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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OLC#76-3274

November 8, 1976

OMB

No action  
required  
RLB

Mr. George L. Cary  
Legislative Counsel  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Mr. Cary:

The Council of State Governments and affiliated organizations have requested assistance in developing legislative proposals for consideration by the State legislatures in their 1978 sessions. States have been requesting this assistance from Federal agencies for over thirty years.

Coordination of this activity is carried out by the Intergovernmental Relations and Regional Operations Division in the Office of Management and Budget. Any proposals for State legislation which your agency may wish to have circulated among the State legislatures by this procedure should be forwarded to the Office of Management and Budget. In some instances, legislative proposals emanating from State governments and elsewhere will be submitted to Federal agencies for appropriate comment through the Office of Management and Budget.

The Office of Management and Budget will review the relationship of your proposals to the program of the President, request the comments of other interested Federal agencies, and, when appropriate, forward the proposal to the Committee on Suggested State Legislation, Council of State Governments. Following Committee review, approved legislative proposals are published and circulated to appropriate State officials in the annual volume of Suggested State Legislation. A copy of the 1977 SSL volume is enclosed for your information.

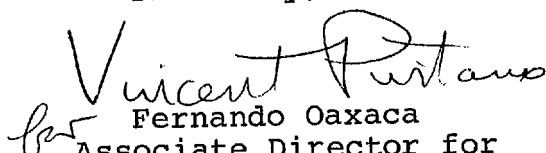
In order to facilitate Committee consideration of the proposals, each proposal should be submitted in the form of a legislative draft consistent with the format outlined in the enclosed style manual. Proposals not susceptible to treatment as a legislative draft should be submitted as a draft statement which sets forth the problem and outlines approaches to its solution. Your attention is directed to the Committee's standards for publication of statements in lieu of draft acts on pages xi-xii, 1977 Suggested State Legislation.

In recognition of the significant amount of time often necessary for reviewing and coordinating legislative proposals within each agency, with other agencies, and with appropriate associations and public interest groups, we encourage each agency to consider legislative proposals on a continuing basis rather than as a once-a-year exercise. Moreover, proposals may be forwarded to the Office of Management and Budget any time during the year.

For possible publication in the 1978 SSL volume, however, proposals should be submitted to Vincent Puritano, Deputy Associate Director for Intergovernmental Relations and Regional Operations, Office of Management and Budget, by December 31, 1976, to permit time for coordination with other Federal agencies and consideration by the Committee prior to its 1977 meeting. We would appreciate receiving five copies of any proposed legislative drafts and accompanying explanatory statements your agency may wish to submit. It will not be necessary to resubmit items previously given circulation unless there is a significant change in the proposal. Please provide the name and telephone number of an individual who can provide supplementary information on each proposal submitted.

In the event there are any questions concerning this procedure, please contact Vincent Puritano at 395-3774.

Sincerely,

  
for Vincent Puritano  
Fernando Oaxaca  
Associate Director for  
Management and Operations

Enclosures

NOV 11 10 41 AM '76

LEGISLATIVE COUNSEL

*REPRINTED FROM*



**1975**  
**SUGGESTED**  
**STATE LEGISLATION**

VOLUME XXXIV

**Style Manual**

Developed by  
The Committee on Suggested State Legislation

The Council of State Governments  
Iron Works Pike  
Lexington, Kentucky 40511

### Style Manual

"Style," according to Webster, is the "custom or plan followed in . . . typographic arrangement or display." Although this means that style is arbitrary, it is helpful to establish some guidelines for copy submitted for publication in *Suggested State Legislation*. This should result in an internally consistent publication, expressing ideas in a concise and clear manner. A sample act follows the discussion below.

#### *Introductory Matter*

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

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

#### *Standardized Sections*

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

Often one finds a "Purpose Clause" at the beginning of an act. Although this clause may be necessary in some States, it is unnecessary for purposes of submission to *Suggested State Legislation*. The purpose of an act should be apparent from its content. Reasons for enactment of an act can be placed in the introductory matter for the reasons may become dated even though the act may still be vital.

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

#### *Form*

Every line of the act is numbered. The line numbers begin anew with each section. Every section has a title, in brackets, which pinpoints the subject of the section.

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

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

To avoid an abundance of capitalization, which can prove distracting, most words are lower cased. For example, "director," "commissioner," or "agency"

are not capitalized. Neither should the names of departments be capitalized except for specific ones established by the act. To say that "regulations of this act are enforced by the Department of Health" would not apply to all States. It would be better to say, "regulations of this act are enforced by the [department of health]."

No footnotes are used. Instead, use is made of a "comment" paragraph which does not have line numbers and is placed at the end of the section or paragraph to which it applies.

*Unnecessary Words and Phrases*

Clarity is essential and excess verbiage eliminated in legislation. Some traps to be avoided are:

<i>Don't</i>	<i>Do</i>
There is hereby created a Division of Accounting	A Division of Accounting is established
The term "disaster" shall mean	"Disaster" means
Under the provisions of this act	Under this act
Until such time as the Director deems it necessary	Until the director considers it necessary
Paragraph (4) of subsection (c) of Section 25	Section 25(c) (4)
No person shall be entitled to	No person shall
On or before June 15, 1974	Before June 16, 1974
In cases in which this occurs	When this occurs
Give consideration to	Consider
He shall receive compensation of \$25,000 per year	His compensation is \$25,000 a year
No person shall engage in said business of applying pesticides	No person shall apply pesticides
It shall be incumbent upon the Director to	The director shall

*Submission of Copy*

All copy should be typed, double spaced, on one side of the paper, with at least one inch margins all around.

### Model Criminal Rehabilitation Research Act

The Problem. The criminal justice system neither deters nor rehabilitates as effectively as possible. Decisions with respect to sentencing and treatment 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. . . .

The Purpose. The purpose of the suggested state legislation is to enable 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. . . .

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.)

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

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

2 (1) "Commission" means the Rehabilitation Research Commission.

3 (2) "Commissioner" means a member of the Rehabilitation Re-  
4 search Commission.

5 (3) "Offender" means a person adjudicated delinquent or convicted  
6 of a criminal offense under the laws and ordinances of the State and its  
7 political subdivisions.

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1 Section 4. [Rehabilitation Research Commission.]

2 (a) A Rehabilitation Research Commission is established to review,  
3 approve, and facilitate research directed at the rehabilitation of delinquent  
4 and criminal offenders and to disseminate the results of such research to  
5 correctional officials and other interested individuals and agencies.

6 [(b) The commission shall consist of 10 members appointed by the  
7 Governor with the advice and consent of the [Senate] as follows:

8 (1) Two members shall be members of the state bar and one of  
9 these representatives shall be a judge in the [highest state trial court  
10 with a criminal jurisdiction].

11 (2) Two members shall at the time of their appointment occupy an  
12 administrative or executive position in state or local government. One  
13 of these members shall be an official of the [state department of correc-  
14 tions].

15 (3) Two members shall be social scientists.

16 (4) Four additional members shall be selected by the Governor.]

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

\* \* \*

1 Section 5. [Jurisdiction and Guidelines.]

2 (a) To be considered by the commission, a research proposal must:

3 (1) Involve the impact of one or more modes of sentencing or  
4 treatment of juvenile or adult offenders.

5 (2) Have as its primary goal the successful and humane rehabilita-  
6 tion of offenders.

7 (3) Be capable of completion with the assistance of the powers  
8 herein given the commission without violating any law of this State or  
9 the United States.

10 (4) Contain reasonable assurances that the proposal will not:

11 (i) Unduly interfere with the major objectives or operations of  
12 any state, local, or private agency.

13 (ii) Tend to undermine the human dignity of the offenders or  
14 staff involved or violate their rights to privacy or result in the unethical  
15 use of any records or information made available or discovered in the  
16 course of the research.

17 (b) In reaching a decision whether to approve a research proposal,  
18 the commission shall consider the following criteria:

19 (1) Relevance to important legal and penal questions.

- 20 (2) Potential practical applicability compared to the costs of con-  
21 ducting the research, including administrative feasibility, number of of-  
22 fenders involved, and proposed duration.  
23 (3) Methodological rigor.

\* \* \*

1 Section 7. [Powers.]

- 2 (a) Every court and public agency or institution whose cooperation is  
3 necessary for the completion of a research project shall actively assist  
4 the project and comply with every reasonable and lawful request of the  
5 commission.

\* \* \*

- 115 (k) In addition to the authority granted in other subsections of this  
116 act or under any other law of this State, the commission may make,  
117 amend, or rescind such rules and regulations and exercise such other  
118 powers as may be appropriate to effectuate the purposes and provisions  
119 of this act.

\* \* \*

- 123 [(m) The commission, in order to further the purposes of this act, is  
124 authorized to initiate an action in mandamus in the State [court of  
125 appropriate jurisdiction] against any public official; provided, however,  
126 that if the writ is directed against a judge of the [highest state trial court  
127 having criminal jurisdiction] the petition may be initiated in the State  
128 [court of appropriate jurisdiction].]

Comment: A State could adopt this provision when the power of the commis-  
sion to compel compliance with its lawful requests and directives is in doubt.

\* \* \*

1 Section 10. [*Severability*.] [Insert severability clause.]

1 Section 11. [*Repeal*.] [Insert repealer clause.]

1 Section 12. [*Effective Date*.] [Insert effective date.]





**1977**  
**SUGGESTED**  
**STATE**  
**LEGISLATION**

**Volume XXXVI**

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*The Council of State Governments*

The Council is a joint agency of all the state governments — created, supported and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials and legislators; issues a variety of publications; assists in state-federal liaison; promotes regional and state-local cooperation and provides staff for affiliated organizations.

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**1977**  
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**STATE**  
**LEGISLATION**

**Volume XXXVI**

Developed by  
The Committee on Suggested State Legislation

The Council of State Governments  
Iron Works Pike  
Lexington, Kentucky 40511

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- State Regulation of Milk Production and Processing
- Theft and Fencing Control Act
- Repeal of State Fair Trade Laws
- Repeal of Protective Labor Legislation—Statement
- Repeal of Literacy Tests for Voting—Statement
- Compliance with Provisions of Overseas Citizens Voting Rights Act of 1975—Statement
- Repeal of Laws Prohibiting Soliciting Offers to Buy Property for Evidence of Discriminatory Practices—Statement
- Act Providing for the Administrative Disposition of Traffic Offenses
- Adoption by States of National Oceanographic Instrumentation Center Standards and Procedures for Marine Measurements—Statement

A cumulative index to all volumes of *Suggested State Legislation*, 1941 through 1973, is available for \$3 from the Council of State Governments.

## FOREWORD

This volume of *Suggested State Legislation* for 1977 contains proposals approved by the Committee on Suggested State Legislation of the Council of State Governments at its meeting June 11-12, 1976, in Washington, D.C.

A review of the measures contained in the volume, together with accompanying explanatory statements, should prove useful to all state officials, members of legislative bodies, and legislative staff agencies. While generally cast in the form of bill drafts, these various items constitute no more than suggestions with respect to the problems posed. They should, therefore, be introduced only after careful consideration of state policies, practices, statutory, and constitutional requirements.

It should be emphasized that neither the Council of State Governments nor its Committee on SSL seeks to influence the enactment of either state or federal legislation. As a service organization of the States, the Council has a duty to assist state officials and legislators in performing their basic tasks, but not to tell them what specific laws to enact.

A cumulative index of measures published in previous volumes of *Suggested State Legislation*, covering the period from 1941 through 1973, is available from the Council. Supplements covering the 1974 through 1977 volumes appear at the back of the present publication.

State officials and legislators are urged to submit, for the Committee's consideration, innovative proposals which they believe may be of interest to other States. A single State's experience in a new field frequently leads to the adoption of comparable legislation elsewhere if the problem is general and when the approach is well conceived. Further information concerning Committee activities and procedures is contained in the Introduction which follows.

August 1976  
Lexington, Kentucky

Brevard Carihfield  
*Executive Director*  
*The Council of State Governments*

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\*Ex officio Advisory Members. Included are representatives of the National Conference of State Legislatures, National Conference of Commissioners on Uniform State Laws, and federal liaison members.

## INTRODUCTION

Since 1941, the Council of State Governments has published *Suggested State Legislation (SSL)*. These annual volumes contain suggested draft legislation which may be of interest to the States. The Council's Committee on Suggested State Legislation determines those measures which are to be included in *SSL*. A representative group of state officials comprises the Committee—Commissioners on Interstate Cooperation, Commissioners on Uniform State Laws, Attorneys General, legislators and legislative staff, and others.

The procedure used in developing *Suggested State Legislation* is as follows:

1. The Council of State Governments receives proposals in the form of legislative drafts from:

- (a) Individual state officials,
- (b) Individual state legislators,
- (c) Organizations of state officials,
- (d) Special state committees or agencies,
- (e) Intergovernmental conferences,
- (f) Public service organizations, and the
- (g) Federal Office of Management and Budget.

The proposed legislative drafts are then sent to members of the Subcommittee on Scope and Agenda for review. They screen the various proposals and alternatives, and selected items are then transmitted to the full Committee for study and review.

In June, at the annual meeting of the Committee on *SSL*, all proposals are considered and discussed in detail at panel sessions. Various governmental officials and nongovernmental organizations are often invited to testify before a panel. Upon completion of their work, the respective panels report to the full Committee for final action in plenary session.

Approved proposals are published in the annual volume of *Suggested State Legislation*, which is distributed to Governors, Legislators, Attorneys General, members of Commissions on Interstate Cooperation, and other state officials.

When appropriate, statements in lieu of draft acts are published in *SSL*. A statement may be in order, if so desired by the Committee, in the following situations:

(a) Where reference is made to suggested legislation previously carried in *SSL*, with appropriate citation.

(b) Where an important subject is under consideration but no "model" draft is available, if citations can be made to partial actions taken by several States.

(c) Where a reputable outside group has prepared a lengthy act which cannot be carried in *SSL* due to space limitations.

(d) Where general drafting guidelines have been prepared, but the situation does not yet permit promulgation of a fully developed legislative draft.

(e) Where an analytical critique of existing legislation can be prepared for use of state legislators and legislative service agencies.

The Committee on *SSL* does not consider it appropriate to carry statements which merely support or oppose the enactment of some partisan legislative

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proposal. Such issues are purely in the realm of policy, whereas the Committee's function is to provide drafting assistance for those who determine policy.

It is urged that the submission of any draft legislation for consideration by the Committee on SSL follow the style manual as approved by the Committee and as printed in the 1975 edition of *Suggested State Legislation*. Copies of the style manual are available from the Council of State Governments.

On June 12, 1976, the Committee on Suggested State Legislation approved 22 items for publication in this volume. The Committee commends them to your consideration. The Committee's product can be a useful tool, but only to the extent that it is in fact utilized.

Richard J. Carlson  
*Secretary*  
*Committee on Suggested State Legislation*

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NOTE: The suggested draft legislation in this volume constitutes no more than suggestions with respect to the problems posed. It should, therefore, be introduced only after careful consideration of local conditions. Existing constitutional and statutory requirements should be examined. Revisions in the statutory language, section headings, numbering, and other modifications may be necessary in order to conform to local practices. Decisions must be made regarding optional sections and provisions.

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**Suggested State Legislation**

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### State Land Trust Act

The Land Trust would be a state instrumentality governed by five trustees appointed by the Governor and confirmed by the Senate for five-year terms. Its principal corporate purpose would be to accept land and interests in land for the benefit of the people of the State. It would not have the power to issue bonds or exercise eminent domain.

To develop standard methods of determining the value of lands and development rights, the Governor would name a five-member Land Value Advisory Committee.<sup>1</sup> In addition, Rural Land Appraisal Commissions of three members each would be created in each of the present natural resource conservation districts.<sup>2</sup> These commissions would make appraisals of lands and interests in lands within their geographic areas independently of local appraisers so as to avoid a fiscal conflict-of-interest situation.<sup>3</sup>

The Trust would offer two different opportunities—one open to any owner of suitable open space lands, the other available only to resident farmers who derive at least one third of their income from farming 40 acres or more. Under the first option, any landowner could offer to dedicate and convey his lands or interests in land to the Trust. If the Trust accepted the offer, the Trust would become the owner, and the former owner would have no tax liability for the interests conveyed. The Trust would have full discretion as to which lands or interests it could acquire, and the conveyor would have no unilateral right to reacquire the rights conveyed. The Trust could, under limited circumstances, reconvey the land or interests. A conveyor of land could, by agreement with the Trust, retain privileges such as life tenure, recreational use, and continued agricultural use. Donation of land or interests in land to the Trust would qualify as a tax deduction to the donor under both federal and state income tax laws, and the donation could be phased over a number of years for maximum advantage.<sup>4</sup>

Operating farmers would have an additional option. Instead of dedicating their land or development rights, they could also lease them to the Trust for a fixed period of years. The model bill requires that the Trust enter into this lease if the farmer and farmland qualify, but the farm owner would not be required to participate against his will. The terms of the lease agreement would specify that the Trust would pay each year to the farmer the local property taxes attributable to the rights leased by

1. This committee is modeled after the New Jersey Farmland Evaluation Advisory Committee. See N.J. Stat. Ann. Section 54:4-23.20 (Cum. Supp. 1974).

2. Natural resource conservation districts have existed since 1935 in conjunction with the Soil Conservation Service of the U.S. Department of Agriculture. See Soil Conservation Act, 16 U.S.C. Section 590(b)-(f) (1970). There are approximately 3,000 local districts in all 50 States, involving over 2 million cooperating landowners in watershed protection, erosion control, woodlot management, and wildlife habitat improvement projects. Most districts are governed by a landowner-elected board of supervisors. National Association of Conservation Districts, *America's Conservation Districts* (1974).

3. The conflict of interest may arise because local appraisers would have no reason not to overvalue development rights if the Trust were committed to paying the full locally assessed taxes on values held by it. By having the development rights appraised by a body independent of the local taxing jurisdiction, this possibility is eliminated. It should be noted that there may be a problem where local governments within a rural land appraisal district have assessments varying widely in percentage of true fair market value; this problem will have to be considered on a state by state basis.

4. See Int. Rev. Code of 1954, Section 170(c)(1).



the Trust; thus, in effect, the farmer would pay taxes only on use value, while the Trust would pay taxes on the value of the development rights. If the Trust should default on a payment due the farmer-lessor, the lease agreement would be terminated without penalty, unless the farmer waived a partial default by the Trust and elected to continue with the lease.

If the farmer wished to recover the development rights leased to the Trust, he could do so at any time by paying a lease termination price of one half the difference in value of the rights computed on the day of initial leasing and that of termination. In no case, however, would the payment be less than a rollback price equal to the past five years' tax benefits carried forward at 6 percent interest. In effect, the farmer could reacquire all rights by sharing one half of the accrued capital gain with the Trust.<sup>5</sup>

Where the Trust leased rights to farmland, it would pay to the farmer the taxes on the value of the land or rights leased, as determined by an appraisal by the Rural Land Appraisal Commission and the tax rate of the local jurisdiction in which the land is located. The farmer then would make full payment of taxes to the local government at the local appraisal value. This approach, incidentally, would relieve local assessors and clerks of the problems of assessing and maintaining records of use values, development values, deferred taxes, etc., problems which can become burdensome where local tax officials are relatively untrained and inexperienced with these more sophisticated concepts.

With respect to land or rights in land other than farmlands, the Trust would pay taxes to the local government only on that portion of such lands or rights which, when valued at fair market value and added to the value of other state-owned property in the jurisdiction, exceeded 10 percent of the remainder of the assessment roll. Local taxpayers, then, would absorb a revenue loss until the 10 percent threshold is reached.<sup>6</sup>

The Trust would be funded by the proceeds of a property transfer tax of 1 percent on the value of all property transferred in excess of \$10,000.<sup>7</sup> This would relieve lower-income home and lot buyers from much of the incidence of the tax. The Trust also would receive some income from lease termination payments from farmers wishing to reacquire leased rights.

If the Trust's revenues fell below that necessary to meet the lease payment obligations, the lease would be terminated and the farmer would recover all leased rights without encumbrance or penalty. This ensures that there would be no open-

5. This is the function of the rollback provision in many state statutes. See, e.g., Conn. Gen. Stat. Ann. Section 12-504(a)-(h) (Cum. Supp. 1975); N.H. Rev. Stat. Ann. Section 79-A:7 (Cum. Supp. 1973). These laws provide for a separate conveyance or land use change tax, computed not with respect to tax benefits received, but at the rate of 10 percent of the total sale or value of the property (declining 1 percent for each year the property qualified before conversion in Connecticut).

6. The 10 percent figure is largely arbitrary, being that used in Vermont under the so-called "Groton formula" for reimbursing towns in which the State has acquired large holdings. See Vt. Stat. Ann. Tit. 32, Section 365(a) (1973).

7. The current Vermont property transfer tax is 0.5 percent of all nonexempt transfers. Vt. Stat. Ann. Tit. 32, Section 9602 (1970). The Vermont Tax Department has estimated that changing the tax to 1 percent of all transfers in excess of \$10,000 would greatly increase revenues. The department's estimate, however, was based on the assumption of a \$10,000 homestead exemption, rather than a \$10,000 value exemption; hence the figure is somewhat conservative.

ended commitment of the funds of the Land Trust or the State, a difficult problem in other contract-type bills.

This act was prepared by John McClaughry, "A Model State Land Trust Act," *Harvard Journal of Legislation*, June 1975.

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### Suggested Legislation

(Title, enacting clause, etc.)

#### I. Short Title and Definitions

1 Section 101. [*Short Title.*] This act may be cited as the [State] Land  
2 Trust Act.

1 Section 102. [*Definitions.*] As used in this act:

2 (1) "Development rights" means the rights to engage in land devel-  
3 opment other than for the purposes of agriculture and forestry.

4 (2) "Farming" means the business of farming, i.e., the cultivation,  
5 operation or management of a farm for gain or profit, either as owner  
6 or tenant.

*Comment:* This definition follows very closely the definition in Section 1.175-3 of the Internal Revenue Code Regulations.

7 (3) "Farmland" means real estate which:

8 (i) Is actively and exclusively devoted to farming.

9 (ii) Comprises no less than 40 acres of open lands, including the  
10 residential area, and not to exceed 10 acres of woodlots.

11 (iii) Is operated as a farm enterprise by its owner, who shall be a  
12 resident of the State.

13 (iv) Produced in farm-related income no less than one third of  
14 the owner's adjusted gross income as defined in [cross-reference]  
15 in the owner's taxable year immediately preceding the year in which  
16 classification under this act is sought.

*Comment:* Since special benefits under the act are available to farmland owners, the definition of "farmland" is very important. The acreage requirements may well be varied with respect to the type of farming carried out in a given State. The limitation on woodlot acreage that may be included is not intended to exclude from participation otherwise qualified farmland that may happen to include more than 100 acres of woodlots; it merely limits the amount of woodlots that may be included for valuation and lease purposes to 100 acres. The seemingly low requirement of one third farm-related income recognizes that many smaller farms are, in effect, subsidized by outside wages earned by the farmer's family. The cross-reference relates to the definition of adjusted gross income elsewhere in the State's tax statutes; for States without income taxation, a definition will have to be included in this section.

17 (4) "Interests in land" includes, but is not limited to:

19 (ii) Fee simple subject to the right of occupancy and use, defined  
20 as full and complete title subject only to a right of occupancy and use of  
21 the subject real property or part thereof by the grantor for residential,  
22 agricultural, or forestry purposes.

23 (iii) Fee simple and resale of rights and interests, defined as the  
24 acquisition of land in fee simple and the subsequent reconveyance of  
25 rights and interests in such property to the former owner or to others,  
26 designed to accomplish the purposes of this act.

27 (iv) Fee simple and leaseback, defined as the acquisition of real  
28 property in fee simple and the lease, for the life of a person or for a term  
29 of years, of rights and interests therein, subject to the provisions of this act  
30 and to such covenants, restrictions, conditions, or affirmative require-  
31 ments fixed by the Land Trust to accomplish the purposes of this act.

32 (v) Less than fee simple, defined as the acquisition of any rights  
33 and interests in real property less than fee simple.

34 (vi) Option to purchase, defined as the acquisition of an option  
35 to purchase land or rights and interests therein.

*Comment: See Vt. Stat. Ann., Tit. 10, Section 6303(a)(1)-(7) (1973).*

36 (5) "Land" means real property in land, including areas covered  
37 by water, air space, subterranean rights, and any buildings, structures, or  
38 other improvements thereon.

39 (6) "Owner" of farmland means the record holder of legal title, the  
40 perpetual leasehold interest or the equity of redemption in either,  
41 under a bona fide mortgage deed, free and clear of any contract, option,  
42 or other agreement, written or oral, recorded or unrecorded, requiring,  
43 conditionally or absolutely, transfer of the beneficial ownership so as to  
44 disqualify the lands for dedication under Section 301 of this act. "Owner"  
45 includes joint ownership or corporate ownership where all holders of  
46 beneficialerests, either as individuals or stockholders, are actively  
47 engaged in the business of farming in this State.

## II. Creation of Land Trust

1 Section 201. [*Land Trust Created.*] There is created a body corporate  
2 and politic to be known as the [State] Land Trust, which shall be an  
3 instrumentality of the State benefiting all the citizens of the State by  
4 carrying out the public purposes expressed in this act.

*Comment: This section may need refinement to conform to constitutional language and judicial decisions of each State specifying the boundaries of "public purpose" for which the revenue-raising and expenditure provisions of this act are undertaken.*

1 Section 202. [*Trustees.*]

2 (a) The Trust shall have five trustees, who shall be residents of the  
3 State. At least two of the trustees shall be active or retired farmers. No  
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4 trustee shall hold any other office, either elective or appointive, under  
5 state or local government.

*Comment:* The requirement that two of the trustees be active or retired farmers is designed to assure farmers that the Trust is not merely an instrument of lawyers, bankers, and environmentalists designed to deprive them of their property. The proscription against holding other offices is intended to prevent conflict of interest situations which could arise, for example, when the Trust takes action affecting the tax base of a local government.

6 (b) The Governor shall appoint the trustees with the advice and con-  
7 sent of the Senate for terms of five years; except that the terms of the  
8 members first appointed shall be for one, two, three, four, and five years  
9 in order that no more than one vacancy will occur in any calendar year.  
10 The Governor shall make appointments to fill vacancies to serve for the  
11 remainder of the unexpired term. A trustee may be removed for cause at  
12 any time by a two-thirds vote of the Senate.

13 (c) The trustees shall elect a chairman and a clerk, and at their organi-  
14 zational meeting shall adopt by majority vote such rules as they deem  
15 necessary. The Trust shall keep a public record of its resolutions and  
16 transactions, and its financial records shall be audited annually by the  
17 [auditor of accounts].

18 (d) Trustees shall receive compensation for their services at the rate  
19 of [\$ ] per year, and shall be entitled to reimbursement from the  
20 Trust for expenses incurred in the performance of their duties.

21 (e) A trustee shall not participate in any actions of the Trust relating  
22 to land or interest in land in which such trustee, his immediate family, or  
23 close associates have an interest, direct or indirect, and in such cases he  
24 shall enter the reason for his nonparticipation in the records of the Trust.

1 Section 203. [*Powers and Duties.*]

2 (a) The Trust may acquire, by purchase, gift, or any other manner,  
3 and hold for the benefit of the people of the State, any rights or interests  
4 in land in the State. It shall record within 30 days of its execution any  
5 instrument conveying to or from it any interest in land, which recordation  
6 shall be a condition of the validity of such transfer.

7 (b) In accepting conveyance of, and in holding and conveying interests  
8 in land, the Trust shall comply with the provisions of Sections 303 and  
9 304 of this act and any plan or bylaws lawfully adopted by the govern-  
10 mental bodies in which such lands or interests are situated.

11 (c) The Trust shall prepare model legal documents and explanatory  
12 materials, conformable to the laws of [State], for the guidance of land-  
13 owners and local groups wishing to establish community land trusts, and  
14 local governments wishing to enter into farm tax stabilization contracts  
15 pursuant to [cross-reference]; and may provide direct technical and legal  
16 assistance to such landowners, groups, and local governments.

*Comment:* This subsection is optional. The cross-reference to farm tax stabilization contracts refers to

legislation permitting local governments to enter into stabilization agreements with farmers, a practice frequently used with respect to industrial plants. See Vt. Stat. Ann., Tit. 24, Section 2741 (1967).

17 (d) The Trust shall have the following additional powers:

18 (1) To sue and be sued in the Trust's name, but the trustees shall  
19 not be liable for acts performed in good faith.

20 (2) To adopt a seal and alter the same with pleasure.

21 (3) To adopt bylaws for the regulation of its affairs and the conduct  
22 of its business.

23 (4) To maintain an office or offices at such place or places within  
24 the State as the trustees may designate.

25 (5) To appoint a secretary and treasurer and such other officers,  
26 who need not be trustees, as it shall deem advisable, and to employ such  
27 other employees and agents as may be necessary or desirable.

28 (6) To apply for and accept any grant of money or other assistance  
29 for programs relating to the purposes of the Trust, from the federal  
30 government, from private individuals, organizations or foundations, or  
31 from any other source, and to subscribe to and comply with any rule,  
32 regulation, contract, or agreement with respect to the application of  
33 such grant or assistance.

34 (7) To make, enter into, and perform all contracts and agreements  
35 necessary or incidental to the performance of its duties and the execution  
36 of its powers under this act.

37 (8) To cooperate with and assist any agency of the State or any of  
38 its political subdivisions, and any private agency or person in furtherance  
39 of the purposes of the Trust.

40 (9) To do all acts and things necessary or convenient to carry out the  
41 powers expressly granted in this section.

1 Section 204. [*Power to Issue Bonded Debt Reserved.*] The Trust shall  
2 not have the power to issue bonded debt unless expressly authorized to do  
3 so by legislative enactment.

*Comment:* This section and the section following have a dual purpose. As written, they forbid the issuance of bonded debt and the exercise of eminent domain. This eliminates two difficult questions for legislative debate. If it is subsequently desired to have the Trust actually acquire development rights for compensation, either by voluntary purchase or eminent domain, such future enactment would replace these two sections at this point in the statute.

1 Section 205. [*Power to Exercise Eminent Domain Reserved.*] The Trust  
2 shall not have the power to exercise eminent domain over land or interests  
3 in land unless expressly authorized to do so by legislative enactment.

1 Section 206. [*Land Value Advisory Committee.*]

2 (a) There is established a land value advisory committee consisting  
3 of three members serving for terms of four years. Two members shall be  
4 appointed by the Governor and shall serve at his pleasure. One additional

6 college. All appointed members shall be persons experienced in agricul-  
7 ture or real estate appraisal. Any vacancies shall be filled by the Governor  
8 and the president of the state agricultural college, respectively. The  
9 commissioner of taxes and the commissioner of agriculture, or their  
10 delegates, shall be members of the committee ex officio.

11 (b) The committee shall formulate guidelines for the determination  
12 of agricultural use value and development rights value of rural land. In  
13 formulating such guidelines, consideration shall be given to the agri-  
14 cultural productivity of the land; the present market value of the land for  
15 agricultural purposes and for development purposes; the topography,  
16 size, location, and climatic exposure of the land; current standards of  
17 farm management and efficiency; and any other factor which the com-  
18 mittee finds relevant to the determination of agricultural use value or  
19 development rights value. The committee shall provide technical advice  
20 and counsel to rural land appraisal commissions and to the Trust on  
21 request.

*Comment:* This blue-ribbon committee is necessary to provide expert assistance on the often complicated question of assessing the value of interests less than fee of agricultural and open space land, a task which may well, at least initially, overwhelm local government appraisers, particularly where they are nonprofessionals. It is modelled after the New Jersey State Farmland Evaluation Advisory Committee. See N.J. Stat. Ann., Section 54:4-23.20 (Cum. Supp. 1974).

1 Section 207. [*Rural Land Appraisal Districts.*] The [commissioner of  
2 agriculture] shall divide the State into rural land appraisal districts. Such  
3 districts shall be coterminous with existing boundaries of natural resource  
4 conservation districts insofar as practicable, and no rural land appraisal  
5 district shall contain more than three natural resource conservation  
6 districts.

1 Section 208. [*Appointment of Rural Land Appraisal Commissions.*]

2 (a) The Governor shall appoint three persons to serve as members of  
3 a rural land appraisal commission in each rural land appraisal district.  
4 The members of the commission appointed by the Governor shall serve  
5 at the pleasure of the Governor, and may be removed by him at any time.  
6 The Governor may appoint a successor for any commission member  
7 appointed by him who dies, resigns, or is removed. Insofar as practicable  
8 the members of each commission appointed by the Governor shall include  
9 the following: a representative of the department of agriculture; a person  
10 employed by a lending institution engaged in making farm loans in the  
11 district; and a person who has served as a tax assessor for a local govern-  
12 ment within the district.

13 (b) The cooperating landowners in each natural resource conservation  
14 district within a rural land appraisal district shall elect, at the time of  
15 election for natural resource conservation district supervisors, one person  
16 from among no less than two persons nominated and placed on the ballot  
17 by the supervisors to serve as a member of the commission.  
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18 mission with respect to appraisals in that district.  
19 (c) Each commission shall elect annually from among its membership  
20 a chairman and a clerk, who shall serve until their successors are elected.  
21 Members of the commission shall not receive compensation for their  
22 services but shall be entitled to reimbursement from the Trust for reasona-  
23 ble and necessary expenses incurred in the performance of their duties.

*Comment:* The provision for election of one member of the commission by the "cooperators" of a natural resource conservation district is an attempt to allow rural landowners themselves to have a voice in the composition of the local commission, in addition to gubernatorial appointments. Nationally, there are some 3,000 such conservation districts involving over 2 million landowners (see footnote 2).

1 Section 209. [*Biennial Report.*] Biennially the Trust shall make a report  
2 to the [Legislature] concerning its operations for the previous biennial  
3 period, including such recommendations as it may choose to make con-  
4 cerning the future operation of the program.

### III. Acquisition, Management, and Taxation of Interests in Land

1 Section 301. [*Dedication of Interests in Land.*]  
2 (a) Any interests in land may be conveyed to the Trust, and accepted  
3 by the Trust at the discretion of the trustees, under such terms and con-  
4 ditions as may be agreed upon. Before accepting any lands or interests  
5 in land under this section the trustees shall consider:  
6 (1) Their value and the amount of the tax liability assumed by the  
7 Trust under Section 305 of this act.  
8 (2) The value of the lands in preserving the landscape of the area,  
9 including views and perspectives.  
10 (3) The extent to which the public may be expected to benefit  
11 directly from and enjoy such dedication.  
12 (4) The location of the lands in relation to other lands or interests  
13 held by the Trust, the State, or other governmental authority.  
14 (5) The potential use of the land, inherently, and as affected by any  
15 state, regional, or local land use plan, development plan, or zoning bylaw.  
16 (6) The ecological, geological, and biological uniqueness and value  
17 to the State.  
18 (7) Whether ownership would enable the Trust to influence the  
19 development of the area for the public benefit.  
20 (8) The extent and nature of reservations, if any, proposed by the  
21 donor if an offer is made of an interest less than fee.  
22 (b) Prior to acceptance of land or interests in land by the Trust, the  
23 details of the proposed transaction shall be submitted to each affected  
24 municipal and regional planning commission, which shall forward its  
25 comments and recommendations, if any, to the Trust within 30 days.  
26 At the request of any affected municipal or regional planning commission  
27 within said 30-day period, the Trust shall, before concluding any pro-  
28 posed transaction, announce and hold a public hearing in the vicinity

29 Prior to concluding any transaction, the Trust shall take into consideration  
30 all comments and recommendations received from planning commissions  
31 and other public bodies, and shall convey its specific responses to the  
32 respective commissions or bodies from which the comments or recom-  
33 mendations originated. Any affected commission or governmental body  
34 shall have standing to seek an injunction against a proposed transaction  
35 where the procedural provisions of this act have allegedly been disregarded.

*Comment:* This subsection recognizes the importance of close liaison between the Trust and local taxing jurisdictions. Since acceptance by the Trust of interests in land will in many cases affect the local property tax base, it is important that the Trust proceed in full public view, although the local jurisdiction is not accorded a right of veto over a proposed conveyance. The last sentence, relating to injunction, is included to ensure that the Trust comply with these detailed procedural requirements. In a Vermont case, where no statutory law exists concerning mandamus or injunction relating to procedural errors by a state agency, a mandamus action by a local planning commission against the state environmental board was dismissed, presumably on the grounds that the state board's refusal to comply with statutory procedure in promulgating a land use plan for submission to the Legislature was a political question for legislative, not judicial, resolution. *Town of Kirby Planning Commission v. State Environmental Board*, Caledonia County (Vermont) Court, Docket C 19-74 CAC, filed February 15, 1974. (Motion for summary judgment by defendant granted without indication of which of the numerous grounds offered was persuasive.)

36 (c) If the Trust accepts land in fee simple under this section, it shall  
37 permit reasonable use of the land for snowmobiling, hunting, fishing,  
38 hiking, and cross-country skiing by the public. If the Trust accepts less  
39 than fee simple interests in land under this section, the terms and condi-  
40 tions of conveyance to the Trust shall include agreement by the conveyor  
41 to permit reasonable use of the land for snowmobiling, hunting, fishing,  
42 hiking, and cross-country skiing. The Trust may establish guidelines for  
43 such reasonable use in consultation with the [Departments of Fish and  
44 Game and Forests and Parks].

*Comment:* This subsection strengthens the case that the act has a public purpose benefiting all the public, but as noted above, it poses a difficult policy question especially with respect to snowmobiling.

#### 1 Section 302. [*Special Leasing of Farmlands.*]

*Comment:* The following section requires the Trust to lease the development rights to qualified farmland for a period not to exceed 25 years. Lessors are allowed to break the lease by paying a prescribed lease termination price, but the Trust may not break a lease unless the revenues assigned to it (which are beyond the Trust's control) prove insufficient to cover all lease payment obligations. Nothing prevents the Trust from entering into a lease of as little as one year's duration; such a lease, however, would be a speculator's dream, since the lessor could, after enjoying the benefits for a year, choose not to renew the lease without becoming liable for the lease termination payment.

At the end of any lease, the statute as written makes it mandatory for the Trust to enter into another lease if the farmer and farmland continue to qualify. The 25-year term provision ensures that the Legislature can act to relieve the Trust of this requirement if it appears that mandatory leasing will be undesirable. Since no lease is perpetually renewable, such revision of the program would raise no question of breach of contract or an unconstitutional taking of property (the property right to the lease benefits).

2 (a) The Trust shall, upon application by an owner of farmland, lease  
3 the development rights to such farmland at the nominal rate of \$1.00 per  
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4 year for a period not to exceed 25 years. The lease agreement shall  
5 provide that:

6 (1) The owner may continue to reside upon the land and continue  
7 all agricultural uses practiced at the time of leasing.

8 (2) If the land has been actively and continuously farmed for a period  
9 of 10 years or more, and no less than three years by the owner, the owner  
10 may discontinue agricultural operations without termination of the lease  
11 agreement provided he continues to maintain the open space character  
12 of the land in a condition equivalent to that associated with active farming.

*Comment:* This paragraph is intended to qualify the retired farmer, who would otherwise not qualify due to the definitions of "farming" and "farmland," which require engaging in the business of farming and one third of family income from farm operation. [Model State Land Trust Act, Section 103(c) *supra*.] The retired farmer could, of course, lease his productive acres to another farmer, or just keep the fields mowed to qualify.

13 (3) If at any time the land fails to qualify as farmland, and the owner  
14 fails to comply with the provisions of paragraph (2) the lease agreement  
15 shall be deemed terminated by the owner, and he shall pay to the Trust  
16 the lease termination price as provided in subsection (b).

17 (4) The owner shall permit reasonable recreational use of the land  
18 for snowmobiling, hunting, fishing, hiking, and cross-country skiing by  
19 the general public in accordance with guidelines established by the Trust.

20 (5) The Trust may not convey its lease interest to any party other  
21 than the owner.

*Comment:* It is, of course, unlikely that a third party would want to acquire a lease interest to development rights from the Trust as a business proposition. This paragraph is included mainly to reassure the farmer-lessor that if at some future time he wishes to terminate the lease and reacquire the rights, he will be dealing with the Trust rather than with the federal government or the Nature Conservancy.

22 (6) The owner may give, convey, grant, or devise his interest in the  
23 farmland subject to the lease to any party and the lease shall not thereby  
24 be terminated and no termination price shall be due under subsection (b)  
25 of this section, provided that the successor in interest resides upon the  
26 land, continues agricultural uses, and otherwise assumes all the obliga-  
27 tions under the lease of the original owner.

*Comment:* This paragraph principally provides for transfer of the lessor's interest at death. Note, however, that where a lessor qualifying under paragraph 2 of this subsection conveys the lease to an heir, the heir must recommence agricultural operations to qualify. The "retired farmer" clause is intended to benefit only the retired farmer himself, and not his heirs.

28 (7) The lease may be terminated at any time by the owner in accord-  
29 ance with the provisions of subsection (b) of this section.

*Comment:* This is the "escape clause" that allows the farmer-lessor to reacquire his leased development  
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30 (8) Upon proper certification, the Trust shall pay to the owner each  
31 year an amount equal to the general local property taxes that the owner  
32 would be liable for if the rights leased were taxed at the value determined  
33 by the appropriate rural land appraisal commission, and at the rate ob-  
34 taining in the local taxing jurisdiction in which the rights are located.

*Comment:* Note that the amount of lease payment to the lessor may not exactly equal the tax liability of the lessor to the local taxing jurisdiction. The payment by the Trust to the lessor equals the amount the lessor would have to pay in local property taxes if his property were taxed at the value fixed by the rural land appraisal commission, which is independent of any taxing jurisdiction. This provision eliminates the problem of reliance on local assessment officials who would have a tendency to overvalue the leased rights on the theory that the Trust's commitment to pay the full taxes due on those rights would eliminate any adverse interest of the local property owner.

35 (9) If the Trust fails to make the payment required by paragraph (8),  
36 the owner, at his option, may declare the lease terminated and recover  
37 all rights contained in the lease without payment of the lease termination  
38 price required by subsection (b); or he may accept a partial payment by  
39 the Trust, waiving any further claim against the Trust for the deficiency,  
40 and continuing the lease agreement in force.

*Comment:* This paragraph deals with the problem of revenue to the Trust insufficient to permit full payment of all the Trust's lease obligations. If this should happen, the Trust can make partial payments to all lessors who will accept them; or the Trust can make full payment to selected lessors and none to others, causing the termination of the latter leases; or a combination of both policies. This provision is extremely important since it eliminates the problem posed by a state instrumentality contractually required to incur budget obligations into the unpredictable future, a problem that has been the bane of many similar proposals.

41 (b) If the lease is terminated by the action of the owner under the  
42 provisions of paragraph (3) or (7) of subsection (a), the owner shall pay  
43 to the Trust as the lease termination price one half of any increase in the  
44 fair market value of the rights from the time the lease was entered into,  
45 to the time the lease was terminated, as determined by the appropriate  
46 rural land appraisal commission, provided, however, that in no case shall  
47 the lease termination price be less than the total payments made by the  
48 Trust under paragraph (8) of subsection (a) during the five years preced-  
49 ing the year in which the rights are reacquired, plus interest at the rate  
50 of 6 percent per annum calculated from each date that payments were  
51 made by the Trust. An owner dissatisfied with the appraisal may appeal  
52 to the county court as provided in [cross-reference].

*Comment:* This important provision allows the farmer-lessor to "buy out" of his lease at any time, preserving the free alienability of land so prized by rural landowners. As a penalty for buying out, the landowner whose tax burden has been alleviated must share with the public the economic benefits of subsequent conversion. Presumably the farmer would not exercise this option unless he had closed a deal for sale of the property fee simple, and the Trust would then be a party at the closing where all rights and considerations would be appropriately exchanged. If it is desired that the Trust be able absolutely to prevent conversion of qualified lands, actual acquisition of either the fee or development rights is the only procedure that can accomplish that objective without raising the problems associated with the taking of property without compensation.

53 (c) The Trust shall have a lien against the real estate to secure the  
54 lease termination price in the same manner as taxes assessed against  
55 real estate are a lien under [cross-reference], and the same may be col-  
56 lected and enforced by action at law in the manner provided for under  
57 sections [cross-reference], or by sale of real estate as provided under  
58 sections [cross-reference], or by foreclosure as provided under section  
59 [cross-reference].

*Comment:* These cross-references refer to existing statutes concerning governmental action in case of nonpayment of property taxes.

1 Section 303. [*Management of Interests by Trust.*]

2 (a) In managing lands and interest in lands held by the Trust, the  
3 trustees shall establish and adhere to policies and practices which shall:

4 (1) Preserve the open space, scenic prospects, and general appear-  
5 ance of the countryside.

6 (2) Preserve and enhance the natural history and ecological balance  
7 of the area.

8 (3) Avoid and abate air and water pollution and any other hazard  
9 to the health and welfare and safety of the public.

10 (4) Protect historic sites.

11 (5) Conform to all lawfully adopted local, regional, and state land  
12 use, development, and zoning plans.

13 (6) Permit reasonable use for snowmobiling, hunting, fishing, hiking,  
14 and cross-country skiing.

15 (7) Otherwise protect the public interest and the welfare and safety  
16 of the people of the area and the State.

17 (b) The Trust may enter into arrangements with any department of  
18 federal, state, or local government, or a responsible private organization  
19 for the actual management of specific lands and interests owned by the  
20 Trust.

1 Section 304. [*Transfer of Interests by Trust.*]

2 (a) The Trust may not convey any interest less than fee held by it  
3 except to the owner of the remainder of the fee, without his written  
4 consent. With respect to interests dedicated to the Trust under Section  
5 301, the owner of the remainder of the fee may reacquire the outstanding  
6 interest in the fee only with the consent of the trustees and on such terms  
7 and at such a price as they may specify. In determining whether convey-  
8 ance of any interest held by the Trust should be made, the trustees  
9 shall consider:

10 (1) The probable effects of conveyance on the continued manage-  
11 ment of the lands or interests in accordance with the policies and prac-  
12 tices enumerated in Section 303.

13 (2) The probable impact on the economy, government, and tax  
14 base of the town in which such lands or interests are located.

15 (3) The net gain likely to accrue to the public interest (or to the  
16 Trust, acting in the public interest) from conveyance.

17 (b) The Trust shall give notice of any proposed conveyance of lands  
18 or interests held by it to the regional and local planning commissions  
19 wherein the land lies and to all affected local governments, and hold  
20 public hearings in the locality prior to effecting any such conveyance.

21 (c) If the trustees determine that lands or interests held by the Trust  
22 should be sold, such conveyance may include conditions, restrictions, or  
23 covenants specifying the nature and character and particular type of  
24 development that may occur thereon, consistent with state, regional, and  
25 local plans and zoning bylaws.

*Comment:* Although in general the Trust would not reconvey interests held by it to a private owner, it is conceivable that changing settlement patterns and planning considerations might suggest development of a Trust-held parcel as preferable to the development of private land in the vicinity. The Trust under this section would thus have carefully safeguarded powers to transfer or exchange interests in land. The safeguards are necessary to discourage transfers principally devised to promote private interests.

1 Section 305. [*Taxation of Interests Held in Trust.*]

2 (a) When development rights or any other interests in land are deeded  
3 to the Trust pursuant to Section 301, the interest deeded shall be appraised  
4 by the rural land appraisal commission at fair market value and listed  
5 separately and apart from other property in the assessment rolls of the  
6 local taxing jurisdiction in the name of the Trust. The Trust shall pay  
7 property taxes to the local taxing jurisdiction on the value of such lands  
8 or interests which, when added to the value of other state-owned property  
9 in the local jurisdiction, exceeds 10 percent of the total value of all other  
10 property listed in the local jurisdiction.

11 (b) In the case of lands or interests in lands leased to the Trust by an  
12 owner of farmland under Section 302, the lessor shall remain liable for  
13 all local property taxes.

14 (c) All appraisals of interests in land held by the Trust shall be made  
15 at the direction of the Trust by the rural land appraisal commission in  
16 the district in which the land is situated.

17 (d) On or before May 1 in each year, the Trust shall notify the rural  
18 land appraisal commission in each rural land appraisal district as to the  
19 properties or rights within the district for which a determination of value  
20 is requested. On receipt of notification from the Trust of the properties  
21 or rights for which a request has been submitted under this section, the  
22 rural land appraisal commission shall determine the appropriate value  
23 for each property or right for which a request has been made. In making  
24 determinations of land values, the commission shall follow the guidelines  
25 established by the land value advisory committee under Section 206.  
26 Prior to completing a determination the commission shall grant a hearing  
27 to the owner, on reasonable notice. The Trust shall also be given notice  
28 of such hearings and shall be entitled to appear. The commission shall  
29 prepare a report containing its valuation of each property or interest.

30 One copy of the report shall be mailed to the owner on or before August 1;  
31 one copy filed with the commissioner of taxes; and one copy transmitted  
32 to the Trust.

33 (e) Farmland, as defined in this act, which is held in the same owner-  
34 ship shall be appraised as one unit, even if the same consists of two or  
35 more parcels which are not contiguous.

36 (f) Each determination of value made in accordance with this section  
37 shall remain in effect for a period of four taxable years, including the  
38 year in which the determination is made, and shall be altered or revised  
39 prior to expiration of such four-year period only when there is a substan-  
40 tial change in the quantity of land held by the owner.

41 (g) The Trust, a municipality, or an owner, if aggrieved or dissatisfied  
42 by a determination by a rural land appraisal commission, may appeal to  
43 the county court for the county in which the land is situated, or if the land  
44 lies in more than one county, the county court for any county in which  
45 any part of the same is situated. Appeal procedure shall be provided as  
46 in [cross-reference].

*Comment:* This section prescribes the two separate methods of taxation employed with respect to Trust-held interests in land. When interests are deeded to the Trust under Section 301, the Trust pays local property taxes only on the value of the interests which, when added to other state-held property, exceeds 10 percent of the local jurisdiction's assessment rolls. This in effect is a local "deductible" similar to current Vermont law (see footnote 6). The local jurisdiction must assume the tax loss until such time as the State and its instrumentalities have consumed one eleventh (10 percent of the remainder is one eleventh of the total) of the local tax base in one way or another. With regard to the special farmland leasing provisions of Section 302, the farmer-lessor remains fully liable, but is of course, reimbursed by the Trust under the terms of his lease. Subsection (g) is cross-referenced to the customary property tax appeals provisions elsewhere in the State's tax law.

1 Section 306. [*Taxation of Residual Interests of Landowners.*] When  
2 interests less than fee simple are dedicated to the Trust, the basis of valua-  
3 tion of the remainder of the fee for tax assessment purposes shall be the  
4 fair market value of the fee, less the fair market value of the interests  
5 conveyed to the Trust as appraised pursuant to Section 305(a).

*Comment:* This section provides for taxation of residual interests at residual value. While this is logically necessary and probably required by law in most States in any case, in some States there may be a reluctance of local taxing authorities to recognize the full diminution of value occasioned by dedication of interests less than fee. This section is designed to remove any uncertainty.

#### IV. Property Transfer Tax

*Comment:* Since it is likely that this part would be codified under the State's tax laws, rather than with the Land Trust provisions, it is referred to throughout as a "chapter" and contains its own set of definitions. This chapter is modelled on the existing Vermont property transfer statute, including amendments proposed by the Tax Department in 1975 to resolve some problems of interpretation. See Vt. Stat. Ann., Tit. 32, Section 9601-16 (1970 & Cum. Supp. 1974).

1 Section 401. [*Definitions.*] As used in this chapter:

3 (2) "Deed" includes any deed, instrument, or other writing evidenc-  
4 ing a transfer of title to property.

5 (3) "Person" means a natural person, association, trust, or corpora-  
6 tion.

7 (4) "Property" means real property, including furnishings, acces-  
8 sories, and improvements permanently attached and annexed thereto,  
9 but the term does not include personal property transferred in the same  
10 transaction with real property.

*Comment:* The term "property" has posed some tricky problems of definition under the Vermont statute. For example, throw rugs included in the sale of a motel are clearly exempt from the tax as personal property, but a nailed-down wall-to-wall carpet is arguably real property. The language used here is adapted from a Vermont case [*Sherburne Corp. v. Town of Sherburne*, 124 Vt. 481, 484, 207 A.2d 125, 127 (1965)].

11 (5) "Recording clerk" means any town clerk, city clerk, county  
12 clerk or other official whose duty it is to record deeds of property.

13 (6) "Title to property" includes:

14 (i) Those interests in property which endure for a period of time  
15 the termination of which is not fixed or ascertained by a specific number  
16 of years, including without limitation, an estate in fee simple, life estate,  
17 perpetual leasehold, and perpetual easement.

18 (ii) Those interests in property enduring for a fixed period of years  
19 but which, either by reason of the length of the term or the grant of a  
20 right to extend the term by renewal or otherwise, consist of a group of  
21 rights approximating those of an estate in fee simple.

22 (7) "Transfer" includes a grant, assignment, conveyance, will, trust,  
23 decree of court, or any other means of transferring title to property or  
24 vesting title to property in any person. In case of a foreclosure or a con-  
25 veyance in lieu of a foreclosure where there are a number of liens on the  
26 same property, the transfer between the obligor and the primary obligee  
27 shall be the only transfer arising out of the foreclosure proceedings or  
28 conveyance in lieu of foreclosure subject to tax under this chapter, any  
29 subsequent transfers to the junior lienholders being merged into the  
30 transfer from the obligor to the primary obligee.

31 (8) "Value" means, in the case of any transfer of title to property  
32 which is not a gift and which is not made for a nominal consideration,  
33 the amount of the full actual consideration for such transfer, paid or to  
34 be paid, including the amount of any liens or encumbrances on the  
35 property existing before the transfer and not removed thereby; in the  
36 case of a gift, or a transfer for nominal consideration, "value" means the  
37 fair market value of the property transferred.

1 Section 402. [*Tax on Transfer of Property; Use of Proceeds.*]

2 (a) A tax is hereby imposed upon the transfer by deed of title to  
3 property located in this State. The amount of the tax equals 1 percent  
4 of the value of the property transferred which is in excess of \$10,000.00,

5 or \$1.00, whichever is greater.

6 (b) On or before January 31 of each year the commissioner shall pay  
7 to the [State] Land Trust an amount equal to the full amount collected  
8 by him in the preceding calendar year under this chapter.

*Comment:* The Vermont tax is ½ percent of the full value of the property transferred. Using 1 percent of all value in excess of \$10,000 eases or eliminates the tax burden on lower-priced homes and lots. In particular, it also reduces the knotty problem of mobile homes for resale by a nondealer owner, since the \$10,000 exemption virtually eliminates any tax otherwise due on a secondhand mobile home.

1 Section 403. [*Exemptions.*] The following transfers are exempt from  
2 the tax imposed by this chapter:

3 (1) Transfers recorded prior to the effective date of this act.

4 (2) Transfers of property to the United States of America, the State  
5 of [State], or any of their instrumentalities, agencies or subdivisions.

6 (3) Transfers directly to the obligee to secure a debt or other obliga-  
7 tion; and transfers directly to the obligor releasing property which is  
8 security for a debt or other obligation when such debt or other obligation  
9 has been fully satisfied.

10 (4) Transfers which, without additional compensation, confirm,  
11 correct, modify, or supplement a transfer previously recorded.

12 (5) Transfers between husband and wife, or parent and child, or  
13 grandparent and grandchild, without actual consideration therefor;  
14 and transfers in trust or by decree of court to the extent of the benefit  
15 to the donor or one or more of the related persons above named; and  
16 transfers from such a trust conveying or releasing the property free of  
17 trust as between such persons and without actual consideration therefor.

18 (6) Transfers pursuant to a public sale for delinquent taxes.

19 (7) Transfers of partition.

