

Full Text of Policies to be Considered by Sunset Review Divided by Issue Area

Affordable Housing and Economic Development

The Home Ownership and Opportunity for People Everywhere Act

Summary

(1) Under existing federal law, the so-called HOME programs and the Homeownership and Opportunity for People Everywhere (HOPE) program, which are part of the Cranston-Gonzalez National Affordable Housing Act, provide funding for homeownership programs for specified persons and entities that receive matching funding, as specified, from non-federal sources.

It is the intent of the legislature that this bill provide a mechanism for (insert state) to fulfill the non-federal matching funds requirements of the federal HOME and HOPE programs.

The bill would authorize local government agencies to exempt, for a period of up to 20 years, specified projects receiving funding pursuant to the federal HOME and HOPE programs from local taxes, fees, or assessments. The bill would also authorize redevelopment agencies to participate in federal projects that receive the federal funding and would authorize the (insert the state Housing Insurance Fund or other appropriate state housing authority's fund) to use its resources to assist specified entities that receive the federal funding.

(2) The bill would require on or before (insert date) that the Affordable Housing Task Force, created by the bill in the (Department of Housing and Community Development or other appropriate agency) with membership as specified, submit a written report to the legislature regarding ways in which state housing programs may be restructured in order to benefit the greatest number of citizens by obtaining maximum federal funding under the Cranston-Gonzalez National Affordable Housing Act, with particular attention to be paid to the federal HOME and HOPE programs.

Model Legislation

Section 1. (A) The legislature finds and declares all of the following:

(1) in 1990, the Cranston-Gonzales National Affordable Housing Act was enacted by the Congress and President of the United States as Public Law 101-625. The Act affirms as a national goal that every American family be able to afford a decent home in a suitable environment.

(2) Titles II and IV of the National Affordable Housing Act enacted the HOME programs and the Homeownership and Opportunity for People Everywhere (HOPE) program, respectively. A requirement of the HOME and HOPE legislation is that a portion of the funding for each recipient project shall be matched by funds from non-federal sources in order to carry out the homeownership program.

(B) In enacting this chapter, it is therefore the intent of the legislature to provide a mechanism for (insert state) to fulfill the non-federal matching funds requirements.

Section 2. (A) Local government agencies may exempt, for a period of up to 20 years, from local taxes, fees, or assessments either of the following types of entities:

(1) multifamily projects that are either nonprofit or limited equity cooperatives and that qualify for, and receive, federal aid under either Title II or IV of the Cranston-Gonzalez National Affordable Housing Act.

(2) multifamily limited equity cooperatives that qualify for, and receive, federal aid under either Title II or IV of the Cranston-Gonzalez National Affordable Housing Act.

(B) The (insert the state housing insurance fund or the appropriate state housing authority's fund) may use its resources to assist nonprofit corporations exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, redevelopment agencies, local finance agencies, and for-profit corporations that receive funding pursuant to either Title II or IV of the Cranston-Gonzalez National Affordable Housing Act.

Section 3. (A) The Affordable Housing Task Force is hereby created in the (insert the Department of Housing and Community Development or other appropriate department) to report on methods by which state housing programs may be restructured in order to benefit the greatest number of citizens by obtaining maximum federal funding under the Cranston-Gonzales National Affordable Housing Act and, particularly, under Titles II and IV there. As a part of the report, the Treasurer shall study how the state bond programs can be counted as part of the non-federal match and how they might specifically fund the HOME and HOPE programs.

(B) The members of the task force shall include (list appropriate members). The task force shall meet as deemed necessary by the chairperson.

(C) Each member of the task force shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of his or her duties, to the extent that reimbursement is not otherwise provided by another public agency.

(D) The task force may request data from, and shall utilize the technical expertise of, other state agencies.

(E) On or before (Insert date), the task force shall submit its written report to the legislature.

Section 4. {Severability clause.}

Section 5. {Repealer clause.}

Section 6. {Effective date.}

Rent Control Preemption Act

Summary

This legislation would effectively preempt all rent control ordinances at the local level. As a result, local governments would be prohibited from enacting, maintaining or enforcing an ordinance that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act may be cited as the Rent Control Preemption Act.

Section 2. As used in this Act, "local governmental unit" means a political subdivision of this state, including, but not limited to, a county, city, village, or township, if the political subdivision provides local government services for residents in a geographically limited area of this State as its primary purpose and has the power to act primarily on behalf of that area.

Section 3.

(A) A local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property.

(B) This Section does not impair the right of any local governmental unit to manage and control residential property in which the local governmental unit has property interest.

Section 4. {Severability clause.}

Section 5. {Repealer clause.}

Section 6. {Effective date.}

The Factory Built Housing Act

Summary

This bill would allow factory-built housing in all areas zoned for single-family residential housing. Local governments would be able to establish aesthetic standards for factory-built homes so long as they are no more restrictive than those for site-built housing.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act may be cited as the Factory-Built Housing Act.

Section 2. {Definitions.} As used in this Act, the following terms have the following meanings:

- (A) “Factory-built housing” means manufactured and modular housing;
- (B) “Manufactured housing” means housing built in a factory according to the Federal Manufactured Home Construction and Safety Standards which went into effect on June 15, 1976;
- (C) “Modular housing” means housing built in a factory that meets the state, local or regional building codes where the home will be sited.

Section 3. {Non-discrimination clause.}

Factory-built housing shall be considered a permitted use in all residential districts established by political subdivisions of this state and shall be accepted at the permitted density for the district.

Section 4. {Exceptions.}

(A) Political subdivisions are permitted to establish reasonable aesthetic standards for factory-built housing within their jurisdiction, including foundation requirements, building setbacks, side and rear yard offsets, subdivision control, architectural landscaping, square footage and other local site requirements applicable to single-family dwellings. However, these standards and the process for applying them shall be no more restrictive for factory-built housing than for housing units constructed on site.

(B) Political subdivisions may be permitted to establish reasonable standards for manufactured housing for unique public safety requirements such as wind, snow and roof loads in accordance with 24 CFR Ch. XX § 3280.305.

(C) Nothing in this Act shall be deemed to supersede any valid covenants or deed restrictions.

Section 5. {Severability clause.}

Section 6. {Repealer clause}

Section 7. {Effective date.}

Adopted by the CIED Task Force at the 2000 States and Nation Policy Summit. Approved by the ALEC Legislative Board January, 2001.

Resolution in Support of Workforce Housing in America

WHEREAS, working families are finding it increasingly difficult to purchase or rent a home in or close to the communities where they work; and

WHEREAS, many moderate-income workers are working two or three jobs to meet their monthly housing expenses; and

WHEREAS, the gap between those who can afford a home and those who cannot is widening at an alarming rate, and affordable rental housing is in short supply; and

WHEREAS, families working in central cities have less than a one-in-three chance of finding a home that they can afford; and

WHEREAS, families working in suburban areas have less than a three-in-ten chance of finding a home that they can afford; and

WHEREAS, regulatory barriers by state, and local governments often prevent the construction of a mix of different types of housing in various price ranges; and

WHEREAS, in some areas of the country regulatory delays and excesses have added as much as twenty percent to the cost of building housing;

BE IT RESOLVED that the American Legislative Exchange Council (“ALEC”), in accordance with its principles of limited government, individual liberty, and free markets, supports governmental cooperation in promoting workforce housing in America in an effort to increase housing opportunities for moderate workers in the communities where they work; and

BE IT FURTHER RESOLVED that ALEC continues its support of state action to eliminate cumbersome housing and development regulations, and excessive fees and exactions; and

BE IT FURTHER RESOLVED that in following with a desire to decrease excessive regulation, ALEC will continue to support the enactment of state “notice and opportunity to repair” legislation that provides builders with the opportunity to resolve differences with home buyers before a lawsuit is filed; and

BE IT FURTHER RESOLVED that ALEC supports partnerships involving homebuilders, community groups, and local governments to enhance affordability and to increase production of affordable housing.

Adopted by the CIED Task Force at the Annual Meeting July, 2004.

Approved by the ALEC Legislative Board August, 2004.

Affordable Housing Tax Credit

Summary

In order to increase the supply of low income housing, this act provides a tax credit for business firms that invest in low-income rental housing production within the state.

Model Legislation

{Title, enacting clause, etc.}

Section 1. The legislature hereby finds and declares that the inadequate supply of sales and rental housing units for persons and families of low income, the deterioration of older dwellings, the elimination of substandard dwellings by governmental action, and a shortage of suitable housing for elderly and disabled individuals threaten the welfare of the citizens of this state. The legislature further finds and declares that it is the public policy of the State of (insert state) to promote the health, safety, and welfare of its citizens by providing tax credit for business firms that invest in low-income rental housing production within this state.

Section 2. As used in this Act, the following terms have the following meanings:

(A) "Business firm" means any business entity authorized to do business in this state and subject to taxes imposed under (insert appropriate statutes);

(B) "Credit" means the Low-Income Housing Credit as established herein.

(C) "Federal low-income housing tax credit" means the Federal low-income housing tax credit as provided for in Section 42 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 USC Sec. 42);

Section 3. Every business firm that is engaged in a for-profit business enterprise within this state and that qualifies for a Federal low-income housing tax credit shall qualify for the Low-Income Housing Tax Credit. A business firm that qualifies for the credit as provided for in this Act may apply the credit against any tax due under (insert appropriate statutes).

Section 4. The amount of the credit available to a business firm that qualifies under this Act shall be equal to 50 percent of the Federal low-income housing tax credit that the business firm is entitled to in the current tax year.

Section 5. {Repealer clause.}

Section 6. {Severability clause.}

Section 7. {Effective date.}

Enterprise Zone Act

Summary

The Enterprise Zone Act establishes zones in depressed areas that have reduced taxes and removal of unnecessary government barriers to the production and earning of wages and profits and the creation of economic growth.

Model Legislation

{Title, enacting clause, etc.}

Section 1. The legislature hereby finds and declares that the health, safety and welfare of the people are enhanced by the continual encouragement, development, growth and expansion of private enterprise within the state. The legislature further finds and declares that there are certain economically depressed areas in this State that need particular attention to create new jobs, stimulate economic activity and attract private sector investment rather than government subsidy to improve the quality of life of their citizens. Therefore, it is the public policy of this legislature to encourage new economic activity in these depressed areas of the state by means of reduced taxes and the removal of unnecessary governmental barriers to the production and earnings of wages and profits and the creation of economic growth.

Section 2. As used in this Act, the following terms have the following meanings:

(A) "Authority" means the enterprise zone authority;

(B) "Enterprise Zone" means an area of this state declared by the authority to be eligible for the benefits of this Act;

(C) "Qualified business" means any person, corporation or other entity engaged in the active conduct of a trade or business, limited to the business location within the Enterprise Zone and not extending to related interests or business locations outside the zone:

(1) with at least 50 percent of its employees performing substantially all of their services within an Enterprise Zone; and

(2) with individuals from one or more of the following three categories constituting at least 25 percent of the business' employees:

(a) residents of an Enterprise Zone;

(b) individuals who have been unemployed for at least the entire year prior to obtaining employment with the business;

(c) individuals who have rejected public assistance benefits, based on need and intended to alleviate poverty for at least the entire year prior to obtaining employment with the business.

(D) "Qualified property" means:

(1) any tangible personal property located in an Enterprise Zone used predominantly by the taxpayer in the zone in the active conduct of a trade or business; and

(2) any real property located in such zone which:

(a) was used predominantly by the taxpayer in the active conduct of a trade or business; or

(b) was the principal residence of the taxpayer on the date of the sale or exchange.

(3) any interest in a corporation, partnership, or other qualified business entity ending before the date of the sale or exchange.

(E) "Qualified employee" means any employee who works for a qualified business.

Section 3. (A) Any city, county or urban county government by act of the local legislative body may designate any area or areas within their jurisdiction to be an economically depressed area. Such city, county, or urban county government may then make written application to the authority to have such area or areas declared to be an enterprise zone. Such application shall include a description of the location of the area or areas in question and such other information as the authority may require.

(B) Upon receipt of an application from a city, county or urban county government the authority shall review the application to determine whether the area or areas described in the application qualify to be designated an enterprise zone.

(C) The authority shall complete its review within 120 days of receipt of the application, but may extend this time period an additional 60 days if necessary. If the authority denies the application, it shall inform the unit of local government of the fact along with the reasons for the denial.

Section 4. (A) Any area or areas of a city, county or urban county government may be designated an enterprise zone which:

(1) has a continuous boundary, and

(2) is an area of pervasive poverty, unemployment and economic distress

(B) An area meets the requirements of Subsection (A)(2) of this Section if:

(1) the average rate of unemployment in such area of the most recent 18 month period for which data are available was at least one and one-half times the average national rate of unemployment for such eighteen 18 month period; and

(2) at least 70 percent of the residents living in the area have incomes below 80 percent of the median income of the residents of the city, county, or urban county government requesting designation; or

(3) The population of all census tracts in the area decreased by 10 percent or more between 1970 and 1980 and the city, county or urban county government requesting designation establishes to the satisfaction of the authority that either:

(a) chronic abandonment or demolition of commercial or residential structures exists in the area

(b) substantial tax averages of commercial or residential structures exists in the area.

Section 5. (A) In each of the three calendar years following the calendar year of the effective date of this Act, the authority may designate four Enterprise Zones. In the fourth calendar year from the year of the effective date of this Act, the authority may designate two Enterprise Zones. In deciding which areas should be designated as Enterprise Zones, the authority shall give preference to:

- (1) areas with the highest levels of poverty, unemployment, and general distress.
- (2) areas that have the widest support from the government seeking designation, the community, residents, local business, and private organization; and
- (3) areas for which the government seeking designation has made or will make the greatest effort to encourage economic activity and remove impediments to job creation, including but not limited to a reduction of tax rates or fees, an increase in the level or efficiency of local services, and a simplification or streamlining of governmental requirements on employers or employees, taking into account the resources available to such government to make such efforts.

(B) Any designation of an area as an Enterprise Zone shall remain in effect during the period beginning on the date of designation pending on December 31 of the twentieth year following designation.

(C) The authority may remove designation of any area as an Enterprise Zone if such area no longer meets the criteria for designation as set out in this Act or by regulation adopted by the authority pursuant to this Act, provided that no designation shall be removed less than 10 years from the date of original designation.

Section 6. (A) For the purposes of carrying out the provisions of this Act, there is hereby created the Enterprise Zone authority of (State) consisting of nine (9) members. The authority shall be appointed as follows: one member appointed by the governor from a list of three persons nominated by the labor management advisory council; one member appointed by the governor from a list of three persons nominated by the municipal league; one member appointed by the governor from a list of three persons nominated by the association of counties; three members appointed by the governor to serve at-large; the Speaker of the House of Representatives or his designee; the President Pro Tempore of the Senate or his designee; and the Secretary of Commerce.

(B) The members shall serve a term of four years; except that the first appointments shall be made as follows: three for a term of one year; two for a term of two years; two for a term of three years; and two for a term of four years.

(C) All members shall serve until such time as their successors are qualified and appointed.

(D) The Department of Commerce shall serve as staff for the authority and carry out the administrative duties and functions as directed by the authority.

Section 7. The authority shall administer this Act and shall have the following powers and duties:

(A) to establish criteria for determining which areas qualify as Enterprise Zones;

(B) to monitor the implementation of this Act and submit reports evaluating the effectiveness of the program and any suggestions for legislation to the governor and general assembly by October 1 of any year preceding a regular session of the general assembly;

- (C) to conduct a continuing evaluation program of Enterprise Zones;
- (D) to promulgate all necessary rules and regulations in accordance with the provisions of the (state revenue code) to carry out the purposes of this Act;
- (E) to assist units of local government in obtaining federal status as enterprise zones;
- (F) to assist any qualified employer in obtaining the benefits of any incentive or inducement program provided by law and to certify employers to be eligible for the benefits of this Act;
- (G) to assist the governing authority of an enterprise zone in obtaining assistance from any other agency of state government, including, but not limited to, assistance in providing training and technical assistance to qualified businesses within a zone.

Section 8. (A) The authority shall establish and design for public display a master business license that shall certify that the qualifying business has obtained all necessary state agency permits, licenses, certificates, approvals, registrations, charters, or any other form of permission required by law, including agency rule, to engage in business in an Enterprise Zone.

(B) The authority shall provide information and appropriate assistance to persons desiring to locate and engage in business in a zone regarding the state licenses, permits, certificates, approvals, registrations, charters, and any other forms of permission required by law to engage in business in the state.

(C) Irrespective of any authority delegated to the authority to implement the provisions of this Act, the authority for determining if any requested licenses, permits, certificates, approvals, registrations, charters, or any other form of permission required by law to be issued shall remain with the agency otherwise legally authorized to issue the license.

Section 9. (A) Qualified zone businesses, whether corporate or otherwise, shall receive a tax credit equivalent to 50 percent of the state and local tax on their income. If such businesses are zone locations of corporations filing consolidated income tax returns, such tax credit shall be calculated considering the income of the zone location alone, and then shall be applied to the tax liability of the corporation filing the consolidated return.

(B) State and local income taxes on capital gains from the sale of qualified property within the zone are hereby abolished.

(C) Employees shall receive, for the purpose of determining their state and local income taxes, a deduction of up to \$10,000 for wage income earned from employment within an enterprise zone.

(D) All sales taxes in transactions by qualified businesses shall be reduced by 100 percent.

(E) Building materials used in remodeling, rehabilitation, or new construction in a zone, and new and used equipment and machinery purchased by qualified businesses for use in the zone, certified by the purchaser to be used for these purposes, shall be exempt from sales and use taxes.

(F) All property taxes within an Enterprise Zone shall be reduced by 50 percent ratable over the first two years after the zone is established and in operation.

(G) Motor vehicles purchased and used by qualified businesses located in the Enterprise Zone shall be exempt from any motor vehicle usage tax.

(H) Any city, county, or urban county government may, by act of the governing body of appropriate jurisdiction, adopt, for the purposes of revenues received by such city, county, or urban county government, an annual ad valorem tax rate on qualified property within a zone of one-tenth of one cent (\$.001) upon each one hundred dollars of value.

(I) All unemployment insurance taxes on qualified businesses shall be reduced by 100 percent. The state shall hereby appropriate out of its general revenues amounts by which revenues for such benefits are otherwise reduced by this section.

(J) All interest payment on loans made to qualified businesses or on mortgage loans made on any property within an enterprise zone shall be exempt from all state and local taxes, provided that such loans were made after the Enterprise Zone was officially established.

Section 10. Any person living within or outside the Enterprise Zone who invests in a new zone business may deduct the full amount of the investment from his or her personal income subject to state taxation, in the same year that the investment was made, subject to a limit of \$30,000.

Section 11. For state tax purposes, qualified Enterprise Zone businesses may carry forward their net operating losses, including casualty losses, for so long as the zone in which they are located shall be designated.

Section 12. All tax reductions provided by this Act applying within a particular Enterprise Zone are to continue for 20 years after the zone is established. The reductions are then to be phased out rationally over the next five years. Any qualified business that is relying on the particular enterprise zone during this five year period to meet the criteria for a qualified business shall have the reductions applied to it reduced accordingly, with the reductions completely phased out after the five year period.

Section 13. (A) In order to carry out the purposes of this Act, the administrative body (Department of Community Development or other appropriate agency) that promulgates administrative regulations for Enterprise Zones may exempt designated zones from the provisions of any regulation, in part or in whole, which has been promulgated by another state or local agency. The rules and regulations dealing with Enterprise Zones promulgated by the Department under this Act shall supersede all state and local laws or regulations dealing with the same area.

(B) Enterprise Zones shall not be exempted from the provisions of any regulation, if such exemptions endanger the health and safety of the citizens of the state.

Section 14. (A) State and local laws controlling prices rents, wages, building codes and zoning shall not be effective in Enterprise Zones. State and local laws controlling interest payments on loans shall not be effective when the loan is made to a qualified zone business.

(B) For the purpose of increasing employment opportunities for disadvantaged youths, the state minimum wage may be lowered to 75 percent of its current level for youths under 21 years of age who live and work in the Enterprise Zone.

(C) State and local laws requiring individuals to obtain any form of license before they may practice a particular occupation are waived solely within an Enterprise Zone, subject to the limitation provided in clause (2) of Section 18 of this Act. Such individuals may, however, obtain the usual license for their occupation if they desire and if they meet the usual standard.

Section 15. (A) Individuals residing in an Enterprise Zone may establish, under the provisions of this Act, a neighborhood enterprise association corporation. There shall be only one such corporation for each geographic neighborhood area. The neighborhood area to which each corporation applies shall be defined by the incorporating residents.

(B) The incorporating residents shall draft a charter and bylaws for the association suitable for doing business in corporate form. The charter and bylaws shall describe the geographic neighborhood area to which the incorporating association applies, and the manner in which a stock interest in the corporation shall be offered to each resident of the neighborhood, contain provisions for amendment by a majority of stockholders, and authorize the corporation to engage in business only within the particular zone in which the neighborhood area of the corporation is located.

(C) The incorporating residents shall send to all eligible residents of the corporation's neighborhood area:

- (1) an explanation of the proposed new corporation and their rights in it;
- (2) a copy of the corporate charter and by-laws; and
- (3) an offer of the stock interest to which each particular resident is entitled without any charge for such stock.

(D) The board of directors of the corporation may, upon approval of a majority of the members of the local legislative body of appropriate jurisdiction, apply to the authority for certification as a neighborhood enterprise association corporation. The authority shall not grant such status unless the corporation has complied with the requests of this Act and such other requirements as may be adopted by the authority by regulation. Upon granting certification, the authority shall place the corporation's charter and bylaws in a public file. The authority shall have the power to revoke or suspend certification, or any of the leases issued under Subsection (E) of this section, if the corporation fails to continue to comply with the requirements of this Act. The authority shall give technical assistance to zone residents attempting to start such corporations.

(E) All property within the neighborhood area of a certified corporation that is owned by state and local government and that is not in current use by such government shall be leased to the corporation. The term of the lease shall not be less than 99 years and the full amount of rental fees under such lease shall not exceed one dollar (\$1). The lease may be renewed upon expiration if the corporation has continuously complied with the requirements of this Act.

(F) A certified corporation shall be exempt from any state or local tax during the life of the zone in which it is located.

Section 16. {Severability clause.}

Section 17. {Repealer clause.}

Section 18. {Effective date.}

Housing Affordability Impact Statement Act

Summary

This bill would require all future legislation introduced in the general assembly, except those making a direct appropriation, whose purpose is to increase or decrease the cost of constructing, purchasing, owning or selling a single family residence, either directly or indirectly, to have prepared for the legislation a housing affordability impact note that shall include a reliable estimate of the anticipated impact on the cost of housing. This bill would greatly impede the future passage of costly regulations on housing.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act may be cited as the Housing Affordability Impact Statement Act.

Section 2. {Definitions.}

As used in this Act, "housing affordability impact note" shall mean a brief note or statement attached to a bill, regulation, rule or ordinance which has been submitted for adoption, repeal, or amendment, which explains the affect the proposed will have on the cost of housing.

Section 3. {Requisites and contents.}

All housing affordability impact notes shall be factual and in nature, as brief and concise as may be, and shall provide a reliable estimate in dollars, and , in addition, it shall include both the immediate effect and, if determinable or reasonable foreseeable, the long range effect of the measure. A housing affordability impact note shall be prepared on the basis of a median priced single family residence and may include an estimate for a larger development as an analysis of the long range effect of a measure. If, after careful investigation, it is determined that no monetary estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no monetary estimate can be given. A brief summary or work sheet of computations used in arriving at housing affordability impact note figures shall be included.

Section 4. {Commentary or opinion.}

No comment or opinion shall be included in the housing affordability impact note with regard to the merits of the measure for which the housing affordability impact note is prepared; however, technical or mechanical defects may be noted.

Section 5. {Applicability-legislature.}

Every bill introduced in the general assembly, except those making a direct appropriation, the purpose or effect which is to increase or decrease the cost of constructing, purchasing, owning or selling a single family residence, either directly or indirectly, shall have prepared for it, before second reading in the house of introduction, a housing affordability impact note that shall include a reliable estimate of the anticipated impact.

Section 6. {Preparation of housing affordability impact notes for the general assembly.}

The sponsor of each bill to which section 5 applies, shall present a copy of the bill, with the request for a housing affordability impact note to the (insert state agency responsible for housing). The housing affordability impact note shall be prepared by the (insert state agency responsible for housing) and submitted to the sponsor of the bill within 5 calendar days, except that whenever, because of the complexity of the measure, additional time is required for the preparation of the housing affordability impact note, the (insert state agency responsible for housing) may inform the sponsor of the bill and the sponsor may approve an extension of the time within which the note is to be submitted. The (insert state agency responsible for housing) may seek assistance from a statewide trade organization representing the real estate or home building industry in the preparation of a housing affordability impact note.

Section 7. {Vote on necessity.}

Whenever the sponsor of any bill is of the opinion that no housing affordability impact note is required, any member of either house may request that a note be obtained, and in that case the applicability of this Act shall be decided by the majority of those present and voting in the house of which the sponsor is a member.

Section 8. {Amendment of bill necessitating the addition of housing affordability impact note.}

Whenever any committee of either house reports any bill with an amendment that will substantially affect the figures stated in the housing affordability impact note attached to the measure at the time of its referral to the committee, there shall be included with the report of the committee a statement of the effect of the change proposed by the amendment reported if desired by a majority of the committee. Whenever any bill is amended on the floor of either house to substantially effect the figures as stated in the housing affordability impact note attached to the bill before amendment, any member of either house may request that a revised note be obtained and that no action shall be taken on the amendment until the sponsor of the amendment presents to the members a statement of the housing affordability impact of the proposed amendment.

Section 9. {Applicability-state agencies.}

Every rule or regulation the purpose or effect of which is to increase or decrease the cost of constructing, purchasing, owning or selling a single family residence, either directly or indirectly, shall also have prepared for it, a housing affordability impact note that shall include a reliable estimate of the anticipated impact. This housing affordability impact note shall be prepared upon the proposal for adoption, repeal or amendment of any rule or regulation by any state agency.

Section 10. {Preparation of housing affordability impact notes for state agencies.}

The state agency proposing adoption, repeal or amendment of any rule shall submit the proposal to the (insert state agency responsible for housing). The housing affordability impact notes shall be prepared by the (insert state agency responsible for housing) and submitted to the agency proposing the rule within 5 calendar days, except that whenever, because of the complexity of the housing affordability impact note, the (insert state agency responsible for housing) may inform the agency proposing the rule or regulation and that the agency may approve an extension of the time within which the note is to be submitted. The (insert state agency responsible for housing) may seek assistance from a statewide trade organization representing the real estate or home building industry in the preparation of a housing affordability impact note.

Section 11. {Applicability-local governments.}

A housing affordability impact note shall be prepared upon the proposal for adoption of any ordinance that pertains to a comprehensive plan, zoning, subdivision standards, the preparation of land for residential construction or the availability or supply of land for residential development by any:

- (A) City or other municipal districts;
- (B) County;
- (C) Water district; or
- (D) Sewer district; or
- (E) Metropolitan service district; or
- (F) Any other special districts.

Section 12. {Preparation of housing affordability impact notes for local governments.}

For those local government entities listed in section 11, the housing affordability impact note shall be prepared and made available to the public at the time the public hearing for the proposed adoption, repeal or amendment of any ordinance is announced. The housing affordability impact note shall be prepared by the (insert local Building Department / Agency) and submitted to the local government agency within 5 calendar days, except that whenever, because of the complexity of the measure, additional time is required for the preparation of the housing affordability impact note, the (insert local Building Department/Agency) may inform the government agency and the agency may approve an extension of the time within which the note is to be submitted. The (insert local Building Department /Agency) may seek assistance from either a state wide trade association or, if one exists within the locality considering the proposal, a local trade association representing the real estate or home building industry in the preparation of a housing affordability impact note.

Section 13. {Petition for addition of housing affordability impact note.}

Any member of the governing board of the local government may request upon approval of the governing board of the local government a note be prepared and attached to that ordinance.

Section 14. {Challenges.}

If a rule or ordinance is challenged based on the failure to prepare a housing affordability impact note, the court or other reviewing authority shall remand the proposed rule or ordinance to the adopting entity if it determines that a housing cost impact statement is required.

Section 15. {Ruling of courts and review authorities.}

The court or other reviewing authority shall only determine whether a housing affordability impact note was prepared and shall not make any determination as to the sufficiency of the housing affordability impact note.

Section 16. {Severability clause.}

Section 17. {Repealer clause.}

Section 18. {Effective date.}

The Right to Buy Public Housing Act

Summary

This act would require local housing authorities to provide residents of the housing projects the opportunity to purchase dwelling units, provided they meet certain requirements.

Model Legislation

Section 1. {Title}

Section 2. (A) Subject to the approval of the (insert Appropriate state housing agency) in the case of a state project, or, in the case of dwelling units operated as public or Indian housing, pursuant to the provisions of the United States Housing Act of 1937, as amended, each local housing authority shall provide to those residents of a project the opportunity to purchase dwelling units in such project provided that such resident:

- (1) is determined to be capable of assuming the responsibilities of homeownership; and
- (2) complies with such additional requirements as the state may establish in a case of a state project.

(B) (Insert appropriate reference to state local housing authority enabling statute) is amended to provide each resident with a right to buy units as provided for by this Act.

Section 3. Any resident meeting the requirements of Section 2 may purchase his dwelling unit directly from the authority if the authority determines that such purchase will not interfere with the rights of other residents residing in the project or harm the efficient operation of such project. Said purchase of a dwelling unit by a resident shall also include a fixed percentage of the common elements of the project as determined by the authority. The price for any such purchase shall not be more than the fair market value of the dwelling unit involved as determined by the authority and shall be set at a level that is affordable to low-income families.

Section 4. For the purpose of assisting any purchase by a resident under this subdivision, the authority involved or any subsidiary corporation of such authority involved may make a loan on the security of the property involved to such purchasing resident at a rate of interest determined by the authority to be appropriate.

Section 5. If any resident purchases a dwelling unit before the expiration of the promissory note period of Title III (HOPE) or Section 5(H) of Title II of the United States Housing Act of 1937, such purchaser shall pay the remaining balance according to the terms of the outstanding promissory note.

Section 6. The state and the authority involved shall provide such training, technical assistance, and education as may be necessary to prepare the resident organizations to undertake the management and maintenance of such project and to prepare the residents for the responsibility of homeownership.

Section 7. This Act shall take effect immediately.

Section 8. {Severability clause.}

Section 9. {Repealer clause.}

Section 10. {Effective date.}

Real Estate and Economic Growth Resolution

Summary

This resolution calls on the United States Congress to reduce capital gains taxes, allow pension funds to be invested in real estate and provide a tax-credit for first time home buyers. These policies would add tremendous strength to the national economy, add jobs, raise tax revenues, bolster consumer confidence and strengthen financial institutions.

Model Resolution

{Title, enacting clause, etc.}

WHEREAS real estate annually generates over one-fifth of our nation's total economic activity;

WHEREAS the real estate industry provides eight million jobs directly through construction and real estate services and millions more from related business; and

WHEREAS lower real estate values diminish America's net wealth and consequently, reduce tax contributions, now well in excess of \$200 billion annually, to all levels of government; and

WHEREAS the 1986 Tax Reform Act levied burdensome and unfair taxes on the real estate industry; and

WHEREAS as a result of the 1986 Tax Reform Act, the United States capital gains tax is one of the highest among industrialized nations; and

WHEREAS these tax increases diminished America's net wealth in real estate and directly led to the nation's recession; and

WHEREAS since World War II, upswings in private real estate investment have led the economy out of eight recessions; and

WHEREAS with the support of positive, fair policies, real estate will once again help lead the nation to improved economic performance; and

WHEREAS reforming capital gains taxes and passive loss would bolster consumer confidence, stimulate savings and investment, add jobs, raise tax revenues and strengthen financial institutions; and

WHEREAS additional incentives such as allowing pension funds to be invested in real estate and tax credits for first time home buyers would further strengthen the economy; now

THEREFORE, BE IT RESOLVED that the state of (insert state) calls upon the United State congress and in particular (insert state's Congressional members) to improve the overall economic condition of the nation by reducing the capital gains tax; and

BE IT FURTHER RESOLVED that new rules should be enacted to make it easier for the nation's pension funds to invest in real estate, providing a vital new source of capital for housing and construction; and

BE IT FURTHER RESOLVED that tax credits for first-time home buyers should be enacted to spur the economy and enable millions of Americans to afford their own homes.

1995 Sourcebook of American State Legislation

Business and Entrepreneurship

Government Services Competition Act

Summary

This model bill provides a general model for state government privatization efforts. States should adapt this model to meet their own particular needs and circumstances regarding privatization. It prohibits state agencies, institutions, or political subdivisions supported in whole or part by any state revenues, from engaging in any activity which is in competition with private enterprise unless the agency, institution, or political subdivision can demonstrate that there is an overriding or compelling public interest served by the state's provision of the service. It also sets standards for state agencies, authorized to engage in activity in competition with private enterprise, to follow.

Legislation

Section 1.

This Act may be cited as the Government Services Competition Act.

Section 2. {Definitions} An Act relation to activities in competition with private enterprise.

(A) As used in the Act, an "activity in competition with private enterprise" means an activity which:

- (1) Is undertaken by a state agency, institution, or political subdivision that is supported in whole or in part from any state revenues; and
- (2) Can be performed by an existing private enterprise situated within the State.

Section 3. {Legislative Findings} Except as otherwise provided in this Act, and notwithstanding any other provisions of law, it shall be the policy that no state agency, institution, or political subdivision supported in whole or part by any state revenue shall engage in any activity which is in competition with private enterprise unless the agency, institution, or political subdivision can demonstrate that there is an overriding or compelling public interest served by the state's provision of the service. Examples of activities provided by the state which may carry an overriding or compelling public interest include certain aspects of the criminal justice system; activities and services of various kinds provided by educational institutions; programs of the state development finance authority; and health services such as those provided by state owned or operated hospitals.

Section 4. The commissioner of the "public protection and regulation agency" [insert appropriate state agency] shall determine, upon petition by any person directly affected by completion with a state agency, institution, or political subdivision whether the agency, institution, or political subdivision is in completion with private enterprise.

Section 5. If, after a hearing at which all parties have been afforded an opportunity to present evidence, the commissioner finds that the agency, institution, or political subdivision is engaged in an activity in competition with private enterprise, he/she shall direct the agency, institution, or political subdivision to terminate the activity unless he/she finds that:

- (A) Cessation of the activity by the agency, institution, or political subdivision will create a bona fide emergency;
- (B) The cost of the service from private enterprise will be at least 10 percent greater than the cost of the services provided by government;
- (C) Private enterprise cannot adequately provide the needed services; or
- (D) Cessation of the activity will cause irreparable harm or loss of substantial invested funds to the state.

Section 6. The commissioner shall submit a decision along with written findings within 20 days decision to authorize or terminate the activity of the agency or institution and shall make copies available to all interested parties.

Section 7. An appeal from an order of the commissioner may be taken to the circuit court where the petitioner does business. Such appeal shall not be *de novo*. The petitioner, if unsuccessful, shall pay the costs of the hearing and appeal incurred by the state, if any, including reasonable attorney's fees.

Section 8. Activities of a state agency, institution, or political subdivision which were undertaken prior to, and are in operation as of [insert date], and which are found under this Act to be in competition with private enterprise and ordered terminated, may continue until the expiration date of any contract that would be adversely affected by the cessation of the activity.

Section 9. If a state agency, institution, or political subdivision of the state demonstrates an overriding or compelling public interest for the provision of any activity in competition with private enterprise, it nevertheless shall be the policy of the state to contract with the private sector for the provision of the activity insofar as it is feasible and in the public interest.

Section 10. If a state agency, institution, or political subdivision is authorized to engage in an activity in competition with private enterprise, it shall be the policy of the state to set a fee or charge a price for that activity which shall include consideration of:

- (A) The fair market value of the activity; and
- (B) The actual costs incurred in engaging in the activity, including the costs and value of labor, real estate, equipment, overhead, and other related expenses. Insofar as appropriate or deemed expedient in order to serve the public interest, fees or prices charged for public activities shall reflect the fair market value or the actual costs incurred.

Section 11. No later than [insert date] of each odd numbered year, the secretary shall submit a report on government competition with private enterprise to the legislature and the governor. The report shall include recommendations concerning whether the competitive government activities identified and reviewed by the secretary should be continued.

