, seven designated their entire city/town as eligible, and six designated certain areas of their city/town as eligible. Four of the municipalities will offer grants, three will offer loans, and one will provide grants and loans.

Connecticut's program provides 30-year, fixed-rate mortgages at 6% interest rate to state and local police officers. Local police officers are eligible to participate when purchasing a home in the designated area of the locality that they serve. State police officers are eligible to participate when purchasing a home in a designated area within any of the participating cities or towns. The program applies to single family homes, townhouses, condominiums and some types of multi-family homes. The officers must live in the home that they purchase through the program.

In addition, as of September 1997, the Connecticut Housing Finance Authority had made nine loans under this program.

Submitted as:
Connecticut
Public Act 96-147
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title.] This act may be cited as “An Act to Increase Homeownership Opportunities for Police.”

2. Section 2. [Pilot Program.]
   (a) The [state housing finance authority,] in conjunction with existing private lending programs and qualified lenders, shall develop a pilot pro-
gram of revolving rehabilitation loans to developers, including nonprofit housing corporations, for the acquisition and rehabilitation of housing consisting of one to four dwelling units. Properties rehabilitated with loans made under this section shall be sold only to people meeting eligibility requirements for financial assistance under programs operated by the [authority.] In making loans under this section, the [authority] may give priority to developers participating in local, state or federal programs financing the rehabilitation of housing.

(b) The [authority] shall adopt written procedures in accordance with [insert citation] establishing procedures for the application and distribution of loans under this section.

Section 3. [Definitions.]
(a) For purposes of this section:
(1) “Applicant” means a local or state police officer who applies for a loan under the home purchasing assistance program, established pursuant to subsection (b) of this section, for the purpose of financing the purchase of real estate.
(2) “Authority” means the [state housing finance authority.]
(3) “Municipality” means a town, city or borough with a population of not less than [forty-five (45)] thousand which, by resolution of its legislative body, elects to participate in the program established in accordance with subsection (b) of this section.
(4) “Real estate” means a [one (1),] [two (2)] or [three (3)]-family residence located in a participating municipality.
(5) “Targeted neighborhood” means an area designated by the legislative body of the municipality as an area where there has been a high incidence of crime or where the legislative body of the municipality determines that increased police presence is needed, where police officers participating in the home purchasing assistance program established pursuant to subsection (b) of this section shall reside.

(b) The [state housing finance authority] shall develop and, in cooperation with participating municipalities, administer a pilot program of home purchasing assistance. The purpose of the program shall be to encourage local and state police officers to purchase and live in residential property in targeted neighborhoods located in the municipality by which they are employed to reduce crime by promoting community policing. The [authority] shall implement the pilot program in an amount not to exceed [ten (10)] million dollars and in a manner designed to facilitate the purchase of real estate targeted neighborhoods in participating municipalities by providing low-interest loans to local and state police officers in accordance with the provisions of this section. The pilot program shall commence on [insert date] and terminate on [insert date.]

(c) To be eligible for assistance under subsection (e) or (f) of this sec-
tion, an applicant shall:

(1) Be a local police officer employed by a municipal police depart-
ment on a full-time basis or a state police officer;
(2) certify intent to use the funds in connection with the purchase of
real estate located in the municipality by which such applicant is employed
as provided by this section;
(3) certify intent to own and reside in such real estate on a perma-
nent basis for at least [seven (7)] years;
(4) take title in such applicant's name and be the grantee or bor-
rrower, as the case may be under this section, and
(5) in the case of a loan, agree to make monthly loan payments for a
period not to exceed [thirty (30)] years, in the manner prescribed by the
[authority] pursuant to procedures adopted by the [authority] in accordance
with subsection (i) of this section.

(d) A municipality may participate in the pilot program by:
(1) enrolling in the program established under this section in accor-
dance with written procedures of the [authority],
(2) advising each applicant of the availability of downpayment as-
sistance under [insert citation,] as amended, and low-interest loans through
the [authority] and
(3) designating one or more targeted neighborhoods in the municipality.

(e) (1) A municipality may make grants to applicants to pay for rea-
sonable and bona fide closing costs, as described in [insert citation.] The
[authority] may provide a preference for loans under this section to appli-
cants for loans for real estate located in a municipality in which grants are
offered under this subsection.
(2) If a grantee ceases to be a local or state police officer prior to the
end of the [seventh (7th)] year after the date on which such grant is made, or
ceases to live in the residential property purchased with assistance pro-
vided under this section, the grantee shall reimburse the municipality for
the amount of the grant within [thirty (30)] days of receipt of written notice
from the municipality that such reimbursement is due.

(f) Any applicant for a loan under this section shall be eligible for a
loan for down payment assistance under [insert citation,] as amended, ex-
cept that the provisions of regulations adopted under section [insert cita-
tion] of the general statutes, as amended, concerning household income
and equity contributions shall not apply to an applicant as defined in sub-
section (a) of this section.

(g) The [authority] shall issue mortgage revenue bonds pursuant to
[insert citation] to provide sufficient funds for loans under this section. The
interest rate on such loans shall be the lowest practicable which would
create an incentive for applicants. Such loans shall satisfy the requirements
of [insert citation,] including, but not limited to, requirements for residence,
sales, income and [three (3)]-year requirements, as applicable, and the re-
(h) The [authority] shall submit a report on the program to the [general assembly] on or before [insert date] and annually thereafter. Such report shall include programmatic data and may include recommendations for modifications to the program.

(i) The [authority] shall adopt written procedures in accordance with [insert citation] establishing procedures for the application and distribution of loans pursuant to subsection (f) of this section and the conditions for such loans.

Section 4. [Effective Date] [Insert effective date.]
Death Penalty: Unitary Review

This act establishes a unitary system of review for class 1 felony cases in which a death sentence is imposed. It also:

- instructs trial courts regarding stays of execution, postconviction reviews of death sentences, appeals processes and postconviction counsel;
- specifies the contents of and issues that may be raised in a motion for postconviction review;
- establishes procedures for appealing to the state supreme court; and
- instructs the state supreme court to adopt rules establishing procedures and time limits for postconviction review and unitary appeal process.

A 1995 Colorado act concerning the death penalty is highlighted in the 1996 SSL volume. That act requires a three-judge panel to determine whether to sentence the defendant to death or to life imprisonment. The 1997 Colorado law that this draft legislation is based on appears to deal with postconviction measures.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “An Act to Establish an Expedited System of Unitary Review of Felony Cases in which a Death Sentence is Imposed.”

Section 2. [Legislative Declaration.]

(1) The [general assembly] hereby declares that the purpose of this act is to establish an expedited system of unitary review of [class 1 felony] cases in which a death sentence is imposed.

(2) The [general assembly] finds that enactment of this act will accomplish the following goals;

(a) Ensuring compliance with the requirements of the federal “Anti-terrorism and Effective Death Penalty Act of 1996”, 28 U.S.C. Sec. 2261, et. seq.;

(b) Improving the accuracy, completeness, and justice of review proceedings by requiring that post conviction review commence immediately after the imposition of a sentence of death;

(c) Allowing for the full and fair examination of all legally recognizable post conviction and appellate issues by the [trial court] and the [state supreme court;] and

(d) Eliminating to the fullest extent possible, unreasonable and un-
Section 3. [Unitary Procedure for Appeals - Scope and Applicability.]
(1) Notwithstanding any state statute or rule of the [state supreme court] to the contrary, this act and the [supreme court rules] adopted pursuant to this act establish the only procedure for challenging a sentence of death or the conviction that resulted in the sentence of death.
(2) This act does not apply to [class 1 felony] cases in which a sentence of death is not sought or to [class 1 felony] convictions for which the death penalty is not imposed.
(3) This act shall apply to any [class 1 felony] conviction for which the death penalty is imposed as punishment, regardless of whether the sentence is imposed pursuant to [insert citation] or which death sentence is imposed on or after the date upon which the [supreme court] adopts rules implementing the unitary system of review established by this act.
(4) For cases in which a death sentence is imposed prior to the date upon which the [state supreme court] adopts rules implementing the unitary system of review established by this act, appellate review and postconviction review shall be as otherwise provided by law.

Section 4. [Definitions.] As used in this act, unless the context otherwise requires:
(1) “Direct Appeal” means the appeal to the [state supreme court] of any issues raised at the entry of a guilty plea, before trial, at trial, at the penalty phase hearing, or in a motion for new trial.
(2) “Direct Appeal Counsel” means the attorney retained by the defendant, or appointed by the [trial court] to represent an indigent defendant, as the successor to trial counsel for purposes of representing the defendant in direct appeal proceedings.
(3) “New Postconvictions Counsel” means the attorney retained by the defendant, or appointed by the [trial court] to represent an indigent defendant, for the purposes of representing the defendant in postconviction review and postconviction review appeal proceedings. New postconviction counsel cannot have previously represented the defendant with regard to the [class 1 felony] charge.
(4) “Postconviction Review” means review as provided in this act by the [trial court] that occurs after conviction in a [class 1 felony] case in which the death penalty is imposed as punishment.
(5) “Postconviction Review Appeal” means the appeal to the [state supreme court] of any issues raised in postconviction review proceedings.
(6) “Trial Counsel” means the attorney who represents the defendant with regard to the [class 1 felony] charge; for the purposes of any guilty plea; before trial; at trial; at the penalty phase hearing; for the purposes of

just delays in the resolution of postconviction issues by combining and reducing the number of proceedings in [class 1 felony] cases.
a motion for new trial; for the purposes of postconviction review if the de-
fendant chooses to continue with trial counsel for purposes of post convic-
tion review; and for the purposes of direct appeal if the defendant chooses
to continue with trial counsel for purposes of direct appeal. “Trial counsel”
does not include new postconviction counsel appointed pursuant to [insert
citation] or direct appeal counsel.

Section 5. [Stay of Execution - Postconviction Review.]
1 (1) A [three (3)] judge panel or the [trial court,] whichever is appli-
cable, upon the imposition of a death sentence, shall set the time of execu-
tion pursuant to [insert date] and enter an order staying execution of the
judgment and sentence until receipt of an order from the [state supreme
court,] the [trial court] shall direct the [clerk of the trial court] to mail to the
[state supreme court,] within [seven (7)] days after the date upon which the
sentence of death is imposed, a copy of the judgment, sentence, and mitti-
mus.

(2) The [trial court] shall order the defendant, trial counsel, and the
prosecution to attend a hearing to be held after the date upon which the
sentence of death is imposed. At the hearing, the [trial court] shall:
   (a) Advise the defendant of the nature of review as provided in this
act.;
   (b) Advise the defendant of the right to direct appeal counsel;
   (c) Advise the defendant that the issue of ineffective assistance of
trial counsel before trial, at trial, or during the penalty phase hearing may
only be raised on postconviction review and on postconviction review ap-
peal;
   (d) Advise the defendant that the issue of ineffective assistance of
counsel during direct appeal by trial counsel or direct appeal counsel may
only be raised by way of a petition for rehearing filed in the [state supreme
court] by new postconviction counsel or the defendant pursuant to the rules
adopted by the [state supreme court] to implement this act.
   (e) Determine whether the defendant intends to pursue
postconviction review, and
   (f) If the defendant intends to pursue postconviction review, deter-
mine whether the defendant intends to proceed with or without counsel.

(3) After a full discussion on the record, if the defendant knowingly,
voluntarily, and intelligently waives the right to pursue postconviction re-
view, trial counsel or direct appeal counsel, if appointed or retained, or the
defendant, if proceeding without counsel, may file any notice of appeal with
the [state supreme court,] as provided by [state supreme court rule.]

Section 6. [Postconviction Review - Appointment of New Postconviction
Counsel - Qualifications - Compensation.]
1 (1) At the hearing held pursuant to section 5 of this act, if the defen-
The defendant chooses to pursue postconviction review, the [trial court] shall enter an order appointing new postconviction counsel for the defendant if the [trial court] finds that the defendant is indigent and either the defendant requests and accepts such appointment or the [trial court] finds that the defendant is unable to competently decide whether to accept or reject the appointment. However, the [trial court] shall not appoint new postconviction counsel if:

(a) The defendant has retained new postconviction counsel; or
(b) The defendant has elected to proceed without counsel and the [trial court] finds, after a full discussion on the record, that the defendant's election to proceed without counsel is knowing, intelligent, and voluntary; or
(c) The defendant elects to have trial counsel continue representing the defendant for purposes of postconviction review and the [trial court] finds, after a full discussion on the record, that
   (I) The defendant understands that new postconviction counsel can be retained by the defendant for purposes of postconviction review or appointed by the [trial court] for the defendant if the defendant is indigent;
   (II) The defendant understands that, by electing to have trial counsel continue to represent the defendant for purposes of postconviction review, the defendant waives the right to challenge the effectiveness of trial counsel's representation at any stage of the proceedings;
   (III) The defendant's election to have trial counsel continue to represent the defendant for purposes of postconviction review is knowing, intelligent, and voluntary; and
   (IV) Trial counsel agrees to continue representing the defendant for purposes of postconviction review.
(2) In appointing new postconviction counsel to represent an indigent defendant, the [trial court] shall appoint one or more attorneys who, alone or in combination, meet all of the following minimum qualifications:
   (a) Each appointed attorney shall be licensed to practice law in this state or be admitted to practice in [this state] solely for the purpose of representing the defendant;
   (b) At least [one (1)] of the appointed attorneys shall have a minimum of [five (5)] years of experience in criminal law litigation, including work on trials and postconviction proceedings;
   (c) At least [one (1)] of the appointed attorneys shall have a minimum of [three (3)] years experience in trying felony cases, including having tried at least [five (5)] felony cases to verdict in the preceding [five (5)] years or having tried a minimum total of [twenty-five (25)] felony cases; and
   (d) At least one of the appointed attorneys shall have a minimum of [three (3)] years experience in handling appeals of felony cases, having served as counsel in at least [five (5)] appeals in felony cases.
(3) In appointing new postconviction counsel, the [trial court] may
also consider the following factors:

(a) Whether the attorney under consideration has previously appeared as counsel in a [class 1 felony] case in which the death penalty was sought;

(b) Whether the attorney under consideration has tried at least [one] [first degree murder] case to verdict;

(c) Whether, within the preceding [five (5)] years, the attorney under consideration has taught or attended a continuing legal education course that dealt in substantial part with the trial, appeal, and postconviction review of [class 1 felony] cases in which the death penalty is sought;

(d) The workload of the attorney under consideration and how that workload would affect the attorney's representation of the defendant;

(e) The diligence and ability of the attorney under consideration; and

(f) Any other factor that may be relevant to a determination of whether the attorney under consideration will fairly, efficiently, and effectively represent the defendant for purposes of postconviction review.

(4) In any case in which the [trial court] appoints new postconviction counsel or new postconviction counsel is retained, said new postconviction counsel shall not be retained or appointed to act as co-counsel with trial counsel and shall not be associated or affiliated with trial counsel. New postconviction counsel shall exercise independent judgement and act independently from trial counsel.

(5) The ineffectiveness of counsel during postconviction review shall not be a basis for relief.

(6) The [office of the public defender] or the [office of alternative defense counsel,] whichever is appropriate, shall pay the compensation and reasonable litigation expenses of defendant's counsel incurred during the unitary review proceeding.

Section 7. [Postconviction Review - Motion.]

(a) In any case in which a defendant has been convicted of a [class 1 felony] and been sentenced to death, all motions for postconviction review and all postconviction review proceedings are governed by this act and by the [supreme court] rules adopted to implement this act.

(b) Any motion for postconviction review shall state with particularity the grounds upon which the defendant intends to rely, including a statement of the facts and citations of law. A motion for postconviction review may include only those issues specified in paragraph (c) of this subsection (1) and shall not include any issues that were raised at the entry of any guilty plea, before trial, at trial, at the penalty phase hearing, or in the motion for new trial.

(c) A motion for postconviction review may raise only the following issues:
(I) Whether there exists evidence of material facts, not previously presented and heard, which by the exercise of reasonable diligence could not have been known or learned by the defendant or trial counsel prior to the imposition of the sentence and which require that the conviction or the death sentence be vacated in the interests of justice; or

(II) Whether the conviction was obtained or the sentence was imposed in violation of the constitution or laws of the United States or this state; or

(III) Whether the defendant was convicted under a statute that violates the constitution of the United States or this state or whether the conduct for which the defendant was prosecuted was constitutionally protected; or

(IV) Whether the judgment was rendered without jurisdiction over the defendant or the subject matter; or

(V) Any other grounds that are properly the basis for collateral attack upon a criminal judgment; or

(VI) Whether trial counsel rendered ineffective assistance.

(2) By alleging that trial counsel rendered ineffective assistance, the defendant automatically waives the attorney-client privilege between the defendant and trial counsel, but only with respect to the information that is related to the defendant's claim of ineffective assistance.

(3) Neither the defendant nor the prosecution may file a motion for reconsideration or rehearing of the [trial court's] ruling on the motion for postconviction review. The granting or denying of a motion for postconviction review under this section is a final order reviewable on appeal by the [state supreme court.]

Section 8. [Supreme Court Appeal - Filing of Notice.]

(1)(a) If the defendant waives his or her right to postconviction review as provided in section 5, but intends to proceed with direct appeal, trial counsel, direct appeal counsel, if appointed or retained, or the defendant, if proceeding on direct appeal without counsel, shall file any notice of appeal for purposes of direct appeal in the [state supreme court.]

(b) If the [trial court] conducts postconviction review and the defendant intends to seek direct appeal or postconviction review appeal. The notices of appeal, including both direct appeal and postconviction review appeal issues, shall be filed in the [state supreme court.]

(2) Any appeal to the [state supreme court] filed by the defendant pursuant to this act shall consolidate and resolve, in one proceeding, all direct appeal and postconviction review appeal issues.

(3) The prosecution may appeal any final ruling by the trial court in the course of proceedings pursuant to this act including but not limited to:

(a) A ruling granting a motion for new trial or other relief; and

(b) A ruling by the [trial court] granting postconviction relief; and
(c) A ruling by the [trial court] that any statute, including but not limited to a statute providing for the imposition of the death penalty, is adjudged inoperative or unconstitutional for any reason.