20 (8) Transfers made pursuant to mergers or consolidations of  
21 corporations; bona fide transfers to shareholders of corporations in  
22 connection with the complete dissolution thereof, except where the  
23 commissioner finds that a major purpose of such dissolution is to evade  
24 the property transfer tax.

25 (9) Transfers made by a subsidiary corporation to its parent corpo-  
26 ration for no consideration other than cancellation or surrender of the  
27 subsidiary's stock.

28 (10) Transfers made to a corporation at the time of its formation  
29 pursuant to which transfer no gain or loss is recognized under Section  
30 351 of the Internal Revenue Code of 1954 as in effect on [date].

31 (11) Transfers made by a partnership to a partner in connection  
32 with a complete dissolution of the partnership, except where the com-  
33 missioner finds that a major purpose of such dissolution is to evade  
34 the property transfer tax.

35 (12) Transfers made to a partnership at the time of its formation,  
36 pursuant to which transfer no gain or loss is recognized under Section

38 (13) Transfers made to, or made by, a nonprofit local development  
39 corporation as organized and defined in [cross-reference].

40 (14) Transfers to community land trusts and other nonprofit organi-  
41 zations created to acquire real property and manage it in accordance with  
42 Section 303 of the [State] Land Trust Act, as certified to the commis-  
43 sioner of taxes by the [State] Land Trust.

*Comment:* Exemption (3) is written for a title property State, where a mortgagee holds actual title until the mortgage is discharged. This exemption may need revision in a lien property State. Exemptions (10) and (12), relating to transfers without recognized gain or loss, incorporate by reference two sections of the U.S. Internal Revenue Code in effect on a specified date. There is some legal question as to whether a state law may incorporate future changes in federal statutory language by reference. The draft here is written to require further legislative action to update the reference to the federal code (by advancing the date specified). Exemptions (13) and (14) relate to nonprofit local development corporations authorized by the laws of most States for the purpose of encouraging job-creating industries, and to nonprofit organizations organized to preserve open lands, such as a community land trust or nature conservancy group. With regard to the latter, the Trust would certify to the commissioner that the organization to which property was transferred qualified for the exemption.

1 Section 404. [*Liability for Tax.*] The tax imposed by this chapter upon  
2 any transfer of title to property is the liability of the transferee of the  
3 title, unless fixed otherwise by agreement of the parties.

1 Section 405. [*Payment of Tax.*] The tax imposed by this chapter shall  
2 be paid to a recording clerk at the time of the delivery to that clerk for  
3 recording of a deed evidencing a transfer of title to property subject to  
4 the tax.

1 Section 406. [*Property Transfer Return.*]

2 (a) A property transfer return complying with this section shall be  
3 filed with a recording clerk at the time of the payment to the clerk of  
4 an amount of property transfer tax under Section 405 of this chapter, or  
5 at the time of the delivery to the clerk for recording of a deed evidencing  
6 a transfer of title to property which is not subject to the tax imposed by  
7 this chapter.

8 (b) The property transfer return required by this section shall be in  
9 such form as the commissioner, by regulation, shall prescribe, and shall  
10 be signed, under oath or affirmation, by each of the parties, or their  
11 legal representatives, to the transfer of title to property for which the  
12 return is filed. If the return is filed for a transfer claimed to be exempt  
13 from the tax imposed by this chapter, the return shall set forth the basis  
14 for such exemption. If the return is filed for a transfer subject to such  
15 tax, the return shall truly disclose the value of the property transferred,  
16 together with such other information as the commissioner may reasonably  
17 require for the proper administration of this chapter.

1 Section 407. [*Acknowledgment of Return and Tax Payment.*] Upon the  
2 receipt by the recording clerk of a property transfer return, complete  
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3 and regular on its face, together with the tax payment, if any, called for  
4 by that return, and the fee required under Section 406, the clerk shall  
5 forthwith mail or otherwise deliver to the transferee of title to property  
6 for which such return was filed a signed and written acknowledgment of  
7 the receipt of that return and payment. A copy of that acknowledgment,  
8 or any other form of acknowledgment approved by the commissioner,  
9 shall be affixed to the deed evidencing the transfer of property with  
10 respect to which the return was filed. The acknowledgment so affixed to  
11 a deed, however, shall not disclose the amount of tax paid with respect  
12 to any return or transfer.

1 Section 408. [*Prohibition against Certain Recordings.*] No recording  
2 clerk shall record, or receive for recording, any deed to which has not  
3 been affixed an acknowledgment of return and tax payment under Section  
4 407 of this chapter. A clerk who violates this section shall be fined \$50.00  
5 for the first offense and \$100.00 for each subsequent offense.

1 Section 409. [*Penalty for False Statement.*] Any person who willfully  
2 falsifies any statement contained in a property transfer return required  
3 under Section 406 of this chapter shall be subject to a fine of not more  
4 than \$1,000.00.

1 Section 410. [*Remittance of Return and Tax; Inspection of Returns.*]  
2 (a) Not later than 30 days after the receipt of any property transfer  
3 return or payment of tax under this chapter, a recording clerk shall  
4 file the return in the office of the local taxing jurisdiction and forward  
5 one copy of the return and the amount of tax paid with respect thereto  
6 to the commissioner.  
7 (b) The copies of property transfer returns shall be open to public  
8 inspection.

1 Section 411. [*Interest.*] Any person who fails to pay any tax imposed  
2 by this chapter on or before the date when the tax is required to be paid  
3 shall pay interest on that tax at the rate of  $\frac{1}{2}$  of 1 percent for each month  
4 or fraction thereof of the tax remaining unpaid, to be calculated from  
5 the date the tax was required to be paid. All such interest shall be payable  
6 to and recoverable by the commissioner in the same manner as the tax  
7 imposed by this chapter. For a reasonable cause the commissioner may  
8 abate all or any part of such interest.

1 Section 412. [*Penalties.*] Whenever the commissioner determines that  
2 any tax assessed under this chapter was unpaid due to negligence or  
3 disregard of the provisions of this chapter or of any ruling or regulation  
4 of the commissioner issued pursuant to the provisions of this chapter,  
5 but without intent to defraud, a penalty of 10 percent of the amount of  
6 such tax as determined by the commissioner shall be added to the assess-

7 ment and interest shall be payable on the amount of the tax at the rate of  
8 1 percent of such tax for each month or fraction of a month during which  
9 the tax remains unpaid. Whenever any tax assessed under this chapter  
10 was unpaid due to fraud with intent to evade the tax imposed by this  
11 chapter, a penalty of 25 percent of the amount of such tax as determined  
12 by the commissioner shall be added to said assessment, and interest shall  
13 be payable on the amount of the tax at the rate of 1 percent of such tax  
14 for each month or fraction of a month during which the tax remains  
15 unpaid. For reasonable cause the commissioner may waive or abate all  
16 or any part of such penalties and interest.

1 Section 413. [*Taxes as Personal Debt to State.*]

2 (a) All taxes required to be paid under this chapter and all increases,  
3 interest, and penalty thereon, which become due and payable to the  
4 commissioner, shall constitute a personal debt from the person liable to  
5 pay the same to the State of [State] to be recovered in an action of  
6 contract on this statute.

7 (b) Action may be brought by the Attorney General at the instance  
8 of the commissioner in the name of the State to recover the amount of  
9 taxes, penalties, and interest due from such person, provided the action  
10 is brought within three years after the same are due. The action shall  
11 be returnable in the county where the person resides if a resident of  
12 the State; and if a nonresident, the action shall be returnable to the  
13 county of [the state capital]. The limitation of three years in this section  
14 shall not apply to a suit to collect taxes, penalties, interest, and costs  
15 when the person filed a fraudulent return or failed to file a return when  
16 the same was due.

1 Section 414. [*Levy for Nonpayment.*] When all or any portion of a tax  
2 imposed by this chapter, or any penalty or interest due in connection  
3 with such a tax, is not paid, the commissioner may issue a warrant under  
4 his hand and official seal directed to the sheriff of any county of this  
5 State. The warrant shall command the sheriff to levy upon and sell the  
6 real and personal property of the taxpayer for the payment of the unpaid  
7 tax liability imposed by this chapter, together with allowable fees and  
8 costs. The levy and sale shall be effected in the manner, and shall be  
9 subject to the limitations, prescribed for the levy, distraint and sale of  
10 property for nonpayment of local property taxes under [cross-reference].  
11 The sheriff shall return the warrant to the commissioner and pay to him  
12 the money collected thereunder within the time specified in the warrant.

*Comment:* The cross-reference is to existing state statutes for property tax delinquency actions.

1 Section 415. [*Taxes as Property Lien.*] If any person required to pay  
2 a tax under this chapter neglects or refuses to pay the same after demand,  
3 the amount, together with all penalties and interest provided for in this  
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4 chapter and together with any costs that may accrue in addition thereto,  
5 shall be a lien in favor of the State of [State] upon all property and rights  
6 to property, whether real or personal, belonging to such person. Such  
7 lien shall arise at the time demand is made by the commissioner and shall  
8 continue until the liability for such sum with interest and costs is satisfied  
9 or becomes unenforceable. Notice of lien, and certificate of release of  
10 lien shall be recorded as provided in [cross-reference].

*Comment:* The cross-reference is to existing state statutes regarding imposition and release of liens on property.

1 Section 416. [*Administrative Appeals.*] Any person held liable to tax  
2 under this chapter may appeal such holding under the provisions of [cross-  
3 reference].

*Comment:* The cross-reference is to existing state property tax appeals procedures.

1 Section 417. [*Grace Period for Unrecorded Deeds.*] Where real proper-  
2 ty was in fact transferred prior to the effective date of this chapter, but  
3 deed was not recorded as of such effective date, the transferee may  
4 within 90 days following the effective date of this chapter record the  
5 deed without incurring liability for payment of tax under this chapter;  
6 provided, however, that in any case where the tax otherwise due would  
7 exceed \$200.00, the commissioner may require evidence of bona fide  
8 prior transfer.

1 Section 418. [*Regulations of Commissioner.*] The commissioner may  
2 from time to time, issue, amend and withdraw regulations interpreting  
3 and implementing this chapter, in accordance with [cross-reference to  
4 Administrative Procedures Act].

#### V. Severability, Repeal, Effective Date

1 Section 501. [*Severability.*] [Insert severability clause.]

1 Section 502. [*Repeal.*] [Insert repealer clause.]

1 Section 503. [*Effective Date.*] [Insert effective date.]

### **Interstate Furlough Compact**

Many correctional departments in the last few years, either through enabling statutes or administrative regulations, have initiated temporary intrastate inmate furlough programs. Typically, the purpose of these programs is to allow selected inmates to visit home in case of family death or illness, or as a means to assist an offender in locating housing and securing employment immediately prior to his release to the community. Furloughs in 33 States are authorized by statute and in four States by departmental regulations.

Within the last few years, some correctional departments, particularly those in the geographically smaller and more contiguous northeastern States, have gone beyond their authorization to furlough within state borders by granting temporary leaves for inmates to visit other States. The lack of jurisdictional authority has placed the increasing number of departments, furloughing on an interstate basis, in a tenuous and potentially perilous legal position, particularly in the event an inmate absconds or commits a criminal offense in another State. Given the increasing mobility of criminals and, by extension, inmate populations, many correctional administrators would like to retain the flexibility to furlough interstate, particularly to meet emergency situations. However, there is reluctance to continue such a policy in the absence of statutory authorization. Therefore, a number of correctional administrators in the northeast region of the Council of State Governments requested assistance of the Criminal Justice Assistance Project staff of the Council of State Governments in developing an enabling legal and procedural mechanism for interstate furloughs. A survey of correctional administrators in other Council regions found that they, too, agreed that statutory authorization was desirable.

In light of these expressions of concern and interest, the Criminal Project staff formed a committee composed of three deputy correctional commissioners and three correctional department attorneys to draft enabling statutory language. The committee met for drafting sessions in March and May 1975, supplemented by interim correspondence and phone calls between Council staff and committee members for purposes of critique and review.

The interest in establishing, by interstate compact, an enabling legal and procedural mechanism for out-of-state furloughs is obvious. Though amendments to the Interstate Corrections Compact or the Parole and Probation Compact were originally considered by the committee, the nature and purpose of these compacts were deemed to be inconsistent with provisions for interstate furloughs. Accordingly, the committee settled on developing a distinct Interstate Furlough Compact and accompanying implementing forms as the most viable method for addressing the problem.

Following the committee's final work session in May 1975, draft language was revised by Council staff and circulated to committee members for their final suggestions and comments. Their suggested revisions were then incorporated into a final draft which was submitted in August 1975 to the Association of State Correctional Administrators for approval. The association endorsed the concept and the language of the compact.

### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Interstate  
2 Furlough Compact.

1 Section 2. [*Definitions.*] As used in this compact:

2 (1) "State" means a State in the United States, the United States of  
3 America, a Territory or possession of the United States, the District of  
4 Columbia, and the Commonwealth of Puerto Rico.

5 (2) "Sending State" means a State which is party to this compact in  
6 which conviction or commitment was had except if confinement be in  
7 another State, pursuant to the Interstate Corrections Compact, in which  
8 event the sending State shall be determined by contract between the  
9 parties of the Interstate Corrections Compact agreement.

10 (3) "Receiving State" means a State which is party to this compact  
11 to which an inmate is sent for furlough.

12 (4) "Inmate" means a person convicted of a crime who is committed  
13 under sentence to or confined in a penal or correctional institution.

14 (5) "Institution" means a penal or correctional facility, including all  
15 those facilities normally used by adult correctional agencies for the care  
16 and custody of inmates whether or not such facilities are owned or op-  
17 erated by the agencies.

18 (6) "Relative" means spouse, child (including stepchild, adopted  
19 child, or foster child), parents (including stepparents, adoptive parents,  
20 or foster parents), brothers, sisters, and grandparents.

21 (7) "Interstate furlough" means any out-of-state leave of an inmate  
22 for a designated period in accordance with the requirements established  
23 by the appropriate officials of the sending State.

24 (8) "Appropriate official" means a person designated by the sending  
25 State to grant furloughs or by the receiving State to accept or reject  
26 furloughs pursuant to this compact.

27 (9) "Authorized person" means a person designated by law or  
28 appointment for purposes of escorting, transferring, or retaking a  
29 furloughed inmate.

30 (10) "Medical emergency" means any illness, injury, incapacity, or  
31 condition, physical or mental, of such a nature and gravity that timely  
32 and immediate treatment of and attention to the illness is required to  
33 prevent permanent injury, substantial harm, or death, and which cannot  
34 be adequately treated or attended to, in a timely manner, by the sending  
35 State.

36 (11) "Escorted interstate furlough" means the transference of an  
37 inmate in emergency situations, who does not meet the furlough require-  
38 ments of the sending State, to a State which is party to the compact

40 (12) "Escapee" means an inmate who is on interstate furlough,  
41 pursuant to this compact, and fails to return at the prescribed time to the  
42 sending State or becomes a known absconder during the period of his  
43 furlough.

44 (13) "Violator" means an inmate who is on interstate furlough in  
45 the receiving State, pursuant to this compact, and fails to abide by the  
46 conditions of the furlough as established by the sending State.

1 Section 3. [*Conditions for Furlough.*]

2 (a) A furlough pursuant to this compact may be granted to an inmate  
3 for the following reasons:

4 (1) To visit a critically ill relative.

5 (2) To attend a funeral of a relative.

6 (3) To obtain medical services of both a physiological and psychiat-  
7 ric nature.

8 (4) To contact prospective employers.

9 (5) To secure a suitable residence for use upon discharge or upon  
10 parole; if in the latter event, the inmate qualifies for the Interstate Parole  
11 and Probation Compact.

12 (6) For any other reason which, in the opinion of the appropriate  
13 official of the sending State, is consistent with the rehabilitation of the  
14 inmate.

15 (b) A furlough among States which are party to the compact shall be  
16 granted for a period not to exceed [15] days, including travel time;  
17 however, for emergency or other exigent circumstances and at the writ-  
18 ten request of the furloughee, an extension may be granted by the  
19 appropriate official of the sending State upon the consent of the receiv-  
20 ing State.

21 (c) For those inmates ineligible for an unescorted furlough, the sending  
22 State, in emergency situations, as defined below, may furlough those  
23 inmates under escort to a State which is party to this compact. All inmates  
24 on escorted furlough shall be under the guard and jurisdiction of an  
25 authorized person from the sending State and shall be under the continu-  
26 ous supervision of that person as consistent with Section 6.

27 (1) An emergency situation shall apply only to visit a critically ill  
28 relative, to attend a funeral of a relative, or if a medical emergency  
29 exists. In all such instances, the sending State shall first verify the  
30 legitimacy of the request and if verified shall request the receiving State  
31 to approve or reject the proposed furlough.

32 (2) Escorted furloughs granted for these reasons shall not exceed  
33 [four] days, including travel time; however, for emergency or other  
34 exigent circumstances and at the written request of the inmate, an exten-  
35 sion may be granted by the appropriate official of the sending State upon  
36 the verification and consent of the appropriate official of the receiving

38 (d) Prior to the authorization for an inmate to go beyond the limits of  
39 the State, the appropriate official shall obtain a written waiver of extradi-  
40 tion from the inmate waiving his right to be extradited from any State to  
41 which he is furloughed or from any State where he was apprehended.

42 (e) The grant of a stipulated period of furlough may be terminated by  
43 either the sending or receiving State upon written showing of cause. In  
44 those instances, the furloughed inmate shall be given reasonable oppor-  
45 tunity to obtain the information, including written statements of  
46 witnesses and other documentation, which may be of assistance to him  
47 in subsequent disciplinary hearings by the sending State for those events  
48 or violations that caused termination of his furlough. Reasonable costs  
49 for gathering of the information shall be chargeable to the furlougee  
50 or to the sending State in the event of the furloughed inmate's inability  
51 to pay.

52 (f) Inmates from the sending State, who are on interstate furlough in  
53 the receiving State, shall be subject to all the provisions of laws and  
54 regulations applicable to those on interstate furlough status within the  
55 receiving State, not inconsistent with the sentence imposed.

1 Section 4. [*Notification to the Receiving State, Requirement for*  
2 *Consent.*]

3 (a) In nonemergency situations, the appropriate official of the sending  
4 State shall notify the appropriate official of the receiving State in writing  
5 30 days prior to the granting of the furlough, requesting the receiving  
6 State to investigate the circumstances of the proposed furlough plan. In  
7 these circumstances, the receiving State shall respond in writing within  
8 [10] days prior to the proposed furlough either accepting the inmate or  
9 stating the reasons for the rejection.

10 (b) In emergency circumstances, as defined in Section 3(c)(1), the  
11 appropriate official of the sending State shall, prior to granting such  
12 furlough, (1) verify the legitimacy of the request, and (2) upon verifica-  
13 tion, immediately notify and secure the consent of the receiving State.

1 Section 5. [*Contracts.*] The appropriate official of a party State may  
2 supplement but in no way abrogate the provisions of this compact  
3 through one or more contracts with any other party State for the fur-  
4 lough of inmates. The contracts may provide for:

- 5 (1) Duration.
- 6 (2) Terms and conditions of the furlough.
- 7 (3) Report of violations and escapes by furlougees.
- 8 (4) Costs, if any, to be incurred.
- 9 (5) Delivery and retaking of furlougees.
- 10 (6) Other matters as may be necessary and appropriate to fix  
11 the jurisdictions, obligations, responsibilities, liabilities, and rights of the  
12 sending and receiving States.

1 Section 6. [*Jurisdiction; Powers; Liabilities; Rights.*]

2 (a) As provided for by the laws, rules, and regulations of the sending  
3 State, the furlougee will at all times be subject to the jurisdiction of  
4 the appropriate officials and authorized persons of the sending State  
5 who shall retain the powers over the furlougee that they would normally  
6 exercise over the inmate were he on intrastate furlough.

7 (b) The authorized person of a sending State may at all times enter a  
8 receiving State and there apprehend and retake any person on furlough.  
9 For that purpose no formalities will be required other than establishing  
10 the authority of that person and the identity of the furlougee to be  
11 retaken. All legal requirements to obtain extradition of fugitives from  
12 justice are hereby expressly waived on the part of the States party hereto  
13 as to such persons. The decision of the sending State to retake a person  
14 on furlough shall be conclusive upon and not reviewable within the  
15 receiving State, provided, however, that if at the time when a State seeks  
16 to retake a furlougee there should be pending against him within the  
17 receiving State any criminal charge, or should he be suspected of having  
18 committed within that State a criminal offense, he shall not be retaken  
19 without the consent of the receiving State until discharged from prosecu-  
20 tion or from imprisonment for the offense.

21 (c) The authorized person of the sending State or the receiving State  
22 acting as agent for the sending State will be permitted to transport  
23 inmates being retaken through any or all States party to this compact  
24 without interference.

25 (d) The Governor of each State may designate an officer who, acting  
26 jointly with like officers of other party States, if and when appointed,  
27 shall promulgate such rules and regulations as may be deemed neces-  
28 sary to more effectively carry out the terms of this compact.

29 (e) Appropriate officials and authorized persons of the receiving State  
30 shall act solely as agents of the sending State with respect to jurisdiction  
31 over and liability for the furlougees. The jurisdiction and liability  
32 of the sending and receiving States may be subject to further contractual  
33 specifications by the sending and receiving States as may be deemed  
34 necessary.

35 (f) The receiving State shall, upon a furlough violation of which it  
36 has knowledge, promptly notify the sending State. The notification  
37 should specify the nature of the violation and, if a crime has been com-  
38 mitted, shall, whenever possible, give the official and furlougee's version  
39 of the act. If the grant of furlough is terminated due to the violation, the  
40 right and responsibility to retake the furlougee shall be that of the  
41 sending State but nothing contained herein shall prevent the receiving  
42 State from assisting the sending State toward retaking and returning  
43 the furlougee except in instances where the receiving State shall subject  
44 the furlougee to confinement for a crime allegedly committed during  
45 the furlough within its boundaries. All costs in connection therewith  
46 shall be chargeable to the sending State unless costs arise from an escape



47 from confinement in the receiving State.

48 (g) In the case of an escape to a jurisdiction other than the sending  
49 or receiving State, the right and responsibility to retake the escapee  
50 shall be that of the sending State, but nothing contained herein shall  
51 be construed to prevent or affect the activities of officers and agencies  
52 of any jurisdiction directed toward the apprehension and return of an  
53 escapee, except in instances where the receiving State shall subject the  
54 furlougee to confinement for a crime allegedly committed during fur-  
55 lough within its boundaries.

56 (h) The receiving State shall make all necessary arrangements to  
57 secure overnight lodging in a state, county, or municipal facility for  
58 escorted furlougees or, in exceptional circumstances, for unescorted  
59 furlougees when they would not have the availability of overnight  
60 lodging.

1 Section 7. [*Costs.*]

2 (a) Costs arising out of a grant of a furlough for transportation, lodg-  
3 ings, meals, and other related expenses shall be the sole responsibility  
4 of the furlougee; however, in the event that the furlougee is financially  
5 unable to pay for these expenses, such costs may be assumed by the  
6 sending State.

7 (b) Extraordinary costs, other than those specified in Section 7(a)  
8 arising from the grant of furlough among party States shall be the sole  
9 responsibility of the sending State. Such costs will generally be confined  
10 to emergency medical and special confinement and transportation needs.

1 Section 8. [*Binding and Continuing Force.*] The contracting States  
2 solemnly agree:

3 (1) That this compact shall become operative immediately upon  
4 its execution by any State as between it and any other State or States  
5 so executing. When executed it shall have the full force and effect of  
6 law within such State, the form of execution to be in accordance with  
7 the laws of the executing State.

8 (2) That this compact shall continue in force and remain binding  
9 upon each executing State until renounced by it. The duties and obliga-  
10 tions hereunder of a renouncing State shall continue as to furlougees  
11 residing therein at the time of withdrawal until retaken or finally dis-  
12 charged by the sending State. Renunciation of this compact shall be by  
13 the same authority which executed it, by sending a six-month notice in  
14 writing of its intention to withdraw from the compact to the other States  
15 party hereto.

1 Section 9. [*Severability.*] [Insert severability clause.]

1 Section 10. [*Repeal.*] [Insert repealer clause.]

### Business Takeover Act

Since 1968 a growing number of States have enacted legislation designed to regulate the takeover of corporations organized under their laws or having a substantial portion of their assets within their borders. Takeover efforts have accelerated in many parts of the country as the prices of some corporate stocks on the major exchanges have dropped far below their actual value. The purpose of the takeover statutes is to protect target companies by giving them time to respond to takeover efforts.

This suggested act provides that before a takeover can be made the offeror must file a statement with the state securities commissioner revealing the identity of the offeror; the source and amount of funds to be used in the acquisition; any plans to liquidate the company, sell its assets, or merge it with another company; and other relevant information. A takeover offer becomes effective 20 days after the filing of a disclosure statement unless the commissioner orders a hearing. The commissioner may also accelerate the effective date if the target company agrees and all other requirements of the law are met.

This suggested act is based on an Indiana statute. Similar statutes have been enacted in Colorado, Hawaii, Idaho, Kansas, Minnesota, Nevada, Ohio, South Dakota, Virginia, and Wisconsin.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Business  
2 Takeover Act.

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

2 (1) "Affiliate" of a person means a person controlling, controlled  
3 by, or under common control with that person.

4 (2) "Associate" of a person means a person acting jointly or in  
5 concert with that person for the purpose of acquiring, holding, or dispos-  
6 ing of, or exercising any voting rights attached to the equity securities  
7 of, a target company.

8 (3) "Commissioner" means the [securities commissioner].

9 (4) "Control," including the terms "controlling, controlled by" and  
10 "under common control with," means the possession of the power to  
11 direct or cause the direction of the management and policies of a person  
12 unless that power is the result of an official position or office.

13 (5) "Equity security" means:

14 (i) Any stock or similar security carrying, at the time of the take-  
15 over offer, the right to vote on any matter by virtue of the articles of

16 incorporation, bylaws, or governing instrument of the target company.  
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17 the right to vote for directors or persons performing substantially similar  
18 functions by operation of law.

19 (ii) Any security convertible into stock or a similar security.

20 (iii) Any warrant or right to purchase stock or a similar security.

21 (iv) Any security carrying any warrant or right to purchase stock  
22 or similar security.

23 (v) Any other security which for the protection of investors is  
24 deemed an equity security pursuant to regulation of the commissioner.

25 (6) "Offeror" means a person who makes or in any way participates  
26 in making a takeover offer, and includes all affiliates and associates of  
27 that person. The term does not include a financial institution or broker-  
28 dealer loaning funds or extending credit to any offeror in the ordinary  
29 course of its business, or any accountant, attorney, financial institution,  
30 broker-dealer, newspaper or magazine of general circulation, consultant,  
31 or other person furnishing information, services, or advice to, or perform-  
32 ing ministerial or administrative duties for, an offeror and not otherwise  
33 participating in the takeover offer.

34 (7) "Offeree" means a record or beneficial owner of equity securities  
35 which an offeror acquires or offers to acquire in connection with a take-  
36 over offer.

37 (8) "Person" means an individual, corporation, association, partner-  
38 ship, trust, or other entity.

39 (9) "Takeover offer" means the offer to acquire or the acquisition  
40 of any equity security of a target company, pursuant to a tender offer  
41 or request or invitation for tenders, if after acquisition the offeror would  
42 be directly or indirectly a record or beneficial owner of more than 10 per-  
43 cent of any class of the outstanding equity securities of the target company.  
44 The term does not include an offer to acquire or acquisition of any equity  
45 security of a target company pursuant to:

46 (i) An offer effected by or through a broker-dealer in the ordinary  
47 course of his business without solicitation of orders to sell equity securi-  
48 ties of the target company.

49 (ii) An offer made to the owners of equity securities of a target  
50 company with less than 100 owners of record at the time of the offer.

51 (iii) An offer, if the acquisition by the offeror, in the instant trans-  
52 action and in all acquisitions of equity securities of the same class during  
53 the preceding 12 months, does not exceed 2 percent of that class of  
54 outstanding equity securities of the target company.

55 (iv) An offer by the target company to purchase its own equity  
56 securities.

57 (v) An offer initiated or approved by the board of directors of the  
58 target company.

59 (vi) An offer determined by ruling of the commissioner to be a  
60 takeover offer that is not made for the purpose of, and not having the  
61 effect of, changing or influencing the control of a target company.

63 ties which is either organized under the laws of this State or has its  
64 principal place of business or a substantial portion of its total assets in  
65 this State.

66 (11) "Securities law" refers to [appropriate state statute].

1 Section 3. [*Filing Requirements.*]

2 (a) No person shall make a takeover offer involving a target company  
3 unless the takeover offer is effective under this act, or is exempted by  
4 regulation or order of the commissioner.

5 (b) Before a takeover offer becomes effective under this act, the  
6 offeror shall file, by counsel admitted to practice within this State,  
7 with the commissioner a disclosure statement containing the information  
8 prescribed in subsection (c) of this section, and shall, not later than  
9 the date of filing of the disclosure statement, send a copy of the disclosure  
10 statement by certified mail to the target company at its principal office  
11 and publicly disclose by press release delivered to the leading wire  
12 services for the financial press the material terms of the proposed offer.

13 (c) The disclosure statement shall be filed on forms prescribed by the  
14 commissioner, and shall be accompanied by a consent by the offeror to  
15 service of process and the filing fee specified in Section 8, and shall  
16 contain the following information and such additional information as the  
17 commissioner by regulation prescribes:

18 (1) The identity of and material information concerning the offeror,  
19 including:

20 (i) If the offeror is a corporation, information concerning its  
21 organization, including the year and jurisdiction of its organization,  
22 a description of each class of its capital stock and long-term debt, a  
23 description of the business done by the offeror and its affiliates and any  
24 material changes therein during the past three years, a description of  
25 the location and character of the principal properties of the offeror and  
26 its affiliates, a description of any material pending legal or administrative  
27 proceedings in which the offeror or any of its affiliates is a party, the  
28 names of all directors and executive officers of the offeror and their  
29 material business activities and affiliations during the past three years,  
30 and audited financial statements of the offeror and its affiliates for its  
31 three most recent annual accounting periods and interim financial  
32 statements for any current period.

33 (ii) If the offeror is not a corporation, information concerning  
34 the background of the person, including his material business activities  
35 and affiliations during the past three years, and a description of any  
36 material pending legal or administrative proceeding in which he is a party.

37 (2) The source and amount of funds or other consideration used or to  
38 be used in acquiring any equity security, including a statement describing  
39 any securities which are being offered in exchange for the equity securi-  
40 ties of the target company, and if any part of the acquisition price is or

42 tion of the transaction and the names of all the parties.

43 (3) If the purpose of the acquisition is to gain control of the target  
44 company, a statement of any plans or proposals or negotiations with  
45 respect thereto, which the offeror has upon gaining control, to liquidate  
46 the target company, sell its assets, effect its merger or consolidation, or  
47 make any other major change in its business, corporate structure, man-  
48 agement, or personnel.

49 (4) The number of shares or units of any equity security of the  
50 target company of which each offeror is the record or beneficial owner  
51 or which the offeror has a right to acquire, directly or indirectly.

52 (5) Information as to any contracts, arrangements, understandings,  
53 or negotiations with any person with respect to any equity security of the  
54 target company, including transfers of any equity security, joint ventures,  
55 loan or option arrangements, puts and calls, guarantees of loan, guarantees  
56 against loss, guarantees of profits, division of losses or profits, or the  
57 giving or withholding of proxies, naming the persons with whom those  
58 contracts, arrangements, or understandings have been entered into.

59 (6) Information as to any contracts, arrangements, understandings,  
60 or negotiations, with any person who is an officer, director, administrator,  
61 manager, executive employee, or record or beneficial owner of equity  
62 securities of the target company with respect to the tender of any equity  
63 securities of the target company, the purchase by the offeror of any equity  
64 securities owned by that person otherwise than pursuant to the takeover  
65 offer, the retention of any person in his present position or in any other  
66 management position or with respect to that person giving or withholding  
67 a favorable recommendation to the takeover offer.

68 (7) A description of the provisions made or to be made for providing  
69 all material information concerning the takeover offer to the offerees,  
70 including a description of the proposed takeover offer in the form pro-  
71 posed to be published or sent the offerees initially disclosing the takeover  
72 offer.

73 (d) The commissioner may require the offeror to file any other docu-  
74 ments, exhibits, and information that is material to the takeover offer,  
75 and he may permit the omission of any of the information specified in  
76 subsection (c) of this section if he determines that the information is not  
77 required for the protection of the offerees.

78 (e) A takeover offer becomes effective 20 days after the date of filing  
79 the disclosure statement, or an amendment thereto, with the commis-  
80 sioner unless accelerated or delayed by order. The commissioner may  
81 accelerate effectiveness if the target company agrees, all requirements  
82 of this chapter are met, and it is in the interest of the offerees. The com-  
83 missioner may, on his own motion, delay effectiveness by ordering a  
84 hearing if it is necessary for the protection of the offerees, and he shall  
85 delay effectiveness by ordering a hearing if requested by the target  
86 company. If a hearing is ordered, the takeover offer shall not become

87 effective until declared effective by order of the commissioner.

88 (f) Any hearing called by the commissioner under this section shall  
89 be held within 20 days of the date of the hearing order, with notice to the  
90 offeror and target company. Any determination made following the  
91 hearing shall be made within 60 days after the conclusion of the hearing,  
92 unless extended by order of the commissioner for the convenience of the  
93 parties or as being in the interest of the offerees. If, following the hearing,  
94 the commissioner finds that the takeover offer fails to provide full and  
95 fair disclosure to the offerees of all material information concerning the  
96 offer, or that the takeover offer is unfair or inequitable to the offerees, or  
97 the takeover offer will not be made to all offerees on substantially equal  
98 terms, he shall by order deny effectiveness to the takeover offer, or con-  
99 dition its effectiveness upon certain changes or modification. If he finds  
100 that the takeover offer provides full and fair disclosure to the offerees of  
101 all material information concerning the offer, and he does not find that  
102 the offer is unfair or inequitable to the offerees and the takeover offer is  
103 made on substantially equal terms to all the offerees, he shall by order  
104 make the takeover offer effective. However, the order making the take-  
105 over offer effective does not constitute approval of the takeover offer by  
106 the commissioner.

1 Section 4. [*Time for Filing.*]

2 (a) Copies of all advertisements, circulars, letters, or other materials  
3 published by the offeror or the target company, soliciting or requesting  
4 the acceptance or rejection of the takeover offer, with the exception  
5 of the initial press release by the offeror to the wire services announcing  
6 the intention to make a takeover offer as contemplated in Section 3 of  
7 this act, shall be filed with the commissioner and sent to the target  
8 company or offeror at least 3 full business days before the time copies  
9 of the materials are first published or used or sent to the offerees.

10 (b) The materials described in subsection (a) of this section shall  
11 not contain any untrue statement of a material fact or omit to state a  
12 material fact necessary in order to make the statements made, in the light  
13 of the circumstances under which they were made, not misleading. The  
14 commissioner may by order prohibit the use of any materials deemed  
15 false or misleading.

1 Section 5. [*Prohibited Acts.*] No person shall engage in any fraudulent,  
2 deceptive, or manipulative acts or practices in connection with a takeover  
3 offer. Fraudulent, deceptive, and manipulative acts or practices include,  
4 without limitation:

5 (1) Solicitation of any offeree for acceptance or rejection of a take-  
6 over offer, or acquisition of any equity security of a target company  
7 pursuant to a takeover offer, that is not effective or exempt under this  
8 act.

10 statement of a material fact or omitting to state a material fact necessary  
11 in order to make the statements made, in light of the circumstances under  
12 which they were made, not misleading, but not including the mailing by  
13 a target company to the record or beneficial owners of its equity securities  
14 of solicitation materials published by an offeror.

15 (3) Sale by any officer, director, affiliate, or associate of a target  
16 company of all or any part of their equity securities to the offeror at a  
17 price higher than that to be paid to the offerees pursuant to the offer,  
18 unless the sales are made at the then existing market price.

19 (4) Acquisition by the offeror, after announcement of the takeover  
20 offer and prior to its termination, of equity securities of the target company  
21 otherwise than pursuant to the takeover offer.

1 Section 6. [*Takeover Offer.*]

2 (a) An offeror shall provide that any equity securities of a target  
3 company deposited or tendered pursuant to a takeover offer may be with-  
4 drawn by or on behalf of any offeree at any time up to the third day  
5 prior to the announced termination date, except as the commissioner may  
6 otherwise prescribe by rule or order for the protection of the offerees.

7 (b) If an offeror makes a takeover offer for less than all the outstand-  
8 ing equity securities of any class, and if the number of securities deposited  
9 or tendered pursuant thereto is greater than the number the offeror has  
10 offered to accept and pay for, the securities shall be accepted pro rata,  
11 disregarding fractions, according to the number of securities deposited  
12 or tendered by each offeree.

13 (c) If an offeror varies the term of a takeover offer before its expiration  
14 date by increasing the consideration offered to the offerees, the offeror  
15 shall pay the increased consideration for all equity securities accepted,  
16 whether the securities have been accepted by the offeror before or after  
17 the variation in the terms of the offer.

18 (d) No offeror shall make a takeover offer at any time when an adminis-  
19 trative or injunctive proceeding has been brought by the commissioner  
20 against the offeror for violation of this act that has not been finally  
21 determined.

22 (e) An offeror may not make a takeover offer involving a target com-  
23 pany which is not made to the owners of equity securities of the target  
24 company who are residents of this State.

1 Section 7. [*Promulgation of Regulations.*] This act shall be administered  
2 by the [securities commissioner], who may promulgate regulations  
3 necessary to carry out the purposes of this act, including regulations  
4 defining fraudulent, deceptive, and manipulative acts and practices,  
5 and other terms used herein.

1 Section 8. [*Filing Fee.*] The commissioner shall charge a filing fee of  
2 [\$ ] for a disclosure statement filed by an offeror and the same  
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3 amount for a request for hearing filed by a target company.

1 Section 9. [*Injunctions.*]

2 (a) Whenever it appears to the commissioner that any person has  
3 engaged or is about to engage in any act or practice constituting a viola-  
4 tion of any provision of this act or any regulation or order adopted under  
5 this act, the commissioner may investigate and issue orders and notices,  
6 including cease and desist orders and notices. In addition to all other  
7 remedies, he may bring an action in any [insert name of appropriate court]  
8 in the name and on behalf of the State against any person or persons  
9 participating in or about to participate in a violation, to enjoin those per-  
10 sons from continuing or doing any act in violation of this act, or to enforce  
11 compliance. In any court proceedings the commissioner may apply for  
12 and on due showing be entitled to have issued the court's subpoena re-  
13 quiring the appearance of any defendant and his employees or agents and  
14 the production of documents, books, and records, as may appear necessary  
15 for the hearing of the petition, to testify and give evidence concerning  
16 the acts or conduct or things complained of in the action. Upon a proper  
17 showing, the court may grant a permanent or preliminary injunction or  
18 temporary restraining order or may order rescission of any sales, tenders  
19 for sale, purchases, or tenders for purchase of equity securities determined  
20 to be unlawful under this act or any regulation or order of the com-  
21 missioner.

22 (b) Whenever any person has engaged or is about to engage in any act  
23 or practice constituting a violation of this act or any regulation or order  
24 adopted thereunder, the offeror, target company, or any record or bene-  
25 ficial owner of an equity security of the target company may bring an  
26 action in the county where the target company has its principal business  
27 office in the State to enjoin that person from continuing or doing any  
28 act in violation of this act or to enforce compliance. Upon a proper  
29 showing, the court may grant a permanent or preliminary injunction or  
30 temporary restraining order or may order rescission of any sales, tenders  
31 for sale, purchases, or tenders for purchase of equity securities determined  
32 to be unlawful under this act or any regulation or order of the commissioner.

1 Section 10. [*Penalties.*]

2 (a) Any person who makes a takeover offer involving a target company  
3 without filing a disclosure statement required under Section 3 may be  
4 imprisoned for a period not to exceed one year, or fined an amount not  
5 to exceed [\$ ], or both.

6 (b) Any person who, in connection with a takeover offer, knowingly  
7 makes or causes to be made to the commissioner any representation of a  
8 material fact which he knows to be false, or knowingly withholds or  
9 causes to be withheld from the commissioner any information the dis-  
10 closure of which he knows is necessary, in light of the circumstances, to  
11 make not misleading  
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12 caused to be made by him to the commissioner, may be imprisoned for a  
13 period of not less than one or more than five years, or fined an amount  
14 not to exceed [\$ ], or both.

15 (c) Any person who, in connection with a takeover offer, knowingly  
16 publishes or causes to be published any representation of a material fact  
17 which he knows to be false, or knowingly omits to publish information  
18 which he knows is necessary, in light of the circumstances, to make not  
19 misleading other representations of material facts published or caused  
20 to be published by him, may be imprisoned for a period of not less than  
21 one or more than five years, or fined an amount not to exceed [\$ ],  
22 or both; provided, however, that this subsection shall not apply to the  
23 mailing by a target company to the record or beneficial owners of its  
24 equity securities of solicitation materials published by an offeror.

25 (d) Any person who knowingly violates any provision of this act for  
26 which a specific criminal penalty is not otherwise provided may be im-  
27 prisoned for a period not to exceed one year, or fined an amount not to  
28 exceed [\$ ], or both.

29 (e) Nothing herein limits the power of the State to punish any person  
30 for conduct which constitutes a crime under any other statute.

1 Section 11. [*Rights and Remedies.*]

2 (a) Any offeror who purchases an equity security in connection with a  
3 takeover offer not in compliance with this act or by means of any untrue  
4 statement of a material fact or any omission to state a material fact  
5 necessary in order to make the statements made, in light of the circum-  
6 stances under which they were made, not misleading, shall be liable to  
7 the person selling the security to him. That person may sue either at law  
8 or in equity:

9 (1) To recover the security, plus any income received by the pur-  
10 chase; or

11 (2) For damages, together with interest at [ ] percent per year,  
12 costs, and reasonable attorneys' fees, upon tender of the consideration  
13 received. For the purpose of this subsection, damages are the excess of  
14 either the value of the security on the date of purchase or its present  
15 value, whichever is greater, over the present value of the consideration  
16 received for the security. Tender requires only notice of willingness to  
17 pay the amount specified in exchange for the security.

18 (b) Any offeror who purchases an equity security in connection with  
19 a takeover offer not in compliance with this act or by means of any  
20 untrue statement of a material fact or any omission to state a material  
21 fact necessary in order to make the statements made, in light of the  
22 circumstances under which they were made, not misleading, shall be  
23 liable to any person who did not sell to him. That person may sue either  
24 at law or in equity to recover damages together with interest at [ ]  
25 percent per year, costs, and reasonable attorneys' fees.

27 under subsection (a) or (b) of this section or any agent of the person  
28 liable under subsection (a) or (b) of this section who materially aids in  
29 the act or transaction constituting the violation, and every broker-dealer  
30 or agent who materially aids in the act or transaction constituting the  
31 violation, is also liable jointly or severally with and to the same extent  
32 as that person, unless he proves that he did not know of the existence  
33 of the facts by reason of which the liability is alleged to exist.

34 (d) No action may be maintained under this section unless commenced  
35 before the expiration of three years after the discovery of the facts  
36 constituting the violation.

37 (e) The rights and remedies under this act are in addition to any other  
38 rights or remedies that may exist at law or in equity.

1 Section 12. [*Appeals Procedure.*] [Insert appropriate state procedure.]

1 Section 13. [*Severability.*] [Insert severability clause.]

1 Section 14. [*Repeal.*] [Insert repealer clause.]

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

### State Condominium Act

Although all 50 States have legislation authorizing the creation of condominiums and several States have enacted relevant consumer protection regulations, this act provides a more comprehensive regulatory system than that found in most jurisdictions. Experiences of several States have been used in creating an act which contains broad disclosure provisions, regulates the conversion of apartments to condominiums, provides for early assumption of unit owner control of the condominium, requires a one-year warranty on construction quality, and regulates developer service contracts and service leases. In addition, administration of the act by an executive agency is provided. The statute is intended to combine the best parts of various statutes into a unified and comprehensive program of condominium regulation. Several state statutes and a model promulgated by the U.S. Department of Housing and Urban Development were used in preparing this draft.

This draft act was prepared by the staff of the Council of State Governments at the request of the Council's Eastern Regional Committee on Consumer Protection.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Condo-  
2 minium Act.

1 Section 2. [*Designation of Administrative Agency.*] This act shall be  
2 administered by the [appropriate state agency], hereinafter called the  
3 "agency."

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

2 (1) "Agent" means a person who represents or acts for or on behalf  
3 of a developer in offering or disposing of any condominium unit in a  
4 condominium development, but the term does not include an attorney-  
5 at-law whose representation of another person consists solely of rendering  
6 legal services.

7 (2) "Common elements" means all portions of the condominium  
8 development other than the units.

9 (3) "Condominium development" means real property, and any im-  
10 provements thereto, covered by the condominium instruments pursuant  
11 to the provisions of [appropriate state statute]. No development shall be  
12 deemed a condominium development unless the undivided interests in  
13 the common elements are vested in the owners of condominium units.

14 (4) "Condominium instruments" means all legal instruments includ-  
15 ing the declaration, rules and regulations, bylaws, contracts, plats, plans,

- 17 statute] to be recorded in order to establish a condominium development.  
18 (5) "Condominium unit" means a unit, either owned in fee or leased  
19 in accordance with the requirements of Section 15(e) of this act, together  
20 with the appropriate undivided interest in the common elements (cf. the  
21 definition of "unit" below).  
22 (6) "Conversion condominium development" means a condominium  
23 development containing structures wholly or partially occupied at the  
24 time the initial application for registration of the condominium develop-  
25 ment is filed with the agency by the developer.  
26 (7) "Developer" means a person who records, or proposes to record,  
27 the condominium instruments or on whose behalf the condominium  
28 instruments are recorded, pursuant to [appropriate state statute], thereby  
29 subjecting the property to condominium ownership, and includes succes-  
30 sors or persons who come to stand in the same relation to the condominium  
31 development as all developers.  
32 (8) "Dispose" or "disposition" refers to any voluntary transfer of  
33 legal or equitable interest in a condominium unit, except as security for  
34 a debt.  
35 (9) "Nonbinding reservation agreement" means an agreement be-  
36 tween the developer and a purchaser which is in no way binding on the  
37 purchaser and may be cancelled without penalty at the sole discretion of  
38 the purchaser by personally delivered or regularly mailed written notice  
39 to the developer or to any agent thereof at any time prior to the signing  
40 by the purchaser of a contract or other agreement for disposition of a  
41 condominium unit or an interest therein.  
42 (10) "Offer" means any inducement, solicitation, or attempt to  
43 encourage any person or persons to acquire a legal or equitable interest  
44 in a condominium unit.  
45 (11) "Person" means a natural person, corporation, partnership,  
46 association, trust, or other entity capable of holding an interest in real  
47 property, or any combination thereof.  
48 (12) "Promotional plan" means any plans of the developer for, and  
49 methods of, marketing condominium units in a condominium develop-  
50 ment, including advertising material, physical displays or models, tours  
51 of the property, special inducements, and other items and techniques the  
52 agency, by its rules, requires.  
53 (13) "Purchaser" means a person who acquires or attempts to  
54 acquire a legal or equitable interest in a condominium unit.  
55 (14) "Unit" means a portion of the condominium development desig-  
56 nated in the condominium instruments, including architectural and legal  
57 delineations, for exclusive ownership and use.

1 Section 4. [Applicability.]

- 2 (a) Unless the method of offer or disposition is adopted for the purpose  
3 of evasion of this act, or unless specifically noted otherwise in this act,  
4 the provisions of this act apply to  
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5 (1) Offers or dispositions in a condominium development in which  
6 all units are restricted to commercial, industrial, or other nonresidential  
7 uses.

8 (2) Offers or dispositions in a condominium development for which  
9 the declaration was recorded prior to the effective date of this act.

10 (3) Dispositions pursuant to court order.

11 (4) Offers by the developer on nonbinding reservation agreements.

12 (b) The agency may from time to time, pursuant to rules issued by it,  
13 exempt from any of the provisions of this act, except Section 5(b), any  
14 condominium unit or condominium development, if it finds that enforce-  
15 ment of this act with respect to the condominium unit or condominium  
16 development is not necessary in the public interest or for the protection  
17 of purchasers.

1 Section 5. [*Prohibitions.*]

2 (a) Unless exempt under Section 4 of this act:

3 (1) A developer (or agent thereof) shall not offer or dispose of any  
4 condominium unit located in this State, [or offer or dispose of in this  
5 State any condominium unit located without this State], unless the con-  
6 dominium development of which the condominium unit is a part is regis-  
7 tered in accordance with this act.

8 (2) A developer (or agent thereof) shall not offer or dispose of in  
9 this State any condominium unit located within or without this State  
10 unless he delivers to the purchaser a current public offering statement  
11 prior to the signing by the purchaser of a contract or other agreement  
12 to purchase. The contract or other agreement is expressly and without  
13 qualification subject to cancellation by the purchaser for [15 days] from  
14 his receipt of the current public offering statement, and the contract or  
15 other agreement shall contain a statement printed in 20-point, boldfaced  
16 type to that effect. If the purchaser elects to cancel, he may do so by notice  
17 thereof sent by mail [return receipt requested], by hand delivery, or by  
18 any other reasonable method which the agency, by its rules, prescribes.  
19 The cancellation shall be without penalty, and any deposit made by the  
20 purchaser within five business days from the developer's receipt of notice  
21 of cancellation shall be refunded in its entirety.

22 (3) Title to a condominium unit shall not be conveyed until the  
23 condominium development of which the condominium unit is a part is  
24 completed in accordance with plans and specifications except for items  
25 prescribed by the agency pursuant to its rules.

26 (b) Notwithstanding the provisions of Section 4 of this act, a developer  
27 or agent thereof shall not, in offering or disposing of in this State any  
28 condominium unit located within or without this State:

29 (1) Employ any device, scheme, or artifice to defraud.

30 (2) Obtain money or property by means of an untrue statement of a  
31 material fact or any omission to state a material fact necessary in order to

33 they were made, not misleading.

34 (3) Engage in any transaction, practice, or course of business which  
35 operates or would operate as a fraud or deceit upon a purchaser.

36 (c) After a certificate of occupancy has been issued, the developer may  
37 permit tenant occupancy of units. Tenants must receive a written warning  
38 from the developer at the beginning of the tenancy that property improve-  
39 ments should not be made during the period of the tenancy without the  
40 express written consent of the developer and will be at the tenant's risk  
41 and expense. The developer must continue to market all condominium  
42 units for sale and upon request of the agency must provide evidence of  
43 this effort.

1 Section 6. [*Procedure for Application for Registration.*]

2 (a) The application for registration of the condominium development  
3 shall be filed as prescribed by the agency's rules and contain the docu-  
4 ments and information required by this act.

5 (b) At the time of the filing of an application for registration, or any  
6 amendment thereto, the developer shall pay to the agency the fee the  
7 agency prescribes to cover the cost of rendering services under this act.

8 (c) The information contained in or filed with an application for regis-  
9 tration shall be made available to the public under the rules the agency  
10 prescribes, and copies thereof shall be furnished to any person at a rea-  
11 sonable charge as the agency prescribes.

12 (d) The developer shall immediately report to the agency any material  
13 changes in the information required to be contained in an application for  
14 registration or in a public offering statement, and the application for  
15 registration or public offering statement shall be amended, pursuant to  
16 rules the agency prescribes, to reflect the changes.

1 Section 7. [*Contents of Application for Registration.*] The application  
2 for registration of the condominium development shall contain, or be  
3 accompanied by, the following documents and information:

4 (1) An irrevocable appointment of the agency to receive service of  
5 any lawful process in any noncriminal proceeding arising under this act  
6 against the developer or his personal representative.

7 (2) The States or jurisdictions in which an application for registra-  
8 tion of the condominium development or similar document has been  
9 filed, and also any adverse order, judgment, or decree entered in connec-  
10 tion with the condominium development by the regulatory authorities  
11 in the jurisdiction or by any court.

12 (3) The developer's name, address, telephone number and, in the  
13 case of an organization, the form, date, and principal place of business  
14 of the organization, and the address and telephone number of each of its  
15 offices in this State.

16 (4) The name, address, and principal occupation for the preceding  
17 [five] years of every officer and principal or person having a similar

18 status or performing similar functions of the developer and the extent and  
19 nature of his interest in the developer or in the condominium development  
20 as of a specified date within [30] days of the filing of the application.

21 (5) A title opinion by a licensed attorney, not an employee, officer,  
22 or director of the developer, of the condition of the title to the condomi-  
23 nium development, or a title insurance report, or other evidence of title  
24 acceptable to the agency.

25 (6) A legally sufficient description of the condominium development  
26 in order to identify the common elements and units in the condominium  
27 development and their relative locations and approximate dimensions,  
28 together with copies signed by a professional registered, licensed engineer  
29 or architect or both of all engineering and architectural plans for the con-  
30 struction or conversion of the condominium development.

31 (7) A line-item estimate of the operating and maintenance costs of  
32 the condominium development, as well as any other costs which may be  
33 passed on to the owners of condominium units in the condominium develop-  
34 ment, for at least [one] year after the first conveyance of title to a condo-  
35 minium unit to a purchaser other than the developer.

36 (8) Copies of the instruments which will be delivered to a purchaser  
37 to evidence his interest in the condominium unit and of the contracts  
38 and other agreements which a purchaser will be required to agree to or sign.

39 (9) Copies of all condominium instruments.

40 (10) Copies of any management agreements, employment contracts,  
41 or other contracts or agreements affecting the operation or use of, mainte-  
42 nance of, or access to all or part of the condominium development.

43 (11) A statement of the status of compliance with applicable zoning,  
44 building permit, and other governmental statutes or regulations affecting  
45 the condominium development, including a statement as to whether or  
46 not streets are owned by the condominium development, and also of any  
47 existing tax and existing or proposed special taxes or assessments which  
48 affect the condominium development.

49 (12) A narrative description of the promotional plan for the disposi-  
50 tion of the condominium units in the condominium development.

51 (13) A copy of the proposed public offering statement.

52 (14) A statement of any criminal convictions, injunctive or adminis-  
53 trative orders, pending criminal proceedings, and pending injunctive or  
54 administrative proceedings against the developer and, if a corporation or  
55 other organization or association, against its officers and principals,  
56 which the agency, by its rules, prescribes.

57 (15) Any other information, including any current financial state-  
58 ment or promotional material, which the agency, by its rules, requires in  
59 order to assure that purchasers are protected in a manner consistent with  
60 the purposes of this act.

3 agency shall:

4 (1) Within [five business days], issue a notice of filing to the devel-  
5 oper.

6 (2) Promptly initiate an investigation to determine if:

7 (i) The developer is able to convey or cause to be conveyed the  
8 condominium units offered for sale if purchasers comply with the terms  
9 of the offer.

10 (ii) There is reasonable assurance that the condominium develop-  
11 ment will be substantially completed according to plans and specifications.

12 (iii) The application for registration (including the proposed  
13 public offering statement) is complete and contains no apparently untrue  
14 statements of material facts or apparent omissions of material facts.

15 (b) Unless subsection (d) or (e) of this section is applicable, if the  
16 agency, after inquiry and examination, makes the determinations required  
17 by subsection (a)(2) of this section, it shall enter an order registering the  
18 condominium development.