Section 12 {Severability clause.}

Section 13 {Repealer clause}**Section 14 {Effective date.}***1995 Sourcebook***Public-Private Fair Competition Act*****Summary***

This act prohibits government from engaging in any commercial activity of any goods or services to or for government agencies or for public use which are also offered by private enterprise. It establishes a Private Enterprise Advisory Committee to act in conjunction with the state auditor to review and make determinations concerning state agencies engaged in or proposed to be engaged in activities which unfairly compete with the private sector. It also establishes a system to resolve complaints from the private sector regarding unlawful government activity established in this Act. (An example of this bill is Oregon BB #2778, 1993.)

Model Legislation

{Title, enacting clause, etc}

Section 1.

This Act shall be known and may be cited as the Public-Private Fair Competition Act.

Section 2. {Statement of purpose}

The Legislative Assembly finds and declares that the growth of private enterprise is essential to the health, welfare, and prosperity of this state and that government competes with the private sector when it provides goods and services to the public. It is the intent of the Legislative Assembly and the purpose of this Act to protect economic opportunities for private industry against unfair competition by government agencies and enhance the efficient provision of public goods and services. It is also the intent of the Legislative Assembly that issues and complaints regarding competition between government and the private sector be addressed by the state auditor, with advise from the Public Enterprise Advisory Committee created by this Act.

Section 3. {Definitions}

- (A) "Commercial Activity" means performing services or providing goods which can normally be obtained from private enterprise.
- (B) "Committee" means the Private Enterprise Advisory Committee.
- (C) "Competitive impact statement" means a cost analysis using uniform accounting standards accepted by private enterprise to determine the total cost of commercial activity. The cost analysis shall include a comparison of impact of commercial activity on state and local tax revenues. The private enterprise cost figures in the cost analysis shall be determined by obtaining one or more bids for performing or providing commercial activity.
- (D) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned

as private property and which established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers.

(E) "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit.

(F) "Uniform accounting standards" means an accounting method which allows government agencies to identify the true and total cost to supply goods and services in the same manner as private enterprise would identify true and total cost, including but not limited to the following:

- (1) Labor expenses, including direct wage and salary costs, training costs, overtime and supervisory overhead;
- (2) Total employee fringe and other personnel expenses;
- (3) Operating costs including vehicle maintenance and repair, marketing, advertising, and other sales expenses, office expenses, billing and insurance expenses;
- (4) Real estate and equipment costs, debt service costs and a proportionate amount of other agency overhead and capital expenses including vehicle depreciation and depreciation of other fixed assets such as buildings and equipment;
- (5) Contract management costs;
- (6) The imputed tax impact of the activity if such entity were required to pay federal state and local taxes; and
- (7) Any other cost particular to the business or industry supplying the goods or services.

(G) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers.

Section 4. (Government activity prohibitions and exceptions)

(A) Except as provided in this act, a government shall not engage in any commercial activity, including, but not limited to, the manufacturing, processing, managing, sale, offering for sale, rental, leasing, delivering, dispensing, distributing, or advertising, in whole or part, of any goods or services to or for government agencies or for public use which are also offered by private enterprise.

(B) Notwithstanding any other provision of law, a government agency is authorized to perform or provide a commercial activity only when:

- (1) The activity is authorized by state law.
- (2) Use of a private enterprise source would cause unacceptable delay or disruption of an essential program.

(3) The agency can provide or is providing goods or services to government agencies or the public on a continuing basis at a lower cost than if such goods or services were obtained from private enterprise as determined by cost comparison as outlined in the competitive impact statement relating to the specific good or service.

Section 5 (Competitive Impact Statement)

(A) A government agency shall not be required to perform more than one competitive impact statement within one year for the same good or service as specified in a complaint under this act.

Section 6 (Committee governance)

(A) The state auditor in consultation with the Public Enterprise Advisory Committee, shall review and make determinations concerning state statutes, state rules and practices of state agencies relating to activities engaged in or proposed to be engaged in by government agencies which may be affected by this act and shall enforce the provisions of this act.

(B) The state auditor, in consultation with the committee, shall determine final uniform accounting standards to be used for cost analysis in this Act in at least as strict a form as the definition of uniform accounting standards in this Act.

(C) The state auditor, in consultation with the committee, shall adopt rules:

- (1) Necessary to govern the public bidding process by private enterprise.
- (2) Establishing procedures for hearing and resolving complaints filed under this Act.

(D) The state auditor shall report activities and determinations made under this Act to the Governor and Legislative Assembly not later than [deadline].

(E) The Private Enterprise Advisory Committee is created in the Department of Insurance and Finance. The committee shall advise the state auditor in the implementation and enforcement of this Act. The committee shall consist of nine unpaid members who shall be appointed as follows:

- (1) The Governor, Speaker of the House of Representatives and President of the Senate shall each appoint two members from private enterprise who are business owners or officers.
- (2) Two members who shall be chief executive or administrative officers of a government agency and who shall be appointed by the Governor.
- (3) One member of the Legislative Assembly who shall be appointed by the Speaker of the House of Representatives.
- (4) The chairperson of the committee shall be appointed by the Governor from the members representing private enterprise.

(F) All initial appointments to the committee shall be made no later than January 1 of the year following enactment. Terms of office for all members of the committee shall be two years and members may be reappointed up to an additional four terms. Each member who is a state agency employment shall remain on the committee until the end of the member's term of office, but only so long as the person remains a state agency employee. A vacancy on the committee shall be filled within 60 days of the date the vacancy occurred in the

same manner as the original appointment. Any member appointment to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the term. Each member shall continue in office until a successor is appointed and qualified.

(G) Five members of the committee shall constitute a quorum. No action shall be taken by the committee without the concurrence of at least three members.

(H) The state auditor shall adopt rules necessary to govern proceedings of the committee. Members of the committee shall serve without compensation but shall be entitled to expenses.

Section 7 {Complaints}

(A) Any person who believes that a government agency has engaged in or is proposing to engage in commercial activity in violation of this Act may file a written complaint with the state auditor stating the grounds for the complaint. Upon receipt of the complaint the state auditor shall immediately transmit a copy of the complaint to the head of the government agency which is the subject of the alleged violation and to the committee.

(B) The head of the government agency named in the complaint shall respond to the state auditor in writing within 30 days after receipt of a complaint. The state auditor shall transmit a copy of the response to the committee. The government agency shall either admit or deny the allegations made in the complaint and indicate whether remedial action will be taken.

(C) If a government agency denies the allegations made in the complaint, the government agency shall:

(1) Prepare and submit to the state auditor a competitive impact statement concerning the commercial activity that is the subject of the complaint; and

(2) Prepare a detailed request for proposal which will be widely disseminated within segments of private enterprise which normally engages in the commercial activity that is the subject of the complaint in order to obtain firm bids or proposal for the activity requested. All bidding processes shall be a matter of public record. A reasonable time period shall be given to private enterprise to submit bids or proposals. Bids received from the request for proposal shall be made available upon request of the state auditor. Bids received from request for proposal shall be used in the preparation of the competitive impact statement.

(D) The state auditor shall establish a deadline for submission of the competitive impact statement by the government agency.

(E) The state auditor shall hold a public hearing on the complaint where all parties are afforded an opportunity to present evidence. The hearing shall be held:

(1) Within 30 days after receipt of the agency's response under this section, if the agency admits the allegations in the complaint but does not indicate whether remedial action will be taken; or

(2) Within 30 days after the state auditor receives the competitive impact statement prepared under this section.

(F) After considering the competitive impact statement, bids received from private enterprise under this Act and other evidence presented, the state auditor, after consulting with committee, shall determine whether the

government agency is in violation of the provisions of this Act. If a government agency is found to be in violation of this Act, the state auditor shall take the necessary steps to terminate the commercial activity.

(G) Within 30 days after the public hearing, the state auditor shall issue a report of its findings to the complainant and the government agency.

(H) If the government agency's commercial activity is to be terminated, the termination shall take place within three months of the state auditor's report or under a schedule set by the state auditor.

(I) The state auditor shall establish by rule fees for filing complaints which will supply the operating funds of the committee. The fee shall not be less than \$2,000 per complaint. In the case where the state auditor finds in favor of the complainant, the government agency shall pay the filing fee, and the complainant shall be reimbursed by the state auditor.

(J) If the government agency fails to comply with the state auditor's order, the state auditor may file an action to restrain and enjoin the government agency from engaging in the activity.

(K) A private enterprise that suffers economic loss as a result of a government agency violating this Act has a cause of action for injunctive relief or damages, or both, in the county where the government agency is located. Any damages awarded in a cause of action brought under this Act shall be assessed against the specific government agency and specifically assessed against its budget. Court costs shall be awarded to any private enterprise prevailing under this section. A private enterprise shall not have standing to seek injunctive relief or damages or to challenge violations of this Act in the courts of this state until the private enterprise has first made a complaint to the state auditor and has received the decision of the state auditor.

Section 8. {Severability clause.}

Section 9. {Repeals.}

Section 10. {Effective date.}

*Adopted by ALEC's Tax and Fiscal Policy Task Force and
Approved by full ALEC Legislative Board January 1995.*

Resolution on Franchise and Business Agreement Legislation

Summary

This resolution recognizes that business and franchise agreements as contracts, which, freely and openly entered into by the parties, should not be impaired.

Model Legislation

WHEREAS, the contract, either written or oral, is the fundamental basis for doing business in the United States, and;

WHEREAS, franchising has been a major source of economic expansion in the United States, particularly in the retail trade and service sectors, and;

WHEREAS, business and franchise agreements are contracts that govern the duties and obligations of the parties to the contract, and;

WHEREAS, parties to business and franchise agreements have legal remedies available under common law and state and federal statutes to resolve contractual disputes, and;

WHEREAS, the U.S. Constitution and most state constitutions specifically prohibit impairment of contracts freely and openly entered into by the parties, and;

WHEREAS, legislation which alters the pre-existing and prospective terms of the contract serves only to discourage the establishment of business and franchise agreements, and limits the parties' ability to choose from a variety of business relationships,

NOW THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council opposes enactment of laws that interfere with business and franchise agreements freely and openly entered into by parties.

1996 Sourcebook of American State Legislation

Economic Liberty Resolution

Summary

This resolution calls for state legislatures to establish a Joint Legislative Committee on Economic Freedom for the purposes of identifying legal and regulatory barriers to private investment and entrepreneurship, and proposing legislation on such other actions as may be necessary to remove such barriers.

Model Resolution

WHEREAS, a prosperous economy depends upon job creation through private investment and entrepreneurship; and

WHEREAS, greater private investment and entrepreneurship is associated with greater economic prosperity; and

WHEREAS, the unparalleled success of the American economy is the result of private investment and entrepreneurship; and

WHEREAS, unnecessary legal and regulatory barriers to private investment and entrepreneurship exist, especially in overly prescriptive licensing requirements, excessive regulations, and government pre-emption of business opportunities; and

WHEREAS, private investment and entrepreneurship are discouraged by unnecessary legal and regulatory barriers, reducing the potential for economic prosperity; and

WHEREAS, poverty is an issue of significant public concern; and

WHEREAS, there are significant geographical pockets of poverty, especially in urban areas, in which legitimate economic activity is substantially impeded; and

WHEREAS, various entrepreneurial opportunities that would require little investment are closed to potential low income entrepreneurs by unnecessary legal and regulatory barriers; and

WHEREAS, the only reliable and sustainable means for reducing poverty is for the poor to climb the income ladder through entrepreneurial activity and employment; and

WHEREAS, by facilitating entrepreneurship by the poor, a means of exit from poverty would be provided for such new entrepreneurs and their employees; and

WHEREAS, increased entrepreneurship and private investment in low income communities would increase levels of tax revenue, improving the financial condition of governments;

NOW THEREFORE BE IT RESOLVED that the legislature establish the Joint Legislative Study Committee on Economic Freedom for the purposes of (1) identifying legal and regulatory barriers to private investment and entrepreneurship and (2) proposing legislation or such other actions as may be necessary to remove such barriers; and

BE IT FURTHER RESOLVED that the Joint Legislative Committee on Economic Freedom shall identify any law or regulation, in whole or in part, that precludes or discourages:

Entry into or operation of any commercial business for any reason other than legitimate health and safety regulation, whether through licensing, franchising, or other regulatory or legal mechanism, or

Operation of public services by entrepreneurs, whether without subsidy or under competitive contract, consistent with legitimate public objectives. Legitimate public objectives shall mean the interests of the population at large and the interests of the users of the corresponding public service, and shall exclude the interest of any group smaller than the population at large, other than users; and

BE IT FURTHER RESOLVED that the Joint Legislative Committee on Economic Freedom shall identify as legal or regulatory barriers any practice or activity of any business or occupational licensing board or authority that exceeds the requirements of public health and safety; and

BE IT FURTHER RESOLVED that the Joint Legislative Committee on Economic Freedom shall identify as legal or regulatory barriers any legal or regulatory obligation to pay more, in wages or benefits, than the standard federal minimum wage, and any other labor or work rule legal or regulatory requirement that does not apply universally to all public and private employers in the particular business sector; and

BE IT FURTHER RESOLVED that the Joint Legislative Committee on Economic Freedom shall propose the most effective means of removing all identified legal and regulatory barriers to entrepreneurship and private investment; and

BE IT FURTHER RESOLVED that in its deliberations, the Joint Legislative Committee on Economic Freedom shall give priority consideration to business sectors with lower private investment requirements and business sectors anticipated to provide the greatest opportunity for expansion of entrepreneurship and private investment in low income communities; and

BE IT FURTHER RESOLVED that the Joint Legislative Committee on Economic Freedom shall report to the legislature no later (insert appropriate date, such as one year following ratification of the resolution), listing and describing the legal and regulatory barriers identified and the required corrective mechanisms.

1996 Sourcebook of American State Legislation

Resolution Opposing Government Mandated Disclosure of Proprietary, Trade Secret Information

Summary

A resolution in opposition to recent efforts by some state legislatures to mandate that Pharmacy Benefit Managers (PBMs) disclose competitive, proprietary, and trade secret information to their clients and other entities. The Federal Trade Commission (FTC) and other federal government agencies have determined that PBMs have successfully helped employers, health plans and other healthcare purchasers significantly reduce their drug costs. The FTC has determined that government-mandated disclosures of proprietary information would undermine the vigorous competition in the marketplace that has enabled PBMs to continue to control drug costs for their clients.

Model Legislation

WHEREAS, vigorous competition leads to market innovations and increased efficiency in all economic sectors; and

WHEREAS, the cost structures which underlie market innovations are carefully guarded as proprietary trade secret information; and

WHEREAS, the contract is the fundamental basis for doing business in the United States and often contains proprietary business information; and

WHEREAS, the confidentiality and sanctity of private contracts give businesses protections and provide incentives to offer highly competitive and innovative services and contract terms; and

WHEREAS, pharmacy benefit managers (PBMs) enter into contracts to manage the pharmacy benefits of clients who are sophisticated purchasers of health care, including health plans, insurers, major employers, unions, and governmental agencies; and

WHEREAS, the Federal Trade Commission (FTC) has found competition between PBMs for contracts with sophisticated health plan sponsors to be “vigorous;” and

WHEREAS, the General Accounting Office (GAO), Congressional Budget Office (CBO) and Federal Trade Commission (FTC) have issued reports documenting how PBMs successfully have worked to hold down drug costs; and

WHEREAS, a number of proposals have been introduced in the states that would mandate by law the disclosure of private PBM contract terms that contain proprietary and competitive financial information, price negotiation strategies, and cost-saving methodologies; and

WHEREAS, the FTC has advised states that a mandate by law of the disclosure of proprietary financial information and cost structures would “hold PBMs to a standard that does not apply to other industries” and

could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford;” and

WHEREAS, the FTC and Department of Justice (DOJ) have concluded that “[v]igorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms” and is “more likely to help ensure that gains from cost savings are passed on to consumers”; and

WHEREAS, the clients of PBMs are not supporting legislation that would require the mandatory disclosure of proprietary information.

NOW, THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council (ALEC) opposes proposals that would mandate contract provisions or establish legal relationships or obligations between PBMs and their clients that require disclosure of private PBM contract terms that contain highly competitive, proprietary or trade secret information:

BE IT FURTHER RESOLVED that the American Legislative Exchange Council (ALEC) supports vigorous competition and the operation of free markets in the pharmaceutical benefits sector as the most effective means of guaranteeing quality service for the lowest price.

Adopted by the Commerce, Insurance and Economic Development Task Force at the States and Nation Policy Summit on December 9, 2006. Approved by the ALEC Legislative Board January 8, 2007.

Obtained and released by:
Common Cause and
The Center for Media and Democracy

Economic Civil Rights Act

Summary

Among the rights Americans cherish the most are freedoms to pursue a chosen enterprise or profession. Yet of all the rights we deem fundamental, economic liberty has eroded most of all, to the extent that the "right" to receive a welfare check today enjoys greater legal protection than the right to earn an honest living.

Licensing and regulation of businesses and professions - often placed in the hands of the regulated industry - artificially limit entry and reduce competition. Myriad entry-level opportunities are affected by occupational licensing laws, government-imposed monopolies in businesses such as taxicabs and trash hauling, and restrictions on home-based businesses such as day-care centers.

The principal victims of these of these restrictions are people outside the economic mainstream, for whom the bottom rungs of the economic ladder are cut off. This model legislation would ensure that all such regulations are limited to legitimate public health, safety, and welfare objectives, and that individuals are free to earn a share of the American Dream.

Note: The model legislation is based upon a draft by Clint Bolick, litigation director at the Institute for Justice in Washington, D.C., a public interest law center that challenges barriers to opportunity in the courts.

Model Legislation

Section 1. This Act may be referred to as the "Economic Civil Rights Act."

Section 2. {Statement of Findings and Purposes.}

(A)The legislature hereby finds and declares that:

(1)The right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right.

(2)The freedom to earn an honest living traditionally has provided the surest means for economic mobility.

(3)In recent years, many regulations of entry into businesses and professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition.

(4)The burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed.

(5)It is in the public interest:

(a) To ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition;

(b)To provide the means for the vindication of this right; and

(c)To ensure that regulations of entry into businesses and professions are demonstrably necessary and carefully tailored to legitimate health, safety, and welfare objectives.

Section 3. {Definitions}.

(A) "Agency" shall be broadly construed to include the state, all units of state government and all units of government and shall exclude no entity established under the constitution or laws of the state or established by any entity which was itself established under the constitution or laws of the state.

(B) "Entry regulations" shall include any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision relating in a market, or the opportunity to engage in any occupation or profession.

(C) "Public service restrictions" shall include any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice or other provision the effect of which is to exclude or limit the use of private firms from providing public services under the supervision of agencies, with or without the support of public subsidy and/or user fees.

(D) "Welfare" shall be narrowly construed to encompass protection of members of the public against fraud or harm. This term shall not encompass the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

(E) "Subsidy" shall include taxes, grants, user fees or any other funds received by or on behalf of an agency.

Section 4. {Limitation on Entry Regulations.} All entry regulations with respect to businesses and professions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

Section 5. { Limitation on Public Service Restrictions.} All public service restrictions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

Section 6. {Elimination of Entry Regulations. }

(A) Within one year following enactment, every agency shall conduct a comprehensive review of all entry regulations within their jurisdictions, and for each such entry regulation it shall:

(1) Articulate with specificity the public health, safety, or welfare objective(s) served by the regulation, and

(2) Articulate the reason(s) why the regulation is necessary to serve the specified objective(s).

(B) To the extent the agency finds any regulation that does not satisfy the standard set forth in Section 4, it shall:

(1) Repeal the entry regulation or modify the entry regulation to conform with the standard of Section 4 if such action is not within the agency's authority to do so; or

(2) Recommend to the legislature actions necessary to repeal or modify the entry regulation to conform to the standard of Section 4 if such action is not within the agency's authority.

(C) Within 15 months following enactment, each agency shall report to the legislature on all actions taken to conform with this section.

Section 7. {Elimination of Public Service Restrictions}.

(A) Within one year following enactment, every agency shall establish, and within 18 months following enactment implement a routine private participation process with respect to the public services under its jurisdiction. Such process shall require that:

(1) Private companies be permitted to perform public services that can be produced without subsidy. An agency may establish reasonable requirements with respect to notice of entry and exit.

(2) Private companies be permitted to periodically and fairly compete for contracts to perform public services that cannot be produced without subsidy.

(3) Private companies not be precluded from commercially producing any service under the jurisdiction of the agency which is not included in (1) or (2) above.

(B) The competitive process required by (A)(2) shall be designed to allow the maximum extent of participation by private firms of all sizes and shall:

(1) Rely upon multiple contracts wherever feasible, and

(2) Not include any provisions or arrangements that have the effect of limiting competition or precluding participation except as necessary to achieve the standard set forth in Section 5.

(C) Every agency shall have the authority to establish reasonable standards of customer service with respect to public services under Sections (A)(1) and (A)(2) above.

(D) Every agency shall recommend to the legislature actions necessary to repeal or modify any public service restriction to conform to the standard set forth in Section 5 if such action is not within the agency's authority.

(E) Within 15 months following enactment, each agency shall report to the legislature on all actions taken to conform with this section.

Section 8. {Administrative proceedings}.

(A) Any person may petition any agency to repeal or modify any entry regulation into a business or profession within its jurisdiction.

(B) Within 90 days of a petition filed under (A) above, the agency shall either repeal the entry regulation, modify the regulation to achieve the standard set forth in Section 4, or state the basis on which it concludes the regulation conforms with the standard set forth in Section 4.

(C) Any person may petition any agency to repeal or modify a public service restriction within its jurisdiction.

(D) Within 90 days of a petition filed under (C) above, the agency shall either establish and within 9 months implement the requirements of Section 7, or state the basis on which it concludes the public service restriction conforms with the standard set forth in Section 5.

Section 9. {Prohibition of Restrictive Provisions}

(A) Notwithstanding any other provision of law, an agency shall not award or extend any franchise that has the effect of conflicting with either Section 4 or Section 5.

(B) Notwithstanding any other provision of law, an agency shall not execute or extend any contract provision, including any labor contract provision that has the effect of conflicting with either Section 4 or Section 5.

(C) This section shall not require the cancellation of any contract clause in effect as of January 1 of the year of enactment so long as the contract expires no later than 24 months after enactment.

Section 10. {Enforcement.}

(A) Any time after 90 days following a petition filed pursuant to Section 6 that has not been favorably acted upon by the agency, the person(s) filing a petition challenging an entry regulation or public service restriction may file an action in a Court of general jurisdiction.

(B) With respect to the challenge of an entry regulation, the plaintiff(s) shall prevail if the Court finds by a preponderance of evidence that the challenged entry regulation on its face or in its effect burdens the creation of a business, the entry of a business into a particular market, or entry into a profession or occupation; and either

(1) That the challenged entry regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) Where the challenged entry regulation is necessary to the legitimate public health, safety, or welfare objectives, such objectives can be effectively served by regulations less burdensome to economic opportunity.

(C) With respect to the challenge of a public service restriction, the plaintiff(s) shall prevail if the court finds by a preponderance of the evidence that on its face or in its effect the public service restriction limits participation by private companies in the provision of public services or other services under the jurisdiction of the agency, and either:

(1) That the challenged public service restriction is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives; or

(2) Where the challenged public service restriction is necessary to fulfill legitimate public health, safety or welfare objectives, such objectives can be effectively served by restrictions that allow greater private participation.

(D) Upon a finding for the plaintiff(s), the Court shall enjoin further enforcement of the challenged entry regulation or public service restriction, and shall award reasonable attorney's fees and costs to the plaintiff(s).

Section 11. {Severability clause.}

Section 12. {Repealer clause.}

Section 13. {Effective date.}

Licensing and Certification Common Language Act

Summary

This Act would require that all activities related to the licensing of businesses, professionals and tradespersons by the State and its subdivisions be conducted in the English language.

Model Legislation

Section 1. {Short Title} "This Act may be cited as the Omnibus Common Language Legislation"

Section 2. {Legislative Declarations}

The legislature hereby finds and declares that:

- (A) The State regulates and licenses the activities of a wide range of business and professional activities, and;
- (B) The State has a responsibility to assure users that the services provided are safe, accurate and otherwise reliable, and;
- (C) For this responsibility to be carried out, it is necessary to be assured that licensees comprehend and understand all information available related to the activity, both oral and written, and;
- (D) Many of the activities and procedures related to the rendering of the covered services involve the handling of hazardous and potentially harmful materials or the carrying out of dangerous procedures, that it is in the best interest of both licensees and their customers, that said licensees should be required to understand, comprehend and otherwise communicate in the English language.

Section 3. {Main Provisions}

- (A) All procedures, applications, documents, attests, and other materials related to the licensing or certification of businesses, professionals and tradespersons in the State shall be conducted, printed and recorded in the English language; and any such files, licenses, certifications or other recorded information maintained by the State related to the licensing and certification of said licensees shall be available to the general public.
- (B) The Regulatory Agencies and Offices of the State shall promulgate regulations pursuant to the provisions of this act.
- (C) Right of action. Any citizen shall have standing to bring an action against the State to enforce this act. The State Courts shall have jurisdiction to hear and decide any such action brought under this section.

Section 4. {Severability Clause}.

Section 5. {(Repealer Clause)}

Section 6. {Effective Date}

Uniform Photographic Records Act

Summary

Recent advances in the area of optical image technology provide an excellent opportunity for businesses to reduce the expense and liability associated with processing, storing, and retrieving paper documents and other business records. Optical imaging allows the user to make an exact representation, or copy of an original document. Some acceptable forms of optical imaging include: microfilm, microfiche, paper copies, and photographs. The Uniform Photographic Records Act establishes changes in evidentiary rules, allowing photographic records to be used as evidence, eliminating the need for individuals to keep original documents.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Uniform Photographic Records Act.

Section 2. {Legislative Declarations.}

Section 3. {Definitions.}

Section 4. {Business and public records as evidence.}

(A) If any business, institution, or member of a profession or calling or any department or agency of government in the regular course of business or activity keeps or records any memorandum, writing, entry, print, or representation, or combination thereof, of any act, transaction, occurrence, or event in the regular course of business has caused any of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk, or other form of mass storage, electronic imaging, electronic data processing, electronically transmitted facsimile, printout, or other reproduction of electronically stored data, or other process which accurately reproduces or forms a durable medium for reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law.

(B) Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original.

(C) This Act shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence.

Section 5. {Severability Clause.}

Section 6. {Repealer Clause.}

Section 7. {Effective Date.}

Employment Policy and Regulatory Reform

Starting Minimum Wage Repeal Act

Summary

The Starting (Minimum) Wage Repeal Act repeals all starting (minimum) wage laws and preempts localities from enacting further laws that would attempt to establish a starting wage.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Starting (Minimum) Wage Repeal Act.

Section 2. {Legislative Declarations.} This legislature finds and declares that:

(A) Starting wage laws represent an unfunded mandate on business by the government, and disproportionately make it difficult for small business -- the engine of job creation -- to hire new employees due to artificially high wage rates.

(B) A majority of starting wage workers are secondary workers in moderate or middle income families, or primary workers in families with other significant sources of income.

(C) Over three-fourths of all economists agree that starting wage laws lead to a reduction in job opportunities.

(D) Even the Association of Community Organizations for Reform (ACORN), one of the prime supporters to raise the starting wage, has recognized that starting wages have a negative affect on employment opportunities, as evidenced by its lawsuit against the State of California which alleges the state's starting wage is unconstitutional because it limits the number of activists the organization is able to employ.

(E) Less than 5 percent of the workforce is employed at the starting wage.

(F) Many people statistically categorized as starting wage earners, actually make much more than the starting wage when tips are taken into consideration -- in fact, 63 percent of all restaurant employees who earn minimum wage also earn tips.

(G) The forces of supply and demand are more capable than the government in determining wage levels, taking into consideration regional differences, such as the cost of living and available workforce.

(H) Starting wage laws make it more difficult for employers to bring teenagers, entry-level workers, and others who need job experience, into the workforce, where they can gain skills, training and confidence.

(I) Starting wage laws are a matter of statewide concern, thus, units of local government shall not enact any laws with respect to minimum wages.

Section 3. {Definitions.}

Section 4. {Repeal of State Law.} Any and all starting (minimum) wage laws are repealed.

Section 5. {Repeal and Preemption of Local Law.}

(A) Any and all starting (minimum) wage laws in any unit of local government are repealed.

(B) Units of local government shall not enact any laws with respect to starting wage laws.

Section 6. {Severability Clause.}

Section 7. {Repealer Clause.}

Section 8. {Effective Date.}

1996 Sourcebook of American State Legislation

Public Employee Compensation Reporting Act

Summary

This bill establishes an annual requirement of public employee compensation reporting to track trends in public employee compensation and keep the public informed of public compensation levels.

Legislation

Section 1. {Definitions}

(A) "Government Entity:" means any of the following: the state, a local government, a special district, or any other public body authorized or established under the laws or authority of the state (this includes counties, cities, towns, townships, villages, special districts, government enterprises, publicly owned utilities, school districts, transit districts, etc.)

(B) "Wage and Salaries;" means any payment to an employee of a government entity for time worked or for paid leave in connection with time worked.

(C) "Employer Paid Benefits:" means any payment by a government entity to an employee, former employee, or dependent of an employee or former employee which would not have been made if the employee or former employee had not been employed by a government entity. Employer paid benefits shall not include any payment from any insurance trust or fund which is offset by previous payments by a government entity or employees of a government entity.

Section 2. {The scope of the Act.}

Each government entity shall file an Employee Compensation Report with the (state fiscal officer) for each fiscal year, no later the 180 days following the end of each fiscal year in the form specified in Schedule A (attached).

provides notice of such non-renewal.

Section 3. {Severability clause}

Section 4. {Repealer clause}

Section 5. {Effective date}

1995 Sourcebook of American State Legislation

Prevailing Wage Repeal Act

Summary

This act repeals all laws that require administratively determined employee compensation rates, including wages, salaries and benefits.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Prevailing Wage Repeal Act.

Section 2. {Legislative Declarations.}

The legislature finds and declares that:

(A) Prevailing wage laws increase the costs of government and business and diminish the number of jobs generated by the economy.

(B) Prevailing wage laws raise the wages and benefits for the few at the expense of taxpayers.

(C) Prevailing wage laws add as much as 30 percent to the cost of public construction, renovation, and other public services.

(D) Prevailing wage laws are most harmful to the young, minorities, and to other new or would-be entrants to the work force.

(E) Repeal of prevailing wage laws will increase the efficiency of public investments, reduce the cost of government, and eliminate government's preferential treatment for the politically powerful few.

Section 3. {Definition} Prevailing wage means any administratively determined employee compensation rate, including wages, salary, and benefits.

Section 4. {Repeal of State Law.} Any and all prevailing wage laws are repealed.

Section 5. {Severability clause.}

Section 6. {Repealer clause.}

Section 7. {Effective date.}

At-will Employment Act

Summary

Under traditional "at will" employment, either the employee or employer can terminate the employment relationship at any time for any reason or no reason at all. Many courts and legislatures have modified this traditional relationship, sometimes even requiring an employer to show good cause before being able to terminate the employment relationship. The At-Will Employment Act stipulates that employment relationships shall be "at-will," unless otherwise specified in an employment contract. The Act also restricts remedies available in the courts for discharged employees.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the At-Will Employment Act.

Section 2. {Legislative Declarations.}

This legislature finds and declares that:

- (A) At-will employment is the traditional relationship between employer and employee that allows either party to abandon the relationship at any time in a manner not inconsistent with applicable state, local or federal laws.
- (B) Some courts and law making bodies have weakened the at-will employment doctrine, making it more difficult for employers to justify discharging an employee. These bodies have often rely on amorphous terms such as "against public policy" or require a showing of "just cause" to justify discharging an employee.
- (C) Litigation of improper discharge cases results in substantial expense to employers and creates disincentives for employers to expand business operations within the state.
- (D) In light of the fundamental right to contract, an employer and employee should be free to contract on their own terms.
- (E) Existing state, local, and federal laws provide adequate protections for employees, making modification of at-will employment unnecessary.
- (F) Modifications of at-will employment often cause changes in an employer's hiring practices, hurting employees in the long run.
- (G) As a result, it is against the public policy interests of this State/Commonwealth to weaken the concept of at-will employment. Courts should not create causes of action that are inconsistent with this stated public policy.

Section 3. {Definitions.}

- (A) "At-will employment" means employment terminable at the will of the employer or the employee, without notice, at any time for any reason that is not prohibited by law.
- (B) "Employer" means an individual, partnership, corporation, association, government entity, or other legal entity that has supervision and control over the labor of one or more employees.

(C) "Modification" means transformation of an at-will employment contract to any other form of employment contract.

Section 4. {Employment shall be at-will, unless otherwise stipulated.}

(A) Employment of an individual is at-will employment unless the individual and his or her employer are subject to a written contract specifying either of the following:

- (1) That the individual is employed for a specific term.
- (2) That the individual's employment may be terminated by the employer only for cause.

(B) Modification of an individual's at-will employment contract is effective only upon execution of a written agreement for modification of the contract, signed by the individual and either his or her employer or the authorized representative of his or her employer.

(C) An employee handbook shall not be construed to be an employment contract if the handbook has a conspicuously placed and clearly expressed contractual disclaimer.

Section 5. {Cause of Action.}

(A) An employee has a claim against an employer for termination of employment only if one or more of the following circumstances has occurred:

- (1) The employer has terminated the employment relationship of an employee in breach of an employment contract as set forth in section 4, in which case the remedies for the breach are limited to the remedies for a breach of contract.
- (2) The employer has terminated the employment relationship of an employee in violation of a state, local or federal statute. If the statute provides a remedy to an employee for a violation of the statute, the remedies provided to an employee for a violation of the statute are the exclusive remedies for the violation of the statute or the public policy arising out of the statute, including, but not limited to:
 - a. The Civil Rights Act.
 - b. The Occupational Health and Safety Act.
 - c. The Fair Labor Standards Act / Wage and Hour Act.

(3) The employer has terminated the employment relationship of an employee in retaliation for any of the following:

- a. Refusal of the employee to commit any act in violation of state, local or federal law.
- b. Exercising rights given to an employee under state, local or federal law.
- c. The disclosure by the employee in a reasonable manner that the employee has information or a reasonable belief that the employer, or an employee of the employer, has violated, is violating or will violate a state, local or federal law to either the employer or a representative of the employer who the

employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information provided by the employee and to take action to prevent further violations of the state, local or federal law.

Section 6. {Severability Clause.}

Section 7. {Repealer Clause.}

Section 8. {Effective Date.}

1996 Sourcebook of American State Legislation

Resolution in Opposition to any Increase in the Starting (Minimum) Wage

Summary

The Resolution in Opposition to Any Increase in the Starting (Minimum) Wage recognizes that increasing the starting (minimum) wage is counterproductive. An increase in the starting wage makes it more difficult for employers to bring teenagers, entry-level workers, and others who need job experience, into the workforce where they can gain skills, training and confidence.

Model Resolution

WHEREAS, increasing the starting wage results in higher costs for business owners, which leads to higher prices for consumers; and

WHEREAS, increases in prices has an adverse impact on everyone, especially those on limited budgets, while an increase in the starting wage only temporarily benefits a few; and

WHEREAS, over three-fourths of all economists agree that increasing the starting wage leads to a reduction in job opportunities; and

WHEREAS, starting wage jobs provide millions of teenagers and others the value of a work ethic, how to work as a team, how to show up on time, dress for a job and more, without the need of a government grant or subsidy; and

WHEREAS, 60 percent of current restaurant managers and owners got their start in entry-level restaurant jobs, washing dishes, busing tables, and waiting on customers; and

WHEREAS, a majority of starting wage workers are secondary workers in moderate or middle income families, or primary workers in families with other significant sources of income; and

WHEREAS, 70 percent of starting wage workers are in families well above the poverty level, with nearly 40 percent in families in the top half of the income distribution; and

WHEREAS, less than 6.5 percent of starting wage workers are single parents, male or female, and only about half of these single parents work full time; and

WHEREAS, even the Association of Community Organizations for Reform (ACORN), a prime supporter of raising the starting wage, has recognized that starting wages have a negative affect on employment opportunities, as evidenced by its lawsuit against the State of California which alleges the state's starting wage is unconstitutional because it limits the number of activists the organization is able to employ; and **WHEREAS**, the most vulnerable to job losses include unskilled, inner-city minorities, who most need the opportunity to develop skills; and

WHEREAS, studies show that increasing the starting wage has no impact on pulling people out of poverty, since only 9.2 percent of poor people of working age are employed full-time, while 60 percent do not work at all; and

WHEREAS, employers use starting wage jobs to provide millions of Americans with real on-the-job training which employees need to move on to higher wages and develop better skills and more responsibilities; and

WHEREAS, starting wage employment is largely tied to work experience, with more than 26 percent of teenagers aged 16-17 working at the starting wage, while less than 8/10ths of one percent of persons 40 or over earn the starting wage; and

WHEREAS, when people are hired at the starting wage, they usually lack skills and knowledge, but as they acquire skills and knowledge, their wages go up -- thus, studies show that 63 percent of workers at the starting wage will earn higher wages within 12 months, with the median raise being 20 percent; and

WHEREAS, studies show that increasing starting wages lures high school students into the full-time work force, resulting in an increase in high school drop-out rates; and

WHEREAS, many people statistically categorized as starting wage workers, actually make much more than the starting wage when tips are taken into consideration -- in fact, 63 percent of all restaurant employees earning the starting wage also earn tips; and

WHEREAS, increasing the starting wage represents an unfunded mandate on business by the government, and disproportionately makes it difficult for small business -- the engine of job creation -- to hire new employees; and

WHEREAS, individual states that seek to approve mandated increases in the starting wage run the risk of losing their ability to economically compete with neighboring states, and;

WHEREAS, the forces of supply and demand are more than capable of determining wage levels, taking into consideration regional differences, such as the cost of living and available workforce;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that increasing the starting wage is counterproductive, because it mainly helps middle class families and adversely affects the working poor by increasing their expenses, while decreasing their opportunities;

BE IT FURTHER RESOLVED, that increasing the starting wage makes it more difficult for employers to bring teenagers, entry-level workers, and others who need job experience, into the workforce, where they can gain skills, training and confidence.