(4) Any appeal filed by the defendant or by the prosecution pursuant to this act shall be taken directly to the [state supreme court.]

Section 9. [Supreme Court - Rules.]
(1) No later than [insert date] the [state supreme court] shall adopt rules to establish procedures, including time limits, for the postconviction review and unitary appeal process created by this act.

(2) The rules adopted by the [state supreme court] pursuant to subsection (1) of this section shall address, but are not limited to:

(a) Filing and resolution of motions for new trial;
(b) The timing of the advisement hearing described in section 5 (2);
(c) The preparation of transcripts for postconviction review and unitary appeal;
(d) Filing and resolution of motions for postconviction review, including but not limited to provisions for determining whether evidentiary hearings are necessary to resolve such motions;
(e) Reciprocal discovery for the defendant and the prosecution during the postconviction counsel to trial counsel's files and materials;
(g) Waiver of a defendant's right to postconviction review and appeal of a conviction and sentence of death;
(h) Resolution of claims of ineffective assistance of counsel on direct appeal by way of a petition for rehearing;
(i) Filing of notices of appeal in the [supreme court.]
(j) Certification of the appellate record to the [supreme court.]
(k) Filing of briefs in the [supreme court.]
(l) Establishment of expedited procedures for resolving second or subsequent requests for relief filed by a defendant after conclusion of the process established by this act, including but not limited to motions filed under section 10 of this act;
(m) Creation of meaningful sanctions for violations of the rules promulgated by the [supreme court.]; and
(n) Issuance and dissolution of stays of execution.

(3) The [supreme court] rules adopted pursuant to subsection (1) of this section shall ensure that all proceedings for postconviction review, the certification of the record, and all appellate briefing shall be completed within [two (2)] years after the date upon which the sentence of death is imposed. There shall be no extensions of time of any kind beyond the [two (2)] year period.

(4) Unless otherwise provided in this act, the [state appellate rules] govern the procedures to be followed in appeals to the [state supreme court] of [trial court] rulings under this act.
The [general assembly] urges the [state supreme court] to render its decisions expeditiously in review of [class 1 felony] convictions where the death penalty has been imposed and any order by the [trial court] granting or denying postconviction relief in such cases. It is the [general assembly's] intent that the [supreme court] give priority to cases in which a sentence of death has been imposed over all other cases before the court, except to the extent of any conflict with the requirement that the court give the highest priority to enforcement actions brought in accordance with [insert citation] of the state constitution.

Section 10. [Limitation on Postconviction Review.]

(1) Nor further postconviction review is available to the defendant after the time specified by [supreme court] rule for filing a petition for postconviction review has expired. Any claim or petition filed thereafter shall be deemed waived and shall be dismissed summarily unless the defendant establishes that:

(a) The failure to raise the claim within the time limit was the direct result of interference by government officials with the presentation of the claim in a manner which violated the constitution or laws of the United States or this state; or

(b) The facts upon which the claim are based were unknown to the defendant and could not have been ascertained by the exercise of due diligence; or

(c) The right asserted by the defendant is a constitutional right that was recognized by the supreme court of either the United States or this state after the time limits specified by [supreme court] rule for the filing of the petition for postconviction review had expired and the constitutional right applies retroactively.

(2) If the defendant files a motion for postconviction review raising any of the grounds specified in subsection (1) of this section, the motion shall be filed with the [trial court] within [thirty (30)] days after the date upon which the grounds are discovered.

Section 11. [Severability.] If any provision of this act or the application of this act to any person or circumstance is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application. Therefore, to this end, the provisions of this act are declared to be severable.

Section 12. [Imposition of Sentence in Class 1 Felonies - Appellate Review.] Whenever a sentence of death is imposed upon a person pursuant to [insert citation] the [supreme court] shall review the propriety of that sentence, having regard to the nature of the offense, the character and record
of the offender, the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based. The procedures to be employed in the review shall be as provided by [supreme court] rule. The [supreme court] shall combine its review pursuant to this section with consideration of any appeal that may be filed pursuant to this act.

Section 13. [Imposition of Sentences in Class 1 Felonies for Crimes Committed on or After July 1, 1988, and Prior to September 20, 1991 - Appel late Review.] Whenever a sentence of death is imposed upon a person pursuant to the [insert citation] the [supreme court] shall review the propriety of that sentence, having regard to the nature of the offense, the character and record of the offender, the public interest, and the manner in which the sentence is imposed, including the sufficiency and accuracy of the information on which it was based. The procedures to be employed in the review shall be as provided by [supreme court] rule. The [supreme court] shall combine its review pursuant to this section with consideration of any appeal that may be filed pursuant to this act.

Section 14. [Review of Proceedings Regarding Class 1 Felony Convictions - Legislative Intent.] In any direct appeal of any [class 1 felony] case in which a conviction is entered and in which a sentence of death is imposed prior to the date upon which the [state supreme court] adopts rules implementing the unitary system of review established by this act, all challenges to any such conviction or sentence, with the exception of any newly discovered evidence or any claim of ineffective assistance of counsel, shall be included in the brief of the person challenging such conviction or sentence, as such brief is defined by [insert citation.] at the time such brief is filed with the [supreme court of the state.] Any issue which is not raised in the manner prescribed in this section shall be deemed to be irrevocably waived by the person challenging such conviction or sentence. The failure of such person to file a brief within any time limits ordered by the [supreme court of the state] shall constitute an irrevocable waiver of all issues which could have been raised in such brief.

Section 15. [Postconviction Remedy.] (1) An application for postconviction review in a [class 1 felony] case where a sentence of death has been imposed shall be limited to claims of newly discovered evidence and ineffective assistance of counsel; except that, for any sentence of death imposed on or after the date upon which the [state supreme court] adopts rules implementing the unitary system of review established by this act, any application for postconviction review in such case shall be governed by the provisions of this act.

(a) Except as otherwise provided in paragraph (b) of this section, an
appeal of any order by the [district court] granting or denying postconviction relief in a case which a sentence of death has been imposed shall be to the [state supreme court] as provided by [insert citation.] The procedures to be followed in the implementation of such review shall be in accordance with any rules adopted by the [state supreme court] in response to the legislative intent expressed in [insert citation.]

(b) In any [class 1 felony] case in which a sentence of death is imposed on or after the date upon which the [state supreme court] adopts rules implementing the unitary system of review established under this act, the procedures for appealing any order by the [district court] granting or denying postconviction relief and review by the [state supreme court] of such order shall be governed by the provisions of this act, and by such rules adopted by the [supreme court.]

Section 16. [Effective Date] [Insert effective date.]
Service Dogs

This act clarifies provisions of state law regarding people with disabilities and the use of service dogs. It defines “service dog” as any dog specifically trained to assist people with physical disabilities by performing necessary tasks which the people cannot perform themselves. These include pulling wheelchairs, retrieving items and carrying supplies.

Submitted as:
Missouri
SB 582, S 2245.01T [Truly Agreed To And Finally Passed Version]
Enacted, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as “An Act Regarding Service Dogs for People with Disabilities.”

2 Section 2. [Service Dogs: Definitions and Use]
   (a) Every person with a visual, aural or physical disability, shall have the same rights afforded to a person with no such disability to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

3 (b) Every person with a visual, aural or physical disability is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, taxis, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

4 (c) Every person with a visual, aural or physical disability shall have the right to be accompanied by a guide dog, hearing dog, or service dog, which is especially trained for the purpose, in any of the places listed in subsection (b) of this section without being required to pay an extra charge for the guide dog, hearing dog or service dog; provided that such person shall be liable for any damage done to the premises or facilities by such dog.

5 (d) As used in this act, the term “service dog” means any dog specifically trained to assist a person with a physical disability by performing necessary physical tasks which the person cannot perform. Such tasks shall include, but not be limited to, pulling a wheelchair, retrieving items,
and carrying supplies.

Section 3. [Discrimination Against People Using Service Dogs.] It is an unlawful employment practice for any employer to discriminate against any person with a visual, aural or physical disability by interfering, directly or indirectly, with the use of an aid or appliance, including a guide dog, hearing dog or service dog by such person. Any person aggrieved by a violation of this section may make a verified complaint to the [state commission on human rights] pursuant to the [insert citation.]

Section 4. [Miscellaneous.] The driver of a vehicle approaching a person with a visual, aural or physical disability who is carrying a cane predominantly white or metallic in color, with or without a red tip, or using a guide dog, hearing dog or service dog shall yield to such pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian and any injury caused to the pedestrian’s guide dog, hearing dog or service dog; provided that such a pedestrian not carrying a cane or using a guide dog, hearing dog or service dog in any of the places, accommodations or conveyances listed in section 2, shall have all of the rights and privileges conferred by law upon other people.

Section 5. [Effective Date] [Insert effective date.]
Special Education Mediation

This act creates a mediation process to resolve conflicts between school districts and parents of students with special needs, or parents of children recommended by the school district to need special education. Mediation may be used as an alternative to an informal resolution conference and a due process hearing. Use of mediation will be agreed upon by both parties unless federal law provides otherwise.

The state education department will provide an impartial mediator upon request at no cost to either the parents or the school district. Mediators must be agreeable to the parents and the school district. Mediators will be selected from a list maintained by the state education department and must meet training, impartiality, and assessment requirements pursuant to that department's regulations. A mediator's role will be to help the parties reach a mutually acceptable, voluntary and consensual agreement in the best interests of the child. Mediators will make no decisions.

School districts cannot use mediation to deny or delay parents' rights to a due process hearing. Mediation may be terminated by either party at any time. Mediation agreements must be completed within 30 days of a decision to mediate. No attorney may attend a mediation session or participate on behalf of any party, although parents may be accompanied by a lay advocate. No statement made by either party during mediation will be offered or used as evidence in any hearing, review of hearing decision, or civil action.

The act also changes due process hearing procedures.

Submitted as:
Missouri
HB 1376 & 1501 [Truly Agreed To And Finally Passed Version]
Enacted, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as "An Act to Establish Special Education Due-Process Hearings Through Mediation."

Section 2. [Changing Status of a Handicapped or Severely Handicapped Child: Restrictions.] During the pendency of any administrative or judicial proceeding pursuant to section 5 or section 6 of this act, no change in the assignment or status of a handicapped or severely handicapped child shall be made except that such change may be made with the written consent of the parent or guardian. If written consent cannot be obtained and the child is endangering himself or others, the...
assignment or status can be changed pursuant to court order, but without
prejudice to any rights that the child and the parent or guardian may oth-
erwise have pursuant to law.

Section 3. [Due-Process Proceedings.] Any due process proceeding or
resulting mediation shall be processed under the law in effect at the time
the request was initiated.

Section 4. [Mediation: Definition and Role.]
(1) As used in this act, “mediation” is the process by which a neutral
mediator assists the parties in reaching a mutually acceptable voluntary
and consensual agreement in the best interests of the child as to issues
contained in a notice pursuant to [insert citation.] The role of the mediator
is to aid the parties in identifying the issues, reducing misunderstandings,
clarifying priorities, exploring areas of common interest and finding points
of agreement. An agreement reached by the parties shall be based on the
decisions of the parties and not the decisions of the mediator. The agree-
ment reached may resolve all or only some of the disputed issues.

(2) Whenever a hearing has been requested pursuant to section 5 of
this act, on any matter in dispute under section 5, of this act, and the dis-
pute has not been finally resolved, the parties shall be offered an opportu-
nity for mediation to resolve the dispute. Use of mediation shall be mutual-
ly agreed upon by both parties unless federal law provides to the con-
trary. The [department of elementary and secondary education] shall en-
sure that impartial mediation is provided at no cost to parents or guard-
ians and the participating school district when requested pursuant to this
section.

(3) No statements made by either party during the mediation pursu-
ant to this section shall be offered or used as evidence in any hearing, re-
view of hearing decision, or civil action.

(4) School districts may not use mediation to deny or delay the par-
ents’ right to a due-process hearing pursuant to section 5, or to deny the
parents any other rights afforded by state law.

(5) Mediation conducted pursuant to this section shall be scheduled
within [fifteen (15)] days of selecting a mediator at a time and place mutu-
ally acceptable to all parties engaged in mediation.

(6) Mediation conducted pursuant to this section shall be completed
within [thirty (30)] days of agreement to mediate and may be terminated
by either party at any time.

(7) Any mediation agreement reached pursuant to this section shall
be in writing and delivered to all parties engaged in the mediation.

(8) Mediators shall be selected by mutual agreement of the parents or
guardians and the participating school district or responsible educational
agency from a list maintained by the [department of elementary and sec-

Suggested State Legislation - 109
Any mediator selected shall meet training, impartiality and assessment requirements pursuant to regulations promulgated by the [department of elementary and secondary education] pursuant to [insert citation.]

(9) No attorney shall attend or participate on behalf of any party at the mediation session although the parent or guardian may be accompanied by a lay advocate. Each party may be accompanied by no more than [three (3)] people, with additional participants allowed only by mutual agreement.

(10) The representative of the participating school district or responsible educational agency shall have authority to reach an agreement on behalf of the school district.

Section 5. [Resolution Conferences and Due-Process Hearings.]

(1) A resolution conference provided for in [insert citation] shall be conducted by the chief administrative officer of the responsible school district or a designee. The conference shall be informal, witnesses need not be sworn and a record of the proceedings shall not be made. The school district or the state [department of elementary and secondary education] shall see that the parent or guardian or his representative is advised of and permitted to review all diagnoses, evaluations and reevaluations obtained by the board of education or the state [department of elementary and secondary education] which pertain to the child. The school district or state [department of elementary and secondary education] shall fully advise the parents or guardian or their representative of each reason relied upon by it in taking the proposed action. The parents or guardian or their representative may present any information whether written or oral to the officer which pertains to the recommended action. Questioning of all witnesses shall be permitted.

(2) The resolution conference may be waived by the parents or guardian. If the parent or guardian waives the resolution conference and requests a [three (3)] member panel hearing, the state [board of education] shall empower such a panel pursuant to subsection 3 of this section. That empowerment shall take place within [fifteen (15)] days of the request for the [three (3)] member panel hearing.

(3) A parent, guardian or the responsible educational agency may request a due process hearing by the state [board of education] with respect to any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education of the child. The [board] or its delegated representative shall within [fifteen (15)] days after receiving notice empower a hearing panel of [three (3)] people who are not directly connected with the original decision and who are not employees of the board to which the appeal has been made. All of the panel members shall have some knowledge or training involving children with disabilities,
none shall have a personal or professional interest which would conflict
with his or her objectivity in the hearing, and all shall meet the [department of elementary and secondary education's] training and assessment
requirements pursuant to state regulations. [One (1)] person shall be [appointed] chosen by the local school district board or its delegated representative or the responsible educational agency, and [one (1)] person shall be chosen at the recommendation of the parent or guardian. If either party has not chosen a panel member [ten (10)] days after the receipt by the [department of elementary and secondary education] of the request for a due process hearing, such panel member shall be chosen instead by the [department of elementary and secondary education]. Each of these [two (2)] panel members shall be compensated pursuant to a rate set by the [department of elementary and secondary education]. The third person shall be appointed by the state [board of education] and shall serve as the chairperson of the panel. The chairperson shall be an attorney licensed to practice law in this state. During the pendency of any [three (3)] member panel hearing, or prior to the empowerment of the panel, the parties may, by mutual agreement, submit their dispute to a mediator pursuant to section 4 of this act.

(4) In a case involving a school district, where the parties are unable to agree upon a third panel member within the [ten (10)] days allowed, the state [board of education] or its designee shall appoint [five (5)] people qualified to serve as panel members upon written request of either or both parties within [five (5)] days of receipt of such a request. The parties within [five (5)] days shall alternately strike [one (1)] name from the list until a single name remains. The person whose name remains shall serve as a chairman of the panel. The first party to strike a name from the list provided by the state [board of education] or its designee shall be chosen by lot. The hearing panel shall have [fifteen (15)] days from the time it is empowered in which to give adequate notice of the time and place of the hearing, to hold the hearing and to render its findings and conclusions. An extension of the timeline may be made by the chairman at the request of either party.

(5) The parent or guardian, school official, and other persons affected by the action in question shall present to the hearing panel all pertinent evidence relative to the matter under appeal. All rights and privileges as described in section 6 of this act shall be permitted.

(6) After review of all evidence presented and a proper deliberation, the hearing panel, within [forty-five (45)] days of receipt of the request for a due process hearing, shall by majority vote determine its findings, conclusions, and decision in the matter in question. The report of the hearing panel shall be forwarded immediately in writing and forward the written decision to the parents or guardian of the child and to the president of the appropriate local board of education or responsible educational agency and to the [department of elementary and secondary education]. A specific ex-
tension of the timeline may be made by the chairman at the request of either party.

Section 6. [Resolution Conferences and Hearings: Rights and Privileges.]
(1) At any hearing held pursuant to the provisions of section 5, either party or a representative shall be entitled to:
(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least [five (5)] days before the hearing;
(d) Obtain a written or electronic verbatim record of the hearing;
and
(e) Obtain written findings of fact and decision.
(2) Parents involved in hearings have the right to have the child who is the subject of the hearing present and the right to open the hearing to the public.
(3) Prior to the a resolution conference or hearing, the parent or guardian or a representative of the parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the action to be reviewed was wholly or partially based which could reasonably have a bearing on the correctness of the determination.
(4) A complete record shall be made of all proceedings unless otherwise specified by statute, which records shall include verbatim transcription of all testimony and shall include all documents, writings, or other evidence presented by any party. Costs incurred during these proceedings, except those of the parties for purchasing diagnostic services or legal counsel or other services of a personal nature, shall be the responsibility of the state [board of education.]