19 (c) If the agency, after inquiry and examination, does not make the  
20 determinations required by subsection (a)(2) of this section, the agency  
21 shall notify the developer that any deficiencies must be corrected in the  
22 particulars specified within [10] days. If the corrections are made by the  
23 developer within the time allowed, the agency shall enter an order regis-  
24 tering the condominium development. If the corrections are not made  
25 within the time allowed, the agency shall enter an order rejecting the  
26 application for registration, which shall include the findings of fact upon  
27 which the order is based. The order rejecting the application for registra-  
28 tion shall not become effective for [20] days after the lapse of the [10-]  
29 day period, during which [20-] day period the developer may petition for  
30 reconsideration and shall be entitled to a hearing. The order of rejection  
31 shall not take effect, in any event, until a hearing, once requested, has  
32 been given to the developer. If, after the hearing: (1) the agency is able to  
33 make the determinations required by subsection (a)(2) of this section, it  
34 shall enter an order registering the condominium development; (2) the  
35 agency is not able to make the determinations required by subsection  
36 (a)(2) of this section, it shall affirm its previous order rejecting the  
37 application for registration.

38 (d) If the agency finds that the application for registration contains  
39 any intentionally untrue statement of a material fact or any intentional  
40 omission to state a material fact required to be stated therein or necessary  
41 in order to make not misleading the statements made therein, or if the  
42 agency finds that the developer, or any agent thereof, has obstructed or  
43 refused to permit the making of an investigation by the agency, the agency  
44 shall enter an order rejecting the application for registration. The order  
45 shall not become effective for [20] days, during which period the develop-  
46 er may petition for reconsideration and shall be entitled to a hearing. The  
47 order of rejection shall not take effect, in any event, until a hearing, once  
48 requested, has been given to the developer. If after the hearing: (1) the  
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49 agency finds that its previous order of rejection should be withdrawn, it  
50 shall do so, and enter an order registering the condominium development;  
51 (2) the agency finds that its previous order of rejection should not be  
52 withdrawn, it shall affirm its previous order rejecting the application for  
53 registration.

54 (e) If the application for registration contains any disclosure required  
55 by Section 7(14) of this act, the agency shall take action, including any  
56 investigation, necessary to enable it to determine whether or not it should  
57 enter an order: (1) unconditionally registering the condominium develop-  
58 ment, (2) rejecting the application for registration, or (3) registering the  
59 condominium development under conditions (including disclosure of  
60 information to purchasers) the agency deems necessary for the accom-  
61 plishment of the purposes of this act, and the agency shall enter the  
62 appropriate order. The agency, by its rules, shall prescribe the factors to  
63 be considered in making the determination. Any order other than one  
64 unconditionally registering the condominium development shall not  
65 become effective for [20] days, during which period the developer may  
66 petition for reconsideration and be entitled to a hearing. Any order shall  
67 not take effect, in any event, until a hearing, once requested, has been  
68 given to the developer. If, after the hearing: (1) the agency finds that its  
69 previous order should be withdrawn or modified, it shall do so, and enter  
70 the appropriate order; (2) the agency finds that its previous order should  
71 not be withdrawn or modified, it shall affirm its previous order.

72 (f) The agency shall take the appropriate action, prescribed by sub-  
73 sections (b) through (e) of this section, on an application for registration  
74 within [60] days from the date of the issuance of the notice of filing. If  
75 agency action is not taken within this period, the condominium develop-  
76 ment shall be considered to be registered unless the developer has con-  
77 sented in writing to a delay.

78 (g) In making any inquiry or examination required by this act, the  
79 agency shall have access to, and may demand the production of, any books  
80 and papers, and may administer oaths and affirmations to and examine  
81 the developer, his agents, or any other person with respect to any matter  
82 relevant to the inquiry or examination.

83 (h) Any notice required under this section shall be sent to or served  
84 on the developer or his authorized agent.

1 Section 9. [*Contents of Public Offering Statement.*]

2 (a) A public offering statement shall disclose fully and accurately the  
3 characteristics of the condominium development and the condominium  
4 units therein offered and make known to prospective purchasers all  
5 material features and circumstances affecting the condominium develop-  
6 ment. The proposed public offering statement submitted to the agency  
7 shall be in a form prescribed by its rules and include the following:

8 (1) The name, principal address, and telephone number of the  
9 developer and the name and principal address of all officers and principals  
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10 thereof.

11 (2) A description of the condominium development in sufficient  
12 detail to identify the common elements and units in the condominium  
13 development and their relative locations and approximate dimensions.

14 (3) Copies of the declaration rules and regulations and bylaws,  
15 along with a brief narrative statement describing each, including informa-  
16 tion on any control of all or any part of the condominium development  
17 by the developer contained in the instruments.

18 (4) A [guaranteed maximum] projected budget for the first [year]  
19 after the initial conveyance of title to a condominium unit to a purchaser  
20 other than the developer, including a line-item listing of projected common  
21 expense assessments for each condominium unit [and provisions for pay-  
22 ment by the developer of the amount of the actual individual unit assess-  
23 ments which exceeds that contained in the guaranteed maximum projected  
24 budget].

25 (5) A statement of any restraints on the free alienability of all or  
26 any part of the condominium development.

27 (6) Copies of any management contract or other contract or agree-  
28 ment affecting the operation or use of, maintenance of, or access to all  
29 or any part of the condominium development, with a brief narrative  
30 statement of the effect of each agreement upon a purchaser, including  
31 a specification of the services to be rendered and the charges to be made  
32 thereunder, and a statement of the relationship, if any, between the  
33 developer and the managing agent or firm.

34 (7) A general description of the status of compliance with applicable  
35 zoning, building permit, and any other governmental statutes and regula-  
36 tions affecting the condominium development.

37 (8) The significant terms of any encumbrances, easements, liens,  
38 and matters of title affecting the condominium development.

39 (9) The significant terms of any financing available to purchasers  
40 of condominium units in the condominium development.

41 (10) Provisions of any warranties provided by the developer to  
42 condominium unit owners, including the warranty prescribed by Section  
43 13(a) of this act, along with a brief statement of the terms of the bond  
44 (or other evidence of security) required by Section 13(b) of this act.

45 (11) A 20-point boldface, typed statement of the right of cancellation  
46 guaranteed a purchaser by Section 5(a)(2) of this act.

47 (12) A statement of the rights of condominium unit owners and of  
48 the requirements imposed on the developer prescribed by Section 15 of  
49 this act.

50 (13) A statement of the requirement for escrow or bonding of  
51 deposits prescribed by Section 14 of this act.

52 (14) A statement of the consumer remedies prescribed by Section 21  
53 of this act.

54 (15) A statement of the parts of the condominium development  
55 covered by a common insurance policy and a summary of all significant

56 provisions of the policy.

57 (16) The statement required by Section 10 of this act.

58 (17) A statement of projected reasonable cost and fees associated  
59 with the purchase of a unit including, but not limited to, cost of transfer  
60 taxes, recording fees, prepaid real estate or other taxes, and insurance.  
61 The statement shall include a statement as to whether or not there will  
62 be a guaranteed title opinion or title insurance policy.

63 (18) Any additional information required by the agency to assure  
64 full and fair disclosure to prospective purchasers.

65 (b) The public offering statement shall not be used for any promotional  
66 purposes before registration of the condominium development, and  
67 afterwards only if it is used in its entirety. No portion of the public  
68 offering statement may be underscored, italicized, or printed in larger,  
69 heavier, or different color type or paper than the remainder of the state-  
70 ment unless the agency or this act requires it.

71 (c) The agency may require the developer to alter or amend the pro-  
72 posed public offering statement in order to assure full and fair disclosure  
73 to prospective purchasers, or in order to meet the requirements of this  
74 section. A public offering statement is not current unless all amendments  
75 are incorporated.

1 Section 10. [*Unlawful Representations.*] The fact that an application  
2 for registration of a condominium development has been filed or the  
3 condominium development has been registered shall not be deemed a  
4 finding by the agency that the information contained in the application  
5 for registration is true and accurate, or be held to mean the agency has in  
6 any way passed upon the merits of, or given approval to, the condominium  
7 development, and the public offering statement shall contain a 20-point  
8 boldface, typed statement, in a form prescribed by the agency, pursuant  
9 to its rules, to that effect. The developer, or any agent thereof, shall not  
10 make or cause to be made to any prospective purchaser any representation  
11 contrary to the foregoing.

1 Section 11. [*Conversion Condominium Developments.*]

2 (a) The developer of a conversion condominium development shall  
3 include in the public offering statement, in addition to the material  
4 required elsewhere in this act, the following:

5 (1) A specific statement of the amount of any initial or special con-  
6 dominium fee due from the purchaser on or before signing of a contract  
7 or other agreement to purchase and the basis of the fee.

8 (2) Information on the actual expenditures made on all repairs,  
9 maintenance, operation, or upkeep of the subject property within  
10 [three] years preceding the filing of the application for registration of  
11 condominium development, set forth tabularly with the proposed line-  
12 budget of the conversion condominium development prescribed  
13 Section 9(a)(4) of this act, and cumulatively broken down on a per-

14 basis in proportion to the relative voting strengths allocated to the condo-  
15 minium units. If any building in the conversion condominium development  
16 has not been occupied for a period of [three] years preceding the filing  
17 of the application for registration of the condominium development, then  
18 the information shall be set forth for the maximum period the building  
19 has been occupied.

20 (3) A report from an independent, licensed engineer stating the  
21 condition, the rated life, and expected useful life of the roofs, foundations,  
22 external and supporting walls, mechanical, electrical, plumbing, and  
23 structural elements, and any other related facilities, together with an  
24 estimate of repair and replacement costs projected for the [five] years  
25 following the registration of the conversion condominium development.

26 (4) A list of any outstanding building code or other municipal  
27 regulation violations, the dates the premises were last inspected for  
28 compliance with building code or other municipal regulations, along with  
29 a certification by the developer that there will be no building code viola-  
30 tions or violations of any other municipal regulations at the time of  
31 conveyance of title to a condominium unit to the purchaser.

32 (b) The developer of a conversion condominium development, upon  
33 registration of the condominium development, shall notify each residential  
34 tenant of the building or buildings which comprise the condominium  
35 development. The notice shall be hand delivered, sent by mail [, return  
36 receipt requested], or delivered by any other reasonable method which  
37 the agency, by its rules, prescribes to the unit of each residential tenant.  
38 The notice constitutes the notice to terminate the tenancy as provided by  
39 [appropriate state statute], except that, notwithstanding the provisions  
40 of [appropriate state statute], no residential tenancy, including a residen-  
41 tial tenancy from month-to-month, shall be terminated prior to the  
42 expiration date of the existing written lease agreement, if any, or a period  
43 of [two] years from the date of the notice, whichever occurs first. If no  
44 written lease agreement exists, residential tenancy may be terminated  
45 by the developer not less than [90] days after the date of the notice of  
46 conversion and termination. Notwithstanding any other provision of this  
47 section, any tenant, within [30] days after notice of conversion, may  
48 notify the developer of his intent to terminate tenancy. The notice must  
49 be written, delivered by hand, or sent by mail [, return receipt requested],  
50 or delivered by any other reasonable method which the agency, by its rules,  
51 prescribes, not less than [90] days prior to the date of termination, except  
52 that those persons with a month-to-month tenancy shall deliver notice  
53 of termination not less than [30] days prior to the date of termination.  
54 For [60] days after receipt of the notice, each residential tenant has the  
55 exclusive right to contract for the purchase of the unit he occupies and  
56 shall receive the public offering statement at least [15] days prior to  
57 termination of the [60-] day period. Any person who applies for a residen-  
58 tial tenancy after the notice is given shall also be informed of the registra-  
59 tion of the condominium development at the time of the application.

60 (c) The developer of a conversion condominium development, in  
61 addition to material required elsewhere in this act, shall include with the  
62 application for registration of the condominium development: (1) a copy  
63 of the notice prescribed by subsection (b) of this section, and (2) a certified  
64 statement that the notice, fully complying with the provisions of this  
65 section, at the time of the registration of the conversion condominium  
66 development, shall be mailed or delivered according to the requirements  
67 of subsection (b) of this section to the unit of each of the residential  
68 tenants in the building or buildings which comprise the conversion condo-  
69 minium development for which registration is sought.

1 Section 12. [*Resale by Condominium Unit Owners.*]

2 (a) In the event of any resale of a condominium unit by a condominium  
3 unit owner other than the developer, the owner shall obtain from the unit  
4 owners' association and furnish to the purchaser, prior to the signing by  
5 such purchaser of any contract or other agreement to purchase, the  
6 following:

7 (1) A copy of the most recent public offering statement submitted  
8 by the developer according to the provisions of this act.

9 (2) A copy of the most recent unit owners' association budget,  
10 bylaws, rules and regulations, declaration, and last auditor's report or  
11 financial statement.

12 (3) To the extent, if any, indicated by the unit owners' association's  
13 budget, a statement of any capital expenditures anticipated by the unit  
14 owners' association within the [current and succeeding two fiscal years].

15 (4) A statement of the status and amount of any reserve for replace-  
16 ment fund and any portion of the fund earmarked for any specified  
17 project by the unit owners' association.

18 (5) A statement of any restraints on the free alienability of the  
19 condominium unit.

20 (6) A statement of the amount of unpaid assessments against the  
21 unit owner.

22 (b) The principal officer of the unit owners' association, or another  
23 officer or officers as the condominium instruments specify, shall furnish  
24 the material prescribed by subsection (a) of this section upon the written  
25 request of any condominium unit owner within [10] days of the receipt  
26 of the request. The condominium unit owner has a cause of action to  
27 collect damages from the unit owners' association for any loss resulting  
28 to him from failure of the officer or officers to comply with the require-  
29 ments of this section.

1 Section 13. [*Warranties; Provision of a Bond.*]

2 (a) The developer shall warrant against defects in the plumbing,  
3 electrical, mechanical, structural, and all other components of the units  
4 and common elements. The warranty:

5 (1) Shall exist on a unit for [one] year from conveyance of title to

6 that unit by a developer to a purchaser other than the developer.

7 (2) Shall exist on all of the common elements for [two] years from  
8 the initial conveyance of title to a condominium unit by the developer to  
9 a purchaser other than the developer.

10 (3) Shall be contained, in a form prescribed by the agency rules, in  
11 the contract or other agreement to purchase.

12 (4) Shall be separate from, and in addition to, any warranties  
13 provided by any other person.

14 (b) The developer shall post a bond in the sum of [10] percent of  
15 estimated construction or conversion costs or provide other security as  
16 the agency, by its rules, prescribes to remedy or cause to be remedied any  
17 defects against which this section requires the developer to warrant.

1 Section 14. [*Escrow or Bonding of Deposits.*] Any deposit made in  
2 connection with any disposition of a condominium unit, including a  
3 deposit made in connection with a nonbinding reservation agreement  
4 (the provisions of Section 4(a)(4) of this act notwithstanding), shall be  
5 held in escrow or guaranteed by surety bond in a form to be prescribed by  
6 the agency until delivered at the closing. Escrow funds shall be deposited  
7 in a separate account designated for this purpose, in an institution the  
8 deposits of which are insured by an agency or instrumentality of this  
9 State or of the United States. Escrow funds shall not be subject to attach-  
10 ment by the creditors of either a purchaser or the developer. All interest  
11 earned by the escrow account may be credited to the developer upon the  
12 closing or may be added to any refund of the deposits to the purchaser  
13 authorized by this act.

1 Section 15. [*Management Contracts and Leases by Developer.*]

2 (a) Owners of condominium units in a condominium development may  
3 assume the powers of the unit owners' association, including selection  
4 of the management of the condominium development and the establish-  
5 ment of appropriate management contracts and other contracts or agree-  
6 ments affecting the use of, maintenance of, or access to all or a part of the  
7 condominium development, no later than [one] year after the initial  
8 occupancy of a unit in the condominium development or as soon as [75]  
9 percent of the units are occupied, whichever is earlier.

10 (b) Voting in the unit owners' association shall be based on objective  
11 criteria and be without regard to the identity of unit owners.

12 (c) After registration of the condominium development, the developer  
13 shall assume the obligations of a condominium unit owner in his capacity  
14 as owner of condominium units not yet disposed of by him.

15 (d) The developer shall not establish a management lease, contract,  
16 or other agreement which is enforceable against the owners of the condo-  
17 minium units in the condominium development beyond the earliest date  
18 on which such owners are authorized to select the management of the

20 by subsection (a) of this section.

21 (e) The developer shall not lease any land or recreational or other  
22 facilities to any unit owner or to the unit owners' association [except where:

23 (1) The lease includes all the property of the condominium develop-  
24 ment.

25 (2) Each condominium unit owner will have a leasehold interest in  
26 his unit and an undivided leasehold on the common elements.

27 (3) The lease is for a fixed amount over the terms of the lease.

28 (4) The lease is for a term of 99 years, or for a shorter term pre-  
29 scribed by the agency, in its rules.

30 (5) The unit owners' association shall maintain all of the common  
31 elements, except the parts thereof which the condominium instruments  
32 specifically state must be maintained by each condominium unit owner.

33 (6) The existence and terms of the lease are included in the applica-  
34 tion for registration prescribed by this act and disclosed to a purchaser in  
35 the public offering statement prescribed by this act.

*Comment:* This exception is prepared for use in those jurisdictions where it is common practice to convey leasehold rather than fee interests in real property.

36 (7) Renewal of the lease includes increased rent only if it shall be  
37 adjusted in accordance with a nationally recognized commodity index.

38 (8) A lease of recreational facilities or other commonly used facili-  
39 ties grants to the lessee an option to purchase the leased property payable  
40 in cash on any anniversary date of the beginning of the lease term after  
41 the tenth anniversary at a price then determined by agreement, and if  
42 there is no agreement, then by arbitration under procedures the agency  
43 establishes; that in the event of arbitration, the arbitrators shall take into  
44 account the capitalization of the current rent but not take into account  
45 the discounted rent for the unexpired term of the lease.

46 (9) If the lessor wishes to sell his interest and has received a bona  
47 fide offer to purchase it, then the lessor shall notify the association and  
48 each unit owner with an executed copy of the offer and its terms. The  
49 association shall have the option, following receipt of the offer, to pur-  
50 chase the interest on the terms and conditions set forth in the offer, for  
51 a period to extend until [90] days following receipt of the offer by the  
52 association. The option shall be exercised, if at all, by a notice in writing  
53 given to the lessor within that period. If the association does not exercise  
54 the option herein granted, then the lessor shall have the right, for a period  
55 of [60] days after receipt of the notice, not to exercise the option within  
56 which to complete the transaction described in the offer to purchase. If  
57 for any reason the transaction is not concluded and notice of that fact  
58 given to the association within [60] days, then the offer shall be deemed  
59 abandoned and the provisions of this subsection shall be reimposed on  
60 the interest in question.]

1 Section 16. [*Unit Owners' Liability for Breach of Duty by the Associa-*  
2 *tion.*]

3 (a) Except as provided in this act, a unit owner has no liability for any  
4 breach of duty for which the association is liable, whether the duty arises  
5 out of contract, or a standard of care imposed by law on the association, or  
6 otherwise.

7 (b) If a judgment against the association, whether or not the associa-  
8 tion is incorporated, remains unpaid in whole or in part for [three] months  
9 after it has become final, a unit owner becomes liable as specified in  
10 subsections (c) and (d) if he has been given written notice of the pending  
11 judicial proceeding and that he has a right to defend in the proceeding.

12 (c) A unit owner is liable to the judgment holder only to pay the same  
13 percentage of the amount of the judgment not paid by the association as  
14 the unit owner's percentage of the common elements.

15 (d) A unit owner is liable under this section only if he owned his unit  
16 at the time the cause of action occurred and an owner who owned a unit  
17 at the time a cause of action occurred remains liable even though he is  
18 no longer the owner of the unit.

19 (e) Nothing in this section prevents suit against the unit owner or  
20 against the unit owner and the association jointly if the unit owner or  
21 someone other than the association for whose conduct he is liable has  
22 breached a duty.

1 Section 17. [*Liability of Association to Unit Owners.*] The association  
2 is liable to, and may be sued by, a unit owner to the same extent as it  
3 is liable to and may be sued by persons other than unit owners.

1 Section 18. [*Investigations by Agency.*]

2 (a) The agency may make necessary public or private investigations  
3 within or without this State in accordance with law to determine whether  
4 any person has violated or is about to violate this act or any rule or order  
5 hereunder, or to aid in the enforcement of this act or in the prescribing  
6 of rules and forms hereunder.

7 (b) For the purpose of any investigation or proceeding under this act,  
8 the agency or any officer designated by rule may administer oaths or  
9 affirmations, and upon its own motion, or upon the request of any party,  
10 shall subpoena witnesses, compel their attendance, take evidence, and  
11 require the production of any material which is relevant to the investiga-  
12 tion, including the existence, description, nature, custody, condition,  
13 and location of any books, documents, or other matter reasonably calcu-  
14 lated to lead to the discovery of material evidence.

15 (c) Upon failure to obey a subpoena or to answer questions asked by  
16 the investigating officer and upon reasonable notice to all persons affected  
17 thereby, the agency may apply to the [appropriate state court] for an  
18 order compelling compliance.



20 this act or of any rule or order hereunder, and secure information to  
21 serve as a basis for recommending further legislation concerning the  
22 matters to which this act relates.

1 Section 19. [*General Powers and Duties of Agency.*]

2 (a) The agency shall prescribe reasonable rules which shall be adopted,  
3 amended, or repealed in compliance with the law applicable to the  
4 administrative procedures of agencies of government. The rules shall  
5 include, but not be limited to, provisions for advertising standards to  
6 assure full and fair disclosure, provisions for operating procedures, and  
7 other provisions as are necessary and proper to accomplish the purposes  
8 of this act.

9 (b) The agency by rule or order, after reasonable notice and hearing,  
10 may require the filing of advertising material relating to a condominium  
11 development prior to its distribution.

12 (c) If it appears that a person has engaged in or is about to engage  
13 in an act or practice constituting a violation of a provision of this act,  
14 or of a rule or order hereunder, the agency, with or without prior adminis-  
15 trative proceedings, may bring an action in the [appropriate state court]  
16 to enjoin the act or practice. Upon proper showing, injunctive relief or  
17 a temporary restraining order shall be granted. The agency is not required  
18 to post a bond in any court proceedings or prove that any other adequate  
19 remedy at law exists.

20 (d) The agency may intervene in any suit by or against a developer  
21 and which involves a condominium development. A developer shall  
22 promptly furnish the agency notice of the suit as well as copies of all  
23 pleadings.

24 (e) The agency may:

25 (1) Accept registrations filed in other States which it finds to be  
26 reasonably consistent with the requirement of this act.

27 (2) Contract with similar agencies in this State and in other juris-  
28 dictions to perform investigative functions.

29 (3) Accept grants-in-aid from any governmental source.

30 (f) The agency shall cooperate with similar agencies in other jurisdic-  
31 tions to establish uniform filing procedures and forms, uniform public  
32 offering statements, advertising standards, rules, and common adminis-  
33 trative practices.

1 Section 20. [*Agency Sanctions.*]

2 (a) If the agency determines, after notice and hearing, that a developer  
3 has: (1) violated any provision of this act, (2) directly or through an agent  
4 knowingly engaged in any false, deceptive, or misleading advertising,  
5 promotional, or sales method to offer or dispose of a condominium unit,  
6 or (3) violated any lawful order or rule of the agency, it may issue an  
7 order requiring the developer to cease and desist from the unlawful  
8 practice and to take affirmative action as in the judgment of the agency

9 will carry out the purposes of this act. If the agency makes a finding of  
10 fact in writing that the public interest will be irreparably harmed by delay  
11 in issuing an order, it may issue a temporary cease and desist order. The  
12 agency shall give notice of the proposal to issue a temporary cease and  
13 desist order to the developer. Every temporary cease and desist order  
14 shall include in its terms a provision that upon request a hearing will be  
15 held promptly to determine if it is to become permanent.

16 (b) A registration of a condominium development may be revoked by  
17 the agency, after notice and hearing, upon a written finding of fact that  
18 the developer has:

19 (1) Failed to comply with the terms of a cease and desist order.

20 (2) Been convicted in any court subsequent to the filing of the  
21 application for registration of a crime involving fraud, deception, false  
22 pretenses, misrepresentation, false advertising, or dishonest dealing in  
23 real estate transactions.

24 (3) Disposed of, concealed, or diverted any funds or assets of any  
25 person so as to defeat the rights of a condominium unit purchaser.

26 (4) Failed to perform faithfully any stipulation or agreement made  
27 with the agency as an inducement to register any condominium develop-  
28 ment, or to reinstate any registration.

29 (5) In an application for registration intentionally made an untrue  
30 statement of a material fact or intentionally omitted to state a material  
31 fact required to be stated therein or necessary to make the statement  
32 made therein not misleading. Findings of fact, if set forth in statutory  
33 language, shall be accompanied by a concise and explicit statement of  
34 the underlying facts supporting the findings.

35 (c) If the agency finds after notice and hearing that the developer has  
36 been guilty of a violation for which revocation could be ordered, it may  
37 suspend the registration until, pursuant to its rules, it determines the  
38 suspension be terminated or the registration be revoked. The suspen-  
39 sions shall mean that the developer or any agent thereof shall not offer  
40 or dispose of, for the period of suspension, any condominium unit in the  
41 condominium development the registration of which has been suspended.

1 Section 21. [*Consumer Remedies.*] Any person who, in reasonable  
2 reliance upon any material and false or misleading statement or informa-  
3 tion made by or under authority from a developer or any agent thereof,  
4 pays anything of value toward the purchase of, or acquiring an interest  
5 in, a condominium unit shall have a cause of action: (1) prior to closing,  
6 to rescind the contract or to collect damages from the developer for his  
7 loss; (2) after closing until one year after closing or until completion of  
8 the condominium development, whichever is later, to collect damages  
9 from the developer for his loss.

1 Section 22. [*Additional Remedies.*] The rights and remedies provided  
2 by this act shall be in addition to any and all other rights and remedies  
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3 that may exist at law or in equity.

1 Section 23. [*Criminal Penalties.*] Any person who willfully violates any  
2 provision of Sections 5(a)(1), 5(a)(2), 5(b), 10, or 15 of this act, upon  
3 conviction, shall be fined not less than [\$1,000] but not more than  
4 [\$50,000] and each violation shall be a separate offense [or imprisoned for  
5 not more than six months, or both, for each offense].

1 Section 24. [*Contrary Stipulations Void.*] Any condition, stipulation, or  
2 provision binding any purchaser to waive compliance with any provision  
3 of this act, or of any rule or order of the agency, is void.

1 Section 25. [*Judicial Review.*] Proceedings for judicial review of agency  
2 action shall be in accordance with [appropriate state statute].

1 Section 26. [*Standardized Forms.*] The agency shall develop and pre-  
2 scribe, within [one] year following the date of enactment, a standardized  
3 form for the application for registration and for the public offering state-  
4 ment, containing the information required by this act, and the forms shall  
5 be uniformly used as the standard forms for applications for registration  
6 and for public offering statements in this State.

1 Section 27. [*Appropriations.*] There is authorized to be appropriated  
2 such sums as may be necessary to carry out the provisions of this act.

1 Section 28. [*Severability.*] [Insert severability clause.]

1 Section 29. [*Repeal.*] [Insert repealer clause.]

1 Section 30. [*Effective Date.*] [Insert effective date.]

### Retail Theft Act

Shoplifting, or retail theft, is a growing national problem. It is estimated that over \$5 billion a year is lost by the Nation's merchants through shoplifting and thievery by store workers. This suggested act specifically defines retail theft and includes in the definition such practices as the alteration of price tags, underringing by employees, and the removal of shopping carts from the store premises. The act sets forth conditions under which merchants can detain suspected shoplifters and provides that parents of minors are fully liable for the retail value or cost of repair or replacement of stolen merchandise.

This act is based on an Illinois statute.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Retail  
2 Theft Act.

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

2 (1) To "conceal" merchandise means that, although there may be  
3 some notice of its presence, that merchandise is not visible through  
4 ordinary observation.

5 (2) "Full retail value" means the merchant's stated or advertised  
6 price of the merchandise.

7 (3) "Merchandise" means any item of tangible personal property.

8 (4) "Merchant" means an owner or operator of any retail mercantile  
9 establishment or any agent, employee, lessee, consignee, officer, director,  
10 franchisee, or independent contractor of the owner or operator.

11 (5) "Minor" means a person who is less than [19] years of age, is  
12 unemancipated, and resides with his parents or legal guardian.

13 (6) "Person" means any natural person or individual.

14 (7) "Peace officer" has the meaning ascribed to that term in [appro-  
15 priate state statute].

16 (8) "Premises of a retail mercantile establishment" includes, but is  
17 not limited to, the retail mercantile establishment, any common use areas  
18 in shopping centers, and all parking areas set aside by a merchant or on  
19 behalf of a merchant for the parking of vehicles for the convenience of  
20 the patrons of the retail mercantile establishment.

21 (9) "Retail mercantile establishment" means any place where mer-  
22 chandise is displayed, held, stored, or offered for sale to the public.

23 (10) "Shopping cart" means a push cart of the type commonly pro-  
24 vided by grocery stores, drug stores, or other retail mercantile establish-

26 markets and, incidentally, from the store to a place outside the store.  
27 (11) "Underring" means to cause the cash register or other sales  
28 recording device to reflect less than the full retail value of the mer-  
29 chandise.

1 Section 3. [*Offense of Retail Theft.*] A person commits the offense of  
2 retail theft when he knowingly:

3 (1) Takes possession of, carries away, transfers, or causes to be  
4 carried away or transferred any merchandise displayed, held, stored, or  
5 offered for sale in a retail mercantile establishment with the intention  
6 of retaining the merchandise or with the intention of depriving the  
7 merchant permanently of the possession, use, or benefit of the merchan-  
8 dise without paying the full retail value of the merchandise.

9 (2) Alters, transfers, or removes any label, price tag, marking,  
10 indicia of value, or any other markings which aid in determining value  
11 affixed to any merchandise displayed, held, stored, or offered for sale  
12 in a retail mercantile establishment and attempts to purchase the mer-  
13 chandise personally or in consort with another at less than the full retail  
14 value with the intention of depriving the merchant of the full retail value  
15 of the merchandise.

16 (3) Transfers any merchandise displayed, held, stored, or offered  
17 for sale in a retail mercantile establishment from the container in or on  
18 which the merchandise is displayed to any other container with the  
19 intention of depriving the merchant of the full retail value of the  
20 merchandise.

21 (4) Underrings with the intention of depriving the merchant of the  
22 full retail value of the merchandise.

23 (5) Removes a shopping cart from the premises of a retail mercantile  
24 establishment without the consent of the merchant given at the time of  
25 removal with the intention of depriving the merchant permanently of  
26 the possession, use, or benefit of the cart.

1 Section 4. [*Presumptions.*] If any person conceals upon his person or  
2 among his belongings unpurchased merchandise displayed, held, stored,  
3 or offered for sale in a retail mercantile establishment, and removes that  
4 merchandise beyond the last known station for receiving payments for  
5 that merchandise in that retail mercantile establishment, the person  
6 shall be presumed to have possessed, carried away, or transferred the  
7 merchandise with the intention of retaining it or with the intention of  
8 depriving the merchant permanently of the possession, use, or benefit of  
9 the merchandise without paying the full retail value of the merchandise.

1 Section 5. [*Detention.*]

2 (a) Any merchant who has reasonable grounds to believe that a  
3 person has committed retail theft may detain the person, on or off the  
4 premises of a retail mercantile establishment, in a reasonable manner and

5 for a reasonable length of time for all or any of the following purposes:

6 (1) To request and verify identification.

7 (2) To make reasonable inquiry as to whether the person has in  
8 his possession unpurchased merchandise and to make reasonable in-  
9 vestigation of the ownership of the merchandise.

10 (3) To inform a peace officer of the detention of the person and  
11 surrender that person to the custody of a peace officer.

12 (4) In the case of a minor, to inform a peace officer and the parents,  
13 guardian, or other private person interested in the welfare of that minor  
14 of this detention and to surrender custody of the minor to such person.

15 (b) A merchant may make a detention as permitted herein off the  
16 premises of a retail mercantile establishment only if the detention is  
17 pursuant to an immediate pursuit of the person.

1 Section 6. [*Affirmative Defense.*] A detention as permitted in this  
2 act neither constitutes an arrest or unlawful restraint as defined in  
3 [appropriate state statute], nor shall it render the merchant liable to  
4 the person detained.

1 Section 7. [*Civil Liability.*] The parents or legal guardian of a minor  
2 who commits the offense of retail theft as defined shall be civilly liable  
3 for the full retail value, or cost of repair, or cost of replacement of the  
4 merchandise. A conviction or plea of guilty of the retail theft is not a  
5 prerequisite to the bringing of a civil suit hereunder. Recovery under this  
6 section may be had in addition to, and is not limited by, any other pro-  
7 vision of law which limits the liability of a parent or legal guardian for  
8 tortious conduct of a minor. [Reference may have to be made here to a  
9 state parental responsibility law.]

1 Section 8. [*Penalties.*]

2 (a) Retail theft of property, the full retail value of which does not  
3 exceed \$150, is a [ ] misdemeanor.

4 (b) After a conviction of retail theft or theft, without regard to the full  
5 retail value thereof, a second or subsequent offense of retail theft, the  
6 full retail value of which does not exceed \$150, is a [ ] felony.

7 (c) Any retail theft of property, the full retail value of which exceeds  
8 \$150, is a [ ] felony.

1 Section 9. [*Severability.*] [Insert severability clause.]

1 Section 10. [*Repeal.*] [Insert repealer clause.]

1 Section 11. [*Effective Date.*] [Insert effective date.]

### Health Maintenance Organization Act

The suggested Health Maintenance Organization Act (HMO) was developed pursuant to the mandate contained in President Nixon's 1971 Health Message and subsequent policy directives issued by former Secretary Elliot L. Richardson. The bill represents nonrestrictive HMO enabling legislation which would encourage a full range of HMO models to compete both with each other and with the fee-for-service sector. It provides basic authority for HMO organization and regulation, while at the same time eliminating a number of the traditional state legal barriers to HMO development and growth.

The bill does not address the issues of comprehensive health planning, personnel licensure, or Medicaid contracting, which are more easily addressed in other legislation, or the issues of medical claims subrogation and coordination of benefits which can be handled in enrollee contracts, at least in most States. Nor does it address explicitly the issue of tax benefits for "charitable," nonprofit HMOs or premium taxes for HMOs, although we oppose in principle any provision that discriminates against certain kinds of HMOs, or against HMOs as a class. (We have included provisions for licensure fees to help finance regulatory activities.)

The regulatory style utilized in the bill focuses, wherever possible, on public disclosure and information as opposed to government control. In this regard, it differs from the model bill developed by the National Association of Insurance Commissioners (NAIC) which relies more heavily on government action rather than private competition, made effective through public disclosure, as a means of assuring adequacy of services.

Specific differences between the draft bill and the NAIC bill are summarized as follows:

1. *Exclusivity.* The NAIC bill is designed to be the exclusive regulatory vehicle. No prepaid health delivery system which does not meet the regulatory standards described in the bill, or implementing regulations, would be permitted to exist. In contrast, the draft bill would provide only that an organization which does not meet standards imposed by the bill could not be called an HMO. Whether the State would choose to permit such organizations to exist, or to regulate them through other means, would be left to state determination.

2. *Delegation of regulatory authority to the insurance commissioner.* The NAIC bill delegates regulatory responsibility to the insurance commissioner. The draft bill says nothing on this issue. Again, we believe that the choice of a regulatory vehicle should be a determination of the State, not the federal government. In some States, it may be best to select the health department, or an entirely new agency rather than delegate authority to the insurance commissioner.

3. *Approval of rates.* The NAIC bill includes insurance-type rate approval. In contrast, we believe it would be more appropriate to rely on the free market. It is doubtful whether rate regulation would provide an effective control on costs. Indeed, it may be—because of limited HMO experience—that rate regulation would actually promote rate uniformity, and thus stifle price competition. Of course, the financial responsibility requirements of our bill would provide reasonable assurance that any rate chosen by an HMO would be adequate to pay

incurred costs.)

4. *Definition.* The definition contained in the NAIC bill does not make clear that the HMO is responsible for the provision or arrangement for medical care services rather than simply payment for such services. The draft bill does.

5. *Benefit package.* The benefit package contained in the NAIC bill is overly rigid and comprehensive and, thus, may preclude HMOs from competing with traditional insurance.

6. *Different standards for insurance-run HMOs.* Under the NAIC bill, HMOs controlled by insurance companies are subject to different standards than other kinds of HMOs. The draft bill makes no such distinction.

7. *Open enrollment.* The NAIC bill contains open enrollment provisions which could make it more difficult for HMOs to compete with traditional insurers which, typically, are not subject to any such requirement and do not in fact offer open enrollment for comprehensive benefits.

8. *Restrictions on investments.* The NAIC bill contains insurance-type restrictions on HMO investments. The draft bill contains no such restrictions as we prefer to rely solely on disclosure and general financial responsibility standards.

9. *Approval of contract changes.* The NAIC bill would require advance approval of any contract changes. In contrast, the draft bill requires only notification. Of course, the regulatory authority could subsequently challenge any modification which adversely and materially alters a contract.

10. *Insurance liquidation provisions.* The NAIC bill includes complex insurance-type liquidation and rehabilitation provisions which we believe may encourage unwarranted government incursions into the internal affairs of HMOs. The draft bill includes no specific liquidation or rehabilitation provisions. We would rely more heavily on HMO management, and on the general bankruptcy law where HMOs do fail.

11. *Liquid reserve requirement.* The NAIC bill includes liquid reserve requirements which are inappropriate, ineffective, and inhibiting to certain kinds of HMOs. In contrast, the draft bill utilizes a variety of different criteria for determining financial responsibility.

The NAIC act was carried in the *1974 Suggested State Legislation*.

This act was developed by the staff of the U.S. Department of Health, Education, and Welfare, with assistance from Interstudy, a private, nonprofit policy development center on contract with HEW.

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#### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Health  
2 Maintenance Organization Act.



2 (1) "Health maintenance organization" means a public or private  
3 organization which is organized under the laws of the federal government,  
4 this State, or the laws of another State or the District of Columbia, and  
5 which:

6 (i) Provides or otherwise makes available to enrolled participants  
7 health care services, including at a minimum those basic health care  
8 services which are determined by the administrator to be generally  
9 available on an insured or prepaid basis in the locality served by the  
10 organization.

11 (ii) Is compensated (except for reasonable copayments) for the  
12 provision of basic health care services to enrolled participants solely on a  
13 predetermined periodic rate basis.

14 (iii) Provides physicians' services primarily (A) directly through  
15 physicians who are either employees or partners of such organization, or  
16 (B) through arrangements with individual physicians or one or more  
17 groups of physicians (organized on a group practice or individual practice  
18 basis) under which all the physicians and groups are provided effective  
19 incentives to avoid unnecessary or unduly costly utilization, regardless  
20 of whether any physician is individually compensated primarily on a  
21 fee-for-service basis, or otherwise.

22 (iv) Assures the availability, accessibility, and quality (including  
23 effective utilization) of the health care services which it provides or makes  
24 available through clearly identifiable focal points of legal and adminis-  
25 trative responsibility.

26 (2) "Basic health care services" means usual physician, hospitali-  
27 zation, laboratory, X-ray, emergency, and preventive services, and out-of-  
28 area coverage.

29 (3) "Health care services" means basic health care services and  
30 other services, which may include, but are not limited to, medical, surgical,  
31 and dental care; psychological, obstetrical, osteopathic, optometric,  
32 optic, podiatric, nursing, physical therapy, and pharmaceutical services;  
33 health education; preventive medical, rehabilitative, and home health  
34 services; inpatient and outpatient hospital services, extended care, nurs-  
35 ing home care, convalescent institutional care, laboratory and ambu-  
36 lance services, appliances, drugs, medicines and supplies; and any other  
37 care, service, or treatment for the prevention, control, or elimination of  
38 disease, the correction of defects, or the maintenance of the physical or  
39 mental well-being of human beings.

40 (4) "Enrolled participant" means a person who has entered into a  
41 contractual arrangement or on whose behalf a contractual arrangement  
42 has been entered into with a health maintenance organization to receive  
43 identified health care services.

44 (5) "Person" means a natural or artificial person including, but not  
45 limited to, individuals, partnerships, associations, corporations, or other  
46 legally recognized organizations.

48 organization, or person that furnishes any health care services and is  
49 licensed or otherwise authorized to furnish such services.

50 (7) "Administrator" means the head of [name of agency].

1 Section 3. [*Application for Certificate of Authority.*]

2 (a) No person may operate a health maintenance organization without  
3 obtaining a certificate of authority from the administrator.

4 (b) Applications for a certificate of authority shall be made in the form  
5 required by the administrator and be verified by an officer or authorized  
6 representative of the applicant and set forth or be accompanied by:

7 (1) A copy of the basic organizational documents of the applicant,  
8 if any, including articles of incorporation, partnership agreement, trust  
9 agreement, or other applicable documents.

10 (2) A copy of the bylaws, regulations, or similar document, if any,  
11 regulating the conduct of the internal affairs of the applicant.

12 (3) A list of the names, addresses, and official capacities with the  
13 organization of all the persons who are to be responsible for the conduct  
14 of the affairs of the applicant, including all members of the governing  
15 body, the officers and directors in the case of a corporation, and the  
16 partners or members in the case of a partnership or corporation.

17 (4) A statement generally describing the organization, its enroll-  
18 ment process, its operation, its quality assurance mechanism, its internal  
19 grievance procedures, the methods it proposes to use to offer its enrolled  
20 participants an opportunity to participate in matters of policy and opera-  
21 tion, the geographic area or areas to be served, the location and hours of  
22 operation of the facilities at which health care services will be regularly  
23 available to enrolled participants, the type and specialty of health care  
24 personnel engaged to provide health care services, the number of person-  
25 nel in each category, and a records system providing documentation of  
26 utilization rates for enrolled participants.

27 (5) Copies of all contract forms the organization proposes to offer  
28 enrolled participants.

29 (6) A statement of the financial condition of the organization, includ-  
30 ing income statement, balance sheet, and projected sources and uses of  
31 funds.

32 (7) A description of the proposed marketing techniques and copies  
33 of any proposed advertising materials.

34 (8) A written statement duly executed by the applicant appointing  
35 the administrator and his successors in office and duly authorized depu-  
36 ties as the true and lawful agent of the applicant upon whom lawful  
37 process in any legal action against the organization on any cause of  
38 action arising in this State may be served.

39 (9) A schedule of rates with supporting actuarial and other data.

40 (10) Other information required by the administrator to make the  
41 determinations required in Section 4.

1 Section 4. [*Issuance of Certificate of Authority.*]

2 (a) The administrator shall issue a certificate of authority to any per-  
3 son filing an application within 60 days of the filing unless he notifies the  
4 applicant during that time that the application is not complete or sufficient  
5 and the reasons therefor; or that payment of the fees required by Section  
6 11 has not been made or that he is not satisfied that:

7 (1) The basic organizational document of the applicant, when com-  
8 bined with the powers enumerated in Section 5, permits the applicant to  
9 conduct business as a health maintenance organization.

10 (2) The organization has demonstrated the intent and ability to  
11 assure that health care services will be provided in a manner to assure  
12 both their availability and accessibility.

13 (3) The organization is financially responsible and may be reasonably  
14 expected to meet its obligations to its enrolled participants. In making  
15 this determination the administrator shall consider, among other relevant  
16 factors:

17 (i) Any agreements with an insurer, a medical or hospital service  
18 corporation, a government agency, or any other organization paying or  
19 contracting to pay for health care services.

20 (ii) Any agreements with providers for the provision of health  
21 care services.

22 (iii) Any arrangements for insurance coverage, or an adequate  
23 plan for self-insurance, to respond to claims for injuries arising out of  
24 the furnishing of health care services.

25 (4) The procedures for offering health care services and offering or  
26 terminating contracts with enrolled participants are reasonable.

27 (5) Procedures have been established to:

28 (i) Monitor the quality of care provided by the organization,  
29 including, at a minimum, internal peer review.

30 (ii) Resolve complaints and grievances initiated by enrolled par-  
31 ticipants.

32 (iii) Offer enrolled participants an opportunity to participate in  
33 matters of policy and operation.

34 (b) The organization will maintain a medical records system which is  
35 adequate to provide an accurate documentation of utilization by every  
36 enrolled participant, the system to identify clearly, at a minimum, each  
37 patient by name, age, and sex, and to indicate clearly the services pro-  
38 vided, when, where, and by whom, and the diagnosis, treatment, and drug  
39 therapy. The administrator, in accordance with regulations, may permit  
40 an organization to contact potential enrolled participants prior to the  
41 granting of a certificate of authority to discuss the health care services  
42 the organization proposes to offer.

1 Section 5. [*Powers of Health Maintenance Organizations.*] The powers  
2 of a holder of a certificate of authority issued pursuant to Section 4 shall  
3 include, in addition to any other powers conferred by the law under which

Health Maintenance Organization

4 the health maintenance organization is organized, the following:

5 (1) The purchase, lease, construction, renovation, operation, or  
6 maintenance of hospitals, medical facilities, or both, and their ancillary  
7 equipment, and property reasonably required for its principal office or  
8 for other purposes as may be reasonably necessary in the transaction of  
9 the business of the organization.

10 (2) The furnishing of health care services on a prepaid basis through  
11 providers which are under contract with, otherwise associated with, or  
12 employed by the health maintenance organization.

13 (3) Marketing, enrolling, and administering, or the contracting with  
14 any person for the performance of these functions on its behalf.

15 (4) The contracting with an insurance company licensed in this  
16 State, or with a hospital or medical service corporation authorized to do  
17 business in this State, for the provision of insurance, indemnity, or reim-  
18 bursement against the cost of health care services provided by the health  
19 maintenance organization.

20 (5) The offering, in addition to health care services, of indemnity  
21 benefits covering out-of-area or emergency services not rendered by the  
22 health maintenance organization itself.

23 (6) Receiving and accepting from governmental or private agencies  
24 or any persons, payments or grants covering all or part of the cost of the  
25 services provided or arranged for by the organization.

1 Section 6. [*Contract Form.*]

2 (a) All forms of contracts issued by the organization to enrolled partici-  
3 pants or other marketing documents purporting to describe the organiza-  
4 tion's health care services shall contain:

5 (1) A complete description of the health care services and other  
6 benefits to which the enrolled participant is entitled.

7 (2) The locations of all facilities, the hours of operation, and the  
8 services which are provided in each facility.

9 (3) The predetermined periodic rate of payment for health care serv-  
10 ices and other benefits, if any, which the enrolled participant is obliged  
11 to pay.

12 (4) All exclusions and limitations on services or any other benefits  
13 to be provided including any deductible or copayment feature and all  
14 restrictions relating to preexisting conditions.

15 (5) All criteria by which an enrolled participant may be disenrolled  
16 or denied re-enrollment.

17 (6) Service priorities in case of epidemic or other emergency con-  
18 ditions affecting demand for medical services.

19 (b) No health maintenance organization authorized under this act  
20 shall cancel the enrollment of an enrolled participant or refuse to transfer  
21 an enrolled participant from a group to an individual basis for reasons  
22 relating to age, sex, race, or health status. However, nothing contained

herein prevents cancellation of a contract with enrolled participants who

24 violate any published policies of the organization which have been ap-  
25 proved by the administrator.

26 (c) No health maintenance organization authorized under this act  
27 shall contract with any provider under provisions which require enrolled  
28 participants to guarantee payment (other than copayments and deducti-  
29 bles) to the provider in the event of non-payment by the health mainte-  
30 nance organization for any services which have been performed under  
31 contracts between enrolled participants and the health maintenance  
32 organization.

33 (d) No contract form or amendment to an approved contract form shall  
34 be issued unless it is approved by the administrator. The contract form  
35 or amendment shall be deemed approved after 30 days following its filing  
36 with the administrator unless the administrator finds that the contract  
37 form or amendment does not comply with the requirements of Section  
38 4(a) or subsection (a) of this section.

1 Section 7. [*Annual Disclosure.*]

2 (a) Every health maintenance organization shall provide to its enrolled  
3 participants and make available to the general public on an annual basis:

4 (1) A statement of financial condition including a balance sheet and  
5 summary of receipts and disbursements.

6 (2) A description of the benefit package or packages available and  
7 their rates.

8 (3) A description of the accessibility and availability of services in-  
9 cluding where and how to obtain them.

10 (4) A statement disclosing by category the percentage of enrolled  
11 participants assisted by public funds.

12 (5) Other information the administrator by regulation prescribes.

13 (b) The information shall be presented in clear, readable, and concise  
14 form and include, at a minimum, all of the material elements required of  
15 contracts with enrolled participants.

1 Section 8. [*Reports to the Administrator.*]

2 (a) Every health maintenance organization subject to this act shall  
3 annually, on or before [ ], file a report with the administrator,  
4 verified by an appropriate official of the organization, showing its finan-  
5 cial condition on the last day of the preceding calendar year.

6 (b) The report shall include:

7 (1) A financial statement of the organization, including its balance  
8 sheet and statement of income and expenditures for the preceding year  
9 certified by an independent public accountant.

10 (2) Any changes in the information submitted pursuant to Section 3.

11 (3) Other information relating to the performance of the organiza-  
12 tion as the administrator requires to enable him to carry out his duties  
13 under this act.

1 Section 9. [*Examinations.*]

2 (a) The administrator shall make an examination of the operations of  
3 any health maintenance organization and providers with whom the  
4 organization has contracts, agreements, or other arrangements as often as  
5 he deems it necessary but not less frequently than once every three years.

6 (b) The administrator shall make an examination concerning the quali-  
7 ty of health care services of any health maintenance organization and  
8 providers with whom the organization has contracts, agreements, or  
9 other arrangements as often as he deems it necessary but not less fre-  
10 quently than once every three years.

11 (c) Every health maintenance organization and provider shall submit  
12 its books and records relating to its operation to the examinations and in  
13 every way facilitate them. Medical records of individuals and records of  
14 physicians providing service under a contract to the health maintenance  
15 organization shall be subject to examination, but the identity of patients  
16 shall not be disclosed by the administrator. For the purpose of examina-  
17 tions, the administrator may issue subpoenas, administer oaths to, and  
18 examine the officers and agents of the health maintenance organization  
19 and the principals of the providers concerning their business.

1 Section 10. [*Administrative Findings and Sanctions.*]

2 (a) The administrator, consistent with the provisions of [State Ad-  
3 ministrative Procedures Act], may initiate proceedings to determine if  
4 a health maintenance organization has:

5 (1) Operated in a manner that materially violates its organizational  
6 documents.

7 (2) Materially breached its obligation to furnish the health care  
8 services specified in its contracts with enrolled participants.

9 (3) Violated any provision of this act, or any regulations promul-  
10 gated thereunder.

11 (4) Made any false statement with respect to any report or statement  
12 required by this act or by the administrator under this act.

13 (5) Advertised or marketed, or attempted to market, its services in  
14 a manner to misrepresent its services or capacity for services, or engaged  
15 in deceptive, misleading, or unfair practices with respect to advertising  
16 or marketing.

17 (6) Prevented the administrator from the performance of any duty  
18 imposed by this act.

19 (7) Fraudulently procured or attempted to procure any benefit under  
20 this act.

21 (b) After providing written notice and an opportunity for a hearing to  
22 be scheduled no sooner than 10 days following the notice, the adminis-  
23 trator shall make administrative findings and, as appropriate, may:

24 (1) Impose a penalty of not more than \$10,000 for each and every  
25 unlawful act committed.

26 (2) Issue an administrative order requiring the health maintenance  
27 organization to:

28 (i) Cease or modify inappropriate conduct or practices by it or  
29 any of the personnel employed or associated with it.

30 (ii) Fulfill its contractual obligations.

31 (iii) Provide a service which has been improperly denied.

32 (iv) Take steps to provide or arrange for any service which it has  
33 agreed to make available.

34 (3) Suspend or revoke the certificate of authority of the health  
35 maintenance organization.

36 (c) If its certificate of authority is suspended, the organization, dur-  
37 ing the period of such suspension, shall not enroll any additional partici-  
38 pants except newborn children or other newly acquired dependents of  
39 existing enrolled participants, and shall not engage in any advertising or  
40 solicitation whatsoever.

41 (d) If its certificate of authority is revoked, the organization shall  
42 proceed under the supervision of the administrator, immediately follow-  
43 ing the effective date of the order of revocation, to wind up its affairs, and  
44 shall conduct no further business except as may be essential to the orderly  
45 conclusion of such affairs, provided that the administrator may, by written  
46 order, permit further operation of the organization as he finds to be in  
47 the best interest of enrolled participants, to the end that the enrolled  
48 participants will be afforded the greatest practical opportunity to obtain  
49 continuing health care coverage.

50 (e) The administrator may apply to any court for the legal or equitable  
51 relief he deems necessary to effectively carry out the purposes of this act.

1 Section 11. [*Fees.*] Every organization subject to this act shall pay to  
2 the administrator the following fees:

3 (1) For filing a copy of its application for a certificate of authority  
4 or amendment thereto, [\$ ].

5 (2) For filing each annual report pursuant to Section 8, [\$ ].

6 (3) The expenses of any examinations conducted pursuant to  
7 Section 9.

1 Section 12. [*Statutory Construction and Relationship to Other Laws.*]

2 (a) Provisions of the insurance law and provisions of hospital or medi-  
3 cal service corporation laws shall not be applicable to any health mainte-  
4 nance organization granted a certificate of authority under this act;  
5 provided that no health maintenance organization shall include in its  
6 name the words "insurer," "casualty," "surety," "health and accident,"  
7 or any words generally regarded as descriptive of the insurance industry;  
8 provided, further, that this provision does not apply to an insurer or  
9 hospital or medical service corporation licensed and regulated pursuant  
10 to the insurance laws or the hospital or medical service corporation laws

12 activities authorized and regulated pursuant to this act.

13 (b) The provision of factually accurate information regarding coverage,  
14 rates, locations, and hours of service, names of affiliated institutions, and  
15 credentials of participating providers by a health maintenance organiza-  
16 tion or its personnel to potential enrolled participants shall not be con-  
17 strued to be violative of any provision of law relating to solicitation or  
18 advertising by health professionals.

19 (c) Any health maintenance organization authorized under this act  
20 shall be exempt from the provision of [appropriate state statute] pro-  
21 hibiting the practice of medicine by corporations, associations, or other  
22 organizations.

23 (d) Any health maintenance organization authorized under this act  
24 which contracts with a health facility or enters into arrangements with  
25 one or more groups of physicians organized on a group practice or indi-  
26 vidual practice basis shall not, by virtue of the contracts or arrangements,  
27 be deemed to have entered into a "conspiracy in restraint of trade" in  
28 violation of [appropriate state statute].

29 (e) No law or regulation of this State shall be applied to prohibit or  
30 unreasonably interfere with any health maintenance organization, or  
31 provider, or group of providers under arrangements with a health mainte-  
32 nance organization to provide any health care service to the enrolled  
33 participants of the health maintenance organization in employing or  
34 otherwise associating with any provider of the health care service.

1 Section 13. [*Implementing Regulations.*] The administrator, after notice  
2 and hearing, may promulgate reasonable rules and regulations as neces-  
3 sary or proper to carry out the provisions of this act. Nothing in this act  
4 shall be construed to prohibit the administrator from requiring changes in  
5 procedures previously approved by him.

1 Section 14. [*Federal Legislation.*] Nothing in this act prohibits any  
2 health maintenance organization from meeting the requirements of any  
3 federal law which would authorize the health maintenance organization  
4 to receive federal financial assistance or certification or to enroll bene-  
5 ficiaries assisted by federal funds.