Employment Reference Immunity Act

Summary

Due to increasing threats of litigation, few employers will give job references for employees. This deprives good employees from being able to receive positive evaluations and also results in employers hiring employees they would not have hired if they were aware of the employees' previous conduct. The Employment Reference Immunity Act is designed to encourage employers to give good faith, truthful job references about employees. The Act accomplishes this goal by granting employers absolute and qualified immunity, depending on the scope of the information, for responding to prospective employers' requests for information.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Employment Reference Immunity Act.

Section 2. {Legislative Declarations.}

This legislature finds and declares that:

(A) Recent court decisions have had a substantial chilling effect on employers providing good faith, factual information concerning employees, to the extent that a 1995 study by the Society for Human Resource Management showed that 63 percent of responding employers will no longer give information about a former employee out of fear of a lawsuit.

(B) The threat of lawsuits harms both employers and employees, because employers should be able to give out truthful information without fear of lawsuits and good employees ought to be able to get the references they need to get other jobs.

(C) Courts have eroded the common law "qualified privilege" protecting employers from litigation to such an extent that employers face the presumptive burden of proving that they acted in good faith in giving a job reference.

(D) At the same time, courts have begun to impose greater responsibility on employers to exercise due care in hiring new employees.

(E) As a result, the absence of any immunity results in suits for invasion of privacy, defamation of character, negligent hiring, discrimination and black-listing, and prima facie tort.

(F) The Employment Reference Immunity Act will assure that employers will have the protection needed to give good faith, valuable, and truthful information to prospective employers.

Section 3. {Definitions.}

Section 4. {Main Provisions.}

(A) An employer, or an employer's designee, who discloses truthful and unbiased information about a current or former employee's job performance to a prospective employer of the employee shall be presumed to be acting in good faith and qualifiedly immune from civil liability for the disclosure and the consequences of the disclosure.

(B) An employer, or an employer's designee, who discloses information about a current or former employee to a prospective employer of the employee shall be absolutely immune from civil liability for the disclosure and the consequences of the disclosure where the disclosure concerns:

- (1) date of employment;
- (2) pay level;
- (3) job description and duties; and
- (4) wage history.

(C) An employer, or an employer's designee, shall be presumed to be acting in good faith and qualifiedly immune from civil liability for damages arising as a result of hiring or retaining an employee unless the employer, or employer's designee, knows that the hiring or retaining poses a threat to others, provided the employer, or employer's designee, has taken reasonable steps to obtain and review the credentials and background of the employee prior to hiring.

Section 5. {Subordinate Provisions.}

(A) The presumption of good faith established in this title may be rebutted by clear and convincing evidence that the information disclosed was knowingly false, disclosed with reckless disregard for the truth, deliberately misleading, disclosed for a malicious purpose, or in the violation of a civil right of the current or former employee.

(B) Employer immunity may not apply in this title where the information is disclosed in violation of a nondisclosure agreement or the information disclosed was otherwise considered confidential according to applicable federal, state, or local statutes, rules or regulations.

Section 6. {Severability Clause.}

Section 7. {Repealer Clause.}

Section 8. {Effective Date.}

1996 Sourcebook of American State Legislation

Resolution Urging Congress to Pass Legislation Requiring Expedited Waiver Procedures to States

Summary

This resolution urges Congress to pass legislation to require federal executive agencies to establish expedited review procedures for granting a waiver to a state under a grant program administered by the federal agency if another state has already been granted a similar waiver by the agency under that program.

Model Resolution

WHEREAS, states have applied to numerous waivers from federal agencies; and

WHEREAS, these waiver applications submitted because states wanted to try new innovative approaches to meet long-standing policy challenges; and

WHEREAS, each waiver application requires extensive efforts and costs, and the response and processing time from federal agencies adds the burdens of uncertainty and suspended state policymaking; and

WHEREAS, the difficulty, cost and delays of obtaining federal waivers discourage states from trying to meet their resident's needs in innovative ways; and

WHEREAS, Congress is now considering legislation to require federal executive agencies to establish expedited review procedures for granting a waiver to a state under a grant program administered by the federal agency if another state has already been granted a similar waiver by the agency under that program; and

WHEREAS, such legislation will allow each state to take advantage of creative policymaking ideas like welfare reform;

THEREFORE BE IT RESOLVED that the _____ legislature urges Congress to pass legislation to require federal executive agencies to establish expedited review procedures for granting a waiver to a state under a grant program administered by the federal agency if another state has already been granted a similar waiver by the agency under that program; and

BE IT FURTHER RESOLVED that the clerk (of the House or Senate) transmit copies of this resolution to the President and Vice President of the United States and to each member of Congress of the United States.

Adopted by the CIED Task Force at the Annual Meeting July 10, 2000. Approved by the ALEC Legislative Board August 2000.

Resolution on the Enhancement of Economic Neutrality, Commercial Efficiency, and Fairness in the Taxation of Moist Smokeless Tobacco (MST) Products

WHEREAS, excise taxes are levied by individual states on the distribution of a variety of consumer products in the United States.

WHEREAS, excise taxes are levied at various points or transactions during the distribution of these consumer products having a compounding effect on all other taxes levied further along the distribution chain, including sales taxes.

WHEREAS, levy of excise taxes should be equally applied to all products of a like nature or category, as to not create a tax policy that benefits one product and penalizes another of the same nature or category.

WHEREAS, state tax policy should not create preferences among products of a like nature or category.

WHEREAS, taxes that create a consumer preference within a product category impede free market commerce.

WHEREAS, excise taxes levied on the basis of value or price "ad valorem" at any point during the distribution of any products greatly aggravate the compounding effect on taxes and prices between products and distort consumer preference between similar products.

WHEREAS, moist smokeless tobacco products MST are all of a like nature and category, and packaging is distinguishable only by volume, weight or labeling.

WHEREAS, ad valorem excise taxes on MST create a tax preference for inexpensive MST products, thereby artificially disrupting free market consumer dynamics.

WHEREAS, ad valorem excise taxes on MST result in automatic tax increases or decreases without legislative oversight or action, and negatively impact consumers and producers while denying them any legislative recourse.

WHEREAS, ad valorem excise tax statutes are subject to differing interpretations as to the appropriate point or transaction to apply the tax, creating compliance problems for producers and state tax administrators.

WHEREAS, excise taxes on MST based on volume or weight eliminate the possibility of market distortions and manipulations, tax preferences for lower priced products, and aggravation of the compounding nature of an excise tax levied during distribution.

WHEREAS, virtually all other products on which excise taxes are levied carry a tax based on volume or weight, ensuring that manufacturers and consumers face a level marketplace based on freedom of consumer choice.

NOW, THEREFORE BE IT RESOLVED, THAT the American Legislative Exchange Council (ALEC) will support efforts to change or convert state excise taxes levied on MST from ad valorem or price based to weight or volume based.

NOW, THEREFORE BE IT FURTHER RESOLVED THAT ALEC shall support the following statement of principles:

Statement of Principles Regarding State Ad Valorem Taxes on Consumer Products

The Problem: Ad Valorem Excise Taxes on Consumer Products

- Ad valorem taxes give less expensive products a tax preference which encourages consumers to switch to those products, thus artificially distorting the market and influencing consumer behavior.
- Market distortions created by ad valorem taxes erode and destabilize state revenues over time.
- Ad valorem excise taxes lack neutrality. Products with identical weights and packaging can have widely different tax burdens, harming commercial activity and artificially distorting the dynamics of the marketplace.
- Ad valorem excise taxes are not consistent with virtually all other consumer product excise taxes which tax solely on the basis of the amount of the product purchased and consumed, and do not discriminate on price.
- Ad valorem state excise taxes amount to a tax on top of a tax because a portion of the price basis for applying the excise tax is attributable to any existing federal excise tax.
- Ad valorem excise taxes result in automatic tax increases and decreases without legislative oversight or action.
- Ad valorem excise tax statutes are subject to differing interpretations regarding the appropriate tax base and payer which increases complexity and compliance problems for manufacturers, distributors, and state tax administrators.

The Solution: Weight-based Excise Taxes

- Under a weight-based tax structure, consumer products compete fairly in the marketplace on the basis of product attributes and price, not a state tax system that arbitrarily gives a preference to one product over another.
- Weight-based excise taxes eliminate the market distortions and revenue erosion caused by ad valorem excise taxes.
- Like products should carry identical taxes. All products and taxpayers are treated fairly and equally under a weight-based tax system.
- A weight-based excise tax would equalize the tax treatment of all like consumer products in the states and eliminate an economic disincentive that hinders commercial activity.

- A weight-based excise tax on MST eliminates the possibility of a tax on tax.
- A weight-based excise tax eliminates automatic tax increases, and requires specific legislative action to increase or decrease taxes.
- Weight-based taxes are easy for taxpayers to understand and for tax administrators to support and enforce.

Conclusion

Adherence to the following principles of sound tax policy; economic neutrality, fairness, simplicity, efficiency and fiscal stability, should lead state legislators in states which currently tax consumer products on an ad valorem basis to replace that method of taxation with one that taxes products on a per unit, weight, or volume basis.

Adopted by the Commerce, Insurance & Economic Development Task Force on July 21, 2006 and approved by the ALEC Legislative Board in December 2006.

Breach of Personal Information Notification Act

Summary

This Act will help ensure that personal information residents of this state is protected by providing procedures for notification of security breaches related to personal information and thereby encouraging individuals and commercial entities, as defined in the bill, to provide reasonable security for unencrypted personal information. .

Model Legislation

Section 1. {Definitions} As used in this Act:

A.) "Breach of the security of a system" means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by an individual or entity as part of a database of personal information regarding multiple individuals and that causes or the individual or entity reasonably believes has caused or will cause identity theft or other fraud to any resident of this state.

(1) Good faith acquisition of personal information by an employee or agent of an individual or entity for the purposes of the individual or the entity is not a breach of the security of the system, provided that the personal information is not used for a purpose other than a lawful purpose of the individual or entity or subject to further unauthorized disclosure.

B.) "Entity" includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities, or any other legal entity, whether for profit or not-for-profit.

C.) "Encrypted" means transformation of data through the use of an algorithmic process to into a form in which there is a low probability of assigning meaning without use of a confidential process or key, or securing the information by another method that renders the data elements unreadable or unusable.

D.) "Financial institution" has the meaning given that term in section 6809(3) of title 15, United States Code.

E.) "Individual" means a natural person.

F.) (1) "Personal information" means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this state, when the data elements are neither encrypted nor redacted:

(2) Social Security number;

(3) Driver's license number or state identification card number issued in lieu of a driver's license; or

(4) Financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial accounts.

(5) The term does not include information that is lawfully obtained from publicly available information, or from Federal, State, or local government records lawfully made available to the general public.

G.) "Notice" means:

(1) Written notice to the postal address in the records of the individual or entity;

(2) Telephone notice;

(3) Electronic notice; or

(4) Substitute notice, if the individual or the entity required to provide notice demonstrates that the cost of providing notice will exceed \$50,000, or that the affected class of residents to be notified exceeds 100,000 persons, or that the individual or the entity does not have sufficient contact information or consent to provide notice as described in paragraphs a., b. or c. Substitute notice consists of any two of the following:

a. E-mail notice if the individual or the entity has e-mail addresses for the members of the affected class of residents; and

b. Conspicuous posting of the notice on the Web site of the individual or the entity if the individual or the commercial entity maintains a Web site; and

c. Notice to major statewide media.

G.) "Redact" means alteration or truncation of data such that no more than the following are accessible as part of the personal information:

(1) Five digits of a Social Security Number, or

(2) The last four digits of a driver's license number, state identification card number or account number.

Section 2. {Disclosure of Breach of Security of Computerized Personal Information by an Individual or Entity}

A.) General rule.--An individual or entity that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach of the security of the system to any resident of this State whose unencrypted and unredacted personal information was or is reasonably believed to have been accessed and acquired by an unauthorized person and that causes, or the individual or entity reasonably believes has caused or will cause, identity theft or other fraud to any resident of this State. Except as provided in paragraph 4 or in order to take any measures necessary to

determine the scope of the breach and to restore the reasonable integrity of the system, the disclosure shall be made without unreasonable delay.

B.) Encrypted information.--An individual or entity must disclose the breach of the security of the system if encrypted information is accessed and acquired in an unencrypted form, or if the security breach involves a person with access to the encryption key and the individual or entity reasonably believes that such breach has caused or will cause identity theft or other fraud to any resident of this State.

C.) An individual or entity that maintains computerized data that includes personal information that the individual or entity does not own or license shall notify the owner or licensee of the information of any breach of the security of the system as soon as practicable following discovery, if the personal information was or is the entity reasonably believes was accessed and acquired by an unauthorized person.

D.) Notice required by this Section may be delayed if a law enforcement agency determines and advises the individual or entity that the notice will impede a criminal or civil investigation, or homeland or national security. Notice required by this Section must be made without unreasonable delay after the law enforcement agency determines that notification will no longer impede the investigation or jeopardize national or homeland security.

Section 3. {Procedures Deemed in Compliance with Security Breach Requirements}

A.) Information privacy or security policy.--An entity that maintains its own notification procedures as part of an information privacy or security policy for the treatment of personal information and that are consistent with the timing requirements of this Act shall be deemed to be in compliance with the notification requirements of this Act if it notifies residents of this state in accordance with its procedures in the event of a breach of security of the system.

B.) Compliance with Federal requirements.

(1) A financial institution that complies with the notification requirements prescribed by the Federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice is deemed to be in compliance with this Act.

(2) An entity that complies with the notification requirements or procedures pursuant to the rules, regulation, procedures, or guidelines established by the entity's primary or functional Federal regulator shall be in compliance with this Act.

Section 4. {Violations}

A.) A violation of this Act that results in injury or loss to residents of this State may be enforced by the Office of the Attorney General as an unfair trade practice pursuant to section ____.

B.) Except as provided by paragraph 3, the Office of Attorney General shall have exclusive authority to bring action and may obtain either actual damages for a violation of this Act or a civil penalty not to exceed \$150,000 per breach of the security of the system or series of breaches of a similar nature that are discovered in a single investigation.

C.) A violation of this Act by a state-chartered or licensed financial institution shall be enforceable exclusively by the financial institution's primary state regulator.

Section 5. {Applicability} This Act shall apply to the discovery or notification of a breach of the security of the system that occurs on or after the effective date of this section.

Section 6. {Effective Date} This Act shall take effect in 120 days after the date of enactment.

Section 7 {Preemption} This Act deals with subject matter that is of Statewide concern, and it is the intent of the Legislature that this Act shall supersede and preempt all rules, regulations, codes, statutes or ordinances of all cities, counties, municipalities and other local agencies within this state regarding the matters expressly set forth in this Act.

Adopted jointly by ALEC's Telecommunications & Information Technology Task Force and Commerce, Insurance & Economic Development Task Force at the 32nd Annual Meeting on August 5, 2005. Approved by full ALEC Legislative Board in September, 2005. Amended by T&IT Task Force at the Spring Task Force Summit on April 20th, 2006

Living Wage Mandate Preemption Act

Summary

The Living Wage Mandate Preemption Act repeals any local "living wage" mandates, ordinances or laws enacted by political subdivisions of the state. It also prohibits political subdivisions from enacting laws establishing "living wage" mandates on private businesses, including those businesses that have service contracts with and/or receive financial assistance from such political subdivisions of state government.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Living Wage Mandate Preemption Act.

Section 2. {Legislative Declarations.} This legislature finds and declares that:

- (A) Economic stability and growth are among the most important factors affecting the general welfare of the people of this state, and that economic stability and growth are therefore among the most important matters for which the Legislature is responsible;
- (B) Mandated wage rates comprise a major cost component for private enterprises, and are among the chief factors affecting the economic stability and growth of this state;
- (C) Local variations in mandated wage rates threaten many businesses with a loss of employees to areas which require higher mandated wage rates, threaten many other businesses with the loss of patrons to areas which allow lower mandated wage rates, and are therefore detrimental to the business environment of the state and to the citizens, businesses, and governments of the various political subdivisions as well as local labor markets;
- (D) In order for businesses to remain competitive and yet attract and retain the highest possible caliber of employees, private enterprises in this state must be allowed to function in a uniform environment with respect to mandated wage rates; and
- (E) Legislated wage disparity between political subdivisions of this state creates an anticompetitive marketplace that fosters job and business relocation.

Section 3. {Definitions.}

(A) For purposes of this title, “political subdivision” includes, but is not limited to, a municipality, city, county, township, village, school district, special purpose district, public service district, or any local government of this state.

(B) For purposes of this title, “living wage mandate” means any requirement enacted by a political subdivision of this state that requires an employer to pay any or all of its employees a wage rate not otherwise required under this state’s law or federal law.

(C) For purposes of this title, “employer” includes, but is not limited to, any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency (other than the government of the United States), as well as employers that have contracts or subcontracts with the political subdivision or that have received tax abatements, loan guarantees, or other financial assistance from the political subdivision.

(D) For purposes of this title, “employee” means any individual employed by an employer.

(E) For purposes of this title, “employ” includes to suffer or permit to work.

(F) For purposes of this title, “person” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

Section 4. {Repeal and Preemption of Local Law.}

(A) Except as provided in Section 4 (B) and Section 5, any and all living wage mandates enacted by any political subdivision of this state are repealed.

(B) Except as provided in Section 5, no political subdivision of this state may enact, maintain, or enforce by charter, ordinance, purchase agreement, contract, regulation, rule, or resolution, either directly or indirectly, a living wage mandate in an amount greater than this state’s applicable state minimum wage [or, if applicable: “in the federal Fair Labor Standards Act of 1938, as amended {29 U.S.C. Sec. 201 et seq.}”].

Section 5. {Severability Clause.}

(A) The prohibitions in Section 4 of this title shall not [choose any/all of the following]:

(1) Prohibit a political subdivision of this state from enacting, maintaining, or enforcing through a collective bargaining agreement or other means a minimum wage requirement governing compensation paid by that political subdivision to employees of that political subdivision;

(2) Apply to a collective bargaining agreement negotiated between a political subdivision and the bargaining representative of the employees of the political subdivision;

(3) Limit, restrict, or expand a prevailing wage required under existing state law [cite code/statute];

(4) Apply when applicable federal law requires the payment of a prevailing or minimum wage to persons working on projects funded in whole or in part by federal funds.

Section 6. {Repealer Clause.}

Section 7. {Effective Date.}

Adopted by the CIED Task Force at the 2001 States and Nation Policy Summit. Approved by the ALEC Legislative Board in January, 2002.

Regulatory Flexibility Act

Summary

A bill* to improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

Findings:

- (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;
- (2) Small businesses bear a disproportionate share of regulatory costs and burdens;
- (3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;
- (4) When adopting regulations to protect the health, safety and economic welfare of [State], state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;
- (5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses with limited resources;
- (6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity;
- (7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- (8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;
- (9) Alternative regulatory approaches that do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;

(10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

Model Legislation

Section 1. {Short Title} This act may be cited as the Regulatory Flexibility Act of [2003]

Section 2. {Definitions}

(a) As used in this section:

- (1) "Agency" means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases;
- (2) "Proposed regulation" means a proposal by an agency for a new regulation or for a change in, addition to or repeal of an existing regulation;
- (3) "Regulation" means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings or (C) intra-agency or interagency memoranda;
- (4) "Small business" means a business entity, including its affiliates, that (A) is independently owned and operated and (B) employs fewer than [five hundred] full-time employees or has gross annual sales of less than [six] million dollars.

Section 3. {Economic Impact Statements}

(a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

- (1) An identification and estimate of the number of the small businesses subject to the proposed regulation;
- (2) The projected reporting, record keeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;
- (3) A statement of the probable effect on impacted small businesses;
- (4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Section 4. {Regulations Affecting Small Businesses}

(a) Prior to the adoption of any proposed regulation on and after [January 1, 2003], each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental and economic welfare consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(b) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the [Department of Economic and Community Development or similar state department or council that exists to review regulations] of its intent to adopt the proposed regulation. The [Department of Economic and Community Development or similar state department or council that exists to review regulations] shall advise and assist agencies in complying with the provisions of this section.

Section 5. {Judicial Review}

- (a) For any regulation subject to this section, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section.
- (b) A small business may seek such review during the period beginning on the date of final agency action and ending one year later.

Section 6. {Periodic Review of Rules}

- (a) Within four years of the enactment of this law, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.
- (b) Rules adopted after the enactment of this law should be reviewed every five years of the publication of such rules as the final rule to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.
- (c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors--

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates or conflicts with other Federal, State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Endnotes

* This model legislation was based in part by legislation drafted by Connecticut [see Conn. Gen. Stat. Ann. §4-168a (Westlaw through 2001)]. Connecticut's regulatory flexibility is successful in part because of an accompanying piece of legislation that enacted a Regulatory Review Committee, which has power to veto regulations [see Conn. Gen. Stat. Ann. §4-170 (Westlaw through 2001)].

Adopted by the CIED Task Force and approved by the ALEC Legislative Board in 2003.

Omnibus Common Language Act

Summary

This Act recognizes a common language and designates a common language as the language of public record and public meetings; repeals conflicting laws; and for other purposes

Model Legislation

Section 1. {Short Title} This Act may be cited as Omnibus Common Language Act

Section 2. {Legislative Declarations} The Legislature hereby finds and declares that:

- (A) By sharing a common language America's immigrants built a new nation and contributed their diverse cultures;
- (B) This State has been enriched by its diversity, and the government should always take steps to promote the dignity of all the heritages that form our society;
- (C) Many languages are represented in this State, and language has the power to unite the people of differing backgrounds and heritages;
- (D) English is the nation's single, shared language - the one language that crosses all ethnic, racial, cultural, nationality and religious lines and allows diverse Americans to share their various backgrounds;
- (E) Full political, economic, and social empowerment depends to a large extent upon proficiency in the common language - and lack of proficiency in the common language condemns people to a permanent second-class status behind a language barrier;
- (F) Knowledge of a common language is essential to the democratic processes of government and the full exercise of constitutional freedoms, informed and knowledgeable empowerment as voters, citizen checks against government abuses, and individual prosperity and independence;
- (G) The use of a common language as the language of public record in no way infringes upon the rights if

citizens to exercise the use of a primary language of their choice for private conduct;

(H) The absence of a recognized common language among diverse people results in segregation along language lines and places at great disadvantage individuals who are of limited proficiency in English;

(I) It is a purpose of this Act to recognize the government's affirmative responsibility to encourage and ensure greater opportunities for individuals to learn the common language, as recognized by this Act;

(J) It is a purpose of this Act to establish a uniform policy for a means of access to public documents and communications in the State and thereby ensure fair, consistent, and equal practices throughout this State when it comes to providing services;

Section 3. {Definitions} Official public documents and records are all documents officially compiled, published, or recorded by the State including deeds, publicly probated wills, records of births, deaths and marriages, and all other documents and records defined by [refer to code citations defining "Freedom of Information Act" documents or comparable laws]; and official public meetings are those meetings and proceedings as defined by [refer to code citations defining "open meetings" laws].

Section 4. {Main Provisions}

(A) The common language is recognized to be English; and the common language is designated as the language of official public documents and records and official public meetings.

(B) Exemptions. The provisions of this Act shall not apply:

- (1) to instruction in foreign language courses;
- (2) to instruction designed to aid students with limited English proficiency in a timely transition and integration into the general education system;
- (3) to the promotion of international commerce, tourism, and sporting events;
- (4) when deemed to interfere with needs of the justice system;
- (5) when the public safety, health, or emergency services require the use of other languages, provided, however, that any such authorization for the use of languages other than the common language in printing informational materials or publications for general distribution must be approved in an open public meeting [refer to code citations defining "open meetings" laws] by the governing board or authority of the relevant state or municipal entity and the decision must be recorded in publicly available minutes [refer to code citations defining "Freedom of Information Act" documents or comparable laws];
- (6) when expert testimony, witnesses or speakers may require a language other than the common language, provided, however, that for purposes of deliberation, decision making, or record keeping, the official version of such testimony or commentary shall be the officially translated English language version.

(C) Pursuant to the exemptions outlined above ((B)(1) through (B)(6)), all costs related to the preparation, translation, printing and recording of documents, records, brochures, pamphlets, flyers, or other information

materials in languages other than the common language must be delineated as a separate budget line item in the agency, departmental, or office budget.

(D) No person shall be denied employment with the State or any constituent entities or municipalities based solely upon that person's lack of facility in a foreign language, except where related to bona fide job needs reflected in the exemptions in (B)(1) through (B)(6) above.

(E) This Act shall not be construed in any way to infringe upon the rights of citizens under the State Constitution or the Constitution of the United States in the use of language in private activities. No agency or officer of the State nor any constituent entities or municipalities may place any restrictions or requirements regarding language usage in businesses operating in the private sector other than official documents, forms, submissions, or other communications directed to government agencies and officers, which communications shall be in the common language as recognized in this Act.

(F) Right of action. Any citizen of the State shall have standing to bring an action against the State to enforce this Act. The State Courts shall have jurisdiction to hear and decide any such action brought under this subsection.

Section 5. {Severability Clause}.

Section 6. {Repealer Clause}

Section 7. {Effective Date}

1995 Sourcebook of American State Legislation

Resolution Opposing Comparable Worth Legislation

Summary

This resolution opposes legislation that would empower the government to require that men and women receive the same pay for different jobs, whose value would be determined by government. Comparable worth legislation often includes punitive damages that incite litigation and drive up costs, which ultimately destroys job opportunities for those it purports to help.

Model Resolution

WHEREAS, WE HEREBY AFFIRM OUR SUPPORT FOR EQUAL PAY FOR EQUAL WORK, which has been the law of the land for over 35 years and which remedies deviations from the beneficial free market principle that men and women who perform the same job are entitled to the same pay; and

WHEREAS, WE HEREBY OPPOSE COMPARABLE WORTH, MAQUERADING AS “PAY CHECK FAIRNESS” OR “PAY EQUITY,” which would empower the government to require that men and women receive the same pay for different jobs, whose value would be determined not by the free market but by government; and

WHEREAS, Equal Pay for Equal Work is a hallmark of today’s workplace, as evidenced by credible studies confirming that when wage disparities between men and women are properly controlled for tenure, education, and experience, that there is near parity between genders in today’s workforce; and

WHEREAS, Comparable Worth legislation has now been proposed in the United States Congress and in numerous state legislatures to undermine the subtle and complex, but irreplaceably valuable free market pricing mechanism with government rules that would politicize private pay practices; and

WHEREAS, a government mandate such as Comparable Worth that artificially drives up the costs of engaging in economic activity invariably constricts job creation and growth, thereby causing economic harm to the intended beneficiaries of such a mandate and to the communities in which they live; and

WHEREAS, such Comparable Worth legislation also would inject punitive damages into the dispute resolution process thereby inciting litigation and its attendant transactional costs, further constricting economic growth and job opportunity;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert jurisdiction) affirms that Comparable Worth/Punitive Damages Legislation represents a serious economic threat to all employees and employers whose welfare depends on the prosperity that our free enterprise system affords, and that it presents a unique and pernicious attack on the ability of our citizens to be free from arbitrary and capricious government intrusion.

BE IT FURTHER RESOLVED, that the Clerk (of the House or Senate) transmit copies of this Resolution to the President and Vice President of the United States and to each member of Congress of the United States.

Adopted by the CIED Task Force at the Annual Meeting August 12, 1999. Approved by the ALEC Legislative Board September 1999.

Financial Services and Consumer Banking

Nationwide Interstate Banking Act

Summary

The Nationwide Interstate Banking Act removes geographical barriers to bank expansion and permits reciprocal interstate banking. If passage of immediate nationwide interstate banking is not politically feasible in a particular state, this bill provides for an optional period of regional interstate banking with a trigger for nationwide interstate banking after an established period of time elapsed.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act may be cited as the Nationwide Interstate Banking Act.

Section 2. As used in this Act:

(A) "In-state financial institutions" means a state or national bank, savings and loan association, or holding company with its home office in [insert name of state].

(B) "Out-of-state financial institution" means a state or national bank or savings and loan association with its home office in a state other than this state or holding company with its home office in a state other than this state.

(C) "Acquire" as applied to an in-state financial institution means any of the following actions or transactions:

(1) The merger or consolidation of an in-state financial institution with an out-of-state financial institution;

(2) The acquisition by an out-of-state financial institution of the direct or indirect ownership or control of voting shares of an in-state financial institution if, after the acquisition, the out-of-state financial institution will directly or indirectly own or control more than 15% of the outstanding voting shares of the acquired in-state financial institution

(3) The direct or indirect acquisition of all or substantially all of the assets of an in-state financial institution; or

(4) The taking of any other action that would result in the direct or indirect control of an in-state financial institution.

(D) "Control" means direct or indirect ownership of, or power to vote 15% or more of the outstanding voting shares of, an in-state financial institution, or to control in any manner the election of a majority of the directors of an in-state financial institution.

(E) "De novo entry" means a newly established bank or savings and loan association, that is not created through the acquisition of, or merger with, an in-state financial institution, and which is controlled through an out-of-state financial institution.

(F) "Superintendent" means the state official who is responsible for licensing banks or savings and loan associations in a state, as the case may be.

(G) "Filed with the Superintendent" means when the complete application including any amendment or supplements containing all the information in the form required by the Superintendent is received by the Superintendent.

Section 3. {Approval of Superintendent.}

(A) An out-of-state financial institution shall not acquire an in-state financial institution unless the Superintendent has approved the acquisition. Nothing in this Act shall be construed to prohibit a person from negotiating or entering into agreements subject to the condition that the acquisition will not be effective until approval of the Superintendent is obtained.

(B) The acquiring financial institution shall submit to the Superintendent a written application for approval in the form the Superintendent prescribes. The acquiring financial institution shall accompany the application with such information, data and records as the Superintendent may require in order to make his determination. For this purpose the Superintendent shall adopt rules prescribing the form and the information, data, or records which he requires.

Section 4. {Prohibition.}

A bank or savings and loan association that applies to the (insert name of appropriate state regulatory agency) or an agency of the federal government from and after insert date) to operate as such in this state shall not be eligible for acquisition under Section 2 until five years from the date of application or until (insert date), whichever comes earlier.

Section 5. {Authorization of acquisition.} From and after the effective date of this Act:

(A) Any out-of-state bank holding company may acquire control of any in-state bank or bank holding company, if the state wherein the out-of-state bank holding company has its principal place of business shall authorize the acquisition of control of a bank or bank holding company in that state by a bank holding company which has its principal place of business in this state under conditions substantially no more restrictive than those imposed by this Act; and

(B) Any out-of-state savings and loan holding company may acquire control of any in-state savings and loan association or savings and loan holding company, if the state wherein the out-of-state savings and loan holding company has its principal place of business shall authorize the acquisition of control of a savings and loan association or savings and loan holding company under conditions substantially no more restrictive than those imposed by this Act.

***OPTIONAL SECTION**

Insert in Place of Above Section 5

Section 5. {Allowing for a period of regional interstate banking prior to nationwide interstate.}

(A) From and after the effective date of this Act:

(1) any bank holding company having its principal place of business in (insert applicable states) may acquire control of any in-state bank or bank holding company, if the state wherein the out-of-state bank holding company has its principal place of business shall authorize the acquisition of control of a bank or bank holding company in that state by a bank holding company which has its principal place of business in this state under conditions substantially no more restrictive than those imposed by this Act.

(2) Any savings and loan holding company having its principal place of business in (insert applicable states) may acquire control of any in-state savings and loan association or savings and loan holding company, if the state wherein the out-of-state savings and loan holding company has its principal place of business shall authorize the acquisition of control of a savings and loan association or savings and loan holding company in that state by a savings and loan holding company which has its principal place of business in this state under conditions substantially no more restrictive than those imposed by this Act.

Section 6. {De Novo Entry} From and after (insert date) an out-of-state financial institution may establish a bank, savings and loan association nor holding company in this state through de novo entry subject to the applicable laws of this state.

Section 7. {Failure to act as approval} The Superintendent shall rule on any application submitted under Section 2 not later than 60 days following the date the application is filed with the Superintendent. If the Superintendent fails to rule on the application within the required 60-day period, the failure to rule shall be deemed a final decision of the Superintendent approving the application.

Section 8. {Grounds for denial} The Superintendent shall deny an application for acquisition of an in-state financial institution if the Superintendent finds any of the following:

(A) The financial condition of the acquiring out-of-state financial institution is such that it may jeopardize the financial stability of the in-state financial institution or prejudice the interests of the depositors, beneficiaries, creditors or shareholders of the in-state financial institution;

(B) The financial condition of the acquiring out-of-state financial institution is such that it may jeopardize the financial stability of the in-state financial institution or prejudice the interests of the depositors, beneficiaries, creditors or shareholders of the in-state financial institution;

(C) Any plan or proposal to liquidate the in-state financial institution, to merge or consolidate the in-state financial institution or make any other major change in the business, corporate structure or management of the in-state financial institution is not fair and reasonable to the depositors, beneficiaries, creditors or shareholders of the in-state financial institution;

(D) That the applicant has exhibited, or has acquired a reputation for, such lack of honesty or integrity as to indicate that it would not be in the interest of the depositors, beneficiaries, creditors or shareholders of the in-state financial institution or in the interest of the public, to permit such applicant to control the in-state financial institution;

(E) The applicant neglects, fails or refuses to furnish the Superintendent any information requested by the Superintendent; or

(F) The acquisition is contrary to law.

Section 9. {Applicable laws and cooperative agreements.}

(A) Any bank, savings and loan association or holding company doing business as such in this state is subject to the applicable laws of this state and all the rules adopted pursuant to such laws.

(B) The Superintendent may promulgate rules, including the imposition of reasonable application and examination fees, to implement and administer this Act.

(C) The Superintendent may enter into cooperative agreements with federal regulatory authorities for the examination of any acquired or de novo entry bank, savings and loan association or holding company and may accept reports of examination and other records from those authorities instead of conducting his own examinations. The Superintendent may enter into joint actions with other bank or savings and loan association regulatory authorities having concurrent jurisdiction over any acquired or de novo entry bank or savings and loan association, or may take such actions independently to carry out his responsibilities under this Act and to assure compliance with applicable laws of this state.

Section 10. {Severability clause.}

Section 11. {Repealer clause.}

Section 12. {Effective date.}

Expanded Consumer Choice In Financial Services Act

Summary

The Expanded Consumer Choice in Financial Services Act permits banks to fully compete in the financial services market by offering consumers a wide variety of investments and other financial services. This Act included safeguards to limit banks' involvements in high-risk investments.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act may be cited as the Expanded Consumer Choice Financial Services Act.

Section 2. {Investment powers.} A bank may invest its funds, and a trust company may invest its corporate funds, subject to the definitions, restrictions, and limitations listed in this Act.

Section 3. {Investments not subject to limitations.} A bank or trust company may invest without limitation in securities of, or other interests in, any open or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended from time to time, provided that the portfolio of such investment company or investment trust is limited to United States Government obligations, and further provided that any such investment company or investment trust shall take delivery of such collateral either directly or through an authorized custodian.

Section 4. {Investment in corporations.} Up to an aggregate of 20% of the total assets of a bank may be invested in the stock, obligations, or other securities of subsidiary corporations, or other corporations or entities, except that during the first three years of existence of a bank, such investments are limited to ten percent of the total assets. The [insert name of appropriate regulatory authority] may, by rule, limit any type of investment made pursuant to this Section if it finds that such investment would constitute an unsafe or unsound practice.