Section 7. [Effective Date.] [Insert effective date.]
Ensuring that primary and secondary schools in America are safe and conducive to learning is a concern of students, parents, educators and public officials. Controlling disruptive and violent behavior within the student population is key. Giving educators and associated school staff (e.g., school bus drivers) the authority to enforce discipline is also vital. Florida, Georgia, Indiana and Missouri have recently enacted legislation these issues.

Florida HB 341 grants broad authority to the state board of education and local school districts to discipline students. This 1996 act clarifies the roles and responsibilities of instructional personnel and bus drivers with respect to maintaining discipline. The law authorizes instructional personnel to have a stronger role in classroom management. Students who intentionally make false accusations against staff may be expelled or assigned to a second chance school. School boards may expel or take disciplinary action against students who have committed certain criminal offenses on school property.

The Florida State Board of education must also adopt standards for the use or reasonable force by school personnel. The standards must provide guidance to school personnel on the limitations of liability under current law. The law specifies the requirements of school bus drivers and enables school boards to designate non-transportation zones for areas in which transportation is unnecessary or impracticable.

Georgia HB 134 provides immunity to educators from civil damages resulting from disciplining students, except for willful or wanton misconduct. Parents and guardians who bring legal complaints against educators over disciplinary actions must pay reasonable court costs, attorneys fees and related expenses if they lose their case.

The 1995 Georgia law also directs county or local boards of education to provide legal counsel for the educators who are the subject of civil actions arising from disciplining students.

Indiana’s 1996 PL 157 allows a public school principal to discipline a student who physically assaults or physically harms a teacher or another student by assigning up to 120 hours of community service or by assigning juvenile court counseling that is conducted in the presence of a representative of the school corporation.

Missouri CCS for SCS for JS for HCS for HB 1301 & 1298 enacts 26 new sections of state law for the purpose of providing safer schools.

The 1996 Missouri law:
- directs local boards of education to establish discipline policies and procedures;
- directs the state department of education to award grants to school
districts and vocational schools for alternative education programs for pupils who cannot be adequately served in traditional classroom settings;

• establishes the crime of assault while on school property;

• sets requirements for school administrators and juvenile officers for reporting acts of violence by pupils to teachers, other employees and school district superintendents;

• enables school officials to immediately remove, suspend or expel students who threaten themselves or others with violence;

• permits schools to suspend violent students on a statewide basis;

• requires new students to be accompanied by a parent or legal guardian when they register for school. They must also prove that they are eligible to enroll in the district they are registering in; and,

• increases penalties for possessing ephedrine and its derivatives (see Comment).

The policies must include corporal punishment and be distributed to all pupils and their parents or guardians. School district employees are required to be trained on these policies and in dealing with school violence.

Readers can contact the states to get a copy of the legislation described in this “Note.”
Prepaid Tuition Plans and College Savings Plans (Note)

Many parents worry about the cost of college for their children. In recent years, several states have taken action to ease those worries by creating programs to help families save for college. These programs are generally known as Prepaid Tuition Plans, Savings Plan Trusts, and Family College Savings Account Plans. They involve public and private sector components. This “Note” provides a brief description of each program type. A chart of states that offer such plans is at the end of the “Note.”

Prepaid Tuition Plans
Under a state prepaid tuition program, people can buy full tuition coverage or units of tuition coverage at all state colleges and universities on behalf of a “designated beneficiary.” For example, a parent can buy a 5-year-old child one semester of tuition for any public college in the state at the current tuition rate. The program guarantees that their child will have enough savings upon matriculation to college to cover tuition for one semester. Obviously, parents may want to buy more than one semester. Under the prepaid tuition plans, if the designated beneficiary chooses to attend a private or out-of-state college or university, the beneficiary is entitled to a payment toward tuition at such school at the same rate that would have been given to an in-state public school.

The funds from tuition pre-purchases are pooled and placed in long-term investments designed to meet or exceed the inflationary rise of college tuition. In some states, the prepaid tuition contracts are backed by the full faith and credit of the state. In all states, strict investment policies and oversight committees, similar to state operated pension fund guidelines, insure prudent investment of fund assets. Furthermore, detailed actuarial valuations and financial audits are performed frequently (yearly at minimum) to determine the financial condition and stability of the programs. This close scrutiny minimizes the risk of funds failing to keep pace with liabilities because investment policies and prices can be adjusted to meet the fund’s financial needs. In addition, most programs’ legislation allows the state the right to terminate all future sales to limit the potential of an unfunded liability.

Savings Plan Trusts
Under savings plan trust programs, participants save for the college education of a designated beneficiary through special college savings accounts similar to state-managed pension plans. A state agency invests the funds and the return to the saver is based on the income of the trust. Funds
Prepaid Tuition Plans and College Savings Plans (Note)

can be withdrawn and spent at any college in the country to educate the designated beneficiary. Under the savings plan trusts, there is no guarantee that investment return will meet the increase in college costs, however a basic rate of return is guaranteed. In addition, as an incentive to save, state assistance grants are credited to qualifying accounts based upon the income of the account owner and the amount annually deposited in an account.

Family College Savings Account Plans

The family college savings account plan programs are similar to savings plan trusts, except that the funds from each account are invested in savings instruments offered by a private sector provider that is selected and monitored by a state agency such as the office of the state treasurer. To comply with section 529, the state programs require that college savings be placed in a specific investment selected by the state agency that monitors the plan. A saver in a family savings account plan program bears the risk that the return on the selected investment will not meet the increase in college costs. The state and program have little risk because college savers receive the actual return on the instruments in which their savings are invested.

Federal Action

In 1996, in response to requests from state governments for clarification of the tax treatment of state-sponsored prepaid tuition programs, the U.S. Congress enacted Section 529 of the Internal Revenue Code under the Small Business Protection Act. Section 529 provides favorable federal tax treatment for “qualified state tuition programs” and tax deferral for the designated beneficiaries of the programs, at the beneficiaries’ income level.

Federal actions in 1997 may also encourage the use of prepaid tuition and college savings plans. The 1997 Revenue Reconciliation Act enacted in August 1997 included room and board as qualified college expenses, expanded the options for transferability to family members, and provided favorable estate/gift tax treatment for the programs.

Prepaid Tuition Plans

Alabama ALA.CODE Secs. 16-33C to 16-33C-8
Alaska AK STAT. Title 14, Art. 6, Sec. 14.40.803 et. Seq.
Colorado SB 96-172 (enacted into law, 1996)
Florida FLA.STAT.ANN Secs. 240.551 to 240.552
Massachusetts MA.CODE Sec. 15-C, Amendment 5A
Michigan MICH.COMPILED LAWS ANN. Sec. 390.421 et.seq.
Mississippi MISS.CODE ANN Sec. 37-155-1 et.seq.
Ohio OHIO REV. CODE ANN. Sec. 334.09
Prepaid Tuition Plans and College Savings Plans (Note)

Pennsylvania  Purdon’s Pennsylvania Statutes Annotated, 24ps Sec. 6901.101 et. Seq.
Tennessee  TN.CODE ANN. Title 49, Chap. 7, Part 8
Texas  1955 Texas HB 1214
Virginia  VA. CODE 23-32.75 to 23-32.87

Savings Plan Trusts/State Operated
Indiana  Burns Statutes Annotated Secs. 4-4-28-1 to 4-4-28-21
Kentucky  KY.REV.STAT.ANN Sec. 164A.300
Louisiana  Louisiana Revised Statutes Title 17, Sec. 3091
New York  Article 14-4, Education Law
Utah  Utah Code Annotated Secs. 53b-8b101 to 53b-8b-112

Family Plan
Arizona  Arizona Revised Statutes Title 15, Chap. 14, Art. 7, Sec. 1-2
Montana  HB 636 (enacted into law, 1997)
Higher Education Performance Standards

This act:
• revises the appointment process, mission and responsibilities of the state higher education commission;
• imposes performance standards on public colleges and universities;
• ties state funding of public colleges and universities to their ability to meet the performance standards; and
• establishes criteria for closing colleges and universities that fail to meet the performance standards.

Submitted as:
South Carolina
SB 1195
Enacted into law, 1996.

Suggested legislation

(Title, enacting clause, etc.)

1

Section 1. [Short Title.] This act may be cited as an “Act to Establish Performance Standards for Higher Education Institutions in this State.”

Section 2. [Higher Education Commission.] There is created the [state commission on higher education.] The [commission] shall consist of [fourteen (14)] members appointed by the [governor.] The membership must consist of [one (1)] at-large member to serve as chairman, [one (1)] representative from each congressional district, [three (3)] members appointed from the state at-large, [three (3)] representatives of the public colleges and universities, and [one (1)] representative of the independent colleges and universities of this state.

The membership of the [commission on higher education] must be as follows:

1. [Nine (9)] members, [six (6)] to represent each of the congressional districts of this state appointed by the [governor] upon the recommendation of a majority of the [senators] and a majority of the members of the [house of representatives] comprising the legislative delegation from the district and [three (3)] members appointed from the state at-large upon the advice and consent of the [senate.] Each representative of a congressional district must be a resident of the congressional district he represents. In order to qualify for appointment, the representatives from the congressional districts and those appointed at large must have experience in at least [one (1)] of the following areas: business, the education of future leaders and
teachers, management, or policy. A member representing the congressional
districts or appointed at large must not have been, during the succeeding
[five (5)] years, a member of a governing body of a public institution of
higher learning in this state and must not be employed or have immediate
family members employed by any of the public colleges and universities of
this state. These members must be appointed for terms of [four (4)] years
and shall not serve on the [commission] for more than [two (2)] consecutive
terms. However, the initial term of office for a member appointed from an
even-numbered congressional district shall be [two (2)] years.

If the boundaries of the congressional districts are changed, members
serving on the [commission] shall continue to serve until the expiration of
their current terms, but successors to members whose terms expire must
be appointed from the newly defined congressional districts. If a congres-
sional district is added, the [commission] must be enlarged to include a
representative from that district.

2. [Three (3)] members to serve ex officio to represent the public col-
leges and universities appointed by the [governor] with the advice and con-
sent of the [senate]. It shall not be a conflict of interest for any voting ex
officio member to vote on matters pertaining to their individual college or
university. [One (1)] member must be serving on the board of trustees of
[one (1)] of the public senior research institutions, [one (1)] member must
be a member of one of the local area technical education commissions or
the [state board for technical and comprehensive education] to represent
the [state board for technical and comprehensive education]. These mem-
bers must be appointed to serve terms of [two (2)] years with terms to ro-
tate among the institutions.

3. [One (1)] ex officio member to represent the independent colleges
and universities by the [governor] upon the advice and consent of the [sen-
ate.] The individual appointed must be serving as a member of the [advi-
sory council of private college presidents.] This member must be appointed
for a term of [two (2)] years and shall serve as a nonvoting member.

4. [One (1)] at-large member to serve as chairman appointed by the
[governor] with the advice and consent of the [senate.] This member must
be appointed for a term of [four (4)] years and may be reappointed for [one
(1)] additional term; however, he may serve only [one (1)] term as chair-
man.

The [governor,] by his appointments, shall assure that various eco-
nomic interests and minority groups, especially women and blacks, are fairly
represented on the [commission] and shall attempt to assure that the gradu-
ates of no one public or private college or technical college are dominant on
the [commission.] Vacancies must be filled in the manner of the original
appointment for the unexpired portion of the term. All members of the
[commission] shall serve until their successors are appointed and qualify.
Section 3. [Higher Education Mission.]

(a)(1) The [general assembly] has determined that the mission for higher education is to be a global leader in providing a coordinated, comprehensive system of excellence in education by providing instruction, research, and life-long learning opportunities which are focused on economic development and benefit this state.

(2) The goals to be achieved through this mission are:

(a) high academic quality;
(b) affordable and accessible education;
(c) instructional excellence;
(d) coordination and cooperation with public education;
(e) cooperation among the [general assembly,] [commission on higher education,] [council of presidents of state institutions,] institutions of higher learning, and the business community;
(f) economic growth;
(g) clearly defined missions.

(b) The [general assembly] has determined that the primary mission or focus for each type of institution of higher learning or other post-secondary school in this state is as follows:

(1) Research institutions
   (a) college-level baccalaureate education, master’s, professional, and doctor of philosophy degrees which lead to continued education or employment.
   (b) research through the use of government, corporate, nonprofit-organization grants, or state resources, or both;
   (c) public service to the state and the local community;

(2) [Four (4)] year colleges and universities
   (a) college-level baccalaureate education and selected master’s degrees which lead to employment or continued education, or both, except for doctoral degrees currently being offered;
   (b) limited and specialized research;
   (c) public service to the state and local community;

(3) [Two (2)] year institutions - branches of the [state university]
   (a) college-level pre-baccalaureate education necessary to confer associates’ degrees which lead to continued education at a [four (4)] year or research institution;
   (b) public service to the state and local community;

(4) state technical and comprehensive education system
   (a) all post-secondary vocational, technical, and occupational diploma and associate degree programs leading directly to employment or maintenance of employment and associate degree programs which enable students to gain access to other post-secondary education;
   (b) up-to-date and appropriate occupational and technical training for adults;
(c) special school programs that provide training for prospective employees for prospective and existing industry in order to enhance the economic development of this state.

(d) public service to the state and local community;

(e) continue to remain technical, vocational, or occupational colleges with a mission as stated in item (4) and primarily focused on technical education and the economic development of the state.

Section 4. [Responsibilities of Commission.] The [commission] shall meet regularly and shall have the authority and responsibility for a coordinated, efficient, and responsive higher education system in this state consistent with the missions of each type of institution as stipulated in section 3. In meeting this responsibility and in performing its duties and functions, the [commission] shall coordinate and collaborate at a minimum with the [council of presidents of state institutions,] the council of board chairs of the various public institutions of higher learning, and business community. The [commission] also is charged with examining the state's institutions of higher learning relative to both short and long-range programs and missions which include:

(a) the role of state-supported higher education in serving the needs of the state and the roles and participation of the individual institutions in the statewide program;

(b) enrollment trends, student costs, business management practices, accounting methods, operating results and needs, and capital fund requirements;

(c) the administrative setup and curriculum offerings of the several institutions and of the various departments, schools, institutes, and services within each institution and the respective relationships to the services and offerings of other institutions;

(d) areas of state-level coordination and cooperation with the objective of reducing duplication, increasing effectiveness, and achieving economies and eliminating sources of friction and misunderstanding;

(e) efforts to promote a clearer understanding and greater unity and good will among all institutions of higher learning, both public and private, in the interest of serving the educational needs of the people of this state on a statewide level.

Section 5. [Critical Success Factors and Performance Indicators.] (A) The [general assembly] has determined that the critical success factors, in priority order, for academic quality in the several institutions of higher learning in this state are as follows:

(1) Mission Focus;

(2) Quality of Faculty;

(3) Classroom Quality;
Higher Education Performance Standards

(4) Institutional Cooperation and Collaboration;
(5) Administrative Efficiency;
(6) Entrance Requirements;
(7) Graduates’ Achievements;
(8) User-friendliness of the Institution;
(9) Research Funding.

(B) The [general assembly] has determined that whether or not an institution embodies these critical success factors can be measured by the following performance indicators as reflected under the critical success factors below:

(1) Mission Focus
   (a) expenditure of funds to achieve institutional mission;
   (b) curricula offered to achieve mission;
   (c) approval of a mission statement;
   (d) adoption of a strategic plan to support the mission statement;
   (e) attainment of goals of the strategic plan.

(2) Quality of Faculty
   (a) academic and other credentials of professors and instructors;
   (b) performance review system for faculty to include student and peer evaluations;
   (c) post-tenure review for tenured faculty;
   (d) compensation of faculty;
   (e) availability of faculty to students outside the classroom;
   (f) community and public service activities for which no extra compensation is paid.

(3) Instructional Quality
   (a) class sizes and student/teacher ratios;
   (b) number of credit hours taught by faculty;
   (c) ratio of full-time faculty as compared to other full-time employees;
   (d) accreditation of degree-granting programs;
   (e) institutional emphasis on quality teacher education and reform.

(4) Institutional Cooperation and Collaboration
   (a) sharing and use of technology, programs, equipment, supplies, and source matter experts within the institution, with other institutions, and with the business community;
   (b) cooperation and collaboration with private industry.

(5) Administrative Efficiency
   (a) percentage of administrative costs as compared to academic costs;
   (b) use of best management practices;
   (c) elimination of unjustified duplication of and waste in administrative and academic programs;
(d) amount of general overhead costs.

(6) Entrance Requirements
(a) SAT and ACT scores of a student body;
(b) high school class standing, grade point averages, and activities of student body;
(c) post-secondary nonacademic achievements of student body;
(d) priority on enrolling in-state residents.

(7) Graduates’ Achievements
(a) graduation rate;
(b) employment rate for graduates;
(c) employer feedback on graduates who were employed or not employed;
(d) scores of graduates on post-undergraduate professional, graduate, or employment-related examinations and certification tests;
(e) number of graduates who continued their education;
(f) credit hours earned of graduates.

(8) User-Friendliness of Institution
(a) transferability of credits to and from the institution;
(b) continuing education programs for graduates and others;
(c) accessibility to the institution of all citizens of the state.

(9) Research Funding
(a) financial support for reform in teacher education;
(b) amount of public and private sector grants.

(C) The [commission,] when using the critical success factors for the purpose of funding recommendations for institutions of higher learning, is required to use objective, measurable criteria.

(D) Critical success factors developed and used for the purpose of funding recommendations shall be those which are directly related to the missions of the particular type of institution as outlined in section 3 and not those factors which are not relevant to the success factors of the particular type of institution.

Section 6. [Budget and Program Approval Procedures.]

(A) All public institutions of higher learning shall submit annual budget requests to the [commission] in the manner set forth in this section.