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

1 Section 16. [*Repeal.*] [Insert repealer clause.]

1 Section 17. [*Effective Date.*] [Insert effective date.]



### Forest Resources Planning Act

In every State, forest and related renewable resources are vitally important in terms of economic benefits and environmental quality. Those few States with a scarcity of forest resources are in the forefront of reforestation efforts. All States cooperate with the federal government in the protection, use, and management of privately owned forest and related lands to further both state and national interests in conservation and environmental protection and maintenance. Congress, in recognition of the vital importance of forest, range, and associated lands to the national interest, enacted the Forest and Rangelands Renewable Resources Planning Act (88 Stat. 476; 16 U.S.C. 1601-1610) on August 17, 1974. This act encompasses the programs and responsibilities of the Forest Service. It requires cooperation with the "States, territories and possessions of the United States" in preparing and updating, every 10 years, a comprehensive Renewable Resources Assessment. The act also provides for preparation and updating every five years of a Renewable Resource Program. The program includes all of the cooperative programs of the Forest Service and the act stipulates public involvement in its formulation. Program development will incorporate the requirements of environmental legislation such as P.L. 92-500, Section 208, the Coastal Zone Management Act, and State Forest Practices Acts. Since renewable resource planning is based on state and local plans, it is proposed that the States enact companion legislation in the field of renewable resources planning.

This act was prepared by the Forest Service, U.S. Department of Agriculture.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Forest  
2 Resources Planning Act.

1 Section 2. [*Forest Resource Assessment.*]

2 (a) A Forest Resource Assessment (hereafter called the assessment)  
3 shall be prepared not later than [month and year] and shall be updated  
4 each tenth year thereafter. It shall include but not be limited to:

5 (1) An analysis of present and anticipated uses, demand for, and  
6 supply of renewable forest land resources.

7 (2) An inventory of present and potential renewable forest resources,  
8 and an evaluation of opportunities for improving their yield of tangible  
9 and intangible goods and services, together with estimates of investment  
10 costs and direct and indirect returns to the state government.

11 (3) A description of state programs and responsibilities in coopera-  
12 tive state-federal forestry programs, and management of state and local  
13 public forest and related lands.

14 (4) A discussion of important policy considerations, laws, regula-  
15 tions, and other factors expected to influence and affect significantly  
16 the use, ownership, and management of forest and related lands.

17 (b) To assure the availability and compatibility of data and scientific  
18 information needed for development of the assessment, the [state  
19 forester] shall cooperate with the U.S. Department of Agriculture in  
20 conducting surveys and analyses as provided for in the Forest and  
21 Rangelands Renewable Resources Planning Act (88 Stat. 476; 16 U.S.C.  
22 1601-1610). There is authorized to be appropriated [\$ ] to carry  
23 out the purposes of this act.

1 Section 3. [*Forest Resource Program.*] In order to provide review of  
2 programs for management and administration of state and local public  
3 forest and related lands for cooperative state-federal forestry programs,  
4 and for conduct of other [state forestry agency] activities in relation to  
5 the findings of the assessment, the [state forester] shall prepare and  
6 transmit to the Governor a recommended Forest Resource Program  
7 (hereinafter called the program). The program transmitted to the Gov-  
8 ernor may include alternatives and shall provide in appropriate detail  
9 for protection, management, and development of state forest lands, and  
10 for other nonfederal public and private forest and related lands through  
11 the state and federal authorities of the various forestry programs. The  
12 program shall be prepared not later than [month and year] to cover the  
13 five-year period beginning [date], and at least one fiscal decade next  
14 following such period, and shall be updated each [five] years thereafter  
15 to cover at least one fiscal decade beginning next after such updating.  
16 The program shall include but not be limited to:

17 (1) An inventory of specific needs and opportunities for both public  
18 and private program investments. The inventory shall differentiate  
19 between activities which are of a capital investment nature and those  
20 which are of an operational nature.

21 (2) Program outputs, results anticipated, benefits associated with  
22 investments, and anticipated costs directly compared with the total  
23 related benefits and direct and indirect returns to the state government.

24 (3) A discussion of priorities for accomplishment of program oppor-  
25 tunities, with specified costs, outputs, results, and benefits.

26 (4) A detailed study of personnel requirements as needed to satisfy  
27 existing and proposed programs.

1 Section 4. [*Cooperation in Resource Planning.*] The [state forester]  
2 will utilize the assistance of the Secretary of Agriculture of the United  
3 States in planning for the protection, use, and management of nonfederal  
4 forest and related lands as provided in Section 6 of the Forest and  
5 Rangelands Renewable Resources Planning Act (88 Stat. 476; 16 U.S.C.  
6 1605).

1 Section 5. [*Accountability.*] Commencing with the third fiscal year  
2 after enactment of this act, the [state forester] shall prepare an annual  
3 report which evaluates the component elements of the program required  
4 to be prepared by Section 3 of this act. These annual evaluation reports  
5 shall detail progress in implementing the program, together with ac-  
6 complishments as they relate to the objectives of the assessment.  
7 Objectives will be set forth in quantitative and qualitative terms and  
8 accomplishments reported accordingly. The evaluation should assess the  
9 balance between economic and environmental quality factors. The  
10 reports shall indicate plans for implementing corrective action and  
11 recommendations for new legislation as necessary.

1 Section 6. [*Severability.*] [Insert severability clause.]

1 Section 7. [*Repeal.*] [Insert repealer clause.]

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

### Tax Increment Financing Act

Tax increment financing has been proposed as an innovative mechanism for financing the public expenditures associated with community development without affecting municipal revenues or municipal debt limits. A city using such a system incurs debt to finance the public costs of urban development projects and dedicates the increased tax revenues resulting from that development to the retirement of the debt. The bonds issued are secured by the pledge of those incremental tax revenues and are thus not a drain on current municipal revenue. Since the bonds are not secured by the full faith and credit of the municipality, they would not affect constitutional or statutory debt limits in many jurisdictions.

Under the suggested act, all revenue increment generated by the redevelopment accrues to the municipality. This prevents other taxing jurisdictions from receiving the benefits of higher assessed valuations produced by municipal redevelopment efforts.

This suggested act protects against misuse of the tax increment tool while establishing a framework that can be adapted to local needs. Use of tax increment financing is limited to certain blighted areas. Local governments are allowed to create tax increment districts, issue tax increment bonds, create a special fund for repayment of indebtedness, and pay for project costs by one of several methods. Both real and personal property are covered by the act's tax increment mechanism. Protection against program misuse is instituted in the form of a provision which limits the amount of property and type of area included in the program. Similar programs have been established in Alaska, California, Colorado, Connecticut, Iowa, Kentucky, Massachusetts, Minnesota, Nevada, North Dakota, Ohio, Oregon, Utah, Washington, Wisconsin, and Wyoming. This act is based on a 1975 Wisconsin statute.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Tax Incre-  
2 ment Financing Act.

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

2 (1) "Blighted area" means:

3 (i) Any area (including slum area) in which the structures, build-  
4 ings, or improvements which, by reason of delapidation, deterioration,  
5 age, or obsolescence, inadequate provision for ventilation, light, air,  
6 sanitation, or open spaces, high density of population and overcrowding,  
7 or the existence of conditions which endanger life or property by fire and  
8 other causes, or any combination of such factors, is conducive to ill health,

10 and is detrimental to the public health, safety, morals, or welfare.

11 (ii) Any area which by reason of the presence of a substantial  
12 number of substandard, slum, deteriorated, or deteriorating structures,  
13 predominance of defective or inadequate street layout, faulty lot layout  
14 in relation to size, adequacy, accessibility, or usefulness, insanitary or  
15 unsafe conditions, deterioration of site or other improvements, diversity  
16 of ownership, tax, or special assessment delinquency exceeding the fair  
17 value of the land, defective or unusual conditions of title, or the existence  
18 of conditions which endanger life or property by fire and other causes, or  
19 any combination, substantially impairs or arrests the sound growth of a  
20 city, retards the provision of housing accommodations, or constitutes an  
21 economic or social liability and is a menace to the public health, safety,  
22 morals, or welfare in its present condition and use.

23 (iii) Any area which is predominantly open and which because of  
24 obsolete platting, diversity of ownership, deterioration of structures or of  
25 site improvements, or otherwise, substantially impairs or arrests the  
26 sound growth of the community.

27 (2) "City" means any city [incorporated municipality] in this State.

28 (3) "Local legislative body" means [the common council].

29 (4) "Personal property" has the meaning prescribed in [appropriate  
30 state statute].

31 (5) "Planning commission" means a planning commission created  
32 under [appropriate state statute], a board of public land commissioners  
33 if the city has no planning commission, or a city planning committee of  
34 the local legislative body, if the city has neither a commission nor a board.

35 (6) "Project costs" means any expenditures made or estimated to be  
36 made or monetary obligations incurred or estimated to be incurred by the  
37 city which are listed in a project plan as costs of public works or improve-  
38 ments within a tax incremental district, plus any costs incidental thereto,  
39 diminished by any income, special assessments, or other revenues, other  
40 than tax increments, received or reasonably expected to be received by  
41 the city in connection with the implementation of the plan. Project costs  
42 include, but are not limited to:

43 (i) Capital costs, including the actual costs of the construction of  
44 public works or improvements, new buildings, structures, and fixtures;  
45 the demolition, alteration, remodeling, repair or reconstruction of exist-  
46 ing buildings, structures, and fixtures; the acquisition of equipment; and  
47 the clearing and grading of land.

48 (ii) Financing costs, including all interest paid to holders of evi-  
49 dences of indebtedness issued to pay for project costs and any premium  
50 paid over the principal amount thereof because of the redemption of such  
51 obligations prior to maturity.

52 (iii) Real property assembly costs, meaning any deficit incurred  
53 resulting from the sale or lease as lessor by the city of real or personal  
54 property within a tax incremental district for consideration which is less  
55 than its cost to the city.

56 (iv) Professional service costs, including those costs incurred for  
57 architectural, planning, engineering, and legal advice and services.

58 (v) Imputed administrative costs, including reasonable charges  
59 for the time spent by city employees in connection with the implementa-  
60 tion of a project plan.

61 (vi) Relocation costs, including those relocation payments made  
62 following condemnation under [appropriate state statute].

63 (vii) Organizational costs, including the costs of conducting en-  
64 vironmental impact and other studies and the costs of informing the  
65 public with respect to the creation of tax incremental districts and the  
66 implementation of project plans.

67 (viii) The amount of any contributions made under [appropriate  
68 state statute] in connection with the implementation of the project plan.

69 (ix) Payments made, at the discretion of the local legislative body,  
70 which are found to be necessary or convenient to the creation of tax  
71 incremental districts or the implementation of project plans.

72 (7) "Project plan" means the properly approved plan for the de-  
73 velopment or redevelopment of a tax incremental district, including all  
74 properly approved amendments thereto.

75 (8) "Real property" has the meaning prescribed in [appropriate  
76 state statute].

77 (9) "Tax increment" means that amount obtained by multiplying  
78 the total county, city, school, and other local general property taxes  
79 levied on all taxable property within a tax incremental district in any year  
80 by a fraction having a numerator equal to that year's equalized value of  
81 all taxable property in the district minus the tax incremental base and a  
82 denominator equal to that year's equalized value of all taxable property  
83 in the district. In any year, a tax increment is "positive" if the tax incre-  
84 mental base is less than the aggregate value of taxable property as equal-  
85 ized by the [department of revenue]; it is "negative" if the base exceeds  
86 such value.

87 (10) "Tax incremental base" means the aggregate value, as equal-  
88 ized by the [department of revenue], of all taxable property located within  
89 a tax incremental district on the date the district is created, determined  
90 as provided in Section 5(b).

91 (11) "Tax incremental district" means a contiguous geographic  
92 area within a city defined and created by resolution of the local legisla-  
93 tive body.

94 (12) "Taxable property" means all real and personal taxable prop-  
95 erty located in a tax incremental district.

1 Section 3. [*Powers of Cities.*] In addition to any other powers con-  
2 ferred by law, a city may exercise any powers necessary and convenient  
3 to carry out the purposes of this act, including the power to:

4 (1) Create tax incremental districts and to define the boundaries  
5 of the districts.

- 6 (2) Cause project plans to be prepared, to approve the plans, and  
7 to implement the provisions and effectuate the purposes of the plan.
- 8 (3) Issue tax incremental bonds and notes.
- 9 (4) Deposit moneys into the special fund of any tax incremental  
10 district.
- 11 (5) Enter into any contracts or agreements, including agreements  
12 with bondholders, determined by the local legislative body to be neces-  
13 sary or convenient to implement the provisions and effectuate the purposes  
14 of project plans. The contracts or agreements may include conditions,  
15 restrictions, or covenants which either run with the land or otherwise  
16 regulate the use of land.

1 Section 4. [*Creation of Tax Incremental Districts and Approval of*  
2 *Project Plans.*]

3 (a) In order to implement the provisions of this act, the following  
4 steps and plans are required:

5 (1) Holding of a public hearing by the planning commission at  
6 which interested parties are afforded a reasonable opportunity to express  
7 their views on the proposed creation of a tax incremental district and its  
8 proposed boundaries. Notice of the hearing shall be published as required  
9 by [appropriate state statute]. Prior to publication, a copy of the notice  
10 shall be sent by first class mail to the chief executive officer of all local  
11 governmental entities having the power to levy taxes on property located  
12 within the proposed district and to the school board of any school district  
13 which includes property located within the proposed district.

14 (2) Designation by the planning commission of the boundaries of  
15 a tax incremental district recommended by it to be created and submission  
16 of the recommendation to the local legislative body.

17 (3) Adoption by the local legislative body of a resolution which:

18 (i) Describes the boundaries, which may but need not be the  
19 same as those recommended by the planning commission, of a tax incre-  
20 mental district with sufficient definiteness to identify with ordinary and  
21 reasonable certainty the territory included. The local legislative body  
22 shall take care that the boundaries include only those whole units of  
23 property assessed for general property tax purposes.

24 (ii) Creates the district on a given date. If the resolution is adopted  
25 during the period between May 2 and September 30, then the date shall  
26 be the following May 1. If the resolution is adopted during the period  
27 between October 1 and April 30, then the date shall be the following  
28 May 1. If the resolution is adopted on May 1, then the date shall be the  
29 date of the resolution.

30 (iii) Assigns a name to the district for identification purposes. The  
31 first district created shall be known as "Tax Incremental District  
32 Number One, City of [ ]." Each subsequently created district shall  
33 be assigned the next consecutive number.

34 (iv) Contains findings that:

35 (A) Not less than 25 percent, by area, of the real property  
36 within the district meets at least one of the following criteria: (1) is a  
37 blighted area; (2) is in need of rehabilitation or conservation work within  
38 the meaning of [appropriate state statute]; or (3) is suitable for industrial  
39 sites within the meaning of [appropriate state statute].

40 (B) The improvement of the area is likely to enhance signifi-  
41 cantly the value of substantially all of the other real property in the  
42 district. It is not necessary to identify the specific parcels meeting the  
43 criteria.

44 (C) The aggregate value of equalized taxable property of the  
45 district plus all existing districts does not exceed 5 percent of the total  
46 value of equalized taxable property within the city.

47 (4) Preparation and adoption by the planning commission of a  
48 project plan for each tax incremental district and submission of the plan  
49 to the local legislative body. The plan shall include a statement listing  
50 the kind, number, and location of all proposed public works or improve-  
51 ments within the district; an economic feasibility study; a detailed list of  
52 estimated project costs; and a description of the methods of financing all  
53 estimated project costs and the time when related costs or monetary  
54 obligations are to be incurred. The plan shall also include a map showing  
55 existing uses and conditions of real property in the district; a map show-  
56 ing proposed improvements and uses therein; proposed changes of  
57 zoning ordinances; master plan, map, building codes, and city ordinances;  
58 a list of estimated nonproject costs; and a statement of a proposed method  
59 for the relocation of persons to be displaced.

60 (5) Approval by the local legislative body of a project plan. The  
61 approval shall be by resolution which contains findings that the plan is  
62 feasible and in conformity with the master plan, if any, of the city.

63 (b) The planning commission may at any time adopt an amendment to  
64 a project plan which shall be subject to approval by the local legislative  
65 body in the same manner as an initial project plan.

1 Section 5. [*Determination of Tax Increment and Tax Incremental Base.*]

2 (a) Upon the creation of a tax incremental district or adoption of any  
3 amendment subject to subsection (c) of this section, its tax incremental  
4 base shall be determined forthwith.

5 (b) Upon application in writing by the city clerk, on a form the [depart-  
6 ment of revenue] prescribes, the [department] shall determine according  
7 to its best judgment from all sources available to it the full aggregate  
8 value of the taxable property in the district, which aggregate valuation,  
9 upon certification to the city clerk, constitutes the tax incremental base  
10 of the district.

11 (c) If the city adopts an amendment to the original project plan for  
12 any district which includes additional project costs for which tax incre-  
13 ments may be received by such city, the tax incremental base for the



15 as of May 1 following the effective date of the amendment, except that if  
16 the effective date of the amendment is May 1 of any year, the redetermina-  
17 tion shall be made on that date. The tax incremental base as redetermined  
18 under this subsection is effective for the purposes of this act only if it  
19 exceeds the original tax incremental base determined under subsection (b)  
20 of this section.

21 (d) It is a rebuttable presumption that any property within a tax incre-  
22 mental district acquired or leased as lessee by the city, or any agency or  
23 instrumentality thereof, within one year immediately preceding the date  
24 of the creation of the district was so acquired or leased in contemplation  
25 of the creation of the district. The presumption may be rebutted by the  
26 city with proof that the property was so leased or acquired primarily for a  
27 purpose other than to reduce the tax incremental base. If the presumption  
28 is not rebutted, in determining the tax incremental base of the district,  
29 but for no other purpose, the taxable status of the property shall be  
30 determined as though such lease or acquisition had not occurred.

31 (e) The city assessor shall identify upon the assessment roll returned  
32 and examined under [appropriate state statute] those parcels of property  
33 which are within each existing tax incremental district, specifying the  
34 name of each district. A similar notation shall also appear on the tax  
35 roll made by the city clerk under [appropriate state statute].

36 (f) The [department of revenue] shall annually give notice to the  
37 designated finance officer of all governmental entities having the power  
38 to levy taxes on property within each district as to both the assessed  
39 and equalized value of the property and the assessed and equalized value  
40 of the tax increment base. The notice shall also explain that the taxes  
41 collected in excess of the base will be paid to the city as provided under  
42 Section 6(b).

1 Section 6. [*Allocation of Positive Tax Increments.*]

2 (a) Positive tax increments of a tax incremental district are allocated  
3 to the city which created the district for each year from the date when  
4 the district is created until the earlier of:

1 Section 6. [*Allocation of Positive Tax Increments.*]

2 (a) Positive tax increments of a tax incremental district are allocated  
3 to the city which created the district for each year from the date when  
4 the district is created until the earlier of:

5 (1) That time, after the completion of all public improvements  
6 specified in the plan or amendments, when the city has received aggre-  
7 gate tax increments of the district in an amount equal to the aggregate of  
8 all expenditures previously made or monetary obligations previously  
9 incurred for project costs for the district; or

10 (2) Fifteen years after the last expenditure identified in the plan is  
11 made. No expenditure may be provided for in the plan more than five  
12 years after the district is created unless an amendment is adopted by the

13 local legislative body under Section 5(c).

14 (b) Notwithstanding any other provision of law, every officer charged  
15 by law to collect and pay over or retain local general property taxes shall  
16 first, on the next settlement date provided by law, pay over to the city  
17 treasurer out of all such taxes which he has collected that portion which  
18 represents a tax increment allocable to such city.

19 (c) All tax increments received in a tax incremental district shall,  
20 upon receipt by the city treasurer, be deposited into a special fund for  
21 the district. The city treasurer may deposit additional moneys into the  
22 fund pursuant to an appropriation by the local legislative body. Moneys  
23 shall be paid out of the fund only to pay project costs of the district, to  
24 reimburse the city for the payments, or to satisfy claims of holders of  
25 tax incremental bonds or notes issued for the district. Subject to any  
26 agreement with bondholders, moneys in the fund may be temporarily  
27 invested in the same manner as other city funds. After all project costs  
28 and all tax incremental bonds and notes of the district have been paid or  
29 provided for, subject to any agreement with bondholders, if there remains  
30 in the fund any moneys, they shall be paid over to the treasurer of each  
31 county, school district, or other tax-levying municipality or to the general  
32 fund of the city in such amounts as belong to each respectively, having  
33 due regard for what portion of such moneys, if any, represents tax incre-  
34 ments not allocated to the city and what portion thereof, if any, repre-  
35 sents voluntary deposits of the city into the fund.

1 Section 7. [*Termination of Tax Incremental Districts.*] The existence  
2 of a tax incremental district shall terminate when:

- 3 (1) Positive tax increments are no longer allocable to a district  
4 under Section 6(a); or  
5 (2) The local legislative body, by resolution, dissolves the district.

1 Section 8. [*Financing of Project Costs.*]

2 (a) Payment of project costs may be made by any of the following  
3 methods or combination thereof:

- 4 (1) Payment by the city from the special fund of the tax incremental  
5 district.  
6 (2) Payment out of the city's general funds.  
7 (3) Payment out of the proceeds of the sale of bonds or notes issued  
8 by the city under [appropriate state statute].  
9 (4) Payment out of the proceeds of the sale of public improvement  
10 bonds issued by the city under [appropriate state statute].  
11 (5) Payment as provided under [appropriate state statute].  
12 (6) Payment out of the proceeds of mortgage bonds or notes or  
13 mortgage certificates issued by the city under [appropriate state statute].  
14 (7) Payment out of the proceeds of revenue bonds issued by the city  
15 under [appropriate state statute].

17 or notes issued by the city under this section.

18 (b) (1) For the purpose of paying project costs or of refunding notes  
19 issued under [appropriate state statute] or under this section, the local  
20 legislative body may issue tax incremental bonds or notes payable out  
21 of positive tax increments. Each bond or note and all interest coupons  
22 appurtenant thereto are declared to be negotiable instruments. The bonds  
23 and notes shall not be included in the computation of the constitutional  
24 debt limitation of the city. Bonds and notes issued under this section,  
25 together with interest and income, shall be taxed in the same manner as  
26 are municipal bonds issued under [appropriate state statute].

27 (2) Tax incremental bonds or notes shall be authorized by resolution  
28 of the local legislative body without the necessity of a referendum or any  
29 electorate approval, but the referendum or approval may be held through  
30 procedures provided in [appropriate state statute]. The resolution shall  
31 state the name of the tax incremental district, the amount of bonds or  
32 notes authorized, and the interest rate or rates to be borne by the bonds  
33 or notes. The resolution may prescribe the terms, form, and content of  
34 the bonds or notes and other matters as the local legislative body deems  
35 useful.

36 (3) Tax incremental bonds or notes may not be issued in an amount  
37 exceeding the aggregate project costs. The bonds or notes shall mature  
38 over a period not exceeding 20 years from the date thereof. The bonds  
39 or notes may contain a provision authorizing the redemption thereof, in  
40 whole or in part, at stipulated prices, at the option of the city, on any  
41 interest payment date and shall provide the method of selecting the bonds  
42 or notes to be redeemed. The principal and interest on the bonds and  
43 notes may be payable at any time and at any place. The bonds or notes  
44 may be payable to bearer or may be registered as to the principal or  
45 principal and interest. The bonds or notes may be in any denominations.  
46 The bonds or notes may be sold at public or private sale. Insofar as they  
47 are consistent with this section, the provisions of [appropriate state  
48 statute] relating to procedures for issuance, form, contents, execution,  
49 negotiation, and registration of municipal bonds and notes are incorporated  
50 herein by reference.

51 (4) Tax incremental bonds or notes are payable only out of the  
52 special fund created under Section 6(c). Each bond or note shall contain  
53 recitals as are necessary to show that it is only so payable and that it  
54 does not constitute an indebtedness of the city or a charge against its  
55 general taxing power. The local legislative body shall irrevocably pledge  
56 all or a part of such special fund to the payment of the bonds or notes.  
57 The special fund or designated part thereof may thereafter be used only  
58 for the payment of the bonds or notes and interest until they have been  
59 fully paid, and a holder of the bonds or notes or of any coupons apper-  
60 taining thereto shall have a lien against the special fund for payment of  
61 the bonds or notes and interest and may either at law or in equity protect

63 (5) To increase the security and marketability of tax incremental  
64 bonds or notes, the city may:

65 (i) Create a lien for the benefit of the bondholders upon any  
66 public improvements or public works financed thereby or the revenues  
67 therefrom.

68 (ii) Make covenants and do any and all acts not inconsistent with  
69 the [State] constitution as may be necessary or convenient or desirable  
70 in order to additionally secure bonds or notes or tend to make the bonds  
71 or notes more marketable according to the best judgment of the local  
72 legislative body.

1 Section 9. [*Overlapping Tax Incremental Districts.*]

2 (a) Subject to any agreement with bondholders, a tax incremental  
3 district may be created, the boundaries of which overlap one or more  
4 existing districts, except that districts created as of that date may not have  
5 overlapping boundaries.

6 (b) If the boundaries of two or more tax incremental districts overlap,  
7 in determining how positive tax increments generated by that area which  
8 is within two or more districts are allocated among the districts, but for  
9 no other purpose, the aggregate value of the taxable property in the area  
10 as equalized by the [department of revenue] in any year as to each earlier  
11 created district is deemed to be that portion of the tax incremental base  
12 of the district next created which is attributable to such overlapped area.

1 Section 10. [*Equalized Valuation for Apportionment of Property Taxes.*]

2 (a) With respect to the county, school districts, and any other local  
3 governmental body having the power to levy taxes on property located  
4 within a tax incremental district, the calculation of the equalized valua-  
5 tion of taxable property in a tax incremental district under [appropriate  
6 state statute] may not exceed the tax incremental base of the district  
7 until the district is terminated.

8 (b) All tax increments which have accrued to school districts under this  
9 act shall be determined and the amounts shall be paid on March 1 of each  
10 year out of the appropriation under [appropriate state statute] to all school  
11 districts which have territory in a tax incremental district.

1 Section 11. [*Comprehensive Report.*] The [department of local affairs  
2 and development], in cooperation with other state agencies and local  
3 governments, shall make a comprehensive report to the Governor and  
4 Legislature at the beginning of each [biennium], beginning with the  
5 [ biennium], as to the social, economic, and financial effects and  
6 impact of tax incremental financing projects.

1 Section 12. [*Tax Increments; Court Test.*] Upon enactment of this act,

2 the Attorney General shall promptly commence an action seeking a  
3 declaratory judgment to determine whether the constitution permits a  
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4 city or village to finance certain public improvements with the taxes  
5 derived from the increase in equalized taxable valuation within a tax  
6 incremental district in lieu of the taxes being received by the local govern-  
7 mental entities having authority to levy a tax within the district as pro-  
8 vided in and created by this act. The Attorney General shall petition for  
9 leave to commence the action as an original action before the [State  
10 Supreme Court]. If the petition is denied, he shall commence the action  
11 in the [appropriate state court].

1 Section 13. [*Severability.*] [Insert severability clause.]

1 Section 14. [*Repeal.*] [Insert repealer clause.]

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

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### **Public Guardian Act**

The proposed Office of Public Guardian provides free or low-cost guardian and conservator services for two classes of individuals. First, the public guardian would be available to serve as guardian or conservator for those persons who have no friends or relatives able and willing to serve as guardian or conservator within the jurisdiction of the court. Second, the public guardian would be available to persons whose income or wealth is inadequate to provide the requisite compensation to a private guardian or conservator. Although public guardians are currently provided in several States, none has such a wide range of powers as the public guardian under this proposal. The proposed public guardian is designed to serve a greater number of people than does a public guardian under any current statute. A third distinction is that the proposed public guardian will be available at little or no cost to most individuals served.

Four alternative systems for incorporating the Office of Public Guardian into state or local government are offered for selection at the option of the States. In each case the powers of the public guardian are nearly identical with those of a private guardian or conservator as provided by the Uniform Probate Code. The methods of paying for the services of public and private guardians and conservators differ.

A private guardian or conservator is paid out of the ward's or protected person's assets. Assuming that an individual's income or estate is large enough for a profit-making institution to be willing to serve as guardian or conservator, the income or estate may still be eaten away by administrative expenses. In contrast, the services of a public guardian would be provided at public expense unless the court determined that the income or the estate of the individual was large enough to bear the costs of the administration of the protective service.

The services of the proposed public guardian are available to anyone who would qualify for a private guardian or conservator, although it is anticipated that a public guardian will be appointed primarily when no one else is available and willing to serve. While traditional kinds of private guardians and conservators, such as spouses, trusted friends, and corporate trustees, generally should be appointed ahead of the public guardian, for many persons a public guardian may be the only guardian or conservator available. (Most of the above comments are taken verbatim from *A Handbook of Model State Statutes*, published in 1971, and sponsored by the National Council of Senior Citizens.)

This draft act was developed as part of the Aging Project of the Council of State Governments.

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### **Suggested Legislation**

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This act may be cited as the [State] Public  
2 Guardian Act.

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

2 (1) "Conservator" means a person appointed by a court to manage  
3 the estate of a protected person.

4 (2) "Court" means the court or branch having jurisdiction in matters  
5 relating to the affairs of decedents, in this State known as [ ].

6 (3) "Department" means the [state agency responsible for communi-  
7 ty-based services to the elderly].

8 (4) "Elderly" means a person 60 years of age or over who is a resi-  
9 dent of the State.

10 (5) "Emergency" means an elderly person living in conditions  
11 which present a substantial risk of death or immediate and serious  
12 physical harm to himself or others.

13 (6) "Emergency services" means protective services furnished to an  
14 elderly person in an emergency pursuant to the provisions of the  
15 [State Protective Services Act].

16 (7) "Guardian" means a person who has qualified as a guardian of  
17 an incapacitated person pursuant to testamentary or court appointment,  
18 but excludes one who is merely a guardian ad litem.

19 (8) "Incapacitated person" means

*Alternative A*

20 a person impaired by reason of mental illness, mental deficiency, physi-  
21 cal illness or disability, advanced age, chronic use of drugs, chronic  
22 intoxication, or other causes (except minority) to the extent that he lacks  
23 sufficient understanding or capacity to make or communicate responsible  
24 decisions concerning his person.

*Alternative B*

25 a person for whom a guardian has been appointed by the court.

26 (9) "Infirm person" means a person who, because of physical or  
27 mental disability, is substantially impaired in his ability to provide ade-  
28 quately for his own care or custody.

29 (10) "Interested person" means any adult relative or friend of an  
30 elderly person, or any official or representative of a protective services  
31 agency or of any public or nonprofit private agency, corporation, board,  
32 or organization eligible for designation as a Protective Services Agency.

33 (11) "Protected person" means a person for whom a conservator has  
34 been appointed or other protective order has been made.

35 (12) "Protective placement" means the transfer of an elderly person  
36 from independent living arrangements to a hospital, nursing home, or  
37 domiciliary or residential care facility, or from one institution to another,  
38 for a period anticipated to last longer than six days.

39 (13) "Protective services" means the services furnished by a Pro-  
40 tective Services Agency or its delegate, as described in the [State  
41 Protective Services Act].

42 (14) "Protective Services Agency" means a public or nonprofit  
43 private agency, corporation, board, or organization authorized by the  
44 department pursuant to the [State Protective Services Act] to furnish

- 45 protective services to elderly infirm, protected, or incapacitated persons  
46 and their spouses and to serve as conservators or guardians of the person  
47 for elderly protected or incapacitated persons upon appointment by a court.  
48 (15) "Public guardian" means the Office of Public Guardian.  
49 (16) "Ward" means a person for whom a guardian has been appointed.

1 Section 3. [*Establishment of Office.*]

*Alternative A*

2 (a) The Office of Public Guardian for elderly persons is established  
3 within [each court of this State which has original jurisdiction in guardian-  
4 ship and conservatorship hearings].

5 (b) The [chief judge; presiding judge] of each court which has an Office  
6 of Public Guardian shall appoint a public guardian who shall serve for  
7 good behavior and may be removed only by the [county board of super-  
8 visors].

9 (c) If in the discretion of the [chief judge; presiding judge] the needs  
10 of the jurisdiction do not require a full-time public guardian, the [chief  
11 judge; presiding judge] may appoint to the position an individual other  
12 than a public official or judge on a part-time basis with appropriate  
13 compensation.

14 (d) The chief administrative judge of the State shall issue regulations  
15 governing the administration of the various offices of public guardians  
16 throughout the State.

17 (e) The compensation for the position of public guardian shall be fixed  
18 [in the same manner as the compensation for other nonelective positions  
19 within the court where the office is located].

*Alternative B*

20 (a) The Office of Public Guardian for elderly persons is established in  
21 the executive branch of the government of [State].

22 (b) The head of the office shall be the public guardian, appointed by  
23 the Governor of the State, upon consultation with appropriate agencies  
24 and individuals concerned with elderly persons, for a term of [five]  
25 years from the time of appointment.

26 (c) The compensation for the public guardian shall be as provided in  
27 the budget.

*Alternative C*

28 (a) The Office of Public Guardian for elderly persons is established  
29 within the [state office on aging; the state department of social services;  
30 the state department of health and mental hygiene].

31 (b) Upon consultation with appropriate agencies and individuals  
32 concerned with elderly persons, the Governor shall appoint the public  
33 guardian, who shall hold office for a term of [five] years from the time  
34 of appointment.

35 (c) The compensation for the position of public guardian shall be as  
36 provided in the budget.



Alternative D

37 (a) Each county within the State shall establish the Office of Public  
38 Guardian for elderly persons.

39 (b) Upon consultation with appropriate agencies and individuals con-  
40 cerned with elderly persons, the county [board of supervisors; council]  
41 shall appoint the public guardian, who shall hold office for a term of  
42 [five] years from the time of appointment.

43 (c) If the needs of the county do not require that a person hold only the  
44 position of public guardian, the county [board of supervisors; council]  
45 may appoint an individual as guardian on a part-time basis, with ap-  
46 propriate compensation.

47 (d) The Attorney General of the State shall issue regulations governing  
48 the administration of the various offices of public guardians through  
49 the State.

50 (e) The compensation for the position of public guardian shall be fixed  
51 by the county [board of supervisors; council].

1 Section 4. [Powers and Duties.]

2 (a) The public guardian may serve as conservator or guardian, after  
3 appointment by a court pursuant to the provisions of the [conservator-  
4 ship or guardianship law of the State].

5 (b) The public guardian shall have the same powers and duties as a  
6 private conservator or guardian, except as otherwise limited by law or  
7 court order.

8 (c) The public guardian may petition the court to have himself or  
9 another appointed as conservator or guardian, to issue an emergency  
10 order for protective services pursuant to the [State Protective Services  
11 Act], and to order protective placement pursuant to the [State Protective  
12 Services Act].

13 (d) The public guardian, on his own motion or at the request of the  
14 court, may intervene at any time in any conservatorship or guardianship  
15 proceeding involving an elderly person by appropriate motion to the court,  
16 if he or the court deems intervention to be justified because an appoint-  
17 ed conservator or guardian is not fulfilling his duties, the estate is subject  
18 to disproportionate waste due to the costs of the guardianship or con-  
19 servatorship, or the best interests of the incapacitated or protected person  
20 require intervention.

21 (e) The public guardian pursuant to the [State Protective Services  
22 Act] may petition the court to enjoin interference by any person with the  
23 provision of protective services.

24 (f) The public guardian may employ subordinates necessary for the  
25 proper performance of his duties, to the extent authorized in the budget  
26 for his office.

27 (g) The public guardian may delegate to members of his staff his  
28 powers and duties as conservator or guardian and other powers and  
29 duties created by this act, although the public guardian retains ultimate

30 responsibility for the proper performance of these delegated functions.

31 (h) The public guardian:

32 (1) May formulate and adopt procedures necessary to promote the  
33 efficient conduct of the work and general administration of his office,  
34 its professional staff, and other employees.

35 (2) Shall establish and maintain working relationships with other  
36 governmental bodies and public and private agencies, institutions, and  
37 organizations, to assure the most effective conservatorship or guardian-  
38 ship program for each elderly person.

39 (3) May contract for services necessary to carry out the duties of  
40 his office.

41 (4) May accept the services of volunteer workers or consultants at  
42 no compensation or at nominal or token compensation and reimburse  
43 them for their proper and necessary expenses.

44 (5) Shall keep and maintain proper financial and statistical records  
45 concerning all cases in which the public guardian provides conservator-  
46 ship or guardianship services, or petitions a court to appoint a guardian,  
47 issue an emergency order for protective services, or order protective  
48 placement.

1 Section 5. [*Persons Eligible for Services; Petition by Elderly Person.*]

2 (a) An elderly person residing in the State is eligible for the services  
3 of the public guardian.

4 (b) An elderly person may petition the court to have the public guardian  
5 appointed as his conservator or guardian with the powers and duties  
6 ordinarily conferred by law on conservators and guardians or for certain  
7 limited purposes described in the petition which are consistent with the  
8 conservatorship and guardianship laws of this State. If the petition  
9 requests that only limited powers be granted, the court shall incorporate  
10 this limitation into its order of appointment. The filing of a petition is  
11 not the basis for any inference concerning the competence of the elderly  
12 person, or for any loss of civil rights or benefits.

1 Section 6. [*Allocation of Costs.*]

2 (a) If a public guardian is appointed conservator or guardian for an  
3 elderly person, the administrative costs of his services and the costs  
4 incurred in the appointment procedure shall not be charged against the  
5 income or the estate of the incapacitated person, unless the court deter-  
6 mines at any time that the person is financially able to pay all or part of  
7 the costs.

8 (b) The ability of the income or estate of the incapacitated or protected  
9 person to pay for administrative costs of a public guardian or costs  
10 incurred in the appointment procedure shall be measured according to  
11 the person's financial ability to engage and compensate a private guardian.

12 This ability is a variable dependent on the nature, extent, and liquidity  
13 of assets; the disposable net income of the person; the nature of the  
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14 conservatorship or guardianship; the type, duration, and complexity of  
15 the services required; and any other foreseeable expenses.

16 (c) The public guardian shall investigate the financial status of a  
17 person who requests the appointment of the public guardian as his  
18 guardian or for whom a court is considering the appointment of the  
19 public guardian. In connection with the investigation, the public guardian  
20 may require the elderly person to execute and deliver written requests or  
21 authorizations necessary under applicable law to provide the public  
22 guardian with access to records of public or private sources, otherwise  
23 confidential, needed to evaluate eligibility. The public guardian may  
24 obtain information from any public record office of the State or of any  
25 subdivision or agency thereof upon request and without payment of any  
26 fees ordinarily required by law.

27 (d) The reasonable value of the services rendered without cost to an  
28 incapacitated or protected person shall be allowed as a claim against  
29 the estate upon the death of the person.

1 Section 7. [*Term of Appointment; Accounting; Review of Appoint-*  
2 *ment; Hearing Procedure.*]

3 (a) The initial appointment by a court of the public guardian as con-  
4 servator or guardian shall be for a term of one year. Successive appoint-  
5 ments for a one-year term may be made by the court upon findings that  
6 (1) the person is still in need of a conservator or guardian; (2) the ap-  
7 propriate circumstances in Section 5 of this act still exist; and (3) the  
8 inventory, account, and plan of the public guardian submitted in accord  
9 with subsection (b) below are satisfactory.

10 (b) No later than [30] days prior to the expiration of his term as con-  
11 servator or guardian, the public guardian shall file with the court an  
12 inventory and account in accord with the provisions of [the conservator-  
13 ship or guardianship law of the State], which shall be subject to examina-  
14 tion pursuant to the provisions of [the conservatorship or guardianship  
15 law of the State]. At the same time he shall file a statement setting forth  
16 facts which indicate (1) the present personal status of the incapacitated  
17 person; (2) the public guardian's plan for preserving and maintaining  
18 the future well-being of the person; and (3) the need for the continuance  
19 or discontinuance of the conservatorship or guardianship, or for any  
20 alteration of the powers of the public guardian.

21 (c) The court shall hold a hearing for the purpose of making the  
22 findings set forth in subsection (a) above concerning renewal of the appoint-  
23 ment of the public guardian.

24 (d) The incapacitated or protected person shall be present at the hear-  
25 ing unless he has knowingly and voluntarily waived the right to be present  
26 or he is physically or mentally incapable of being present. Waiver may  
27 not be presumed from non-appearance but shall be determined on the  
28 basis of factual information supplied to the court by counsel or a visitor  
29 appointed by the court.

30 (e) The incapacitated or protected person has the right to counsel  
31 whether or not he is present at the hearing, unless he intelligently and  
32 voluntarily waives the right. If the person is indigent or lacks the capacity  
33 to waive counsel, the court shall appoint counsel. If the person is indigent,  
34 the State shall pay reasonable attorney's fees, i.e., compensation  
35 customarily charged by attorneys in the State for comparable services.

36 (f) The incapacitated or protected person has the right to trial by jury  
37 upon request by the person or his counsel.

38 (g) The incapacitated or protected person has the right, at his own  
39 expense or, if indigent, at the expense of the State, to secure an inde-  
40 pendent medical or psychological examination relevant to the issues  
41 involved in this hearing, and to present a report of this independent  
42 evaluation or the evaluator's personal testimony as evidence at the  
43 hearing.

44 (h) The incapacitated or protected person may present evidence and  
45 cross-examine witnesses.

46 (i) The duties of counsel representing an incapacitated or protected  
47 person at this hearing shall include: a personal interview with the person;  
48 counseling the person with respect to his rights; and arranging for an  
49 independent medical and/or psychological examination of the person, as  
50 provided in subsection (g) above.

1 Section 8. [*Termination.*] The public guardian may be discharged as  
2 conservator or guardian by a court upon petition of the incapacitated or  
3 protected person or any interested person or upon the court's own motion,  
4 if it appears that the services of the public guardian are no longer  
5 necessary.

1 Section 9. [*Succession to Position of Public Guardian; Vacancies.*]

2 (a) A person appointed to the position of public guardian succeeds  
3 immediately to all rights, duties, responsibilities, and powers of the  
4 preceding public guardian.

5 (b) If the position of public guardian is vacant, subordinate personnel  
6 employed under Section 4 of this act shall continue to act as if the posi-  
7 tion of public guardian were filled.

8 (c) If the position of public guardian is vacant, the court may act  
9 temporarily as public guardian until the position is filled.

10 (d) If the position of public guardian becomes vacant, a successor in  
11 office must be appointed within [45] days.

1 Section 10. [*Court Costs.*] In any proceeding for appointment of a  
2 public guardian, or in any proceeding involving the estate of a protected  
3 or incapacitated person for whom a public guardian has been appointed  
4 conservator or guardian, the court may waive any

1 Section 11. [*Bond Required.*]

2 (a) Upon taking office, a public guardian shall file with the clerk of the  
3 court in which he is to serve a general bond in the amount of [\$ ]  
4 payable to the State or to the people of the county in which the court is  
5 seated and issued by a surety company approved by the [chief judge; pre-  
6 siding judge] of the court. The bond shall be purchased with the [general  
7 funds of the State or county] and be conditioned upon the public guardian's  
8 faithful performance of his duties as conservator or guardian.  
9 (b) The general bond and oath of a public guardian is in lieu of the  
10 bond and oath required of a private conservator or guardian.

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

1 Section 13. [*Repeal.*] [Insert repealer clause.]

1 Section 14. [*Effective Date.*] [Insert effective date.]

**Multiservice Senior Center and Community Care  
Program Development Act**

One of the major concerns expressed by the elderly and their advocates at the Council of State Governments' regional forums was over those circumstances which compel senior citizens to enter custodial environments. Frequently those circumstances are the lack of available alternative resources for care even where only minor and temporary infirmities are involved. It has been suggested that a minimum of 40 percent of nursing home patients could and would stay in the familiar environment of their home if they could obtain health services and other supportive services on an outreach basis from a central agency. This statute is drawn from a Florida enactment aimed at creating such agencies. Other States, including Maryland, Massachusetts, and Pennsylvania, have taken initiatives, either administrative or legislative, to achieve this same end.

This draft act was developed as part of the Aging Project of the Council of State Governments.

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**Suggested Legislation**

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Multi-  
2 service Senior Center and Community Care Program Development Act.

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

2 (1) "Elderly person" means a person [65] years of age or older.

3 (2) "Functionally impaired person" means a person who, because  
4 of physical or mental disability, requires help from others in order to  
5 cope with the normal demands of daily living.

6 (3) "Center" means a multiservice senior center facility where  
7 elderly persons are provided with medical, social, supportive, and  
8 rehabilitative services in a centralized and comprehensive fashion. The  
9 center will also provide community care services to those who are unable  
10 to come to the center.

11 (4) "Community care" means a community-coordinated program  
12 administered from a center which provides coordinated home delivery  
13 of selected services to functionally impaired or other elderly persons.

14 (5) "Health services" means preventive medical services, diagnostic  
15 and treatment services, emergency health services, and counseling  
16 services on health matters which are provided on a daily basis at a center  
17 by at least one licensed physician or by a registered nurse or other quali-  
18 fied health professional under a licensed physician's supervision.

19 (6) "Employment services" means a program established to locate

21 time basis.

22 (7) "Information and referral services" means the use of a list of all  
23 services available in a community for elderly persons by a staff member of  
24 a center to assist individuals in identifying the type of assistance needed,  
25 to place individuals in contact with appropriate services, and to follow up  
26 to determine whether services have been received and identified needs met.

27 (8) "Health maintenance services" means those routine health  
28 services necessary to help confined elderly people maintain an appropri-  
29 ate standard of personal health. These services are provided by licensed  
30 physicians, registered nurses, or other qualified health service personnel.

31 (9) "Homemaking and chore services" means those routine house-  
32 hold services necessary to help functionally impaired older persons meet  
33 the normal demands of daily living. These services include light house-  
34 keeping and laundering, meal preparation, personal and food shopping,  
35 check cashing and bill paying, friendly visiting, minor household repairs,  
36 and yard chores.

37 (10) "Mobile meals" means hot or cold nourishing meals prepared  
38 under the supervision of a dietitian and delivered on a regular schedule  
39 to functionally impaired elderly persons living at home. This service will  
40 include a system for determining nutritional needs of participants.

41 (11) "Transportation service" means door-to-door vehicular transpor-  
42 tation for functionally impaired or other elderly persons living at home.

43 [(12) "Legal services" means the provision of legal advice and  
44 assistance by an attorney licensed to practice in [State] or by a paralegal  
45 or legal assistant acting under the supervision of an attorney.]

46 (13) "Counseling service" means the provision of information and  
47 advice by persons of professional or paraprofessional competence to  
48 enable elderly clients to make decisions on personal matters, including  
49 income, health, housing, transportation, and family, personal, and social  
50 relationships.

51 (14) "Area agency" means the single agency designated by the office  
52 on aging to be responsible for the program described in rules adopted  
53 pursuant to U.S.C. Section 3024, et seq., of the Older Americans Act of  
54 1965, in a designated geographical area of the State.

55 (15) "Department" means the [State Department of Elder Affairs].

1 Section 3. [Program Goals.] The goals of this act are to:

2 (1) Identify acceptable and economically feasible ways to provide  
3 coordinated medical, supportive, and rehabilitative services to elderly  
4 persons.

5 (2) Encourage elderly persons to maintain physical, social, and  
6 emotional well-being and to live dignified and reasonably independent  
7 lives in their own homes.

8 (3) Diminish the rate of inappropriate entry and placement of  
9 functionally impaired elderly persons in nursing homes and related health  
10 care facilities.

1 Section 4. [*Location.*]

2 (a) The department shall establish or cause to be established multi-  
3 service senior centers with community care components in each county  
4 or appropriate political subdivision of the State as appropriate and feasi-  
5 ble to the extent that federal, state, and local funding is available. The  
6 department shall promulgate procedures whereby interested counties,  
7 municipalities, or local organizations may make application to participate  
8 in the program. These procedures shall provide that elderly persons or  
9 representatives of organizations composed of elderly persons shall be  
10 assured of maximum feasible participation in the planning of these  
11 programs. Where an area agency has been designated, that agency will  
12 be given the option of establishing the center for its existing service area.

13 (b) Centers shall be centrally located and easily accessible to public  
14 transportation, if any is available in the particular locality. Provision  
15 shall be made for transporting persons wanting to gain access to the  
16 centers who are unable to do so because of financial inability or physical  
17 impairment. Centers shall be designed to provide ease of access and use  
18 considering the infirmities of frail and handicapped elderly persons;  
19 special safety features shall be provided in as unobtrusive a fashion  
20 as possible.

1 Section 5. [*Services.*]

2 (a) Services provided within the center shall include at least the fol-  
3 lowing:

- 4 (1) Health services.
- 5 (2) Employment services.
- 6 (3) Counseling services.
- 7 (4) Information and referral services.
- 8 [(5) Legal services.]

9 (b) Community care services provided from the center directly to the  
10 home from the center shall include at least the following:

- 11 (1) Health maintenance services.
- 12 (2) Homemaking and chore services.
- 13 (3) Mobile meals services.
- 14 (4) Transportation services.

15 (c) Services in addition to those described in subsections (a) and (b),  
16 including social and recreational services, adult education courses, tele-  
17 phone reassurance, escort services, and housing assistance, may be in-  
18 corporated into the center's programs as appropriate and to the extent  
19 that resources are available.

1 Section 6. [*Administration.*]

2 (a) Services may be furnished by public agencies or private organiza-  
3 tions, but the total system of providing services within and outside the  
4 center shall be coordinated by means of a single, centralized management  
5 unit which operates within the center and is established, staffed, and



6 equipped for this purpose.

7 (b) The department may contract for any portion or all of the services  
8 required by the center, and the contracts may be made with any other  
9 state agency, unit of the state education system, county agency, or private  
10 corporation in order to accomplish the purposes of this act.

11 (c) This act contemplates significant contribution of volunteer personal  
12 services; therefore, the department shall contract for the necessary  
13 insurance coverage to protect all volunteers from the normal risks of  
14 personal liability while they are acting within the scope of their volun-  
15 teer assignments for the community care for the elderly program in which  
16 they are participating.

17 (d) Once established, each of the centers shall receive state funds con-  
18 tinuously for a period of at least two years, at which time the [secretary  
19 of the department] shall make a report to [the Governor, the Speaker of  
20 the House of Representatives and to the President of the Senate] sum-  
21 marizing the results of programs offered by the center. This report shall  
22 include an evaluation of the extent to which these programs achieved the  
23 purposes expressed in Section 3. The report shall also include the infor-  
24 mation and data necessary for an accurate analysis of the costs and  
25 benefits associated with the establishment and operation of senior centers  
26 with community care components. The report should include a complete  
27 description of the programs that were established and may also include  
28 further information and discussion as the department deems appropriate  
29 and advisable.

1 Section 7. [*Client Eligibility.*]

2 (a) Services provided under this act are available to all persons [65]  
3 years of age or older, except if funds earmarked for particular component  
4 programs have other legally established client eligibility guidelines.

5 (b) It is the policy of this act to encourage voluntary contributions to  
6 the center by clients for services received from the center, but no eligi-  
7 ble client shall be refused services because of an inability or unwillingness  
8 to make a contribution.

1 Section 8. [*Discrimination Prohibited.*] Centers established pursuant  
2 to this act are open to all residents of the area being served without  
3 regard to race, religion, color, sex, or creed.

1 Section 9. [*Construction.*]

2 (a) The provisions of this act shall be liberally construed in order that  
3 the purposes of the act may be effectively accomplished.

4 (b) No provision of this act is intended to prevent the establishment of  
5 senior multiservice centers under guidelines different from those de-  
6 scribed in this act from funds other than those appropriated under this act.

2 shall manage, plan, oversee, and implement, where appropriate, serv-  
3 ices for elderly persons as provided in this act. In order to effect this  
4 purpose, the department or the duly authorized local agency may accept  
5 gifts and grants of any nature and enter into contracts for the purchase  
6 of services.

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

1 Section 12. [*Repeal.*] [Insert repealer clause.]

1 Section 13. [*Effective Date.*] [Insert effective date.]

### Hearing Aid Dealers Regulation Act

Elderly persons are often the victims of unethical practices in the sale of hearing aids. This act, drafted by the Retired Professional Action Group, offers broad consumer protection in the sale of hearing aids. It may be used in whole or in part to upgrade current laws regulating the sale of hearing aids, or as a basis for legislation where no law regulating the sale of hearing aids presently exists in a State. Some outstanding features of this act include the requirements of an evaluation and written recommendation by a medical ear specialist or an audiologist prior to the sale of a hearing aid, a trial period during which the purchaser can return an improperly fitted, defective, or unsuitable aid, and a training period and examination for all hearing aid dealers.

This draft act was developed as part of the Aging Project of the Council of State Governments.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Hearing  
2 Aid Dealers Act.

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

2 (1) "Department" means the [state department of health], which is  
3 charged with responsibility for administration of this act and, as the con-  
4 text requires, the term means the chief officer of that department and the  
5 authorized delegates of the chief officer.

6 (2) "Council" means the advisory council to the department.

7 (3) "Otolaryngologist" means a physician licensed in this State who  
8 specializes in ear, nose, and throat, and is a diplomate or eligible for  
9 qualification by the American Board of Otolaryngology as an otolaryn-  
10 gologist.

11 (4) "Otologist" means a physician licensed in this State who spe-  
12 cializes in the ear, and is a diplomate or eligible for qualification by  
13 the American Board of Otolaryngology as an otolaryngologist.

14 (5) "Audiologist" means an individual who is eligible for the Ameri-  
15 can Speech and Hearing Association certificate of clinical competence  
16 in audiology, which means the application of principles, methods, and  
17 procedures of measurement, testing, evaluation, prediction, consultation,  
18 counseling, instruction, habilitation, or rehabilitation related to hearing  
19 and disorders of hearing for the purpose of evaluating, identifying, pre-  
20 venting, ameliorating, or modifying these disorders and conditions in  
21 individuals or groups of individuals. For the purpose of this subsection  
22 the words "habilitation" and "rehabilitation" include, but are not limited

23 to, hearing aid evaluation and recommendation, auditory training, and  
24 speech reading.

25 (6) "Hearing aid dealer" or "registrant" means a person who has  
26 been issued a certificate of registration by the department, which autho-  
27 rizes him to engage in the business of fitting and selling hearing aids.

28 (7) "Fitting" includes the physical acts of adjusting the hearing aid  
29 to the individual, taking audiograms, making ear molds, and advising  
30 the individual with respect to hearing aids, audiogram interpretation,  
31 and assisting in the selection of a suitable hearing aid for the sole purpose  
32 of the sale of a hearing aid.

33 (8) "Sale" or "selling" includes any transfer of title to a hearing aid  
34 or transfer of the right to possession of a hearing aid by lease, bailment,  
35 loan, or any other contract, together with pricing, delivery, and guaran-  
36 teeing of the hearing aid. Wholesale transactions and gifts by public or  
37 charitable organizations are not included.

38 (9) "Hearing aid" means any electronic instrument or device worn  
39 on the human body represented as aiding or compensating for impaired  
40 human hearing, together with any parts, attachments, or accessories of  
41 the instrument or device, except batteries and cords.

42 (10) "Trainee temporary certificate of registration" means the  
43 certificate which is issued by the department to a qualified person,  
44 authorizing the person to engage in the training program prescribed by  
45 this act and to perform, under the supervision of a registrant, acts involved  
46 in the fitting and selling of hearing aids.

47 (11) "Trainee" means a person who does not qualify as a registrant,  
48 but who undertakes to do so through successful completion, under the  
49 direct and personal supervision and instruction of a registrant, of the  
50 training program prescribed in this act.

1 Section 3. [*Powers and Duties of the Department.*] The powers and  
2 duties of the department under this act are to:

3 (1) Establish an administrative subdivision within the department  
4 to assist in carrying out the provisions of this act.

5 (2) Employ and fix the compensation of persons needed to assist  
6 the department in carrying out the provisions of this act.

7 (3) Authorize all disbursements necessary to carry out the pro-  
8 visions of this act and receive and account for all fees.

9 (4) Approve examinations of applicants for certificates of registra-  
10 tion. The examination shall be prepared by an examining committee  
11 with the advice of the department and the council. The examining com-  
12 mittee shall consist of an otologist or otolaryngologist, an audiologist, and  
13 a hearing aid dealer who holds a certificate of registration under this act.  
14 The three persons need not be members of the council. If they are not  
15 members of the council, they shall be appointed for the purpose of  
16 carrying out this provision.