Section 5. {Investment quality.} None of the bonds or other obligations described in this Section shall be eligible for investment in any amount unless current as to all payments of principal and interest unless rated in one of the four highest classifications or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized rating service, or any comparable rating as determined by the [insert name of appropriate regulatory authority]. Bonds or other obligations that are not rated shall not be eligible for investment unless otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing bank or trust company.

Section 6. {Federally chartered banks.} This Act shall not apply to any state bank which holds membership in the Federal Reserve System or which is subject to, and that complies with, the requirement of Regulation D of the Board of Governors of the Federal Reserve System.

Section 7. {Severability clause.}

Section 8. {Repealer clause.}

Section 9. {Effective date.}

Consumer Banking Act

Summary

The Consumer Banking Act defines a consumer bank and authorizes financially sound, diversified companies to invest in the banking industry through separate subsidiaries established to provide consumer financial services. These consumer banks are fully regulated and insured, are restricted in the types of loans and financial services they may offer, and are subject to strict provisions regarding associations with other subsidiaries of the same holding company.

Under this Act, a consumer bank must comply with FDIC insurance requirements, must maintain capital in an amount equal to nine percent of total assets, and must adhere to state banking laws. Furthermore, a consumer bank is required to offer no interest-bearing checking accounts with reasonable fees and to make available consumer loans representing at least 60% of the bank's local consumer deposit portfolio.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act may be cited as the Consumer Banking Act.

Section 2. As used in this Act:

(A) "Consumer bank" means any banking association or organization, organized under the laws of this state or the laws of any other state, that does not engage in the business of making commercial loans as defined in subsection (E) of this Section, and:

- (1) is an "insured bank" within the meaning of the Federal Deposit Insurance Act;
- (2) has not failed to maintain, for at least two out of every three consecutive calendar years (beginning with the first calendar year commencing at least six months after the latter of: the effective date of this Act; or the earliest date as of which any such institution would be chartered as a consumer bank), capital in an amount at least equal to nine percent of its total assets. Not more than one-third of this minimum capital may include debt subordinated to the claims of its depositors. Such debt constitutes capital pursuant to regulations or guidelines (as in effect on the effective date of this Act) regarding the qualification of subordinated debt as bank capital promulgated by:
 - a. the Board of Governors of the Federal Reserve System, in the case of a consumer bank organized under this Act, if such consumer bank is a member of the Federal Reserve System;
 - b. the Federal Deposit Insurance Corporation, in the case of a consumer bank organized under this Act, if such consumer bank is not a member of the Federal Reserve System; or
 - c. the Comptroller of the Currency of the United States, in the case of a consumer bank that is a national banking association.
- (3) offers to the public (in addition to any other deposit services, arrangements, accounts or instruments which it may offer) non-interest-bearing checking accounts with no required minimum balance and no fees except for cost items such as the return to the customer of cancelled checks and dishonor of checks because of insufficient funds in the account;

(4) does not maintain investments, other than investments in consumer loans described in subsection (F) of this Section, in excess of 40% of its total assets, determined on a daily average basis, for more than one out of every three consecutive calendar years (beginning with the first calendar year, commencing at least six months after the later of: the effective date of this Act; or the earliest date as of which any company controlling such institution would become a consumer bank holding company);

(5) makes available in this state, to the extent consistent with safe and sound banking standards, loans and extensions of credit in an aggregate amount equal to at least 60% of the amount outstanding of its deposits originated in this state; and

(6) is chartered as a consumer bank by the state Banking Commissioner.

(B) "Consumer bank" does not include;

(1) any organization operating under Section 25 or 25(a) of the Federal Reserve Act;

(2) any organization that does not do business within the United States except as incidental to its activities outside the United States;

(3) any foreign bank, whether or not it has one or more insured or uninsured branches in the United States; or

(4) any savings and loan association, credit union, industrial bank, or industrial loan company.

(C) "Consumer bank holding company" means any company which is not a bank holding company, that has control over any consumer bank or over any company that is or becomes a consumer bank holding company.

(D) "Control" means [insert definition from state banking code].

(E) "Commercial loan" means any loan or extension of credit for commercial, corporate or agricultural purposes, but does not include consumer loans as defined in subsection (F) of this Section.

(F) "Consumer loan" includes:

(1) loans or extensions of credit to natural persons primarily for personal, family or household purposes, whether directly, indirectly, or through the use of a lease;

(2) loans or extensions of credit for charitable purposes;

(3) loans or extensions of credit to small business concerns that meet the size standards for Small Business Administration loans pursuant to the Federal Small Business Act and the rules and regulations promulgated by the Administrator of the Small Business Administration;

(4) loans or extensions of credit to natural persons, or trusts the beneficiaries of which are natural persons, secured by a one to four family residence;

(5) loans or extensions of credit through use of credit cards or similar means of access;

(6) the purchase of, or investment in, retail installment contracts, loans or extensions of credit to consumers, and accounts receivable resulting from retail sales or from the supplying of services to

consumers, and the financing of sellers of goods or suppliers of services to consumers (including without limitation, inventory floor planning) in connection therewith;

(7) loans to operators of family farms that are owned by a natural person or by natural persons (herein referred to as "members of a family") who have family relationship with one another, or by a corporation (herein referred to as "family corporation") the sole stockholder of which is a natural person or all of the stockholders of which are one or more members of a family, related family corporations or related family partnerships, or by partnerships (herein referred to as "family partnerships") all of the partners of which are one or more members of a family, related family corporations or related family partnerships, or by trusts the sole beneficiary of which is a natural person, family corporation, or family partnership or all of the beneficiaries of which are one or more members of a family, related family corporations or family partnerships; or

(8) investments such as commercial paper, certificates of deposit, bankers acceptances and similar money market instruments, obligations of the United States and state and local governments, or agencies and instrumentalities thereof, mortgage-backed securities, the sale of federal funds, the deposit of interest-bearing funds, the extension of broker call loans, and other types of investments similar to the foregoing. The purpose of any loan or extension of credit shall be conclusively established by any written statement of purpose signed by the borrower and accepted in good faith by the institution making such loan or extension of credit.

(G) "Engaged in the business of making commercial loans" refers to any banking organization with an aggregate principal amount of outstanding commercial loans equal to, or exceeding five percent of the organization's total assets.

Section 3. {Loan requirements.} A consumer bank shall not require, as a condition to granting a loan or extension of credit to any person or entity, that such person or entity also purchase, contract for or obtain any product or service from, or do business with, any affiliate of such consumer bank.

Section 4. {Authorized investments.}

(A) A consumer bank holding company may engage in business activities without limitation, except as otherwise provided by law.

(B) A consumer bank may engage in business activities according to the same laws and regulations governing banks in this state, as established in [insert citation from state banking code], to the extent that such laws and regulations are not inconsistent with this Act.

Section 5. {Chartering of consumer banks.}

(A) The Banking Commissioner of this state shall have the authority to charter consumer banks, as defined in Section 2(A) of this Act, according to the laws and regulations respecting bank charters in this state, to the extent that such laws and regulations are not inconsistent with this Act.

(B) Any bank, as defined in {insert citation from state banking code} which meets the definition of consumer bank, as stated in Section 2(A), may petition the Banking Commissioner of this state to be chartered as a consumer bank.

Section 6. {Applicable laws and regulations.} Consumer banks shall be governed by all laws and regulations of this state governing banks, to the extent that such laws and regulations are not inconsistent with this Act.

Section 7. {Severability clause.}

Section 8. {Repealer clause.}

Section 9. {Effective date.}

1995 Sourcebook of American State Legislation

Resolution Urging Congress to Protect our Uniform National Credit System

Summary

This resolution supports the permanent extension of the seven areas of state law preemption contained in Section 624 of the Fair Credit Reporting Act that are due to sunset on December 31, 2003. The resolution states that the uniform operation of our national credit system, and its overall importance to our economy, requires that Congress act in this area.

Model Resolution

WHEREAS, the United States maintains the most efficient and reliable credit reporting system in the world. This system is the foundation that supports our national credit markets. Our national credit reporting system operates in a uniform, fair, and reliable manner; efficiently making credit available across state lines to large segments of an increasingly mobile and transient American population; and

WHEREAS, consumer spending represents two-thirds of the Gross Domestic Product (GDP) in the United States, and seventy-five percent of U.S. households participate in the consumer credit market; and

WHEREAS, since 1970 with the passage of the Fair Credit Reporting Act, American consumers have come to rely upon the efficient and automated granting of credit when financing their homes and purchasing everything from automobiles to furniture, appliances and apparel; and

WHEREAS, in 1996, Congress expanded the FCRA to provide additional rules for certain existing activities, while also including several important areas of state law preemption corresponding to the areas in which it clarified or expanded the operation of the FCRA; and

WHEREAS, since the 1996 amendments to the FCRA were adopted, our nation's credit system has become even more robust. Today, our nationwide system of credit granting is based on the standardized availability of credit information and use of credit reports. The current national system is critical to consumers and to our economy; and

WHEREAS, uniform national standards permit lenders to accurately judge the creditworthiness of each individual consumer regardless of their state of residence, speeding credit approval and leading to lower lending costs. These lower costs are passed on to consumers in the form of lower interest rates; and

WHEREAS, uniformity in information standards across state lines helps businesses to communicate with the national credit bureaus and within their own corporate family to prevent and mitigate crimes such as fraud and identity theft; and

WHEREAS, under the current system the use of consistent, comprehensive information has increased credit availability to previously underserved individuals, allowing for new entrants to the credit market and giving those individuals the ability to build a positive credit history; and

WHEREAS, the risk of upending our national credit reporting system by creating a patchwork of new laws in this area is real, as demonstrated by the initiatives currently being proposed by some individual legislators;

BE IT RESOLVED that [insert state] urges Congress to support permanent extension of state law preemption contained in Section 624 of the Fair Credit Reporting Act.

BE IT FURTHER RESOLVED, that the clerk of the [House or Senate] transmit copies of this resolution to the President and Vice President of the United States, and to each member of Congress of the United States.

Adopted by the CIED Task Force at the Annual Meeting on July 31, 2003. Approved by full ALEC Legislative Board August, 2003.

Resolution in Opposition to Government Imposed Caps or Elimination of ATM Service Charges

Summary

This resolution opposes government imposed caps or elimination of ATM service charges. ATMs are widely used machines that many consumers rely upon to conveniently bank 24 hrs per day. These machines were originally installed to reduce reliance on tellers and have proliferated because of financial support derived from particular fees for usage. In any case, government imposed caps on ATM fees and surcharges are price controls, which violate the principles of free enterprise.

Model Resolution

WHEREAS, ATM owners have revolutionized personal banking by providing consumers access to banking services 24 hours per day, seven days per week and ATM networks provide consumers access to their money nationwide and worldwide; and

WHEREAS, Most banks allow free, unlimited ATM usage for their own customers; and

WHEREAS, since April of 1996, when ATM networks began to allow ATM owners to charge non-customers for transactions, the number of ATMs nationwide has increased by 85%; and

WHEREAS, the consulting firm of McKinsey & Co. found that banks have spent \$1.5 billion to operate ATMs and have saved \$200 million on the cost of using tellers as a result of growing ATM usage; and

WHEREAS, Between 1991 and 1995, the federal reserve board estimates that average ATMs generated \$10,445 more in expenses than in income; and

WHEREAS, some ATM owners and network operators charge fees and surcharges to consumers to help them cover the costs of operating ATMs; and

WHEREAS, Before ATM surcharges, 3,000 transactions per month for small ATM operators were required for them to break even; and

WHEREAS, Now it only takes these same operators 500 transactions per month to break even; and

WHEREAS, Prohibiting ATM fees and surcharges would reduce the number and locations of ATMs because of the high costs of owning and operating these machines, thereby reducing customer convenience and choice in using personal banking services; or

WHEREAS, ATM owners would be forced to pass the costs of operating ATMs to other customers who may not be ATM users but would end up subsidizing those who do use them; and

WHEREAS, ATM surcharges and others fees are really fees used for different purposes and not double dipping as some critics of ATM fees contend; and

WHEREAS, Consumers are provided other methods such as traveling to a bank or utilizing a point of sale installation to complete their cash transactions; and

WHEREAS, Consumers and not the government should decide whether or not they want to pay for the convenience of using ATMs; and

WHEREAS, Such a government imposed prohibition would amount to levying a time tax on consumers by denying them the opportunity to use convenient ATMs and forcing them to travel, in some cases, long distances to complete banking transactions; and

WHEREAS, Such a government imposed prohibition represents a price control that flies in the face of free market principles;

NOW THEREFORE BE IT RESOLVED, that ALEC opposes the practice of government at any level limiting or eliminating any ATM fees or surcharges; and

BE IT FURTHER RESOLVED, that the clerk (of the House or Senate) transmit copies of this resolution to the President and Vice President of the United States and to each member of Congress of the United States.

Adopted by the CIED Task Force August 20, 1998. Approved by the ALEC Legislative Board September 1998.

Deferred Presentment Services Act

Summary

This model bill establishes a system of regulations for those persons involved in the business of deferred presentment services.

Model Legislation

Section 1. {Short Title} This chapter shall be known and may be cited as the “Deferred Presentment Services Act.”

Section 2. {Definitions} As used in this chapter, unless the context otherwise requires:

- A. "Check" means a personal check signed by the maker and made payable to a person subject to this chapter.
- B. "Deferred presentment service" means a transaction pursuant to a written agreement between a person and the maker of a check whereby the person:
1. Accepts a check from the maker dated on the date it was written;
 2. Agrees to hold the check for a period of time prior to negotiation or presentment of the check; and
 3. Pays to the maker of the check the amount of the check, less the service fees permitted by Section 5 of this chapter.
- C. "Person" means an individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity providing deferred presentment services.

Section 3. {Written Agreement} Each deferred presentment service transaction must be documented by a written agreement signed by both the maker of the check and the person accepting such check. The written agreement must contain the name of the person, the transaction date, the amount of the check, and a statement of the total amount of fees charged, expressed both as a dollar amount and as an annual percentage rate (APR). The written agreement must authorize the person to defer presentment or negotiation of the check until a specific date, which date may not be later than thirty-one (31) calendar days following the date of the transaction.

Section 4. {Notice to Maker of Check} A person providing a deferred presentment service transaction shall provide a notice in a prominent place on each deferred presentment service agreement in at least (10) point type in substantially the following form:

A. A DEFERRED PRESENTMENT SERVICE TRANSACTION IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.

B. YOU SHOULD USE A DEFERRED PRESENTMENT SERVICE TRANSACTION ONLY TO MEET SHORT-TERM CASH NEEDS.

C. YOU WILL BE REQUIRED TO PAY ADDITIONAL FEES IF YOU RENEW THE DEFERRED PRESENTMENT SERVICE TRANSACTION RATHER THAN PAY THE DEBT IN FULL WHEN DUE.

Section 5. {Authorized Service Fee} A person may charge a service fee for each deferred presentment service transaction. Such fee shall be deemed fully earned as the date of the transaction and shall not be deemed interest for any purpose of law. No other fees or charges may be charged or collected for the deferred presentment service transaction.

Section 6. {Maximum Transaction Amount} The maximum amount a person may pay to the maker of a check in a deferred presentment service transaction is one thousand dollars (\$1000). Consequently, no check held by a person in connection with a deferred presentment service transaction may exceed the sum of one thousand dollars (\$1000) plus the service fee authorized by Section 5 of this chapter.

Section 7. {Multiple Outstanding Transactions}

A. No person may have more than two (2) outstanding deferred presentment services transactions with any one (1) maker at the same time. The aggregate face value of all outstanding deferred presentment service checks

held by a person from any one (1) maker may not exceed one thousand dollars (\$1000), exclusive of the service fee authorized by Section 5 of this chapter.

B. A person providing a deferred presentment service transaction shall provide a notice in a prominent place on each deferred presentment service agreement in at least ten (10) point type in substantially the following form:

STATE LAW PROHIBITS YOU FROM HAVING OUTSTANDING, AT ANY ONE TIME, DEFERRED PRESENTMENT TRANSACTIONS TOTALING MORE THAN \$1,000 (EXCLUDING APPLICABLE SERVICE FEES). FAILURE TO OBEY THIS LAW COULD CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.

Section 8. {Renewals} A deferred presentment service transaction may be renewed no more than three (3) consecutive times, after which time either the maker must pay-off the deferred presentment check in cash, or its equivalent, or the person must deposit the maker's check. Once the maker of a check has completed a deferred presentment service transaction with a person, such maker may enter into a new agreement for deferred presentment services with that person. A transaction is completed when a check is presented for payment, deposited, or redeemed by the maker by paying the full amount of the check to the person holding the check.

Section 9. {Form of Transaction Proceeds} A person may pay the proceeds from a deferred presentment service transaction to the maker of the check in the form of the person's business check, money order, or cash; provided, however, that no additional fee may be charged by a person for cashing the person's business check.

Section 10. {Endorsement of Check} Before a person subject to this chapter may negotiate or present a check for payment, the check must be endorsed with the actual name under which the person is doing business.

Section 11. {Redemption of Check} The maker of a check shall have the right to redeem the check from the person holding the check at any time prior to the negotiation or presentment of the check by paying the full amount of the check in the form of cash or its equivalent.

Section 12. {Authorized Dishonored Check Fee} If a check written in connection with a deferred presentment service transaction is returned to a person from a payor financial institution due to insufficient funds, a closed account, or a stop payment order, the person shall have the right to exercise all civil means available and allowable by law to collect the face value of the check. Additionally, the person may contract for and collect a returned check charge not to exceed twenty-five (\$25) plus any court costs, including reasonable attorney fees, incurred as a result of the returned check. No other fees may be collected as a result of a returned check or the default by the maker under a deferred presentment service agreement.

Section 13. {Posting of Charges} A person offering deferred presentment service transactions must post at the point-of-sale a notice of the charges imposed for such deferred presentment service transaction.

Section 14. {No Criminal Culpability} The maker of a check who enters into a deferred presentment service agreement shall not be subject to any criminal penalty for entering into such agreement and further shall not be subject to any criminal penalty in the event the maker's check is dishonored, unless the account on which the check was written was closed on the date of the transaction or before the agreed upon negotiation date.

Section 15. {Other Types of Business} A person may conduct other types of business at a location where it engages in deferred presentment services, unless the person carries on such other types of business for the purpose of evading or violating this chapter.

Section 16. {Unfair or Deceptive Practices} No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred presentment service transaction.

Section 17. {Severability Clause}

Section 18. {Effective Date}

Adopted by the CIED Task Force November 13, 1999. Approved by the ALEC Legislative Board December 1999.

Access to Financial Services for Unbanked and Underbanked Consumers

WHEREAS, there is a substantial population of American consumers that do not have access to traditional sources of consumer credit or banking services, and

WHEREAS, consumers that do not have or maintain traditional bank accounts are considered “Unbanked”, and

WHEREAS, consumers that have limited or insufficient credit files are considered financially “Underbanked”, and

WHEREAS, estimates indicate that over 75 million American consumers are considered to be Underbanked or Unbanked, and

WHEREAS, this constitutes approximately one out of every three adult consumers, and

WHEREAS, financial products and financial companies serving these consumers, and laws governing both those transactions and the practices of those companies, have evolved substantially since the mid-1990’s, and

WHEREAS, the economic development potential of the United States and each State and its communities is limited by the large number of Unbanked or Underbanked consumers, and

WHEREAS, the access to traditional installment credit, secured and unsecured, as well as mainstream financial services is a key enabler to wealth for all Americans, and

WHEREAS, many states have not had a comprehensive review of their various lending laws and whether they foster availability and access of responsible personal installment lending, utilize sources of financial literacy, or leverage the favorable changes that have occurred in the national marketplace in products, business practices, credit information and operations technology, and

WHEREAS, the states have the responsibility to provide adequate consumer protection, to encourage economic development, and to provide the regulatory framework necessary for financial services organizations to operate.

THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council (ALEC) supports the efforts of States to bring financial service choices to the Unbanked and Underbanked consumer by:

1. Reviewing the respective academic or economic studies, consumer protection laws and corporate best practices for consumer installment finance; and
2. Investigating the potential of whether business models and regulatory economic incentives could

serve to transition and graduate consumers from sub-prime to prime credit scores resulting in increased chances that they may accumulate wealth; and

3. Determining whether the lending process is understandable, fair, and efficient and that optimum disclosures show terms and conditions so that consumers can understand the product being offered and make a comparison or reasoned decision; and

4. Identifying the economic impact of raising credit scores and also requiring wider reporting and creditor consideration of payments for alternative “credit- like” accounts, such as rent or utilities to major credit bureaus; and

5. Determining the impact and availability of financial education or incentives to raise personal financial literacy, as well as personal credit or financial counseling by companies providing the customer financial services; and

6. Determining the appropriate regulatory mechanism where consumers will benefit from the fostering of a market-based, competitive business environment.

Adopted by the CIED Task Force at the States and Nation Policy Summit, December 8, 2007. Approved by the ALEC Legislative Board January 2008.

Resolution in Support of Insurance Commissioners’ Exclusive State Regulatory Authority Over Variable Life Insurance and Variable Annuities

Model Resolution

WHEREAS, variable life insurance and variable annuities are subject to a comprehensive federal and state regulatory structure, enforced by state insurance commissioners, the Securities and Exchange Commission and the National Association of Securities Dealers, which covers these products from design through their marketing and sale and

WHEREAS, an overwhelming majority of the states give their insurance commissioners exclusive state jurisdiction to regulate the issuance and sale of variable life insurance and variable annuities and

WHEREAS, an overwhelming majority of the state securities laws exempt variable life insurance and variable annuities from state securities regulation and

WHEREAS, variable life insurance and variable annuities are among the most heavily regulated products in today’s financial services marketplace and

WHEREAS, there has been no demonstration of empirical statistical evidence of abuses in the marketing and sale of variable life insurance and variable annuities and

WHEREAS, there has been no evidence presented that state insurance commissioners are unable or unwilling to effectively and comprehensively regulate variable life insurance and variable annuities and

WHEREAS, a streamlined, efficient system of regulatory oversight is necessary for insurers and producers to be competitive in today’s rapidly evolving financial services marketplace and

WHEREAS, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has adopted the Uniform Securities Act (2002) which, among other things, allows each legislature to determine whether to include variable life insurance and variable annuities within the definition of the term “security” and

WHEREAS, NCCUSL rejected a proposal that would have expressly brought variable life insurance and variable annuities within the definition of the term “security,” which would have subjected these products and the producers who sell them to an unnecessary, redundant and inconsistent layer of oversight by state securities commissioners and

WHEREAS, in the upcoming legislative sessions, state legislatures may be considering legislation to revise their laws to conform with the Uniform Securities Act (2002) and

WHEREAS, the members of these state legislatures may be looking for guidance on this issue,

NOW THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council endorses and supports state insurance commissioners having exclusive authority at the state level over the regulation of the issuance, marketing and sale of variable life insurance and variable annuities, and opposes any state legislation or regulation that would grant state securities regulators jurisdiction over the issuance and sale of such products or that would define variable life insurance or variable annuities as “securities” under state law.

Adopted by the CIED Task Force March 29, 2003. Approved by the ALEC Legislative Board April 2003.

State Power to Regulate Lending Act

Summary

The State Power to Regulate Lending Act preempts local ordinances enacted by a political subdivision of this state that govern the originating, granting, servicing or collecting of loans. It prohibits political subdivisions from enacting lending ordinances or rules that would disqualify persons from doing business with a city, county or other political subdivision based on restrictions on lending practices.

Model Legislation

Section 1. {Short Title.} This act shall be known as the State Power to Regulate Lending Act.

Section 2. {Legislative Declarations.} This General Assembly finds and declares:

(A) All citizens are entitled to have fair access to financial services and credit, especially the ability to share in the American dream of homeownership. The national credit markets, with lenders from both the prime and sub-prime credit risk segments, have provided increasingly wider access to loans for American borrowers. The growth in home lending is based on the stable and long-established state-federal regulatory scheme that governs the lending activities of financial institutions. Local lending ordinances threaten access to credit, raise the cost of borrowing, and violate the longstanding state-federal regulatory scheme.

(B) Local lending ordinances would create a confusing patchwork of inconsistent regulation across the state. At a minimum, enactment of a myriad of local lending ordinances will raise the cost of compliance and the risk of inadvertent violations because these ordinances will vary from state and federal law and from each other. Where ordinances are too restrictive or complex, financial institutions will curtail lending, drying up credit in that market and making it difficult for many citizens to realize homeownership.

(C) In order to foster the safe and free flow of capital among the states, the Congress has continually enacted comprehensive laws to assure uniform consumer protections as well as examination and supervision of lending activities across this nation. In addition, the Congress has delegated authority to numerous federal agencies, such as the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration and Federal Deposit Insurance Administration, to carry out this national regulatory scheme.

(D) The General Assembly also has continuously filled any regulatory gaps that existed between federal and state chartered institutions by enacting uniform, comprehensive and pervasive laws that provide a second level of consumer protections and govern lending activities in this state. The General Assembly has delegated authority to the department of financial institutions so that it may establish regulations to interpret and locally enforce these lending statutes.

Section 3. {Definitions.} For the purposes of this Act, the following terms shall have the following meaning:

(A) "Department" means the state Department of Financial Institutions (or the equivalent in this state).

(B) "Municipality" means a [city, borough, incorporated town or township].

(C) "Political Subdivision" means a municipality, including a home rule or charter municipality, county, school district, vocational school district, other district authority local board, local agency, political subdivision, public corporation or local government entity.

Section 4. {State preemption.}

(A) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in the state and the manner in which any such business is conducted, and this regulation shall be in lieu of all other regulation of such activities by any municipality or other political subdivision.

(B) Political subdivisions of this state are prohibited from enacting, issuing and enforcing ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to the financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices, including interest rates and fees, or from imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices and upon subsidiaries or affiliates thereof, who:

1. Are subject to the jurisdiction of the department; or
2. Are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission or the United States Department of Housing and Urban Development; or
3. Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in paragraph (1) or (2); or
4. Are chartered by the United States Congress to engage in secondary market mortgage transactions; or
5. Are created by the state housing finance corporation.

Section 5. {Effective Date.}

Adopted by the CIED Task Force at the States and Nation Policy Summit in December, 2002. Approved by the ALEC Legislative Board January, 2003.

Title Pledge Act

Summary

This Act will provide for statewide licensing of title pledge lenders, including examination standards. The goal of this legislation is to reinforce title pledge lenders' financial responsibility to the public.

Model Legislation

Section 1. {Short Title} This Act shall be known and may be cited as the "Title Pledge Act."

Section 2. {Legislative Findings and Purpose} The making of title pledge loans vitally affects the general economy of this state and the public interest and welfare of its citizens. It is the policy of this state and the purpose of this Act to:

- (A) Ensure a sound system of making title pledge loans through statewide licensing of title pledge lenders by the department of financial institutions;
- (B) Establish licensing requirements;
- (C) Provide for the examination and regulation of title pledge lenders by the department of financial institutions; and
- (D) Ensure financial responsibility to the public.

Section 3. {Definitions} Unless the context otherwise requires, as used in this Act:

- (A) "Commissioner" means the commissioner of financial institutions or the commissioner's designated representative.
- (B) "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person. For purposes of this subdivision, a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing 25 percent or more of the then outstanding voting securities issued by another person is presumed to control such other person. For purposes of this subdivision, the commissioner may determine whether a person, in fact, controls another person.
- (C) "Controlling person" means any person in control of a title pledge lender.
- (D) "Department" means the [insert state department of financial institutions or other appropriate regulatory department].
- (E) "Month" means thirty (30) days.

(F) “Person” means an individual, sole proprietorship, general partnership, corporation, limited liability company or other entity duly qualified to do business in the state.

(G) “Pledged property” means any personal property certificate of title that is deposited with a title pledge lender in the course of the title pledge lender’s business and is the subject of a title pledge agreement.

(H) “Pledgor” means the individual or individuals obligated to repay the loan.

(I) “Title pledge agreement” means a thirty-day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in unencumbered titled personal property owned by the pledgor. The pledgor shall agree for the title pledge lender to keep possession of the certificate of title. The pledgor shall have the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title pledge agreement. When the certificate of title is redeemed, the title pledge lender shall release the security interest in the titled personal property when funds clear and return the certificate of title to the pledgor. The title pledge agreement shall provide that upon failure by the pledgor to redeem the certificate of title at the end of the original thirty-day agreement period, or at the end of any renewal or renewals thereof, the title pledge lender shall be allowed to take possession of the titled personal property. The title pledge lender shall retain physical possession of the certificate of title for the entire length of the title pledge agreement, but shall not be required to retain physical possession of the titled personal property at any time. A title pledge lender may only hold unencumbered certificates of title for pledge

(J) “Title pledge lender” means any person engaged in the business of making title pledge agreements with pledgors.

(K) “Title pledge office” means the location at which, or premises in which, a title pledge lender regularly conducts business.

(L) “Titled personal property,” means any personal property, the ownership of which is evidenced and delineated by a state-issued certificate of title.

Section 4. {Authority of Licensed Title Pledge Holders}

(A) A title pledge lender licensed pursuant to this Act has the power to make loans of money on pledges of personal property certificates of title in accordance with the provisions of this Act.

(B) Title pledge lenders licensed pursuant to this Act shall not have the powers enumerated in this Act without first complying with the law regulating title pledge agreements, but title pledge lenders exercising any of the powers in compliance with this Act’s provisions shall not be deemed in violation of any usury law. No action shall be brought by a pledgor against a title pledge lender in connection with a title pledge agreement more than one (1) year after the date of the alleged occurrence of any violation of this Act.

Section 5. {License Required}

(A) No person shall engage in the business of title pledge lending without having first obtained a license from the [insert state department of financial institutions or other appropriate regulatory department]. A separate license shall be required for each location from which such business is conducted.

(B) Any loan made without first having obtained a license is void, in which case the person making the loan forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the pledgor in

connection with the title pledge agreement. The person making the loan shall return to the pledgor, the titled personal property pledged, or the fair market value of such titled personal property, and all principal, interest, and any other fees paid by the pledgor.

Section 6. {Eligibility Requirements for License}

(A) To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant has a tangible net worth (tangible assets less liabilities) of not less than seventy-five thousand dollars (\$75,000) for each location;

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this Act, the commissioner may review and approve:

(a) The relevant business records and the capital adequacy of the applicant;

(b) The financial responsibility, financial condition, business experience, character, and general fitness of any person who is a director, officer, or five percent (5%) or more shareholder of the applicant or owns or controls the applicant; and

(c) Any adjudication against the applicant or any person referred to in subdivision (2) (b) of any criminal activity, any fraud or other act of personal dishonesty, or any act, omission or practice, which constitutes a breach of a fiduciary duty.

(B) The requirements set forth in subdivisions (A) (1) and (A) (2) of this Section are continuing in nature.

(C) Each application for a license shall be in writing and under oath to the commissioner, in a form prescribed by the commissioner, and shall include the following:

(1) The legal name, residence and business address of the applicant and, if the applicant is an entity, of every member, partner, officer, managing employee, director, trustee, and person who controls the entity thereof;

(2) The location in this state at which the registered officer of the applicant shall be located; and

(3) Other data and information the commissioner may reasonably require with respect to the applicant, its directors, trustees, officers, members, partners, managing employees or controlling persons.

(D) Each application for a license shall be accompanied by:

(1) A filing fee, in an amount prescribed by the commissioner by rule but not to exceed one thousand dollars (\$1,000), which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof. The filing fee shall be applicable to each location; and

(2) A balance sheet for the immediately preceding fiscal year prepared in accordance with generally accepted accounting principles.

(E) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in this section, the commissioner shall investigate to ascertain whether the qualifications prescribed by this section have been satisfied. If the commissioner finds that the qualifications have been satisfied, the commissioner shall issue to the applicant a license to engage in the title pledge lending business in the state. A license issued pursuant to this subsection shall expire on October 31 unless the license submits a timely renewal application, or unless earlier surrendered, suspended or revoked pursuant to this Act.

(F) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial. If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. Any hearing shall be conducted pursuant to the Administrative Procedures Act of the state. A decision of the commissioner following any hearing on the denial of license is subject to review under the Administrative Procedures Act of the state.

(G) The license shall be kept conspicuously posted in the place of business of the title pledge lender.

(H) The license is not transferable or assignable except as allowed by rule of the commissioner.

(I) The licensing year shall end on October 31. Each license may be renewed upon application by the license holder, submitted at least 30 days prior to the renewal date, showing continued compliance with the requirements of this section and the payment to the commissioner of the annual license fee in an amount prescribed by the commissioner by rule but not to exceed one thousand dollars (\$1,000) for each licensed location.

(J) The commissioner may establish a biennial licensing arrangement for the filing of the application for license renewal but in no case shall the license fee be payable for more than one year at a time.

(K) Except when a change of control is beyond the control of the Title pledge lender, or in the case of an emergency, a change in control of a title pledge lender shall require thirty (30) days prior written notice to the commissioner. In the case of a publicly traded corporation, such notification shall be made in writing within thirty (30) days of a change or acquisition of control of a title pledge lender.

(L) Upon notification of a change in control, the commissioner may require such information as deemed necessary to determine whether to approve the new controlling person(s). The commissioner may disapprove the new person(s) for any reason the commissioner could deny a license. If the commissioner disapproves any person(s), the commissioner shall allow a reasonable time for the licensee to remove such person(s) as controller(s).

(M) Costs incurred by the commissioner in investigating a change of control notification shall be paid by the person requesting such approval, subject to limitations set forth in Section (7) (B) of this Act.

(N) Whenever control of a title pledge lender is acquired or exercised in violation of this subsection, the license of the title pledge lender may be revoked.

Section 7. {Rule-Making; Investigations}

(A) The commissioner may promulgate reasonable regulations in accordance with the Administrative Procedures Act of this state for the enforcement of this Act. A copy of any rule or regulation adopted by the commissioner shall be mailed to each license holder at least thirty (30) days before the date it takes effect.

(B) To assure compliance with the provisions of this Act, the commissioner may examine the relevant business, books and records of any title pledge lender. The commissioner may charge and collect the reasonable and actual expenses for any compliance examination conducted under this Act

(C) The commissioner, for the purpose of discovering violations of this Act and for the purpose of determining whether persons are subject to the provisions of this Act, is hereby authorized to examine persons licensed under this Act and persons reasonably suspected by the commissioner of conducting business which requires a license under this Act, including all relevant books, records and papers employed by such persons in the transaction of their business, and to summon witnesses and examine them under oath concerning matters relating to the business of such persons, or such other matters as may be relevant to the discovery of violations of this Act, including, without limitation, the conduct of business without a license as required under this Act.

(D) All books and records required to be preserved by this Act or any regulation of the commissioner or required by any federal statute, regulation, or regulatory guideline, as applicable to each title pledge lender, shall be preserved and made available to the commissioner as provided in this Act, for a period of twenty-four (24) months from the date the title pledge agreement was executed or the date the last payment was received, whichever is later. The title pledge lender may cause any or all records at any time in its custody to be reproduced and/or preserved by itself or by any other person who agrees in writing to submit its operations to the examination of the commissioner to the extent that such operations directly affect such record-keeping by any micro-photographic process, electronic and/or mechanical data storage technique or any other means. Any such record reproduced and/or preserved by any such process, technique or means shall have the same force and effect as the original record and be admitted into evidence equally with the original. All records of the title pledge lending business shall be maintained separately by the title pledge lender from any other business in which the title pledge lender may engage.

Section 8. {Record of Transactions Required - Inspection}

(A) Each title pledge lender shall notify the commissioner fifteen (15) days prior to any change in the principal place of business of a title pledge lender.

(B) Within fifteen (15) days of the occurrence of any of the events listed below, a title pledge lender shall file a written report with the commissioner describing such event and its expected impact on the activities of the title pledge lender in the state:

- (1) The filing for bankruptcy or reorganization by the title pledge lender;
- (2) Any felony indictment of the title pledge lender or any of its officers, directors or principals;
- (3) Any felony conviction of the title pledge lender or any of its officers, directors, principals.

(C) Each title pledge lender shall file a report with the commissioner, commencing on October 1 and every odd year thereafter.

(1) This report shall contain the following information:

- (a) The names and addresses of persons owning controlling interest in each title pledge lender;

(b) Balance sheets;

(c) If the title pledge lender is a corporation, the names and addresses of its officers and directors; if the title pledge lender is a partnership, the names and addresses of the partners; and if the title pledge lender is a limited liability company, the names and addresses of the Members of the limited liability company, or if the title pledge lender is any other form of entity, the names and addresses of all persons who generally manage or control the business.