The [state board for technical and comprehensive education] shall submit an annual budget request to the [commission] representing the total requests of all area-wide technical and comprehensive educational institutions. The budget submitted by each institution and the [state board for technical and comprehensive education] must include all state funds, federal grants, tuition, and fees other than funds derived wholly from athletic or other student contests, from the activities of student organizations, from approved private practice plans, and from the operation of canteens and bookstores which may be retained by the institutions and be used as deter-
minded by the prospective governing boards, subject to annual audit by the state. Fees established by the respective governing boards for programs, activities, and projects not covered by appropriations or other revenues may be retained and used by each institution as previously determined by the respective governing boards, subject to annual audit by the state. The budget request for the public higher education system shall be submitted by the [commission] to the [governor] and appropriate standing committees of the [general assembly] in conjunction with the preparation of the annual general appropriations act for the applicable year.

(B) Supplemental appropriations requests from any public institution of higher education must be submitted first to the [commission.] If the [commission] does not concur in the requests, the affected institution may request a hearing on the requests before the appropriate committee of the [general assembly.] The [commission] may appear at the hearing and present its own recommendations and findings to the same committee. The provisions of this paragraph do not apply to any capital improvement projects funded in whole or in part prior to [insert date.]

(C) No new program may be undertaken by any public institution of higher education without the approval of the [commission.] The provisions of this act apply to all college parallel, transferable, and associate degree programs of technical and comprehensive education institutions. All other programs and offerings of the technical and comprehensive education institutions are excluded from this act.

Section 7. [Duties and Functions of Commission.] In addition to the powers, duties, and functions of the [commission on higher education] as provided by law, the [commission,] notwithstanding any other provision of law to the contrary, shall have the following additional duties and functions with regard to the various public institutions of higher education:

(1) establish procedures for the transferability of courses at the undergraduate level between [two (2)] year and [four (4)] year institutions or schools;

(2) coordinate with the [state board of education] in the approval of secondary education courses for the purpose of determining minimum college entrance requirements, and define minimum academic expectations for prospective post-secondary students, communicate these expectations to the [state board of education] and work with the state board to ensure these expectations are met;

(3) review minimum undergraduate admissions standards for in-state and out-of-state students;

(4)(a) develop standards for determining how well an institution has met or achieved the performance indicators for quality academic success as enumerated in section 5 and develop mechanisms for measuring the standards of achievement of particular institutions. These standards and mea-
Higher Education Performance Standards

...surement mechanisms shall be developed in consultation and cooperation
with, at a minimum but not limited to, the [council of presidents of state
institutions,] the chairmen of the governing boards of the various institu-
tions and the business community;

(b) base the higher education funding formula in part on the achieve-
ment of the standards set for these performance indicators including base-
line funding for institutions meeting the standards of achievement, incen-
tive funding for institutions exceeding the standards of achievement, and
reductions in funding for institutions which do not meet the standards of
achievement, provided that each institution under the formula until [in-
sert date] must receive at least its fiscal year [insert date] formula amount;

(c) promulgate regulations to implement the provisions of subitems
(a) and (b) above and submit such regulations to the [general assembly] for
its review pursuant to the [Administrative Procedures Act] not later than
the beginning of the [insert date] session of the [general assembly.]

(d) develop a higher education funding formula based entirely on
an institution's achievement of the standards set for these performance
indicators, this formula to be used beginning [insert date.] This new fund-
ing formula also must be contained in regulations promulgated by the com-
misson and submitted to the [general assembly] for its review in accor-
dance with the [state administrative procedures act;]

(5) reduce, expand, or consolidate any institution of higher learning
including those which do not meet the standards of achievement in regard
to the performance indicators for quality academic success enumerated in
section 5, and beginning [insert date] close any institution which does not
meet the standards of achievement in regard to the performance indica-
tors for quality academic success enumerated in section 5. The process to
be followed for the closure, reduction, expansion, or consolidation of an in-
stitution under this item (5) shall be as promulgated in regulations of the
[commission] which shall be submitted to and approved by the [general
assembly.]

(6) review and approve each institutional mission statement to en-
sure it is within the overall mission of that particular type of institution as
stipulated by section 3 and is within the overall mission of the state;

(7) ensure access and equity opportunities at each institution of higher
learning for all citizens of this state regardless of race, gender, color, creed,
or national origin within the parameters provided by law.

Section 8. [Technical Corrections.] The [commission] shall make such
recommendations to the [governor’s office] and the [general assembly] as to
policies, programs, curricula, facilities, administration, and financing of all
state-supported institutions of higher learning as may be considered desir-
able. The [house ways and means committee,] the [senate finance commit-
tee,] and the [state budget and control board] may refer to the [commission]
Section 9. [Closure of an Institution.] If an institution beginning [insert date] is closed by the [commission,] the institution shall be treated as a terminated agency under [insert citation] and as such terminated in the manner provided therein. However, any remaining funds shall not revert to the general fund as provided in [insert citation] but instead shall be reallocated to higher education funding through use of the higher education funding formula in the manner the [commission] shall provide.

Section 10. [New Construction and Purchases.] No public institution of higher learning shall be authorized to construct or purchase any new permanent facility at any location other than on a currently approved campus or on property immediately contiguous thereto unless such new location or purchase of improved or unimproved real property's been approved by the [commission.]

Section 11. [Admission Policies.]
(A) In consultation and coordination with the public institutions of higher learning in this state, the [state commission on higher education] shall ensure that minimal admissions standards are maintained by the institutions.

The [commission,] with the institutions, shall monitor the effect of compliance with admissions prerequisites that are effective at the institution.

(B) The boards of trustees of each public institution of higher learning, excluding the [state board for technical and comprehensive education,] shall adopt admission policies reflecting the desired mix of in-state and out-of-state enrollment appropriate for each institution. Changes in the policies affecting the mix of in-state and out-of-state enrollment must be approved by the board of trustees of the affected institution. The boards shall submit the policies to the [commission] by [insert date] and any subsequent changes to the policies must be submitted to the [commission.]

These admission policies and standards shall be reviewed by the [commission] as provided in section 7. For purposes of this section enrollment must be calculated on a full-time equivalency basis with the equivalent of one full-time student being a student enrolled for [thirty (30)] credit hours in an academic year. Out-of-state students mean students who are not eligible for in-state rates for tuition and fees under [insert citation.]

Section 12. [Scholarships.] A scholarship program is established to foster scholarship among the state's post-secondary students and retain
outstanding high school graduates in the state through awards based on scholarship and achievement. Measures must be taken to ensure equitable minority participation in this program. Recipients of these scholarships are designated as Fellows. Each Fellow shall receive a scholarship in an amount designated by the [commission on higher education.] The [commission] shall conduct a study as well as evaluations and reviews of developmental education in this state. The [commission] shall develop appropriate methods of funding developmental education programs and courses.

Section 13. [Developmental Education.] Each public institution of higher learning in this state shall develop a plan for developmental education in accord with provisions, procedures, and requirements developed by the [commission on higher education.] The [commission] shall conduct a study as well as evaluations and reviews of developmental education in this state. The [commission] shall develop appropriate methods of funding developmental education programs and courses.

Section 14. [Technical Education Systems.]

(A) The technical education system in this state shall convert from the quarter calendar to the semester calendar, if funds are appropriated for this purpose. The [commission on higher education] shall request state appropriations for the conversion to be funded and completed over a [two (2)] year period.

(B) The [state board for technical and comprehensive education,] in consultation with the [commission,] shall limit the offering of courses designed for college transfer in those technical colleges that do not have approved college transfer programs. The offering of 'college parallel' general education courses in institutions not authorized to award the associate in arts or associate in science degree is limited to those necessary to support approved nontransfer programs. The [commission,] after consultation with the [state board for technical and comprehensive education] and with public senior colleges and universities, shall establish rules and procedures by which this limitation must be regulated. The [commission] shall establish procedures concerning courses acceptable for transfer as provided in section 7 of this act.

Section 15. [Competitive Grants.] A competitive grants program is established to improve undergraduate education in this state. The [state commission on higher education] shall administer the program, promulgate appropriate regulations, and request annual state appropriations for this purpose. All public and private nonproprietary post-secondary institutions accredited by the [commission on colleges of the southern association of colleges and schools] are eligible to participate in this program.
Section 16. [Governor’s Professor of the Year Award.]
(A) Each public or private institution of higher learning in this state is eligible to nominate [one (1)] faculty member for this award who has demonstrated exceptional teaching performance.
(B) The [governor’s office] in conjunction with the [commission on higher education] shall establish a committee to choose the Professor of the Year. The committee must consist of representatives of the [governor’s office,] the [commission,] and appropriate civic, business, government, and academic organizations.
(C) The award must include a citation and a payment of [five (5)] thousand dollars. The [governor’s office] shall host an appropriate ceremony at which the award must be presented.
(D) The [commission] shall request annual state appropriations for the award.

Section 17. [Endowed Professorships.]
(A) The [commission on higher education] shall request state funds and establish procedures to implement a program of endowed professorships at senior public institutions of higher learning to enable the institutions to attract or retain productive faculty scholars who are making or show promise of making substantial contributions to the intellectual life of the state.
(B) Each professorship must be supported by the income from an endowment fund created especially for that purpose. Half of the corpus of each fund must be provided by the [commission] through this program, and half must be provided by the institution from private funds specifically donated for this purpose.
(C) The [state treasurer] shall establish a separate fund consisting of any funds appropriated for all endowed professorships plus accrued interest received. Any amount remaining in the established fund at the end of any fiscal year must be carried forward to the next fiscal year to be used for endowed professorships. Funds in the specified amounts to support each endowment may be transferred by the [commission] to each eligible institution.

Section 18. [Salary Enhancements.]
(A) The [commission on higher education] shall request state funds to implement a program to endow salary enhancements for outstanding faculty in technical colleges and [two (2)] year campuses of the state. The purpose of the program is to enable the state’s [two (2)] year college systems to retain and reward outstanding instructional personnel.
(B) The [commission,] in collaboration with the [state board for technical and comprehensive education] and the state, shall establish procedures to implement the program. Each salary enhancement must be sup-
ported by an endowment fund created especially for that purpose. Half of
the corpus of each fund must be provided by the [commission] through this
program, and half must be provided by the institution from private sources
specifically donated for this purpose.

(C) The [state treasurer] shall establish a separate fund consisting of
any funds appropriated for all salary enhancements plus accrued interest
received. Any amount remaining in the established fund at the end of any
fiscal year must be carried forward to the next fiscal year to be used for
salary enhancements. Funds in the specified amounts to support each sal-
ary enhancement may be transferred by the [commission] to each eligible
institutions.

Section 19. [Automating College Libraries.] All libraries in the tech-
nical colleges in this state shall convert to a computer-based automated
system that is compatible with existing state library systems and allows
for appropriate networking with public colleges and universities if funds
are appropriated for this purpose. The [commission on higher education]
shall request special appropriations to accomplish the conversion.

Section 20. [Joint Programs.] The [commission on higher education]
shall encourage the development of joint programs that take advantage of
the strengths of the public colleges and universities and discourage the
development of independent competitive programs. The programs must be
developed through planning and cooperation among the institutions in both
academic and nonacademic areas.

Section 21. [Research Investment Fund.]

(A) A [Research Investment Fund] is created to establish or expand
research programs in public institutions of higher learning in this state
which are related to the continued economic development of the state. The
fund must consist of appropriations to the [state commission on higher edu-
cation] which it allocates to the institutions for research. The funds must
be apportioned among the [three (3)] senior universities and the [four (4)]
year colleges in a manner that takes into account the previous year’s ex-
penditures of externally generated funds for research by the institutions as
reported to the [commission.] However, the [commission] may make excep-
tions to accommodate economic development opportunities in any area of
the state.

The fund must be used for research which:

(1) has a direct, positive impact on economic development, educa-
tion, health, or welfare in this state;

(2) has an existing base in faculty expertise, resources, and facili-
ties;

(3) serves to improve the quality of undergraduate and graduate
education to citizens in accordance with the institutions’ stated missions as
given in the [commission’s] master plan and as developed by the institution
and approved by the [commission] as provided in this act.

(B) The fund must not be used for capital construction projects.

(C) At the end of each fiscal year, comprehensive reports must be
made to the [commission on higher education] on the expenditures of funds
and the results realized from the research programs. At the end of [two (2)]
fiscal years and each fiscal year after that, the [commission] shall reexamine
the process of appropriating funds for research and the results obtained
from the expenditures and recommend changes and alterations in the funding of research by the state if the changes are considered advisable by the
[commission.]

(D) With the exception of [insert applicable institutions;] institutions
seeking financial support from the fund for research projects shall submit
proposals to the [commission] for its review and approval.

(E) The portion of the fund allocated to the [three (3)] senior universi-
ties excepted in subsection (D) must be distributed in a manner that takes
into account the previous year’s expenditures of externally generated funds
for research which each university reported to the [commission.]

(F) No funds allocated under the provisions of this act nor matching
funds received pursuant to terms of this act may be used to increase an
institution’s future years’ formula funding as computed by the [commission
on higher education.]

Section 22. [Strategic Planning.] The [state commission on higher
education] shall maintain a statewide planning system to address strategic
issues in public and private higher education. The system must focus upon
the following goals to:

1. identify future directions for higher education in this state and
recommend appropriate methods for meeting the resultant challenges;
2. review major goals identified by the public and private institu-
tions of higher learning in this state and ascertain their relationship to
higher education in the state;
3. assure the maintenance and continued development of the qual-
ity of higher education in this state;
4. assure the maintenance and continued provision of access to and
equality of educational opportunity in higher education in this state;
5. measure and monitor an institution’s standard of achievement in
regard to the performance indicators for quality academic success as con-
tained in section 5 of this act.

Section 23. [Advisory Council on Planning.] The [commission on higher
education] shall establish an [advisory council on planning] to assist the [commission] and the institutions of
higher learning in maintaining planning as a high priority.
(B) The [advisory council] shall report to the [executive committee of
the commission,] which shall serve as the [standing committee on plan-
ing] for the [commission.]
(C) The [advisory council] shall submit to the [executive committee of
the commission] its advice, reports, and draft plans.

Section 24. [Institutional Planning.]
The [commission on higher education] shall ensure that each public
institution in this state maintains its individual planning process.

Section 25. [Planning Prospectus.]
(A) The [chief executive officer] of the [commission on higher educa-
tion] shall develop a prospectus for planning each year.
(B) In the initial year, the [advisory council] on planning is respon-
sible for developing a statewide planning document for submission to the
[commission.]
(C) After the initial year and annually thereafter, the [advisory coun-
cil] shall prepare revisions of the planning document for consideration by
the [commission.] The revisions must conform to, but need not be limited
to, the prospectus provided by the [commission.]

Section 26. [Quality Assessment.]
(A) The goals for maintaining an effective system of quality assess-
ment by institutions of higher learning in the state are to:
(1) assure that a system for measuring institutional achievement in
regard to the performance indicators for quality academic success as con-
tained in section 5 is in effect on every public college and university campus
in this state;
(2) provide a vehicle for disseminating the results of these measure-
ments to the constituents within the state;
(3) provide data relative to the effectiveness of each institution that
can be used to initiate curriculum, programmatic, or policy changes within
the institution necessary to meet the standards for these performance indi-
cators;
(B) The process by which these goals must be attained is as follows:
(1) Each institution of higher learning is responsible for maintain-
ing a system to measure institutional achievement in regard to the perfor-
manence indicators for quality academic success in accord with provisions,
procedures, and requirements developed by the [commission on higher edu-
cation.] The system for measuring such institutional achievement must
include, but is not limited to, a description of criteria by which such institu-
tional achievement is being assessed.
(2) As a part of the statewide planning process, each institution
shall provide the [commission] with an annual report on the results of its institutional achievement program.

(3) The [commission] shall prepare a report that must include results of institutional achievement, including student assessment programs. Information from private colleges and universities must be included for those institutions that voluntarily provide the information to the [commission].

Section 27. [Measuring Student Achievement.]
(A) All state-supported institutions of higher learning shall establish their own procedures and programs to measure student achievement which must include, but are not limited to, the performance indicators contained in section 5. The procedures and programs must be submitted to the [commission on higher education] as part of the plan for measuring institutional achievement and must:

(1) derive from institutional initiatives, recognizing the diversity of this state's public colleges and universities, the tradition of institutional autonomy, and the capacity of faculty and administrators to identify their own problems and solve them creatively;
(2) be consistent with each institution’s mission and educational objectives;
(3) involve faculty in setting the standards of achievement, selecting the measurement instruments, and analyzing the results;
(4) follow student progress through the curriculum, as appropriate;
(5) include follow-up of graduates.

(B) As part of their annual report on institutional achievement, all state-supported colleges and universities shall describe their progress in developing assessment programs and submit information on student achievement to the [commission].

Section 28. [Annual Reports.]
(A) The [commission on higher education] shall submit an annual report to the [governor] and to the [general assembly]. The annual report must be published prior to [insert date] of each year and presented in a readable format so as to easily compare with peer institutions in the state and other [Southern Regional Education Board] states the state's public, post-secondary institutions. Prior to publication, the [commission on higher education] shall distribute a draft of the report to all public, post-secondary institutions and shall allow comment upon the draft report. The [commission on higher education] shall develop and adopt a format for the report and shall ensure consistent reporting and collecting of the data in the report by the institutions.

(B) Each [four (4)] year, post-secondary institution shall submit to the [commission] the following information for inclusion in the report, with
the states [department of corrections] students identified and reported separately:

(1) the number and percentage of accredited programs and the number and percentage of programs eligible for accreditation;

(2) the number and percentage of undergraduate and graduate students who completed their degree program;

(3) the percent of lower division instructional courses taught by full-time faculty, part-time faculty, and graduate assistants;

(4) the percent and number of students enrolled in remedial courses and the number of students exiting remedial courses and successfully completing entry-level curriculum courses;

(5) the percent of graduate and upper division undergraduate students participating in sponsored research programs;

(6) placement data on graduates;

(7) the percent change in the enrollment rate of students from minority groups and the change in the total number of minority students enrolled over the past [five (5)] years;

(8) the percent of graduate students who received undergraduate degrees at the institution, within the state, within the United States, and from other nations;

(9) the number of full-time students who have transferred from a [two (2)] year, post-secondary institution and the number of full-time students who have transferred to [two (2)] year, post-secondary institutions;

(10) student scores on professional examinations with detailed information on state and national means, passing scores, and pass rates, as available, and with information on such scores over time, and the number of students taking each exam;

(11) appropriate information relating to each institution's role and mission;

(12) any information required by the [commission] in order for it to measure and determine the institution's standard of achievement in regard to the performance indicators for quality academic success enumerated in section 5.