18 committee, qualifying written, oral, and practical examinations to test the  
19 knowledge and proficiency of applicants for certificates of registration.

20 (6) Designate the time and place for examining applicants for  
21 certificates of registration.

22 (7) Establish annual minimum requirements of continuing hearing  
23 aid education for renewal of certificates.

24 (8) Promulgate, with the advice of the council, rules and regulations  
25 consistent with the laws of this State which are deemed necessary to  
26 carry out the provisions of this act and publish and enforce the rules  
27 and regulations.

28 (9) Purchase and maintain, rent, or acquire audiometric equipment  
29 and facilities necessary to carry out the examination of applicants.

30 (10) Conduct investigations into the business and ethical back-  
31 ground of any person who makes application for a certificate of registra-  
32 tion or a trainee temporary certificate of registration in order to determine  
33 the applicant's qualifications.

34 (11) Issue and renew certificates of registration and trainee tempo-  
35 rary certificates of registration.

36 (12) Investigate alleged irregularities and complaints related to  
37 the fitting and selling of hearing aids and conduct public hearings re-  
38 garding any irregularities and complaints as deemed necessary by the  
39 department with the advice of the council.

40 (13) Suspend or revoke certificates of registration and temporary  
41 trainee certificates of registration with the advice of the council.

42 (14) Require the periodic inspection and calibration of audiometric  
43 testing equipment of each registrant, and carry out the periodic inspec-  
44 tion of facilities of persons who sell hearing aids to determine that  
45 minimal procedures and equipment are used.

46 (15) Delegate ministerial duties to the council as the department  
47 deems proper.

48 (16) Record council proceedings and maintain a register of persons  
49 whose certificates have been suspended or revoked. The books and  
50 records concerning the council proceedings shall be prima facie evidence  
51 of all matters reported therein.

52 (17) Make available for public inspection all the department's  
53 records pertaining to this act.

54 (18) Furnish, upon the oral or written request of any person, a  
55 list of persons registered under the provisions of this act.

1 Section 4. [*Advisory Council Established; Powers and Duties.*]

2 (a) There is created an advisory council to the department regarding  
3 hearing aid dealers consisting of nine members, who are residents of this  
4 State. Five members are a quorum. Two members shall be hearing aid  
5 dealers with at least three years' experience at the time of appointment

7 under this act, shall hold valid certificates of registration issued under  
8 this act. One member shall be an audiologist with at least three years'  
9 experience at the time of appointment in audiological practice. One  
10 member shall be an otolaryngologist or otologist. One member shall be  
11 a physician engaged in general practice. One member shall be a consumer  
12 hearing aid user. One member shall be a representative of a government  
13 or nongovernment consumer protection agency. One member shall be a  
14 representative of the [state department of education]. One member shall  
15 be the chief officer of the department or his delegate. The members of the  
16 council shall be appointed by the department, and the first appointments  
17 shall be made within 60 days after the effective date of this act. In making  
18 the appointments, the department shall consider nominations made by  
19 any state or voluntary agency or private citizen. The terms of office of  
20 members of the council shall be three years. Any vacancy on the council  
21 shall be filled for the remainder of the unexpired term with a person  
22 having the same qualifications as the former council member.

23 (b) Members of the council shall receive no compensation, but each is  
24 entitled to reimbursement for actual expenses incurred in the perfor-  
25 mance of duties under this act, payable from the fund established by  
26 Section 11 of this act.

27 (c) The council shall:

28 (1) Meet within 30 days after appointments are complete and elect  
29 a chairman and a vice chairman from its own members. Each officer  
30 shall hold office for one year.

31 (2) Hold a meeting twice each year and other meetings at times and  
32 places which the department, chairman, or a quorum of the council's  
33 members directs.

34 (3) Recommend to the department examination procedures for  
35 applicants, minimum requirements for the testing of equipment, minimal  
36 procedures necessary in fitting and selling of hearing aids, public hearings  
37 in accordance with Section 3(12), a code of ethics to assure improvement  
38 of services and procedures to be followed by registrants, and specialized  
39 educational courses for persons wishing to become hearing aid dealers.  
40 The council shall be guided by relevant rules and regulations adopted and  
41 promulgated by the Federal Trade Commission.

42 (4) Make a report each year to the department and to the Governor  
43 of its official acts during the preceding year.

44 (5) Hear the charges, defenses, and evidence in hearings conducted  
45 for alleged violations of any of the provisions of this act or any of the  
46 regulations issued pursuant to this act.

1 Section 5. [*Oath of Members of Council.*] Immediately upon appoint-  
2 ment and before entering upon the duties of office, each member of the  
3 council shall take the constitutional oath of office and file it with the  
4 [department of state], which shall issue to the member a certificate of  
5 appointment.

1 Section 6. [*Certificate of Registration or Trainee Certificate of Regis-*  
2 *tration Required.*] Beginning [ ] days after the effective date of  
3 this act, it is unlawful for any person in this State to engage in the busi-  
4 ness of fitting and selling hearing aids, or in any way advertise or repre-  
5 sent that he practices the fitting and selling of hearing aids, unless the  
6 person holds a certificate of registration, or a trainee temporary certificate  
7 of registration issued by the department.

1 Section 7. [*Exemptions.*]

2 (a) Nothing in this act prohibits a corporation, partnership, trust,  
3 association, or other similar organization from engaging in the business  
4 of fitting and selling hearing aids without a certificate of registration,  
5 if all fitting and selling of hearing aids are conducted by registrants.  
6 The organization shall file annually with the department a list of hearing  
7 aid dealers directly or indirectly employed by it. The organization also  
8 shall file with the department a statement on a form approved by the  
9 department that it submits itself to the rules and regulations of the  
10 department and the provisions of this act which the department deems  
11 applicable to the organization. The organization engaging in the business  
12 of fitting and selling hearing aids at retail shall maintain a place of  
13 business in this State which is an actual, established physical location  
14 from which the organization conducts its business and where applicable  
15 books and records are maintained.

16 (b) This act does not apply to a person engaged in the practice of  
17 fitting and recommending hearing aids, if the practice is part of the  
18 academic curriculum of an accredited institution of higher education, or  
19 part of a program conducted by a charitable institution or nonprofit  
20 organization supported primarily by voluntary contributions, or part of  
21 a program of a governmental agency, provided that the organization  
22 does not sell hearing aids.

23 (c) This act does not apply to any physician licensed to practice medi-  
24 cine in this State who does not sell hearing aids.

25 (d) This act does not apply to any audiologist practicing audiology  
26 in this State who does not sell hearing aids.

27 (e) This act does not apply to any dealer who sells hearing aids only  
28 upon the prescription or recommendation of a medical ear specialist or  
29 an audiologist, if the dealer does not engage in testing or fitting for the  
30 purpose of selling a hearing aid.

1 Section 8. [*Qualifications of Applicants for Registration.*]

2 (a) Any person engaged in the fitting and selling of hearing aids from  
3 an established place of business at a permanent address in this State for  
4 a period of not less than two years prior to the effective date of this act,  
5 upon sworn application to the department, is entitled to a certificate of  
6 registration. The registrant shall be required to take the first qualifying  
7 examination given by the department, provided that the first examination

8 of a registrant who is a member of the council or examining committee  
9 be delayed no longer than the third examination given by the department  
10 so that arrangements are made under which no member will participate  
11 in the preparation, administration, or grading of an examination taken by  
12 that member.

13 (b) If any person who received a certificate of registration by experience  
14 fails to take or pass the first examination required by this section, the  
15 certificate of registration of the person will be automatically revoked,  
16 and the department shall advise the person that he may apply for a  
17 trainee temporary certificate and undertake further training under Stage  
18 III of the trainee apprenticeship course prescribed by this act in Section  
19 9. If this situation occurs, the trainee must work under the supervision  
20 of a sponsor registrant.

21 (c) Each applicant for a certificate of registration or a trainee temporary  
22 certificate of registration shall be at least 18 years of age and not under  
23 disability of minority, be of good moral character, have the educational  
24 equivalent of successful completion of a four-year course in an accredited  
25 high school, and have an established business address in this State. The  
26 applicant shall submit to the department a sworn application on a form  
27 approved by the department, accompanied by the prescribed fee.

28 (d) Any person who holds a currently effective certificate of registra-  
29 tion or license to fit or sell hearing aids in another State and is qualified  
30 under subsection (c) of this section may make sworn application to the  
31 department to take the qualifying examination without any trainee  
32 period. Upon passing the examination, the person shall receive a certifi-  
33 cate of registration. If the person fails to pass the examination, the  
34 procedure shall be as provided in subsection (b) of this section.

35 (e) Any person who meets the requirements of subsection (c) of this  
36 section and who desires to become a registrant by successfully complet-  
37 ing the training program outlined in Section 9 of this act may submit a  
38 sworn application to the department for a trainee temporary certificate  
39 of registration. Previous experience is not required for a trainee certifi-  
40 cate. Upon receipt of the certificate, the trainee becomes subject to all  
41 the provisions of this act and regulations issued under it, and under  
42 the supervision and instruction of a registrant shall undertake the train-  
43 ing program described in Section 9 of this act. The application shall be  
44 accompanied by a sworn statement from the registrant who will be the  
45 applicant's supervising sponsor that the sponsor accepts responsibility  
46 for all acts of the applicant relating to fitting and selling of hearing aids  
47 during the training period, and that during at least Stages I and II of  
48 the training program the applicant will receive training and supervision  
49 in the same office occupied by the registrant.



3 and personal supervision of, and in the same office as, the sponsor regis-  
4 trant. During this stage, the trainee is not allowed to do any testing,  
5 fitting, or selling.

6 (b) Stage II—This training stage lasts for six months, during which the  
7 trainee may do testing for the proper selection and fitting of hearing aids  
8 and make ear impressions. During this period the trainee must work  
9 under the direct and personal supervision of, and in the same office as,  
10 the sponsor registrant. During this stage, the trainee may not make  
11 final testing or final fitting.

12 (c) Stage III—This training stage lasts for three months or until the  
13 time the next examination thereafter is given, whichever is longer. During  
14 this time the trainee may engage in all of the activities of a registrant,  
15 but must work under the supervision of the sponsor registrant.

16 (d) The three stages described above must be completed with no time  
17 lapse between stages except as authorized by the department for justi-  
18 fiable cause shown by the trainee, or sponsor, or both. A trainee who  
19 desires to change sponsors shall furnish the department with a sworn  
20 request, giving reasons for the request, accompanied by a sworn state-  
21 ment from the new sponsor with the undertakings required by Section 8(e)  
22 of this act, and accompanied by the trainee's temporary certificate of  
23 registration. If the transfer is approved, the certificate will be revali-  
24 dated without charge. If a sponsor desires to terminate responsibilities  
25 undertaken with regard to a trainee, he shall give the trainee 10 days'  
26 written notice, giving reasons, and notify the department accordingly  
27 by registered or certified mail.

28 (e) Upon completion of the three stages described in this section, the  
29 trainee shall take the qualifying examination given by the department  
30 and upon passing that examination shall receive a certificate of regis-  
31 tration.

32 (f) If a trainee who holds a trainee temporary certificate of registration  
33 takes and fails to pass the qualifying examination, he must work under  
34 the provisions of Stage III of the trainee apprenticeship period until the  
35 next examination.

36 (g) No trainee may perform any hearing health services for a customer  
37 without the customer being informed that the services are being performed  
38 by a trainee rather than by a registrant. The notice shall be given verbally  
39 by the trainee or by the registrant sponsor, and a trainee identification  
40 badge must be worn disclosing the status of the trainee. In each case,  
41 records shall be kept showing the particular services performed by the  
42 trainee.

43 (h) When a course in fitting and selling of hearing aids, approved by  
44 the department and the council, is established in this State as provided  
45 in Section 23, satisfactory completion of the course qualifies the student  
46 to take the examination required by this act without complying with the

1 Section 10. [*Examination and Registration Fees.*]

2 (a) Every initial application submitted to the department shall be  
3 accompanied by a fee of [\$ ] to cover costs of investigation and  
4 verification. No part of this fee may be refunded.

5 (b) The annual certificate of registration fee is [\$ ].

6 (c) The annual trainee temporary certificate of registration fee is  
7 [\$ ].

8 (d) The annual renewal fee for every certificate or temporary certi-  
9 cate of registration is [\$ ].

10 (e) The fee for each examination is [\$ ].

11 (f) The delinquency fee on renewals is [\$ ]. If any certificate or  
12 temporary certificate of registration is issued after January 1 in any  
13 year, the annual fee shall be reduced in an equitable manner as provided  
14 by regulations promulgated by the department.

1 Section 11. [*Disposition of Fees.*] All fees collected under the pro-  
2 visions of this act shall be paid to the department. The department shall  
3 deposit the funds with the [state treasurer], to the credit of the Hearing  
4 Aids and Devices Trust Fund, which is established. The costs of adminis-  
5 tration of this act shall be paid from the moneys collected under this act.

1 Section 12. [*Examination.*]

2 (a) An applicant must make a grade of 70 percent or more in each  
3 area, subject, or technique specified in this section to qualify for a  
4 certificate of registration. The oral, written, and practical examination  
5 shall be prescribed by the department in accordance with Section 3(4)  
6 and shall be given at least twice a year, or as often as necessary to  
7 process applications received. A person wishing to take the examination  
8 shall notify the department of his intention and the department shall  
9 supply the person with an application on a form prescribed by the  
10 department. The applicant shall execute the application and send it to  
11 the department together with the examination fee. If the department  
12 finds that the applicant is eligible to take the examination, it shall notify  
13 the applicant in advance of the time and place for the examination. If  
14 the application is rejected, the application fee shall be refunded. If the  
15 application is approved and the applicant does not take the examination,  
16 the fee shall not be refunded. No person will be permitted to take the  
17 examination more than three times.

18 (b) All applicants taking the examination at the same time shall be  
19 given the same written, oral, and practical examination. The examina-  
20 tion must be such that, in order to pass, the applicant must establish  
21 knowledge and proficiency in each of the following areas, subjects,  
22 and techniques:

23 (1) Tests of knowledge in the following areas as they pertain to the  
24 fitting of hearing aids:

- 26 (ii) The human hearing mechanism, including the science of hear-  
27 ing and the causes and rehabilitation of abnormal hearing disorders.  
28 (iii) Structure and functions of hearing aids.  
29 (iv) Basic psychology relating to the hearing impaired.  
30 (v) Availability of social service resources and other special re-  
31 sources for the hearing impaired.  
32 (vi) Knowledge of the provisions of this act, with emphasis on  
33 criminal provisions and the grounds on which a certificate of registration  
34 may be suspended or revoked.  
35 (2) Tests of proficiency in the following techniques as they pertain  
36 to the fitting of hearing aids:  
37 (i) Pure tone audiometry, including air conduction testing and  
38 bone conduction testing.  
39 (ii) Recorded speech audiometry, including speech reception  
40 threshold testing and speech discrimination testing.  
41 (iii) Theory and practice of masking methodology.  
42 (iv) Recording and evaluation of audiograms and speech audi-  
43 ometry to determine hearing aid candidacy.  
44 (v) Selection and adaption of hearing aids and testing of hearing  
45 aids.  
46 (vi) Basic repair and maintenance of hearing aids.  
47 (vii) Taking earmold impressions.  
48 (viii) Other skills as required for the fitting of hearing aids.  
49 (c) The examination shall be revised annually by the examining com-  
50 mittee so that it includes current and significant information which  
51 pertains to the categories in this section. No examination of any estab-  
52 lished association of hearing aid dealers or manufacturers may be used  
53 exclusively to replace this examination.

1 Section 13. [*Certificate of Registration.*] Upon passing the examination,  
2 the department shall issue to the applicant a certificate of registration  
3 under the seal of the department. The certificate of registration shall be  
4 prominently displayed at all times in the registrant's place of business.

1 Section 14. [*Grounds for Suspension, Revocation, or Refusal to Issue*  
2 *or Renew Certificate of Registration or Trainee Temporary Certificate*  
3 *of Registration.*] The department may suspend, revoke, or refuse to renew  
4 any certificate issued under this act, for any of the following reasons:

- 5 (1) Conviction of a felony or misdemeanor involving moral turpitude.  
6 (2) Willfully making a false statement to the department in an appli-  
7 cation for a certificate or for the renewal of any certificate or with respect  
8 to any matter within the scope of the department's power and duties  
9 under this act.  
10 (3) Altering any certificate with fraudulent intent.

12 in the fitting or selling of hearing aids.

13 (5) Violation of any of the provisions of this act, or any of the pro-  
14 visions of any rules or regulations promulgated pursuant to this act.

15 (6) Selling a hearing aid to any person unless within the preceding  
16 three months the person has been examined by an otolaryngologist or  
17 an otologist, and a written recommendation for a hearing aid has been  
18 made by the physician or by an audiologist eligible for certification by  
19 the American Speech and Hearing Association to whom the person has  
20 been referred by the physician. This does not apply to replacement of  
21 an identical hearing aid within one year of its purchase.

22 (7) Departing from the medical or audiological recommendations  
23 obtained pursuant to subsection (6) without consultation and written  
24 approval from the physician or the audiologist involved.

1 Section 15. [*Unethical Conduct Defined.*] Unethical conduct includes:

2 (1) Obtaining any fee or making or attempting to make any sale of  
3 any hearing aid by fraud or misrepresentation.

4 (2) Employing, directly or indirectly, any suspended or unregistered  
5 person to perform any work requiring a certificate of registration or a  
6 temporary certificate of registration.

7 (3) Using, causing, or promoting the use of any advertising matter,  
8 promotional literature, testimonial, guarantee, warranty, label, brand,  
9 insignia, or any other representation however disseminated or published  
10 which is misleading, deceitful, or untruthful.

11 (4) Advertising a particular model, type, or kind of hearing aid if  
12 the offer is not a bona fide effort to sell the product so offered as adver-  
13 tised and at the advertised price. Among actions or procedures which  
14 will be considered in determining whether this type of advertisement  
15 has been made are the following:

16 (i) The creation, through the initial offer of advertisement, of a  
17 false impression of the product offered in any material respect.

18 (ii) The refusal to show, demonstrate, or sell the product offered  
19 in accordance with the terms of the offer.

20 (iii) The disparagement, by actions or words, of the product  
21 offered; the guarantee; the credit terms; the availability of service,  
22 repairs, or parts; or any other disparagement in connection with the  
23 product's sale or service.

24 (iv) The showing, demonstrating and, in the event of sale, the  
25 delivery of a product which is unusable or impractical for the purpose  
26 represented or implied in the offer.

27 (v) The refusal, in the event of sale of the product offered, to  
28 deliver the product to the buyer within 30 days.

29 (vi) The failure to have access to a quantity of the advertised  
30 product at the advertised price sufficient to meet reasonably anticipated  
31 demands.

33 practice medicine or of a person certified as an audiologist will be used  
34 or made available in the selection, fitting, adjustment, maintenance, or  
35 repair of hearing aids when that is not true; or using or incorporating in  
36 any title or designation the words "doctor," "clinic," "clinical audiolo-  
37 gist," "audiologist," "state-licensed clinic," "state-registered," "state-  
38 certified," "state-approved," or any other term, abbreviation, or symbol,  
39 or wearing any costume which would give the false impression that one  
40 is being treated medically or audiologically or that the registrant's serv-  
41 ices have been recommended by the State.

42 (6) Canvassing from house to house or by telephone, either in person  
43 or by agents, for the purpose of selling a hearing aid, without prior  
44 request from the prospective customer.

45 (7) Selling a hearing aid to a person under the age of 18 years or to  
46 a person in a mental institution, hospital, nursing home, convalescent  
47 home, or like institution, unless there is present in addition to the regis-  
48 trant an adult person who is not a business associate of the registrant.

49 (8) Permitting another to use one's certificate of registration or  
50 temporary certificate of registration.

51 (9) Representing, advertising, or implying that the hearing aid repair  
52 is guaranteed, without a clear and concise disclosure of the identity of  
53 the guarantor, the nature and extent of the guarantee, and any conditions  
54 or limitations imposed.

55 (10) Failure to supervise a trainee as required by Sections 8 and 9 of  
56 this act or to accept responsibility for the actions of a trainee relating to  
57 the fitting and selling of hearing aids.

58 (11) Using any advertisement or other representation which has the  
59 effect of misleading or deceiving purchasers or prospective purchasers  
60 in the belief that any hearing aid or device, or part or accessory thereof,  
61 is a new invention or involves a new mechanical or scientific principle  
62 when that is not the fact.

63 (12) Representing, directly or by implication, that a hearing aid  
64 utilizing bone conduction has certain specified features, such as the  
65 absence of anything in the ear or leading to the ear, or the like, without  
66 disclosing clearly that the instrument operates on the bone conduction  
67 principle, and that in many cases of hearing loss this type of instrument  
68 may not be suitable.

69 (13) Stating or implying that the use of any hearing aid will restore  
70 hearing to normal, or preserve hearing, or prevent or retard progression  
71 of a hearing impairment, or any other false or misleading or medically or  
72 audiologically unsupportable claims regarding the efficacy or benefits  
73 of a hearing aid.

74 (14) Representing or implying that a hearing aid is or will be  
75 "custom-made," "made to order," "prescription made," or in any other  
76 sense especially fabricated for an individual when that is not the case.

77 (15) Directly or indirectly giving or offering to give, or permitting or  
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79 another in a professional capacity, as an inducement to influence the  
80 person, or to have the person influence others, to purchase or contract to  
81 purchase any product sold or offered for sale by the registrant or to  
82 influence any person to refrain from dealing in the products of competitors.

83 (16) Violation of any relevant rules and regulations adopted and  
84 promulgated by the Federal Trade Commission.

85 (17) Other acts or omission as the department determines by regula-  
86 tions to be unethical conduct.

1 Section 16. [*Trial Period: Receipt to be Furnished Purchasers of*  
2 *Hearing Aids.*] Every registrant who sells a hearing aid shall provide  
3 for a trial period of the instrument by the purchaser, and deliver to the  
4 purchaser a receipt which contains all of the following information:

5 (1) The name, address, and signature of the purchaser.

6 (2) The name, address of the regular place of business, the number  
7 of the certificate of registration, and the signature of the registrant.

8 (3) The make, model, serial number, purchase price, and the date  
9 the manufacturer first produced the same model.

10 (4) Whether the hearing aid sold is new, used, or rebuilt.

11 (5) If the hearing aid is (or has been represented to be) guaranteed,  
12 a clear and precise statement of:

13 (i) The identity of the guarantor and the manner in which the  
14 guarantor will perform under the guarantee (such as total or partial  
15 refund, repair, or exchange).

16 (ii) The nature and extent of the guarantee.

17 (iii) Any material conditions or limitations in the guarantee which  
18 are imposed by the guarantor.

19 (iv) The fact that the guarantee is offered only by the registrant, if  
20 a guarantee made by the registrant is not backed up by the manufacturer.

21 (6) The complete terms of the sale, including the terms of the trial  
22 period, an itemized account showing individually the goods and services  
23 and the individual prices for them, that go to make up the total amount  
24 charged the purchaser.

25 (7) The name and address of the department, with a statement that  
26 complaints which may arise with respect to the transaction may be sub-  
27 mitted to it.

28 (8) In type no smaller than the largest type contained in the receipt,  
29 the following statement:

30 The purchaser was advised at the outset of relations with the undersigned  
31 hearing aid dealer that any examination or representation made by the  
32 dealer in connection with the fitting and selling of the hearing aid de-  
33 scribed in this receipt is not an examination, diagnosis, or prescription by  
34 a person licensed to practice medicine, audiology, or otolaryngology  
35 in this State.

36 (9) A copy of the written recommendation and findings of the  
37 otolaryngologist, otologist, or audiologist who examined the purchaser

38 and issued clearance for a hearing aid, showing the type and degree of  
39 hearing disability involved (such as conductive, sensorineural, or mixed  
40 hearing loss).

41 (10) A statement precisely setting forth all representations made by  
42 the hearing aid dealer about the dealer's tests, test results, and recom-  
43 mendations, and about the special benefits of the hearing aid purchased,  
44 together with written materials supporting the claims or representations.

1 Section 17. [*Minimal Equipment and Procedures.*] The following mini-  
2 mal equipment and procedures as prescribed by the department, with  
3 the advice of the council, shall be used in connection with the fitting and  
4 sale of hearing aids:

5 (1) Minimal equipment includes:

6 (i) Access to a selection of hearing aid models and hearing aid  
7 supplies and services complete enough to accommodate the various needs  
8 of hearing aid users, as an adequate stock of hearing aids, including an  
9 appropriate selection of receivers and accessories, and access to facilities  
10 for making ear molds and any other supplies required by the department.

11 (ii) Satisfactory facilities for the personal comfort of customers.

12 (iii) A sound-treated testing room.

13 (iv) Pure tone audiometer which shall meet the American National  
14 Standards Institute specifications for diagnostic audiometers and which  
15 shall be calibrated and recorded at intervals established by the rules  
16 and regulations of the department.

17 (v) Speech audiometer for determining the most comfortable  
18 listening level and speech discrimination.

19 (2) Minimal procedures include:

20 (i) Pure tone audiometric testing by air and bone conduction to  
21 determine the degrees and types of hearing deficiency, and masking  
22 as required.

23 (ii) Appropriate testing to determine speech discrimination, speech  
24 reception threshold, most comfortable sound tolerance level, and selec-  
25 tion of the best ear for maximum hearing aid benefit. Selection of an  
26 instrument that will best compensate for the degree of loss and tolerance  
27 level and provide a frequency amplification curve that will give the best  
28 speech discrimination possible.

29 (iii) Final fitting of the hearing aid ensuring physical and opera-  
30 tional comfort.

31 (iv) Keeping a complete retail price list showing all hearing aid  
32 models for all prospective customers to examine.

33 (v) Keeping records on every customer to whom the registrant  
34 renders services or to whom he sells a hearing aid. The records shall be  
35 preserved for at least seven years after the sale of the hearing aid to the  
36 customer. If other hearing aids are subsequently sold to that customer,  
37 cumulative records must be maintained for at least seven years after the

39 for department inspection shall include:

- 40 (A) Copy of each receipt executed in connection with the fitting
- 41 and sale of each hearing aid.
- 42 (B) A complete record of tests, test results, and services.
- 43 (C) Customer's case history.
- 44 (D) Any correspondence specifically related to the customer or
- 45 hearing aid or aids sold to the customer.

1 Section 18. [*Renewal of Certificate of Registration or Trainee Tempo-*  
2 *rary Certificate of Registration.*]

3 (a) Every certificate shall expire on December 31 of the year in which  
4 it is issued. On or before October 1 of each year, the department shall  
5 mail to each registrant or trainee an application for renewal of the  
6 certificate. The application shall be completed by the registrant or trainee  
7 and sent to the department, accompanied by the annual renewal fee.  
8 Every application shall request a record of the current educational  
9 material the applicant has studied and the educational classes the  
10 applicant has attended in the hearing health field since last receiving a  
11 certificate of registration or a trainee temporary certificate of registra-  
12 tion. Upon approval of the application by the department, the department  
13 shall send the applicant a renewed certificate issued under the seal of  
14 the department.

15 (b) In the case of an application for renewal of a trainee temporary  
16 certificate of registration, the sponsor registrant shall sign a statement  
17 reporting the progress being made by the trainee. No trainee temporary  
18 certificate of registration shall be renewed for any person who has had  
19 the opportunity to take three consecutive examinations.

20 (c) A certificate which has not been renewed by January 1 of any year  
21 shall be automatically suspended after a 30-day grace period until the  
22 registrant or trainee pays the regular fee plus a delinquency fee of [\$ ]  
23 for each month or fraction of a month that the person failed to register,  
24 provided, that after a period of three months the certificate shall be  
25 automatically cancelled.

1 Section 19. [*Procedure for Handling Complaints and Denial, Suspen-*  
2 *sion, or Revocation of Certificates of Registration or Trainee Temporary*  
3 *Certificates of Registration; Public Hearings.*]

4 (a) Any person who wishes to make a complaint against a registrant or  
5 a trainee or an applicant for a certificate of registration under this act  
6 shall put the complaint in writing and file it with the department within  
7 one year from the date of the action (or failure to act) upon which the  
8 complaint is based. If the department finds, after an investigation it  
9 deems appropriate, and after advice of the council, that the charges in  
10 the complaint and the circumstances justify a public hearing to determine  
11 whether or not a certificate of registration or a trainee temporary



13 take action.

14 (b) The initial procedures to be followed are:

15 (1) No certificate may be denied, revoked, or suspended except after  
16 written notice by registered mail to the applicant or registrant or trainee,  
17 setting forth the particular reasons for the proposed action, furnishing  
18 a copy of the complaint, and explaining the right to a public hearing if  
19 demanded by the applicant or registrant or trainee.

20 (2) Any applicant or registrant who desires a hearing within 20 days  
21 after service of notice shall request the hearing in writing and send it  
22 to the department by registered mail.

23 (3) If an applicant or registrant or trainee requests a hearing, the  
24 department shall fix a date, time, and place for the hearing and notify  
25 the applicant or registrant or trainee accordingly. The notice shall be  
26 either personal notice or notice by registered mail, and shall be served at  
27 least 30 days before the date set for the hearing.

28 (4) If no request for a hearing is made, the department shall immedi-  
29 ately deny, revoke, or suspend the certificate.

30 (c) For the purpose of the hearing, the department may require the  
31 production of books, papers, and other documents, and issue subpoenas  
32 to compel witnesses to appear. Witnesses are entitled to the same per  
33 diem and mileage allowances as witnesses in the county courts of record  
34 in this State, payable out of the Hearing Aids and Devices Trust Fund,  
35 established by Section 11 of this act. The customary rules of evidence  
36 used in court proceedings are not applicable to the hearing.

37 (d) If the department determines from the evidence and proofs sub-  
38 mitted that the accused has been guilty of violating any of the provisions  
39 of this act, or any of the regulations promulgated by the department  
40 pursuant to this act, the department, within 30 days after the hearing,  
41 shall issue an order refusing to issue or renew, or revoking or suspending  
42 (as the case may be), the certificate. The order shall include the findings  
43 of fact and the conclusions of law made by the council. A copy of the  
44 order shall be sent to the accused by registered mail. The records of the  
45 department shall reflect the action taken by the department on the  
46 charges and the department shall preserve a record of the proceedings  
47 in a manner similar to that used by courts of record in the State.

48 (e) The final order of the department in the proceedings for denial,  
49 suspension, or revocation of a certificate are subject to appeal to, and  
50 review by, an appropriate court of record in the county where the accused  
51 resides, or in which the accused's principal place of business is located.

52 (f) The department shall send a copy of the complaint and a copy of the  
53 department's final order to the Attorney General for purposes of informa-  
54 tion in the event the accused pursues a court appeal, and for consideration  
55 as to whether the violations are flagrant enough to justify prosecution.

56 (g) Insofar as applicable, the provisions of the [State Administrative  
57 Procedures Act] shall govern the hearing and appeal set forth in this  
58 section.

1 Section 20. [*Attorney General and County Prosecuting Attorneys.*]  
2 The Attorney General of this State and all county prosecuting attorneys  
3 shall assist the department in the enforcement of this act.

1 Section 21. [*Penalties.*] Violation of any of the provisions of this act,  
2 or of any of the regulations promulgated pursuant to this act, is a mis-  
3 demeanor, punishable upon conviction by a fine of not more than [\$500],  
4 or imprisonment for not more than [90] days, or both.

1 Section 22. [*Action to Enjoin Violations of Act; Bond Not Required.*]  
2 (a) Upon violation of any of the provisions of this act, or of any of the  
3 rules and regulations promulgated by the department pursuant to this  
4 act, any judge of a court of record in any county where the violation  
5 occurs may restrain and enjoin any person or his agents or representa-  
6 tives from further violating any of the provisions. The injunctive relief  
7 may be granted upon the application of the department and shall not be  
8 barred by reason of any administrative or penal proceedings had or pend-  
9 ing involving the same charges. No bond is required when injunctive  
10 relief is sought.

11 (b) Nothing contained in this section precludes any other person from  
12 obtaining injunctive relief or damages on account of a violation of this act.

1 Section 23. [*Establishment of Academic Courses in the Fitting, Selling,  
2 and Servicing of Hearing Aids.*]

3 (a) The [state department of education], with the advice and assistance  
4 of the department and the advisory council, shall establish within educa-  
5 tional institutions, financed in whole or in part with public funds of this  
6 State, formal courses of instruction to enable eligible students to become  
7 qualified hearing aid dealers and fitters. Minimum enrollment require-  
8 ments shall be good moral character and the educational equivalent of  
9 successful completion of a four-year course in an accredited high school.

10 (b) The course shall consist of a minimum of the equivalent of [30  
11 semester hours], as computed by accredited colleges and universities  
12 in this State. The semester hours shall be devoted to classroom instruc-  
13 tion and practical application as the [state department of education] and  
14 the department find most effective.

15 (c) Insofar as feasible, the [state department of education] shall pro-  
16 vide for the utilization of present faculty members teaching audiology,  
17 physics, and physiology, and may permit employment of additional full-  
18 or part-time instructors as necessary to carry out the purposes of this  
19 section.

20 (d) One year after instruction is commenced under this section, the  
21 [state department of education] may modify the number of semester  
22 hours and subjects of instruction required for successful completion of  
23 the course to reach the number of hours and subjects necessary for an

25 (e) Successful completion of the course provided herein shall qualify  
26 the student to take the examination required by this act without comply-  
27 ing with the requirements of the trainee apprenticeship course described  
28 in Section 9.

29 (f) The [state department of education] and the department may  
30 promulgate rules and regulations, not contrary to the laws of this State,  
31 necessary to carry out the purposes of this section.

1 Section 24. [*Severability.*] [Insert severability clause.]

1 Section 25. [*Repeal.*] [Insert repealer clause.]

1 Section 26. [*Effective Date.*] [Insert effective date.]

### Health Care Facility, Safety, and Security Act

This act has as its goal the enforcement of health, safety, and security standards in skilled and intermediate nursing homes and in residential care facilities. The basic enforcement mechanism is the "citation system," whereby a representative of the department of health, upon inspection initiated by complaint or in fulfillment of the requirement for periodic inspections, can issue one of two classes of citations, depending on the seriousness of the violation. The licensee of the facility has a time period in which to correct the condition or conditions leading to the violation and, if he does not do so, an initial fine is levied and an extra fine is levied for each day the violation continues after that. This act also requires public posting of notices of uncorrected violations and other means to make public those violations of health, safety, and security standards by the health care facility. This act is modeled after a California statute.

This draft act was developed as part of the Aging Project of the Council of State Governments.

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#### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Health  
2 Care Facility, Safety, and Security Act.

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

2 (1) "Health care facility" means any skilled or intermediate nursing  
3 home as defined by the [applicable state law] and any residential facility  
4 providing services and care to persons with some degree of physical or  
5 mental impairment, below the skilled or intermediate nursing care level.  
6 Hospitals are not included in this definition.

7 (2) "Licensee" means the holder of a license issued for a health  
8 care facility.

9 (3) "Department" means the [state department of health], which is  
10 charged with responsibility for administration of this act and, as the  
11 context requires, the term means the chief officer of the department or  
12 the duly authorized delegate or delegates of the chief officer.

1 Section 3. [*Request for Inspection.*] Any person may request an in-  
2 spection of any health care facility in accordance with the provisions  
3 of this act by giving notice to the department of an alleged violation of  
4 applicable requirements of state law. A notice shall be in writing signed  
5 by the complainant and set forth the matters complained of, with reasona-  
6 ble particularity. The substance of the complaint shall be provided to the  
7 licensee no earlier than at the commencement of the inspection. Neither

9 complaint or record published, released, or otherwise made available to  
10 the licensee may disclose the name of the complainant or other person  
11 mentioned in the complaint, except the name or names of any duly  
12 authorized officer, employee, or agent of the department conducting the  
13 investigation or inspection pursuant to this act, unless the complainant  
14 specifically requests the release of his name or the matter results in a  
15 judicial proceeding.

1 Section 4. [*Preliminary Review; Inspection.*] Upon receipt of a com-  
2 plaint, the department may assign an inspector to make a preliminary  
3 review of the complaint and notify the complainant of the name of the  
4 inspector. Unless the department determines that the complaint is  
5 willfully intended to harass a licensee or is without any reasonable basis,  
6 it shall make an onsite inspection within [10] working days of the  
7 receipt of the complaint. In either event, the complainant shall be  
8 promptly informed of the department's proposed course of action. Upon  
9 the request of either the complainant or the department, the complainant  
10 or his representative, or both, may be allowed to accompany the inspector  
11 to the site of the alleged violations during his tour of the facility, unless  
12 the inspector determines that the privacy of any resident would be vio-  
13 lated thereby.

1 Section 5. [*Procedures; Penalty for Advance Notice.*]  
2 (a) Any authorized officer, employee, or agent of the department may  
3 enter and inspect any health care facility at any time, including, but not  
4 limited to, interviewing residents and reviewing records, to enforce any  
5 provision of this act. Inspections conducted pursuant to complaints filed  
6 with the department shall be conducted in a manner which will assure  
7 maximum effectiveness. No advance notice may be given of any inspec-  
8 tion conducted pursuant to this act unless previously and specifically  
9 authorized by the department or required by federal law.  
10 (b) Any public employee giving advance notice in violation of this  
11 section shall be suspended from all duties without pay for a period  
12 determined by the department.

1 Section 6. [*General Inspections.*] The department, in addition to any  
2 inspections conducted pursuant to complaints filed pursuant to this act,  
3 shall conduct at least two general inspections, and as many additional  
4 inspections as necessary in every calendar year of all health care facili-  
5 ties in the State without providing notice of the inspections.

1 Section 7. [*Issuance of Citations.*] If upon inspection or investigation  
2 the department determines that a health care facility is in violation of  
3 any statutory provision or rule or regulation relating to the operation  
4 or maintenance of the facility, or that the licensee is not qualified to  
5 be licensed, and the licensee is not qualified to be licensed, and the licensee is  
6 determined to have only a minimal relationship to safety or health pursuant to

6 Section 11, it shall, not later than one day after the date of inspection,  
7 issue a citation to the licensee. The citation shall be served upon the  
8 licensee personally or by registered mail in a manner which will assure  
9 adequate notice. A copy of the citation also shall be sent to the com-  
10 plainant. Each citation shall be in writing and describe with particularity  
11 the nature of the violation, including a reference to the statutory pro-  
12 vision, standard, rule, or regulation alleged to have been violated. The  
13 citation shall fix the earliest feasible time for the elimination of the  
14 condition constituting the violation, where appropriate.

1 Section 8. [*Classification of Violations.*] Citations issued pursuant to  
2 this act shall be classified according to the nature of the violation and  
3 indicate the classification on the face thereof, as follows:

4 (1) Class A violations are violations which the department deter-  
5 mines present an imminent danger to the residents or guests of the  
6 health care facility or a substantial probability that death or serious  
7 physical harm would result therefrom. A physical condition or one or  
8 more practices, means, methods, or operations in use in a health care  
9 facility may constitute a violation. The condition or practice constituting  
10 a Class A violation shall be abated or eliminated immediately, unless a  
11 fixed period of time, as determined by the department, is required for  
12 correction. A Class A violation is subject to a fine in an amount not less  
13 than [\$1,000] and not exceeding [\$5,000] for each and every violation.

14 (2) Class B violations are violations which the department deter-  
15 mines have a direct or immediate relationship to the health, safety, or  
16 security of health care facility residents, other than Class A violations.  
17 A Class B violation is subject to a fine in an amount of not less than  
18 [\$50] and not exceeding [\$250] for each and every violation. A citation  
19 for a Class B violation shall specify the time within which the violation  
20 is required to be corrected. If a Class B violation is corrected within the  
21 time specified, no fine shall be imposed.

1 Section 9. [*Subsequent Penalties.*] If a licensee has failed to correct a  
2 violation within the time specified in the citation, the department shall  
3 assess the licensee a fine of [\$50] for each day the deficiency continues  
4 beyond the date specified for correction.

1 Section 10. [*Regulations.*] After consultation with industry, profes-  
2 sional, and consumer groups affected thereby, not later than three months  
3 after the effective date of this act, the department shall publish proposed  
4 regulations setting forth the criteria and, if feasible, the specific acts that  
5 constitute Class A and Class B violations under this act. Not later than  
6 six months after the effective date of this act, the department shall adopt  
7 and promulgate regulations setting forth criteria and, if feasible, specific  
8 acts constituting Class A and Class B violations.

1 Section 11. [*Notice of Violation.*] The department shall prescribe  
2 procedures for the issuance of a notice of violation with respect to viola-  
3 tions having only a minimal relationship to safety or health.

1 Section 12. [*Contesting Citations; Court Procedures.*]

2 (a) If a licensee desires to contest a citation or the proposed assessment  
3 of a fine therefor, within four business days after service of the citation  
4 he shall notify the department in writing of his request for an informal  
5 conference with the designee of the department for the county in which  
6 the cited health care facility is located. The designee, within four business  
7 days from the receipt of the request, shall hold an informal conference,  
8 at the conclusion of which he may affirm, modify, or dismiss the citation  
9 or proposed assessment of a fine. If the designee modifies or dismisses  
10 the citation or proposed assessment of a fine, he shall state with particu-  
11 larity in writing his reasons for the action, and immediately transmit a  
12 copy thereof to each party to the original complaint. If the licensee  
13 desires to contest a decision made after the informal conference, he shall  
14 inform the department in writing within four business days after he re-  
15 ceives the decision by the department's designee. If the licensee fails to  
16 notify the department in writing that he intends to contest the citation or  
17 the proposed assessment of a fine therefor or the decision made by a  
18 designee after an informal conference within the time specified in this  
19 subsection, the citation or the proposed assessment of a fine or the deci-  
20 sion by a designee after an informal conference shall be deemed a final  
21 order of the department and not be subject to further administrative  
22 review.

23 (b) A licensee, in lieu of contesting a citation pursuant to this section,  
24 may transmit to the department the minimum amount specified by law  
25 for each violation within four business days after the issuance of the  
26 citation.

27 (c) If a licensee notifies the department that he intends to contest a  
28 citation, the department shall immediately notify the Attorney General.  
29 Upon notification, the Attorney General shall promptly take all appropri-  
30 ate action to enforce the citation and recover the fine prescribed thereon,  
31 and take other action he deems appropriate, in the [appropriate court]  
32 of the county in which the health care facility is located.

33 (d) In assessing the fine for each count of violation, the court shall  
34 consider the nature of the violation and the seriousness of the effect of  
35 the violation upon the effectuation of the purposes and provisions of  
36 this act.

37 (e) The fine authorized by this act shall be trebled for a second or sub-  
38 sequent violation occurring within any 12-month period, if a citation was  
39 issued for the previous violation occurring within that period and a fine  
40 was assessed therefor.

41 (f) Actions brought under the provisions of this act shall be set for  
42 trial at the earliest possible date and shall be tried by a jury.  
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43 dar over all other cases except those to which equal or superior prece-  
44 dence is specifically granted by law. The times for responsive pleadings  
45 and for hearings in the proceedings shall be set by the judge of the court  
46 with the object of securing a decision at the earliest possible time.

1 Section 13. [*Posting; Availability of Citations.*]

2 (a) Each citation for a Class A violation specified in Section 8(1) which  
3 is issued pursuant to this section and is final, or a copy or copies thereof,  
4 shall be prominently posted, as prescribed in regulations issued by the  
5 department, until the violation is corrected to the satisfaction of the  
6 department, up to a maximum of 120 days. The citation or copy shall be  
7 posted in a place or places in plain view of the residents in the health  
8 care facility, persons visiting those residents, and persons who inquire  
9 about placement in the facility.

10 (b) Each citation for Class A and Class B violations specified in  
11 Section 8(1) and (2) which is issued pursuant to this section and is final,  
12 or a copy or copies thereof, shall be retained by the licensee at the facility  
13 cited until the violation is corrected to the satisfaction of the department.  
14 Each citation shall be made promptly available by the licensee for in-  
15 spection or examination by any member of the public who so requests.  
16 In addition, every licensee shall post in a place or places in plain view  
17 of the residents in the health care facility, persons visiting those residents,  
18 and persons who inquire about placement in the facility, a prominent  
19 notice informing the persons that copies of all final uncorrected violations  
20 issued by the department to the facility will be made promptly available  
21 by the licensee for inspection by any person who so requests.

1 Section 14. [*Injunctions; Civil Damages.*] Unless the department has  
2 taken action and the violations have been corrected to its satisfaction,  
3 any licensee who commits a Class A or Class B violation may be enjoined  
4 from permitting the violation to continue or sued for civil damages within  
5 a court of competent jurisdiction. Actions for injunction or civil damages,  
6 or both, may be prosecuted by the Attorney General in the name of the  
7 people of the State of [ ] upon his own complaint or upon the com-  
8 plaint of any board, officer, person, corporation, or association, or by  
9 any person acting for the interests of himself, the residents of the health  
10 care facility, or members of the general public. The remedies specified in  
11 this section are in addition to any other remedy provided by law.

1 Section 15. [*Misdemeanors for Certain Acts.*] It is a misdemeanor for  
2 any person to do any of the following:

3 (1) Willfully prevent, interfere with, or attempt to impede in any  
4 way the work of any duly authorized representative of the department in  
5 the lawful enforcement of any provision of this act.

6 (2) Willfully prevent or attempt to prevent the representative from  
7 examining any relevant books or records in the conduct of his official



8 duties under this act.

9 (3) Willfully prevent or interfere with the representative in preserv-  
10 ing evidence of any violation of any of the provisions of this act or of the  
11 rules and regulations promulgated under this act.

1 Section 16. [*No Retaliation or Discrimination; Violations of Medical*  
2 *Personnel.*]

3 (a) No licensee may discriminate or retaliate in any manner against a  
4 resident or employee in its health care facility on the basis or for the  
5 reason that the resident or employee or any other person has initiated or  
6 participated in any proceeding specified in this act. A licensee who vio-  
7 lates this section is subject to a fine of not more than [\$500], to be  
8 assessed by the department and collected in the manner provided in  
9 Section 14.

10 (b) Any attempt to expel a resident from a health care facility, or any  
11 type of discriminatory treatment of a resident by whom, or upon whose  
12 behalf, a complaint has been submitted to the department or any pro-  
13 ceeding instituted under or related to this act within 120 days of the  
14 filing of the complaint or the institution of the action, shall raise a  
15 rebuttable presumption that the action was taken by the licensee in  
16 retaliation for the filing of the complaint.

17 (c) No licensee may be cited for any violation caused by any person  
18 licensed pursuant to the [state statutes licensing medical personnel] if  
19 the person is independent of and not connected with the licensee and the  
20 licensee shows that he has exercised reasonable care and diligence in  
21 notifying the persons of their duty to the residents in the licensee's  
22 health care facility.

1 Section 17. [*Individual Causes of Action.*] The remedies provided by  
2 this act are cumulative and shall not be construed as restricting any  
3 remedy, provisional or otherwise, provided by law for the benefit of any  
4 party, and no judgment under this act precludes any party from obtaining  
5 additional relief based upon the same facts.

1 Section 18. [*Notification to and Referral by Public Agencies.*] The  
2 department, on or before [February 1] of each year, shall notify all  
3 public agencies which refer residents to health care facilities of all the  
4 health care facilities in the area found upon inspection within the previous  
5 12-month period to be without Class A or Class B violations. Public  
6 agencies shall give priority to these health care facilities in referring  
7 publicly assisted residents. No public agency may refer residents to health  
8 care facilities with any uncorrected Class A violations or five or more  
9 uncorrected Class B violations, except those health care facilities which  
10 the department may exempt because of a lack of facilities of the same  
11 type in the area sufficient to satisfy the demand for services provided by  
12 this type of facility.

1 Section 19. [*Annual Reports.*] The department shall annually prepare  
2 and make available in all offices of the [facilities licensing section] a  
3 report listing all licensees by name and address, indicating the number of  
4 citations and the nature of each citation issued to each licensee during  
5 the previous 12-month period and the status of any action taken pursuant  
6 to each citation, including fines assessed, and the nature and status of  
7 action taken with respect to each uncorrected violation for which a cita-  
8 tion is outstanding.

1 Section 20. [*Training for Inspectors.*] The department shall provide for  
2 ongoing training for inspectors charged with implementation of this  
3 act in investigative techniques and standards relating to the quality of  
4 care provided by health care facilities.

1 Section 21. [*Review of Effectiveness; Recommendations.*] On or before  
2 [ ], the department shall review the effectiveness of the enforcement  
3 of the provisions of this act in maintaining the quality of care provided by  
4 health care facilities and submit a report thereon to the Legislature to-  
5 gether with any recommendations of the department for additional  
6 legislation which it deems necessary to improve the enforcement of the  
7 provisions of this act or to enhance the quality of care provided by the  
8 facilities.

1 Section 22. [*Public Record; Public Inspection.*] Any writing received,  
2 owned, used, or retained by the department in connection with the  
3 provisions of this act is public record. However, the names of any persons  
4 contained in the records, except the names of duly authorized officers,  
5 employees, or agents of the department conducting an investigation of  
6 inspection in response to a complaint filed pursuant to this act, shall not  
7 be open to public inspection and copies of the records provided for public  
8 inspection shall have the names deleted.

1 Section 23. [*Severability.*] [Insert severability clause.]

1 Section 24. [*Repeal.*] [Insert repealer clause.]

1 Section 25. [*Effective Date.*] [Insert effective date.]

### Life Care and Payments Contracts Act

A home is often an elderly person's only financial asset. This act allows the transfer of this asset or other property by the elderly person to a person or organization in exchange for the provision of either care in an institution or periodic support payments while he remains in his home. A number of safeguards are included in this act to ensure honesty and fair dealing. The person or organization providing the payments or care must procure a certificate of authority from the appropriate state agency. Before an applicant can obtain a certificate, it may be required to file a bond with the agency. The agreement itself must be approved by the agency before it or any transaction completed in connection with it becomes valid. Certificate holders must also maintain specified reserves. This act states the provisions which must be included in every agreement for life care or payments, a copy of which must be furnished to each party. If an elderly person for some reason is discharged from an institution providing life care, the certificate holder must either provide alternative care or refund an appropriate portion of the value of the assets transferred. The grounds and the procedures for suspending or revoking a certificate are also established.

This act and the preceding introduction are taken from *A Handbook of Model State Statutes*, published in 1971, developed under the auspices of the Legislative Research Center of the University of Michigan Law School, and sponsored by the National Council of Senior Citizens.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Life Care  
2 and Payments Contracts Act.

1 Section 2. [*Life Care Agreements; Transfers; Payments.*]

2 (a) Any person, association, or corporation which holds a certificate  
3 of authority issued by the [appropriate state agency] may receive trans-  
4 fers of property from persons [60] years of age or older as consideration  
5 for the agreement of the person, association, or corporation:

6 (1) To provide care payments to the transferor for life or for a period  
7 of [two] years or more; or

8 (2) To provide or purchase care for the transferor for life or for a  
9 period of [two] years or more, but only if the care provided or purchased  
10 meets the standards of the [appropriate state agency].

11 (b) Transfer of property under this act shall include the transfer of  
12 rights as a joint tenant with right of survivorship and of rights as a  
13 tenant in common.

15 (a)(1) may be allocated to the transferor in weekly, biweekly, or monthly  
16 installments. The amount of each installment and the time period over  
17 which the total number of installments will be paid shall be computed  
18 by the person, association, or corporation making the payments, based  
19 on the transferor's equity and life expectancy as determined from mor-  
20 tality or actuarial tables approved by the [appropriate state agency]. An  
21 agreement for life care payments is not effective until the [appropriate  
22 state agency] has determined that the computation is accurate and valid  
23 and that the amount of the payments is adequate and fair.

24 (d) If the transferor is living when the total number of life care install-  
25 ment payments is exhausted, he may continue to reside on the transferred  
26 property until he dies or voluntarily changes his residence. After his  
27 death or voluntary change of residence, the person, association, or  
28 corporation which made the payments may take possession of the property.

29 (e) Life care pursuant to an agreement under subsection (a)(2) may  
30 include provision of reasonable cash payments to the transferor or his  
31 nominee for personal and incidental expenses.

1 Section 3. [*Issuance of Certificate of Authority; Standards.*]

2 (a) The [appropriate state agency] shall issue to a person, association,  
3 or corporation a certificate of authority to enter into agreements for life  
4 care payments or for life care if:

5 (1) The person, association, or corporation has complied with all  
6 provisions of this act.

7 (2) The person, association, or corporation has submitted written  
8 statements detailing the care, services, or payments which will be pro-  
9 vided to or purchased for transferors.

10 (3) The person, association, or corporation submits a written state-  
11 ment specifying the costs of providing life care, services, or payments.

12 (4) The person, association, or corporation has submitted all other  
13 information and complied with all other requirements deemed necessary  
14 by the [appropriate state agency].

15 (b) The [appropriate state agency] shall refuse to issue a certificate of  
16 authority to any applicant who has failed to comply with any provision  
17 of this act.

1 Section 4. [*Surety Bond: Applicant for Certificate of Authority.*]

2 (a) Before issuing a certificate of authority, the [appropriate state  
3 agency], if necessary, may require an applicant for a certificate to file  
4 with the [appropriate state agency], and maintain in effect, during the  
5 period that the certificate is in force, a bond:

6 (1) Executed by a surety approved by the [appropriate state agency].

7 (2) In an amount satisfactory to the [appropriate state agency].

8 (3) Conditioned upon the applicant's faithful performance of all  
9 obligations which he undertakes pursuant to the certificate of authority.

11 by the failure of the applicant to perform his obligations.

12 (b) Any person injured or aggrieved by the failure of the certificate  
13 holder to faithfully perform his obligations undertaken pursuant to the  
14 certificate may bring suit on the bond in his own name.

1 Section 5. [*Surety Bond: Agent or Employee with Access to Funds.*]  
2 Before issuing a certificate of authority, the [appropriate state agency]  
3 shall require that any agent or employee of the applicant, who in the course  
4 of his agency or employment has access to any substantial amount of  
5 funds, furnish and maintain in effect during the period that the certificate  
6 of authority is in force, a surety bond in form and amount the [appropriate  
7 state agency] deems necessary to protect all persons from loss of the funds.

1 Section 6. [*Transferor's Lien; Recording; Release; Appeal; Judicial*  
2 *Review.*] If necessary to secure the performance of all obligations of the  
3 certificate holder to transferors, the [appropriate state agency] may  
4 record with the recorder of any [county] a notice of lien on behalf of the  
5 transferors. From the time of the recording, there exists a lien on all real  
6 property of the certificate holder, not exempt from execution, either  
7 owned by him at the time or which he may afterward acquire before the  
8 release of the lien, and located within the [county] where the notice is  
9 recorded. The [appropriate state agency] shall file a release of the lien  
10 upon proof of complete performance of all obligations to transferors, or  
11 upon the filing of a bond meeting the conditions set forth in this act. The  
12 [appropriate state agency] may file a release of the lien if it deems the  
13 lien no longer necessary to secure the performance of all obligations of  
14 the certificate holder to the transferors. The certificate holder may appeal  
15 to the [appropriate state agency] from a refusal of a request for release  
16 of the lien. The decision of the board is subject to court review pursuant  
17 to the [State Administrative Procedures Act], upon petition of the cer-  
18 tificate holder filed within [30] days of service of the decision.

1 Section 7. [*Reserve Requirements.*]

2 (a) A certificate holder shall maintain reserves covering obligations  
3 assumed under all agreements entered into and maintained. Reserves  
4 shall be in an amount not less than the sum computed in accordance with  
5 the standard of valuation based upon a modern and up-to-date table of  
6 mortality selected by the [appropriate state agency]. The interest assump-  
7 tion for that computation shall be determined by the [appropriate state  
8 agency].

9 (b) Failure to maintain reserves as provided in this section shall be  
10 deemed a breach of all agreements to furnish care.