(2) If the title pledge lender holds two (2) or more licenses or is affiliated with other title pledge lenders, a composite report may be filed, but may not be required.

(3) All such reports shall be filed in such form as may reasonably be required by the commissioner and shall be sworn to by a responsible officer of the title pledge lender.

(4) The information submitted by title pledge lenders pursuant to this subsection shall be confidential and may not be disclosed or distributed outside the department by the commissioner except that the commissioner is authorized to disclose confidential information to any local, state or federal agency as the commissioner deems proper.

Section 9. {Recording of Liens}

(A) Every title pledge lender shall keep a numbered record of every title pledge agreement or property pledge agreement executed by the title pledge lender and pledgor. Such record, as well as the title pledge agreement or property pledge agreement itself, shall include the following information:

- (1) The make, model, and year of the titled personal property;
- (2) The vehicle identification number, or other comparable identification number, along with the license plate number, if applicable, of the titled personal property;
- (3) The name, residential address, date of birth, and physical description of the pledgor;
- (4) The date the title pledge agreement or the property pledge agreement is executed by the title pledge lender and the pledgor; and
- (5) The maturity date of the title pledge agreement which shall be thirty (30) days after the title pledge agreement or property pledge agreement is executed by the title pledge lender and the pledgor.

(B) The following information shall also be printed on the title pledge agreement:

- (1) The name and physical address of the title pledge office;
- (2) In not less than 14-point bold type, the name and address of the department of financial institutions as well as a telephone number to which consumers may address complaints;
- (3) The statement that “The pledgor represents and warrants, to the best of the pledgor’s knowledge, that the titled personal property is not stolen and has no liens or encumbrances against it, the pledgor has the right to enter into this transaction and the pledgor will not apply for a duplicate certificate of title while the title pledge agreement is in effect.”

(4) The pledgor shall sign the title pledge agreement and shall be provided with a copy of such agreement. The title pledge agreement shall also be signed by the title pledge lender, or the lender's employee or agent. If the pledgor has been issued a social security number, the title pledge lender shall keep on file the social security number of the pledgor

(5) All of the following statement in not less than 14-point bold type:

(a) "THIS LOAN IS NOT INTENDED TO MEET LONGTERM FINANCIAL NEEDS.

(b) YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT-TERM CASH NEEDS.

(c) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST AND FEES IF YOU RENEW THIS LOAN RATHER THAN PAY THE DEBT IN FULL WHEN DUE.

(d) THIS LOAN IS A HIGHER INTEREST LOAN. YOU SHOULD CONSIDER WHAT OTHER LOWER COST LOANS MAY BE AVAILABLE TO YOU.

(e) YOU ARE PLACING AT RISK YOUR CONTINUED OWNERSHIP OF THE PERSONAL PROPERTY WHOSE TITLE YOU ARE PLEDGING FOR THIS LOAN.

(f) IF YOU FAIL TO REPAY THE FULL AMOUNT OF THIS LOAN ON OR BEFORE THE END OF THE MATURITY DATE OR RENEWAL OF THE LOAN THE TITLE PLEDGE LENDER MAY TAKE POSSESSION OF THE PROPERTY WHOSE TITLE IS PLEDGED AND SELL THE PROPERTY IN THE MANNER PROVIDED BY LAW.

(g) IF YOU ENTER INTO A TITLE PLEDGE AGREEMENT, YOU HAVE A LEGAL RIGHT OF RESCISSION. THIS MEANS YOU MAY CANCEL YOUR CONTRACT AT NO COST TO YOU BY RETURNING THE MONEY YOU BORROWED BY THE NEXT BUSINESS DAY AFTER THE DATE OF YOUR LOAN.

(h) IF THE TITLE PLEDGE AGREEMENT IS LOST, DESTROYED OR STOLEN, YOU SHOULD IMMEDIATELY SO ADVISE THE TITLE PLEDGE LENDER IN WRITING."

Section 10. {Rate of Interest}

(A) A title pledge lender may contract for and receive an effective rate of interest as the parties agree to in writing.

(B) Title pledge lenders may assess and collect amounts paid to independent third parties to repossess the titled personal property and deliver such titled personal property to the storage facility of the title pledge lender.

(C) Notwithstanding the provisions of Section 4, or any other law to the contrary, in accordance with the Administrative Procedures Act of this state, the [insert state department of financial institutions or other appropriate regulatory department] shall promulgate rules requiring each title pledge lender to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws prior to entering into any title pledge agreement wherein the pledged goods will consist of one (1) or more motor vehicles titled by this or any other state. The required style, content and method of executing the form shall be prescribed by the rule and shall be designed to ensure that the pledgor, prior to entering into such agreement, receives and acknowledges an accurate and complete notification and disclosure of the itemized and total

amounts of all interest, fees, charges and other costs that will or potentially could be imposed as a result of such agreement

Section 11. {Right to Redeem} Except as otherwise provided in this Act, the pledgor, upon presentation of suitable identification, shall be entitled to redeem the titled personal property and/or certificate of title described therein upon satisfaction of all outstanding obligations pursuant to the title pledge agreement and this Act.

Section 12. {Thirty-Day Agreements; Renewal of Agreements}

(A) Title pledge agreements made pursuant to this Act shall not exceed thirty (30) days in length. However, such agreements may provide for renewals, which may occur automatically, unless one (1) of the following has occurred:

- (1) The pledgor has redeemed the pledged certificate of title by paying all principal, interest, and customary fees due in accordance with the title pledge agreement;
- (2) The pledgor has surrendered possession, title and all other interest in and to the certificate of title to the title pledge lender;
- (3) The title pledge lender has notified the pledgor in writing that the title pledge agreement is not to be renewed;
- (e) Default by pledgor of any obligation pursuant to the title pledge agreement.

(B) A pledgor has the right to cancel the pledgors' obligation to make payments under a title pledge agreement until the close of the next business day after the day when the pledgor signs a title pledge agreement if the pledgor returns the original check or cash to the location where the loan was originated. For the purpose of this section, "business day" means any day that the title pledge office is open for business.

(C) Notwithstanding any provision of this Act to the contrary, beginning with the sixth renewal or continuation and at each successive renewal or continuation thereafter, the pledgor shall be required to make a payment of at least five percent (5 percent) of the original principal amount of the title pledge transaction in addition to interest and fees authorized by this Act. Interest and fees authorized by this Act at each successive renewal or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the five percent (5 percent) required principal reduction shall be credited to the outstanding principal on the day received. If at the maturity of any renewal requiring a principal reduction, the pledgor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the pledgor cannot repay at least five percent (5 percent) of the original principal balance and any outstanding interest and fees authorized by this Act, the title pledge lender may, but shall not be obligated to, defer any required principal payment until the end of the title pledge agreement. No further interest or fees may accrue on any such principal amount thus deferred.

Section 13. {Default}

(A) Upon expiration of a title pledge agreement and the final renewal of the agreement, if any, if the title pledge agreement has not been paid in full, the title pledge lender may declare a default, in which case the title pledge lender shall mail a Notice to Cure Default to the pledgor at the pledgor's last address shown in the title pledge lender's file, notifying the pledgor that the pledgor has ten (10) days from the date of the notice in which to cure the default.

(B) If the pledgor does not cure the default within the ten days, the title pledge lender may repossess the vehicle whose title is pledged. In taking possession, the title pledge lender or the lender's agent may proceed without judicial process if this can be done without breach of the peace; or, if necessary, may proceed by action to obtain judicial process. There shall be no further interest or other fees charged to the pledgor after repossession of the property. After repossession, the title pledge lender shall mail a Notice of Right to Redeem to the pledgor, notifying the pledgor that the pledgor must redeem the title within ten (10) days by paying all outstanding principal, interest and fees authorized by this Act owed by the pledgor to the title pledge lender, plus all repossession charges, in which case the pledgor shall be given possession of the titled personal property and the certificate of title without further charge. If the pledgor fails to redeem the certificate of title by the end of the ten day period, the pledgor shall thereby forfeit all right, title and interest in and to the personal property whose title is pledged to the title pledge lender, who shall thereby acquire an absolute right of title to the titled personal property, and the title pledge lender shall have the right and authority to sell or dispose of the property.

(C) The title pledge lender shall sell the property in a commercially reasonable manner. The proceeds of the sale shall be applied to the principal, interest and all fees authorized by this Act owed by the pledgor to the title pledge lender, including the actual repossession costs and cost of the sale. Any surplus from the sale of the titled personal property shall be remitted to the pledgor after such sale and shall not be retained by the title pledge lender. The commissioner shall prescribe by rule the manner in which the title pledge lender shall remit any surplus to the pledgor.

(D) Upon voluntary surrender of the vehicle whose title is pledged, the title pledge lender shall have no obligation to send any Notice to Cure Default or Notice of Right to Redeem to the pledgor.

(E) If the pledgor loses the title pledge agreement or property pledge agreement or other evidence of the transaction, the pledgor shall not thereby forfeit the right to redeem the pledged property, but may promptly, before the lapse of the redemption date, make affidavit for such loss, describing the pledged property, which affidavit shall, in all respects, replace and be substituted for the lost evidence of the pledge transaction.

Section 14. {Prohibited Actions}

(A) A title pledge lender shall not:

- (1) Accept a pledge from a person less than eighteen (18) years of age, or from anyone who appears to be intoxicated;
- (2) Make any agreement giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default or failure to redeem, and to sell or otherwise dispose of the titled personal property in accordance with the provisions of this Act, except where the pledger prevented repossession of the vehicle, damaged or committed or permitted waste on the vehicle or committed fraud;
- (3) Enter into a title pledge agreement in which the amount of money loaned, when combined with the outstanding balance of other outstanding title pledge agreements the pledgor has with the same lender secured by any single certificate of title, exceeds ten thousand dollars (\$10,000) or enter into a property pledge agreement in which the amount of money loaned exceeds ten thousand dollars (\$10,000);
- (4) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Act;

- (5) Fail to exercise reasonable care to protect from loss or damage the certificate of title in the physical possession of the title pledge lender;
- (6) Purchase pledged titled personal property that was repossessed in the operation of its business;
- (7) Maintain more than one (1) title pledge office or place of operation for each title pledge lender under each license, provided, however, any such title pledge lender may move from one (1) place of business to another, as permitted;
- (8) Enter into a pledge agreement unless the pledgor presents a clear title to titled personal property at the time that the loan is made, and such title is retained, after noting of the lien by the state, in the physical possession of the title pledge lender. If the title pledge lender files a lien against such property without possession of a clear title to such property, the resulting lien shall be void;
- (9) Capitalize or add any accrued interest or fee to the original principal of the title pledge agreement during any renewal of the agreement;
- (10) Sell or otherwise charge for any type of insurance in connection with a title pledge agreement. Nothing in this subdivision shall prohibit a title pledge lender from offering a pledgor the option to purchase memberships in automobile clubs or associations, provided that the title pledge lender informs the pledgor in writing that the membership is optional, that the membership can be purchased elsewhere, and that the purchase of the membership has no bearing on whether the pledgor receives a loan;
- (11) Charge a prepayment penalty;
- (12) Require a pledgor to provide any additional guaranty as a condition to entering into a title pledge agreement;
- (13) Use any collection tactics in violation of the federal Fair Debt Collection Practices Act;
- (14) Use any device or agreement, including agreements with affiliated title pledge lenders, with the intent to obtain greater charges than otherwise would be authorized by this Act; or
- (15) Violate the provisions of this Act or any rule promulgated pursuant thereto by the commissioner.

Section 15. {Penalties} Any person who intentionally violates any provision of this Act commits a Class A misdemeanor.

Section 16. {Violations}

(A) The commissioner may, after notice and opportunity for a hearing, impose a civil penalty or suspend or revoke any license if the commissioner finds that the title pledge lender has knowingly or through lack of due care:

- (1) Engaged in conduct of a manner, this would warrant the denial of an application;
- (2) Refused to permit the commissioner to make any examination authorized by this Act;

(3) Failed to pay the annual license fee imposed by this Act, or an examination fee imposed by the commissioner under the authority of this Act;

(4) Committed any fraud;

(5) Made a false statement in the application for the license or failed to give a true reply to a question in the application;

(6) Demonstrated incompetence or untrustworthiness to act as a title pledge lender; or

(7) Violated any provisions of this Act or any administrative regulation issued pursuant thereto or has violated any other law in the course of such title pledge lender's dealings as a title pledge lender.

(B) A hearing shall be held on written notice given at least twenty (20) days prior to the date of the hearing and shall be conducted in accordance with the Administrative Procedures Act of the state.

(C) If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this Act, or any administrative regulation issued pursuant thereto, the commissioner may take any or all of the following actions:

(1) Order the person to cease and desist violating the Act or any administrative rules issued pursuant thereto;

(2) Require the refund of any fees collected by such person in violation of this Act; and

(3) Order the person to pay the commissioner a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this Act.

(D) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this Act. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this Act, or any rule, regulation or order promulgated or issued hereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this Act or any rule, regulation or order promulgated or issued under this Act.

(E) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(F) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this Act without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken which is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.

(G) Any person aggrieved by the conduct of a title pledge lender under this Act in connection with the title pledge lender's regulated activities may file a written complaint with the commissioner who may investigate the complaint.

(H) In the course of the investigation of the complaint, the commissioner may:

(1) Subpoena witnesses;

(2) Administer oaths;

(3) Examine any individual under oath; and

(4) Compel the production of records, books, papers, contracts or other documents relevant to such investigation.

(I) If any person fails to comply with a subpoena of the commissioner under this Act or to testify concerning any matter about which the person may be interrogated under this Act, the commissioner may petition any court of competent jurisdiction for enforcement.

(J) The license of any title pledge lender under this Act who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(K) The commissioner shall have exclusive administrative power to investigate and enforce all complaints filed by any person, which are not criminal in nature, which complaint relates to the business of title pledge lending.

(L) The commissioner, after notice and opportunity for hearing, may censure, suspend for a period not to exceed twelve (12) months, or bar a person from any position of employment, management or control of any title pledge lender, if the commissioner finds that the:

(1) Censure, suspension, or bar is in the public interest and that the person has intentionally committed or caused a violation of this Act or any rule, regulation or order of the commissioner; or

(2) Person has:

(a) Been convicted or pled guilty to or pled *nolo contendere* to any crime; or

(b) Been held liable in any civil action by final judgment, or any administrative judgment by any public agency; if the criminal, civil or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this Act.

(3) Persons suspended or barred under this subsection are prohibited from participating in any business activity of a title pledge lender and from engaging in any business activity on the premises where a title pledge lender is conducting its business. This subsection shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a title pledge lender.

(4) This subsection shall apply to any violation, conviction, plea, or judgment on or after the enactment of this act.

Section 17. {Acquiring a License; Maintaining an Existing License} No incorporated municipality, city or taxing district in this state shall enact an ordinance or resolution or promulgate any rules or regulations relating to this Act. The provisions of any ordinance or resolution or rules or regulations of any municipality, city or taxing district relative to title pledge lending are superseded by the provisions of this Act.

Section 18. {Severability}

Section 19. {Effective Date}

Adopted by the CIED Task Force at the 2005 Annual Meeting. Approved by the ALEC Legislative Board September 26, 2005

Free Contract in Financing Act

Summary

The Free Contract in Financing Act removes restrictions on interest rates for all loans and sales, including those to both consumers and businesses, and allows borrowers and lending institutions to contract for a mutually agreeable interest rate.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act may be cited as the Free Contract in Financing Act.

Section 2. {Contracting for extension of credit.} Notwithstanding any contrary provision of the law, the parties to any transaction involving the extension of credit may contract for any interest, finance charge or other consideration for such extension of credit, as agreed upon by the parties in writing.

Section 3. {Contracting for additional charges.} In addition to the interest, finance charge or consideration permitted under this Act, the parties to any such transaction may contract for such additional charges as may be agreed upon by the parties in writing.

Section 4. {Severability clause.}

Section 5. {Repealer clause.}

Section 6. {Effective date.}

1995 Sourcebook of American State Legislation

Resolution Urging Congress to Oppose Measures Designed to Impose Ceilings on Credit Card Rates

Summary

This resolution opposes a national interest rate ceiling on credit cards. The resolution states that such a national cap would be inconsistent with our nation's free market principles and would inhibit the availability of credit. The resolution also explains that comparing credit card interest rates to other interest rates is an invalid comparison. Credit cards incur outside expenses such as sales transaction processing, authorization systems, and monthly billing. Therefore, credit cards interest rates are less responsive to changes in interest rates and should not be forced to adhere to unrealistic caps.

Model Resolution

WHEREAS there is a high level of competition among credit card issuers, the marketplace for credit card credit is intensely competitive. Thousands of banks, credit unions, savings and loans, retailers, and gasoline companies supply credit cards. Even the largest card issuers hold only a small share of the credit card

market. The frequent announcement of new entrants into the market demonstrates that there exists a sufficient level of competition; and

WHEREAS it is inconsistent with free market principles to impose what are, in effect, price controls on a competitive market; and

WHEREAS a national interest rate ceiling would inhibit the availability of the credit. The economic effects of a national rate ceiling would be similar to, but more damaging than, those already observed in states with strict ceilings on credit card rates. Claims that a ceiling on interest rates would not restrict availability on credit cards ignores both historical and economic analysis. Federal controls on credit cards in early 1980 reduced availability of credit. At that time, new cards were selectively issued; minimum payment schedules were increased; and credit card qualifications were tightened. Some banks actually abandoned the business because of the burdens imposed, thus contributing to a temporarily less competitive market; and

WHEREAS consumers value credit cards for reasons other than their function as a means of access to credit. Credit cards represent a safe convenient means of payment accepted almost universally. They offer security, convenience of payment, and ease of access to cash. They serve as a means of identification and a source of protection against the merchant in the event a dispute with the merchant arises. They reduce the risks associated with carrying large amounts of cash. Credit cards allow consumers the flexibility to choose to pay all charges in full or exercise the credit option. The monthly billing statement also provides the consumer a neat, clear account of all purchases. These valuable services could be denied to many consumers if federal price ceilings on credit cards are enacted; and

WHEREAS credit card plans have not generated excessive profits. The January 1987 Federal Reserve Bulletin states that net earnings of bank card plans before taxes averages 1.9 percent of balances outstanding from 1972 through 1985. This is significantly lower than the average net returns on major types of commercial bank loans for the same period: 2.3 percent on real estate mortgages; 2.4 percent on commercial and other loans; and

WHEREAS comparing credit card interest rates to other interest rates is an invalid comparison. In most types of lending, the cost of funds to the lending institution is by far the greatest determinant of the interest rate charged to borrowers. In the case of credit cards, the cost of funds is only approximately 40 percent of the total costs. The cost of administering credit card plans is significantly higher than the cost of administering other types of credit. These additional costs are associated with sales transaction processing; authorization systems; monthly billing statements; telecommunications costs; error inquiry and resolution costs; and losses from fraud, counterfeiting and defaults. Because pricing of credit card plans relies less on the cost of money than other forms of credit, credit card interest rates are less responsive to changes in interest rates; now

THEREFORE BE IT RESOLVED that the state of (*insert state*) urges Congress to oppose measures designed to place "caps" on credit card interest rates; and

BE IT FURTHER RESOLVED that the Legislature of the State of (*insert state*) also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of this resolution; and

BE IT FURTHER RESOLVED that the Chief Clerk of the House transmit copies of this resolution to the Secretary of State and presiding officers of the houses of legislature of each of the other states in the Union, to the President and Vice-President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative in the Congress of the United States, to the Clerk of the United States House of Representatives, and to the Secretary of the United States Senate.

Property and Casualty Insurance

After-Market Crash Parts Act

Summary

Since only bodily injury claims are litigated, no-fault insurance only saves money in the bodily injury component of insurance premiums. However, savings can be achieved in the property damage component of premiums, as well. Often, the price of a replacement part reflects whether or not the original manufacturer has competition from a non-original manufacturer.

Naturally, insurers have sought to utilize these less expensive non-original equipment manufacturer crash parts (fenders, quarter panels, hoods, etc.), and as the market develops, it is likely that its beneficial effect will be seen through the lowering of the costs to repair cars. In fact, in many states collision coverage rates have stabilized or come down as a result of the availability and use of competitive replacement parts. Many insurers warrant these parts and the distributors for many of these parts offer warranties on them, as well.

However, warranty restrictions in several states restrict the free market in this area and threaten to drive non-original manufacturers out of business.

Model Legislation

(Title, enacting clause, etc.)

Section 1. {Title.} This Act shall be known and may be cited as the After Market Crash Parts Act.

Section 2. {Definitions.} As used in this Act:

(A) "Insurer" includes an insurance company and any person authorized to represent the insurer with respect to a claim.

(B) "After-market crash part" means a replacement for any of the non-mechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle, including inner and outer panels.

(C) "Non-original equipment manufacturer (non-OEM) after-market crash part" means after-market crash parts not made for or by the manufacturer of the motor vehicle.

Section 3. {Identification.} Any after-market crash part supplied by a non--original equipment manufacturer for use in this state after the effective date of this regulation shall have affixed thereto or inscribed thereon the logo or name of its manufacturer. Such manufacturer's logo or name shall be visible after installation whenever practicable.

Section 4. {Disclosure.} No insurer shall specify directly or indirectly the use of non-OEM after-market crash parts in the repair of an insured's motor vehicle without disclosing the intended use of such parts. In all instances where non-OEM after-market crash parts are intended for use by an insurer:

(A) the written estimate shall clearly identify each such part;

(B) the disclosure document containing the following information in 10-point or larger type shall appear on or be attached to the insured's copy of the estimate: "This estimate has been prepared based on the use of one or more crash parts supplied by a source other than the manufacturer of your motor vehicle. Warranties applicable

to these replacement parts are provided by the parts manufacturer or distributor rather than by the manufacturer of your vehicle."

Section 5. {Enforcement.} Violations of this regulation shall be enforced through the Unfair Trade Practices Act by the penalties provided for in said Act.

Section 6. {Severability clause.}

Section 7. {Repealer clause.}

Section 8. {Effective Date.}

1995 Sourcebook of American State Legislation

Resolution Supporting Territorial Rating

Summary

"Redlining" originally referred to the refusal to insure an area identified on a map by red lines. Redlining also is used to refer to discrimination in insurance coverage because of race, sex, or other arbitrary factors. However, redlining is illegal in all fifty states.

Territorial rating, which should not be equated with "Redlining", refers to the legitimate business practice of factoring in the location of risk in determining an insurance premium. The frequency and severity of theft, natural disaster, arson, or other factors may be greater in one area than another.

Model Resolution

WHEREAS, the U.S. insurance industry provides coverage in the voluntary market and through assigned risk plans so that all persons have the opportunity to acquire insurance; and

WHEREAS, territorial rating refers to the practice of factoring the location of the risk in determining an insurance premium; and

WHEREAS, territorial rating is a legitimate and legal business practice used by the insurance industry; and

WHEREAS, territorial rating is not the illegal practice of redlining which refers to discrimination in insurance coverage due to ethnicity or other arbitrary factors; and

WHEREAS, insurance premiums differ from one area to another because of differences in the expected level of risk; and

WHEREAS, in a competitive insurance market, territorial rating ensures that insurance prices are fair and reasonable and adequate coverage is provided;

THEREFORE, BE IT RESOLVED that the American Legislative Exchange Council recommends that the legal practice of territorial rating not be confused with the illegal practice of redlining; and

BE IT FURTHER RESOLVED that the American Legislative Exchange Council endorses the practice of territorial rating in the competitive insurance market as a means to ensure that insurance prices are fair and reasonable and adequate coverage is provided.

1995 Sourcebook of American State Legislation

Consumer Choice Motor Vehicle Insurance Act

Summary

This Act would give motorists the right to choose the kind of personal protection available in case of an automobile accident and the amount of financial protection they deem appropriate and affordable. Instead of being forced to buy traditional fault liability insurance to protect strangers, motorists would have the opportunity to buy a new personal protection policy to protect themselves and their family members in the event of a motor vehicle accident. Motorists would also have the right to reject the provisions of this Act and thus retain all rights to sue under the existing fault liability insurance system.

Model Legislation

(Title, enacting clause, etc.)

Section 1. {Title.} This Act shall be known and may be cited as the Consumer Choice Motor Vehicle Insurance Act.

Section 2. {Definitions.} As used in this Act:

(A) "Accidental bodily injury" means bodily injury, sickness, or disease or death resulting therefrom, arising out of the ownership, operation, or use of a motor vehicle or while occupying such vehicle, which is accidental as to the person injured.

(B) "Added personal protection" means an optional policy, plan, or coverage for personal protection that each insurer issuing motor vehicle liability insurance in this state shall make available. The added personal protection coverage shall include a schedule of benefits with an aggregate limit of \$100,000 per person, which includes: medical expenses; up to \$1,000 per week for lost income from work; replacement services loss for up to \$300 per week; and death benefits of \$25,000 if the death occurs within one year after the date of a motor vehicle accident and was a direct result of the accident. Collateral sources shall be subtracted in calculating added personal protection benefits, but an insurer may write added personal protection. The insurer shall also make available a scheduled pain and suffering coverage with an aggregate limit of \$50,000 payable if the injured person sustains an accidental bodily injury that is subject to the limitations on tort liability under Section 10 and is a serious injury. Nothing contained in this Section prevents a personal protection insurer from also making available optional additional compensation benefits in amounts other than those prescribed in this section. No applicant or insured may be required to purchase a lesser amount than those prescribed by this subsection.

(C) "Basic personal protection" means a policy, plan, or coverage for personal protection that provides benefits for loss resulting from accidental bodily injury resulting from a motor vehicle accident. Basic personal protection benefits consists of the following with an aggregate limit of \$15,000 per person:

- (1) medical expenses;

- (2) lost income from work up to \$200 per week;
- (3) replacement services loss of up to \$100 per week; and
- (4) death benefits of \$5,000 if the death of the injured person occurs within one year after the date of a motor vehicle accident and was a direct result of the accident.

(D) "Cause of action for injury" means a claim for accidental bodily injury for economic or non-economic loss or both, caused by the negligent conduct or intentional misconduct of another person, and includes a claim by any person other than a person suffering accidental bodily injury based on such injury, including but not limited to loss of consortium, companionship, or any derivative claim.

(E) "Collateral sources" means any benefit a person receives or is entitled to receive from any source, other than added personal protection benefits, as reimbursement for loss resulting from an accidental bodily injury. Such benefits shall be subtracted from loss in calculating added personal protection benefits payable to a personal protection insured; no subtraction may be made for the amounts the personal protection insured receives or is entitled to receive:

- (1) in discharge of familial obligations or support;
- (2) by reason of another person's death, except that amounts received from Social Security or workers' compensation shall be subtracted; or
- (3) as gratuities, any amount paid by an employer to an employee or the survivors of the employee is not a gratuity.

(F) "Dependent" means all persons related to another person by blood, marriage, adoption, or otherwise who reside in the same household at the time of the accidental bodily injury and receive financial services or support from him or her.

(G) "Director" means the director of the (state department of insurance).

(H) "Driving under the influence of alcohol or illegal drugs" means conduct that causes or contributes to the harm claimed:

- (1) if a blood, breath or urine test shows a blood or breath alcohol content of 0.10 or more;
- (2) if the driver refuses to submit to a blood, breath, or urine test in violation of (cite state DUI law); or
- (3) if the driver is convicted of violating (cite state DUI law).

(I) "Economic loss" means pecuniary loss and monetary expenses incurred by or on behalf of an injured person as the result of an accidental bodily injury.

(J) "Governmental unit" means the United States government, the government of the State of (state), and any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of either such government, or any local government in this state, and such units thereof, including, but not limited to, counties, cities, towns, and other regional governments.

(K) "Injured person" means a person who sustains accidental bodily injury when eligible for benefits under a policy providing personal protection or under the assigned claims plan under Section 19. The term also includes where appropriate the personal representative of an estate.

(L) "Intentional misconduct" means conduct whereby harm is intentionally caused or attempted to be caused by one who acts or fails to act for the purpose of causing harm or with knowledge that harm is substantially certain to follow when such conduct caused or substantially contributed to the harm claimed for. A person does not intentionally cause or attempt to cause harm:

- (1) merely because his act or failure to act is intentional or done with the realization that it creates a grave risk of causing harm; or
- (2) if the act or omission causing bodily harm is for the purpose of averting bodily harm to oneself or another person.

(M) "Loss of income from work" means 80 percent loss of income from the work the injured person would have performed if he had not been injured, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake. Loss of income from work does not include any loss after the death of the injured person and payment for the period of disability shall not exceed two years from the date of the accident.

(N) "Medical expenses" means reasonable amounts incurred by an injured person for necessary medical, surgical, radiological, dental, ambulance, hospital, medical rehabilitation and professional nursing services, eyeglasses, hearing aids, and prosthetic devices. Personal protection insurers may review medical expenses to ensure that the expenses are reasonable and necessary. Under basic personal protection and added personal protection, medical expenses are promptly payable to the injured person for covered expenses incurred within two years after the date of the accident. Medical expenses do not include that portion of a charge for a room in a hospital, clinic, or convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless medically required, and does not include treatments, services, products, or procedures that are experimental in nature, for research, or not primarily designed to serve a medical purpose, or which are not commonly and customarily recognized throughout the medical profession within the United States as appropriate treatment of the accidental bodily injury.

(O) "Medical rehabilitation" means rehabilitation services that are reasonable and necessary to reduce the disability and restore the pre-accident level of physical functioning of the injured person.

(P) "Motor vehicle" means:

- (1) a vehicle of a kind required to be registered pursuant to this title other than a vehicle with three or fewer load bearing wheels; or
- (2) a vehicle, including a trailer, designed for operation on a public roadway by other than any muscular power, except a vehicle used exclusively on stationary rails or tracks. For the purposes of this section, "public roadway" means a way open to the use of the public for purposes of automobile travel.

(Q) "Non-economic loss" means any loss other than economic loss and includes, but is not necessarily limited to, pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, hedonic damages and loss of any of the following: consortium, society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, and all other non-

economic damage whether formerly recoverable under the law of this state or not. Non-economic loss does not include economic loss caused by pain and suffering or by physical impairment.

(R) "Operation or use" means operation or use of a motor vehicle as a motor vehicle, including, incident to its operation or use as a vehicle, occupying, entering into, and alighting from it. Operating or use of a motor vehicle does not include:

- (1) conduct within the course of manufacturing, sale or maintenance of a motor vehicle, including repairing, servicing, washing, loading or unloading, unless the conduct occurs while occupying it; or
- (2) conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into or alighting from it.

(S) "Owner" means the person or persons other than a lien holder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. Owner does not include a lessee under a lease not intended as security.

(T) "Person" means a person or an organization, public or private.

(U) "Personal protection" means a policy, a plan, or other coverage that provides basis benefits for loss resulting from accidental bodily injury, regardless of fault.

(V) "Personal protection insured" means:

- (1) a person identified by name as an insured in a contract providing personal protection benefits;
- (2) while residing in the same household with a named insured, the following persons:
 - (a) a spouse or other relative of a named insured;
 - (b) a minor in the custody of a named insured. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere;
- (3) a person with respect to accidents within this state who sustains accidental bodily injury while occupying or through being struck by a motor vehicle insured for personal protection, unless the person has reflected the coverage.

(W) "Personal protection insurer" means an insurer or qualified self-insurer who provides personal protection benefits.

(X) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services from others, not members of the injured person's household, in lieu of those the injured person would have performed for the benefit of the household. Replacement services loss shall not be paid if the injured person is entitled to receive personal protection benefits for loss of income from work for the same period. Under basic personal protection, replacement services loss does not include any loss incurred after the death of the injured person, and payment for the period of disability shall not exceed two years from the date of the accident.

(Y) "Serious injury" means an accidental bodily injury that results in death, dismemberment, significant and permanent loss of an important bodily function, or significant and permanent scarring or disfigurement.

(Z) "Uncompensated economic loss" means that portion of economic loss arising out of an accidental bodily injury of an injured person which exceeds the benefits provided by a personal protection insurer under a policy providing such benefits (except for loss incurred by a deductible under such a policy), and collateral sources. Such loss is payable under the same terms and limitations as under added personal protection, but shall not be subject to the aggregate limit of liability of such coverage.

(AA) "Uninsured motorist" means the owner of a motor vehicle uninsured for either basic personal protection or liability insurance at the limits prescribed by the state's motor vehicle insurance law.

Section 3. {Insurance requirements.}

(A) Each motor vehicle required to be registered in this state shall be insured for basic personal protection and for at least the minimum property damage liability limits prescribed by (cite state insurance law), unless the owner of the motor vehicle exercises his right of rejection pursuant to Section 11. An insurance policy written by a personal protection insurer pursuant to this act to provide basic personal protection is deemed to include all basic personal protection coverage required by this Act. Coverage under basic personal protection meets the requirements of this state's motor vehicle insurance law.

(B) In addition to any added personal protection coverage, a personal protection insurer shall make available additional insurance coverage. The additional coverage shall include bodily injury liability insurance, collision coverage, and comprehensive physical damage.

Section 4. {Geographic application of personal protection policies.}

(A) A personal protection insurer shall pay to a personal protection insured benefits for accidental bodily injury sustained within the United States, its territories or possessions or Canada.

(B) A personal protection policy issued in this state shall contain coverage such that it satisfies the financial responsibility laws of any other state or Canadian province in which the insured motor vehicle is operated.

Section 5. {Persons not entitled to personal protection benefits.}

(A) A personal protection insurer may not pay benefits to or on behalf of an injured person who:

- (1) was involved in a motor vehicle accident while committing a felony or while voluntarily occupying a motor vehicle that he knew to be stolen;
- (2) was driving under the influence of alcohol or illegal drugs;
- (3) was occupying an uninsured motor vehicle owned by the person;
- (4) is guilty of intentional misconduct. If the person dies as a result of his own intentional misconduct, his survivors are not entitled to personal protection for loss arising from the decedent's injury or death;
- (5) has reflected the limitation on his right to sue pursuant to Section 11;
- (6) is an uninsured motorist; or
- (7) was operating or occupying a motor vehicle with three or fewer load bearing wheels.

(B) A personal protection insurer may include in personal protection coverage any person under Subsection A if the insurer states his intent to do so clearly on the policy.

Section 6. {Payment of personal protection benefits.} At the option of the personal protection insurer, personal protection benefits are payable to any of the following persons:

- (A) the injured person;
- (B) the parent or guardian of the injured person if the injured person is a minor or incompetent; or
- (C) a survivor, executor or administrator of the injured person.

Section 7. {Multiple coverage.} Notwithstanding the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown on the policy, or premiums paid, the liability limits under a motor vehicle insurance policy for any coverage shall not be combined with or added to any other coverage limit to determine the maximum limit of coverage available to an injured person. Unless the contract clearly provides otherwise, the contract may provide that if two or more policies, plans, or coverages apply equally to the same accident, the highest limit of liability applicable is the maximum amount available to an injured person under any one of the policies. Each policy, plan, or coverage is responsible for its proportionate share of the loss.

Section 8. {Priority of benefits.}

(A) Subject to Section 7, a person who is entitled to receive personal protection benefits may claim the benefits in the following order up to the limits of personal protection in the listed category:

- (1) the personal protection applicable to a motor vehicle provided by an employer if the injured person is an employee and the injury results from a motor vehicle accident while the person was driving, was occupying, or was struck by the employer's motor vehicle;
- (2) the personal protection of a motor vehicle used principally for the commercial transportation of personnel or property if the injured person was an occupant of or was struck by the motor vehicle;
- (3) the personal protection covering a motor vehicle involved in the accident, if the injured person was an occupant of or was struck by the motor vehicle;
- (4) the personal protection under which the injured person is or was a named insured;
- (5) the personal protection under which the injured person is or was an insured, other than a named insured.

(B) If two or more insurers are obligated to pay personal protection benefits, the insurer against whom the claim is first made shall pay the claim and may thereafter recover a pro rata contribution from any other insurer at the same priority level for the costs of the payments and for processing the claim. For the purposes of this section an unoccupied parked motor vehicle is not a motor vehicle involved in an accident unless parked in such a way as to cause unreasonable risk of injury.

Section 9. {Other sources of indemnity for basic personal protection benefits.}

(A) A basic personal protection insurer is primarily obligated to indemnify an injured person, except that state or federally mandated disability benefits and any workers' compensation benefits or similar benefits provided pursuant to an occupational injury shall be subtracted from the basic personal protection benefits payable to the

injured person. Any other benefits payable for accidental bodily injury are secondary to the benefits payable for the basic personal protection.