(C) Each [two (2)] year, post-secondary institution shall submit to the [commission] the following information for inclusion in the report:

(1) the number and percentage of accredited programs and the number and percentage of programs eligible for accreditation;

(2) the number and percentage of undergraduate students who completed their degree program;

(3) the percent of courses taught by full-time faculty members, part-time faculty, and graduate assistants;

(4) placement rate on graduates;

(5) the percent change in the enrollment rate of students from minority groups, the number of minority students enrolled and the change in
the total number of minority students enrolled over the past [five (5)] years;

(6) the number of students who have transferred into a [four (4)] year, post-secondary institution and the number of students who have transferred from [four (4)] year, post-secondary institutions;

(7) appropriate information relating to the institution’s role and mission;

(8) any information required by the [commission] in order for it to measure and determine the institution’s standard of achievement in regard to the performance indicators for quality academic success enumerated in section 5.

(D) The [commission] also shall develop with the cooperation of the public, post-secondary institutions, a uniform set of questions to be included in surveys to be used by each public, post-secondary institution in determining alumni satisfaction. The survey instruments must address the issues of overall satisfaction, satisfaction with major instruction, impact of general education, and current societal participation of alumni. Every [two (2)] years the graduating class of [three (3)] years prior must be surveyed by each institution using appropriate statistical techniques. Information from these surveys must be included every [two (2)] years in the annual report as required herein.

(E) The [commission] shall make no funding decision, capital outlay decision, distribution or certification on behalf of any public, post-secondary institution that has not submitted the information required pursuant to this section.

(F) After discussions with the institutions, the [commission on higher education] in consultation with the [house education and public works committee] and the [senate education committee] shall develop the format for the higher education report as required herein.

(G) The [commission on higher education] also is required in the annual report to report on the progress of institutions of higher education in implementing assessment programs, in their achievement of effectiveness goals, and on each institution’s standard of achievement in regard to the performance indicators for academic success established in section 5.

(H) The report required by this section must be filed in magnetic media form if the information is available in that form.

Section 29. [Single-Gender Programs.]

(A) The [general assembly] finds that some students, both male and female, benefit from attending a single-gender college. For these students, the opportunity to attend a single-gender college is a valuable experience, likely to lead to better academic and professional achievements. The [general assembly] therefore adopts the findings of fact in U.S. v. Commonwealth of Virginia, 44 F.3d 1229, 1232, 1238 (4th Cir. 1995) that ‘single-gender education at the college level is beneficial to both sexes’. Further, in that single-
gender education is both beneficial and justifiable, the [general assembly] finds that providing opportunities for students to attend a single-gender college fulfills an important and legitimate state objective, and therefore declares and stipulates that it is the public policy of the state to support the establishment and maintenance of single-gender programs of higher learning for both sexes. Single-gender offerings to both men and women need not be identical in form and detail, but should be designed to produce substantively comparable outcomes.

(B) The [general assembly] shall annually provide such funding as may be necessary, under the auspices of the [commission on higher education,] to establish and maintain approved single-gender offerings, provided that the [commission] should not be authorized to require any change to a court approved single-gender education program which would hinder the program's ability to produce a substantively comparable outcome.

Section 30. [Effective Date.] [Insert effective date.]
Home School Interscholastic Activities

This Act amends state statutes to permit children who are home schooled to participate in interscholastic athletic competition activities on behalf of public schools. The Act prohibits school districts from contracting with private entities that supervise interscholastic athletic competition activities if the private entity prohibits the participation of home schooled children in interscholastic athletic competition activities.

Submitted as:
Arizona
ARS 15.802.01
Status: enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “An Act to Permit Home Schooled Children to Participate in Interscholastic Athletic Competition Activities on Behalf of Public Schools.”

Section 2. [Children Instructed at Home; Participation in Interscholastic Activities.]

A. Notwithstanding any other provision of law, a child who resides within the attendance area of a public school and who is instructed at home may be allowed to participate in interscholastic competition activities on behalf of the public school. If a school declines to allow children instructed at home to participate in an interscholastic activity, the children instructed at home who reside within the attendance area of the school may be allowed to participate in the interscholastic activity on behalf of any other school. The [state board of education] shall adopt rules prescribing procedures for the participation of children instructed at home in interscholastic competition activities, including, if necessary, requiring the child to take a nationally standardized norm-referenced achievement test or academic evaluation for verification of academic performance. The rules adopted by the [state board of education] shall provide that a child who is instructed at home and who was previously enrolled in a school shall be ineligible to participate in interscholastic activities on behalf of a different school for the remainder of the school year during which the child was enrolled in a school.

B. A school district shall not contract with any private entity that supervises interscholastic athletic activities if the private entity prohibits the participation of children instructed at home in interscholastic athletic competition activities.
1 Section 3. [Effective Date.] [Insert effective date.]
Prenatal Care - HIV Testing (Note)

Experts say that detecting Human Immunodeficiency Virus (HIV) early in pregnancy is critical to reducing the chances of transmitting AIDS from mothers to infants, and thus controlling the spread of the disease. However, testing pregnant women for HIV is controversial within parts of the health care community. The federal government and at least four states, California, New York, Virginia and Texas, have passed laws which address this topic.

Section 7 of U.S. Public Law: 104-106, (Ryan White CARE Act Amendments of 1996) requires states, as a condition of receiving assistance for counseling and testing, to take measures to adopt Centers for Disease Control and Prevention guidelines for HIV counseling and voluntary testing for pregnant women. It authorizes grants to complying states for: (1) HIV counseling for pregnant women; (2) outreach to pregnant women at high risks of HIV who are not receiving prenatal care; (3) voluntary testing for such women; (4) other state costs under this section; and (5) state costs regarding mandatory newborn testing.

California SB 889 (CH 873, 1995 Laws of California) requires prenatal care providers to offer an HIV test, information, counseling, and referral services that include providing certain information to every pregnant woman patient during prenatal care. Providers must document in their patients medical record that HIV information and counseling has been offered.

Virginia H 1921 (CH 309, 1995 Laws of Virginia) requires all practitioners rendering prenatal care to advise every pregnant woman, as a routine component of prenatal care, of the value of testing for HIV infection and to request such women to consent to testing for the infection.

Practitioners must counsel all HIV-positive pregnant women about the dangers to the fetus and the advisability of receiving treatment in accordance with current Centers for Disease Control recommendations. Pregnant women may refuse consent to testing or treatment for HIV infection. Such refusals will be documented in their medical record.

Texas HB 1345 (CH 805, 1995 Laws of Texas) establishes criteria for screening pregnant women for HIV infection and informing them about available treatments, including zidovudine (AZT). It directs attending health care providers to take a sample of a pregnant patient’s blood and submit the sample to a lab for syphilis and HIV testing. However, health care providers must distribute printed materials about AIDS, HIV and syphilis to patients prior to taking a blood sample, and inform the patients that an HIV test will be performed if the patient does not object. Apparently, such patients may refuse an HIV test, or subsequently, treatment, if they test positive.

New York A 04413 – C (CH 220, 1996 Laws of New York) provides for
testing newborns for HIV or presence of the antibodies to such virus. It directs the state health commissioner to establish a comprehensive program for such testing and authorizes the commissioner to promulgate regulations governing the implementation of such program.

Readers can contact the states to get a copy of the legislation described in this “Note.”
Health (Note)

Health care remains a challenge with the public and with state governments. Activity has focused on managed care. Some of the many laws are noted here. Recently, states are ensuring greater access for children, people with mental illness, and people in rural areas.

Health Care Consumer Protection

New York's S7553 (CH 705, Laws of 1996) is the first to comprehensively set forth rights and responsibilities for managed care plans, consumers and health providers. It requires health insurer's to provide comprehensive information about their policies to policy holders and potential customers. The law establishes a comprehensive set of standards for grievance procedures for health maintenance organizations (HMO's) and insurance offering managed care plans. It bans limitations imposed by HMOs or insurers on health care providers right to advocate to the HMO or insurers on behalf of patients.

The act establishes due process protections for health care providers participating in HMOs to ensure that HMOs maintain sufficient capacity to meet the needs of enrollees. The law provides patients with better access to needed specialty care under HMOs and other plans.

Mandatory disclosures as well as items to be disclosed upon request are both extensively derailed: coverage's, appeals, toll free lines, financial responsibilities, grievance and utilization procedures, emergency care, picking and changing doctors, standing referrals, specialty care access, lists of specialists, copies of contracts, list of drugs included and excluded.

The New York law summarizes the specifics of the far ranging rights and disclosures at the beginning of the measure, then sets forth the specifics in the latter part of the bill. The grievance and utilization review procedures are patterned after the national utilization review accreditation commission's recommendations.

Getting health insurance is one thing, understanding your coverage is another. Arizona SB 1286 (CH 132, Laws of 1996) prohibits advertising or indicating that “limited benefit insurance” policies cover major medical expenses or could be substituted for major medical expense insurance policies.

The Arizona act also clarifies when and how health insurance plans can require enrollees to get prior authorization from the plan in order to receive emergency medical care. The law requires health care service plans to provide coverage for initial medical screening examination and any immediately necessary stabilizing treatment required by the federal Emergency Treatment and Active Labor Act without prior authorization by the
play. The law prohibits providers from denying, limiting or restricting a patient’s access to medically necessary services based upon the patient’s enrollment in a health services plan.

**Options to Consumers (Point of Service)**

Maryland and Oregon require point-of-service options for managed care. Point of service refers to process allowing members of an HMO to choose doctors, or other designated providers who are not part of the HMO’s network. Maryland CH 283, Acts 1996 requires HMOs to offer a point-of-service option as part of their health benefit coverage to companies and associations which the HMO contracts with. It has similar requirements for dental plans.

Oregon CH 672, Laws of 1995 requires all insurers offering a policy of health insurance in the state that requires an enrollee to designate a participating primary care physician to make available for employer purchasers of group health plans with more than 25 employees a point-of-service benefit plan providing for payment for the services of a provider on a discounted fee-for-service basis with reasonable access to a broad array of licensed providers in the insurer’s geographic service area.

**Anti-Gag Clauses**

Massachusetts was among the first to ban “gag clauses.” Massachusetts H 5347 (CH 8, Laws of 1996) prohibits insurers and HMO’s from refusing to contract with an otherwise eligible doctor or provider solely because the provider has in good faith communicated with one or more of his current, former or prospective patients the terms or requirements of the insurers/HMO’s products as they relate to the needs of their patients. Colorado HB 1216 (enacted in 1996) is similar to the Massachusetts gag rule.

**Any Willing Provider Laws**

Any-willing-provider laws address HMOs limiting the number of health care providers in their plan. State AWP proposals can be broad or narrow in coverage. Broad AWP laws typically cover all health care providers. Narrow AWP laws typically cover selected providers, or pharmacies.

Arkansas Code Ann. 23-99-201 prohibits health maintenance organizations from limiting the participation of qualified health care providers if they are willing to accept the plan’s contracts and fee schedules. Health care insurers cannot impose monetary advantages or penalties under a health benefit plan according to the terms offered. They cannot impose upon a beneficiary of health care services under a health benefit plan any co-
payment fee or condition that is not equally imposed upon all beneficiaries in the same benefit category, class or co-payment level.

Described as one of the broadest AWP laws, the Arkansas has been under litigation. At issue are ERISA preemption, due-process, the Contract Clause of the US Constitution and Commerce Clause of the US Constitution. A Louisiana AWP law was struck down due to ERISA. Similar laws are found in

Georgia Code 33-20-16 and Indiana Code 27-8-11-3.

Mandatory Insurance Coverage for Mental Illness

Three states have taken steps to require private insurance policies cover mental illness; Arkansas, Colorado and Indiana.

Arkansas HB 1525 (Act 1020 of 1997) requires health benefit plans to provide medical coverage for the diagnosis and mental health treatment of mental illness and the mental health treatment of those with developmental disorders. Benefits shall be provided under the same terms and conditions as provided for covered benefits offered under the health benefit plan for the treatment of other medical illnesses or conditions.

Colorado HB 97-1192 requires coverage for the treatment of biologically based mental illness that is not less extensive than the coverage for other physical illness. The 1997 law defines biologically based mental illness.

Indiana's 1997 HEA 1400 limits the state when contracting for health services so as to not permit treatment limitations or financial requirements on the coverage of services for mental illness if similar limitations or requirements are not imposed on coverage of services for other conditions.

Access to Health Care Providers in Rural Areas

Utah HB 216 is designed to increase access to health care for people who live in rural areas of the state. The 1997 law guarantees a patient living in a community with less than 100 people per square mile who has to travel more than 30 miles to see a doctor covered under their HMO plan, they can opt to visit a local, non-HMO doctor or hospital instead. The act requires the HMOs to "reimburse the physician or facility for those services at the same rate it does doctors and medical centers under its health insurance plan.

Hospital Rate-Setting

In 1996, New York took a fresh look at the way it regulates hospitals. New York moved toward a market-driven system to help control rates.

New York's Health Care Reform Act of 1996 requires hospitals in the
state to negotiate their rates directly with commercial insurers, Blue Cross plans and self-insured plans. This comprehensive act ends a system in which the state set those rates for all payers, while maintaining subsidies for indigent care and graduate medical education.

New York’s act establishes a pool for Indigent Care, Graduate Medical Education (GME) and Health Care Initiatives. The pools will be funded through assessments on hospitals and third-party payers.

The law requires hospitals and related providers who apply for GME funding to reduce the number of GME programs or residents, increase the proportion of primary care residencies, decrease training programs with low retention rates. Increase the number of residents in underserved areas and ambulatory settings and increase the training of minorities. It expands subsidized health insurance for children of the working pool and extends eligibility for certain care from 14 to 18 years old.

The New York law creates a new category of managed care licensure called “integrated delivery systems” (IDS) which are essentially provider sponsored networks.

Maryland the last state to maintain competitive rate setting has opted to retain its system.

**Health Reform in Kentucky and Oregon**

Of all the states, Kentucky and Oregon have made some of the most far reaching changes to their health care systems. Recent developments in both are worth noting as they reflect each states amendments to prior reforms.

**Kentucky**

In 1994, Kentucky passed its Health Reform Act (H5250) which included:

- A health policy board to develop standard and supplemental health benefit plans;
- A health purchasing alliance to negotiate and contract with health plans to insure individuals, high risk populations, including Medicaid recipients and state employees; and
- A modified community rating system.

For various reasons, some parts of the act were implemented and some parts repealed. Some premiums increased and some insurance insurance companies dropped out. Evidently the mix of risk factor, of costs and of eligibility participation in the risk pools did not reach an equilibrium. Revisions in 1995 and 1996 have yet to achieve a balance and proposals for some changes are pending.
Oregon

Between 1989 and 1995 Oregon passed nine laws, commonly known as the Oregon Health Plan, to reform the state's health care coverage system, generally, with a goal of eventually providing universal health coverage.

• Extended Medicaid coverage to residents with income below the federal poverty level and guaranteed them a basic benefit package based on a prioritized list of health services.
• Led to development of a basic benefit package for Medicaid recipients by ranking medical services in the state from most to least important.
• Required employers to cover all “permanent” employees and their dependents by July 1, 1995 or pay into a special insurance fund which would offer coverage to those employees.
• Funded an Oregon Medical Insurance Pool to offer health insurance to people who cannot buy conventional coverage because of pre-existing conditions.
• Lead to development of a basic benefit package for that insurers could offer to small businesses (3-25 employees).
• Established a commission to examine the impact of capital expenditures on medical technology.
• Took steps to integrate coverage for health and chemical dependency service for Medicaid recipients.
• Made other reforms concerning group and individual markets and portability.

Oregon revised the standard Medicaid benefit package at least once since it was enacted although the employer mandate did not become operable, primarily because the state could not get an ERISA waiver.
Unauthorized Use of Sperm, Ova or Embryos

This act makes it a felony for anyone to knowingly use sperm, ova or embryos in assisted reproduction technology for any purpose other than that indicated by the sperm, ova or embryo providers on a written consent form or to implant sperm, ova or embryos through the use of assisted reproduction technology into a recipient who is not the sperm, ova or embryo provider without the signed written consent of the sperm, ova or embryo provider and recipient.

Submitted as:
California
SB 1555 (enrolled version)
Enacted into law, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as an “Act to Prevent Unauthorized Use of Sperm, Ova or Embryos Through Assisted Reproduction Technology.”

Section 2. [Legislative Findings.] The legislature finds and declares the following:

(a) The risk of unauthorized transfers or implantation of sperm, ova, or embryos through assisted reproduction technology warrants strong legislative protections for people undergoing assisted reproduction procedures.

(b) Physicians and other medical personnel must obtain signed written consent from patients before performing in vitro and other assisted reproduction procedures.

Section 3. [Penalties.]

(a) It shall be unlawful for anyone to knowingly use sperm, ova, or embryos, through the use of assisted reproduction technology, for any purpose other than that indicated by the sperm, ova, or embryo provider’s signature on a written consent form.

(b) It shall be unlawful for anyone to knowingly implant sperm, ova, or embryos, through the use of assisted reproduction technology, into a recipient who is not the sperm, ova, or embryo provider, without the signed written consent of the sperm, ova, or embryo provider and recipient.

(c) Any person who violates this act shall be punished by imprisonment in a state prison for [three (3),] [four (4),] or [five (5)] years, by a fine...

Suggested State Legislation - 145
Unauthorized Use of Sperm, Ova or Embryos

not to exceed [fifty (50)] thousand dollars, or by both that fine and imprison-
ment.

(d) Written consent, for the purpose of this act, shall not be required
of men who donate sperm to a licensed tissue bank.