11 (c) Reserves shall consist of the following:

12 (1) Deposits in commercial and savings accounts with banks which  
13 are members of the Federal Deposit Insurance Corporation, to the extent  
14 that the deposits are insured by that corporation.

15 (2) Investments in certificates issued by building and loan associa-  
16 tions which are members of the Federal Deposit Insurance Corporation,  
17 to the extent that the certificates are insured by that corporation.

18 (3) Notes receivable secured by first deeds of trust and first mortgages.

19 (4) Bonds and stocks selected from an approved list, as determined  
20 by the [appropriate state agency]. If stocks, bonds, and securities that  
21 are not on the approved list are part of the reserves, and if they are to be  
22 retained as part of the reserves, it is not necessary that those unapproved  
23 stocks, bonds, and securities be disposed of immediately, but they shall  
24 be disposed of in accordance with regulations of the [appropriate state  
25 agency] and disposal shall be accomplished in a gradual manner so as to  
26 avoid loss to certificate holders. Securities which, although not on the  
27 approved list, should be retained in the reserve for reasons acceptable to  
28 the [appropriate state agency] may be retained with the specific approval  
29 of the [appropriate state agency].

30 (5) Real estate used to provide care and housing for transferors under  
31 life care contracts, or equities therein, owned by the certificate holder,  
32 to the extent of [40] percent of the net value thereof. Appraisals shall be  
33 made by two appraisers approved by the [appropriate state agency].

34 (6) Furniture and equipment situated in property used to provide  
35 care and housing for holders of life care contracts, to the extent of [30]  
36 percent of the net value thereof. Appraisals shall be made by two appraisers  
37 approved by the [appropriate state agency].

38 (7) Real estate or equities therein owned by the certificate holder  
39 as an investment, the rents from which are used to discharge obligations  
40 to the transferors or to reinvest as a part of the reserves.

41 (8) At least [25] percent of the reserve necessary to maintain all care  
42 agreements must consist of bonds, stocks, commercial and savings  
43 accounts, and building and loan certificates.

44 (d) For purposes of computing the reserve, the liens required under  
45 Section 6 shall not be deducted from the value of real or personal property.

1 Section 8. [*Agreements as Preferred Claims on Liquidation.*] In the  
2 event of liquidation, all care agreements executed by a certificate holder  
3 shall be deemed a preferred claim against all assets owned by the certifi-  
4 cate holder.

1 Section 9. [*Filing Copy of Agreement; Statute of Frauds; Approval of*  
2 *Terms.*]

3 (a) The [appropriate state agency] may require the filing with it of a  
4 copy of any agreement entered into between the certificate holder and  
5 transferor, by every person or organization holding a certificate of  
6 authority to receive transfers under this act. All agreements entered into  
7 between the certificate holder and the transferor shall be in writing and

8 (b) The [appropriate state agency] shall require that any forms used by  
9

10 the certificate holder in concluding an agreement with any transferor be  
11 filed with and approved by the [appropriate state agency] prior to their  
12 use by the certificate holder.

1 Section 10. [*Contents of Agreement.*] A care agreement executed be-  
2 tween a transferor and a certificate holder shall:

3 (1) Show the value of all property transferred, including donations,  
4 subscriptions, fees, and any other amounts paid or payable by or on  
5 behalf of the transferor.

6 (2) Show all services which are to be provided by the certificate  
7 holder to the transferor, including, in detail, all items which the transferor  
8 will receive—as board, room, medical care, clothing, burial and incident-  
9 als—and whether the items will be provided for a designated time period  
10 or for life, and the estimated monthly cost to the certificate holder of  
11 providing the care.

12 (3) Be accompanied by a financial statement showing all facts perti-  
13 nent to the financial condition of the certificate holder.

14 (4) Be furnished, together with the financial statement, to the  
15 transferor.

16 (5) Include the statutory rights of both parties.

17 (6) Include any other information or provisions deemed necessary by  
18 the [appropriate state agency].

1 Section 11. [*Contract Approval.*] Neither an agreement for life care or  
2 life care payments or for care or payments over a period of [two] years or  
3 more nor any transfer of property pursuant to that agreement is valid  
4 unless the agreement is approved by the [appropriate state agency].

1 Section 12. [*Dismissal or Discharge of Transferor; Alternative Care;*  
2 *Refund.*] If the agreement for care permits dismissal or discharge of the  
3 transferor from the institution providing care prior to the expiration of  
4 the agreement, with or without cause, the certificate holder, at the  
5 transferor's election, must:

6 (1) Provide an alternative care program approved by the [appropri-  
7 ate state agency], or

8 (2) Refund to the transferor a sum equal to the amount of the  
9 projected cost to the certificate holder of maintaining the transferor in  
10 the institution for the remaining period of the agreement.

1 Section 13. [*Rules and Regulations; Inspections.*]

2 (a) The [appropriate state agency] may make any rules and regulations  
3 for the governing of the dealings and operations of certificate holders  
4 necessary to protect the rights of transferors.

5 (b) The [appropriate state agency], by a duly authorized representa-  
6 tive, may inspect and examine any institution, home, place, books and

8 agreements of a certificate holder.

1 Section 14. [*Annual Audit.*]

2 (a) In lieu of making a detailed financial investigation, the [appropri-  
3 ate state agency] may accept an annual audit of the records of the  
4 organization or person, made by a certified public accountant or public  
5 accountant, which includes a certification, if such is the case, that the  
6 organization or person is maintaining reserves in accordance with the  
7 requirements of Section 7.

8 (b) Each certificate holder shall have an annual audit made of its  
9 financial affairs by a certified public accountant or a public accountant,  
10 which audit shall include full details on per capita costs of operation and  
11 on the matter of reserves. A copy of the audit shall be filed with the  
12 [appropriate state agency]. Funds and property received as advanced  
13 payments for maintenance of the transferors shall be reported separately  
14 from membership fees, donations, or other funds available for capital  
15 expansion.

1 Section 15. [*Application for Certificate of Authority; Duration.*] An  
2 applicant for a certificate of authority shall submit a formal application  
3 to the [appropriate state agency] in conformance with regulations issued  
4 by the [appropriate state agency]. When issued, the certificate remains in  
5 force until suspended or revoked by the [appropriate state agency] in  
6 accordance with Section 16.

1 Section 16. [*Suspension or Revocation of Certificate of Authority;*  
2 *Grounds; Appeal.*]

3 (a) A certificate of authority may be suspended or revoked for cause  
4 by the [appropriate state agency]. Grounds for suspension or revocation  
5 include violation of the provisions of this act, violations of rules or regu-  
6 lations issued by the [appropriate state agency] pursuant to this act,  
7 and any fraudulent or misrepresentative practice.

8 (b) A certificate holder whose certificate of authority is suspended or  
9 revoked may appeal to the [appropriate state agency]. The proceedings  
10 shall be conducted in accordance with the [State Administrative Pro-  
11 cedures Act].

12 (c) Final decision of the [appropriate state agency] may be appealed  
13 to the [appropriate court].

1 Section 17. [*Sufficiency of Reserves.*] For the failure of any certificate  
2 holder to establish and maintain reserves as provided in this act, the  
3 [appropriate state agency] shall revoke the certificate of authority.

1 Section 18. [*Nontransferability of Certificate; Change of Terms or*  
2 *Place of Performance.*] No certificate of authority is transferable. Neither  
3 the terms of the agreement, nor the place of performance, shall be changed in any  
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4 agreement shall be changed without the written consent of the [appropri-  
5 ate state agency], except in circumstances where a transferor is removed  
6 from a life care facility for medical treatment.

1 Section 19. [*Sale of Home by Certificate Holder; Approval.*] A holder  
2 of a certificate of authority, who has life care residents in an institution  
3 and who wishes to sell or transfer ownership of the institution to another  
4 party, shall first obtain approval from the [appropriate state agency].

1 Section 20. [*Penalties for Violations.*] Any person, association, or  
2 corporation which maintains, enters into, or as manager or officer or in  
3 any other administrative capacity assists in maintaining or entering into  
4 any agreement providing for transfer of property, conditioned upon an  
5 agreement to furnish life care or life care payments to the transferor  
6 or his legal representative, without first having secured a certificate of  
7 authority therefor in writing, or which refuses to permit or interferes  
8 with the inspection authorized by this act, is guilty of a misdemeanor and  
9 is punishable by fine not in excess of [\$500], or by imprisonment not in  
10 excess of [90] days, or both.

1 Section 21. [*Advertisements, etc.; Soliciting Life Care Contracts; Re-*  
2 *quirements; Penalties for Violations.*]

3 (a) Any report, circular, public announcement, certificate, financial  
4 statement, or other printed matter or advertising material which is de-  
5 signed for or used to solicit or induce persons to enter into any agreement  
6 providing for the transfer of property, conditioned upon an agreement to  
7 furnish life care or life care payments, or care or payments for a period of  
8 more than [two] years, and which lists or refers to the name of any  
9 individual or organization as being interested in or connected with the  
10 person, association, or corporation to perform the contract, shall clearly  
11 state the extent of financial responsibility assumed by that individual  
12 or organization for the person, association, or corporation and the ful-  
13 fillment of its contracts.

14 (b) Any person, association, or corporation that issues, delivers, or  
15 publishes, or as manager or officer or in any other administrative capacity  
16 assists in the issuance, delivery, or publication of any printed matter or  
17 advertising material which does not conform to the requirements of this  
18 section is guilty of a misdemeanor and is punishable by fine not in excess  
19 of [\$500], or by imprisonment not in excess of [90] days, or both.

1 Section 22. [*Severability.*] [Insert severability clause.]

1 Section 23. [*Repeal.*] [Insert repealer clause.]

1 Section 24. [*Effective Date.*] [Insert effective date.]

### Sexual Assault Act

Recent state actions indicate a trend toward modification of current rape statutes. Several jurisdictions have enacted laws which protect the rape victim from disclosure in court of irrelevant evidence describing previous sexual conduct. These laws are designed, in large part, to encourage the rape victim to prosecute the rapist. Other States have modified rape statutes to establish different degrees of the offense as well as to make changes which recognize that rape or sexual assault may be committed by females as well as males. Many of these statutes contain penalties for certain types of sexual contact even if actual rape was not involved.

This draft act was prepared by the Council of State Governments and contains the provisions described above. It is based upon an act introduced in Congress, and recently enacted Kentucky and Wisconsin statutes.

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### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Sexual  
2 Assault Act.

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

2 (1) "Complaining witness" means the alleged victim of the crime  
3 charged, the prosecution of which is subject to the provisions of this act.

4 (2) "Actor" means the person accused of conduct prohibited by this  
5 act.

6 (3) "Intimate parts" means the genital, groin, inner thigh, buttock,  
7 anus, or breast of a human being.

8 (4) "Mentally defective" means an individual suffering from a  
9 mental disease or deficiency which renders the individual temporarily  
10 or permanently incapable of appraising the nature of his conduct.

11 (5) "Mentally incapacitated" means an individual temporarily  
12 incapable of appraising or controlling his conduct by reason of the influ-  
13 ence of a narcotic, anesthetic, or other substance, administered without  
14 the individual's consent.

15 (6) "Physically helpless" means an individual physically unable to  
16 communicate unwillingness to an act because of the individual's being  
17 asleep, unconscious, or for other reasons.

18 (7) "Personal injury" means bodily injury, mental anguish, chronic  
19 pain, pregnancy, disease, and loss or impairment of a sexual or repro-  
20 ductive organ.

21 (8) "Sexual contact" means the intentional touching of the victim's  
22 or actor's intimate parts or the intentional touching of the clothing

24 reasonably construed as being for the purpose of sexual arousal or  
25 gratification.

26 (9) "Sexual penetration" means sexual intercourse, cunnilingus,  
27 fellatio, anal intercourse, or any other intrusion, however slight, of any  
28 part of a human's body or of any other object into the genital or anal  
29 openings of another human's body.

30 (10) "Consent" means words or overt actions by a person who is  
31 competent to give informed consent indicating a freely given agreement  
32 to have sexual contact or sexual penetration. A person under [15] years  
33 of age is incapable of consent as a matter of law. The following persons  
34 are presumed incapable of consent but the presumption may be rebutted  
35 by competent evidence:

36 (i) A person who is [15] to [17] years of age.

37 (ii) A person suffering from a mental illness or defect which  
38 impairs his capacity to appraise his conduct.

39 (iii) A person who is unconscious or for any other reason is  
40 physically unable to communicate unwillingness to an act.

41 (11) "Force or coercion" includes:

42 (i) The application of physical force or physical violence.

43 (ii) The threat of physical force or physical violence, when the  
44 victim believes that the actor has the present ability to execute this threat.

45 (iii) The medical treatment or examination of the victim in a man-  
46 ner or for purposes which are recognized by the medical profession as  
47 unethical.

48 (iv) The use of concealment or surprise to overcome the victim.

1 Section 3. [*Sexual Assault.*]

2 (a) Whoever does any one of the following shall be guilty of first  
3 degree sexual assault and shall be fined not more than [\$15,000], or  
4 imprisoned for not more than [15] years, or both:

5 (1) Has sexual contact or sexual penetration with another person  
6 without consent of that person and causes pregnancy or great bodily harm  
7 to that person.

8 (2) Has sexual contact or sexual penetration with another person  
9 without consent of that person by use or threat of use of a dangerous  
10 weapon or any article used or fashioned in a manner to lead the victim  
11 reasonably to believe it to be a dangerous weapon.

12 (3) Is aided or abetted by one or more other persons and has sexual  
13 contact or sexual penetration with another person with consent of that  
14 person by use or threat of use of force or violence.

15 (4) Has sexual contact or sexual penetration with a person [12]  
16 years of age or younger.

17 (b) Whoever does any one of the following shall be guilty of second  
18 degree sexual assault and shall be fined not more than [\$10,000], or

19 (1) Has sexual contact or sexual penetration with another person  
20

21 without consent of that person by use or threat of use of force or violence.  
22 (2) Has sexual contact or sexual penetration with another person  
23 without consent of that person and causes injury, illness, disease, or  
24 loss or impairment of a sexual or reproductive organ, or mental anguish  
25 requiring psychiatric care for the victim.

26 (3) Has sexual contact or sexual penetration with a person who  
27 suffers from a mental illness or deficiency which renders that person  
28 temporarily or permanently incapable of appraising his conduct, and the  
29 defendant knows of that condition.

30 (4) Has sexual contact or sexual penetration with a person who the  
31 defendant knows is unconscious.

32 (5) Has sexual contact or sexual penetration with a person who is  
33 over the age of [12] years and under the age of [18] years without con-  
34 sent of that person.

35 (c) Whoever has sexual penetration with a person without consent of  
36 that person shall be guilty of third degree sexual assault and shall be  
37 fined not more than [\$5,000], or imprisoned for not more than [five]  
38 years, or both.

39 (d) Whoever has sexual contact with a person without consent of that  
40 person shall be guilty of fourth degree sexual assault and shall be fined  
41 not more than [\$500], or imprisoned for not more than [one] year, or both.

42 (e) No person may be prosecuted under this section if the complainant  
43 is his or her legal spouse, unless the parties are living apart and one of  
44 them has filed for an annulment, legal separation, or divorce.

1 Section 4. [*Admissibility of Evidence.*]

2 (a) In any prosecution for assault with intent to commit, attempt to  
3 commit, or conspiracy to commit a crime defined in any of these sections,  
4 reputation evidence and evidence of specific instances of the complain-  
5 ing witness' prior sexual conduct or habits is not admissible by the  
6 defendant.

7 (b) Notwithstanding the prohibition contained in subsection (a),  
8 evidence of the complaining witness' prior sexual conduct or habits with  
9 the defendant or evidence directly pertaining to the act on which the  
10 prosecution is based may be admitted at the trial if the relevancy of  
11 such evidence is determined in the following manner:

12 (1) A written motion shall be filed by the defendant with the court  
13 no later than [two] days prior to the day of the trial, or at a later time as  
14 the court may for good cause permit, stating that the defendant has an  
15 offer of relevant evidence of prior sexual conduct or habits of the com-  
16 plaining witness.

17 (2) A hearing on the motion shall be held in the judge's chambers.  
18 If, following the hearing, the court determines that the offered proof is  
19 relevant and that it is material to a fact in issue, and that its probative  
20 value outweighs its inflammatory or prejudicial nature, the court shall  
21 admit the offered proof, in whole or in part, in accordance with the

22 applicable rules of evidence.

1 Section 5. [*Severability.*] [Insert severability clause.]

1 Section 6. [*Repeal.*] [Insert repealer clause.]

1 Section 7. [*Effective date.*] [Insert effective date.]

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### Mapping, Charting, and Surveying Coordination Act

Mapping, charting, and surveying activities are performed by all levels of government. At the present time, no mechanism exists at the state level for the coordination of these efforts. Thus, considerable work is repeated at the taxpayers' expense, and data collected from completed projects is not readily available for use in upcoming projects. Often, federal surveying, mapping, and charting efforts are performed in the State with little or no knowledge of the work by appropriate state and local officials. In addition, a lack of uniformity in survey methods and tax mapping by adjoining jurisdictions creates considerable problems to those involved in regional project planning.

The purpose of the suggested state legislation is to provide for the establishment of a state office for the coordination of all mapping, charting, and surveying activities within the State, and to provide the legislative authority to support these efforts. The office will serve as a conduit for information between the federal, state, and local agencies and be appropriately staffed to provide technical specification, guidelines, and assistance to state and local agencies as required in the performance of their mapping, charting, and surveying activities. The legislation will provide for the formation of a unified information system which will contain all of the surveys, maps, charts, and tidal data established within the State by federal and state organizations.

This draft act was developed by the National Oceanic and Atmospheric Administration of the Department of Commerce and a comprehensive commentary on the legislation can be obtained by writing the National Oceanic and Atmospheric Administration, 6001 Executive Boulevard, Rockville, Maryland 20852, with a copy to the Director of National Ocean Survey, Attention: Director, National Geodetic Survey, 6001 Executive Boulevard, Rockville, Maryland 20852.

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#### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Mapping,  
2 Charting, and Surveying Coordination Act.

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

2 (1) "Map" means representation on a plane surface, at an estab-  
3 lished scale, of the physical features of all or part of the earth's surface.

4 (2) "Chart" means maps made primarily for use in nautical and  
5 aeronautical navigation.

6 (3) "Survey" means monumented surveys of third-order accuracy  
7 or better as defined in the publication *Classification and Standards of*

1 Section 3. [*Establishment of Office.*]

2 (a) This act establishes a state office for the coordination of all mapping,  
3 charting, and surveying activities within the State to serve as a conduit  
4 for information between the federal, state, and local agencies. The office  
5 shall be known as the State Surveying and Mapping Coordination Office.  
6 The office will provide for the formation of a unified information system  
7 which will contain all of the surveys, maps, charts, and tidal data estab-  
8 lished within the State by federal and state organizations.

9 (b) The office shall consist of a director and the director shall be em-  
10 powered to hire such staff as is necessary and authorized within his  
11 budget. The director shall be appointed by the Governor with the advice  
12 and consent of the [Senate]. The director shall be a registered land  
13 surveyor or a cartographer from the university community.

1 Section 4. [*Jurisdiction and Guidelines.*]

2 (a) The office shall establish a mechanism for the coordination of  
3 mapping, charting, and surveying activities at all levels of the government.

4 (b) It shall establish a unified information system containing the  
5 surveys, maps, charts, and tidal data of the State as produced by federal  
6 and state organizations.

7 (c) It shall establish a system of uniformity in survey methods and tax  
8 mapping by adjoining jurisdictions.

9 (d) It shall assist, when requested by regional project planning com-  
10 missions, in solving problems involved in regional planning efforts.

11 (e) It shall provide technical specifications, guidelines, and assistance  
12 to state and local agencies as required in the performance of their map-  
13 ping, charting, and surveying activities.

1 Section 5. [*Powers.*]

2 (a) Every state agency or institution whose cooperation is necessary  
3 for the completion of a research project shall actively assist the office  
4 and comply with every reasonable and lawful request of the office.

5 (b) The office is granted the authority to propose amendments to this  
6 legislation and to make or rescind rules and regulations after due notice  
7 and an opportunity for a public hearing, as provided for in the [State  
8 Administrative Procedures Act] and exercise powers as may be appropri-  
9 ate to effectuate the purposes and provisions of this act.

1 Section 6. [*Authorization.*] There is authorized to be appropriated the  
2 sum of [\$ ] for [fiscal year, calendar year] to:

3 (1) Cover the costs of salaries and travel expenses in the office.

4 (2) Cover the costs of office space and miscellaneous equipment  
5 necessary to the operation of the office.

6 (3) Cover the cost of the purchase of data as necessary to the opera-  
7 tion of the office.

9 State and retransmitted as necessary to local authorities, other States,  
10 and the federal government.

1 Section 7. [*Severability.*] [Insert severability clause.]

1 Section 8. [*Repeal.*] [Insert repealer clause.]

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



### **Plea Negotiations Act**

Of all the procedures in the judicial process, perhaps the most difficult for persons both within and without the criminal justice system to comprehend is that of plea negotiation. Plea negotiations have also come under more criticism, whether justifiable or not, from the public and from persons within the criminal justice system than perhaps any other single judicial process. The process is criticized as being a bargaining session or a horse-trading process. The process is difficult for the offender to comprehend because seldom does he participate in the actual plea negotiation process. Plea negotiations are often viewed with a jaundiced eye by the public because an offender charged originally with a serious crime may later have the original charge reduced to a lesser offense and receive a relatively light sentence. The real problem in plea negotiation is its total lack of visibility.

The National Advisory Commission on Criminal Justice Standards and Goals, in its report on courts in Section 3.1, recommended the complete abolition of plea-bargaining in all criminal cases. The Plea Negotiations Act recognizes the inherent dangers in plea negotiation, but at the same time recognizes the necessity and the need for the process both from the standpoint of implementing diversion programs and from the standpoint of alleviating overly congested courts. The Plea Negotiations Act includes the recommendations, made by the National Advisory Commission on Criminal Justice Standards and Goals contained in the report on courts beginning in Section 3.2, that if plea negotiations, as recommended by the commission were not abolished, certain guidelines should be established to ensure that all constitutional protections and a sense of fairness to all parties are maintained.

The Plea Negotiations Act formalizes the plea-bargaining process. The intent of the legislation is to give plea negotiations a certain degree of visibility and comprehensiveness as far as both the offender and the public are concerned. The act requires a judicial record of the plea and of the agreement underlying it and its acceptance or rejection by the court and the reasons therefor. The act also provides for a set of plea negotiation practices, establishes a time limit prior to the trial date at which point all plea negotiations must cease in order to maintain accurate trial dockets, requires representation by counsel at any and all stages of the plea negotiation process, and contains a prohibition against coercion by either the prosecution or defense counsel to enter a plea. The act further sets forth criteria for acceptance of a negotiated plea by the court. The plea of "nolo contendere" is included in the act as an alternative plea for inclusion in those States in which such a plea is either constitutionally or statutorily available. Nothing in the act is intended to abrogate in any way a defendant's right to enter a plea of nolo contendere.

This act was prepared by the staff of the Criminal Justice Project of the Council of State Governments.

### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Plea  
2 Negotiations Act.

1 Section 2. [*Pleading by a Defendant.*]  
2 (a) A defendant may plead not guilty or guilty [or, when allowed under  
3 the law of the jurisdiction, nolo contendere]. A plea of guilty [or nolo  
4 contendere] should be received only from the defendant himself in open  
5 court.  
6 [(b) A defendant may plead nolo contendere only with the consent  
7 of the court. Such a plea should be accepted by the court only after due  
8 consideration of the views of the parties and the interest of the public  
9 in the effective administration of justice.]

1 Section 3. [*Pleading to Other Offenses.*] Upon entry of a plea of guilty  
2 [or nolo contendere] or after conviction on a plea of not guilty, the  
3 defendant's counsel may request permission for the defendant to enter a  
4 plea of guilty [or nolo contendere] as to other crimes he has committed  
5 which are within the jurisdiction of the coordinate courts of the State.  
6 Upon written approval of the prosecuting attorney of the governmental  
7 unit in which these crimes are charged or could be charged, the defendant  
8 should be allowed to enter the plea [subject to the court's discretion to  
9 refuse a nolo contendere plea]. Entry of such a plea constitutes a waiver  
10 of: (1) venue, as to crimes committed in other governmental units of the  
11 State, and (2) formal charges as to offenses not yet charged.

1 Section 4. [*Aid of Counsel; Time for Deliberation.*]  
2 (a) A defendant shall not be called upon to plead until he has had an  
3 opportunity to retain counsel or, if he is eligible for appointment of  
4 counsel, until counsel has been appointed or waived; a defendant with  
5 counsel shall not be required to enter a plea if his counsel makes a rea-  
6 sonable request for additional time to hold a plea conference pursuant  
7 to Section 5, or to represent the defendant's interests in other respects.  
8 (b) Except as provided in subsection (a) of this section, a defendant  
9 who has waived counsel shall not be called upon to plead within less than  
10 seven days following the date he was held to answer or was otherwise  
11 informed of the charge, and the court shall not accept a plea of guilty  
12 [or nolo contendere] from such a defendant unless it is entered affirmed  
13 at least three days after the defendant received advice from the court  
14 required by Section 9.  
15 (c) A defendant may be offered an opportunity to plead and a plea

18 felony and if the sentence posed does not provide for his incarceration  
19 unless he violates conditions of probation or a suspended sentence.

1 Section 5. [*Procedure for Plea Discussions.*] At the request of either  
2 party, the parties shall meet to discuss the possibility that upon the de-  
3 fendant's entry of a plea of guilty [or nolo contendere] to one or more  
4 offenses, the prosecutor will not charge, will dismiss, or will move for  
5 the dismissal of other charges, or will recommend or will not oppose a  
6 particular sentence. The defendant must be represented by counsel in  
7 such discussions and the defendant need not be present. The court shall  
8 not participate in such discussions.

1 Section 6. [*Prosecutor's Regulations.*]  
2 (a) [Each prosecution office in the State] shall formulate guidelines  
3 and procedures with respect to plea discussions and plea agreements  
4 designed to afford similarly situated defendants equal opportunities for  
5 plea discussions and plea agreements.

*Comment:* A State should make a choice between having a single state official establish guidelines as distinguished from establishment of the guidelines by local officials.

6 (b) The written policy statement as provided in subsection (a) of this  
7 section shall provide for consideration of the following factors by prose-  
8 cuting attorneys involved in plea negotiations:

9 (1) The impact a formal trial would have on the offender and those  
10 close to him, especially the likelihood and seriousness of financial hard-  
11 ship and family disruption.

12 (2) The role that a negotiated plea agreement may play in rehabili-  
13 tating the offender.

14 (3) The value of trial in fostering the community's sense of security  
15 and confidence in law enforcement agencies.

16 (4) The assistance rendered by the offender:

17 (i) In the apprehension or conviction of other offenders.

18 (ii) In the prevention of crimes by others.

19 (iii) In the reduction of the impact of the offense on the victim.

20 (iv) In any other socially beneficial activities.

21 (c) The written statement of policy shall direct that before finalizing  
22 any plea negotiations, the prosecuting attorney's staff shall obtain full  
23 information on the offense and the offender. This information should  
24 include information concerning the impact of the offense upon the victims,  
25 the impact of the offense upon the community, the amount of police  
26 resources expended in investigating the offense and apprehending the  
27 defendant, any relationship between the defendant and organized crime,  
28 and other matters similarly bearing upon the nature of the offense and  
29 the offender.

1 Section 7. [*Improper Activities by a Prosecuting Attorney.*] No prose-  
2 cuting attorney shall, in connection with plea negotiations, engage in,  
3 perform, or condone any of the following:

4 (1) Charging or threatening to charge the defendant with offenses  
5 for which the admissible evidence available to the prosecuting attorney  
6 is insufficient to support a guilty verdict.

7 (2) Charging or threatening to charge the defendant with a crime  
8 not ordinarily charged in the jurisdiction for conduct allegedly engaged  
9 in by him.

10 (3) Threatening the defendant that if he should plead not guilty  
11 his sentence may be more severe than that which is ordinarily imposed in  
12 the jurisdiction in similar cases on defendants who plead not guilty.

13 (4) Failing to grant full disclosure before the disposition negotia-  
14 tions of all exculpatory evidence.

1 Section 8. [*Preliminary Consideration of a Plea Agreement.*]

2 (a) If the parties have reached a proposed plea agreement they may,  
3 with the permission of the court, advise the court of the terms of the  
4 agreement and the reasons therefor in advance of the time for tender of  
5 the plea. The court may indicate to the parties whether it will concur in  
6 the proposed disposition. Any such concurrence shall be subject to the  
7 information contained in the pre-sentence report being consistent with  
8 representations made by the parties to the court.

9 (b) Whenever a plea of guilty is offered, the court shall inquire as  
10 to the existence of any agreement. The court shall review any negotiated  
11 plea agreement and make specific determinations relating to the accepta-  
12 bility of the agreement. Underlying an offered plea of guilty, the court  
13 shall make such determinations relating to the acceptability of a plea  
14 before accepting it.

15 (c) Before accepting a plea of guilty, the court shall require the  
16 defendant to make a detailed statement concerning the commission of  
17 the offense to which he is pleading guilty and any offenses of which he  
18 has been previously convicted. In the event that the plea is found unac-  
19 ceptable, the statement and any evidence obtained through use of it  
20 shall not be admissible against the defendant in any subsequent criminal  
21 prosecution.

1 Section 9, [*Defendant's Understanding of His Rights and Consequences*  
2 *of Plea.*] The court shall inquire personally of the defendant concerning  
3 his plea and its underlying negotiated agreement, and if any of the follow-  
4 ing circumstances are found, and cannot be corrected by the court, the  
5 court shall not accept the plea:

6 (1) That counsel was not present during the plea negotiations.

7 (2) That the defendant is not competent or does not understand the  
8 nature and consequence of the charges and proceedings against him.

9 (3) That the defendant was reasonably mistaken or ignorant as to  
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10 the law or facts related to his case and this affected his decision to enter  
11 into a plea agreement.

12 (4) That the defendant does not know his constitutional rights and  
13 how his plea of guilty will affect those rights. Rights that expressly  
14 should be waived upon the entry of a guilty plea include: the right to the  
15 privilege against compulsory self-incrimination, which includes the right  
16 to plead not guilty; the right to trial in which the State, or governmental  
17 unit, must prove the defendant's guilt beyond a reasonable doubt; the  
18 right to a trial by jury; the right to confrontation of one's accusers; the  
19 right to compulsory process to obtain favorable witnesses; and the right  
20 to effective assistance of counsel at trial.

21 (5) During plea negotiations the defendant was denied constitutional  
22 or significant substantive rights that he did not waive.

23 (6) The defendant did not know at the time he entered into the  
24 agreement the mandatory minimum sentence, if any, and the maximum  
25 sentence that may be imposed for the offense to which he pleads, or that  
26 the defendant was not aware of those facts at the time his plea was offered.

27 (7) The defendant had been offered improper inducements to enter  
28 a plea of guilty.

29 (8) That the admissible evidence is insufficient to support a guilty  
30 verdict on the offense for which the plea is offered, or to a related greater  
31 offense.

32 (9) The defendant continues to assert facts that, if true, establish  
33 that he is not guilty of the offense to which he seeks to plead.

34 (10) That accepting the plea would not serve the public interest.  
35 Accepting a plea of guilty would not serve the public interest if it:

36 (i) Places the safety of persons or valuable property in unreasona-  
37 ble jeopardy.

38 (ii) Depreciates the seriousness of the defendant's activity or  
39 otherwise promotes disrespect for the criminal justice system.

40 (iii) Gives inadequate weight to the defendant's rehabilitative  
41 needs.

42 (iv) Would result in conviction for an offense out of proportion  
43 to the seriousness with which the community would evaluate the de-  
44 fendant's conduct upon which the charge is based.

1 Section 10. [*Pre-sentence Investigation.*] The court may direct its  
2 probation service to conduct an investigation to assist it in ruling on a  
3 plea agreement. If the court believes it appropriate it may direct that  
4 such investigation be commenced at the time a plea agreement is presented  
5 for preliminary consideration pursuant to Section 8.

1 Section 11. [*Ruling on a Plea of Guilty.*] Before accepting a plea  
2 pursuant to a plea agreement, the court shall advise the parties whether  
3 it approves the agreement and will dispose of the case in accordance  
4 therewith. If the court should determine to disapprove the agreement and  
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5 not to dispose of the case in accordance therewith, it shall so inform the  
6 parties, not accept the defendant's plea of guilty [or nolo contendere], and  
7 then advise the defendant personally that he is not bound by the agree-  
8 ment. The court shall advise the parties of the reasons for which it re-  
9 jected the agreement and afford them an opportunity to modify the  
10 agreement accordingly. A decision by the court disapproving an agree-  
11 ment shall not be subject to appeal.

1 Section 12. [*Plea Discussion and Agreement Not Admissible.*] Unless  
2 the defendant subsequently enters a plea of guilty [or nolo contendere]  
3 which is not withdrawn, the fact that the defendant or his counsel and  
4 the prosecuting attorney engaged in plea discussions or made a plea  
5 agreement shall not be received in evidence or in favor of the defendant  
6 in any criminal or civil action or administrative proceeding.

1 Section 13. [*Verbatim Record of the Proceedings.*] A verbatim record  
2 of the proceedings at which the defendant enters a plea of guilty and of  
3 any preliminary consideration of a plea agreement by the court pursuant  
4 to Section 8 shall be made. Such record shall include the court's advice  
5 to the defendant and its inquiries of the defendant, defense counsel, and  
6 the prosecutor, and any responses. If the plea agreement has been reduced  
7 to writing it shall be made a part of the record; otherwise, the court shall  
8 require that the terms of the agreement be stated for the record and that  
9 the assent thereto of the defendant, his counsel, and the prosecutor be  
10 also recorded.

1 Section 14. [*Time Limit on Plea Negotiations.*] Each judicial district  
2 shall set a time limit prior to the date set for trial after which time plea  
3 negotiations may no longer be conducted. After the specific time limit  
4 has elapsed, only pleas to the official charge should be allowed, except  
5 in unusual circumstances and with the approval of the court and the  
6 prosecution.

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

1 Section 16. [*Repeal.*] [Insert repealer clause.]

1 Section 17. [*Effective Date.*] [Insert effective date.]

### **Diversion Program Act**

Perhaps the most centralized theme running throughout all of the reports of the National Advisory Commission on Criminal Justice Standards and Goals on the entire criminal justice system is that of diversion. The term "diversion," as used within the framework of the criminal justice system, is the procedure of postponing prosecution of a criminal offense either temporarily or permanently. The purpose of diversion is to offer an offender an alternative method of rehabilitation, other than incarceration or probation, which will bring about the offender's future compliance with the law.

The process of diversion must utilize a wide range of agencies and services in order to provide an offender with the opportunity to rehabilitate himself prior to becoming inexorably entrenched in the criminal justice system. The process of diversion and the use of diversionary techniques by the prosecution, by courts, and by correctional personnel, are in large measure dependent upon a high degree of flexibility to achieve the desired end result of offender rehabilitation.

Presently, although the acceptance of the concept of diversion as a tool to alleviate many of the problems of the criminal justice system is almost universal, the use of diversionary techniques and the process of diversion itself have not been legislated in most States. The fact that diversionary techniques are not recognized statutorily gives rise to a very critical factor that persons or agencies employing diversion programs may well run the risk of considerable personal liability when the program, agency, or personnel employed for an offender's rehabilitative program may not be able to achieve a desirable end result. Such liability may well run to the States themselves in many instances.

While not in any way attempting to restrict the use of diversion programs by legislatively structuring such programs, the Diversion Program Act attempts to define criteria by which those using diversion could assess the circumstances and the individual's candidacy for entering the diversionary process. Standards set forth by the National Advisory Commission on Criminal Justice Standards and Goals in its report on corrections (Section 3.1 and following) are embodied in the model act establishing general criteria for the use of diversion. The act requires that upon enactment each district or county attorney shall prepare and issue regulations consistent with the criteria established by the act to provide office criteria for the use of diversion programs. The use of a pre-trial and even pre-charge conference at which the offender, the prosecution, defense counsel, and correctional personnel may discuss the offense, the offender's eligibility to enter into a diversion program, and the diversion program for the specific offender is a unique feature of the act. The act finally sets forth those instances in which diversion shall be appropriate before a formal decision to charge, to continue, or to prosecute an offense is made. The ultimate decision is still left to the prosecutor. Court approval of a diversion program is required only when the diversion program results from the dismissal of a charge or a continuance, or a suspended sentence based upon the successful completion of the rehabilitative program set forth for the offender.

This draft act was prepared by the staff of the Criminal Justice Project of the Council of State Governments

**Suggested Legislation**

(Title, enacting clause, etc.)

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

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

2 (1) "Diversion" means the procedure of postponing prosecution  
3 either temporarily or permanently at any point in the judicial process  
4 from the point at which the accused is charged until adjudication. The  
5 purpose of diversion is to offer the offender an alternative method of  
6 rehabilitation other than incarceration or probation which will bring  
7 about the offender's future compliance with the law.

8 (2) "Dangerous offender" means a person who has committed an  
9 offense, and whose history, character, and condition reveal a substantial  
10 risk that he will be a danger to others, and whose conduct has been  
11 characterized by a pattern of repetitive, compulsive, or aggressive  
12 behavior with indifference to the consequences.

1 Section 3. [*Diversory Conference.*]

2 (a) [Each district [county] attorney] shall prepare and issue guidelines  
3 consistent with this act, providing for a diversion conference at which  
4 the prosecutor, defense counsel, and offender may meet to discuss the  
5 case. These regulations shall identify those classes of cases in which the  
6 prosecutor may schedule a conference and shall further provide that the  
7 prosecutor shall schedule a conference in any other case for which  
8 defense counsel or the offender requests a conference or for which the  
9 prosecutor believes a conference is desirable. To the extent the prosecutor  
10 believes feasible in the effective administration of justice, such regula-  
11 tions shall include guidelines concerning action which the prosecutor  
12 will consider taking in certain types of cases or factual situations.

*Comment:* A State should make a choice between having a single state official establish guidelines as distinguished from establishment of the guidelines by local officials.

13 (b) At the diversion conference, the prosecutor shall afford either the  
14 offender or his counsel the opportunity to advance arguments and present  
15 facts bearing on the issues and shall inform the offender or his counsel  
16 of his views and the reasons therefor in a manner that will give the  
17 offender or his counsel the opportunity to respond. The parties may  
18 discuss and agree upon a disposition of the case which may include dis-  
19 missal or suspension of the prosecution. The parties may agree that a  
20 particular disposition shall be conditioned upon the offender's participat-  
21 ing in a supervised rehabilitation program.

22 (c) In any case in which the prosecutor is considering charging an



24 must be represented by counsel.

25 (d) In all cases where an individual is found eligible for diversion, a  
26 written report shall be made and retained on file in the prosecutor's office,  
27 regardless of whether the individual is finally rejected or accepted for a  
28 diversionary program. A copy of this report shall be provided to the  
29 offender and the offender's counsel. In addition, copies may be provided  
30 to those agencies which may be involved in developing treatment pro-  
31 grams with the offender. All parties concerned shall take due care to  
32 ensure the privacy of the diversionary reports.

33 (e) The process of diversion and the diversion conference, if such a  
34 conference is held, cannot be used to coerce a guilty plea from an offend-  
35 er, even though there is reasonable assumption of the offender's guilt.  
36 [The offender, or an accused, shall not be required to enter any formal  
37 plea to a charge made against him as a condition for participation in a  
38 diversion program.] Participation in a diversion program shall not be  
39 used in subsequent proceedings relative to a charge as evidence of an  
40 admission of guilt.

41 (f) Each individual who is charged must be provided with a sheet of  
42 facts about the diversion process.

43 (g) In any case in which an offender agrees to a specific diversion  
44 program, a specific agreement shall be made between the prosecution  
45 and the offender. This agreement shall include the terms of the diversion  
46 program, the length of the program, and a section therein stating the  
47 period of time after which the prosecutor will either move to dismiss  
48 the charge or to seek a conviction based upon that charge. This agreement  
49 must be signed by the offender and his counsel, if represented by counsel,  
50 and filed in the prosecutor's office.

51 (h) No diversion or diversionary program will take place without the  
52 written consent of the offender.

53 (i) Prior to formal entry into a diversion program, the prosecutor may  
54 require the offender to inform him concerning the offender's past criminal  
55 record, if any, his education and work record, his family history, his  
56 medical or psychiatric treatment or care he has received, any psychologi-  
57 cal test he has taken, and other information bearing on the prosecutor's  
58 decision for an appropriate disposition of the case.

59 (j) If the case should go to trial, any statements made by an offender  
60 or his counsel in connection with any pre-charge discussions concerning  
61 diversion shall not be admissible in evidence.

1 Section 4. [*General Criteria.*] The written policies developed by the  
2 prosecutor's offices shall contain policies for the diversion of offend-  
3 ers. Prior to authorizing diversion, the following factors should be taken  
4 into account:

5 (1) Whether there is substantial likelihood that justice will be served  
6 and the community will be safe if the individual is placed in a diversion  
7 program, or a decision is made simply not to prosecute his case.

- 8 (2) Whether the needs of an offender can better be met outside the  
9 criminal justice system and if resources are available to meet these needs.
- 10 (3) Whether the offense neither caused nor threatened serious physi-  
11 cal harm to persons or property, or the offender did not contemplate  
12 that it would do so.
- 13 (4) Whether the offense was the result of circumstances unlikely  
14 to recur.
- 15 (5) Whether the victim of the offense induced or facilitated the  
16 offense.
- 17 (6) Whether there are substantial grounds tending to excuse or  
18 justify the offense, though failing to establish a defense.
- 19 (7) Whether the offender acted under strong provocation.
- 20 (8) Whether the offender has no history of prior delinquency or  
21 criminal activity, or has led a law-abiding life for a substantial time  
22 before commission of the present offense.
- 23 (9) Whether the offender is likely to respond quickly to correctional  
24 or rehabilitative treatment.

1 Section 5. [*Exclusions.*] An individual should not be considered for a  
2 diversion program in those circumstances in which he has been known to  
3 be unresponsive to previous diversionary programs. A diversion program  
4 should not be considered for an individual who may be considered a  
5 dangerous offender.

1 Section 6. [*Maintaining Dispositions List.*] [Each district [county]  
2 attorney's] office shall maintain a current and complete listing of various  
3 resource dispositions available to it. This listing shall be compiled and  
4 evaluated in conjunction with law enforcement agencies, correctional  
5 agencies, courts, and defense counsel. This listing shall be subject to  
6 periodic review and evaluation, and shall be made public.

1 Section 7. [*Severability.*] [Insert severability clause.]

1 Section 8. [*Repeal.*] [Insert repealer clause.]

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

### **Private Security Licensing and Regulatory Act**

In its reports issued in 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended that all private security agencies should be required to obtain state licensing as a prerequisite for engaging in police-related security functions. The commission felt that licensing requirements would allow state control of important considerations such as the selection of standards for private police personnel, the educational criteria for employment, and the minimum training necessary for private police forces. States would then be able to control the activities of security forces by revoking or withdrawing licenses when minimum performance standards were not met. Prior to the issuance of the commission's recommendations in 1973, the Private Security Advisory Council to the U.S. Department of Justice Law Enforcement Assistance Administration had been meeting on a regular basis to furnish advisories to LEAA on the more effective use of private security in the national strategy to reduce crime. The advisory council had prepared many written reports concerning its findings to LEAA. It was a finding of the advisory council that an increasing number of States and municipalities were in the process of considering, or had already enacted, legislation related to the licensing and regulation of private security guards. After some two years of concentrated effort, including public hearings, the Private Security Advisory Council developed the Private Security Licensing and Regulatory Act.

The act requires licensing of all contract security companies; however, it exempts proprietary security (in-house) organizations from the licensing requirement. The act defines proprietary security organizations as a person who provides security services solely for the benefit of such person, thereby making some organizations such as shopping mall and stadium operators who provide such services for persons other than themselves contract security companies. The act requires applicants for a license to possess at least three years of security supervisory experience or to pass an examination. The act further recognizes two categories of private security without regard to the nature of their employer, i.e., armed private security officers and unarmed uniformed private security officers, and sets forth basic minimum training standards for each. An important consideration of this act is that it requires all training to be given and certified by a state-approved trainer. The act includes in its coverage all security guards, armored car guards, armed courier service guards, and alarm response runners. The minimum criteria for registration under the act as a private security guard are, of course, also set forth in the statute.

The Private Security Licensing and Regulatory Act was drafted by Dennis M. Crowley, Jr., and Richard D. Bickelman of the New England Bureau for Criminal Justice Services under the direction of the Private Security Advisory Council and its Chairman, Arthur J. Bilek.

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### **Suggested Legislation**

1 Section 1. [*Short Title.*] This act may be cited as the [State] Private  
2 Security Licensing and Regulatory Act.

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

2 (1) "Alarm response runner" means an individual employed by a  
3 contract security company or a proprietary security organization to  
4 respond to security system signals, other than a person whose sole func-  
5 tion is to maintain or repair a security system.

6 (2) "Armed courier service" means a person that transports or offers  
7 to transport under armed security guard from one place or point to another  
8 place or point, valuables, currency, documents, papers, maps, stocks,  
9 bonds, checks, or any other item that requires expeditious delivery.

10 (3) "Armed private security officer" means an individual employed  
11 by a contract security company or a proprietary security organization  
12 whose principal duty is that of an armed security guard, armed armored  
13 car service guard, armed courier service guard or armed alarm response  
14 runner, and who at any time wears, carries, possesses, or has access to  
15 a firearm in the performance of his duties.

16 (4) "Armored car service" means a person that transports or offers  
17 to transport under armed security guard from one place or point to another  
18 place or point, currency, jewels, stocks, bonds, paintings, or other  
19 valuables of any kind, or other items in a specially equipped motor vehicle  
20 which offers a high degree of security.

21 (5) "Branch office" means any office of a licensee within the State  
22 other than its principal place of business within the State.

23 (6) "Certified trainer" means a person approved and certified by  
24 the licensing authority as qualified to administer and certify to successful  
25 completion of the minimum training requirements for private security  
26 officers required by Section 36.

27 (7) "Contract security company" means a person engaging in the  
28 business of providing, or undertakes to provide, a security guard, an  
29 alarm response runner, armored car service, or armed courier service, as  
30 defined in this act, on a contractual basis for another person.

31 (8) "Employer/employee relationship" means the performance of  
32 any service for wages or under any contract of hire, written, oral, expressed  
33 or implied by an individual, and provided the employer has control or  
34 direction over the performance of such service both under this contract  
35 or service and provided that such service is performed personally by  
36 such individual.

37 (9) "Identification card" means a pocket card issued by a licensing  
38 authority to a private security officer as evidence that the individual has  
39 met the minimum qualifications required to perform duties of an unarmed  
40 private security officer.

41 (10) "Licensee" means a person to whom a license is granted in  
42 accordance with the provisions of this act.

44 appropriate department, agency, or bureau of the State designated to  
45 administer and enforce this act.

46 (12) "Person" means an individual, firm, association, company,  
47 partnership, corporation, nonprofit organization, institution, or similar  
48 entity.

49 (13) "Police chief executive" means the elected or appointed police  
50 administrator of any municipal, county, or state police department or  
51 sheriff's department, such department having full law enforcement  
52 powers in its jurisdiction.

53 (14) "Principal corporate officer" means the president, vice presi-  
54 dent, treasurer, secretary, and comptroller, as well as any other person  
55 who performs functions for the corporation corresponding to those  
56 performed by the foregoing officers.

57 (15) "Proprietary security organization" means a person or depart-  
58 ment of that person which employs a security guard, an alarm response  
59 runner, armored car service, or armed courier services, as defined in  
60 this act, solely for such person, and wherein an employer/employee  
61 relationship exists.

62 (16) "Qualifying agent" means, in the case of a corporation, an  
63 officer or an individual in a management capacity, or in the case of a  
64 partnership, a general or unlimited partner, meeting the experience  
65 qualifications set forth in this act for operating a contract security  
66 company.

67 (17) "Registrant" means an individual who has a valid registration  
68 card issued by the licensing authority.

69 (18) "Registration card" means the permanent permit issued by the  
70 licensing authority to a registrant as evidence that the registrant has met  
71 the minimum qualifications required by this act to perform the duties of  
72 an armed private security officer.

73 (19) "Security alarm system" means an assembly of equipment and  
74 devices (or a single device such as a solid-state unit which plugs directly  
75 into a 110-volt AC line) designated to detect or signal an unauthorized  
76 intrusion into, movement through, or exit from, a premise, or to signal an  
77 attempted robbery or other criminal acts at a protected premise; with  
78 respect to such signals, police and/or security guards or alarm response  
79 runners are expected to respond. Fire alarm systems and alarm systems  
80 which monitor temperature, humidity, or any other conditions not direct-  
81 ly related to the detection of an unauthorized intrusion into premises or  
82 an attempted robbery at a premises are excluded from the provisions of  
83 this act.

84 (20) "Security guard" means an individual principally employed to  
85 protect persons or property from criminal activities and whose duties  
86 include, but are not limited to, the prevention of: unlawful intrusion or  
87 entry, larceny, vandalism, abuse, arson, or trespass on private property;  
88 or control regulation or direction of the flow or movements of the public,

90 merchant patrol service. Persons whose duties are limited to custodial or  
91 observational duties or the reporting of administrative regulations only  
92 are specifically excluded from this definition.

93 (21) "Street patrol service" means any contract security company  
94 or proprietary security organization that utilizes foot patrols, motor  
95 vehicles, or any other means of transportation in public areas or on public  
96 thoroughfares in the performance of its security functions.

97 (22) "Sworn peace officer" means an individual who derives plenary  
98 or special law enforcement powers from, and is an employee of, the  
99 federal government, [State], or any political subdivision, agency, de-  
100 partment, branch, or service of either, of any municipality, or of any  
101 other unit of local government.

102 (23) "Unarmed private security officer" means an individual em-  
103 ployed by a contract security company or a proprietary security organiza-  
104 tion whose principal duty is that of a security guard, armored car service  
105 guard, or alarm response runner; who never wears, carries, or has access  
106 to a firearm in the performance of those duties; and who wears dress of  
107 a distinctive design or fashion, or dress having any symbol, badge, emblem,  
108 insignia, or device which identifies or tends to identify the wearer as a  
109 security guard, alarm response runner, or armored car service guard.

1 Section 3. [*Establishment of a Licensing Authority.*]

2 (a) A Private Security Industry Regulatory Board is established,  
3 hereinafter called the licensing authority or board, designated to carry  
4 out the duties and functions conferred upon it by this act.

5 (b) The position of director of the Private Security Industry Regulatory  
6 Board is created. He shall serve as the chief administrator of the board.  
7 He shall not be a member of the board but shall be a full-time employee  
8 of the board, fully compensable in an amount to be determined by the  
9 Legislature. The director shall perform such duties as may be prescribed  
10 by the board except those duties vested in the board by Section 10, and  
11 shall have no financial or business interests or affiliations, contingent  
12 or otherwise, in any person rendering private security services.

1 Section 4. [*Licensing Authority Seal.*] The licensing authority shall  
2 have a seal, the form of which it shall prescribe.

1 Section 5. [*Board Meeting.*] The board shall consist of the following  
2 members:

3 (1) The Attorney General or his duly designated representative  
4 shall serve as an ex officio member of the board, and his service shall  
5 not jeopardize his official capacity with the State.

6 (2) The director of the [department of public safety] or his duly  
7 designated representative shall serve as an ex officio member of the  
8 board, and his service shall not jeopardize his official capacity with

10 (3) One police chief executive appointed by the Governor subject  
11 to legislative confirmation.

12 (4) Two members shall be appointed by the Governor, subject to  
13 legislative confirmation, who are licensed under the provision of this act,  
14 who have been engaged for a period of three years in the rendering of  
15 private security services and are not employed by or affiliated with any  
16 other member of the board.

17 (5) Two members shall be appointed by the Governor, subject to  
18 legislative confirmation, who are selected from the public at large, who  
19 are citizens of the United States and residents of the State and are not  
20 now or in the past employed by or affiliated with a person rendering  
21 private security services.

22 (6) Two members shall be appointed by the Governor, subject to  
23 legislative confirmation, who are citizens of the United States and resi-  
24 dents of the State and are full-time managers responsible for a proprie-  
25 tary security organization function.

1 Section 6. [*Chairmanship of Board.*] The Governor shall designate one  
2 appointee to sit as chairman of the licensing authority for that member's  
3 full term.

1 Section 7. [*Voting Powers and Procedures.*]

2 (a) No action shall be taken by the board unless a quorum of the  
3 membership of the board is present.

4 (b) All powers, duties, and responsibilities conferred upon the board  
5 by this act may be exercised or taken by a majority vote of the necessary  
6 quorum then present.

1 Section 8. [*Terms of Office.*]

2 (a) The director of the [department of public safety] and the Attorney  
3 General, or their representatives, shall serve on the board during their  
4 terms of office and shall perform the duties required by this act in addi-  
5 tion to those duties required of them in other official capacities.

6 (b) The appointed members of the board shall serve six-year terms,  
7 their terms to be staggered by the appointment of the initial appointees  
8 as follows: the police chief executive and one proprietary security organi-  
9 zation manager for an initial term of two years; one licensee and one  
10 public at-large member for an initial term of four years; and the remaining  
11 members for initial terms of six years.

1 Section 9. [*Vacancies.*] The Governor shall, subject to legislative  
2 confirmation, fill vacancies occurring among appointed members of the  
3 board with appointments for the duration of the unexpired term.

4 Appointees must meet the qualification for that position to be filled as  
5 stipulated in Section 7.

1 Section 10. [*Powers of the Licensing Authority Relating to Rules and*  
2 *Regulations; Petitions.*] The following powers are vested in the licensing  
3 authority:

4 (1) Promulgation of rules and regulations which are reasonable,  
5 proper, and necessary to carry out the functions of the licensing authority;  
6 investigations limited to determinations as to whether the provisions of  
7 this act are being complied with or violated; enforcement of the provisions  
8 of this act; establishment of procedures for the preparation and process-  
9 ing of examinations, applications, license certificates, registration and  
10 identification cards, renewals, appeals, hearings, and rulemaking pro-  
11 ceedings; and determination of the qualifications of licensees and private  
12 security officers consistent with the provisions of this act.

13 (2) An interested person may petition the licensing authority to  
14 enact, amend, or repeal any rule or regulation within the scope of sub-  
15 section (1) of this section. The licensing authority shall prescribe by rule  
16 the form for such petitions and procedures for their submission, considera-  
17 tion, and disposition.

1 Section 11. [*Subpoenas; Oaths; Contempt Powers.*]

2 (a) In any investigation conducted under the provisions of this act,  
3 the licensing authority may issue subpoenas to compel the attendance of  
4 witnesses and the production of relevant books, accounts, records, and  
5 documents. The officer conducting a hearing may administer oaths and  
6 may require testimony or evidence to be given under oath.

7 (b) If a witness refuses to obey a subpoena or to give any evidence  
8 relevant to proper inquiry by the licensing authority, the licensing authori-  
9 ty may petition a court of competent jurisdiction in the State to compel  
10 the witness to obey the subpoena or to give the evidence. The court shall  
11 promptly issue process to the witness and shall hold a hearing on the  
12 petition as soon as possible. If the witness then refuses, without reasonable  
13 cause or legal grounds, to be examined or to give evidence relevant to  
14 proper inquiry by the licensing authority, the court may cite the witness  
15 for contempt.

1 Section 12. [*Public Notice and Hearing on Proposed Rulemaking.*]  
2 [For information under this topic, follow the State's Administrative  
3 Procedures Act.]