(B) Basic personal protection is subject to a \$250 deductible with respect to a claim by the named insured or a person residing in the same household with the named insured. A basic personal protection insurer may write policies with a deductible that is higher or lower than that prescribed by this Subsection pursuant to rules adopted by the director.

(C) Added personal protection is written as excess insurance pursuant to Subsection (A) of Section 2. A provider of personal protection benefits or other collateral sources shall not recover any amount against the claimant pursuant to a claim for added protection benefits or for uncompensated loss and shall not be subrogated to any rights the claimant may have against the defendant.

(D) Notwithstanding any provision to the contrary, a personal protection insurer is subrogated, to the extent of its obligations, to all of the rights of its personal protection insured with respect to an accident caused in whole or in part by:

- (1) the negligence of an uninsured motorist;
- (2) the negligence of the owner or operator of a motor vehicle having a gross weight of 7,000 pounds or more;
- (3) driving under the influence of alcohol or illegal drugs;
- (4) intentional misconduct; or
- (5) any person who has rejected, or is otherwise not affected by, the limitations on tort rights and liabilities.

Adopted by the CIED Task Force at the Task Force Summit on May 30, 1999. Approved by the ALEC Legislative Board June 1999.

The Property/Casualty Insurance Form Filing Act

Summary

This model bill establishes a file and use system for the approval of policy forms and endorsements for personal and commercial lines of insurance. This creates a more competitive and less onerous regulatory environment in the insurance industry.

Model Legislation

Section 1. {Short Title} This act shall be known as the Property/Casualty Insurance Form Filing Act.

Section 2. {Legislative Declaration} This legislature finds and declares that a modernized and competitive procedure be employed¹

A. To promote insurance product competition and price competition among insurers;

B. To expand insurance policy options and choices for insurance purchasing consumers;

C. To provide the necessary regulatory authority to protect policyholders from confusing and misleading insurance product offerings.

D. To reduce the number of current regulatory barriers that inadvertently prohibit the timely bringing of personal and commercial lines insurance products to market.

Section 3. {Definitions}

A. For the purpose of this Act, “Advisory organization” means any person or organization, which has five unrelated members and which assists insurers. It does not include joint underwriting organizations, actuarial or legal consultants, single insurer, any employees of an insurer, or insurers under common control or management of their employees or managers.

B. For the purpose of this Act, “Commissioner” means the Commissioner of Insurance of this state.

Section 4. {Scope}

A. This Act applies to all kinds of insurance written on risks in this state by any insurer authorized to do business in this state, except:

1. Life insurance;
2. Annuities;
3. Accident and health-insurance;
4. Ocean marine insurance;
5. Aircraft liability and aircraft hull insurance; and
6. Reinsurance.

Section 5. {Filing of Forms and Endorsements} Each insurer, advisory organization, or group, association or other organization of insurers shall file all policy forms and endorsements 30 calendar days before the effective date of their use. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of the insurance code. A filing shall be deemed to meet the requirements of the insurance code unless the commissioner provides a written and delivered notice of disapproval within the 30 calendar day waiting period. A notice of disapproval shall state the specific reasons for the disapproval of the policy form or endorsement. Policy forms and endorsements may be disapproved only if they contain provisions that are in violation of the insurance code or other laws of this state, or if they contain language that is inconsistent, ambiguous or misleading clauses. If the commissioner issues a notice of disapproval, an insurer may request a hearing under Section 6 of this Act.

Section 6. {Disapproval of Forms and Endorsements}

A. Procedures for Disapproval. Prior to the expiration of the waiting period of a filing made pursuant to section 5, the commissioner may disapprove by written order forms or endorsements filed pursuant to section 5 without hearing. The order shall specify in what respects such filing fails to meet the requirements of this Act. Any insurer whose forms or endorsements are disapproved under this section shall be given a hearing upon written request made within 30 calendar days of disapproval.

B. Order of Disapproval. If the commissioner disapproves a form or endorsement pursuant to subsection (A) of this section, and any insurer requests a hearing pursuant to subsection (A) of this section, the commissioner shall issue a written and delivered written order within 30 calendar days of the close of the hearing specifying in what respects such forms or endorsements fail to meet the requirements of this Act. The written and delivered order shall state an effective date no sooner than 30 calendar days after the date of the order when the use of

such policy forms or endorsements shall be discontinued. This written and delivered order shall not affect any policy made before its effective date. However, a policyholder shall have the privilege to cancel the policy containing the disapproved forms or endorsements without penalty (i.e., obtain return premium calculated according to company pro-rata schedules or waiver of minimum premium earned stipulations).

Section 7. {Exemptions} The commissioner may, after public notice and hearing, exempt any line of insurance from any or all of the provisions of this Act for the purpose of relieving such line of insurance from filing or any otherwise applicable provisions of this Act.

Section 8. {Penalties}

A. The commissioner may impose after notice and hearing a penalty determined in accordance with (refer to appropriate penalties provision)

B. Technical violations arising from systems or computer errors of the same type shall be treated as a single violation.

C. The commissioner may suspend or revoke the license of any insurer, advisory organization, or statistical agent that fails to comply under the provisions of this Act with an order of the commissioner within the time prescribed by such order, or any extension thereof that the commissioner may grant.

D. The commissioner may determine when a suspension of license shall become effective and the period of such suspension, which the commissioner may modify or rescind at any time during the suspension period in any reasonable manner.

E. No penalty shall be imposed and no license shall be suspended or revoked under the provisions of this Act except upon a written order of the commissioner, stating his or her findings, made after notice and hearing.

Section 9. {Judicial Review} Any order, ruling, finding, decision or other act of the commissioner made pursuant to this Act shall be subject to judicial review in accordance with (cite applicable provisions of state civil practice act)

Section 10. {Notice and Hearing}

A. Notice Requirements. All notices rendered pursuant to the provisions of this act shall be in writing and shall state clearly the nature and purpose of the hearing. All relevant facts, statutes and rules shall be specified so that respondent(s) are fully informed of the scope of the hearing, including specific allegations, if any. If a hearing is required, all notices shall designate a hearing date at least 14 calendar days from the date of the notice, unless such minimum notice period is waived by respondents.

B. Hearings. All hearings pursuant to the provisions of this act shall be conducted in accordance with (cite applicable provisions of Administrative Procedures Act) to the extent such provisions are consistent with the procedural requirements contained in this act.

Section 11. {Severability}

Section 12. {Effective Date}

Endnotes

¹ This model is intended for consideration in insurance regulatory jurisdictions with a more restrictive form filing and review system than outlined in this bill. States also may want to consider an informational filing framework for policy forms that incorporates insurer “self-certification.”

Under “self-certification,” insurers file and certify to the state insurance commissioner that any policy form, endorsement or disclosure form conforms to state law and any rules or regulations promulgated by the insurance commissioner.

Adopted by the CIED Task Force at the States and Nation Policy Summit, December 17, 1999. Approved by the ALEC Legislative Board January 2000

Government-Related Insurers Not to be Authorized Act

Summary

The Government-Related Insurers Not to Be Authorized Act prohibits insurers from transacting insurance in this state if affiliated with the government. This act excludes the State Insurance Fund.

Model Legislation

Section 1. {Short Title} This act shall be known as the Government-Related Insurers Not to be Authorized Act

Section 2. {Definitions} For purposes of this section “state government instrumentality” includes, but is not limited to:

- (A) a public corporation or quasi-public corporation formed by an act of a state;
- (B) an organization, exempt in whole or in part from federal income taxation;
- (C) an organization whose governing board is appointed in whole or in part by an act of a foreign state, or that by law must include in its governing board a representative from state government;
- (D) an organization created by an act of a state and whose operation is in furtherance of a state goal; and
- (E) an insurer that must, by law, serve as an insurer of last resort in a state.

Section 3. {Prohibitions} Except for the State insurance Fund or other insurer created by this state, no insurer shall be authorized to transact insurance in this state if:

- (A) the insurer is, or is ultimately operated for or by a state government, state government agency or state government instrumentality; or
- (B) a state government, state government agency or state government instrumentality has more than a de minimus ownership interest in the insurer.

Section 4. {Repealer Clause}

Section 5. {Effective Date}

Adopted by the CIED Task Force at the States and Nation Policy Summit in December, 2001. Approved by the ALEC Legislative Board January, 2002.

Insurance Market Conduct Surveillance Act

Table of Contents

Section 1 Short Title

Section 2 Purpose and Scope

Section 3 Definitions

Section 4 Immunity

Section 5 General Powers and Duties of Commissioner

Section 6 Relations with Other States

Section 7 Market Analysis Procedures

Section 8 Examinations

Section 9 Confidentiality

Section 10 Market Conduct Surveillance Personnel

Section 11 Sanctions

Section 12 Severability

Section 13 Rule Making Authority

Section 14 Effective Date

SECTION 1. SHORT TITLE. This Act may be cited as the Insurance Market Conduct Surveillance Act.

SECTION 2. PURPOSE AND SCOPE.

(a) The purpose of this Act is to establish a framework for department market conduct actions, including:

- (1) processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants;
- (2) development of appropriate market conduct actions by the Commissioner as required to:
 - (A) substantiate market conduct problems; and
 - (B) remedy significant market conduct problems; and
- (3) procedures to communicate and coordinate market conduct actions with other states to foster the most efficient and effective use of resources.

(b) Notwithstanding any other law or grant of authority, the Commissioner, as applicable, may undertake market analysis or market conduct action only as provided by this Act. Authority not expressly delegated to the Commissioner under this Act shall not be inferred.

SECTION 3. DEFINITIONS.

For the purposes of this Act, these defined words have the following meaning:

Drafting Note: If necessary, definitions of “insurer” and “insurance department” (or other appropriate regulatory agency) may be added. If a state has the authority to conduct market conduct examinations of third party administrators or other non-insurer entities, the appropriate provisions of this Model Act may be amended to extend its requirements and protections to such entities.

(a) “Commissioner” means the chief insurance regulatory official of the state.

Drafting Note: Where the word “Commissioner” appears in the Model Act, the appropriate designation for the chief insurance regulatory official of the state, if different, should be substituted.

(b) "Complaint" means a written or documented oral communication, the primary intent of which is to express a grievance or an expression of dissatisfaction. For health companies, a grievance is a written complaint submitted by or on behalf of a covered person.

(c) "Desk examination" means a targeted examination conducted by an examiner at a location other than an insurer's premises. The term includes an examination performed at the department's offices during which the insurer provides requested documents for department review by hard copy or by microfiche, disk, or other electronic media.

(d) "Market analysis" means a process under which market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, and other sources as necessary to:

- (1) develop a baseline understanding of the marketplace; and
- (2) identify insurer patterns or practices that:
 - (A) deviate significantly from the norm; or
 - (B) pose a potential risk to the insurance consumer.

(e) "Market conduct action" means any activity that the Commissioner may initiate to assess and address market practices of insurers licensed to do business in this state before conducting a targeted examination. The term does not include a Commissioner action taken to resolve:

- (1) an individual consumer complaint; or
- (2) another report relating to a specific instance of insurer misconduct.

(f) "Market conduct examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

(g) "Market conduct examiners handbook" means the set of guidelines, developed and adopted by the National Association of Insurance Commissioners, that document established practices to be used by market conduct surveillance personnel in developing and executing an examination under this Act.

(h) "Market conduct surveillance personnel" means those individuals employed by or under contract with the department who collect, analyze, review, or act on information regarding insurer patterns or practices.

(i) "Market conduct uniform examination procedures" means the set of guidelines developed and adopted by the National Association of Insurance Commissioners designed to be used by market conduct surveillance personnel in conducting an examination under this Act.

(j) "National Association of Insurance Commissioners" (NAIC) means the organization of insurance regulators from the 50 states, the District of Columbia and the five U.S. territories.

Drafting Note: If statutory drafting conventions require further description, the following language should be used: "Its mission is to assist insurance regulators in protecting the public interest, promoting competitive markets, facilitating the fair and equitable treatment of insurance consumers, promoting the reliability, solvency and financial solidity of insurance institutions, and supporting and improving state regulation of insurance."

(k) "On-site examination" means an examination that is conducted at:

- (1) the insurer's home office; or
- (2) another location at which the records under review are stored.

(l) "Qualified contract examiner" means a person qualified by education, experience, and any applicable professional designations who is under contract with the Commissioner to perform market conduct actions.

(m) "Standard data request" means the set of field names and descriptions developed and adopted by the National Association of Insurance Commissioners for use by market conduct surveillance personnel in a market conduct action.

(n) "Targeted examination" means a limited review and analysis, conducted through a desk examination or an on-site examination and in accordance with the market conduct uniform examination procedures, of specific insurer conduct, practices, or risks identified through market analysis that have not been remedied by the insurer, including:

- (1) underwriting and ratings;
- (2) marketing and sales;
- (3) complaint handling operations and management;
- (4) advertising materials;
- (5) licensing;
- (6) policyholder services;
- (7) claims handling;
- (8) policy forms and filings; or
- (9) tier classification.

SECTION 4. IMMUNITY.

(a) A cause of action does not arise, and liability may not be imposed, for any statements made or conduct performed in good faith while implementing this Act, against:

- (1) the Commissioner;
- (2) an authorized representative of the Commissioner; or

(3) an examiner appointed by the Commissioner.

(b) A cause of action does not arise, and liability may not be imposed, against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner under an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) A person identified in Subsection (a) is entitled to attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities conducted in implementing this Act, and the party bringing the action was not substantially justified in doing so. For purposes of this subsection, an action is "substantially justified" if the action had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify any common law or statutory privilege or immunity.

SECTION 5. GENERAL POWERS AND DUTIES OF COMMISSIONER

(a) The Commissioner shall participate in national market conduct databases.

(1) The Commissioner shall collect and report market data to the National Association of Insurance Commissioners' market information systems, including the complaint database system, the examination tracking system, the regulatory information retrieval system, or other successor systems of that association, as determined by the Commissioner. Complaints reported to the Complaint Database system shall be justified complaints that have been substantiated by appropriate personnel in the Insurance Department and by the insurer that is the subject of the complaint.

(2) Information collected and maintained by the department shall be compiled in a manner that meets the requirements of the National Association of Insurance Commissioners.

(3) In addition to complaint data, insurer specific information reported to the National Association of Insurance Commissioners for market analysis and market conduct purposes shall be substantiated by appropriate personnel in the department and verified by the insurer.

(b) Market conduct action shall be coordinated with other states.

(1) The Commissioner shall coordinate the department's market analysis and examination efforts with other states through the National Association of Insurance Commissioners.

(2) The Commissioner may share documents, materials, or other information, including the confidential and privileged documents, materials, or information with other state, federal and international regulatory agencies and law enforcement authorities and the National Association of Insurance Commissioners and that association's affiliates and subsidiaries, if the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, or other information.

(3) The Commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and that association's affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The Commissioner shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(c) The Commissioner shall provide notice of new laws and rules.

(1) At least once annually or more frequently if determined necessary by the Commissioner, the Commissioner shall provide in an appropriate manner to insurers and other entities subject to this code information regarding new laws and rules, enforcement actions, and other information the Commissioner considers relevant to ensure compliance with market conduct requirements.

(2) The Commissioner may provide the notice required under Subsection (1) in an electronic format that is designed to give insurers and other entities adequate notice.

(3) Failure by the Commissioner to provide the information described by Subsection (1) does not constitute a defense for an insurer who fails to comply with an insurance law of this state.

(d) The Commissioner shall designate an individual within the department whose responsibilities shall include the receipt of information from employees of insurers and other entities regulated by the department regarding violations of laws or rules by their employers. The Commissioner's designee shall be properly trained in the handling of that information. Information received under this section is a confidential communication and is not public information.

(e) The Commissioner has the subpoena power authorized by [appropriate state citation], for the production of documents under this Act and enforcement of this subtitle.

SECTION 6. RELATIONS WITH OTHER STATES

(a) The Commissioner shall have the authority to interact with insurance Commissioners of other states.

(1) The Commissioner has responsibility for conducting market conduct examinations on domestic insurers. The Commissioner may delegate that responsibility to the insurance Commissioner of another state, if that insurance Commissioner agrees to accept the delegated responsibility. If the Commissioner elects to delegate responsibility for examining an insurer, the Commissioner shall accept a report of the examination prepared by the insurance Commissioner to whom the responsibility has been delegated.

(2) If the insurer to be examined is part of an insurance holding company system, the Commissioner may also seek to simultaneously examine any affiliate of the insurer that is authorized to write the same types of insurance in this state as the insurer if the insurance Commissioner of the state in which the affiliate is organized consents and delegates responsibility for that examination.

(3) In lieu of conducting a targeted examination of an insurer that holds a certificate of authority in this state but is not a domestic insurer, the Commissioner shall accept a report of a market conduct examination regarding that insurer prepared by the insurance Commissioner of the state in which the insurer is domiciled or by another state if:

(A) the laws of the examining state that are applicable to the subject of the examination are substantially similar to those of this state; and

(B) the examining state has a market conduct surveillance system that the Commissioner deems comparable to the market conduct surveillance system required under this Act.

(4) The Commissioner's determination under Subsection (3)(B) is discretionary with the Commissioner and is not subject to appeal.

(5) Subject to a determination under Subsection (3), if a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, the Commissioner shall accept documentation that the insurer has made a similar modification in this state in lieu of initiating a market conduct action or examination related to that practice or procedure.

SECTION 7. MARKET ANALYSIS PROCEDURES

(a) Information shall be collected and analyzed.

(1) Subject to Subsection (c), the Commissioner shall gather insurance market information from:

- (A) data available to the department, including survey results and information required to be reported to the department;
- (B) information collected by the National Association of Insurance Commissioners and from other sources; and
- (C) information from within and outside the insurance industry from objective sources; and
- (D) information from websites for insurers, agents and other organizations; and
- (E) information from other sources, provided they are published at least annually in a bulletin or regulation, prior to use.

(2) The Commissioner shall analyze the information compiled under Subsection (1) as necessary to:

- (A) develop a baseline understanding of the insurance marketplace; and
- (B) identify for further review insurers or insurance practices that deviate significantly from the norm or that pose a potential risk to the insurance consumer.

(3) The Commissioner shall use the following policies and procedures in performing the analysis required under this section:

- (A) maintain an ongoing Market Analysis Chief (MAC);
- (B) establish a systematic interdivisional communication program;
- (C) identify key lines of business for systematic review;
- (D) identify companies for further analysis based on available information, including but not limited to:
 - (i) complaint activity on justified complaints that indicates a potential harm to consumers;
 - (ii) significant changes in Direct Written Premium volume; and
 - (iii) significant changes or anomalies in reserves;

(4) after completion of any level of Market Analysis, the state shall contact the insurer to verify the analysis prior to further market conduct action;

- (A) Insurer specific information that is used and relied upon by the department when developing the baseline analysis and identifying insurers or practices for further review shall be substantiated by appropriate personnel in the department and verified by the insurer.
- (B) The Commissioner may only utilize information from NAIC databases for market analysis provided that the Commissioner verifies the information directly with that state prior to its consideration.

(C) Except as otherwise specifically provided, the department or the Commissioner, as applicable, may not require an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort.

(b) A continuum of market conduct actions shall be utilized.

(1) If market analysis indicates the existence of causes or conditions that compel the Commissioner to inquire into a particular insurer or insurance practice, the Commissioner shall consider taking one or more of the market conduct actions described by Subsection (2) before conducting a targeted examination. If a market conduct action selected by the Commissioner requires the participation of or a response by the affected insurer, the Commissioner shall notify the insurer of the action selected in writing.

(2) Market conduct actions described by Subsection (1) may include:

(A) correspondence with the insurer;

(B) insurer interviews;

(C) information gathering;

(D) policy and procedure reviews;

(E) interrogatories; and

(F) review of insurer self-evaluation and compliance programs, including insurer membership in a best-practice organization.

(3) The Commissioner shall select market conduct actions that are efficient and cost-effective for the department and the insurer while protecting the interests of the insurance consumer.

(4) The Commissioner shall take steps reasonably necessary to:

(A) eliminate requests for information that duplicate or conflict with information provided as part of an insurer's annual financial statement, the annual market conduct statement of the National Association of Insurance Commissioners, or other required schedules, surveys, or reports that are regularly submitted to the Commissioner, or with data requests made by other states if that information is available to the Commissioner, unless the information is state specific; and

(B) coordinate the market conduct actions and findings of this state with those of other states.

(5) The causes or conditions, if identified through market analysis, that may trigger a targeted examination are:

(A) information obtained from a market conduct annual statement, market survey or report of financial examination indicating potential fraud, that the insurer is conducting the business of insurance without a license or is engaged in a potential pattern of unfair trade practice in violation of [cite statutory reference for the Unfair Trade and Claims Practices Acts].

(B) a number of justified complaints against the insurer or a justified complaint ratio sufficient to indicate potential fraud, conducting the business of insurance without a license, or a potential pattern of unfair trade practice in violation of [cite statutory reference for the Unfair Trade and

Claims Practices Acts]. For the purposes of this section, a complaint ratio shall be determined for each line of business.

(C) information obtained from other objective sources, such as published advertising materials indicating potential fraud, conducting the business of insurance without a license, or evidencing a potential pattern of unfair trade practice in violation of [cite appropriate statutory reference for the state's Unfair Trade and Claims Practices Act].

(c) Prescribed protocols for market conduct actions shall be followed.

(1) Each market conduct action taken as a result of a market analysis:

(A) must focus on the general business practices and compliance activities of insurers, rather than identifying infrequent or unintentional random errors that do not cause significant consumer harm;

(B) may not result in a market conduct examination, unless the head of the insurance regulatory agency in the insurer's state of domicile determines that a market conduct examination is needed.

(2) The Commissioner may determine the frequency and timing of the market conduct actions. The timing of an action depends on the specific market conduct action to be initiated unless extraordinary circumstances indicating a risk to consumers require immediate action.

(3) If the Commissioner has information that more than one insurer is engaged in practices that may violate statutes or rules, the Commissioner may schedule and coordinate multiple examinations simultaneously.

(4) The Commissioner shall provide an insurer with an opportunity to resolve to the satisfaction of the Commissioner any matter that arises as a result of a market analysis before any additional market conduct actions are taken against the insurer. If the insurer has modified a practice or procedure as a result of a market conduct action taken or examination conducted by the insurance Commissioner of another state, and the Commissioner deems that state's market conduct surveillance system comparable to the system required under this Act, the Commissioner shall accept the modified practice or procedure in this state.

(5) For an application by the department of a handbook, guideline, or other product referenced in this Act that is the work product of the National Association of Insurance Commissioners that changes the way in which market conduct actions are conducted, the Commissioner shall give notice and provide interested parties with an opportunity for a public hearing as provided by [appropriate state citation].

(6) Each officer, director, employee, insurance producer, and agent of an insurer or person described by Subsection (6) shall, to the extent of that individual's ability, facilitate and aid in a department market conduct action.

SECTION 8. MARKET CONDUCT EXAMINATIONS

(a) Protocols shall be followed for examinations.

(1) When market analysis identifies a pattern of conduct or practice by an insurer which requires further investigation, and a less intrusive market conduct action is not appropriate, the Commissioner may conduct a targeted examination in accordance with the market conduct uniform examination procedures and the market conduct examiners handbook.

(2) A targeted examination may be conducted through a desk examination or an on-site examination. To the extent feasible, the department shall conduct a market conduct examination through desk examinations and data requests before conducting an on-site examination.

(3) The department shall conduct an examination in accordance with the market conduct examiners handbook and the market conduct uniform examinations procedures.

(4) The department shall use the standard data request or a successor product that is substantially similar to the standard data request as adopted by the Commissioner by rule.

(5) If the insurer to be examined is not a domestic insurer, the Commissioner shall coordinate the examination with the insurance Commissioner of the state in which the insurer is organized.

(b) Before beginning an examination, market conduct surveillance personnel shall prepare a work plan that includes:

- (1) the name and address of the insurer to be examined;
- (2) the name and contact information of the examiner-in-charge;
- (3) a statement of the reasons for the examination;
- (4) a description of the scope of the examination;
- (5) the date the examination is scheduled to begin;
- (6) an identification of whether the examiners are department employees or independent contractors;
- (7) a time estimate for the examination; and
- (8) if the cost of the examination is billed to the affected insurer:
 - (A) a budget for the examination; and
 - (B) an identification of factors that will be included in the billing.

(c) Notice shall be given of the examination.

(1) Unless the examination is conducted in response to extraordinary circumstances indicating a risk to consumers requiring immediate action, the department shall notify an affected insurer of an examination not later than the 60th day before the scheduled date of the beginning of the examination. The notice must include the examination work plan and a request that the insurer name an examination coordinator for the insurer.

(2) In addition to the notice required under Subsection (a), the Commissioner shall post notice that a market conduct examination has been scheduled on the National Association of Insurance Commissioners examination tracking system.

(3) If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under Subsection (a), the Commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.

(d) Not later than the 30th day before the scheduled date of the examination, the Commissioner shall conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations.

(e) Except as otherwise provided by law, each insurer or person from whom information is sought under this Act, and each officer, director, or agent of that insurer or person, shall provide the Commissioner with convenient and free access to all books, records, accounts, papers, documents, and any computer or other recordings relating to the property, assets, business, and affairs of the insurer or person during regular business hours.

(f) Before the conclusion of an examination, the member of the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.

(g) Protocols shall be followed in issuing an examination report, where the Commissioner has determined that the issuance of an examination report is required.

(1) Unless the Commissioner and the insurer agree to a different schedule, the Commissioner shall follow the time line established under this section.

(2) If the Commissioner elects to issue a report, the draft examination report shall be provided to the insurer not later than the 60th day after the date the examination is completed. For purposes of this section, the date the examination is completed is the date on which the exit conference is conducted.

(3) Not later than the 30th day after the date on which the insurer receives the draft examination report, the insurer shall provide any written comments regarding the report to the department.

(4) The department shall make a good faith effort to resolve issues with the insurer informally and where the Commission determines that such examination report is required shall prepare a final examination report not later than the 30th day after the date of receipt of the insurer's written comments on the draft report unless a mutual agreement is reached to extend the deadline.

(5) The department shall include the insurer's responses in the final examination report. The responses may be included as an appendix or in the text of the examination report. An insurer is not obligated to submit a response. An individual involved in the examination may not be named in either the report or the insurer response except to acknowledge the individual's involvement.

(6) The Commissioner shall make corrections and other changes to the final examination report as appropriate to reflect resolution of disputed matters, and shall issue the report to the insurer. Not later than the 30th day after receipt of the final examination report under this subsection, the insurer shall accept the report, accept the findings of the report, file any written comments, request an alternative dispute resolution under Subsection (k) or request a hearing. The Commissioner and the insurer by mutual agreement may extend the period for an additional 30 days. A request for a hearing must be made in writing and must follow the requirements of [appropriate state citation].

(h) Expectations of confidentiality of examination report information.

(1) A final or preliminary market conduct examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under [appropriate state citation]. Documents and information obtained during an alternative dispute resolution under Subsection (k), and the results of such action, shall be afforded the same protection. No such report or information shall be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private action. This section may not be construed to limit the Commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other

documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the Commissioner, in the Commissioner's sole discretion, may deem appropriate.

(2) This Act does not prevent the Commissioner from disclosing at any time the contents of a final market conduct examination report to the department, the insurance department of any other state, or an agency of the federal government, if the department or agency receiving the report agrees in writing to maintain the information as confidential and in a manner consistent with this Act.

(3) The Commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (2) not later than the fifth day after the date the final market conduct examination is released under Subsection (2).

(i) Assessment of costs and fees of examination.

(1) Subject to Subsection (2), if the reasonable and necessary expense for a market conduct examination is to be assessed against the affected insurer, costs and fees for that examination must be consistent with those otherwise authorized by law. The costs and fees must be itemized and bills for the costs and fees must be provided to the insurer at least as frequently as on a monthly basis for review prior to submission for payment.

(2) The Commissioner shall actively manage and oversee examination costs and fees, including but not limited to costs associated with the use of department personnel and examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the Commissioner retains outside assistance, the Commissioner shall adopt by rule written protocols that:

- (A) clearly identify the types of functions to be subject to outsourcing;
- (B) provide specific time lines for completion of the outsourced review;
- (C) require disclosure of recommendations made by contract examiners;
- (D) establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination costs and fees; and
- (E) require disclosure of the terms of contracts entered into with outside consultants, and specifically terms regarding the costs and fees or hourly rates that may be charged by those consultants.

(3) The Commissioner must review and affirmatively endorse detailed billings made by a qualified contract examiner before the detailed billings are sent to the insurer. Such billings shall be sent to the insurer monthly.

(4) The Commissioner may contract, in accordance with applicable state contracting procedures, for such qualified contract actuaries and examiners as the Commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided, that the compensation and per diem allowances paid to such contract persons shall not exceed one hundred twenty-five percent (125%) of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the National Association of Insurance Commissioners.

(5) An insurer may not be required to provide reimbursement for examination costs and fees under Subsection (1), whether those costs and/or fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those costs and fees exceed the costs and fees prescribed

in the market conduct examiners handbook and any successor documents to that handbook, unless the Commissioner demonstrates that the costs and/or fees prescribed in the handbook are inadequate under the circumstances of the examination.

(j) The Commissioner may not conduct a market conduct examination with respect to a single licensed insurer more frequently than once every five years other than for cause under the definition of “market conduct examination” in Section 3(f). The Commissioner may waive conducting a market conduct examination based on market analysis.

(k) Alternative dispute resolution is an option for resolution of differences.

(1) Not later than the 30th day after receipt of a notice of examination under Subsection (c)(1), an insurer may request arbitration to contest the reason(s) given.

(2) Not later than the 30th day after receipt of a final examination report under Subsection (g)(6), an insurer may request arbitration of any matter related to the report which is in dispute, including but not limited to actions alleged to be outside the scope of the Commissioner’s statutory authority; examination procedures, including conduct of the examiners; examination costs and fees; findings by the Commissioner of violations of the laws of this state or regulations issued by the Commissioner; and proposed fines or penalties to be assessed for such violations.

(3) Arbitration shall be conducted by a board of arbitrators consisting of one arbitrator selected by the Commissioner, one arbitrator selected by the insurer, and a third selected jointly by the other two arbitrators. Each arbitrator must be certified by a recognized arbitration organization, including but not limited to the American Arbitration Association, and must have at least six (6) years of prior related insurance experience. No arbitrator may be a current or former employee of the Department or of the insurer, unless both parties agree. American Arbitration Association rules shall be applied in any such arbitration. A decision is valid only upon affirmative vote of at least two of the arbitrators. The Commissioner and the insurer must treat the decision of the arbitrators as final. Unless otherwise ordered by the arbitrators, the parties shall each bear the costs of the arbitrator selected by it and shall share equally in the costs of the third arbitrator and of the arbitration.

(4) Notwithstanding the provisions of subsections (1) and (2), an insurer may request a form of alternative dispute resolution other than arbitration, such as mediation, to contest the reason(s) given for the examination and/or any matter related to the report which is in dispute, including but not limited to actions alleged to be outside the scope of the Commissioner’s statutory authority; examination procedures, including conduct of the examiners; examination costs; findings by the Commissioner of violations of the laws of this state or regulations issued by the Commissioner; and proposed fines or penalties to be assessed for such violations

(5) Notwithstanding the provisions of Subsections (1), (2) and (4), an insurer may request a hearing in lieu of an alternative dispute resolution mechanism pursuant to [cite statutory reference for administrative procedure act]. Proceeding to hearing under this subsection in lieu of an alternative dispute resolution mechanism shall not be considered a failure to exhaust administrative remedies.

SECTION 9. CONFIDENTIALITY REQUIREMENTS

(a) The disclosure to the Commissioner under this Act of a document, material, or information does not constitute the waiver of any applicable privilege or claim of confidentiality regarding the document, material, or information.

(b) Notwithstanding Subsection (a), an insurer may not be compelled to disclose a self-audit document or waive any statutory or common law privilege. An insurer may, however, voluntarily disclose a document described by this subsection to the Commissioner in response to any market conduct action or examination.

(c) For the purposes of Subsection (b), "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.

(d) The Commissioner may share documents, materials, or other information obtained by or disclosed to the Commissioner under this Act with other state, federal, and international regulatory agencies and law enforcement authorities if the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, or other information.

(e) The Commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and that association's affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The Commissioner shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(f) Consistent with this section, the Commissioner may enter into agreements governing the sharing and use of information.

Drafting note: State should consider the adoption of NCOIL's Insurance Compliance Self-Evaluative Privilege Model Act in conjunction with the Market Conduct Surveillance Model Act.

SECTION 10. MARKET CONDUCT SURVEILLANCE PERSONNEL

(a) To conduct market conduct surveillance under this Act, the Commissioner may designate department staff to perform duties under this Act, and may supplement that staff with qualified outside professional assistance if the Commissioner determines that that assistance is necessary.

(b) Market conduct surveillance personnel must be qualified by education and experience and, if applicable, must hold appropriate professional designations.

(c) An individual who is a member of the market conduct surveillance personnel has a conflict of interest, either directly or indirectly, if the individual is affiliated with the management of, has been employed by, or owns a pecuniary interest in an insurer subject to an examination conducted under this Act.

(d) Subsection (c) may not be construed to automatically preclude the individual from being:

- (1) a policyholder or claimant under an insurance policy;
- (2) a grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary course of business;
- (3) an investment owner in shares of regulated diversified investment companies; or
- (4) a settlor or beneficiary of a blind trust into which any otherwise permissible holdings have been placed.

(e) Market conduct surveillance personnel may examine insurance company personnel under oath if that action is ordered by the Commissioner under [appropriate state citation].

SECTION 11. SANCTIONS

(a) The Commissioner may impose sanctions under [appropriate state citation] against an insurer determined, as a result of a market conduct action or other action under this Act, to have violated this code, a rule adopted under this code, or another insurance law of this state.

(b) In determining an appropriate sanction under Subsection (a) the Commissioner shall consider:

- (1) any actions taken by the insurer to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the insurance marketplace; and
- (2) the extent to which the insurer maintains regulatory compliance programs to self-assess, selfreport, and remediate problems detected by the insurer.

SECTION 12. SEVERABILITY

If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of any provision to any person or circumstances other than those as to which it has been held invalid shall not be affected.

SECTION 13. RULE MAKING AUTHORITY

(a) The Commissioner may adopt rules that are consistent with and no more restrictive than this Act as is necessary for the implementation and enforcement of this Act.

(b) The Commissioner shall give notice and provide interested parties with an opportunity for public hearing as provided by [appropriate state citation].

SECTION 14. EFFECTIVE DATE

This Act shall take effect one hundred and twenty days (120) days after the governor's signature.

Adopted by the Commerce, Insurance and Economic Development Task Force at the States and Nation Policy Summit, December 10, 2006. Approved by the ALEC Legislative Board January, 2006.

Interstate Insurance Product Regulation Compact Resolution

WHEREAS, the states have successfully and effectively protected insurance consumers and ensured the safety and soundness of insurance companies operating in the United States for over 150 years; and

WHEREAS, the states have regulatory authority for the regulation of insurance as provided under the McCarran-Ferguson Act and as recently affirmed by the Gramm-Leach-Bliley Financial Services Modernization Act of 1999; and

WHEREAS, the American Legislative Exchange Council (ALEC) strongly believes that states should continue as regulators of the business of insurance, and

WHEREAS, governors, legislators, and insurance commissioners have acknowledged the need to streamline and simplify insurance regulation for the 21st century financial services marketplace and are enacting specific reforms to address differences in state laws and rules that can present obstacles to insurers, consumers' needs and market efficiencies; and

WHEREAS, Congress has called on states to streamline, simplify and modernize state insurance regulation or face federal action, including possible federal insurance regulation, which would preempt state laws, and would undermine state authority to protect insurance consumers; and

WHEREAS, the National Association of Insurance Commissioners (NAIC) has adopted model legislation for an Interstate Insurance Product Regulation Compact (Compact) to establish a voluntary, state-based system to receive, review and approve life insurance, annuity, disability income, and long term care insurance products that meet national uniform standards that member states would create; and

WHEREAS, the compact ensures broad participation by all member states, incorporates legislative involvement and oversight, encourages decisions through consensus, and protects states' authority to opt-out of uniform standards and, if necessary, to voluntarily withdraw from the compact; and

WHEREAS, ALEC believes that the Compact would help to preserve state regulation while raising insurance product standards, improving the quality of product review, and providing life insurance companies the regulatory efficiency that they need to compete in the 21st Century financial services marketplace.

NOW, THEREFORE, BE IT RESOLVED, THAT the American Legislative Exchange Council will continue to support state efforts to streamline, simplify and modernize insurance regulation and recommends the NAIC Interstate Insurance Product Regulation Compact Model Act to the states for their consideration and support; and

BE IT FURTHER RESOLVED, THAT a copy of this resolution along with the NAIC Compact Model Act be sent to state legislative leaders, the members of state legislative committees of interest, the nation's governors, the President of the United States, the Secretary of the Treasury, and the members of the 109th Congress.