Section 4. [Effective Date.] [Insert effective date.]
Child Health Insurance (Note)

At least five states are currently looking at ways to provide or extend health care and health insurance to children; Colorado, Connecticut, New Jersey, Texas and Wisconsin. New Jersey and Wisconsin are taking an administrative approach. Connecticut, Colorado and Texas have enacted or proposed legislation. Connecticut's law and Colorado's legislation are highlighted below.

Connecticut Public Act 96-187 authorizes the state insurance commissioner to offer a nongroup health insurance product for children and pregnant women who cannot get insurance from the private sector and whose incomes are below 250 percent of the federal poverty level.

Colorado HB 97-1304 creates a state authority to consolidate and streamline existing funding sources to provide health care services to uninsured children. It establishes a board of directors for the authority.

The legislation, which was enacted in 1997, creates a children's basic health plan trust in the state treasury. It requires 30 percent of any Medicaid funds that become available to school districts that enroll as Medicaid providers be deposited in the trust. Appropriations to the trust from the state shall be made by the general assembly based on the amount of savings achieved through reforms, consolidations, and streamlining of health care programs.

The Colorado law authorizes the board to design a schedule of health care services to be included in the plan, a fee structure, eligibility criteria and subsidies to help eligible children enroll in the plan. Children under 19 years old and whose gross family income does not exceed 185 percent of the federal poverty level and who are not insured are eligible for subsidized enrollment in the plan.

Readers can contact the states to get copies of the legislation mentioned in this "Note."
Telemedicine

This act defines telemedicine and imposes requirements governing the delivery of health care services through telemedicine. It requires health care practitioners, prior to providing services through telemedicine to a patient, to get verbal and written consent from the patient. The law provides that failing to get consent constitutes unprofessional conduct. However that requirement does not apply when the patient is not directly involved in the telemedicine interaction.

The act says that it is the intent of the legislature that all medical information transmitted through telemedicine be maintained as part of the patient’s medical record and contains provisions for paying for telemedicine through health care service plans.

The draft legislation below incorporates amendments made in 1997 to clarify minor inconsistencies in the original 1996 law. The amendments remove routine telephone conversations between doctors and patients from being classified by law as telemedicine. They conform the requirements for releasing medical records to telemedicine patients to be consistent with those in traditional medicine.

Finally, the amendments clarify provisions in the 1996 law by saying that all existing laws regarding surrogate decision-making on behalf of patients apply to telemedicine.


Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “The Telemedicine Development Act.”

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

(a) Lack of primary care, specialty providers, and transportation continue to be significant barriers to access to health services in medically underserved rural and urban areas.

(b) Parts of this state have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care. As of [insert date] [forty (40)] counties received federal designation as having medically underserved areas or populations.
(c) Many health care providers in medically underserved areas are isolated from mentors, colleagues, and the information resources necessary to support them personally and professionally.

(d) Telemedicine is broadly defined as the use of information technology to deliver medical services and information from one location to another.

(e) Telemedicine is part of a multifaceted approach to address the problem of provider distribution and the development of health systems in medically underserved areas by improving communication capabilities and providing convenient access to up-to-date information, consultations, and other forms of support.

(f) The use of telecommunications to deliver health services has the potential to reduce costs, improve quality, change the conditions of practice, and improve access to health care in rural and other medically underserved areas.

(g) Telemedicine has been utilized in one form or another for [thirty (30)] years, and telemedicine projects currently exist in at least [forty (40)] states.

(h) Telemedicine will assist in maintaining or improving the physical and economic health of medically underserved communities by keeping the source of medical care in the local area, strengthening the health infrastructure, and preserving health care-related jobs.

(i) Consumers of health care will benefit from telemedicine in many ways, including expanded access to providers, faster and more convenient treatment, better continuity of care, reduction of lost work time and travel costs, and the ability to remain with support networks.

(j) Telemedicine does not change the existing scope of practice of any licensed health professional.

(k) It is the intent of the [legislature] that telemedicine not replace health care providers or relegate them to a less important role in the delivery of health care. The fundamental health care provider-patient relationship can not only be preserved, but also augmented and enhanced, through the use of telemedicine.

(l) Without the assurance of payment and the resolution of legal and policy barriers, the full potential of telemedicine will not be realized.

Section 3. [Altering Health Care Practices.] This act shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

Section 4. [Consultation and Professional Education.] Nothing in this act applies to any practitioner located outside this state, when in actual consultation, whether within this state or across state lines, with a
Section 5. [Definitions and Consent.]

(a) For the purposes of this section, “telemedicine” means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes “telemedicine” for purposes of this section.

(b) For the purposes of this section, “health care practitioner” has the same meaning as “Licentiate” as defined in [insert citation].

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient’s legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient’s legal representative verbally and in writing:

(1) The patient or the patient’s legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient’s legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient’s legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient’s legal representative understands the written information provided pursuant to subdivision (c), and that this information has been discussed with the health care practitioner, or his or her
(e) The written consent statement signed by the patient or the patient’s legal representative shall become part of the patient’s medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct.

(g) All existing laws regarding surrogate decision making shall apply. For purposes of this section, “surrogate decision making” means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the [department of corrections.]

Section 6. [Health Care Service Plans.] 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 so 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)(1) 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.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of section 5 of this act, these services shall be considered in determining compliance with [insert citation.]
(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 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 citation], except that the [commissioner] 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 act. Nothing in this act 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 unobjectionable by, the commissioner and set forth to the subscriber or enrollee pursuant to the disclosure provisions of [insert citation].

Nothing in this section shall be construed to permit the [commissioner] to establish the rates charged subscribers and enrollees for contractual health care services.

The [commissioner's] enforcement of [insert citation] shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

Section 7. [Face-to-Face Contact Between Health Care Providers and Patients: Health Care Service Plans.]

(a) It is the intent of the [legislature] to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider.

(b) For the purposes of this section, the meaning of “telemedicine” is
as defined in subdivision (a) of section 5 of this act.

(c) On and after [insert date] no health care service plan contract that
is issued, amended, or renewed shall require face-to-face contact between a
health care provider and a patient for services appropriately provided
through telemedicine, subject to all terms and conditions of the contract
agreed upon between the enrollee or subscriber and the plan. The require-
ment of this subdivision shall be operative for health care service plan con-
tracts with the [Medi-Cal] managed care program only to the extent that
both of the following apply:

(1) Telemedicine services are covered by and reimbursed under, the
[Medi-Cal] fee-for-service program, as provided in [insert citation.]

(2) [Medi-Cal] contracts with health care service plans are amended
to add coverage of telemedicine services and make any appropriate capita-
tion rate adjustments.

(d) Health care service plans shall not be required to pay for consulta-
tion provided by the health care provider by telephone or facsimile machines.

Section 8. [Financial Risk and Prompt Payment.]

(a) Every plan shall have and shall demonstrate to the [commissioner]
that it has all of the following:

(1) A fiscally sound operation and adequate provision against the
risk of insolvency.

(2) Assumed full financial risk on a prospective basis for the provi-
sion of covered health care services, except that a plan may obtain insur-
ance or make other arrangements for the cost of providing aggregate value
of which exceeds [five (5,000)] dollars in any year, for the cost of covered
health care services provided to its members other than through the plan
because medical necessity required their provision before they could be se-
cured through the plan, and for not more than [ninety (90)] percent of the
amount by which its costs for any of its fiscal yeas exceed [one hundred
fifteen (115)] percent of its income for that fiscal year.

(3) A procedure for prompt payment or denial of provider and sub-
scriber or enrollee claims, including those telemedicine services, as defined
in subdivision (a) of section 5 of this act, covered by the plan. Except as
provided in Section 1371, a procedure meeting the requirements of Sub-
chapter G of the Federal regulations (29 C.F.R. Part 2560) under Public
this requirement.

(b) In determining whether the conditions of this section have been
met, the [commissioner] shall consider, but not be limited to, the following:

(1) The financial soundness of the plan's arrangements for health
care services and the schedule of rates and charges used by the plan.

(2) The adequacy of working capital.

(3) Agreements with providers for the provision of health care ser-
Section 9. [Patient Records.] It is the intent of the [legislature] that all medical information transmitted during the delivery of health care via telemedicine, as defined in subdivision (a) of section 5 of this act, become part of the patient's medical record maintained by the licensed health care provider.

Section 10. [Insurance Claims.]

(a) Every insurer issuing group or individual policies of disability insurance that covers hospital, medical, or surgical expenses, including those telemedicine services covered by the insurer as defined in subdivision (a) of section 5 of this act, shall reimburse claims or any portion thereof is contested by the insurer in which case the claimant shall be notified, in writing, that the claim is contested or denied, within [thirty (30)] working days after receipt of the claim by the insurer unless the claim or portion thereof is contested by the insurer in which case the claimant shall be notified, in writing, that the claim is contested or denied, within [thirty (30)] working days after receipt of the claim by the insurer. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

(b) If an uncontested claim is not reimbursed by delivery to the claimants' address of record within [thirty (30)] working days after receipt, interest shall accrue at the rate of [ten (10)] percent per annum beginning with the first calendar day after the [thirty (30)] working day period.

(c) For purposes of this section, a claim, or portion thereof, is reasonably contested where the insurer has not received a completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine liability for the claims includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the insurer to determine the medical necessity for the health care services provided to the claimant.

(d) Every insurer issuing group or individual policies of disability insurance that covers hospital, medical, or surgical expenses, including those telemedicine services covered by this act, shall reimburse claims or any portion as soon as practical, but no later than [thirty (30)] working days after receipt of the claim by the insurer unless the claim or portion thereof is contested by the insurer in which case the claimant shall be notified, in writing, that the claim is contested or denied, within [thirty (30)] working days after receipt of the claim by the insurer. The notice that a claim is contested or denied, within [thirty (30)] working days after receipt of the claim by the insurer. The notice that a claim is

(c) For the purposes of this section, "covered health care services" means health care services provided under all plan contracts.
being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

(e) If an uncontested claim is not reimbursed by delivery to the claimants' address of record within [thirty (30)] working days after receipt, interest shall accrue at the rate of [ten (10)] percent per annum beginning with the first calendar day after the [thirty (30)] working day period.

(f) For purposes of this section, a claim, or portion thereof, is reasonably contested where the insurer has not received a completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine liability for the claims includes, but is not limited to, reports of consents, releases, and assignments, a claim or appeal, or other information necessary for the insurer to determine the medical necessity for the health care services provided to the claimant.

(g) The obligation of the insurer to comply with this section shall not be deemed to be waived when the insurer requires its contracting entities to pay claims for covered services.

Section 11. [Face-to-Face Contact Between Health Care Providers and Patients: Disability Insurance Contracts.]

(a) It is the intent of the [legislature] to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider.

(b) For the purposes of this section, the meaning of “telemedicine” is as defined in subdivision (a) of section 5 of this act.

(c) On and after [insert date] no disability insurance contract that is issued, amended, or renewed for hospital, medical, or surgical coverage shall require face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to all terms and conditions of the contract agreed upon between the policyholder or contractholder and the insurer.

(d) Disability insurers shall not be required to pay for consultation provided by the health care provider by telephone or facsimile machines.

Section 12. [Face-to-Face Contact Between Health Care Providers and Patients: Medi-Cal Program.]

(a) It is the intent of the [legislature] to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider.

(b) For the purposes of this section, the meaning of “telemedicine” is as defined in subdivision (a) of section 5 of this act.

(c) Commencing [insert date] face-to-face contact between a health
Telemedicine care provider and a patient shall not be required under the [Medi-Cal] program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the [Medi-Cal] program to compensate licensed health care providers who provide health care services, that are otherwise covered by the [Medi-Cal] program, through telemedicine.

(d) The [Medi-Cal] program shall not be required to pay for consultation provided by the health care provider by telephone or facsimile machines.

(e) The [Medi-Cal] program shall pursue private or federal funding to conduct an evaluation of the cost-effectiveness and quality of health care provided through telemedicine by those providers who are reimbursed for telemedicine services by the program.

(f) This section shall remain 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 extends that date.

Section 13. [Effective Date] [Insert effective date.]
Use of E-mail

This act establishes guidelines for which e-mail of state agencies and public officials may be considered public or private. It defines correspondence to include communication sent via electronic mail. It exempts legislators’ e-mail from public record if the message is “work product.” It defines “work product” generally as preparatory materials and not a final product, including bill and amendment requests.

Submitted as:
Colorado
SB 96-212
Enacted, 1996.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “An Act to Clarify the Use of E-mail by Governmental Agencies.”

Section 2. [Legislative Declaration - Use of E-mail.] The [general assembly] hereby finds and declares that the use of electronic mail by agencies, officials, and employees of state government creates unique circumstances. Electronic mail shares some features with telephonic communication, which generally is not stored in any form and is generally regarded as private. However, electronic mail differs in that it creates an electronic record that may be used or retrieved in electronic or paper format. The use of electronic mail is becoming more common and more important in facilitating the ability of government officials to gather information and communicate with their staff, other officials and agencies, and the public. However, individual officials are not equipped to act as official custodians of such communications and to determine whether or not the communications might be public records. For these reasons, this act is intended to balance the privacy interests and practical limitations of public officials and employees with the public policy interests in access to government information.

Section 3. [Requests for Drafting Bills and Amendments - Confidential Nature Thereof - Lobbying for Bills.]

(1) All requests made to the [office] for the drafting of bills or amendments thereto shall be submitted, either in writing or orally, by the [legislator] or by the [governor] or the [governor’s representative] making the re-
Use of E-mail

quest, with a general statement respecting the policies and purposes which
the person making the request desires the bill or amendment to accom-
plish. The [office] shall draft each bill or amendment to conform to the
purposes so stated or to supplementary instructions of the person making
the original request.

(2) (a) Prior to the introduction of a bill or amendment in the [gen-
eral assembly,] no employee of the [office] shall reveal to any person outside
the office the contents or nature of such bill or amendment, except with the
consent of the person making the request. Nothing in this section shall
prohibit the disclosure to the staff of any [legislative service agency] of such
information concerning or amendments prior to introduction as is neces-
sary to expedite the preparation of fiscal notes, as provided by the rules of
the [general assembly,] but such staff shall not reveal the contents or na-
ture of such bills or amendments to any other person without the consent of
the person making the request.

(b) All documents prepared or assembled in response to a request
for a bill or amendment, other than the introduced version of a bill or amend-
ment that was in fact introduced, shall be considered work product as de-
dined in section 5.

(3) No employee of the [office] shall lobby, personally or in any other
manner, directly or indirectly, for or against any pending legislation before
the [general assembly.]

Section 4. [Meetings - Open to Public.] If elected officials use elec-
tronic mail to discuss pending legislation or other public business among
themselves, the electronic mail shall be subject to the requirements of this
section. Electronic mail communication among elected officials that does
not relate to pending legislation or other public business shall not be con-
sidered a “meeting” within the meaning of this section.

Section 5. [Definitions.]

(1) “Correspondence” means a communication that is sent to or re-
ceived by one or more specifically identified individuals and that is or can
be produced in written form, including, without limitation:
(a) communications sent via U.S. mail;
(b) communications sent via private courier;
(c) communications sent via electronic mail.
(2) “Custodian” means and includes the official custodian or any
authorized person having personal custody and control of the public records
in question.
(3) “Electronic mail” means an electronic message that is transmit-
ted between two or more computers or electronic terminals, whether or not
the message is converted to hard copy format after receipt and whether or
not the message is viewed upon transmission or stored for later retrieval.
“Electronic mail” includes electronic messages that are transmitted through a local, regional, or global computer network.

(4) “Records” means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristic, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the value of the official governmental data contained therein. As used in this paragraph the following are excluded from the definition of records:

(a) Electronic mail messages, regardless of whether such messages are produced or stored using state-owned equipment or software, unless the recipient has previously segregated and stored such messages as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the value of the official governmental data contained therein.

(5)(a)(I) “Public records” means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(II) “Public records” includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) work product;

(B) without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

(C) a communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent; or

(D) subject to nondisclosure as required in [insert citation.]

(III) The acceptance by a public official or employee of compensation for services rendered, or the use by such official or employee of publicly owned equipment or supplies, shall not be construed to convert a writing that is not otherwise a “public record” into a “public record.”

(b) “Public records” does not include:

(I) Criminal justice records which are subject to [insert citation.]

(II) Work product prepared for elected officials.

(c) “Work product” means and includes all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and...
are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to:

(A) notes and memoranda that relate to or serve as background information for such decisions;

(B) preliminary drafts and discussion copies of documents that express a decision by an elected official.

(d) “work product” also includes all documents relating to the drafting of bills or amendments, pursuant to [insert citation,] and all research projects conducted by [staff] of [legislative council] pursuant to [insert citation,] if the research is requested by a member of the [general assembly] and identified by the member as being in connection with pending or proposed legislation or amendments thereto. However, the final product of any such research project shall become a public record unless the member specifically requests that it remain work product. In addition, if such a research project is requested by a member of the [general assembly] and the project is not identified as being in connection with pending or proposed legislation or amendments thereto, the final product shall become a public record.

(e) “work product” does not include:

(I) any final version of a document that expresses a final decision by an elected official;

(II) any final version of a fiscal or performance audit report or similar document the purpose of which is to investigate, track, or account for the operation or management of a public entity or the expenditure of public money, together with the final version of any supporting material attached to such final report or document;

(III) any final accounting or final financial record or report;

(IV) any materials that would otherwise constitute work product if such materials are produced and distributed in a public meeting or cited and identified in the text of the final version of a document that expresses a decision by an elected official.

(6) “Writings” means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. “Writings” includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

Section 6. [Public Records Open to Inspection.]

(1)(a) All public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regu-
lar discharge of the duties of the custodian or the custodian’s office.

(b) Where public records are kept only in miniaturized or digital form, whether on magnetic or optical disks, tapes, microfilm, microfiche, or otherwise, the official custodian shall:

(I) adopt a policy regarding the retention, archiving, and destruction of such records; and

(II) take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via on-line bulletin boards or other means.