1 Section 13. [*Requirement for License.*]

2 (a) It shall be unlawful and punishable, as provided in Section 42 of  
3 this act, for any person to engage in the business of a contract security  
4 company in the State without having first obtained a contract security  
5 company license from the state licensing authority, subject to subsection  
6 (b) of this section.

7 (b) Every person engaged in the contract security company business  
8 in the State on the effective date of this act shall have 180 days to apply



9 to the licensing authority for a license to operate a contract security  
10 company. Any such person filing a timely application may continue to  
11 engage in business pending a final determination of the application.

12 (c) Unless there is a separate statute currently in effect in the State  
13 by which an alarm, armed courier service, or armored car business is  
14 licensed and regulated, all provisions of this act shall apply equally to  
15 the businesses which shall be considered as contract security companies.  
16 If there is a separate statute in effect in the State by which alarm, armed  
17 courier service, and armored car businesses are licensed and regulated,  
18 the licensing provisions of this statute shall not apply to such businesses  
19 unless such businesses are also engaged in the business of providing  
20 security guard services.

1 Section 14. [*Form of Application.*]

2 (a) Application for license required by the provisions of this act shall  
3 be filed with the licensing authority on a form provided by the licensing  
4 authority. If the applicant is an individual, the application shall be sub-  
5 scribed and sworn to by such person. If the applicant is a partnership,  
6 the application shall be subscribed and sworn to by each partner. If the  
7 applicant is a corporation, the application shall be subscribed and sworn  
8 to by at least one principal corporate officer. The application shall contain:

9 (1) The full name and business address of the applicant and, if the  
10 applicant is a corporation or partnership, the name and address of the  
11 qualifying agent.

12 (2) The name under which the applicant intends to do business.

13 (3) The address of the principal place of business and all branch  
14 offices of the applicant in the State, and the corporate headquarters of  
15 the business if outside of the State.

16 (4) If the applicant is a corporation, the correct legal name, the  
17 State of incorporation, and the date it qualified to do business in the State.

18 (5) A list of principal officers of the corporation and the business  
19 address, residence address, and the office or position held by each officer  
20 in the corporation.

21 (6) (i) For each applicant, or if the applicant is a partnership, for  
22 each partner, or if the applicant is a corporation, for the qualifying agent,  
23 the following information: (A) full name, (B) age, (C) date and place of  
24 birth, (D) all residences during the immediate past five years, (E) all  
25 employment or occupations engaged in during the immediate past five  
26 years, (F) two sets of classifiable fingerprints, (G) a photograph taken  
27 within the last six months of a size prescribed by the licensing authority,  
28 (H) a general physical description, (I) letters attesting to good moral  
29 character from three reputable individuals not related by blood or marriage  
30 who have known the applicant or qualifying agent for at least five years,  
31 (J) three credit references from lending institutions or business firms  
32 with whom the applicant or qualifying agent has established a credit

34 charges in any jurisdiction, any felony, any crime involving moral turpi-  
35 tude, or illegally using or possessing a dangerous weapon, for any of  
36 which a full pardon (or similar relief) has not been granted.

37 (ii) For every required person, a statement of experience that  
38 meets the qualifications of Section 15(a)(7).

39 (7) For each applicant which is a corporation or partnership, the  
40 names and addresses of each principal officer, director, or partner,  
41 whichever is applicable and unless the stock of such corporation is listed  
42 on a national securities exchange or registered under Section 12 of the  
43 Securities and Exchange Act of 1934, as amended, the names and ad-  
44 dresses of all stockholders.

45 (b) The licensing authority may require that the application include  
46 any other information which the licensing authority may reasonably deem  
47 necessary to determine whether the applicant or individual signing the  
48 application meets the requirements of this act or to establish the truth  
49 of the facts set forth in the application.

50 (c) Any individual signing a license application must be at least [the  
51 legal age for licensing generally established in the State] years of age.

1 Section 15. [*License Qualifications.*]

2 (a) Every applicant, or in the case of a partnership each partner, or  
3 in the case of a corporation the qualifying agent, shall meet the following  
4 qualifications before he may engage in the business of a contract security  
5 company:

6 (1) Be of legal majority age.

7 (2) Be a citizen of the United States or a resident alien.

8 (3) Not have been convicted in any jurisdiction of any felony or of  
9 any crime involving moral turpitude or illegally using or possessing a  
10 dangerous weapon, for any of which a full pardon (or similar relief) has  
11 not been granted.

12 (4) Not have been declared by any court of competent jurisdiction  
13 incompetent by reason of mental defect or disease and has not been  
14 restored.

15 (5) Not be suffering from habitual drunkenness or from narcotic  
16 addiction or dependence.

17 (6) Be of good moral character.

18 (7) Possess three years' experience as a manager, supervisor, or  
19 administrator with a contract security company or proprietary security  
20 organization or possess three years' supervisory experience approved by  
21 the licensing authority with any federal, U.S. military, state, county, or  
22 municipal law enforcement agency.

23 (b) If the licensing authority determines that the applicant or qualify-  
24 ing agent has not satisfactorily complied with subsection (a)(7) of this  
25 section, it may require compliance with subsection (c) of this section.

26 (c) The licensing authority shall prepare and administer at least twice

28 and competence in the contract security company business. An applicant  
29 or qualifying agent successfully passing the licensing authority's examina-  
30 tion may substitute that for the experience requirement of subsection  
31 (a)(7) of this section.

1 Section 16. [*License Application—Investigation.*] After receipt of an  
2 application for a license, the licensing authority shall conduct an investi-  
3 gation to determine whether the facts set forth in the application are true  
4 and shall compare, or request that [the appropriate state agency] compare  
5 the fingerprints submitted with the application to fingerprints filed with  
6 [the division of criminal identification, records and statistics of the state  
7 department of corrections or its equivalent]. The licensing agency [or the  
8 state agency comparing the fingerprints] shall also submit the finger-  
9 prints to the Federal Bureau of Investigation for a search of the finger-  
10 print files of that agency to determine if the individual fingerprinted has  
11 any convictions recorded in the FBI files.

1 Section 17. [*Action on License Application.*] Within 30 days after  
2 receipt of an application, the licensing authority shall either issue a  
3 license to the applicant or notify the applicant of a denial of the license  
4 application. In the event that additional information is required from the  
5 applicant by the licensing authority to complete its investigation or  
6 otherwise to satisfy the requirements of this act, or if the applicant has  
7 not submitted all of the required information, the 30-day period for  
8 action by the licensing authority shall commence when all such informa-  
9 tion has been received by the licensing authority.

1 Section 18. [*Grounds for Denial of Application.*] The licensing authority  
2 shall deny the application for a license if it finds that the applicant or  
3 the qualifying agent or any of the applicant's owners, partners, or princi-  
4 pal corporate officers have:  
5 (1) Violated any of the provisions of this act or the rules and regula-  
6 tions promulgated hereunder.  
7 (2) Practiced fraud, deceit, or misrepresentation.  
8 (3) Knowingly made a material misstatement in the application  
9 for a license.  
10 (4) Have not met the qualifications of Section 15(a).

1 Section 19. [*Procedure for Approval or Denial of Application; Hearings.*]  
2 (a) The procedure of the licensing authority in approving or denying  
3 an application shall be as follows:  
4 (1) If the application is approved, the licensing authority shall  
5 notify the applicant in writing that a license will be issued. Such notifica-  
6 tion shall state that the license issued will expire in two years, unless  
7 renewed in accordance with Sections 20 and 21 of this act, and shall  
8 state the time within which application for renewal must be made.

9 (2) If the application is denied, the licensing authority shall notify  
10 the applicant in writing and shall set forth the grounds for denial. If the  
11 grounds for denial are subject to correction by the applicant, the notice  
12 of denial shall so state and the applicant shall be given 10 days after  
13 receipt of such notice or, upon application, a reasonable additional period  
14 of time within which to make the required correction.

15 (b) If the application is denied, the applicant may within 30 days  
16 after receipt of notice of denial from the licensing authority request a  
17 hearing on the denial. Within 10 days after the filing of such request for  
18 hearing by the applicant, the licensing authority shall schedule a hearing  
19 to be held before the licensing authority after due notice to the applicant.  
20 The hearing shall be held within 15 days after such notice is mailed to  
21 the applicant, unless postponed at the request of the applicant. The  
22 applicant shall have the right to make an oral presentation at the hearing,  
23 including the right to present witnesses and to confront and cross-examine  
24 adverse witnesses. The applicant may be represented by counsel. If the  
25 hearing is before a hearing officer, the officer shall submit his report in  
26 writing to the licensing authority within 10 days after the hearing. The  
27 licensing authority shall issue its decisions within 10 days after the hearing  
28 or within 10 days after receiving the report of the hearing officer. The  
29 decision of the licensing authority shall be in writing and set forth the  
30 licensing authority's findings and conclusions. A copy shall be promptly  
31 mailed to the principal office of the applicant in the State.

1 Section 20. [*Renewal of License.*] Each license shall expire two years  
2 after its date of issuance. Application for renewal of a license must be  
3 received by the licensing authority on a form provided by the licensing  
4 authority not less than 30 days prior to the expiration date of the license,  
5 subject to the right of the licensing authority to refuse to renew a license  
6 for any of the grounds set forth in Section 24(a), and it shall promptly  
7 notify the licensee of its intent to refuse to renew the license. The licensee  
8 may, within 15 days after receipt of the notice of intent to refuse to  
9 renew a license, request a hearing on the refusal in the manner prescribed  
10 by Section 24(b). A licensee shall be permitted to continue to engage in  
11 the contract security company business while the renewal application  
12 is pending.

1 Section 21. [*Application, License, and Renewal Fees.*]

2 (a) A nonrefundable application fee of [\$500] shall be remitted with  
3 each initial license application.

4 (b) A fee of [\$250], refundable in the event the license renewal is  
5 denied, shall be remitted with each application for renewal of a license.

1 Section 22. [*Form of License.*] The license, when issued, shall be in a  
2 form prescribed by the licensing authority and shall include:

- 4 (2) The business name under which the licensee is to operate. 14
- 5 (3) The addresses of the locations where the licensee is authorized 15
- 6 to operate. 16
- 7 (4) The number and date of the license and its date of expiration. 17

18 1 Section 23. [*License—Transferability.*] 19

2 (a) No license issued pursuant to the provisions of this act shall be 20

3 assigned or transferred, either by operation of law or otherwise. 21

4 (b) If the license is held by an owner who is not already a licensee, 22

5 other than a corporation, and such owner shall die, become disabled, or 23

6 otherwise cease to engage in the business, the successor, heir, devisee, or 24

7 personal representative of the owner shall, within 30 days of the death, 25

8 disablement, or other termination of operation by the original licensee, 26

9 apply for a license on a form prescribed by the licensing authority, which 27

10 form shall include the same general information required by Section 14 of 28

11 this act. The transfers shall be subject to the same general requirements 29

12 and procedures set forth in Sections 15 through 20 to the extent such 30

13 sections are applicable. 31

14 (c) If a sale, assignment, transfer, merger, or consolidation of a 32

15 business licensed under this act is consummated, the purchaser, assignee, 33

16 transferee, surviving, or new corporation not already a licensee shall 34

17 immediately apply for a license on a form prescribed by the licensing 35

18 authority which shall include the general information required by Section 36

19 14. The purchaser, assignee, transferee, surviving, or new corporation 37

20 shall be subject to the same general requirements and procedures set 38

21 forth in Sections 15 through 20 to the extent that such sections are 39

22 applicable and may continue the operation of that licensed business until 40

23 notified by the licensing authority of its final decision on the new applica- 41

24 tion for a license. 42

25 (d) With good cause, the licensing authority may extend the period of 43

26 time for filing the application required by subsections (b) and (c) of this 44

27 section. 45

1 Section 24. [*Licenses—Revocation; Hearings; Appeals; Notices.*]

2 (a) Licenses may be revoked by the licensing authority in the manner 2

3 hereinafter set forth if the licensee or any of its owners, partners, princi- 3

4 pal corporate officers, or qualifying agent are found to have: 4

5 (1) Violated any of the provisions of this act or any rule or regulation 5

6 of the licensing authority which violation the licensing authority deter- 6

7 mines to reflect unfavorably upon the fitness of the licensee to engage in 7

8 the contract security company business. 8

9 (2) Knowingly and willfully given any false information of a material 9

10 nature in connection with an application for a license or a renewal or 10

11 reinstatement of a license or in a notice of transfer of a business licensed 11

12 under this act. 12

13 (3) Been convicted in any jurisdiction of a felony or a misdemeanor 13

14 if the licensing authority determines that such conviction reflects un-  
15 favorably on the fitness of the applicant to engage in the contract security  
16 company business.

17 (4) Committed any act while the license was not in effect which  
18 would have been cause for the revocation of a license or grounds for the  
19 denial of an application for a license.

20 (b) Prior to revocation of a license, the licensing authority shall  
21 promptly notify the licensee of its intent to issue an order of revocation,  
22 setting forth in reasonable detail the grounds for revocation. Within 30  
23 days of receipt of notice of intent to revoke from the licensing authority,  
24 the licensee may request a hearing. Within 10 days after the filing of a  
25 request for hearing by the licensee, the licensing authority shall, upon  
26 due notice to the licensee, schedule a hearing to be held before the  
27 licensing authority or an officer designated by the licensing authority.  
28 The hearing shall be held within 15 days after the notice is mailed to the  
29 licensee, unless postponed at the request of the licensee. The licensee  
30 shall have the right to make an oral presentation at the hearing, including  
31 the right to present witnesses and to confront and cross-examine adverse  
32 witnesses. The licensee may be represented by counsel. If the hearing is  
33 held before a hearing officer, the officer shall submit his report in writing  
34 to the licensing authority within 10 days after the hearing. The licensing  
35 authority shall issue its decision within 10 days after the hearing or  
36 within 10 days after receiving the report of the hearing officer. The  
37 decision of the licensing authority shall be in writing and set forth the  
38 licensing authority's findings and conclusions. A copy shall be promptly  
39 mailed to the principal office of the licensee in the State.

40 (c) Within 90 days after the licensee has exhausted all rights of appeal  
41 under this act or if the licensee does not seek a hearing after receipt of  
42 a notice of intent to revoke, the licensee shall notify all of its clients  
43 in the State of the revocation and maintain in its records a copy of the  
44 notices. The licensee shall cease to perform any services for which it has  
45 been licensed under this act within 60 days of its receipt of the final  
46 notice of intent to revoke from the licensing authority.

47 (d) Under circumstances in which the licensing authority determines  
48 that the public health, welfare, or safety may be jeopardized by the  
49 termination of a licensee's services, the licensing authority may upon its  
50 own motion or upon application by the licensee or any party affected by  
51 such termination extend the time for the termination of the licensee's  
52 operations, subject to reasonable, necessary and proper conditions or  
53 restrictions it deems appropriate.

54 (e) After the licensing authority has issued a notice of intent to revoke  
55 a license, the licensee may request that it be permitted to continue to  
56 operate subject to the terms of a written order of consent issued by the  
57 licensing authority requiring the licensee to correct the conditions set  
58 forth as grounds for revocation in the notice of intent to revoke and

60 conduct of its business. The licensing authority may grant or deny such a  
61 request and may stay or postpone any proceeding being conducted  
62 pursuant to subsection (b) of this section. Negotiations for an order of  
63 consent may be requested at any time during revocation proceedings and  
64 stay of pending proceedings during negotiations shall be within the sole  
65 discretion of the licensing authority. If revocation proceedings are before  
66 a court and the licensing authority and licensee have agreed upon the  
67 terms of a proposed consent order, the licensing authority shall submit  
68 the proposed order to the court which may approve or disapprove the  
69 proposed order or require modification of the proposed consent order  
70 before approval.

71 (f) The licensing authority shall enact reasonable rules and regulations  
72 for determination of whether a licensee has complied with a consent order  
73 issued pursuant to subsection (e) of this section. If the licensing authority  
74 determines that a licensee has failed to comply, it may revoke the order  
75 and conduct proceedings for revocation of the license. If the consent order  
76 has been approved by a court, the licensing authority shall petition the  
77 court for vacation of the order. The court shall hold a hearing to determine  
78 if the order should be vacated. If the court vacates the consent order, the  
79 licensing authority may initiate proceedings for revocation of the license.

1 Section 25. [*Posting and Surrender of License Certificate.*]

2 (a) Within 72 hours after receipt of the license certificate, the licensee  
3 shall post and display the license certificate at all times in a conspicuous  
4 place in his principal office in the State and copies thereof to be displayed  
5 at all times in any other offices within the State where the licensee trans-  
6 acts business with its customers so that all persons visiting such place or  
7 places may readily see the license. Such license certificates or copies  
8 thereof shall be subject to inspection at all reasonable times by the  
9 licensing authority.

10 (b) It shall be unlawful for any person holding a license certificate to  
11 knowingly and willfully post the license certificate or permit it to be  
12 posted upon premises other than those described in the license certificate  
13 or to knowingly and willfully alter the license certificate. Each license  
14 certificate shall be surrendered to the licensing authority within 72 hours  
15 after it has been revoked or after the licensee ceases to do business,  
16 subject, however, to Section 24(d) and (e). If, however, the licensing  
17 authority or a court of competent jurisdiction has pending before it any  
18 matter relating to the renewal, revocation, or transfer of a license, the  
19 licensee shall not be required to surrender the license until the matter  
20 has been adjudicated and all appeals have been exhausted. When the  
21 licensee receives final notice that his license has been revoked, a copy of  
22 the notice shall be displayed and posted in close proximity to the license  
23 certificate until the licensee terminates his operations.

2 the licensing authority within 30 days of any change in its officers, direc-  
3 tors, or material change in the information previously furnished or required  
4 to be furnished to the licensing authority or any occurrence which could  
5 reasonably be expected to affect the licensee's right to a license under  
6 this statute.

1 Section 27. [*Application for Registration.*]

2 (a) Except as otherwise provided in this act, no person shall perform  
3 the functions and duties of an armed private security officer in the State  
4 without first having been registered with the licensing authority and issued  
5 a registration card in the manner prescribed in the statute.

6 (b) Individuals required to obtain a registration card under this section  
7 shall file for a registration card and, upon completion thereof, the licensee  
8 or registrant shall immediately forward the application to the licensing  
9 authority.

10 (c) Every applicant for a registration card shall make and deliver to  
11 the licensee or the licensing authority a sworn application in writing upon  
12 a form prescribed by the licensing authority containing the following  
13 information:

14 (1) The name and address of the person which employs or will em-  
15 ploy the applicant.

16 (2) Applicant's full name and current residence address.

17 (3) Date and place of birth.

18 (4) Social Security number.

19 (5) Telephone number, if any.

20 (6) Complete addresses for the past five years.

21 (7) List of all employers for the past five years.

22 (8) List of all arrests, convictions, and pending criminal charges in  
23 any jurisdiction.

24 (9) Type of military discharge.

25 (10) General physical description.

26 (11) All names used by the applicant other than the name by which  
27 the individual is currently known, with an explanation setting forth the  
28 place or places where each name was used, the date or dates of each use,  
29 and an explanation of why the names were used.

30 (12) Two sets of classifiable fingerprints recorded in the manner as  
31 may be prescribed by the licensing authority.

32 (13) Two recent color photographs.

33 (14) A statement whether the applicant has ever been denied a  
34 registration card and whether the card has been revoked or suspended in  
35 any jurisdiction.

36 (15) A statement that the applicant will notify the licensing authority  
37 of any material changes of information set forth in the application within  
38 10 days after the change.

39 (16) A statement that the applicant does not suffer from habitual



41 possess any disability which would prevent him from performing the  
42 duties of an armed private security officer.

43 (17) A statement from a certified trainer to the effect that the appli-  
44 cant has completed the training required by Section 36(a) and (b).

45 (d) To be eligible to apply for a registration card an individual must:

46 (1) Be of legal majority age.

47 (2) Be a citizen of the United States or a resident alien.

48 (3) Not have been convicted in any jurisdiction of any felony or of  
49 any crime involving moral turpitude or illegally using or possessing a  
50 dangerous weapon, for any of which a full pardon (or similar relief) has  
51 not been granted.

52 (4) Not have been declared by any court of competent jurisdiction  
53 incompetent by reason of mental disease or defect and has not been  
54 restored.

55 (5) Not suffer from habitual drunkenness or from narcotic addiction  
56 or dependence.

57 (6) Be of good moral character.

58 (7) Not possess any disability which in the opinion of the licensing  
59 authority prevents him from performing the duties of an armed private  
60 security officer.

61 (e) The registration card shall be carried by an individual required to  
62 be registered under this act whenever such individual is performing the  
63 duties of an armed private security officer and shall be exhibited upon  
64 request.

65 (f) Application for a registration card to the licensing authority shall  
66 be accompanied by a [\$15] fee.

67 (g) A registration card shall entitle the registrant to perform the duties  
68 of an armed private security officer provided the registrant continues in  
69 the employ of the employer listed on the card and maintains his eligibility  
70 to hold a registration card under the provisions of this act.

1 Section 28. [*Registration Card—Investigation.*] After receipt of an  
2 application for a registration card, the licensing authority shall conduct  
3 an investigation to determine whether the facts set forth in the applica-  
4 tion are true and shall cause the applicant's fingerprints to be compared  
5 with fingerprints filed with [the State's department or agency maintain-  
6 ing criminal history records]. The licensing authority or that agency shall  
7 within five days forward a copy of the fingerprint card of the applicant  
8 to the Federal Bureau of Investigation and request a search of the finger-  
9 print files of the FBI for any record of convictions of the registration  
10 card applicant.

1 Section 29. [*Action on Registration Card Application.*] Action to ap-  
2 prove or deny an application of an individual for a registration card shall  
3 be taken as expeditiously as possible by the licensing authority but the  
4 action shall be completed within 30 days of the application  
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5 unless the licensing authority shall require additional information from  
6 the applicant. In that event or if additional facts are required to satisfy  
7 the requirements of this act, or if the applicant has not submitted all the  
8 information required, the period for the action by the licensing authority  
9 shall commence when all information has been received by the licensing  
10 authority. Upon acceptance of a registrant's application, the licensing  
11 authority shall enter the registrant on its permanent register and issue to  
12 the registrant a permanent registration card which shall be valid for  
13 one year.

1 Section 30. [*Registration Cards—Denial, Suspension or Revocation;*  
2 *Hearings, Notices.*]

3 (a) Registration cards shall be denied, suspended, or revoked by the  
4 licensing authority in the manner hereinafter set forth if the cardholder  
5 has:

6 (1) Failed to meet the qualifications of Section 27(d).

7 (2) Been found to have violated any of the provisions of this act or  
8 any rule or regulation of the licensing authority if the licensing authority  
9 determines that the violation reflects unfavorably upon the fitness of the  
10 registrant to function as an armed private security officer.

11 (3) Knowingly and willfully giving any material false information  
12 to the licensing authority in connection with an application for a registra-  
13 tion card or a renewal or reinstatement of a registration card or in the  
14 submission of any material fact to the licensing authority.

15 (4) Been convicted in any jurisdiction of a felony, a crime involving  
16 moral turpitude, or illegally using or possessing a dangerous weapon,  
17 for any of which a full pardon (or similar relief) has not been granted.

18 (b) Prior to denial, suspension, or revocation of a registration card,  
19 the licensing authority shall promptly notify the registrant and the employ-  
20 er with whom the cardholder is employed of the proposed action setting  
21 forth in reasonable detail the grounds for denial, suspension, or revoca-  
22 tion. The registrant may request a hearing in the same manner and in  
23 accordance with the same procedures as that provided in Section 24(b).

24 (c) In the event that the licensing authority denies, suspends, or re-  
25 vokes a registration card, the cardholder, upon receipt of the notice of  
26 denial, suspension, or revocation, shall immediately cease to perform the  
27 duties of an armed private security officer.

28 (d) Both the cardholder and the employer shall be notified by the  
29 licensing authority of final action to deny, suspend, or revoke a registra-  
30 tion card.

1 Section 31. [*Renewal of Registration Card—Notification of Changes.*]

2 (a) Registration cards issued by the licensing authority shall be valid  
3 for a period of one year. A registration card renewal form must be filed  
4 by the cardholder with the licensing authority not less than 30 days

6 be [\$5]. The renewal application shall include a statement by the regis-  
7 trant that the registrant continues to meet the qualifications for an armed  
8 private security officer as set forth in Section 27(c). The renewal applica-  
9 tion shall be accompanied by a statement from a certified trainer that the  
10 registrant has satisfactorily completed the prescribed refresher training  
11 required by Section 36. A renewed registration card shall be valid for  
12 one year.

13 (b) The licensing authority may refuse to renew a registration card  
14 for any of the grounds set forth in Section 27(d) and it shall promptly  
15 notify the cardholder of its intent to refuse to renew the license. The  
16 cardholder may, within 15 days after receipt of the notice, request a  
17 hearing on the refusal in the same manner and in accordance with the  
18 same procedure as that provided in Section 24(b).

19 (c) Licensees and employers subject to this act shall notify the  
20 licensing authority within 10 days after the death or termination of em-  
21 ployment of any of its employees who are registrants.

22 (d) Licensees and employers subject to this act shall immediately  
23 notify the licensing authority upon receipt of information relating to a  
24 registrant's continuing eligibility to hold a card under the provisions  
25 of this act.

1 Section 32. [*Transferability of Registration Cards.*]

2 (a) In the event that a registrant terminates employment with one  
3 employer and is reemployed within five business days as an armed private  
4 security officer with another employer, the registrant shall within 24  
5 hours of reemployment submit to the licensing authority a notice of the  
6 change on a form prescribed by the licensing authority, together with a  
7 transfer fee of [\$5]. The licensing authority shall issue a new registration  
8 card reflecting the name of the new employer. Upon receipt of the new  
9 card, the registrant must immediately return the old card to the licensing  
10 authority. The registrant may continue to work as an armed private  
11 security officer for the new employer while the licensing authority is  
12 processing the application.

13 (b) A registrant who terminates employment and who is not reem-  
14 ployed as an armed private security officer within five business days  
15 shall, within 24 hours of the fifth business day, surrender the registration  
16 card to the employer. The employer shall return the cancelled registration  
17 card to the licensing authority within five business days by placing it in  
18 the U.S. mail addressed to the licensing authority. If the registrant fails  
19 to surrender the card as required by this subsection, the employer shall  
20 notify the licensing authority of that fact within 10 business days after  
21 the registrant terminated employment.

22 (c) Any individual who changes his permanent residence to this State  
23 from any other State which the licensing authority determines has selec-  
24 tively licensed private security officers, and who holds a valid registration,  
25 required by this act, and who holds a valid registration, commission,

26 identification, or similar card issued by that State through a licensee  
27 which is licensed by that State and who wishes to continue to be employed  
28 by that licensee, may apply for a registration card on a form prescribed  
29 by the licensing authority upon payment of a processing fee of [\$5] and  
30 certification by the licensee that the individual has completed the training  
31 prescribed by that State. The licensing authority shall issue the individual  
32 a registration card.

33 (d) A registration card issued by any other State of the United States  
34 shall be valid in this State for a period of 90 days, provided the registrant  
35 is on temporary assignment for the employer shown on his registration  
36 card.

1 Section 33. [*Expiration and Renewal during Suspension of Use of a*  
2 *Registration Card.*] A registration card shall be subject to expiration and  
3 renewal during the period in which the holder of the card is subject to  
4 an order of suspension.

1 Section 34. [*Activities of Registrants during Suspension of Use of a*  
2 *Registration Card.*] After a registrant has received a notice of suspension  
3 or revocation of his registration card, the individual shall not perform the  
4 duties of an armed private security officer unless specifically authorized  
5 to do so by order of the licensing authority or by [a court of competent  
6 jurisdiction within the State].

1 Section 35. [*Firearms.*]

2 (a) It shall be unlawful for any person performing the duties of an  
3 armed private security officer to carry a firearm in the performance of  
4 those duties without having first been issued a registration card by the  
5 licensing authority.

6 (b) A registration card will grant authority to the holder, while in the  
7 performance of his duties, to carry a standard police .38 caliber handgun  
8 or any other firearm approved by the licensing authority not otherwise  
9 prohibited by any state law and with which the registrant has met the  
10 training requirements of Section 36. The use of any firearm not approved  
11 by the licensing authority is prohibited.

12 (c) The registrant must be in possession of the registration card when  
13 carrying a firearm and shall exhibit it upon request. Registration cards  
14 shall authorize possession of an approved firearm only when the regis-  
15 trant is on duty or traveling directly to and from work.

16 (d) All firearms carried by authorized armed private security officers  
17 in the performance of their duties shall be owned by the employer and,  
18 if required by law, shall be fully registered with the proper agency or  
19 government. Personally owned weapons will not be carried by armed  
20 private security officers in the performance of their duties.

1 Section 36. [*Armed Private Security Officer Training Requirements.*]

2 (a) Prior to being issued a registration card, all armed private security  
3 officers shall receive at least eight hours of general training as prescribed  
4 by the licensing authority and be required to successfully pass an examina-  
5 tion on the prescribed material which includes the following topics:

- 6 (1) Orientation: two hours.
- 7 (2) Legal powers and limitations of a security officer: two hours.
- 8 (3) Emergency procedures: two hours.
- 9 (4) General duties: two hours.

10 (b) All armed private security officers shall also receive firearms  
11 training before being issued a firearm. The following minimum firearms  
12 preassignment training shall be required:

- 13 (1) Pre-issue weapon instruction and successful examination,  
14 including the following topics:
  - 15 (i) Legal limitations on use of weapons.
  - 16 (ii) Handling of a weapon.
  - 17 (iii) Safety and maintenance.

18 (2) Minimum marksmanship qualification requirement: a minimum  
19 of 60 percent on any approved silhouette target course prescribed by the  
20 licensing authority.

21 (c) All armed private security officers must complete an annual eight-  
22 hour refresher course in the subjects prescribed by subsection (a) of this  
23 section and be requalified in the use of firearms prior to applying for a  
24 renewal registration card under the provisions of Section 31.

25 (d) Upon a registrant's completion of any training required in this  
26 section, the licensee, registrant, or employer shall furnish to the licensing  
27 authority a written notice of such completion signed by a certified trainer.

28 (e) All training required by this act shall be administered by a certified  
29 trainer who is approved by the licensing authority and meets the following  
30 minimum qualifications:

- 31 (1) Is of legal majority age.
- 32 (2) Has a minimum of one year supervisory experience with a  
33 contract security company, proprietary security organization, or with any  
34 federal, U.S. military, state, county, or municipal law enforcement agency.
- 35 (3) Is personally qualified to teach the training required by  
36 this act.

37 (f) The certified trainer may, at his discretion, instruct personally or  
38 use a combination of personal instruction, audio, and/or visual training  
39 aids. The certified trainer shall have authority to appoint one or more  
40 instructors to assist in the implementation of the training program.

1 Section 37. [*Employment by Nonlicensees.*] It is unlawful, as pro-  
2 vided in Section 42, for any person, other than a licensee, to employ an  
3 armed private security officer unless prior to employment that person  
4 shall notify the licensing authority on a form prescribed by the licensing  
5 authority of his intent to employ an armed private security officer; desig-

7 applicable provisions of this act on behalf of the officer; furnish the  
8 licensing authority with evidence of insurance required by Section 41;  
9 and furnish other information as the licensing authority may require.

1 Section 38. [*Fingerprinting and Application.*]

2 (a) Except as otherwise provided in this act, no person shall perform  
3 the duties of an unarmed private security officer without having first sub-  
4 mitted two sets of classifiable fingerprints to his employer and having  
5 completed an employment application on a form approved by the licens-  
6 ing authority.

7 (b) On or before the date an unarmed private security officer begins  
8 employment, the employer must submit the employee's fingerprints and  
9 the application to the licensing authority. The licensing authority shall  
10 compare or request that [the appropriate state agency] compare the finger-  
11 prints filed with the application to fingerprints filed with [the division of  
12 criminal identification, records and statistics of the state department of  
13 corrections, or its equivalent]. The licensing authority [or the state agency  
14 comparing the fingerprints] shall also submit the fingerprints to the  
15 Federal Bureau of Investigation for a search of the fingerprint files of  
16 that agency.

17 (c) The application for an identification card shall be accompanied  
18 by a [\$5] fee.

19 (d) Within 30 days after an employment application and fingerprints  
20 have been submitted by an employer, the licensing authority shall inform  
21 the employer of any criminal conviction data resulting from the records  
22 search.

23 (e) No person may employ an individual as an unarmed private securi-  
24 ty officer if the individual has been convicted in any jurisdiction of any  
25 felony or of any crime involving moral turpitude or illegally using or  
26 possessing a dangerous weapon, for any of which a full pardon (or similar  
27 relief) has not been granted.

1 Section 39. [*Identification Card.*]

2 (a) The licensing authority shall issue an identification card for every  
3 individual who has been subjected to a criminal history records check and  
4 does not have a conviction for a felony or any crime as stated in Section  
5 38(d). The identification card will be sent to the employer submitting the  
6 fingerprint records and the card will then be issued to the employee if he  
7 is still employed. Identification cards issued by the licensing authority  
8 under this subsection shall be carried by that individual while performing  
9 his duties and shall be exhibited upon request.

10 (b) In the event that a holder of an identification card terminates  
11 employment with one employer and is reemployed within five business  
12 days as an unarmed private security officer with another employer, the  
13 holder shall within 24 hours of such reemployment submit to the licensing  
14 authority a notice of the change on a form prescribed by the licensing  
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15 authority together with a transfer fee of [\$5]. The licensing authority  
16 shall issue a new identification card reflecting the name of the new employ-  
17 er. Upon receipt of that new card, the holder must immediately return the  
18 old card to the licensing authority. The holder may continue to work as an  
19 unarmed private security officer for the new employer while the licensing  
20 authority is processing the application.

21 (c) The holder of an identification card who terminates employment  
22 and who is not reemployed as an unarmed private security officer within  
23 five business days shall, within 24 hours of the fifth business day, surrend-  
24 er the identification card to the employer. The employer shall return the  
25 cancelled identification card to the licensing authority within five business  
26 days by placing the card in the U.S. mail addressed to the licensing  
27 authority. If the holder fails to surrender the card as required by this  
28 subsection, the employer shall notify the licensing authority of that fact  
29 within 10 business days after the holder has terminated employment.

1 Section 40. [*Uniforms and Equipment.*]

2 (a) No individual, while performing the duties of an armed or unarmed  
3 private security officer, shall wear or display any badge, insignia, device,  
4 shield, patch or pattern which shall indicate or tend to indicate that he  
5 is a sworn peace officer or which contains or includes the word "police"  
6 or the equivalent thereof, or is similar in wording to any law enforcement  
7 agency in this State.

8 (b) No person, while performing any private security services, shall  
9 have or utilize any vehicle or equipment displaying the words "police,"  
10 "law enforcement officer," or the equivalent thereof, or have any sign,  
11 shield, marking, accessory, or insignia that may indicate that such vehicle  
12 is a vehicle of a public law enforcement agency.

13 (c) If a private security officer is required to wear a uniform, it shall  
14 be furnished by the employer. All military or police-style uniforms, except  
15 for rainwear or other foul weather clothing, shall have affixed:

16 (1) Over the left breast pocket on the outermost garment and on  
17 all caps worn by such persons, badges, distinct in design from those  
18 utilized by law enforcement agencies within the State and approved by  
19 the licensing authority.

20 (2) Over the right breast pocket on the outermost garment a plate  
21 or tape of the size 5" x 1" with the words "Security Officer."

22 (d) An employer may require a reasonable deposit to secure the return  
23 of the uniform, weapon, or any equipment provided by the employer.

1 Section 41. [*Insurance Requirements.*] All licensees and employers  
2 of armed private security officers shall file with the licensing authority a  
3 certificate of insurance evidencing comprehensive general liability  
4 coverage for bodily injury, personal injury, and property damage with  
5 endorsements for assault and battery and personal injury, including false

7 for bodily or personal injury and [\$100,000] for property damage. Licen-  
8 sees shall also file endorsements for damage to property in their care,  
9 custody, and control, and for errors and omissions. Licensees and employ-  
10 ers of armed private security officers shall also file a certificate of Work-  
11 men's Compensation Insurance as required by the statutes of this State.  
12 The certificates shall provide that the insurance shall not be modified or  
13 cancelled unless 10 days' prior notice shall be given to the licensing  
14 authority. All persons required to be insured by this act must be insured  
15 by a carrier licensed in the State in which the insurance has been pur-  
16 chased or in this State.

1 Section 42. [*Unlawful Acts.*]

2 (a) It is unlawful for any person to knowingly commit any of the  
3 following:

4 (1) Provide contract security services without possessing a valid  
5 license.

6 (2) Employ any individual to perform the duties of an armed private  
7 security officer who is not the holder of a valid registration card or to  
8 employ any individual to perform the duties of an unarmed private  
9 security officer who has not filed an application for an identification  
10 card as required by Section 38.

11 (3) Publish any advertisement, letterhead, circular, statement, or  
12 phrase of any sort which suggests that the licensee is an official police  
13 agency or any other agency, instrumentality, or division of this State or  
14 any of its political subdivisions or of the federal government.

15 (4) Issue any badge or shield not in conformance with this act.

16 (5) Designate an individual as other than a private security officer.

17 (6) Knowingly make any false statement or material omission in  
18 any application filed with the licensing authority.

19 (7) Falsely represent that the person is the holder of a valid license  
20 or registration.

21 (8) Violate any provision of this act or any rule or regulation of the  
22 licensing authority.

23 (b) It is unlawful for any private security officer to knowingly commit  
24 any of the following:

25 (1) Fail to return immediately on demand or within 24 hours of  
26 termination of employment a firearm issued by an employer. Violation of  
27 this provision shall constitute a felony.

28 (2) To carry a firearm in the performance of his duties if not the  
29 holder of a valid registration card. Violation of this provision will consti-  
30 tute a felony.

31 (3) Fail to return immediately on demand or within seven days of  
32 termination of employment any uniform, badge, or other item of equip-  
33 ment issued to the private security officer by an employer.

34 (4) Make any statement which would reasonably cause another  
35 person to believe that the private security officer functions as a sworn



36 peace officer or other official of this State or of any of its political sub-  
37 divisions or agency of the federal government.

38 (5) Fail to comply with the regulations issued by the licensing  
39 authority or with any other requirements under the provisions of this act.

40 (6) Divulge to anyone other than his employer or to such persons  
41 as his employer may direct as may be required by law any information  
42 acquired during such employment that may compromise the security of  
43 any premises to which he shall have been assigned by the employer.

44 (7) Fail to return to the employer or the licensing authority a regis-  
45 tration card or identification card as required by the provisions of this act.

46 (8) Possess a license, registration card, or identification card issued  
47 to another person.

48 (9) Use any badge or shield not in conformance with this act.

49 (c) The violation of any of the provisions of this section, unless other-  
50 wise specified, shall constitute a misdemeanor punishable by a fine of  
51 not more than [\$1,000] or up to one year of imprisonment, or both. The  
52 licensing authority is also authorized to suspend or revoke a license,  
53 registration card, or identification card issued under this act.

1 Section 43. [*Sworn Police Officer.*] Any individual who is regularly  
2 employed as a sworn police officer and who also is employed as an armed  
3 or unarmed private security officer must comply with the requirements of  
4 this act.

1 Section 44. [*Fees and Deposits.*] Any fees payable by a registrant  
2 under this act and paid by a licensee on the registrant's behalf, or any  
3 deposits which may be required by licensee from a registrant under this  
4 act, may be deducted from any wages payable to the registrant by the  
5 licensee, provided that such deduction does not reduce the hourly wage  
6 below the applicable minimum wage law.

1 Section 45. [*Local Government Regulation of Contract Security Com-  
2 panies or Private Security Officers.*]

3 (a) From and after the effective date of this act, no governmental  
4 subdivision of this State shall enact any legislation, code, or ordinance, or  
5 promulgate any rules or regulations relating to the licensing, training, or  
6 regulation of contract security companies or individuals functioning as  
7 private security officers, armed or unarmed, other than the imposition of  
8 a bona fide business tax.

9 (b) Upon the effective date of this act, any provision of any legislation,  
10 code, or ordinance, or rules promulgated by any local governmental  
11 subdivision of this State relating to the licensing, training, or regulation  
12 of contract security companies or individuals functioning as private  
13 security officers, armed or unarmed, shall be deemed superseded by this  
14 act.

1 Section 46. [*Judicial Review.*]

2 (a) Any person aggrieved by any final action of the licensing authority  
3 under this act shall have the right to judicial review by [a court of compe-  
4 tent jurisdiction] within the State.

5 (b) In proceedings in any court pursuant to the provisions of this act,  
6 trial shall be de novo. When a court has acquired jurisdiction, all adminis-  
7 trative action taken prior thereto shall be stayed, except as provided in  
8 Section 34. The rights of the parties shall be determined by the court  
9 upon a trial of the matter or matters in controversy under rules governing  
10 the trial of other civil suits in the same manner and to the same extent as  
11 if the matter had been committed to the court in the first instance and  
12 there had been no intervening administrative or executive action or  
13 decision.

1 Section 47. [*Reciprocity.*] Full reciprocity shall be accorded to armed  
2 and unarmed private security officers who are properly registered and  
3 certified in another State having selection and training requirements at  
4 least equal to the requirements of this State when the duties of these  
5 individuals require them to operate across state lines.

1 Section 48. [*Severability.*] [Insert severability clause.]

1 Section 49. [*Repeal.*] [Insert repealer clause.]

1 Section 50. [*Effective Date.*] [Insert effective date.]

### Suggested State Pesticide Act

The 1974 report of the Model Bill Committee of the Association of American Pesticide Control Officials (AAPCO) included a copy of the Suggested State Pesticide Act. This draft was included in the 1974-75 official publication of AAPCO so that association members and other interested persons could have an opportunity to review the proposal and submit comments. After two years of cooperative effort, a final draft was adopted by AAPCO at the August 1975 annual meeting. It is published in the 1975-76 AAPCO official publication. This consolidated act, entitled Suggested State Pesticide Act, contains provisions from both the Control Act and the Use and Application Act that are considered essential for a cooperative pesticide regulatory program with the Environmental Protection Agency (EPA). It was drafted for States wanting to adopt a single act providing for a unified, but minimal, pesticide program. It provides:

- (1) For certification requirements for commercial and private applicators;
- (2) For registration of all pesticides distributed in the State and includes authority to register pesticides distributed for special local needs subject to EPA's approval under the authority of Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- (3) The authority to regulate the use of pesticides at the time, place, and method of application, and such other restrictions as may be necessary to prevent unreasonable adverse effects on the environment;
- (4) For classification of pesticides into general use or restricted use classification;
- (5) For issuance of experimental use permits;
- (6) For the licensing of pesticide dealers distributing a restricted use pesticide;
- (7) For regulation of the storage and disposal of pesticides and their containers;
- (8) Authority to enter into cooperative agreements to implement the state act or as provided for in Section 23 of FIFRA;
- (9) The authority to enforce compliance of regulations through the authority to inspect, place stop sales, deny, suspend, revoke, or modify licenses, permits, or certification.

The added impetus that amended FIFRA has placed on States to adopt pesticide legislation has produced a need for additional guidance. It was necessary to determine the essential legislative provisions needed to facilitate a federal-state pesticide program as envisioned by the federal act. The Suggested State Pesticide Act provides this guidance.

Deleted in this consolidated act are provisions for the licensing and examination of employees of commercial applicators (operators), pest management consultants, and pesticide dealer managers; provisions for requiring liability insurance for commercial applicators and provisions for investigating claims of damage from pesticide applications; provisions for establishing a pesticide advisory board; and provisions for the licensing of application equipment.

Beginning with the first drafts, the two prior pieces of legislation were designed to be compatible and were intended to cover all the various legislative needs a State

found to be necessary in at least one State and has been successfully implemented. Listed below is a record of the development of the Control Act (Registration) and the Use and Application Act that led to the State Pesticide act.

*Registration Legislation.* By 1901, five States had enacted insecticide laws to protect the farmer against adulteration of arsenical and sulfur spray materials. In the 75-year period since that time, all States have adopted pesticide legislation which requires the registration of pesticide products distributed in their respective States. The State Uniform Insecticide, Fungicide, and Rodenticide Act, developed by AAPCO in 1946, and published in *Suggested State Legislation* of the Council of State Governments, served as a model for States in adopting their registration legislation. State pesticide registration laws closely coordinate with federal legislation and include authority for inspection and analysis of pesticide products.

States have required registration of pesticide products distributed for use in their respective States, including EPA-registered interstate products and, until now, many States registered intrastate products not federally registered. This has been a complementary program in which EPA has evaluated chemical, residue, and toxicology data on pesticide chemicals, and state registrars have not only reviewed and maintained a file on the labeling of pesticides distributed and used within their State, but have accommodated special local needs.

The Suggested State Pesticide Control Act in the 1974-75 AAPCO publication is the latest draft of AAPCO's suggested legislation pertaining to registration. In addition to authority for the registration and inspection of all pesticides distributed within the State (similar to the 1946 act) the current draft includes provisions to:

1. Cooperate with EPA to register pesticides for special local needs according to Section 24(c) of FIFRA.
2. Issue experimental use permits.
3. License and examine pesticide dealer managers (Optional).
4. License and examine pest management consultants (Optional).
5. Establish a Pesticide Advisory Board.
6. Cooperate with other agencies.
7. Issue regulations to require the safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
8. Enforce the act and regulations adopted under its authority.

*Use and Application Legislation.* During the 1940s, a number of States adopted legislation to control the use and application of pesticides. AAPCO developed the Model Custom Application of Pesticides Act, which was published in the 1951 *Suggested State Legislation* of the Council of State Governments. This custom applicator law, which required the licensing, insuring, and testing of commercial applicators, was used as a guide by many States in the development of their application legislation. However, as late as 1968 at least 20 States had adopted no legislation to control the use and application of pesticides.

In 1968, AAPCO began a project of developing updated use and application legislation which would cover all phases of use and would provide for restricting certain uses for all users, including private growers. This legislation, entitled Model State Pesticide Use and Application Act, published in the 1971 *Suggested State Legislation* of the Council of State Governments, was developed with the assistance

of federal, state, and industry groups who had taken time to review its mandatory and optional provisions. Every provision had been successfully implemented to advantage in at least one State. Authority was provided to adopt regulations to protect intrastate environmental values as well as to provide mechanisms for controlling pests.

Because some States did not feel there was need, or did not choose to accept the responsibility for controlling the use of pesticides within their respective borders, this prior local intrastate responsibility was partially preempted on October 21, 1972, when the Amendments to FIFRA were signed into law (P.L. 92-516).

The latest draft of the AAPCO Suggested State Pesticide Use and Application Act provides authority for licensing and examining commercial, public, and private applicators. In addition, this draft published in the 1975-76 AAPCO official publication provides for:

1. The option of licensing and examining employees of commercial applicators.
2. Requiring surety bonds or insurance for commercial applicators.
- Investigating claims of damages from pesticide applications.
3. Inspecting and licensing application equipment.
4. Issuing regulations to:
  - (a) control the use and application of pesticides;
  - (b) adopt EPA "restricted use pesticide" classifications;
  - (c) designate "state restricted pesticide uses"; and
  - (d) require permits for restricted uses.

The Pesticide and Application Act was published in the *1974 Suggested State Legislation* of the Council of State Governments.

*State Pesticide Act.* The purpose of this act is to regulate, in the public interest, the labeling, distribution, storage, transportation, use and application, and disposal of pesticides. Pesticides are valuable to a State's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliant, desiccants, and plant regulators. However, such pesticides may be ineffective, may cause injury to man, or may cause unreasonable adverse effects on the environment if not properly used. Pesticides may injure man or animals, either by direct poisoning or by gradual accumulation of pesticide residues in the tissues. Crops or other plants may also be injured by their improper use. The drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with which it comes in contact. This act provides for regulation of such pesticides.

Included in this act are provisions taken from the Suggested State Pesticide Control Act and the Suggested State Pesticide Use and Application Act that are considered essential for a cooperative pesticide regulatory program with EPA. This act contains the authority needed by the States to comply with the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1972, and to

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adopt appropriate regulations to participate in cooperative programs under FIFRA. The remaining provisions (not used) in the two earlier acts are provisions that have been successfully implemented by one or more States as useful but are not considered necessary for a minimum regulatory program and therefore are not incorporated in this consolidated act.

### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [State] Pesticide  
2 Act of 19[        ].

1 Section 2. [*Enforcing Official.*] This act shall be administered by the  
2 [        ] of the State of [        ], hereinafter referred to as the “[        ].”

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

2 (1) “[        ]” means the [commissioner, secretary, or director of        ].

3 (2) “Active ingredient” means any ingredient which will prevent,  
4 destroy, repel, control, or mitigate pests, or which will act as a plant  
5 regulator, defoliant, or desiccant.

6 (3) “Adulterated” shall apply to any pesticide if its strength or  
7 purity falls below the professed standard of quality as expressed on its  
8 labeling under which it is sold, or if any substance has been substituted  
9 wholly or in part for the pesticide, or if any valuable constituent of the  
10 pesticide has been wholly or in part abstracted.

11 (4) “Animal” means all vertebrate and invertebrate species, includ-  
12 ing but not limited to man and other mammals, birds, fish, and shellfish.

13 (5) “Applicators”:

14 (i) “Certified applicator” means an individual who is certified  
15 under Section 11 or 12 as authorized to use or supervise the use of any  
16 pesticide which is classified for restricted use for use only by certified  
17 applicators.

18 (ii) “Private applicator” means a certified applicator who uses or  
19 supervises the use of any pesticide which is classified for restricted use  
20 for use only by certified applicators for purposes of producing any agri-  
21 cultural commodity on property owned or rented by him or his employer  
22 or, if applied without compensation other than trading of personal serv-  
23 ices between producers of agricultural commodities, on the property of  
24 another person.

25 (iii) “Commercial applicator” means a certified applicator, whether

26 or not he is a private applicator with respect to some uses, who uses or  
27 supervises the use of any pesticide which is classified for restricted use  
28 for use only by certified applicators for any purpose or on any property  
29 other than as provided by subsection (5)(ii) of this section.

30 (iv) "Under the direct supervision of a certified applicator" means  
31 that unless otherwise prescribed by its labeling, a pesticide shall be con-  
32 sidered to be applied under the direct supervision of a certified applicator  
33 if it is applied by a competent person acting under the instructions and  
34 control of a certified applicator who is available if and when needed, even  
35 though such certified applicator is not physically present at the time and  
36 place the pesticide is applied.

*Comment:* Those States which license, or intend to license, commercial applicators as business entities or commercial operators (employees) should refer to the AAPCO Suggested State Pesticide Use and Application Act.

37 (6) "Beneficial insects" means those insects which, during their life  
38 cycle, are effective pollinators of plants, are parasites or predators of  
39 pests, or are otherwise beneficial.

40 (7) "Defoliant" means any substance or mixture of substances  
41 intended for causing the leaves or foliage to drop from a plant, with or  
42 without causing abscission.

43 (8) "Desiccant" means any substance or mixture of substances  
44 intended for artificially accelerating the drying of plant tissue.

45 (9) "Device" means any instrument or contrivance, other than a  
46 firearm, which is intended for trapping, destroying, repelling, or mitigat-  
47 ing any pest or any other form of plant or animal life, other than man and  
48 other than bacteria, virus, or other microorganism on or in living man or  
49 other living animals; but not including equipment used for the application  
50 of pesticides when sold separately therefrom.

51 (10) "Distribute" means to offer for sale, hold for sale, sell, barter,  
52 ship, deliver for shipment, or receive and (having so received) deliver or  
53 offer to deliver, pesticides in this State.

54 (11) "Environment" includes water, air, land, and all plants and man  
55 and other animals living therein, and the interrelationships which exist  
56 among these.

57 (12) "EPA" means the United States Environmental Protection  
58 Agency.

59 (13) "Fungus" means any nonchlorophyll-bearing thallophyte (that  
60 is, any nonchlorophyll-bearing plant of a lower order than mosses and  
61 liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and  
62 bacteria, except those on or in living man or other living animals, and  
63 except those in or on processed food, beverages, or pharmaceuticals.

64 (14) "Highly toxic pesticide" means any pesticide determined to be  
65 a highly toxic pesticide under the authority of Section 25(c)(2) of FIFRA

68 continued use of a pesticide during the time required for cancellation  
69 proceedings pursuant to Section 7 would likely result in unreasonable  
70 adverse effects on the environment or will involve unreasonable hazard  
71 to the survival of a species declared endangered by the Secretary of the  
72 Interior under P.L. 91-135.

73 (16) "Inert ingredient" means an ingredient which is not an active  
74 ingredient.

75 (17) "Ingredient statement" means (i) statement of the name and  
76 percentage of each active ingredient together with the total percentage  
77 of the inert ingredients in the pesticide, and (ii) when the pesticide con-  
78 tains arsenic in any form, the ingredient statement shall also include  
79 percentages of total and water soluble arsenic, each calculated as ele-  
80 mental arsenic.

81 (18) "Insect" means any of the numerous small invertebrate animals  
82 generally having the body more or less obviously segmented, for the  
83 most part belonging to the class insecta, comprising six-legged, usually  
84 winged forms, as for example, beetles, bugs, bees, flies, and to other  
85 allied classes of arthropods whose members are wingless and usually  
86 have more than six legs, as for example, spiders, mites, ticks, centipedes,  
87 and wood lice.

88 (19) "Label" means the written, printed, or graphic matter on, or  
89 attached to, the pesticide or device or any of its containers or wrappers.

90 (20) "Labeling" means the label and all other written, printed, or  
91 graphic matter: (i) accompanying the pesticide or device at any time; or  
92 (ii) to which reference is made on the label or in literature accompanying  
93 the pesticide or device, except to current official publications of EPA;  
94 the United States Departments of Agriculture, of the Interior, and of  
95 Health, Education, and Welfare; state experiment stations; state agricul-  
96 tural colleges; and other similar federal or state institutions or agencies  
97 authorized by law to conduct research in the field of pesticides.

98 (21) "Land" means all land and water areas, including air space, and  
99 all plants, animals, structures, buildings, contrivances, and machinery  
100 appurtenant thereto or situated thereon, fixed or mobile, including any  
101 used for transportation.

102 (22) "Nematode" means invertebrate animals of the phylum  
103 nemathelminthes and class nematoda, that is, unsegmented round worms  
104 with elongated, fusiform, or sac-like bodies covered with cuticle, and  
105 inhabiting soil, water, plants, or plant parts; may also be called nemas  
106 or eelworms.

107 (23) "Permit" means a written certificate, issued by the [ ] or  
108 his authorized agent, authorizing the purchase, possession, or use of  
109 certain pesticides or pesticide uses defined in subsections 31 and 32 of  
110 this section.

111 (24) "Person" means an individual, partnership, association, fi-  
112 duciary, corporation, or any organized group of persons whether in-  
113 corporated or not.



114 (25) "Pest" means (i) any insect, rodent, nematode, fungus, weed,  
115 or (ii) any other form of terrestrial or aquatic plant or animal life or virus,  
116 bacteria, or other microorganism (except virus, bacteria, or other micro-  
117 organism on or in living man or other living animals), which the EPA  
118 Administrator declares to be a pest under Section 25(c)(1) of FIFRA or  
119 which the [ ] declares to be a pest under Section 8(a)(1) of this act.

120 (26) "Pesticide" means (i) any substance or mixture of substances  
121 intended for preventing, destroying, repelling, or mitigating any pest,  
122 and (ii) any substance or mixture of substances intended for use as a  
123 plant regulator, defoliant, or desiccant.

124 (27) "Pesticide dealer" means a person who distributes to the user  
125 any restricted use pesticide and/or any pesticide whose uses or distribu-  
126 tion are further restricted by the [ ] by regulation.