Adopted by the CIED Task Force at the States and Nation Policy Summit in December, 2005. Approved by the ALEC Legislative Board January, 2006.

Resolution on the State Regulation of Insurance

Summary

The Resolution on the State Regulation of Insurance opposes any attempt by the federal government to regulate the insurance industry. Specifically, the Resolution calls on Congress to adopt a proportional liability scheme for cleaning up waste sites, giving states the maximum flexibility and capability to clean-up waste sites without passing clean-up costs to taxpayers through joint and several liability.

Model Resolution

WHEREAS, the American Legislative Exchange Council (ALEC) supports the continuation of state regulation of the insurance industry and opposes any attempt at federal preemption; and

WHEREAS, ALEC is opposed to any federal intrusion by Congress or the Administration which would adversely impact the solvency of state property and casualty insurance guaranty funds as well as life and health insurance guaranty funds. An insolvent insurer is a financial burden on a state's guaranty; and

WHEREAS, ALEC is also concerned with recent efforts to fashion a national solution to environmental waste problems that relies in part on a establishing a federal role in liability insurance and will oppose any federal plan for environmental liability and reinsurance which adversely impacts a state's ability to levy premium taxes, regulate the business of insurance and sets solvency standard for property and casualty; and

WHEREAS, in the same vein, ALEC is concerned that retroactive, strict, and joint and several liability schemes with regard to hazardous wastes and superfund sites may force untold financial responsibilities on property and casualty insurers. Under such liability schemes, property and casualty insurer could be forced into insolvency which will not only adversely impact other innocent policyholders but also could become a drain on state treasuries by requiring a financial bailout of potentially responsible parties by a state's taxpayers;

NOW, THEREFORE BE IT RESOLVED, that the State/Commonwealth of {insert state name} urges Congress to adopt a proportional liability scheme for conduct after 1987 which places liability on those most responsible for dumping waste. The liability scheme must provide maximum flexibility for states to certify capability to clean-up sites, encourage, not deter, reuse of industrial properties, and not pass clean-up costs indirectly onto state taxpayers under the scheme of joint and several liability which ALEC has consistently opposed; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to each member of Congress.

Adopted by the CIED Task Force November 16, 2007. Approved by the ALEC Legislative Board December 2007

Property/Casualty Insurance Modernization Act

Summary

This model bill establishes a use and file rate regulatory system for personal lines of insurance, a no-file system for commercial lines, and allows policies sold to large, sophisticated commercial insurance providers to be exempt from rate and regulatory requirements. This creates a more competitive and less onerous regulatory environment in the property/casualty insurance industry. This model is intended for consideration in insurance regulatory jurisdictions with a more restrictive rate filing and review system than outlined in the bill.

Model Legislation

Section 1. {Short Title} This act shall be known as the Property/Casualty Insurance Modernization Act.

Section 2. {Legislative Declaration} This legislature finds and declares that a modernized and competitive procedure be employed

- A. To promote price competition among insurers;
- B. To protect policyholders and the public against adverse effects of excessive, inadequate or unfairly discriminatory rates;
- C. To prohibit unlawful price fixing agreements by or among insurers;
- D. To authorize essential cooperative activities among insurers in the ratemaking process and to regulate such activities to prohibit practices that tend to substantially lessen competition or create monopolies; and
- E. To provide necessary regulatory authority in the absence of a competitive marketplace.

Drafting Note: This model is intended for consideration in insurance regulatory jurisdictions with a more restrictive rate filing and review system than outlined in this bill. States may also wish to consider implementing a competitive rating law that eliminates the regulatory rate filing process for all lines of insurance that are competitive.

Section 3. {Definitions}

- A. For the purpose of this Act, “Advisory organization” means any person or organization, which has five unrelated members and which assists insurers as authorized by section 11. It does not include joint underwriting organizations, actuarial or legal consultants, single insurer, any employees of an insurer, or insurers under common control or management of their employees or managers.
- B. For the purpose of this Act, “Classification system” or “classification” means the process of grouping risks with similar risk characteristics so that differences in costs may be recognized.
- C. For the purpose of this Act, “Commercial risk” means any kind of risk, which is not a personal risk.
- D. For the purpose of this Act, “Commissioner” means the Commissioner of Insurance of this state.
- E. For the purpose of this Act, “Competitive market” means any market except those that have been found to be non-competitive pursuant to section 5.
- F. For the purpose of this Act, “Developed losses” means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those which are anticipated to provide actual ultimate loss (including loss adjustment expense) payments.
- G. For the purpose of this Act, “Expenses” means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees.
- H. For the purpose of this Act, “Experience rating” means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder’s loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.
- I. For the purpose of this Act, “Joint underwriting” means an arrangement established to provide insurance coverage for a risk, pursuant to which two or more insurers contract with the insured for a price and policy terms agreed upon between or among the insurers.
- J. For the purpose of this Act, “Large Commercial Policyholder” is a commercial policyholder with the size, sophistication, and insurance-buying expertise to negotiate with insurers in a largely unregulated environment and which meets at least two of the following criteria:
- Drafting Note: The criteria for the definition of large commercial policyholder should be set so as to identify truly sophisticated policyholders. Criteria suggested include (1) aggregate premium on commercial policies held by the insured, including workers’ compensation, (2) number of employees, (3) annual net revenues or sales, (4) net worth, (5) annual budgeted expenditures for not-for profit organizations or a public body or agencies, or (6) population for municipalities.*
- K. For the purpose of this Act, “Loss adjustment expense” means the expenses incurred by the insurer in the course of settling claims.
- L. For the purpose of this Act, “Market” is the interaction between buyers and sellers consisting of a product market component and a geographic component. A product market component consists of identical or readily

substitutable products including but not limited to consideration of coverage, policy terms, rate classifications, and underwriting. A geographic market component is a geographical area in which buyers have a reasonable degree of access to insurance sales outlets. Determination of a geographic market component shall consider existing market patterns.

M. For the purpose of this Act, "Non-competitive market" means a market, which is subject to a ruling pursuant to Section 5 that a reasonable degree of competition does not exist, and, for the purposes of this Act, residual markets, and pools are non-competitive markets.

N. For the purpose of this Act, "Personal risk" means homeowners, tenants, nonfleet private passenger automobiles, mobile homes and other property and casualty insurance for person, family or household needs. This includes any property and casualty insurance that is otherwise intended for non-commercial coverage.

O. For the purpose of this Act, "Pool" means an arrangement pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate as an association, syndicate or in any other generally recognized manner.

P. For the purpose of this Act, "Prospective loss cost" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

Q. For the purpose of this Act, "Rate" means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.

R. For the purpose of this Act, "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment of risks among insurers for insurance that may be afforded applicants who are unable to obtain insurance through ordinary methods.

S. For the purpose of this Act, "Special assessments" means guaranty fund assessments, Special Indemnity Fund assessments, Vocational Rehabilitation Fund assessments, and other similar assessments. Special assessments shall not be considered as either expenses or losses.

T. For the purpose of this Act, "Supplementary rate information" means any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule and any other similar information needed to determine an applicable rate in effect or to be in effect.

U. For the purpose of this Act, "Supporting information" means (a) the experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer, (b) the interpretation of any statistical data relied upon by the filer, (c) a description of methods used in making the rates, and (d) other similar information relied upon by the filer.

V. For the purpose of this Act, "Trending" means any procedure for projecting losses to the average date of loss, or premiums or exposures to the average date of writing, for the period during which the policies are to be effective.

Section 4. {Scope}

A. This Act applies to all kinds of insurance written on risks in this state by any insurer authorized to do business in this state, except:

1. Life insurance;
2. Annuities;
3. Accident and health-insurance;
4. Ocean marine insurance;
5. Aircraft liability and aircraft hull insurance; and
6. Reinsurance.

Section 5. {Competitive Market}

A. A competitive market is presumed to exist unless the commissioner, after notice and hearing, determines that a reasonable degree of competition does not exist within a market and issues a ruling to that effect. Such ruling shall expire one year after issue unless rescinded earlier by the commissioner or unless the commissioner renews the ruling after a hearing and a finding as to the continued lack of a reasonable degree of competition. The commissioner shall consider all relevant structural factors in determining the competitiveness of the market, including: the number of insurers actively engaged in providing coverage; market shares; changes in market shares; and ease of entry.

B. The following factors shall be considered by the commissioner for purposes of determining if a reasonable degree of competition does not exist in a particular line of insurance.

1. the number of insurers or groups of affiliated insurers actively engaged in providing coverage;
2. measures of market concentration and changes of market concentration over time;
3. ease of entry and the existence of financial or economic barriers that could prevent new firms from entering the market;
4. The extent to which any insurer or group of affiliated insurers controls all or a portion of the market.
5. Whether the total number of companies writing the line of insurance in this state is sufficient to provide multiple options.
6. The disparity among insurance rates and classifications to the extent that such classifications result in rate differentials.
7. The availability of insurance coverage to consumers.
8. The opportunities available to consumers in the market to acquire pricing and other consumer information.
9. Other relevant factors.

C. The commissioner shall monitor the degree and continued existence of competition in this State on an on-going basis. In doing so, the commissioner may utilize existing relevant information, analytical systems and other sources; or rely on some combination thereof. Such activities may be conducted internally within the insurance department, in cooperation with other state insurance departments, through outside contractors and/or in any other appropriate manner.

Section 6. {Rating Standards and Methods}

A. Rates shall not be excessive, inadequate or unfairly discriminatory.

1. For the purpose of this Act, “Excessive” means a rate that is likely to produce a long-term profit that is unreasonably high for the insurance provided. No rate in a competitive market shall be considered excessive.

Drafting Note: Reflecting the well-accepted economic principle that costs and prices are driven downward by competition, insurance laws in seventeen (17) states do not allow a finding of excessiveness in a competitive market. Those seventeen (17) states are: Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Michigan, Missouri, Montana, Nevada, Oklahoma, Oregon, Vermont, Virginia, and Wyoming. Insurance laws in five (5) other states say that rates are “presumed” not to be excessive if there is a reasonable degree of competition. Those five (5) states are Arizona, Kansas, Minnesota, New Mexico, and Wisconsin.

2. For the purpose of this Act, “Inadequate” means a rate which is unreasonably low for the insurance provided and

- a. the continued use of which endangers the solvency of the insurers using it or
- b. will have the effect of substantially lessening competition or creating a monopoly in any market.

3. For the purpose of this Act, “Unfairly discriminatory” refers to rates that cannot be actuarially justified. It does not refer to rates that produce differences in premiums for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects such differences with reasonable accuracy. A rate is not unfairly discriminatory if it averages broadly among persons insured under a group, franchise or blanket policy, or a mass marketing plan. No rate in a competitive market shall be considered unfairly discriminatory unless it violates the provisions of section 6(B) in that they classify, or are based, in whole or in part on the basis of race, color, creed or national origin.

B. Risks may be classified in any way except that no risk may be classified in whole or in part on the basis of race, color, creed or national origin.

C. In determining whether rates in a non-competitive market are excessive, inadequate or unfairly discriminatory, consideration may be given to the following elements:

1. Basic Rate Factors. Due consideration shall be given to past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to events or trends within and outside of this state, to dividends or savings to policyholders, members or subscribers, and to all other factors and judgments deemed relevant by the insurer.
2. Classification. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified for individual risks in accordance with rating plans or schedules that establish standards for measuring probable variations in hazards or expenses, or both.
3. Expenses. The expense provisions shall reflect the operating methods of the insurer and its own past expense experience and anticipated future expenses.
4. Contingencies and Profits. The rates may contain a provision for contingencies and a provision for a reasonable underwriting profit, and may reflect investment income directly attributable to unearned premium and loss reserves.
5. Other relevant factors. Any other factors available at the time of hearing.

Section 7. {Rate Regulation in a Market Determined to be Non-competitive}

- A. If the commissioner determines that competition does not exist in a market and issues a ruling to that effect pursuant to section 5, the rates applicable to insurance sold in that market shall be regulated in accordance with the provisions of section 6 through 9 applicable to non-competitive markets.
- B. Any rate filing in effect at the time the commissioner determines that competition does not exist pursuant to section 5 shall be deemed to be in compliance with the laws of this state unless disapproved pursuant to the procedures and rating standards contained in sections 6 through 9 applicable to non-competitive markets.
- C. Any insurer having a rate filing in effect at the time the commissioner determines that competition does not exist pursuant to section 5 may be required to furnish supporting information within 30 days of a written request by the commissioner.

Section 8. {Filing of Rates, Supplementary Rate Information and Supporting Information}

A. Filings in Competitive Markets. For personal lines, every insurer shall file with the commissioner all rates and supplementary rate information to be used in this state no later than 30 days after the effective date; provided, that such rates and supplementary rate information need not be filed for inland marine risks which by general custom are not written according to manual rules or rating plans.

B. Filings in Non-competitive Markets

1. Every insurer shall file with the commissioner all rates, supplementary rate information and supporting information for non-competitive markets at least 30 days before the proposed effective date. The commissioner may give written notice, within 30 days of the receipt of the filing, that the commissioner needs additional time, not to exceed 30 days from the date of such notice to consider the filing. Upon written application of the insurer, the commissioner may authorize rates to be effective before the expiration of the waiting period or an extension thereof. A filing shall be deemed to meet the requirements of this Act and to become effective unless disapproved pursuant to section 9 by the commissioner before the expiration of the waiting period or an extension thereof. Residual market mechanisms or advisory organizations may file residual market rates.
2. The filing shall be deemed in compliance with the filing provisions of this section unless the commissioner informs the insurer within 10 days after receipt of the filing as to what supplementary rate information or supporting information is required to complete the filing.

C. Reference Filings. An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization on behalf of the insurer as permitted by Section 11.

D. Filings Open to Inspection. All rates, supplementary rate information and any supporting information filed under this Act shall be open to public inspection once they have been filed. Copies may be obtained from the commissioner upon request and upon payment of a reasonable fee.

E. Consent to Rate. Notwithstanding any other provisions of this section, upon written application of the insured, stating the reason therefore, a rate in excess of or below that otherwise applicable may be used on any specific risk.

Section 9. {Disapproval of Rates}

A. Bases for Disapproval

1. The commissioner shall disapprove a rate in a competitive market only if the commissioner finds pursuant to subsection (B) of this section that the rate is inadequate or unfairly discriminatory.
2. The commissioner may disapprove a rate for use in a non-competitive market only if the commissioner finds pursuant to subsection (B) of this section that the rate is excessive, inadequate or unfairly discriminatory.

B. Procedures for Disapproval

1. Prior to the expiration of the waiting period or an extension thereof of a filing made pursuant to section 8, subsection (B), the commissioner may disapprove by written order rates filed pursuant to section 8, subsection (B) without hearing. The order shall specify in what respects such filing fails to meet the requirements of this Act. Any insurer whose rates are disapproved under this section shall be given a hearing upon written request made within 30 days of disapproval.
2. If, at any time, the commissioner finds that a rate applicable to insurance sold in a non-competitive market does not comply with the standards set forth in section 6, the commissioner may, after a hearing held upon not less than 20 days written notice, issue an order pursuant to subsection 9(C) disapproving such rate. The Hearing notice shall be sent to every insurer and advisory organization, which adopted the rate and shall specify the matters to be considered at the hearing. The disapproval order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order. However, a policyholder shall have the privilege to cancel the policy containing the disapproved rates without penalty (i.e., obtain return premium calculated according to company pro-rata schedules or waiver of minimum premium earned stipulations).
3. If, at any time, the commissioner finds that a rate applicable to insurance sold in a competitive market is inadequate or unfairly discriminatory, the commissioner may issue an order pursuant to subsection 9(C) disapproving the rate. Said order shall not affect any contract or policy made or issued prior to the expiration period set forth in said order. However, a policyholder shall have the privilege to cancel the policy containing the disapproval rates without penalty (i.e., obtain return premium calculated according to company pro-rata schedules or waiver of minimum premium earned stipulations).

C. Order of Disapproval. If the commissioner disapproves a rate pursuant to subsection (B) of this section, the commissioner shall issue an order within 30 days of the close of the hearing specifying in what respects such rate fails to meet the requirements of this Act. The order shall state an effective date no sooner than 30 business days after the date of the order when the use of such rate shall be discontinued. This order shall not affect any policy made before the effective date of the order. However, a policyholder shall have the privilege to cancel the policy containing the disapproval rates without penalty (i.e., obtain return premium calculated according to company pro-rata schedules or waiver of minimum premium earned stipulations).

D. Appeal of Orders; Establishment of Reserves. If an order of disapproval is appealed pursuant to section 19, the insurer may implement the disapproved rate upon notification to the court, in which case any excess of the disapproved rate over a rate previously in effect shall be placed in a reserve established by the insurer. The court shall have control over the disbursement of funds from such reserve. Such funds shall be distributed as determined by the court in its final order except that de minimus refunds to policyholders shall not be required.

Section 10. {Large Commercial Policyholder}

A. A policy of insurance sold to a "Large Commercial policyholder," as defined in Section 3(J) shall not be subject to the requirements of this chapter, including but not limited to, Sections 5, 6, 7, 8, and 9. The forms and endorsements for any policy sold to a "Large Commercial Policyholder" shall not be subject to filing and approval requirements of (reference form filing and approval provisions plus other applicable provisions).

B. All policies issued pursuant to the provisions of this section shall contain a conspicuous disclaimer printed in at least ten-point, bold-faced type that states that the policy applied for (including the rates, rating plans, resulting premiums, and the policy forms) is not subject to the rate and form requirements of this state and other provisions of the insurance law that apply to other commercial products and may contain significant differences from a policy that is subject to all provisions of the insurance law. Such notice shall set forth possible differences in policy conditions, forms, and endorsements, as compared to a policy that is subject to all of the provisions of the insurance law. The format and provisions of such notice shall be prescribed by the commissioner. The disclosure notice will also include a policyholder's acknowledgement statement, to be signed and dated prior to the effective date of the coverage, and shall remain on file with the insurer.

C. In procuring insurance, a large commercial policyholder shall certify on a form approved by the department of insurance that it meets the eligibility requirements set out in Section 10(A) and specify the requirements that the policyholder has met. This certification is to be completed annually and remain on file with the insurer.

D {Optional}. A surplus lines broker seeking to obtain or provide insurance for a "Large Commercial Policyholder" is authorized to purchase insurance from any eligible unauthorized insurer without making a diligent search of authorized insurers as required by (applicable surplus lines law).

Section 11. {Operation and Control of Advisory Organizations}

A. License Required. No advisory organization shall provide any service relating to the rates of any insurance subject to this Act, and no insurer shall utilize the services of such organization for such purposes, unless the organization obtained a license under this section.

B. Availability of Services. No advisory organization shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

C. Licensing.

1. Application. An advisory organization applying for a license shall include with its application:

- a. A copy of its constitution, charter, articles of association or incorporation, bylaws and any other rules or regulations governing the conduct of its business;
- b. A list of its members and subscribers;
- c. The name and address of one or more residents of this state whom notices, process affecting it or orders of the commissioner may be served;
- d. A statement showing its technical qualifications for acting in the capacity for which it seeks a license;
- e. A biography of the ownership and management of the organization; and
- f. Any other relevant information and documents that the commissioner may require.

2. Change in Circumstances. Every organization, which has applied for a license, shall promptly notify the commissioner of every material change in the facts or in the documents on which its application was based.

3. Granting of License. If the commissioner finds that the applicant and the natural persons through which it acts are competent, trustworthy and technically qualified to provide the services proposed, and

that all requirements of law are met, the commissioner shall issue a license specifying the authorized activity of the applicant.

4. Duration. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked. The commissioner may at any time, after a hearing, revoke or suspend the license of an advisory organization that does not comply with the requirements and standards of this Act.

Section 12. {Advisory Organizations: Permitted Activity}

A. Any advisory organization in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to:

1. Develop statistical plans including but not limited to territorial and class definitions,
2. Collect statistical data from members, subscribers or any other sources;
3. Prepare and distribute prospective loss costs that may include provisions for special assessments and taxes;
4. Prepare and distribute factors, calculations or formulas pertaining to classification, territory, increased limits and other variables;
5. Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions or minimum premiums;
6. Distribute information that is required or directed to be filed with the commissioner;
7. Conduct research and on-site inspections in order to prepare classifications of public fire defenses and other exposures;
8. Consult with public officials regarding public fire protection as it would affect members, subscribers and others;
9. Conduct research and collect statistics in order to discover, identify and classify information relating to causes or prevention of losses;
10. Conduct research and collect information relating to the impact of statutory changes upon prospective loss costs and special assessments;
11. Prepare, file and distribute policy forms and endorsements and consult with members, subscribers and others relative to their use and application;
12. Conduct research and on-site inspections for the purpose of providing risk information relating to individual risks;
13. Conduct on-site inspections to determine rating classifications for individuals;
14. Collect, compile and distribute past and current prices of individual insurers and publish such information provided such information is also made available to the general public for a reasonable price;
15. Collect and compile exposure and loss experience for the purpose of individual risk experience ratings.

16. File final rates, at the direction of the commissioner, for residual market mechanisms;

17. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

Section 13. {Advisory Organizations: Prohibited Activity}

A. Except as specifically permitted under this act, no advisory organization shall compile or distribute recommendations relating to rates that include expenses (other than loss adjustment expenses) or profit.

B. No insurer or advisory organization shall attempt to monopolize or combine or conspire with any other person to monopolize an insurance market in this state. No insurers or advisory organization shall engage in a boycott, on a concerted basis, of an insurance market.

C. Except as otherwise provided in this Act, no insurer shall agree with any other insurer, or with an advisory organization, to adhere to or use any rate, supplementary rate information, policy, surveys, inspections or similar material except as needed to develop statistical plans or facilitate the reporting of statistics pursuant to this act.

D. The fact that two or more insurers, whether or not members or subscribers of any advisory organization, use consistently or intermittently the same rates, supplementary rate information policy or bond forms, surveys, inspections or similar materials is not sufficient in itself to support a finding that an illegal agreement exists and may be used only for the purpose of supplementing or explaining other direct evidence of the existence of any such agreement.

E. Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to activities authorized in this Act as if they constituted a single insurer.

Section 14. {Records and Reports; Exchange of Information}

A. Insurers and advisory organizations shall file with the commissioner, and the commissioner shall review, reasonable rules and plans for recording and reporting of loss and expense experience. The commissioner may designate one or more advisory organizations to assist in gathering such experience and making compilations thereof. Except for subsection (C) of this section, no insurer shall be required to record or report its experience in a manner inconsistent with its own rating system.

B. The commissioner and every insurer and advisory organization may exchange information and experience data with insurance regulatory officials, insurers, and advisory organization in this and other states and may consult with them with respect to the collection of statistical data and the application of rating systems.

C. Each workers' compensation insurer shall adhere to the uniform classification system and uniform experience rating plan as submitted to the commissioner by the advisory organization. An insurer may develop subclassifications of the uniform classification system, upon which a rate may be made; provided, however, that such subclassifications must be filed on an informational basis only with the commissioner 30 days prior to their use. The commissioner shall disapprove subclassifications only if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform statistical plan and classification system. Each workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by the advisory organization designated by the commissioner. The advisory organization shall develop and file rules reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system.

Section 15. {Joint Underwriting, Pool and Residual Market Activities}

A. Acting in Concert. Notwithstanding the provisions of section 12, insurers participating in joint underwriting, pools or residual market mechanisms may act in cooperation with each other in the making of rates, rating systems, supplementary rate information, policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information and conducting research. Joint underwriting, pools and residual market mechanisms shall not be deemed advisory organizations.

B. Regulation

1. If, after notice and hearing, the commissioner finds that any activity or practice of an insurer participating in a joint underwriting or pooling mechanism is unfair or unreasonable, will tend to substantially lessen competition in any market or is otherwise inconsistent with the provisions or purposes of this Act and all other applicable statutes, the commissioner may issue a written order specifying in what respects such activity or practice is unfair, unreasonable, anti-competitive or otherwise inconsistent with the provisions of this Act and all other applicable statutes, and require the discontinuance of such activity or practice.
2. Every pool shall file with the commissioner a copy of its constitution, articles of incorporation, agreement or association, bylaws, rules and regulations governing activities, its members, the name and address of a resident of this state upon whom notices, process and orders of the commissioner may be served and any changes or modifications thereof.
3. Any residual market mechanism, plan or agreement to implement such a mechanism, and any changes or amendments thereto, shall be submitted in writing to the commissioner for approval, together with such information as may be reasonably required. The commissioner shall approve such agreements if they foster (i) the use of rates that meet the standards prescribed by this Act and all other applicable statutes and (ii) activities and practices not inconsistent with the provisions of this Act and all other applicable statutes.
4. The commissioner may review the operations of all residual market mechanisms to determine compliance with the provisions of this Act and all other applicable statutes. If, after a notice of hearing, the commissioner finds that such mechanisms are violating the provisions of this Act and all other applicable statutes, the commissioner may issue a written order to the parties involved specifying in what respects such operations violate the provisions of this Act and all other applicable statutes. The commissioner may further order the discontinuance or elimination of any such operation.

Section 16. {Assigned Risks}

A. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner.

Note: This section is to be included if the current provision authorizing agreements for the assigned risk or other residual market is repealed with current rating law. You may wish to pick up current state provisions.

Section 17. {Examinations}

A. The commissioner may examine any insurer, pool, advisory organization, or residual market mechanism to ascertain compliance with this Act.

B. Every insurer, pool, advisory organization, and residual market mechanism shall maintain adequate records from which commissioner may determine compliance with the provisions of this Act. Such records shall contain

the experience, data, statistics and other information collected or used and shall be available to the commissioner for examination or inspection upon reasonable notice.

C. The reasonable cost of an examination made pursuant to this section shall be paid by the examined party upon presentation to it of a detailed account of such costs.

D. The commissioner may accept the report of an examination made by the insurance supervisory official of another state in lieu of an examination under this section.

Section 18. {Exemptions}

A. The commissioner may, after public notice and hearing, exempt any line of insurance from any or all of the provisions of this Act for the purpose of relieving such line of insurance from filing or any otherwise applicable provisions of this Act.

Section 19. {Dividends}

A. Nothing in this Act shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

Section 20. {Penalties}

A. The commissioner may impose after notice and hearing a penalty determined in accordance with (refer to appropriate penalties provision)

B. Technical violations arising from systems or computer errors of the same type shall be treated as a single violation. In the event of an overcharge, if the insurer makes restitution including payment of interest, no penalty shall be imposed.

C. The commissioner may suspend or revoke the license of any insurer, advisory organization, or statistical agent that fails to comply with an order of the commissioner within the time prescribed by such order, or any extension thereof that the commissioner may grant.

D. The commissioner may determine when a suspension of license shall become effective and the period of such suspension, which the commissioner may modify or rescind in any reasonable manner.

E. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his or her findings, made after notice and hearing.

Section 21. {Judicial Review}

A. Any order, ruling, finding, decision or other act of the commission made pursuant to this Act shall be subject to judicial review in accordance with (cite applicable provisions of state civil practice act)

Section 22. {Notice and Hearing}

A. Notice Requirements. All notices rendered pursuant to the provisions of this act shall be in writing and shall state clearly the nature and purpose of the hearing. All relevant facts, statutes and rules shall be specified so that respondent(s) are fully informed of the scope of the hearing, including specific allegations, if any. If a hearing is required, all notices shall designate a hearing date at least 14 days from the date of the notice, unless such minimum notice period is waived by respondents.

B. Hearings. All hearings pursuant to the provisions of this act shall be conducted in accordance with (cite applicable provisions of Administrative Procedures Act) to the extent such provisions are consistent with the procedural requirements contained in this act.

Section 23. {Severability} If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 24. {Effective Date} The provisions of this Act become effective _____ months after the enactment.

Adopted by the CIED Task Force at the States and Nation Policy Summit in December, 2000. Approved by the ALEC Legislative Board January, 2001.

Act Regarding the Use of Credit Information in Personal Insurance

Section 1. {Short Title This} Act may be called the Model Act Regarding Use of Credit Information in Personal Insurance.

Section 2. {Purpose} The purpose of this Act is to regulate the use of credit information for personal insurance, so that consumers are afforded certain protections with respect to the use of such information.

Section 3. {Scope} This Act applies to personal insurance and not to commercial insurance. For purposes of this Act, "personal insurance" means private passenger automobile, homeowners, motorcycle, mobile-homeowners and non-commercial dwelling fire insurance policies [and boat, personal watercraft, snowmobile and recreational vehicle policies]. Such policies must be individually underwritten for personal, family or household use. No other type of insurance shall be included as personal insurance for the purpose of this Act.

Section 4. {Definitions} For the purposes of this Act, these defined words have the following meaning:

A. Adverse Action—A denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of personal insurance.

B. Affiliate—Any company that controls, is controlled by, or is under common control with another company.

C. Applicant—An individual who has applied to be covered by a personal insurance policy with an insurer.

D. Consumer—An insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.

E. Consumer Reporting Agency—Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

F. Credit Information—Any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related shall not be considered "credit information," regardless of whether it is contained in a credit report or in an application, or is used to calculate an insurance score.

G. Credit Report—Any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

H. Insurance Score—A number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured. When used herein, the provisions of this Act pertaining to insurance scores shall apply only to the credit information that is used to calculate such scores and shall not apply to any information that is not credit-related.

Section 5. {Use of Credit Information} An insurer authorized to do business in [insert State] that uses credit information to underwrite or rate risks, shall not:

A. Use an insurance score that is calculated using income, gender, address, ethnic group, religion, marital status, or nationality of the consumer as a factor.

B. Deny, cancel or nonrenew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information. An insurer shall not be considered to have denied, cancelled or nonrenewed a policy if coverage is available through an affiliate.

C. Base an insured's renewal rates for personal insurance solely upon credit information, without consideration of any other applicable factor independent of credit information. An insurer shall not be considered to have based rates solely on credit information, if coverage is available in a different tier of the same insurer.

D. Take an adverse action against a consumer solely because he or she

does not have a credit card account, without consideration of any other applicable factor independent of credit information.

E. Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

1. Treat the consumer as otherwise indicated to the Insurance Commissioner/ Supervisor/Director, if the insurer presents information that such an absence or inability relates to increased risk for the insurer.
2. Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.
3. Exclude the use of credit information as a factor and use only other underwriting criteria.

F. Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date the policy is first written or renewal is issued.

G. Use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection:

1. At annual renewal the insurer shall re-underwrite and re-rate the policy based upon a current credit report or insurance score upon the request of a consumer or the consumer's agent. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period.

2. The insurer shall have the discretion to obtain current credit information upon any renewal before the 36 months, if consistent with its underwriting guidelines.

3. No insurer need obtain current credit information for an insured, despite the requirements of subsection (G)(1), if one of the following applies:

(a) The insurer is treating the consumer as otherwise approved by the Commissioner.

(b) The insured is in the most favorably-priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to order such report, if consistent with its underwriting guidelines.

(c) Credit was not used for such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for such insured upon renewal, if consistent with its underwriting guidelines.

(d) The insurer re-evaluates the insured beginning no later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

H. Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

1. Credit inquiries not initiated by the consumer. The prohibition under this subsection shall not apply to inquiries initiated at the consumer's request.

2. Inquiries relating to insurance coverage, if so identified on a consumer's credit report.

3. Collection accounts with a medical industry code, if so identified on the consumer's credit report.

4. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.

5. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

Section 6. {Dispute Resolution and Error Correction} If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

Section 7. {Initial Notification}

A. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy, if such consumer has previously been provided a disclosure statement.

B. Use of the following example disclosure statement constitutes compliance with this section: “In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.”

Section 8. {Adverse Action Notification} If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of both (A) and (B) of this subsection. Such insurer shall:

A. Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 USC 1681m(a).

B. Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer’s decision to take an adverse action. Such notification shall include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as “poor credit history,” “poor credit rating,” or “poor insurance score” does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this section.

Section 9. {Filing}

A. Insurers that use insurance scores to underwrite and rate risks must file their scoring models (or other scoring processes) with the Department of Insurance. A third party may file scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information.

B. Any filing relating to credit information is considered trade secret under [cite to the appropriate state law].

Section 10. {Indemnification}

A. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of [an agent / a producer] who obtains or uses credit information and/or insurance scores for an insurer, provided the [agent / producer] follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

Section 11. {Sale of Policy Term Information by Consumer Reporting Agency}

A. No consumer reporting agency shall provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer’s credit information or a request for a credit report or insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer’s insurance may expire and the terms and conditions of the consumer’s insurance coverage.

B. The restrictions provided in subsection (A) of this section do not apply to data or lists the consumer reporting agency supplies to the insurance [agent / producer] from whom information was received, the insurer on who’s behalf such [agent / producer] acted, or such insurer’s affiliates or holding companies.

C. Nothing in this section shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Section 12. {Severability} If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the

remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

Section 13. {Effective Date} This Act shall take effect on [insert date], applying to personal insurance policies either written to be effective or renewed on or after 9 months from the effective date of the bill.

Adopted by the CIED Task Force at the Spring Task Force Summit, March 29, 2003. Approved by the ALEC Legislative Board April 2003.

Resolution on the National Association of Insurance Commissioners

Summary

The Resolution on the National Association of Insurance Commissioners (NAIC) opposes the NAIC's current accreditation process and urges the NAIC to remain an advisor organization which does not attempt to use sanctions to force legislative action. Furthermore, the Resolution calls on the NAIC to create a mechanism whereby legislators are allowed to participate in the organization and provide input on legislative matters.

Model Resolution

WHEREAS, states have the primary responsibility for regulating the business of insurance through laws and regulations; and

WHEREAS, the current accreditation process of the National Association of Insurance Commissioners (NAIC) infringes on that responsibility; and

WHEREAS, the NAIC has opened its plenary and executive committee meetings and conference calls and will re-examine its accreditation and seek input from state legislators; and

WHEREAS, the NAIC is not a policy making body and should leave broad public policy decisions to state legislators; and

WHEREAS, the resolution of these issues hinges on the appropriate definition of the NAIC's functions and funding mechanisms;

NOW, THEREFORE BE IT RESOLVED, that the State/Commonwealth of {insert state name} congratulates the NAIC on taking steps toward openness, accreditation system improvements, appropriate self definition and suitable funding, the State/Commonwealth of {insert state name} encourages the NAIC to continue as an advisory organization state insurance commissioners and opposes designation of the NAIC as an entity authorized to exercise regulatory authority; and

BE IT FURTHER RESOLVED, that the State/Commonwealth of {insert state name} urges the NAIC to not use accreditation sanctions as a means to force legislative actions; and

BE IT FURTHER RESOLVED, that the State/Commonwealth of {insert state name} encourages the NAIC to create, within its organization, a legislative participation board for state legislators; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to each state insurance commissioner, the NAIC and the National Governor's Association (NGA).

Resolution Opposing "Pay at the Pump" Automobile Insurance

Summary

"Pay at the pump" plans would replace the present personal choice automobile insurance market with a government program. Each car would be covered by basic auto insurance upon registration and issuance of license tags through higher registration and tag fees, and the state would use the proceeds of a gasoline surtax of up to 50 cents per gallon to pay for future claims. States would contract with insurance companies to handle claims, and insurance companies would compete in bidding to insure blocks of motorists. Individuals could exercise choice of package provided and, because of duplication in coverage and lower volumes, the cost of extra coverage would increase.

The "Pay at the pump" plan rejects consumer choice and the relationship between risk and price would result in careful drivers subsidizing accident prone drivers and rural drivers subsidizing urban drivers.

Model Resolution

WHEREAS "pay at the pump" would impose increased automobile registration and license tag fees and a gasoline surtax to provide basic automobile insurance coverage for all registered cars; and

WHEREAS "pay at the pump" would replace the present personal choice automobile insurance market with a government program; and

WHEREAS the price of auto insurance varies by car, driver experience, and area based on differences in risk; and

WHEREAS "pay at the pump" would increase the price of auto insurance for those who consume the most gasoline, regardless of risk; and

WHEREAS the present insurance system rewards careful drivers through lower premiums by providing a financial incentive for all drivers to adhere to the rules and regulations of traffic safety to avoid higher premiums; and

WHEREAS "pay at the pump" would create a situation in which safe drivers would subsidize insurance costs for poor drivers; and

WHEREAS rural and suburban drivers travel further distances and use more gasoline per capita than other drivers; and

WHEREAS "pay at the pump" would force rural and suburban drivers to subsidize insurance costs for other drivers; and

WHEREAS "pay at the pump" is unnecessary because many current automobile insurance policies already take account to an appropriate extent the relation between miles driven and risks; and

WHEREAS generally larger cars, which consume large amounts of fuel, are safer than smaller more fuel efficient cars; and

WHEREAS "pay at the pump" would cause drivers of safer cars to subsidize drivers of smaller cars; and

WHEREAS motorists could avoid the cost of insurance but still maintain coverage by buying gasoline from a state that did not have a "pay at the pump" system; and

WHEREAS "pay at the pump" applied to all motor fuels would force a "one size fits all" insurance financing program on cars, trucks, boats, busses, and users of non-petroleum fuels;

NOW THEREFORE, BE IT RESOLVED that the American Legislative Exchange Council opposes "pay at the pump" programs as a means to provide automobile insurance; and

BE IT FURTHER RESOLVED that the American Legislative Exchange Council supports competition and the operation of free markets in the insurance industry as the most effective means of guaranteeing quality service for the lowest price.