(2)(a) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person’s knowledge and belief the reason for the absence of the records from the person’s custody or control, the location of the records, and what person then has custody or control of the records.

(b) If an official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of the correspondence for the purpose of determining whether the correspondence is a public record.

(3)(a) If the public records requested are in the custody and control of the person to whom application is made but are in active use, in storage, or otherwise not readily available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection.

(b) The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a “reasonable time” shall be presumed to be [three (3)] working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed [seven (7)] days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the [three (3)] day period.

Extenuating circumstances shall apply only when: (I) A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the [three (3)] day period; or
(II) A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the [three (3)] day period because:

(A) The agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

(B) In the case of the [general assembly] or its staff or service agencies, the [general assembly] is in session.

(c) In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

Section 7. [Allowance or Denial of Inspection - Grounds, Procedure - Appeal.]

(1)(a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the [general assembly] or the [office of the governor] in connection with pending or anticipated legislation;

(2)(a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, the official custodian may apply to the [district court] of the district in which such record is located for an order permitting him or her to restrict such disclosure. Hearing on such application shall be held at the earliest practical time. After hearing, the [court] may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. In such action the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the state rules of civil procedure and shall have the right to appear and be heard.

(b) In defense against an application for an order under this section, the custodian may raise any issue that could have been raised by the custodian in an application under paragraph (a) of this subsection.

Section 8. [Adoption of Electronic Mail Policy.]

(1) On or before [insert date] the state or any agency, institution, or political subdivision thereof that operates or maintains an electronic mail communications system shall adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted.
(2) The policy shall include a statement that correspondence of the employee in the form of electronic mail may be a public record under the public records law and may be subject to public inspection under section 6 of this act.

Section 9. [Effective Date] [Insert effective date.]
Agriculture: False Information

False or malicious claims about their products can put companies out of business. While people might associate such claims against manufacturers, agricultural enterprises are also at risk. Three states, Arizona, Florida and North Dakota have taken action to help address bogus claims against agricultural products.

Arizona Statutes Title 3-113, 1995 and Florida Statutes 865.065 (enacted in 1994, amended in 1995), enable producers, shippers or an association that represents producers or shippers of perishable agricultural food products to sue people who disseminate false and damaging information to the public about perishable agricultural food products.

North Dakota HB 1176 enables people who grow, raise, distribute or sell agricultural products, to sue people who disseminate false and damaging information to the public about perishable agricultural food products. North Dakota enacted this bill in 1997.

The draft act in this SSL volume is based on Ohio legislation. The act enables producers of perishable agricultural or aquacultural food products to bring legal action against entities which disseminate false information about their products.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as an “Act to Provide a Cause of Action to Recover Damages for the Disparagement of Any Perishable Agricultural or Aquacultural Food Product.”

Section 2. [Legislative Findings.] The [general assembly] finds that the production of agricultural and aquacultural food products constitutes an important and significant portion of the economy of this state. Further, the [general assembly] finds that the dissemination in this state of false information about the safety of the state’s food supply would be extremely detrimental to the state’s economy, the welfare of the consuming public, and the producers of agricultural and aquacultural food products. Accordingly, it is the intent of the [general assembly] in enacting this act to benefit all the citizens of this state and protect the vitality of the agricultural and aquacultural economy by providing a cause of action for producers of perishable agricultural and aquacultural food products to recover damages for disparagement of such food products.
Section 3. [Definitions.]
(a) "Disparagement" means the dissemination to the public in any manner of any false information that a perishable agricultural or aquacultural food product is not safe for human consumption.
(b) "False information" means any information that is not based upon reasonable and reliable scientific inquiry, facts, or data, and that directly indicates that a perishable agricultural or aquacultural product is not safe for human consumption.
(c) "Perishable agricultural or aquacultural food product" means any food product or commodity of agriculture or aquaculture that is grown, raised, produced, distributed, or sold within this state in a form that will perish or decay beyond marketability within a reasonable period of time.
(d) "Producer" means a person who grows, raises, produces, distributes, or sells a perishable agricultural or aquacultural food product.

Section 4. [Cause of Action.] Any producer of perishable agricultural or aquacultural food products that suffers damage as a result of another person's disparagement of any such perishable agricultural or aquacultural food product or any association representing producers of perishable agricultural or aquacultural food product may bring an action for damages and for any other relief a court having jurisdiction considers appropriate. If the plaintiff establishes that the dissemination knew or should have known that the information was false, damages may be awarded, including compensatory and punitive damages, reasonable attorney's fees, and costs of the action.

Section 5. [Notice and Judgment.] In any action maintained under division (c) of this section by an association representing producers of perishable agricultural or aquacultural food products, the court shall direct written individual notice to the members of the association that have suffered damages as a result of another person's disparagement of any such perishable agricultural or aquacultural food product. The notice shall advise each member that:
(a) The court will exclude the member from the action if the member so requests by a specified date;
(b) The judgment, whether favorable or not, will include all members who have received the notice and who do not request exclusion;
(c) Any member who does not request exclusion may enter an appearance through the member's counsel.
(I) The judgment in an action maintained under section 4 of this act by an association representing producers of perishable agricultural or aquacultural food products, whether favorable to the association, shall include and specify or describe those members to whom the notice provided in section 5 of this act was directed, and who did not request exclusion. If the
judgment is favorable to the association, the court shall require the association to submit a plan for the distribution to the association and the members of the association included in the judgment of any award of monetary damages under section 4 or section 6 of this act. The court may accept or modify the plan of the association and shall enter a written order for the distribution of any award of monetary damages.

Section 6. [Penalties.]
(a) Notwithstanding any contrary provisions of state law, any person who intentionally disparages a perishable agricultural or aquacultural food product for the purpose of harming the producers of that product, in addition to any award of punitive damages, is liable for damages in an amount up to [three (3)] times the amount of compensatory damages awarded under section 4.
(b) Notwithstanding any contrary statute of limitations prescribed by state law, an action under section 4 of this act shall be commenced to later than [two (2)] years after the last disparagement of the perishable agricultural or aquacultural food product occurs.
(c) The cause of action established in this act is in addition to all other causes of action available under common law or under any other section of state law.

Section 7. [Effective Date] [Insert effective date.]
Aquaculture

This act is based on a Florida law that recognizes aquaculture as an industry and sets policies to promote and regulate aquaculture. It also provides money to develop a state aquaculture plan and for aquaculture research.

Submitted as:
Florida
CH 597, Florida Statutes (Supplement, 1996)

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “The Aquaculture Act.”

Section 2. [Definitions.] For the purposes of this act, the following terms shall have the following meanings:

(1) “Aquaculture” means the cultivation of aquatic organisms.
(2) “Aquaculture producers” means those people engaging in the production and sale of aquaculture products.
(3) “Aquaculture products” means aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions. Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification.
(4) “Commissioner” means the [commissioner of agriculture.]
(5) “Department” means the [department of agriculture and consumer services.]

Section 3. [Legislative Declaration of Public Policy Respecting Aquaculture.] The [legislature] declares that aquaculture is agriculture. The [legislature] declares that in order to effectively support aquaculture in this state, there is a need for a state aquaculture plan that will provide for the coordination and prioritization of state aquaculture efforts and the conservation and enhancement of aquatic resources and will provide mechanisms for increasing aquaculture production which may lead to the creation of new industries, job opportunities, income for aquaculturists, and other benefits to the state. The state aquaculture plan shall guide the research and development of the aquaculture industry. Funds designated by the [legislature] for aquaculture research and development or for contract-
Aquaculture

Section 4. [Legislative Intent.]
(1) It is the intent of the [legislature] to enhance the growth of aquaculture in this state, while protecting the state’s environment.
(2) It is also the intent of the [legislature] to give the [department] the duty to coordinate and assist the development of aquaculture.
(3) It is the intent of the [legislature] that a [aquaculture review council] and a [aquaculture interagency coordinating council] are established to provide a means of communication between the aquaculture industry and the regulatory agencies.

Section 5. [Powers and Duties of Department of Agriculture and Consumer Services.]
(1) The [department] is hereby designated as the lead agency in encouraging the development of aquaculture in the state and shall have and exercise the following functions, powers, and duties with regard to aquaculture:
(a) Issue or deny aquaculture certificates that identify aquaculture producers and aquaculture products, and collect all related fees.
(b) Coordinate the development, annual revision, and implementation of a state aquaculture plan. The plan shall include prioritized recommendations for research and development as suggested by the [aquaculture review council], the [aquaculture interagency coordinating council], and public and private institutional research, extension, and service programs.
(c) Develop memorandums of agreement, as needed, with the [department of environmental protection], the [state game and fresh water fish commission], the [state sea grant program], and other groups as provided in the state aquaculture plan.
(d) Provide staff for the [aquaculture review council] and the [aquaculture interagency coordinating council].
(e) Forward the annually revised state aquaculture plan to the [commissioner] and to the chairs of the [house committee on agriculture and consumer services] and the [senate committee on agriculture,] [one (1)] month prior to submission of the [department’s] legislative budget request to the [governor.]
(f) Submit the list of research and development projects proposed to be funded through the [department] as identified in the state aquac-
ulture plan, along with the [department's] legislative budget request to the [governor,] the [president of the senate,] and the [speaker of the house of representatives.]

(g) Provide developmental assistance to the various sectors of the aquaculture industry as determined in the state aquaculture plan.

(h) Assist people seeking to engage in aquaculture when applying for the necessary permits and serve as ombudsman to resolve complaints or otherwise resolve problems arising between aquaculture producers and regulatory agencies.

(i) Develop and propose to the [legislature] legislation necessary to implement the state aquaculture plan or to otherwise encourage the development of aquaculture in the state.

(2) The [department] may employ such people as are necessary to perform its duties under this act.

Section 6. [Aquaculture Certificate of Registration.]

(1) Certification.

(a) Any person engaging in aquaculture must be certified by the [department]. The applicant for a certificate of registration shall submit the following to the [department:] 1. Applicant's name/title. 2. Company name. 3. Complete mailing address. 4. Legal property description of all aquaculture facilities. 5. Description of production facilities. 6. Aquaculture products to be produced. 7. [Fifty (50)] dollar annual registration fee, effective [insert date.]

(b) Any aquatic plant producer certified by the [department] pursuant to [insert citation] shall also be issued an aquaculture certificate of registration.

(c) Any alligator producer with an alligator farming license and permit to establish and operate an alligator farm pursuant to the provisions and rules of [insert citation] shall be issued an aquaculture certificate of registration.

(2) Fees.

(a) Effective [insert date,] all fees collected pursuant to this section shall be deposited into a [general inspection trust fund] in the [department of agriculture and consumer services.]

(b) For each aquaculture certificate of registration issued pursuant to this section for freshwater fish operations under [insert citation], [amount] shall be deposited into the [state game and trust fund] in the [game and fresh water fish commission] from the [general inspection trust fund] in the [department of agriculture and consumer services.]

(3) Identification of Aquaculture Products. Aquaculture products shall be identified while possessed, processed, transported, or sold as provided in this subsection, except those subject to the requirements of [insert citation] and the rules of the [game and fresh water fish commission.]
(a) Aquaculture products shall be identified by an aquaculture certificate of registration number from harvest to point of sale. Any person who possesses aquaculture products must show, by appropriate receipt, bill of sale, bill of lading, or other such manifest where the product originated.

(b) Marine aquaculture products shall be transported in containers that separate such product from wild stocks, and shall be identified by tags or labels that are securely attached and clearly displayed.

(c) Each aquaculture registrant who sells food products labeled as “aquaculture or farm raised” must have such products containerized and clearly labeled. Label information must include the name, address, and aquaculture certification number. This requirement is designed to segregate the identity of wild and aquaculture products.

(4) Sale of Aquaculture Products.

(a) Aquaculture products, except shellfish, snook, and freshwater aquatic species identified in [insert citation] and rules of the [game and fresh water fish commission] may be sold without restriction so long as product origin can be identified.

(b) Aquaculture shellfish must be sold and handled in accordance with shellfish handling regulations of the [department of environmental protection] established to protect public health.

(5) Registration and Renewals.

(a) Not later than [insert date] each aquaculture producer must apply for an aquaculture certificate of registration with the [department]. Upon [department] approval, the [department] shall issue the applicant an aquaculture certificate of registration only for the period covering [insert date] through [insert date]. The [department] shall not require a registration fee only for the period covering [insert date] through [insert date]. However, beginning [insert date] and each year thereafter, each aquaculture certificate of registration must be renewed with fee, pursuant to this act, on [insert date].

(b) No later than [insert date] the [department] shall send notices of registration to all aquaculture producers of record requiring them to register for an aquaculture certificate. Thereafter, the [department] shall send a renewal notice to the registrant [sixty (60)] days preceding the termination date of the certificate of registration. Prior to the termination date, the registrant must return a completed renewal form with fee, pursuant to this act, to the [department].

Section 7. [Prohibited Acts; Penalties.]

(1) It is unlawful for an aquaculture registrant to:

(a) Commingle in the same container any shellfish aquaculture product with any wild product;

(b) Transport by vessel over water both wild and aquaculture products of the same species at the same time; or
(c) Violate any provision of this act.

(2)(a) Any person who violates any provision of this act or any rule promulgated hereunder is subject to a suspension or revocation of his or her certificate of registration under this act. The [department] may, in lieu of, or in addition to the suspension of revocation, impose on the violator an administrative fine in an amount not to exceed [one thousand (1,000)] dollars per violation per day.

(b) Any person who violates any provision of this act, or rule hereunder, commits a misdemeanor of the first degree, punishable as provided in [insert citation.]

(3) Any person certified under this act who has been convicted of taking aquaculture species raised at a certified facility shall have his or her license revoked for [five (5)] years by the [department of agriculture and consumer services] pursuant to the provisions and procedures of [insert citation.]

Section 8. [Aquaculture Review Council.]

(1) Composition. There is created within the [department] the [aquaculture review council] to consist of [nine (9)] members as follows: the chair of the [state agricultural advisory council] or designee; the chair of the [aquaculture interagency coordinating council;] and [seven (7)] additional members to be appointed by the [commissioner,] including an alligator farmer, a food fish farmer, a shellfish farmer, a tropical fish farmer, an aquatic plant farmer, a representative of the commercial fishing industry, and a representative of the aquaculture industry at large. Members shall be appointed for [four (4)] year terms. Each member shall be selected from no fewer than [two (2)] or more than [three (3)] nominees submitted by recognized statewide organizations representing each industry segment or the aquaculture industry at large. In the absence of nominees, the [commissioner] shall appoint people who otherwise meet the qualifications for appointment to the council. Members shall serve until their successors are duly qualified and appointed. An appointment to fill a vacancy shall be for the unexpired portion of the term.

(2) Meetings; Procedures; Records.

(a) The members of the [council] shall meet at least quarterly, shall elect a chair, a vice chair, a secretary, and an industry representative to the [aquaculture interagency coordinating council;] and shall use accepted rules of procedure. The terms of such officers shall be for [one (1)] year.

(b) The [council] shall meet at the call of its chair, at the request of a majority of its members, at the request of the [department,] or at such times as may be prescribed by its rules of procedure. However, the council shall hold a joint annual meeting with the [aquaculture interagency coordinating council.]

(c) A majority of the members of the [council] constitutes a
quorum for all purposes, and an act by a majority of such quorum at any
meeting constitutes an official act of the [council.]

(d) The [council secretary] shall keep a complete record of the
proceedings of each meeting, which record shall include the names of the
members present and the actions taken. Such records shall be kept on file
with the [department,] and these records and other documents about mat-
ters within the jurisdiction of the [council] shall be subject to inspection by
the members of the [council.]

(3) Responsibilities. The primary responsibilities of the [aquacul-
ture review council] are:

(a) Formulate and recommend to the [commissioner] rules and
policies governing the business of aquaculture by studying and evaluating
aquacultural issues.

(b) Provide aquaculture industry recommendations for research
and development to be included in the annual revision of the state aquacul-
ture plan.

(c) Submit to the [commissioner] on an annual basis: 1. A pri-
oritized list of research projects to be included in the [department's] legisla-
tive budget request. 2. Recommendations to be forwarded to the [speaker
of the house of representatives] and the [president of the senate] on legisla-
tion needed to help the aquaculture industry. 3. Recommendations on aquac-
ulture projects, activities, research, and regulation and other needs to fur-
ther the development of the aquaculture industry.

(d) On a quarterly basis, review and discuss problems that
serve as barriers to the growth and development of aquaculture.

(e) Assist the [department] in carrying out duties identified in
[insert citation] by studying aquaculture issues and making recommenda-
tions for regulating and permitting aquaculture and in the development,
revision, and implementation of the state aquaculture plan.

(f) Provide input to the [department] to perform studies, iden-
tify needs, research issues, write reports, record actions and meetings of the
council and, in general, conduct the business of the [council.]

(g) Receive input from state agencies and public and private
institutions on aquaculture research, service, development, and regulatory
needs.

(h) For any problem that cannot be solved through simple co-
operation and negotiation, provide an issue analysis to the [aquaculture
interagency coordinating council] and to the chairs of the legislative appro-
priations committees. The analysis shall include, but not be limited to,
specific facts and industry hardships, regulatory provisions, questions rela-
tive to the issue, and suggestions for solving the problem.

(4) Expenses; Per Diem. Members of the [council] shall receive
expenses and per diem for travel, including attendance at meetings, as al-
lowed state officers and employees pursuant to [insert citation.]
Section 9. [Effective Date] [Insert effective date.]
Vegetative Filter Strips

This act defines vegetative filter strips and sets guidelines for their size and their value under state property tax assessments.

The act directs county soil and water conservation districts to help taxpayers fill out applicable property tax assessment documents. The soil and water conservation districts must also create a conservation plan for creating vegetative filter strips.

It requires the state department of agriculture and natural resources to report to the legislature by March 2006 on the impact of vegetative filter strips.