127 (28) "Plant regulator" means any substance or mixture of substances,  
128 intended through physiological action, for accelerating or retarding the  
129 rate of growth or rate of maturation, or for otherwise altering the behavior  
130 of ornamental or crop plants or the produce thereof, but shall not include  
131 substances to the extent that they are intended as plant nutrients, trace  
132 elements, nutritional chemicals, plant inoculants, and soil amendments.

133 (29) "Protect health and the environment" means protection against  
134 any unreasonable adverse effects on the environment.

135 (30) "Registrant" means a person who has registered any pesticide  
136 pursuant to the provisions of this act.

137 (31) "Restricted use pesticide" means any pesticide with restricted  
138 uses as classified for restricted use by the Administrator, EPA.

139 (32) "State restricted pesticide use" means any pesticide use which,  
140 when used as directed or in accordance with a widespread and commonly  
141 recognized practice, the [ ] determines, subsequent to a hearing,  
142 requires additional restrictions for that use to prevent unreasonable  
143 adverse effects on the environment including man, lands, beneficial  
144 insects, animals, crops, and wildlife, other than pests.

145 (33) "Unreasonable adverse effects on the environment" means any  
146 unreasonable risk to man or the environment, taking into account the  
147 economic, social, and environmental costs and benefits of the use of any  
148 pesticide.

149 (34) "Weed" means any plant which grows where not wanted.

150 (35) "Wildlife" means all living things that are neither human,  
151 domesticated, nor, as defined in this act, pests, including but not limited  
152 to mammals, birds, and aquatic life.

*Comment:* Subsections 23 and 27. Not required by FIFRA.

Subsection 31. Under Section 3(d)(1)(C) of FIFRA, the designation of restricted use pesticide applies, "If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to

Subsection 32. Section 24(a) of FIFRA provides, in effect, that the State may impose additional restrictions to those imposed by EPA upon the sale or use of pesticides in the State.

1 Section 4. [*Misbranded.*] The term "misbranded" shall apply:

2 (1) To any pesticide, or to any device designated under Section  
3 8(b)(4):

4 (i) If its labeling bears any statement, design, or graphic repre-  
5 sentation relative thereto or to its ingredients which is false or misleading  
6 in any particular.

7 (ii) If it is an imitation of or is distributed under the name of  
8 another pesticide.

9 (iii) If any word, statement, or other information required to  
10 appear on the label or labeling is not prominently placed thereon with  
11 such conspicuousness (as compared with other words, statements, de-  
12 signs, or graphic matter in the labeling), and in such terms as to render it  
13 likely to be read and understood by the ordinary individual under custo-  
14 mary conditions of purchase and use.

15 (2) To any pesticide:

16 (i) If the labeling does not contain a statement of the federal use  
17 classification under which the product is registered.

18 (ii) If the labeling accompanying it does not contain directions for  
19 use which are necessary for effecting the purpose for which the product  
20 is intended and, if complied with, together with any requirements imposed  
21 under Section 3(d) of FIFRA, are adequate to protect health and the  
22 environment.

23 (iii) If the label does not bear:

24 (A) Name, brand or trademark under which the pesticide is  
25 distributed.

26 (B) An ingredient statement on that part of the immediate con-  
27 tainer (and on the outside container and wrapper of the retail package,  
28 if there be one, through which the ingredient statement on the immediate  
29 container cannot be clearly read) which is presented or displayed under  
30 customary conditions of purchase, provided that the ingredient statement  
31 may appear prominently on another part of the container as permitted  
32 pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the con-  
33 tainer makes it impracticable to place it on the part of the retail package  
34 which is presented or displayed under customary conditions of purchase.

35 (C) A warning or caution statement which may be necessary  
36 and which, if complied with together with any requirements imposed  
37 under Section 3(d) of FIFRA, would be adequate to protect the health  
38 and environment.

39 (D) The net weight or measure of the content.

40 (E) The name and address of the manufacturer, registrant, or  
41 person for whom manufactured.

42 (F) The EPA registration number assigned to each establish-

- 44 to the pesticide, if required by regulations under FIFRA.  
45 (iv) If that pesticide contains any substance or substances in  
46 quantities highly toxic to man unless the label bears, in addition to other  
47 label requirements:  
48 (A) The skull and crossbones.  
49 (B) The word "POISON" in red prominently displayed on a  
50 background of distinctly contrasting color.  
51 (C) A statement of a practical treatment (first aid or otherwise)  
52 in case of poisoning by the pesticide.  
53 (v) If the pesticide container does not bear a registered label or  
54 does not bear a label for "experimental use only."

*Comment:* The label and labeling requirements for pesticides must conform to FIFRA requirements. In subsection 2(iv), determination is under authority of Section 25(c)(2) of FIFRA.

1 Section 5. [Registration.]

2 (a) Every pesticide which is distributed in this State shall be registered  
3 with the [ ] subject to the provisions of this act. Such registration  
4 shall be renewed annually prior to [January 1], provided that registration  
5 is not required if a pesticide is shipped from one plant or warehouse to  
6 another plant or warehouse operated by the same person and used  
7 solely at such plant or warehouse as a constituent part to make a pesticide  
8 which is registered under the provisions of this act; or if the pesticide is  
9 distributed under the provisions of an experimental use permit issued  
10 under Section 6 of this act or an experimental use permit issued by EPA.

11 (b) The applicant for registration shall file a statement with the [ ]  
12 which shall include:

13 (1) The name and address of the applicant and the name and address  
14 of the person whose name will appear on the label, if other than applicant's.

15 (2) The name of the pesticide.

16 (3) Other necessary information required for completion of the  
17 department's application for registration form.

18 (4) A complete copy of the labeling accompanying the pesticide and  
19 a statement of all claims to be made for it, including the directions for  
20 use and the use classification as provided for in FIFRA.

21 (c) The [ ], when he deems it necessary in the administration of  
22 this act, may require the submission of the complete formula of any  
23 pesticide including the active and inert ingredients.

24 (d) The [ ] may require a full description of the tests made and the  
25 results thereof upon which the claims are based on any pesticide not  
26 registered pursuant to Section 3 of FIFRA or on any pesticide on which  
27 restrictions are being considered. The [ ] may refuse to consider  
28 data he required of the initial registrant of a pesticide use in support of  
29 any other application for registration of that same use unless such sub-  
30 sequent applicant has first obtained written permission to use such data.

32 the [ ] shall promptly notify said initial registrant. In the case of  
33 renewal of registration, a statement shall be required only with respect  
34 to information which is different from that furnished when the pesticide  
35 was registered or last reregistered.

36 (e) The [ ] may prescribe other necessary information by regulation.

37 (f) The applicant desiring to register a pesticide shall pay an annual  
38 registration fee of [ \$ ] to the [ ] for each pesticide registered  
39 for such applicant. All such registrations shall expire on [December 31]  
40 of any one year, unless sooner cancelled. A registration for a special local  
41 need pursuant to subsection (i) of this section which is disapproved by  
42 the Administrator, EPA, shall expire on the effective date of the Ad-  
43 ministrator's disapproval.

44 (g) Any registration approved by the [ ] and in effect on the [31st  
45 day of December] for which a renewal application has been made and  
46 the proper fee paid, shall continue in full force and effect until such time  
47 as the [ ] notifies the applicant that the registration has been renewed,  
48 or otherwise denied, in accord with the provisions of Section 7 of this  
49 act. Forms for reregistration shall be mailed to registrants at least 30 days  
50 prior to the due date.

51 [(h) If the renewal of a pesticide registration is not filed prior to  
52 [January 1] of any one year an additional fee of [ \$ ] shall be assessed  
53 and added to the original fee and shall be paid by the applicant before  
54 the registration renewal for that pesticide shall be issued, provided that  
55 such additional fee shall not apply if the applicant furnishes an affidavit  
56 certifying that he did not distribute such unregistered pesticide during  
57 the period of nonregistration. The payment of such additional fee is not  
58 a bar to any prosecution for doing business without proper registry.]

59 (i) Provided the State is certified by the Administrator of EPA to  
60 register pesticides to meet special local needs pursuant to Section 24(c)  
61 of FIFRA, the [ ] shall require the information set forth under  
62 subsections (b) through (e) of this section and shall, subject to the terms  
63 and conditions of certification, register such pesticide if he determines  
64 that:

65 (1) Its composition is such as to warrant the proposed claims for it.

66 (2) Its labeling and other material required to be submitted comply  
67 with the requirements of this act.

68 (3) It will perform its intended function without unreasonable  
69 adverse effects on the environment.

70 (4) When used in accordance with widespread and commonly  
71 recognized practice it will not generally cause unreasonable adverse  
72 effects on the environment.

73 (5) The proposed classification for general use, for restricted use, or  
74 for both is in conformity with Section 3(d) of FIFRA.

75 (6) A special local need exists.

76 (j) The [ ] shall not make any lack of essentiality a criterion for  
77 denying registration of any pesticide. Where two pesticides meet the  
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78 requirements of this section, one should not be registered in preference  
79 to the other.

1 Section 6. [*Experimental Use Permits.*] Provided the State is authorized  
2 by the Administrator of EPA to issue experimental use permits in order  
3 to accumulate information necessary to register a pesticide for special  
4 local needs, the [ ] may:

5 (1) Issue an experimental use permit to any person applying for an  
6 experimental use permit if he determines that the applicant needs such  
7 permit in order to accumulate information necessary to register a pesti-  
8 cide under Section 5(i) of this act. An application for an experimental  
9 use permit may be filed at the time of or before or after an application for  
10 registration is filed.

11 (2) Refuse to issue an experimental permit if he determines that  
12 issuance of such permit is not warranted or that the pesticide use to be  
13 made under the proposed terms and conditions may cause unreasonable  
14 adverse effects on the environment.

15 (3) Prescribe terms, conditions, and period of time for the experi-  
16 mental use permit which shall be under the supervision of the [ ].

17 (4) Revoke or modify any experimental use permit, at any time, if  
18 he finds that its terms or conditions are being violated, or that its terms  
19 and conditions are inadequate to avoid unreasonable adverse effects on  
20 the environment.

1 Section 7. [*Refusal to Register, Cancellation, Suspension, Legal Re-*  
2 *course.*]

3 (a) Provided the State is certified by the Administrator of EPA to  
4 register pesticides formulated to meet special local needs, the [ ]  
5 shall consider the following for refusal to register, for cancellation, for  
6 suspension, or for legal recourse for such pesticides:

7 (1) If it does not appear to the [ ] that the composition of the  
8 pesticide is such as to warrant the proposed claims for it, or if the pesti-  
9 cide and its labeling and other material required to be submitted do not  
10 comply with the provisions of this act or regulations adopted thereunder,  
11 he shall notify the applicant of the manner in which the pesticide, label-  
12 ing, or other material required to be submitted fails to comply with the  
13 provisions of this act so as to afford the applicant an opportunity to make  
14 the necessary corrections. If, upon receipt of such notice, the applicant  
15 does not make the required changes, the [ ] may refuse to register  
16 the pesticide. The applicant may request a hearing as provided for in  
17 the [Administrative Procedures Act].

18 (2) When the [ ] determines that a pesticide or its labeling does  
19 not comply with the provisions of the act or the regulations adopted  
20 thereunder, or when necessary to prevent unreasonable adverse effects  
21 on the environment, he may cancel the registration of a pesticide or  
22 change the classification of a pesticide, after a hearing in accordance

23 with the provisions of the [Administrative Procedures Act].

24 (3) When the [ ] determines that there is an imminent hazard,  
25 he may, on his own motion, suspend the registration of a pesticide in  
26 conformance with the provisions of the [Administrative Procedures  
27 Act]. Hearings shall be held with the utmost possible expedition.

28 (4) Any person who will be adversely affected by such order in this  
29 section may obtain judicial review thereof by filing in the [appropriate  
30 state court], within 60 days after the entry of such order, a petition  
31 praying that the order be set aside in whole or in part. A copy of the  
32 petition shall be forthwith transmitted by the clerk of the court to the  
33 [ ] and thereupon the [ ] shall file in the court the record of  
34 the proceedings on which he based his order. The court shall have juris-  
35 diction to affirm or set aside the order complained of in whole or in part.  
36 The findings of the [ ] with respect to questions of fact shall be  
37 sustained if supported by substantial evidence when considered on the  
38 record as a whole. Upon application, the court may remand the matter to  
39 the [ ] to take further testimony if there are reasonable grounds for  
40 the failure to adduce such evidence in the prior hearing. The [ ] may  
41 modify his findings and his order by reason of the additional evidence so  
42 taken and shall file the additional record and any modification of the  
43 findings or order with the clerk of the court.

44 (b) If the [ ] determines that the federally registered pesticide,  
45 with respect to the use of such pesticide within this State, (1) does not  
46 warrant the proposed claims for it, or (2) if the pesticide would cause  
47 unreasonable adverse effects on the environment, he may refuse to  
48 register the pesticide as required in Section 5 of this act, or if the pesti-  
49 cide is registered under Section 5 of this act the registration may be can-  
50 celled or suspended as per subsections (a)(2) and (3) of this section. If  
51 the [ ] believes the pesticide does not comply with the provisions of  
52 FIFRA or the regulations adopted thereunder, he shall advise EPA of  
53 the manner in which the pesticide, labeling, or other material required  
54 to be submitted fails to comply with the provisions of FIFRA, and suggest  
55 necessary corrections.

1 Section 8. *[Authority; Determinations; Rules and Regulations; Re-*  
2 *stricted Use Pesticides; and Uniformity.]*

3 (a) The [ ] is authorized, after due notice and an opportunity for  
4 a hearing:

5 (1) To declare as a pest any form of plant or animal life (other than  
6 man and other than bacteria, viruses, and other microorganisms on or in  
7 living man or other living animals) which is injurious to health or the  
8 environment.

9 (2) To determine whether pesticides registered for special local  
10 needs under the authority of Section 24(c) of FIFRA are highly toxic to  
11 man. The regulations promulgated by EPA pursuant to Section 25(c)(2)

13 termination.

14 (3) To determine pesticides, and quantities of substances contained  
15 in pesticides, which are injurious to the environment. The [ ] shall  
16 be guided by EPA regulations in this determination.

17 (b) The [ ] is authorized, after due notice and a public hearing,  
18 as provided for in the [Administrative Procedures Act] to make appropriate  
19 regulations, where such regulations are necessary for the enforcement  
20 and administration of the act, including but not limited to regulations  
21 providing for:

22 (1) The collection, examination, and reporting of samples of pesti-  
23 cides or devices pursuant to Section 15 of this act.

24 (2) The safe handling, transportation, storage, display, distribution,  
25 and disposal of pesticides and their containers.

26 (3) Labeling requirements of all pesticides required to be registered  
27 under provisions of this act, provided that such regulations shall not  
28 impose any requirements for federally registered labels in addition to  
29 or different from those required pursuant to FIFRA.

30 (4) Specifying classes of devices which shall be subject to the pro-  
31 visions of Section 4(1) of this act.

32 (5) Determining which pesticides with restricted uses may be  
33 distributed only by licensed pesticide dealers.

34 (6) Prescribing methods to be used in the application of pesticides  
35 where the [ ] finds that such regulations are necessary to carry out  
36 the purpose and intent of this act. Such regulations may relate to the  
37 time, place, manner, methods, materials, and amounts and concentra-  
38 tions in connection with the application of the pesticide and may restrict  
39 or prohibit use of pesticides in designated areas during specified periods  
40 of time and shall encompass all reasonable factors which the [ ]  
41 deems necessary to prevent damage or injury by drift or misapplication  
42 to plants, including forage plants, or adjacent or nearby lands; wildlife in  
43 the adjoining or nearby areas; fish and other aquatic life in waters in  
44 reasonable proximity to the area to be treated; and humans, animals, or  
45 beneficial insects. In issuing such regulations the [ ] shall give  
46 consideration to pertinent research findings and recommendations of  
47 other agencies of the State, the federal government, or other reliable  
48 sources. The [ ] may, by regulation, require that notice of a proposed  
49 application of a pesticide be given to landowners whose property is  
50 adjacent to the property to be treated or in the immediate vicinity thereof,  
51 if he finds that such notice is necessary to carry out the purpose of this act.

52 (7) Requiring any pesticide registered for special local needs to be  
53 colored or discolored if he determines that such requirement is feasible  
54 and is necessary for the protection of health and the environment. Such  
55 regulations shall be consistent with regulations promulgated by EPA  
56 pursuant to Section 25(c)(5) of FIFRA.

57 (8) Establishing standards for the packages, containers, and wrap-  
58 pings of pesticides registered for special local needs. Such regulations

59 shall be consistent with the regulations promulgated by EPA pursuant to  
60 Section 25(c)(3) of FIFRA.

61 (c) For the purpose of uniformity and in order to enter into cooperative  
62 agreements, the [ ] may:

63 (1) Adopt restricted use pesticides classifications as determined  
64 by EPA. In addition to those restricted use pesticides classified by the  
65 Administrator, EPA, the [ ] may also, by regulation, after a public  
66 hearing following due notice, determine state restricted pesticide uses for  
67 the State or for designated areas within the State. If the [ ] deter-  
68 mines that the pesticide (when applied in accordance with its directions  
69 for use, warnings, and cautions, and for uses for which it is registered)  
70 may cause, without additional regulatory restrictions, unreasonable  
71 adverse effects on the environment, including injury to the applicator or  
72 other persons because of acute dermal or inhalation toxicity of the pesti-  
73 cide, the pesticide shall be applied only by or under the direct super-  
74 vision of a certified applicator, or be subject to such other restrictions as  
75 the [ ] may determine. Such other restrictions may include, but are  
76 not limited to, the conditions of use as provided in subsection (b)(6) of  
77 this section for state restricted pesticide uses. [The [ ] may require  
78 a permit for the purchase, possession, and application of pesticides  
79 labeled for uses which were designated as state restricted pesticide uses,  
80 and may further require that application of any such pesticide be only  
81 under the direct supervision of the [ ].]

82 (2) Adopt regulations in conformity with the primary pesticide  
83 standards, particularly as to labeling, registration requirements, and  
84 issuance of experimental use permits as established by EPA or other  
85 federal or state agencies.

86 (d) Regulations adopted under this act shall not permit any pesticide  
87 use which is prohibited by FIFRA and regulations or orders issued  
88 thereunder.

89 (e) Regulations adopted under this act as to certified applicators of  
90 restricted use pesticides as designated under FIFRA, regulations adopted  
91 as to special local needs registrations, and regulations adopted as to  
92 experimental use permits as authorized by FIFRA shall not be inconsistent  
93 with the requirements of FIFRA and regulations promulgated thereunder.

94 (f) In order to comply with Section 4 of FIFRA, the [ ] is author-  
95 ized to make such reports to the EPA in such form and containing such  
96 information as the agency may from time to time require.

*Comment:* The bracketed portion of subsection (c)(1) is not required by FIFRA.

1 Section 9. [*Classification of Licenses; Standards.*]

2 (a) The [ ] may further classify or subclassify certifications or  
3 licenses to be issued as may be necessary for the administration and  
4 enforcement of the act. Subclassifications may relate to ground, aerial,  
5 or manual methods used by any licensee to apply pesticides or to the use



6 of pesticides to control insects, plant diseases, rodents, or weeds. Each  
 7 classification shall be subject to separate testing procedures and require-  
 8 ments, provided that no person shall be required to pay an additional  
 9 license fee if such person desires to be licensed in one or all of the li-  
 10 cense classifications provided for by the [ ] under the authority of  
 11 this section.

12 (b) The [ ] in promulgating regulations under this act shall  
 13 prescribe standards for the certification of applicators of pesticides. Such  
 14 standards may relate to the use and handling of pesticides, or to the use  
 15 and handling of the pesticide or class of pesticides covered by the indi-  
 16 vidual's certification, and shall be relative to the hazards involved. In  
 17 determining standards, the [ ] shall consider the characteristics of  
 18 the pesticide formulation such as the acute dermal and inhalation toxicity;  
 19 the persistence, mobility, and susceptibility to biological concentration;  
 20 the use experience which may reflect an inherent misuse or an unexpected  
 21 good safety record which does not always follow laboratory toxicological  
 22 information; the relative hazards of patterns of use such as granular soil  
 23 applications, ultralow volume or dust aerial applications, or air blast  
 24 sprayer applications; and the extent of the intended use. Further, the  
 25 [ ] shall take into consideration standards of the EPA and is autho-  
 26 rized to adopt by regulation these standards.

*Comment:* The manner in which a State classifies licenses or certifications is discretionary with the States, provided that any such classification or subclassification will fall within a general category of classification as specified by EPA. In subsection (b), state standards should assure that the individual is competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual's certification. Such standards must conform to the standards prescribed by EPA, and may be more restrictive than the federal standards.

1 Section 10. [*Certification Requirements; Prohibition.*] No person shall  
 2 use or supervise the use of any restricted use pesticide which is restricted  
 3 to use by certified applicators, or any state restricted pesticide use which  
 4 is restricted to use by certified applicators, without that person first  
 5 complying with the certification requirements pursuant to this act, and  
 6 such other restrictions as had been determined by the [ ] as neces-  
 7 sary to prevent unreasonable adverse effects on the environment, includ-  
 8 ing injury to the applicator or other persons, provided that a competent  
 9 person who is not a certified applicator may use a restricted use pesticide  
 10 or a state restricted pesticide use under the direct supervision of a  
 11 certified applicator.

*Comment:* A State may wish to establish different standards for supervision by commercial or private applicators.

1 Section 11. [*Commercial Applicator's License.*] No commercial appli-  
 2 cator shall use or supervise the use of any restricted use pesticide which  
 3 is restricted to use by certified applicators or any state restricted pesticide  
 4 use which is restricted to use by certified applicators, without a com-

5 mercial applicator's license issued by the [ ]. The [ ] shall  
6 require an annual fee of [\$ ] for each commercial applicator's  
7 license issued.

8 (1) Application for the commercial applicator's license shall be made  
9 in writing to the [ ] on a designated form obtained from the [ ]  
10 office. Each application for a license shall contain information regarding  
11 the applicant's qualifications and proposed operations, license classifica-  
12 tion or classifications the applicant is applying for, and shall include  
13 the following:

14 (i) The full name of the individual applying for the license.

15 (ii) The address of the applicant in the State.

16 (iii) Any other necessary information prescribed by the [ ].

17 (2) The [ ] shall not issue a commercial applicator's license  
18 until the individual identified pursuant to subsection (1)(i) of this  
19 section has passed a written examination to demonstrate to the [ ]  
20 his knowledge of how to apply pesticides under the classifications he  
21 has applied for, and his knowledge of the nature and effect of pesticides  
22 he may apply under such classifications. Applicants successfully complet-  
23 ing this examination requirement shall have met the standards for a  
24 certified commercial applicator for the use of the pesticide, or the par-  
25 ticular use or uses classified for restricted use covered by the applicant's  
26 classification. The scope of the examination shall be prescribed by  
27 regulation.

28 (3) The [ ] may renew any applicant's license under the classi-  
29 fication(s) for which such applicant is licensed, subject to reexamination  
30 or other requirements imposed by the [ ] by regulation to ensure  
31 that the applicator continues to meet the requirements of changing  
32 technology and to assure a continuing level of competence and ability  
33 to use pesticides safely and properly.

34 [(4) If the application for renewal for a license is not filed prior to  
35 [January 1] in any year, an additional fee of [\$ ] shall be assessed  
36 and added to the original fee and shall be paid by the applicant before the  
37 renewal for a license shall be issued, provided that such penalty shall not  
38 apply if the applicant furnishes an affidavit certifying that he has not  
39 applied pesticides subsequent to the expiration of his license.]

40 (5) If the [ ] finds the applicant qualified to apply pesticides in  
41 the classifications he has applied for, and if the applicant applying for a  
42 license to engage in aerial application of pesticides has met all of the  
43 requirements of the Federal Aviation Agency, the aeronautics commission  
44 of this State, and any other applicable federal or state laws or regulations  
45 to operate the equipment described in the application, the [ ] shall  
46 issue a commercial applicator's license limited to the classifications for  
47 which he is qualified, which shall expire at the end of the calendar year  
48 of issue unless it has been revoked or suspended prior thereto by the  
49 [ ] for cause. The [ ] may limit the license of the applicant to

51 equipment if the applicant is only so qualified. If a license is not issued  
52 as applied for the [ ] shall inform the applicant in writing of the  
53 reasons therefor.

1 Section 12. [*Private Applicators.*]

2 (a) No private applicator shall use or supervise the use of any restricted  
3 use pesticide which is restricted to use by certified applicators or any  
4 state restricted pesticide use which is restricted to use by certified appli-  
5 cators, without first complying with the certification requirements deter-  
6 mined by the [ ] as necessary to prevent unreasonable adverse  
7 effects on the environment, including injury to the applicator or other  
8 persons, for that specific pesticide use.

9 (b) Certification standards to determine the individual's competency  
10 with respect to the use and handling of the pesticide or class of pesti-  
11 cides the private applicator is to be certified to use shall be relative to  
12 hazards according to Section 9(b) of this act. In determining these  
13 standards the [ ] shall take into consideration standards of the EPA  
14 and is authorized to adopt by regulation these standards.

15 (c) The [ ] shall assess a fee of [\$ ] for each certification to  
16 cover the costs of administering this section.

17 (d) A private applicator certification issued by the [ ] shall be  
18 valid for such period as prescribed by the [ ] in regulations. The  
19 [ ] shall, by regulation, develop provisions to ensure that certified  
20 private applicators continue to meet the requirements of changing tech-  
21 nology and to assure a continuing level of competence and ability to use  
22 pesticides safely and properly.

23 (e) If the [ ] does not qualify the private applicator under this  
24 section he shall inform the applicant in writing of the reasons therefor.

*Comment:* Subsection (c) is optional for those States wishing to charge a fee for certification of private applicators. States not desiring to charge such fee should delete this subsection.

1 Section 13. [*Pesticide Dealer License.*]

2 (a) It shall be unlawful for any person to act in the capacity of a pesti-  
3 cide dealer, as defined by Section 3(27) of this act, or advertise as, or  
4 assume to act as a pesticide dealer at any time without first having ob-  
5 tained an annual license from the [ ] which shall expire on [Decem-  
6 ber 31] of each year. A license shall be required for each location or  
7 outlet located within this State from which such pesticides are distributed,  
8 provided that any manufacturer, registrant, or distributor who has no  
9 pesticide dealer outlet licensed within this State and who distributes  
10 such pesticides directly into this State shall obtain a pesticide dealer  
11 license for his principal out-of-state location or outlet.

12 (b) Application for a license shall be accompanied by a [\$ ]  
13 annual license fee and shall be on a form prescribed by the [ ] and  
14 such license. If

15 such applicant is a partnership, association, corporation, or organized  
16 group of persons, the full name of each member of the firm or partner-  
17 ship or the names of the principal officers of the association or corporation  
18 shall be given on the application. Such application shall further state the  
19 address of each outlet to be licensed, the principal business address of  
20 the applicant, the name of a person domiciled in this State authorized to  
21 receive and accept service of summons of legal notices of all kinds for  
22 the applicant, and any other necessary information prescribed by the [ ].

23 (c) Provisions of this section shall not apply to a commercial applicator  
24 who sells pesticides only as an integral part of his pesticide application  
25 service when such pesticides are dispensed only through equipment used  
26 for such pesticide application; or any federal, state, county, or municipal  
27 agency which provides pesticides only for its own programs.

28 [(d) If an application for renewal of a licensed pesticide dealer license  
29 is not filed on or prior to [January 1] of any one year an additional fee  
30 of [\$ ] shall be assessed and added to the original fee and shall be  
31 paid by the applicant before the renewal license shall be issued, provided  
32 that such additional fee shall not apply if the applicant furnishes an  
33 affidavit that he has not operated as a licensed pesticide dealer subsequent  
34 to the expiration of his prior license.]

35 (e) Each licensed pesticide dealer shall be responsible for the acts of  
36 each person employed by him in the solicitation and sale of pesticides  
37 and all claims and recommendations for use of pesticides. The dealer's  
38 license shall be subject to denial, suspension, or revocation after a hearing  
39 for any violation of this act whether committed by the dealer, or by the  
40 dealer's officer, agent, or employee.

*Comment:* This section not required by FIFRA.

1 Section 14. *[Unlawful Acts and/or Grounds for Denial, Suspension or*  
2 *Revocation of a License, Permit or Certification.]*

3 (a) The [ ] may suspend, pending inquiry, for not longer than  
4 10 days and after opportunity for a hearing may deny, suspend, revoke or  
5 modify any provision of any license, permit, or certification issued under  
6 this act if he finds that the applicant or the holder of a license, permit, or  
7 certification [has been convicted or is subject to a final order imposing a  
8 civil penalty pursuant to Section 14, FIFRA, or] has committed any of the  
9 following acts, each of which is declared to be a violation of this act,  
10 provided that any licensed or unlicensed person shall be subject to the  
11 penalties provided for by Section 23 of this act.

12 (1) Made false or fraudulent claims through any media misrepresent-  
13 ing the effect of pesticides or methods to be utilized.

14 (2) Made a pesticide recommendation or used a pesticide inconsistent  
15 with the labeling, the EPA or [ ] state registration for that pesticide,  
16 or in violation of the EPA or [ ] state restrictions on the use of that

- 18 (3) Applied known ineffective or improper pesticides.
- 19 (4) Operated faulty or unsafe equipment.
- 20 (5) Operated in a faulty, careless, or negligent manner.
- 21 (6) Neglected or, after notice, refused to comply with the provisions
- 22 of this act, the rules adopted hereunder, or of any lawful order of the [ ].
- 23 (7) Refused or neglected to keep and maintain the records required
- 24 by this act, or to make reports when and as required.
- 25 (8) Made false or fraudulent records, invoices, or reports.
- 26 (9) Used, or supervised the use of, a pesticide which is restricted to
- 27 use by certified applicators without having qualified as a certified appli-
- 28 cator according to Sections 11(2) or 12 of this act.
- 29 (10) Used fraud or misrepresentation in making an application for,
- 30 or renewal of, a license, permit, or certification.
- 31 (11) Refused or neglected to comply with any limitations or restric-
- 32 tions on or in a duly issued license, permit, or certification.
- 33 (12) Aided or abetted a licensed or an unlicensed person to evade the
- 34 provisions of this act, conspired with such a licensed or an unlicensed
- 35 person to evade the provisions of this act, or allowed one's license,
- 36 permit, or certification to be used by another person.
- 37 (13) Made false or misleading statements during or after an inspec-
- 38 tion concerning any infestation or infection of pests found on land.
- 39 (14) Impersonated any federal, state, county, or city inspector or
- 40 official.
- 41 (b) It is unlawful for any person to distribute in the State any of the
- 42 following:
- 43 (1) Any pesticide which is not registered pursuant to the provisions
- 44 of this act.
- 45 (2) Any pesticide if any of the claims made for it or any of the
- 46 directions for its use or other labeling differs from the representations
- 47 made in connection with its registration, or if the composition of a pesti-
- 48 cide differs from its composition as represented in connection with its
- 49 registration, provided that a change in the labeling or formulation of a
- 50 pesticide may be made within a registration period without requiring
- 51 reregistration of the product if the registration is amended to reflect such
- 52 change and if such change will not violate any provision of FIFRA or
- 53 this act.
- 54 (3) Any pesticide unless it is in the registrant's or the manufacturer's
- 55 unbroken immediate container and there is affixed to such container, and
- 56 to the outside container or wrapper of the retail package, if there is one
- 57 through which the required information on the immediate container can-
- 58 not be clearly read, a label bearing the information required in this act
- 59 and the regulations adopted under this act.
- 60 (4) Any pesticide which has not been colored or discolored pursuant
- 61 to the provisions of Section 8(b)(7) of this act or of Section 25(c)(5) of
- 62 FIFRA.

64 which is misbranded.

65 (6) Any pesticide in a container which, due to damage, is hazardous.

66 (c) It shall be unlawful:

67 (1) To distribute any pesticide labeled for restricted uses to any  
68 person who is required by law or regulations promulgated under such  
69 law to [have a permit or to] be certified to use or purchase such pesticide  
70 labeled for restricted uses, unless such person [has a valid permit or] is  
71 certified to use or purchase the kind and quantity of such pesticide labeled  
72 for restricted uses, or distribution is made to the designated agent of a  
73 certificate [or permit] holder [, provided that subject to conditions estab-  
74 lished by the [ ], such permit may be obtained immediately prior  
75 to distribution from any person designated by the [ ]].

76 (2) For any person to detach, alter, deface, or destroy, wholly or in  
77 part, any label or labeling provided for in this act or regulations adopted  
78 under this act, or to add any substance to, or take any substance from, a  
79 pesticide in a manner that may defeat the purpose of this act or the  
80 regulations adopted thereunder.

81 (3) For any person to use or cause to be used any pesticide in a  
82 manner inconsistent with its labeling or to regulations of the [ ] if  
83 those regulations further restrict the uses provided on the labeling.

84 (4) For any person to use for his own advantage or to reveal, other  
85 than to the [ ] or properly designated state or federal officials, or  
86 employees of the state or federal executive agencies, or to the courts of  
87 the State or the federal government in response to a subpoena, or to  
88 physicians, or in emergencies to pharmacists and other qualified per-  
89 sons for use in the preparation of antidotes, any information relative to  
90 formulas of products acquired by authority of Section 5 of this act or any  
91 information judged by the [ ] as containing or relating to trade  
92 secrets or commercial or financial information obtained by authority of  
93 this act and marked as privileged or confidential by the registrant.

94 (5) For any person to handle, transport, store, display, or distribute  
95 pesticides in such a manner as to endanger man and his environment or  
96 to endanger food, feed, or any other products that may be transported,  
97 stored, displayed, or distributed with such pesticides.

98 (6) For any person to dispose of, discard, or store any pesticides  
99 or pesticide containers in such a manner as to cause injury to humans,  
100 vegetation, crops, livestock, wildlife, beneficial insects, or to pollute any  
101 water supply or waterway.

102 (7) For any person to refuse or otherwise fail to comply with the pro-  
103 visions of this act, the regulations adopted hereunder, or of any lawful  
104 order of the [ ].

105 (d) The penalties provided for violations of subsections (b)(1) through  
106 (5) of this section shall not apply to:

107 (1) Any carrier while lawfully engaged in transporting a pesticide  
108 within this State, if such carrier shall, upon request, permit the [ ] to  
109 copy all records showing the transactions in and movement of the pesti-  
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110 cides or devices.

111 (2) Public officials of this State and the federal government while  
112 engaged in the performance of their official duties in administering state  
113 or federal pesticide laws or regulations.

114 (3) The manufacturer, shipper, or distributor of a pesticide for  
115 experimental use only by or under the supervision of an agency of this  
116 State or the federal government authorized by law to conduct research in  
117 the field of pesticides, provided that there is a valid experimental use  
118 permit as provided for by Section 6 of this act or by EPA for such pesticide.

119 (4) Any person who ships a substance or mixture of substances  
120 being put through tests, in which the purpose is only to determine its  
121 value for pesticide purposes, or to determine its toxicity or other proper-  
122 ties, and from which the user does not expect to receive any benefit in  
123 pest control from its use.

124 (e) No pesticide or device shall be deemed in violation of this act when  
125 intended solely for export to a foreign country, and when prepared or  
126 packed according to the specification or directions of the purchaser. If  
127 not so exported, all the provisions of this act shall apply.

*Comment:* Subsection (a). This ground for denial, suspension, or revocation of a license, permit, or certification is recommended in 40 C.F.R. 171.7(b)(1)(iii)(B). If any Legislature believes this subsection violates state statutes or policy they may consider the bracketed portion as an option.

Subsection (c)(1) is a necessary option for States having, or intending to implement, permit authority, or to control sales of restricted use pesticides.

1 Section 15. [*Enforcement.*]

2 (a) The sampling and examination of pesticides or devices shall be  
3 made under the direction of the [ ] for the purpose of determining  
4 whether they comply with the requirements of this act. The [ ] is  
5 authorized, upon presentation of proper identification, to enter any  
6 distributor's premises, including any vehicle of transport, at all reasonable  
7 times in order to have access to pesticides or devices packaged and labeled  
8 for distribution and to samples of any containers or labeling for such  
9 pesticides or devices. If the [ ] obtains any samples, prior to leaving  
10 the premises, he shall give to the owner, operator, or agent in charge a  
11 receipt describing the samples obtained and, if requested, a portion of  
12 each such sample equal in volume or weight to the portion retained. If an  
13 analysis is made of such samples, a copy of the results of such analysis  
14 shall be furnished promptly to the owner, operator, or agent in charge. If  
15 it appears from such examination that a pesticide or device fails to comply  
16 with the provisions of this act or regulations adopted thereunder, and the  
17 [ ] contemplates instituting criminal proceedings against any person,  
18 the [ ] shall cause appropriate notice to be given to such person. Any  
19 person so notified shall be given an opportunity within a reasonable time  
20 to present his views, either orally or in writing, with regard to the con-  
21 templated proceedings. If thereafter, in the opinion of the [ ], it  
22 appears that the provisions of the act or regulations adopted thereunder

23 have been violated by such person, the [ ] shall refer a copy of the  
24 results of the analysis or the examination of such pesticide or device to  
25 the [prosecuting] attorney for the county in which the violation occurred.

26 (b) For the purpose of carrying out the provisions of this act the [ ]  
27 may enter upon any public or private premises at reasonable times, in  
28 order to:

29 (1) Have access for the purpose of inspecting any equipment used  
30 in applying pesticides.

31 (2) Inspect or sample lands actually or reported to be exposed to  
32 pesticides.

33 (3) Inspect storage or disposal areas.

34 (4) Inspect or investigate complaints of injury to humans or land.

35 (5) Sample pesticides being applied or to be applied.

36 (6) Observe the use and application of a pesticide.

37 (c) Should the [ ] be denied access to any land where such access  
38 was sought for the purposes set forth in this act, he may apply to any court  
39 of competent jurisdiction for a search warrant authorizing access to such  
40 land for said purposes. The court may, upon such application, issue the  
41 search warrant for the purposes requested.

42 (d) The [ ], with or without the aid and advice of the county or  
43 district attorney, is charged with the duty of enforcing the requirements  
44 of this act and any rules or regulations issued hereunder. In the event a  
45 county or district attorney refuses to act on behalf of the [ ], the  
46 Attorney General may so act.

47 (e) The [ ] may bring an action to enjoin the violation or threatened  
48 violation of any provision of this act or any regulation made pursuant to  
49 this act in a court of competent jurisdiction of the county in which such  
50 violation occurs or is about to occur.

51 (f) Nothing in this act shall be construed as requiring the [ ] to  
52 report minor violations of this act for prosecution or for the institution  
53 of condemnation proceedings when he believes that the public interest  
54 will be served best by a suitable notice of warning in writing.

1 Section 16. ["*Stop Sale, Use, or Removal*" Order.] When the [ ]  
2 has reasonable cause to believe a pesticide or device is being distributed,  
3 stored, transported, or used in violation of any of the provisions of this  
4 act, or of any of the prescribed regulations under this act, he may issue  
5 and serve a written "stop sale, use, or removal" order upon the owner or  
6 custodian of any such pesticide or device. If the owner or custodian is not  
7 available for service of the order upon him, the [ ] may attach the  
8 order to the pesticide or device and notify the owner or custodian and the  
9 registrant. The pesticide or device shall not be sold, used, or removed  
10 until the provisions of this act have been complied with and the pesticide  
11 or device has been released in writing under conditions specified by the  
12 [ ] or the violation has been otherwise disposed of as provided in  
13 this act by a court of competent jurisdiction.



1 Section 17. [*Judicial Action after "Stop Sale, Use, or Removal" Order.*]

2 (a) After service of a "stop sale, use, or removal" order is made upon  
3 any person, either that person, the registrant, or the [ ] may file an  
4 action in a court of competent jurisdiction in the county in which a viola-  
5 tion of this act or regulations adopted thereunder is alleged to have  
6 occurred for an adjudication of the alleged violation. The court in such  
7 action may issue temporary or permanent injunctions, mandatory or  
8 restraining, and such intermediate orders as it deems necessary or ad-  
9 visable. The court may order condemnation of any pesticide or device  
10 which does not meet the requirements of this act or regulations adopted  
11 thereunder.

12 (b) If the pesticide or device is condemned, it shall, after entry of  
13 decree, be disposed of by destruction or sale as the court directs, and if  
14 such pesticide or device is sold, the proceeds, less costs including legal  
15 costs, shall be paid to the state treasury as provided in Section 27 of this  
16 act, provided that the pesticide or device shall not be sold contrary to the  
17 provisions of this act or regulations adopted thereunder. Upon payment  
18 of costs and execution and delivery of a good and sufficient bond condi-  
19 tioned that the pesticide or device shall not be disposed of unlawfully,  
20 the court may direct that the pesticide or device be delivered to the owner  
21 thereof for relabeling, reprocessing, removal from the State, or otherwise  
22 bringing the product into compliance.

23 (c) When a decree of condemnation is entered against the pesticide or  
24 device, court costs, fees, storage, and other proper expenses shall be  
25 awarded against the person, if any, appearing as claimant of the pesticide.

1 Section 18. [*Records.*]

2 (a) Any person issued a license [or permit] under the provisions of this  
3 act may be required by the [ ] to keep accurate records containing  
4 the following information:

5 (1) The delivery, movement, or holding of any pesticide or device  
6 including the quantity.

7 (2) The date of shipment and receipt.

8 (3) The name of consignor and consignee.

9 (4) Any other information, necessary for the enforcement of this  
10 act, as prescribed by the [ ].

11 (b) The [ ] shall have access to such records at any reasonable  
12 time to copy or make copies of such records solely for the purpose of  
13 carrying out the provisions of this act. Unless required for the enforce-  
14 ment of this act, such information shall be confidential and if summarized,  
15 shall not identify an individual person.

16 (c) The [ ] shall require licensed commercial applicators to main-  
17 tain records with respect to applications of restricted use pesticides and  
18 the [ ] may require such records on all pesticides. Such relevant  
19 information as the [ ] may deem necessary may be specified by

21 records related to applications of certain state restricted pesticide uses.]  
22 Such records shall be kept for a period of [ ] years from the date  
23 of the application of the pesticide to which such records refer, and the  
24 [ ] shall, upon request in writing, be furnished with a copy of such  
25 records forthwith by the licensee or certified commercial applicator.

*Comment:* In subsection (c), "private applicators" are exempted from record-keeping requirements under FIFRA.

1 Section 19. [*Cooperation.*] The [ ] may cooperate, receive grants-  
2 in-aid, and enter into cooperative agreements or contracts with any  
3 agency of the federal government, of this State or its subdivisions, or  
4 with any agency of another State, in order to:

5 (1) Secure uniformity of regulations.

6 (2) Enter into cooperative agreements with the EPA to register  
7 pesticides under the authority of this act and FIFRA.

8 (3) Cooperate in the enforcement of the federal pesticide control  
9 laws through the use of state and/or federal personnel and facilities and  
10 to implement cooperative enforcement programs including but not limited  
11 to the registration and inspection of establishments.

12 (4) Develop and administer state plans for training and for certifica-  
13 tion of certified applicators consistent with federal standards.

14 (5) Contract for training with other agencies for the purpose of  
15 training certified applicators.

16 (6) Contract for monitoring pesticides for the national plan.

17 (7) Prepare and submit state plans to meet federal certification  
18 standards, as provided for in Section 4 of FIFRA.

19 (8) Regulate certified applicators.

1 Section 20. [*Publication of Information.*] The [ ] may publish, at  
2 least annually and in such form as he may deem proper, results of analyses  
3 based on official samples as compared with the analyses guaranteed and  
4 information concerning the distribution of pesticides, provided that  
5 individual distribution information shall not be a public record. The  
6 [ ] may, in cooperation with the [Land Grant College (University)]  
7 or other educational institutions publish information and conduct short  
8 courses of instruction in the areas of knowledge required in this act.

1 Section 21. [*Reports of Pesticide Accidents or Incidents.*] The [ ]  
2 may by regulation require the reporting of significant pesticide accidents  
3 or incidents to a designated state agency.

*Comment:* This section not required by FIFRA.

1 Section 22. [*Subpoenas.*] The [ ] may issue subpoenas to compel  
2 the attendance of witnesses and/or production of books, documents, and

3 records in the State in any hearing affecting the authority or privilege  
4 granted by a license, registration, certification, or permit issued under  
5 the provisions of this act.

1 Section 23. [Penalties.]

2 (a) Any person violating any provisions of this act or regulations  
3 adopted thereunder is guilty of a misdemeanor for the first violation and  
4 a gross misdemeanor for a subsequent violation. In any instance where a  
5 person was issued a warning in writing by the [ ] pursuant to the  
6 provisions of this act, such person shall, upon conviction of such pro-  
7 vision of this act, be guilty of a gross misdemeanor, provided that any  
8 offense committed more than three years after a written warning is  
9 issued by the [ ] or a previous conviction shall be construed as a  
10 first offense and a misdemeanor.

11 (b) No state court shall allow the recovery of damages from administra-  
12 tive action taken or for "stop sale, use, or removal" if the court finds  
13 that there was probable cause for such action.

*Comment:* The degree of penalty for a violation of this act is a state option and appropriate terminology for the individual State should be used.

1 Section 24. [Protection of Trade Secrets and Other Information.]

2 (a) In submitting data required by this act, the applicant may (1)  
3 clearly mark any portions thereof which in his opinion are trade secrets or  
4 commercial or financial information and (2) submit such marked material  
5 separately from other material required to be submitted under this act.

6 (b) Notwithstanding any other provision of this act, the [ ] shall  
7 not make public information which in his judgment contains or relates to  
8 trade secrets or commercial or financial information obtained from a  
9 person and privileged or confidential, except that, when necessary to  
10 carry out the provisions of this act, information relating to formulas of  
11 products acquired by authorization of this act may be revealed to any  
12 state or federal agency consulted or as required by law and may be re-  
13 vealed at a public hearing or in findings of fact issued by the [ ].

14 (c) If the [ ] proposes to release for inspection information which  
15 the applicant or registrant believes to be protected from disclosure under  
16 subsection (b) of this section, he shall notify the applicant or registrant,  
17 in writing, by certified mail. The [ ] shall not thereafter make availa-  
18 ble for inspection such data until 30 days after receipt of the notice by  
19 the applicant or registrant. During this period, the applicant or registrant  
20 may institute an action in an appropriate court for a declaratory judgment  
21 as to whether such information is subject to protection under subsection  
22 (b) of this section.

*Comment:* Refer to similar provision in Section 10 of FIFRA.

2 by this act may be delegated by him to such employees of the department  
3 or agents as the [ ] may from time to time designate for such purposes.

1 Section 26. [*Reciprocal Agreement.*] The [ ] may waive all or  
2 part of the examination requirements provided for in Sections 11 and 12  
3 of this act on a reciprocal basis with any other jurisdiction which has  
4 substantially the same standards. Licenses or certifications issued pur-  
5 suant to this section may be suspended or revoked in the same manner  
6 and on the same grounds as other licenses or certifications pursuant to  
7 this act, or upon suspension or revocation of the license or certification  
8 of another jurisdiction supporting the issuance of a [State] license or  
9 certification.

1 Section 27. [*Disposition of Funds.*] All moneys received by the [ ]  
2 under the provisions of this act shall be deposited [into the treasury of  
3 the State] [to the credit of a special fund to be used only for carrying out  
4 the provisions of this act].

1 Section 28. [*Prior Liability.*] The enactment of this act shall not have  
2 the effect of terminating, or in any way modifying, any liability, civil or  
3 criminal, which shall already be in existence on the date this act becomes  
4 effective.

1 Section 29. [*Severability.*] [Insert severability clause.]

1 Section 30. [*Repeal.*] [Insert repealer clause.]

1 Section 31. [*Effective Date.*] [Insert effective date.]

*Comment:* After the effective date of Section 3, FIFRA, all pesticides must be registered either pursuant to Section 3 or Section 24(c). EPA has provided, however, for an orderly phase-in of the registration scheme of the amended FIFRA, by providing that state registrations of intrastate products will continue to be valid, provided that the registrant has filed with EPA within 60 days of the effective date of Section 3, a notice of intent to apply for federal registration. A provision should be included in the act to ensure the continued validity of existing state registrations of intrastate products during the phase-in period for Section 3, and to authorize the renewal of such registrations during this phase-in period.

### **An Act for Reciprocal Non-Retaliation in Insurance Taxation**

Virtually all States have retaliatory insurance tax statutes. These laws provide that the State will tax premiums collected within its boundaries by a foreign company on the same basis as the premiums collected by a domestic company are taxed in the state of residence of the foreign company. The goal of such legislation is to protect domestic companies from discriminatory taxation in other States. The practical result of present retaliatory legislation is to create a ceiling on the tax rate that a State can apply to foreign companies. This condition has led to some States taxing domestic insurance companies at a higher rate than foreign companies. Two States (Massachusetts and New York) have adopted reciprocal nonretaliatory statutes, and within this limited framework they have made some adjustments in their method of insurance taxation.

Existing practices, by imposing different rates on companies according to their State of residence, make it extremely difficult to develop tax policies in a rational manner suited to individual state needs. Under the present retaliatory tax structure, a State's tax policy is, in effect, determined by the actions of other States. This has given rise to advocacy of preemptive federal legislation to mandate a uniform rate of insurance taxation for all States—a step in the direction of federal regulation of the industry and the loss of still another traditional state responsibility.

This complicated problem has received attention in recent years. In 1970, the National Association of Insurance Commissioners unanimously adopted a policy statement rejecting retaliatory insurance taxes. In 1974, following a study prepared by its Committee on Interstate Relations, the National Association of Tax Administrators adopted a resolution calling for all States to eliminate retaliatory insurance taxes and to consider model laws that had been developed by NATA's Subcommittee on Retaliatory Insurance Taxes.

At its 1975 annual meeting, the Southern Legislative Conference of the Council of State Governments adopted the following resolution:

Forty-eight States impose a retaliatory tax on insurance premiums to equalize tax differentials between the States. These taxes represent a serious restraint on the taxing powers of the individual States.

Because of this problem, which affects interstate cooperation and relations, the Southern Legislative Conference requests the Council of State Governments to initiate a study of this matter and to report to the States.

In response to the above-cited resolution, the Council of State Governments created a special study Task Force that included in its membership state legislators, state tax commissioners, state insurance commissioners, and representatives of national organizations in the fields of insurance and taxation. The Task Force met twice in the early months of 1976 and is now preparing a research report due to be published before the end of the year. Action already approved by the Task Force includes suggested legislation based on models developed by the National Association of Tax Administrators, with a recommendation that the Committee on Suggested State Legislation carry the proposal in its volume for 1977. Additional work by the Task Force will include consideration of other tax issues and

step, however, is to find a way out of the retaliatory tax box that now encases the States.

Since the language of the statutes of the States relating to retaliation is rather uniform, reciprocal non-retaliation typically may be accomplished by amending the applicable section of each State's law to insert the suggested state legislation herein described.

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#### **Suggested Legislation**

- 1 The provision of this section shall not apply to insurance companies
- 2 organized or domiciled without this State under laws which do not impose
- 3 retaliatory taxes or other charges or which grant, on a reciprocal basis,
- 4 exemptions therefrom to insurance companies organized or domiciled
- 5 in this State.

*Comment:* The word "section" refers to that portion of existing state legislation dealing with insurance taxation and the present retaliatory tax.

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**Statements without Accompanying Draft Legislation**

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### **Uniform Vehicle Code Revised in 1975—Statement**

The Uniform Vehicle Code is designed for adoption by the Legislature of each State to achieve quality and uniformity among regulations affecting the use of our highways. First published in 1926, this document has been periodically updated and has served as the basis for most highway safety legislation in the United States. Revisions in the 1962, 1968, and 1971 editions of the Code were considered and approved by the Committee on Suggested State Legislation. See *Suggested State Legislation* for 1963, 1970, and 1973.

The purpose of this statement is to indicate the general nature of significant revisions in the Uniform Vehicle Code that were approved by the National Committee on Uniform Traffic Laws and Ordinances when it met during July 1975. A supplement containing the text of all changes in the Code can be obtained from the committee at 1776 Massachusetts Avenue, NW, Washington, D.C. 20036, for \$3.00 a copy. The supplement is to be used together with the Uniform Vehicle Code (Rev. ed. 1968—\$5.00). The committee also has distributed free copies of "1975 Revisions in the Uniform Vehicle Code" which can be consulted for more information about 1975 changes in the Uniform Vehicle Code.

Among rules of the road, the most important changes involved turning right on red; the meaning of the new yellow X lane control signal; passing at intersections; and the 55 mph speed limit. Rules pertaining to bicycles were also given extensive consideration.

For most rules of the road violations, jail was eliminated as a penalty. Chapter 12 of the Uniform Vehicle Code on equipment was shortened in an attempt to limit it to basic, important requirements. Opportunity for a hearing must precede any suspension of a person's driver's license. So that all vehicle registrations will not expire on the same date, the Uniform Vehicle Code was amended so that plates will expire at different times each year.



### ACIR State Legislative Program—Statement

The Advisory Commission on Intergovernmental Relations has contributed model state legislation to various annual issues of *Suggested State Legislation*. These models were developed to help States interested in implementing commission positions. During 1975, ACIR reviewed and substantially updated this body of model legislation to reflect new commission policy, recent federal and state enactments, and court opinions.

The new *ACIR State Legislative Program* is a reference for state legislators, state legislative service agencies, and others interested in strengthening intergovernmental relations. The *Program* is divided into 10 parts; overall it deals with state and local government modernization, public finance, and functional problems of government.

Some of the legislative models contained in the *ACIR State Legislative Program* have appeared in *Suggested State Legislation*. Below is a list of state legislative models that are contained in the ACIR volume. Brackets following some bill titles indicate the *SSL* volume in which an earlier version of the bill appeared.

The acts appearing in this list were not reviewed by the Committee on Suggested State Legislation. They are included here for informational purposes. Copies of these acts may be obtained, free of charge, from the Advisory Commission on Intergovernmental Relations, 726 Jackson Place, Washington, D.C. 20575.

#### PART I—STATE GOVERNMENT STRUCTURE AND PROCESSES

##### Introduction

##### 1.1 Legislative Branch

- 1.101 Legislative Apportionment Procedure
- 1.102 Removal of Constitutional Restrictions on Legislative Sessions and Compensation [*SSL* 1969, pp. E66-E67]
- 1.103 Year-Round Professional Staffing of Major State Legislative Standing Committees [*SSL* 1969, pp. E68-E69]

##### 1.2 Executive Branch

- 1.201 Constitutional Provision for Short Ballot for State Officials [*SSL* 1969, pp. E38-E39]
- 1.202 Authorization for Gubernatorial Self-succession [*SSL* 1969, p. E40]
- 1.203 Reorganization of the State Executive Branch [*SSL* 1969, pp. E41-E42]
- 1.204 Strong Executive Budget [*SSL* 1969, pp. E43-E44]

#### PART II—LOCAL GOVERNMENT MODERNIZATION

##### Introduction

##### 2.1 Formation, Boundaries, and Dissolution

- 2.101 Local Government Creation, Dissolution, and Boundary Adjustments

- 2.2 Organization and Functions
  - 2.201 Home Rule Powers of Local Governments [*SSL* 1976, p. 99]
  - 2.202 Optional Forms of Municipal Government
  - 2.203 County Modernization
  - 2.204 Interlocal Contracting and Joint Enterprise
  - 2.205 Transfer of Functions between Municipalities and Counties [*SSL* 1976, p. 58]
  - 2.206 Neighborhood Subunits of Government [*SSL* 1969, pp. E102-E106]
  - 2.207 Supervision of Special Districts
- 2.3 Areawide Units
  - 2.301 Statewide Substate Districting Act [*SSL* 1975, p. 48]
  - 2.302 Umbrella Multijurisdictional Organization for Specific Metropolitan or Multicounty Areas
  - 2.303 Umbrella Multijurisdictional Organizations for Interstate Areas
  - 2.304 Regional Service Corporation
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