Submitted as:
Illinois
HB 1447 (enrolled version), Public Act 89-606
Enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as “The Vegetative Filter Strips Act.”

Section 2. [Vegetative Filter Strip Assessments.]

(a) In counties with less than [three million (3,000,000)] inhabitants, any land (I) that is located between a farm field and an area to be protected, including but not limited to surface water, a stream, a river, or a sinkhole and (II) that meets the requirements of subsection (b) of this section shall be considered a “vegetative filter strip” and valued at [one sixth (1/6)] of its productivity index equalized assessed value as cropland. In counties with [three million (3,000,000)] or more inhabitants, the land shall be valued at the lesser of either (I) [sixteen (16)] percent of the fair cash value of the farmland estimated at the price it would bring at a fair, voluntary sale for use by the buyer as farm defined in [insert citation] or (II) [ninety (90)] percent of the fair cash value of the farmland estimated at the price it would bring at fair, voluntary sale for use by the buyer as a farm defined in [insert citation] or (II) [ninety (90)] percent of the [insert date] average equalized assessed value per acre certified by the [department of revenue.]

(b) Vegetative filter strips must be at least [sixty-six (66)] feet wide and contain vegetation that (I) has a dense top growth; (II) forms a uniform ground cover; (III) has a heavy fibrous root system and (IV) tolerates pesti-
Vegetative’s Filter Strips

(c) The county’s soil and water conservation district shall assist the taxpayer in completing a uniform certified document as prescribed by the [department of revenue] in cooperation with the [association of soil and water conservation districts] that certifies (I) that the property meets the requirements established under this section for vegetative filter strips and (II) the acreage or square footage of property that qualifies for assessment as a vegetative filter strip. The document shall be filed by the applicant with the chief county assessment officer. The chief county assessment officer shall promulgate rules concerning filing of the document. The soil and water conservation district shall create a conservation plan for the creation of a filter strip. The plan shall be kept on file in the soil and water conservation district office. Nothing in this section shall be construed to require any taxpayer to have vegetative filter strips.

(d) A joint report by the [department of agriculture] and the [department of natural resources] concerning the effort and impact of vegetative filter strip assessments shall be submitted to the [general assembly] by [insert date.]

Section 3. [Repealer.] This act is repealed on [insert date.]

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

Suggested State Legislation - 175
Cumulative Index, 1979-1998

The following cumulative index covers volumes of Suggested State Legislation since 1979 and includes the legislation through this current edition.

This index uses extensive subject headings, sub-headings and cross references ("see" and "see also" entries). Draft legislation is listed by title under appropriate subjects. Individual bills are often included under several headings, if they cover more than one topic.

Specific entries are of two kinds:

(1) Titles of bills followed by the year of the volume in parentheses and the page numbers. To find the text of a draft bill, you should consult the volume for the specific year listed.

(2) References are also provided to parts of draft bills, by subject. These references do not list the full title of the draft bill, but cite only the year and the page numbers.

All entries under subject headings are listed in the order in which they were published. An index to volumes before 1979 may be found in Volume 46 (1987).

Academic records, see records management
Acid rain, see conservation and the environment
Adoption, see domestic relations
Aged
banking: Lifeline Banking, (1986) 143-44
environment: Senior Environmental Corps Act, (1994) 152-54
transportation: School Bus Service for the Elderly, (1983) 95
see also: state and local government - public pensions
Agriculture
farm credit: Agricultural Linked Deposit Act (Statement), (1988) 192; Farm Mediation and Arbitration Program Act, (1989) 165-68
inspection: (1981) 151-154
licenses and licensing: (1986) 198-203; State Grain Insurance Act (Statement), (1988) 282
pest control: Pest Control Compact, (1978) 161-71
see also: conservation and the environment; labor - migrant workers
| **Index** |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Air pollution, see conservation and the environment |
| Alcohol, see drugs and alcohol; consumer protection |
| Art, see business and commerce - copyright; culture, the arts and recreation |
| Asbestos, see hazardous material and waste disposal |
| Assistance for handicapped, see handicapped persons |
| Atomic energy, see nuclear energy |
| Auditors, see public finance and taxation—accounting and auditors |
| Automobiles, see transportation |
| Ballot, see election |
| liquidation of closed banks: Model Liquidation Code for Closed, Insured Banks, (1985) 139-43 |
| see also: consumer protection; insurance |
| Birth certificates, see domestic relations - adoption; records management |
| Blood donors, see health care |
| Boats and boating, see transportation |
| Bonds and notes, see public finance and taxation |
| Budgets, see public finance and taxation |
| Building codes, see housing, land and property |
| Buildings, see housing, land and property; culture, the arts and recreation - historic preservation |
| Burial sites, Desecration of Burial Sites, (1985) 101-03 |
| Business and commerce |
Index


see also: banks and financial institutions; consumer protection - motor vehicles; economic development; exports; licensing; transportation - motor vehicles

Campaign finance, see elections; ethics

Carnival amusement rides, see culture, the arts and recreation

Carpooling, see transportation - ridesharing

Cemeteries, see burial sites


Child abuse, see crime and criminals

Child visitation, see crime and criminals

Civil disorder, Crowd Control, (1982) 175-78

Clincs, see health care - hospitals and clinics

Colleges, see education - universities and colleges

Commerce, see business and commerce

Commercial development, see business and commerce

Commercial law, see business and commerce


telefacsimile: Unsolicited Telefacsimile Advertising Act, (1990) 63-64


Community development, see growth management

Community health services, see health care

Comparable worth, see labor - pay equity

Computer crime, see crime and criminals

Conflict of interest, see ethics

Conservation and the environment

acid rain: Acid Precipitation, (1983) 16-17
see also: fish and wildlife; hazardous materials and waste; public utilities and public works - water treatment

Construction, building, see housing, land and property


Suggested State Legislation - 179


credit and creditors: Credit Services Regulation, (1986) 96-100; Credit, Charge Card, and Retail Installment Account Disclosure Acts, (1988) 292-300


see also: hazardous materials and waste - household use

Controlled substances, see drugs and alcohol

Copyrights, see business and commerce

Corporate acquisitions, see business and commerce

Courts


see also: business and commerce - small business; public finance and taxation

Credit, see consumer protection; crime and criminals

Crime and criminals


shoplifting: Civil Liability for Theft Act, (1990) 145

see also: criminal justice and corrections; courts; drugs and alcohol

Criminal justice and corrections


early and work release: State Early Release and Work Furlough, (1979) 10-14

expungement of records: Expungement of Records, (1983) 243-46

Suggested State Legislation - 181


temporary leave: (1979) 10-14


see also: state and local government - police

Criminal procedure, see criminal justice and corrections


carnival amusement rides: Carnival Amusement Rides Safety and Inspection, (1983) 137-44

historic preservation: (1979) 111-13; State Underwater Antiquities Act, (1988) 266-75


Dams and reservoirs, see conservation and the environment - environmental protection

Deficit financing, see public finance and taxation - public debt

Dentists, see health care

Development, see growth management

Developmental disabilities, see handicapped persons

Disabled persons, see handicapped persons

Disasters, see state and local government - emergency management

Discrimination in employment, see labor

Disease control, see health care

Disposal of waste, see conservation and the environment; hazardous materials and waste

Distressed communities, see growth management - community development

Divorce, see domestic relations

Domestic relations


juveniles: Crisis Intervention Unit, (1984) 62-68

see also: crime and criminals - child abuse and domestic violence; labor - housewives and homemakers

Domestic violence, see crime and criminals - child abuse and domestic violence

Drugs and alcohol
alcoholism: Alcoholism and Drug Addiction Treatment and Support Act, (1990) 118-22
boating: Alcohol Boating Safety, (1986) 131-33


Early release, see criminal justice and correction

Economic development


see also: business and commerce - small business; conservation and the environment; exports; growth management

Education
attendance: Homeless Child Education Act (Statement), (1992) 109
environmental education: Environmental Education Program, (1994) 155-64


preschool: Prevention, Early Assistance and Early Education
Index

Childhood Act (Statement), (1991) 40-43; Parents as Teachers Grant Program Act, (1993) 55-58


see also: public finance and taxation; records management - academic

Elderly, see aged

Elections

campaign finance: Campaign Finance, Ethics and Lobbying Regulation (Statement), (1992) 90-92;
Campaign Finance Legislation (Note), (1995) 144-47

election law: Act to Extend Qualifying Deadlines for Elections, (1993) 151

Electronic banking, see banks and financial institutions - funds transfer

Emergency management, see state and local government

Employees, see state and local government; labor

Employment, see labor

Energy


see also: nuclear energy

Environment, see conservation and the environment

Environmental protection, see conservation and the environment

Equal access, see handicapped persons

Erosion, see conservation and the environment

Ethics, Campaign Finance, Ethics and Lobbying Regulation (Statement), (1992) 90-92

Euthanasia, see health care - right to die

Explosives and fireworks, Paramilitary Training Act, (1983) 128-29

see also: hazardous materials and waste

Exports
development: Export Development Authority and Assistance, (1985)

Family, see domestic relations

Farm credit, see agriculture

Farms, see agriculture

Finance, public, see public finance and taxation

Financial emergencies, local, see public finance and taxation - fiscal crises

Financial institutions, see banks and financial institutions

Firearms, see guns, firearms and other weapons
Firefighters, see hazardous materials - rules and regulations; state and local government
Fireworks, see explosives and fireworks
Fiscal crises, local, see public finance and taxation
Fish and wildlife: State Fishing Enhancement Act (Statement), (1988) 22
habitat: Fish Habitat Improvement, (1984) 191-97
Flammable liquids, see hazardous materials and waste cleanup - disposal
Food, drug, and cosmetics, see consumer protection - household hazards
Food stamps, see public assistance - welfare
Forestry, see conservation and the environment
Funds transfer, see banks and financial institutions
see also business and commerce - unfair trade practices
Garbage, see conservation and the environment - refuse disposal
Gifted, education of, see education - special
Gold and silver dealers, see business and commerce - small business
Good samaritan laws, see hazardous materials - cleanup; public assistance - food
Governors, see state and local government - executive branch
Growth management
zoning: State Aviation Development Act (Statement), (1988) 194
see also: economic development; housing, land and property; transportation - airports
Guns, firearms and other weapons
replica: Replica Firearm Warning Label Act, (1990) 144
Handicapped, education of, see education - special
subsidies: Subsidy Program for Qualified Parents, (1982) 203-05
see also: education - special; aged - housing

Hazardous materials and waste

see also: conservation and the environment; explosives and fireworks


dentists: Dental Practice, (1980) 164-86


hospices: Hospice Program Licensing, (1985) 43-45


labatories: Clinical Laboratory Billing Information, (1981) 29


Health maintenance organizations, see health care

Hereditary diseases, see health care

Suggested State Legislation - 187
Historic preservation, see culture, the arts and recreation
Home care, see aged - nursing homes
Home purchases, see housing, land and property - real estate transactions
Hospices, see health care
Hospitals, see health care
Housewives, see labor
Housing, land and property
emergency assistance: Emergency Assistance to Homeowners, (1985) 31-34
manufacture: Common Interest Ownership Statement, (1986) 36
see also: growth management; public finance and taxation; public assistance - housing; aged - housing

Information systems
see also: banks and financial institutions; crime and criminals
Infrastructure bank, see public finance and taxation
Inspector general, see public finance and taxation
Insurance
certification of insurers: Surplus Lines Insurance, (1987) 68-78
medical: Health Insurance Continuation and Conversion, (1980) 142-48; Comprehensive


migrant workers: Seasonal Farm Labor and Mi-
pay equity: Pay Equity for State Employees, (1985) 147-48
see also: state and local government - employees
Land, see housing, land and property
Land development, see growth management
Land use planning, see growth management - land development
Landfills, see conservation and the environment - refuse disposal and recycling
Landlords and tenants, see housing, land and property
Law and lawyers, see courts; criminal justice and corrections
Law enforcement, see crime and criminals
Legal services, see courts - lawyers
professions: (1983) 285-92; Emergency Medical Services Regulation and Licensing Act (Statement), (1988) 255; Emergency Medical Services Organization Act (Statement),
Suggested State Legislation - 191


see also: agriculture; business and commerce - security guards; health care - hospices; natural resources - mining

Litter, see conservation and the environment - refuse

Livestock, see agriculture

Loans, see banks and financial institutions

Local government, see state and local government

Marital property, see domestic relations - marriage

Marriage, see domestic relations

Migrant workers, see labor

Mines and minerals, see natural resources


Mortgages: Reverse Annuity Mortgage, (1986) 40-41

see also: housing, land and property

Motor vehicles, see consumer protection; transportation

Native Americans, American Indian Endowed Scholarship Program Act, (1992) 112-14

see also: burial sites

Natural resources

mines and minerals: Licensing of Surface and Underground Coal Miners, (1979) 197; Uniform Dormant Mineral Interests Act (Note), (1988) 36-37

Negligence, see courts - tort liability and negligence

Noise pollution, see conservation and the environment

Nominations, see elections

Nuclear energy
decommissioning: Decommissioning Nuclear Power Plants, (1983) 52-60
environmental protection: Environmental Radiation Protection, (1980) 130-32
radiation control: Regulations for the Control of Radiation (Statement), (1978) 185; Radiation Control, (1983) 27-43

see also: hazardous materials and waste - disposal

Nursing homes, see aged

Ombudsman, see state and local government - public relations

One man-one vote, see elections - reapportionment

Paramilitary training, see guns, firearms and other weapons

Parks, see culture, the arts and recreation

Parole, see criminal justice and corrections

Pay equity, see state and local government

Pensions, see banks and financial institutions; state and local government

Personal property, see housing, land and property

Pest control, see agriculture

Pesticides, see agriculture

Physicians, see health care

Plea bargaining, see criminal justice and corrections - sentencing

Police, see state and local government

Pollution, see conservation and the environment

Pornography, see crime and criminals - child abuse

Postal savings, see banks and financial institutions

Prepaid medical services, see health care - health maintenance organizations

Preschool education, see education

Prevention of retardation, see handicapped persons

Primaries, see elections

Prisons, see criminal justice and corrections

Privacy, see information systems

Probate, see wills

Probation, see criminal justice and corrections

Procurement, see state and local government - purchasing

Product safety, see consumer protection; courts; insurance

Property, see domestic relations - marriage; housing, land and property; public finance and taxation

Prosecutors, see criminal justice and corrections

Protected tenancy, see aged - housing

Public assistance


homeowners: Emergency Assistance to

Suggested State Legislation - 191
Index


insurance or security funds: (1986) 187-97, 198-203


see also: courts - public guardians; health care

Public buildings, see housing, land and property

Public debt, see public finance and taxation

Public employees, see state and local government

Public finance and taxation


itinerant vendors: Tax Registration of Itinerant Vendors, (1985) 144-46


public debt: (1979) 190-93; (1982) 93-97


taxation (motor vehicles): Weight-Distance Tax, (1987) 79-91


see also: business and commerce; courts; transportation

Public guardian, see courts

Public utilities and public works: Retail Transmission of Electricity, (1997) 40-6

cable television: Cable Subscriber Privacy Protection Act, (1990) 134-38


see also: communications; conservation and the environment - water pollution; nuclear energy

Purchasing, see state and local government

Radiation, see nuclear energy; state and local government - emergency management

Railroads, see transportation

Rape, see crime and criminals - sexual assault

192 - The Council of State Governments
Real estate, see housing, land and property

Receiverships, see banks and financial institutions - liquidation

Records management and data collection

see also: domestic relations - adoption

Recreation, see culture, the arts and recreation

Recycling, see conservation and the environment - refuse disposal

Refuse disposal, see conservation and the environment

Relocation assistance, see housing, land and property

Reorganization, governmental, see state and local government

Ridesharing, see state and local government - employees

Right to die, see health care

Roads, see growth management; transportation

Sales practices, see consumer protection

Securities, see banks and financial institutions; public finance and taxation

Senior citizens, see aged

Sewage disposal, see public utilities and public works - water treatment

Sexual assault, see crime and criminals

Shoplifting, see crime and criminals

Smoking laws, see health care

Snowmobiles, see transportation

Solar energy, see energy

Sovereign immunity, see state and local government

Special education, see education

Spouse abuse, see crime and criminals

State bill payments, see state and local government - administration of agencies

State funding, see public finance and taxation - investments

administration of agencies: (1986) 65-68; Prompt Payment, (1986) 102-08
contracts: State Civil Rights Act, (1992) 93-95

employee pensions: Municipal Pension Funding and Recovery (Statement), (1966) 101

firefighters: (1981) 67-75


pay equity: Pay Equity for State Employees, (1985) 147-49


Suggested State Legislation - 193

public relations: Local Government Impact Fiscal Notes, (1979) 190-93


see also: intergovernmental relations; records management and data collection

State-federal relations, see intergovernmental relations

Statistics, see records management and data collection

Takeover legislation, see business and commerce - corporate acquisitions

Taxation, see public finance and taxation

Telephones, see communications

Television, see communications

Timesharing agreements, see housing, land and property - real estate transactions

Tort liability and negligence, see courts

Tourism, see culture, the arts and recreation

Toxic substances, see hazardous materials and waste

Trade regulation, see business and commerce; consumer protection

Traffic laws, see transportation

Transportation
airports: Small Airport Zoning Regulation and Restriction, (1985) 28-30; State Aviation Development Act (Statement), (1988) 194


see also: insurance - motor vehicles

Unemployment insurance, see labor

Unfair trade practices, see business and commerce

Unions, see labor

 Universities, see education

Urban development, see growth management

Veterans, see health care - treatment

Victims’ rights, see criminal justice and correction

Vital statistics, see records management and data collection


Voting, see elections
Waste disposal, see conservation and the environment
Water pollution, see conservation and the environment
Water treatment, see public utilities and public works
Weapons, see guns, firearms and other weapons

Welfare, see public assistance
Wetlands, see conservation and the environment
Wills, see domestic relations - marital property
Work release, see criminal justice and correction
Workers’ compensation, see labor
Zoning, see growth management