1995 Sourcebook of American State Legislation

The Uninsured Motorist Stipulation of Benefits Act

Summary

This bill is designed to reduce the number of uninsured motorists and to protect those who do comply with the fiscal responsibility laws from lawsuits by uninsured motorists.

Model Legislation

Section 1. {Title.} This Act may be cited as The Uninsured Motorist Stipulation of Benefits Act.

Section 2. {Legislative finding and declaration.}

(A) It is the policy of this state that an uninsured motorist shall be deemed to have waived his or her right to recover for noneconomic loss from a motorist who carries the statutorily required automobile insurance in the event of an accident unless the accident was caused by the (tortfeasor's/ insured motorist's) use of alcohol or other drugs.

(B) If an uninsured motorist is awarded damages against a (tortfeasor/ insured motorist), it shall require the deduction of the portion of the award representing compensation for noneconomic losses and prohibits informing the trier of the fact of such deduction.

Section 3. {Statement of Purpose.}

(A) An owner and operator of a motor vehicle who operates the motor vehicle on the public highways of this state, or who knowingly permits the operation of the motor vehicle on the public highways of this state, who fails to have in full force and effect a complying liability policy providing at least the minimum liability coverage required by the state and covering said motor vehicle at the time of an accident, shall:

- (1) be deemed to have waived any right to recover against a complying policyholder for non-economic loss; and
- (2) recover, if at all, only for an award covering economic loss; and

(3) such waiver shall not apply if it can be demonstrated by clear and convincing evidence that the accident was caused, wholly or in part, by a tortfeasor's operating a motor vehicle under the influence of drugs or alcohol, or who is convicted of vehicular assault or homicide.

(B) In an action against a complying policyholder by a person deemed to have waived recovery under subsection (A) of this section:

(1) Any award in favor of such person shall be reduced by an amount equal to the portion of the award representing compensation for noneconomic losses.

(2) The trier of fact shall not be informed, directly or indirectly, of such waiver or of its effect on the total amount of said person's recovery.

(C) Nothing in this Act shall be construed to preclude recovery against an alleged tort-feasor of benefits provided or economic loss coverage.

(D) There is a rebuttable presumption of a knowing violation of the minimum insurance requirements contained in subsection (A) of this section, if said insurance has lapsed, terminated, or otherwise been ineffective for a period of at least 30 days prior to the accident.

(E) Passengers in the uninsured vehicle are not subject to this waiver.

Section 4. {Safety clause.} The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Section 5. {Severability clause.}

Section 6. {Repealer clause.}

Section 7. {Effective date.}

1995 Sourcebook of American State Legislation

Transportation and Infrastructure

Resolution to Repeal Special Privileges in Transit

Summary

ALEC's model Resolution to Repeal Special Privileges In Transit would reduce or eliminate costly special privileges that grant transit workers benefits and provisions above the vast majority of American workers.

Model Resolution

WHEREAS, the nation faces serious problems of urban traffic congestion and air pollution; and

WHEREAS, substitution of transit trips by automobile drivers reduces traffic congestion and air pollution; and

WHEREAS, substitution of transit trips by automobile drivers has been a principal policy justification for spending more than \$200 billion to subsidize transit operations and construct expensive rail systems; and

WHEREAS, a great percentage of traffic congestion and air pollution is attributable to the journey to work; and

WHEREAS, overwhelming evidence indicates that the percentage of people using transit for the work trip continues to decline, with market share decreases between 1980 and 1990 of more than 30 percent in half of the nation's metropolitan areas with more than one million people, and market share increases in only two of the largest 39 metropolitan areas; and

WHEREAS, public transit unit costs have risen well in excess of inflation, despite evidence that unit costs in similar private and public industries have declined relative to inflation; and

WHEREAS, public transit's extraordinary cost escalation required cancellation of services that reduced transit ridership and has precluded the establishment of additional services that might have increased public transit's market share; and

WHEREAS, public transit's extraordinary cost escalation is at least partially attributable to the onerous provisions and administration of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended; and

WHEREAS, Section 13(c) provides special privileges for public transit workers far in excess of the rights of other workers, thereby serving a private, rather than a public purpose; and

WHEREAS, Section 13(c) has been administered by the U.S. Department of Labor in such a manner that it has created disincentives for public transit organizations to implement innovative programs that would cost effectively improve mobility,

NOW THEREFORE BE IT RESOLVED, that the legislature requests that the Congress of the United States repeal Section 13(c) at the earliest possible opportunity, making transit workers subject to the same body of labor law as applies to the vast majority of American workers; and

BE IT FURTHER RESOLVED, that pending repeal of Section 13(c), the Legislature requests that the President instruct the Secretary of Labor to not impose labor provisions that are greater than the law requires; and

BE IT FURTHER RESOLVED, that pending repeal of Section 13(c), the Legislature requests that the President instruct the Secretary of Labor to not extend Section 13(c) privileges beyond the extent of federal funding; and

BE IT FURTHER RESOLVED, that pending repeal of Section 13(c), the Legislature requests that the President instruct the Secretary of Labor to require that any compensation or other remedy under Section 13(c) be denied unless harm is a sole and direct consequence of the receipt of a particular federal grant; and

BE IT FURTHER RESOLVED, that the Clerk of both Houses of the Legislature transmit copies of this resolution to the President of the United States, the Vice President of the United States, the Speaker of the United States House of Representatives.

Resolution to Eliminate the Clean Air Act's Employee Trip Reduction Provision

Summary

ALEC's model calls for an amendment to the Clean Air Act Amendments of 1990; the Provision in the Clean Air Act which calls for an Employee Trip Reduction should be changed to an option in each state's implementation plan.

Model Resolution

WHEREAS, through the federal Clean Air Act and its amendments, the states are required to undertake various mandated steps to reduce air pollution and come into compliance with federal law; and

WHEREAS, a balance must be struck between the steps to be taken to reduce air pollution and the adverse impact those steps may have upon each state's economy, business climate, and cost of government; and

WHEREAS, under the Clean Air Act Amendments of 1990, the states classified as "extreme" or "severe" non-attainment areas are required to adopt employee commute options and trip reduction laws; and

WHEREAS, companies having one hundred or more employees who will be required to adopt employee trip reduction strategies will in effect be imposing onerous and burdensome travel restrictions on the employees of companies; and

WHEREAS, the federal government has launched this ill-conceived initiative through the Clean Air Act and its amendments, modeled after California legislation; and

WHEREAS, the ineffectiveness and huge cost of California's program are now coming to the surface; and

WHEREAS, trip reduction efforts have cost California between \$136 and \$197 million per year; and

WHEREAS, the costs experienced by California amount to approximately \$3,000 per car taken off the road and \$232 per employee; and

WHEREAS, the United States Environmental Protection Agency has estimated that it will cost the economies of just the ten "extreme" and "severe" non-attainment areas a staggering \$1.5 billion per year or \$337 per employee, and

WHEREAS, the United States General Accounting Office estimates that trip reduction programs will only yield a one to three percent reduction in vehicle traffic which will be quickly reversed by expected urban growth; and

WHEREAS, any resulting benefits from mandatory carpooling will be short-lived at best and will never meet the goals of the Clean Air Act, as the California experience, the General Accounting Office studies, and urban growth have demonstrated; and

WHEREAS, the General Accounting Office believes that virtually none of the trip reduction measures called for in the Clean Air Act will significantly reduce emissions; and

WHEREAS, recent studies cited by Transportation Quarterly indicate that not more than nine percent of all cars are responsible for as much as fifty percent of automotive emissions; and

WHEREAS, the General Accounting Office has concluded that the existing models used to predict emission reductions for trip reduction measures cannot be counted on with confidence to estimate actual reductions; and

WHEREAS, there is no data or analysis to demonstrate that the Clean Air Act mandates will accomplish the trip and emission reduction mandated in the Clean Air Act; and

WHEREAS, it is obvious to every employer, employee, governmental entity, and the General Accounting Office that the costs and results of the mandated trip reduction measures do not justify the economic and social hardships which occur in non-attainment areas if employment trip reduction mandates continue as part of the Clean Air Act; and

WHEREAS, despite the fact that other avenues may be available which would result in, among other things, the elimination of the federal mandate for a vehicle reduction program, it is imperative that the path chosen not result in the disruption of many critical and environmentally desirable programs along with the desired elimination of such a program; and

WHEREAS, it is in the best interests of the employees and the employers to chose the course of action which is directed toward accomplishing one thing - the elimination of the federally mandated vehicle trip reduction program; and

NOW THEREFORE BE IT RESOLVED, by the American Legislative Exchange Council that the United States Congress is strongly urged to adopt an amendment to the Clean Air Act Amendments of 1990 to eliminate the provisions that mandate an Employer Trip Reduction Program in "extreme" and "severe" non-attainment areas and, in lieu thereof, leave such a program as an option to be implemented by the states based on relative costs, timing and benefits of such a program.

BE IT FURTHER RESOLVED, that every state legislative body join in this effort by adopting a similar Resolution.

BE IT FURTHER RESOLVED, that a copy of this Resolution be forwarded to each and every member of the Congress of the United States and each house of the Legislature of each State.

ALEC's Sourcebook of American State Legislation 1995

Intermodal Policy Resolution

Summary

ALEC's Intermodal Policy Resolution supports the goal of an integrated transportation system that provides and enhances the Nation's system of moving freight and people.

Model Resolution

WHEREAS, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 recognizes the unique contributions of each transportation mode to the productivity of the States and the Nation, and to the ability of this nation to compete globally in the merging and existing international economies; and

WHEREAS, the National Intermodal Transportation System policy declaration in ISTEA contemplates an integrated transportation system for the movement of both freight and people, with increased emphasis on

adopting technologies that improve productivity; and

WHEREAS, ISTEA recognizes the limitations of each mode in the seamless delivery of freight and people, and has promoted mechanisms strengthening transportation planning of projects and funding flexibility of these projects; and

WHEREAS, those mechanisms, most importantly the state transportation plans, local transportation improvement programs, and intermodal management systems, incorporate the needs of urban and rural populations and the private sector directly in the decision-making process that allocates scarce transportation dollars;

NOW THEREFORE, BE IT RESOLVED, that the American Legislative Exchange Council hereby supports the promotion of intermodal goals of ISTEA, seeking to ensure the implementation of systems and facilities that strengthen the connectivity between the modes and provide linkages to overcome the limitations of each mode to an integrated transportation system; and

BE IT FURTHER RESOLVED, that the American Legislative Exchange Council supports an integrated transportation system that fosters competitiveness for domestically produced goods in overseas markets; and

BE IT FURTHER RESOLVED, that the American Legislative Exchange Council supports an integrated transportation system that preserves and enhances an efficient infrastructure to ensure market place choice for the seamless movement of freight and people.

ALEC's Sourcebook of American State Legislation 1995

Resolution on the Federal Highway Trust Fund

Summary

Resolution to Congress to use Highway Trust Fund monies primarily for the needs associated with the construction, reconstruction, rehabilitation, and maintenance of the National Highway System (NHS).

Model Resolution

Section 1. {Short Title} This Resolution shall be known as the Resolution on the Federal Highway Trust Fund.

Section 2. {Model Resolution}

WHEREAS, due to the dynamics of state size, population, and other factors such as federal land ownership and international borders, there is a need for donor and donee states in order to have a successful nation-wide transportation system; and

WHEREAS, there should be a uniform measure when considering the donor/donee issue. A ratio derived from the total amount of funds a state receives divided by the total amount that the state collects in federal taxes and fees is a clear and understandable measure; and

WHEREAS, all demonstration projects should be eliminated; and

WHEREAS, the Mass Transit Account of the Highway Trust Fund should be rolled into the state Block Grant

Program with the states making the final decisions that affect the funding of their local transit operations and based on the state-wide planning process; and

WHEREAS, as a whole, all funds residing in the Highway Trust Fund should be returned to the states either as funds for the uses on the National Highway System, nationally uniform highway safety improvement programs, or as a block grant. Only a reasonable amount of the collected funds from the federal gas tax and highway users fees should be retained by U.S. Department of Transportation for safety and research purposes; and

WHEREAS, states with public land holdings should not be penalized for receiving transportation funding through federal land or National Park transportation programs, and said funding should not be included in the states allocation of funds; now

THEREFORE BE IT RESOLVED that after National Highway System and safety improvement expenditures, a state block grant program should be established for the distribution of remaining funds; and

BE IT FURTHER RESOLVED, to expand federal and state activities to combat the evasion of fuel taxes and vehicle registration fees.

ALEC's Sourcebook of American State Legislation 1996

Resolution on Equitable Motor Carrier Regulatory Fees

Summary

This Resolution directs state public utility and public service commissions to assess regulatory fees against motor carriers based on the extent of reduced regulatory oversight required of that motor carrier.

Model Resolution

Section 1. {Short Title} This Resolution shall be known as the Resolution on Equitable Motor Carrier Regulatory Fees.

Section 2. {Model Resolution}

WHEREAS, effective January 1, 1995, Congress, through its passage of Sec. 601 of the Federal Aviation Administration Authorization Act of 1994 (now codified at 49 U.S.C. §§11501 (h) (1) and 41713 (b) (4)) preempted state economic regulation of any motor carriers of property; and

WHEREAS, in April 1996, the United States Supreme Court declined to review the decision of the United State Court of Appeals for the Tenth Circuit rejecting all constitutional challenges to the broad economic preemption of intrastate trucking as a proper exercise of the Commerce Clause powers; and

WHEREAS, Congress specifically contemplated that states not indirectly regulate a motor carrier's rates, routes or services through any unaffected authority; and

WHEREAS, Congress specifically extended to the motor carrier industry the broad preemption provision adopted by the United States Supreme Court in interpreting the identical preemption language in the earlier Airline Deregulation Act; and

WHEREAS, motor carriers in the state of *{Insert State}* are regulated by the *{Insert Appropriate State Agency}*;

and

WHEREAS, prior to January 1995 the *{Insert Appropriate State Agency}* regulated the rates, routes, services, safety, and insurance of motor carriers; and

WHEREAS, prior to January 1995, the *{Insert Appropriate State Agency}* assessed all motor carriers a regulatory fee based upon the cost regulating of the aforementioned five criteria; and

WHEREAS, in January 1995, this Federal preemption of state economic regulation applied to the activities of the 41 states still regulating motor carriers at that time; and

WHEREAS, in many cases only two of these criteria, safety and insurance, are still subject to intrastate regulation; and

WHEREAS, the *{Insert Appropriate State Agency}* continues to assess all motor carriers regulatory fees based upon its prior regulation of the aforementioned five criteria; and

WHEREAS, many states have reduced their regulatory fee burden by seventy to eighty percent by assessing motor carriers regulatory fees based only upon those areas presently subject to regulation;

NOW THEREFORE BE IT RESOLVED, That the *{Insert State}* Legislature directs the *{Insert Appropriate State Agency}* to adjust the regulatory fees assessed against any motor carriers of property to accurately reflect the actual costs incurred in regulating only those areas still permitted by federal law, and

BE IT FURTHER RESOLVED, that the *{Insert Appropriate State Agency}* shall audit the regulatory fees assessed against any motor carriers of property after January 1995, and where applicable, retroactively refund regulatory fees collected in excess of those still permitted by federal law; and

BE IT FURTHER RESOLVED, that if the Legislature finds an intrastate motor carrier regulatory function performed by the *{Insert Appropriate State Agency}* to be duplicative of that performed by another state agency, then, as long as federal requirements are met, the *{Insert Appropriate State Agency}* shall cease to perform that regulatory function and shall assess no regulatory fee based thereon.

ALEC's Sourcebook of American State Legislation 1996

The Multi-Passenger Transportation Deregulation Act

Model Legislation

{ Title, enacting clause, etc. }

An Act to create a more efficient transit system by eliminating the bus service monopoly and allowing multi-passenger van services to compete in the transit market.

Be it enacted by the legislature of the state of [insert state]:

SECTION 1. Definitions.

1. Private transit services refers to any motor-vehicle based service providing transportation to customers, clients, or members, including route-based or schedule-based van or bus service, express bus service, multi-

passenger van service, dial-a-ride, shared-ride buspools, carpools, or vanpools, or taxis.

SECTION 2. Findings

1. Current regulations imposed by local governments and the public utility commissions grant exclusive privileges to scheduled bus services; these privileges eliminate competition and create monopolies.
2. Operating a bus service in a non-competitive environment leads to lower quality of service, less innovation, less entrepreneurship, higher costs, and in the absence of subsidies, higher fares. These factors combine to steadily diminish the share of trips carried by mass transit.
3. Passengers of private transit services report feeling safer, waiting less, and traveling faster than on traditional municipal bus services. Throughout the country private transit services have proven that they can create new markets and expand existing ones.
4. Current regulations imposed by local governments limit entry into local taxi markets; these limits dramatically reduce competition.
5. Non-competitive or limits on taxi services increases prices, reduces service levels, ENGENDERS "REDLINING," increases waiting time, and denies opportunity to would-be taxi entrepreneurs.
6. The chance to start a private transit service will be a major source of business opportunities for low skill disadvantaged workers.

It will create the small businesses that are the source of economic growth, and will provide a service the public needs.

SECTION 3. Application

(A) [Insert appropriate statute or regulation], which currently prohibits the creation of private transit services to provide public transportation that competes with a publicly franchised or operated bus or transit system is repealed. No county, city or subsection thereof shall prevent a private transit service from entering the transit market as long as it meets the following public safety standards.

- 1.) Service operators must have a valid vehicle license and driver's license to operate the vehicle.
- 2.) Service operators must have proper insurance.
- 3.) The vehicle is subject to regular inspections not to exceed four per year.
- 4.) Operators must comply with applicable state laws regarding drug and alcohol testing.

(B) Local governments may not deny a license to any applicant that meet conditions 1-3 in Section 3, para. A.

(C) Local government's licensing fees for private transit services may not be excessive or a significant barrier to entry.

(D) Local governments or any transit regulating body may not prevent private services from operating on any route, including those served by public transit.

- 1.) To deal with the potential problem of private services interloping at bus stops by picking up passengers

waiting for publicly franchised or operated bus to arrive, provisions may be made to prevent private transit services from running ahead of public buses, lingering at the bus stop, or engaging in any other form of interloping at the pick-up points.

- a) These provisions may arrange for private services to stop at bus stops during certain time windows, or establish for private services separate stopping zones.
 - b) Stopping zones or staging areas for private transit services established on private property shall be permitted.
- 2.) Where contracts exist for route-based services with payments based on passenger loads, competition may be deferred until the current contract expires, is renegotiated, or for a maximum of three years.

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 21, 1998. Approved by full ALEC Legislative Board September, 1998.

Resolution to Restore to the States the Ability to Safely Regulate Vehicle Weight and Size to Meet their Transportation Needs

Summary

A Resolution for the purpose of petitioning the Congress of the United States to restore to the states the ability to safely regulate vehicle weight and size to meet their transportation needs.

Model Resolution

{Title, enacting clause, etc.}

WHEREAS historically the state legislatures have demonstrated a better working knowledge than the federal government has of each individual state's transportation needs and abilities; and

WHEREAS states are uniquely dependent upon advanced highway and vehicle transport technology to serve their agricultural, manufacturing, forest and other economic needs as well as imports and exports; and

WHEREAS states will recognize their full economic potential as they establish compatible truck size and weight standards and operational conditions and remove institutional barriers between the states; and

WHEREAS years of cooperative industry/government research testing operations prove that freight can be transported in vehicles that safely and efficiently serve the needs of the shippers and consumers at lower cost while also serving national goals of improving highway safety, reducing fuel consumption, engine emissions, noise traffic congestion and accidents; and

WHEREAS states need flexibility to enter into agreements to cooperatively pursue compatible regional operational systems, advanced technology systems and to develop regional trade corridors.

NOW, THEREFORE, BE IT RESOLVED that individual states shall be responsible for determining their transportation system's operational and safety requirements in keeping with the federal governments stated goal to provide more initiative and authority to state and local governments; and

BE IT FURTHER RESOLVED, that congress should remove the national restrictions that prevent the use of regionally compatible commercial vehicles and operating systems. The states should be able to individually and collectively coordinate truck size and weight operating and permit regulations that promote safety and regional economic enhancement; and

BE IT FURTHER RESOLVED, that the clerk of the (House of Representatives or Senate) transmits copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Member of Congress of the United States.

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 21, 1998. Approved by full ALEC Legislative Board September, 1998

Competitive Contracting of the Department of Motor Vehicles Act

Summary

The purpose of the bill is to require that the state's department of motor vehicles develop a competitive environment for the production of goods and services. This would be accomplished by an annual consideration of competitive contracts based upon a percentage of the DMV's budget. The DMV would also be required to institute a make or buy analysis when presented with a good faith petition by a private company indicating an interest in providing the service under contract to the DMV and for less than the internal cost of operation.

A make or buy analysis would include the issuance of a request for proposal for the specified good or service, and the award of a contract to the lowest responsive and responsible proposer. The DMV would be required to observe proposal requirements as if it is a private company, submitting sealed proposals and employing true costing provisions (unless it chose not to compete for the good or service). Contracts would be limited to five years, including options, after which time any such service would be subjected to make or buy analysis again.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Legislative Declarations.}

The legislature hereby finds and declares that:

- (A) Public services should be provided at the lowest possible cost consistent with service and safety standards.
- (B) Obtaining cost-effective public services requires a competitive environment and a mechanism for competitive contracting of such services.
- (C) Private companies have been used under competitive contracts to provide public services at lower costs and with lower annual cost increases.

Section 2. {Definitions.}

(A) "Attributable fully allocated cost:" means the operating and capital cost of a public service including direct, indirect and allocated minus the cost of any function not to be competitively contracted.

(B) "Make or buy analysis:" means a periodic analysis in which the costs of internal production of a good or service are compared to the costs of production by outside vendors. The process assumes the comparison of the true costs of public and private production methods that result in comparable public goods or services.

(C) "Public goods and services:" means any product or service produced by the DMV and any product or service supportive of or ancillary to the functions of the DMV.

Section 3. {Scope of the Act.}

(A) *Application:* This act shall apply to all aspects of the DMV

(B) *Routine make or buy analysis requirement:* On an annual basis, the DMV shall perform make or buy analysis covering goods or services representing at least five percent of its operating budget.

(C) *Petitions of interest:* In addition to the routine make or buy analysis requirement above, the DMV shall perform make or buy analysis covering any good or service for which it has received a qualifying petition of interest from a private company (consistent with the process below). No more than one make or buy analysis shall be required for a particular good or service within a one-year period.

(D) *Public control of specifications:* The DMV shall retain full control of service quantities, service specifications, standards and any other matter demonstrably related to the delivery of the particular public good or service in a manner consistent with the public interest.

(E) *Requirement for speedy compliance:* The DMV shall fully comply with this Act as soon as practicable, but shall in any case be in full compliance with its provisions within one year of enactment.

Section 4. {Free enterprise participation process.}

(A) *Establishment of free enterprise participation process:* The DMV shall establish a free enterprise participation process, including:

(1) Maintenance of a list of interested proposers, which shall include all organizations that have requested inclusion on such list. The DMV shall advertise for additions to the interested proposers list at least annually.

(2) Distribution to companies on the mailing list of a calendar specifying:

(a) Dates and deadlines with respect to the routine make or buy analysis (the five percent requirement)

(b) Annual deadlines for submittal of petitions of interest from private companies (based upon fiscal year).

(3) DMV appeal process covering petitions of interest and requests for proposals.

(B) *Wide participation to be sought:* The free enterprise participation process shall seek the widest possible participation of interested private companies in the production of DMV services.

Section 5. {Petitions of Interest.}

(A) *Companies may file petitions of interest:* Private companies interested in producing goods or services for government entities may file petitions of interest subject to the free enterprise participation process of the DMV.

(B) *Petition of interest requirements:* Petitions of interest shall include:

- (1) A description of the public good or service that the private company would like to provide for the DMV;
- (2) A statement that the private company believes that it can provide the same service, under contract, for a lower cost than the present cost;
- (3) A description of the company's financial capacity to provide the service;
- (4) A description of the company's technical ability to produce the public good or service, especially evidenced by identical, similar, or relevant goods or services provided by the company, whether under public sponsorship or not;

(C) *Timely action on petitions of interest:* Within 90 days the DMV shall determine whether there is sufficient reason to believe that the private company has the financial and technical ability to provide the public good or service.

(D) *Findings with respect to petitions of interest:* The DMV shall make one of two findings with respect to the petition of interest:

- (1) Certification of petition: that the company has sufficient financial and technical ability to provide the good or service;
- (2) Denial of petition: that the company has insufficient financial and/or technical ability to provide the good or service. The DMV shall state its justification for such a finding.

Note: If the DMV has scheduled an immediate make or buy analysis for substantially the same public good or service specified in the petition of interest, it shall notify the petitioner that such an analysis has been scheduled, without making a finding on the petition.

(E) *Make or buy analysis requirement where petition of interest is certified:* If the DMV certifies the petition, the DMV shall undertake a make or buy analysis with respect to the public good or service specified in the petition, at the first possible opportunity within its schedule adopted under its free enterprise participation process.

Section 6. {Make or Buy Analysis And Contracts.}

(A) *Request for proposals requirement:* The make or buy analysis shall be performed through the issuance and evaluation of requests for proposals from private companies.

(B) *Request for proposal process:*

- (1) The DMV shall seek the widest reasonable distribution of each request for proposals, and at a minimum shall send each request for proposals to each organization on the interested proposers list and to each additional organization that requests the specific request for proposal.
- (2) The DMV shall advertise each request for proposals within 10 days of issuance, and in accordance with its general procurement policy.
- (3) Proposals submission shall be required no sooner than 45 days after the request for proposal advertisement date.
- (4) A request for proposals shall clearly specify the goods or services to be procured and include a draft contract.
- (5) The DMV may submit its own proposal in response to the request for proposal, subject to the terms and conditions later specified.

(C) *Evaluation of proposals:*

- (1) The DMV shall employ a two-step review process, involving the concurrent submittal of two packages: first, the financial qualifications and technical proposal, and second, the cost proposal.
 - (a) The first step shall be an evaluation of the financial qualifications and technical proposals. The DMV shall determine whether each such submittal represents a responsive and responsible proposal.
 - (b) The second step shall be an evaluation of the cost proposals of the responsive and responsible proposers.
- (2) with respect to each request for proposals, the DMV shall award the contract to the private provider or DMV whose responsive and responsive proposal offers the lowest cost.

(D) *Limitation on contract length:* Any public good or service operated under competitive proposals on the effective date of this Act or thereafter shall be subject a new competitive proposal at least every five years. Renewal options that extend a contract beyond five years shall be prohibited.

(E) *No reversion to non-competitive operation:* In no case shall a good or service operated under competitive proposal be returned to operation not subject to competitive proposal.

(F) *No labor restrictions:* A DMV shall not establish or impose any requirement relating to salaries, wages, benefits, or labor union representation, staffing levels, work rules, or other conditions of employment of private contractor employees. All contractors shall comply with applicable federal and state labor laws.

(G) *Capital facilities and equipment:* Each DMV shall make capital facilities and equipment available for operation under competitive proposals by private contractors to the maximum extent feasible, subject to supervision of the DMV. Capital facilities and equipment should be denied use by private contractors only if they would similarly be denied to use by the DMV itself if it were awarded the contract.

(H) *Competitive determination of contract prices required:* All contract prices shall be competitively determined through a request for proposal. No change in contract payment amount to a private contractor or DMV shall be made except as specified in the contract. Payment changes in a contract shall be limited to indices, escalators, deflators, changes in service level, and other expressly stated or calculable amounts,

consistent with the request for proposal and the proposal of the private contractor or DMV awarded the contract.

(I) *Interim contracts*: A DMV may execute interim standby competitive contracts with one or more private contractors to provide any good or service on an interim basis in the event that the DMV is required to do so by the public welfare. Any good or service operated under a standby contract shall be subject to competitive proposal within six months of standby contract service award.

(J) *No restrictive agreements*: No DMV shall make or be bound by any contract, agreement, or assurance that restricts its ability to comply with this Act in any respect.

Section 7. {Internal DMV Proposals.}

The DMV may compete to provide the public good or service subjected to make or buy analysis by submitting its own proposal, subject to the following conditions:

(A) *Sealed proposal requirement*: That it submit a sealed proposal before the advertised deadline for such proposals, that the proposal not be altered after that deadline and that the proposal be publicly opened and made public at such deadline.

(B) *Fair labor competition*: That any labor provision assumed in the proposal either be specified in currently effective labor contracts or be executed before the proposal deadline in a written and binding agreement between the DMV and the appropriate labor organization.

(C) *Objective evaluation*: That it take reasonable steps to ensure an objective and fair evaluation process including prohibition of proposal evaluation participation by personnel or departments that were involved in preparing the DMV's proposal.

(D) *Fair cost competition*: That its proposal price be not less than its attributable fully allocated cost for the service, and that its proposal price not be based on part time labor provisions or other less costly labor provisions to a greater percentage than such provisions are employed in comparable positions within the DMV, and that its proposal price be consistent with currently adopted budgets and financial plans.

(E) *No restrictive labor agreements*: That it shall make or be bound by no contract, agreement, or assurance which creates or extends any form of obligation for continued employment or employee compensation, except for pension, beyond the contract expiration date under the provisions of the request for proposal for employees assigned to the service.

(F) *Equal contract administration*: That it shall be bound by the same terms, conditions, and performance and other standards as would have applied to a private provider awarded the contract under the request for proposal.

(G) *Cost control required*: That its costs shall not at any point during the contract period rise by an amount greater than that specified for the corresponding period in the DMV's proposal. If the DMV's cost performance is not in compliance with this provision, the DMV shall issue a new request for proposal for the good or service within 90 days.

Section 8. {Privacy clause.}

Any agency either publicly or privately operated that performs any function of the DMV is prohibited from selling, buying or distributing any information that the agency requires from the a citizen subject to its regulation unless the citizen gives the agency written consent expressly authorizing the distribution of this

information. This clause in no way restricts an agency from distributing this required information once written authorization is received from the citizen.

Section 9. {Severability clause.}

Section 10. {Repealer clause.}

Section 11. {Effective date.}

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 21, 1998. Approved by full ALEC Legislative Board September, 1998.

Resolution Against Federal Weight-Distance Tax Proposal

Summary

Current proposals in Congress would repeal several existing federal highway user fees and impose in their place a federal weight-distance tax on motor carrier, calculated according to the weight of a truck, the number of its axles, and the distance it travels. The bill contemplates that state governments would assist in the administration, collection, and enforcement of the new tax. The proposed federal weight-distance tax represents a significant tax increase for most of the motor carrier industry, would impose burdensome administrative and compliance costs on government and industry, and, by reason of greatly increased tax evasion, threaten the integrity of the federal Highway Trust Fund.

Model Resolution

WHEREAS, The proposed federal weight-distance tax represents a significant federal tax increase for the majority of the motor carrier industry, at a time when there are surpluses in both the federal general fund and the federal Highway Trust Fund; and

WHEREAS, according to the Federal Highway Administration, the motor carrier industry is already paying its fair share of the cost of the Nation's highways; and

WHEREAS, administration of the proposed federal weight-distance tax would be delegated to the U.S. Internal Revenue Service, which has no experience or expertise with a highway user fee of such scope or complexity, and which would be required to employ as many as 1,000 additional federal tax auditors to collect the tax; and

WHEREAS, compliance with the proposed federal weight-distance tax would impose immense burdens on the motor carrier industry, the majority of which comprises thousands of small businesses; and

WHEREAS, most intrastate carriers do not currently report their operations to state or federal governments for tax purposes, the proposed federal weight-distance tax would require such carriers to initiate complex tax reporting systems from scratch; and

WHEREAS, state experience with weight-distance taxes has been notably unsatisfactory, with nearly twenty states having repealed this type of tax over the years because of its complex administration and widespread evasion; and

WHEREAS, state governments do not currently collect or maintain data on motor carriers that would materially assist in the administration, collection, or enforcement of the proposed federal weight-distance tax; and

WHEREAS, potential evasion of the proposed federal weight-distance tax has been estimated at from \$1 billion to \$1.75 billion annually, which would drain the federal Highway Trust Fund of revenues the states need for highway construction and maintenance; and

NOW THEREFORE BE IT RESOLVED that the American Legislative Exchange Council hereby opposes the enactment of a federal weight-distance tax on the motor carrier industry.

BE IT FURTHER RESOLVED, that the clerk of the (House of Representatives or Senate) transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Member of Congress of the United States.

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 13, 1999. Approved by full ALEC Legislative Board September, 1999.

Statement on Aviation Funding

Aviation is a key component of a balanced transportation system and is vitally linked to regional growth and economic development efforts. The development and preservation of a balanced system of airports, which is responsive to the needs of all sectors of the nation, is the mutual responsibility of federal, state and local governments.

FINANCE

Current aviation sources have not provided the necessary funding to meet identified capital development needs, particularly at small airports. This under investment in our nation's aviation system has negative safety, capacity, and economic repercussions. The following recommendations regarding aviation financing are to be viewed as a comprehensive package and not as individual parts to be implemented piecemeal.

The Airport and Airways Trust Fund, financed by existing dedicated user taxes and charges, should be retained and utilized as the primary method of funding federal-aid aviation projects. As a means of ensuring full expenditure, the American Legislative Exchange Council (ALEC) supports the removal of the Trust Fund from the federal unified budget. ALEC supports a mechanism to guarantee that all revenue dedicated to the Trust Fund is spent each year for its intended purpose. Aviation programs financed by Trust Fund revenue should be classified as "mandatory" spending and operate as a "pay-as-you-go" program. The current spending caps and categorization imposed on domestic discretionary programs are causing arbitrary funding reductions in important state aviation programs.

Recognizing the safety, security, economic, and other broad public benefits of the services provided by the Federal Aviation Administration, ALEC supports a continuation of a General Fund contribution, due to military and federal usage of airport facilities and services, and for aviation sectors not required to pay their fully allocated costs.

Federal aviation taxes are acceptably structured to equitably distribute the financial burden on all users. All aviation user fees should be directed to the Airport and Airways Trust Fund and should accrue to the benefit of aviation users. Federal aviation fees collected from airline ticket taxes should not be diverted to non-aviation purposes. ALEC supports federal grant assurance provisions barring diversion of airport revenue to non-airport purposes.

The Airport Improvement Program (AIP) is the linchpin of airport Federal financial planning and must be funded adequately on a reliable basis in order to meet the substantial capital needs of the nation's airports and airways. ALEC believes that the AIP must be fully funded at a minimum level of \$2 billion annually on a multi-

year basis to help support needed a multi-year safety, security, capacity and noise projects. Authorization would provide a stable and predictable federal funding source for airport capital development and eliminate the current uncertainty and start-and-stop nature of airport development and construction. Flexibility in the prioritization and administration of funds should be provided to the states. Statutory or regulatory barriers to state and locally-granted revenues should be removed.

State Apportionment funds should be increased to fund essential planning activities. Funding should be available to states from the Trust Fund for aviation-related transportation planning activities.

ALEC supports the creation of a separate aviation budget category which is no longer subject to budget caps; and the actual expenditure of all Aviation Trust Funds, including surplus balances on aviation needs. Surplus trust fund revenues could be allocated to the AIP.

ALEC supports the continuation of Passenger Facility Charges (PFCs) as a supplementary revenue source to finance airport needs, only after all surplus trust funds are expended. Proceeds generated from PFCs should be permitted for financing projects which preserve or enhance safety, security, capacity, and noise mitigation.

Federal tax laws should continue to exempt airport municipal bonds from federal taxation.

ALEC supports the use of innovative financing methods, such as state infrastructure banks and revolving loans, whenever possible to allow states to meet the funding needs of smaller airports. The creation of such programs to address state needs outside the existing program framework should be treated as a viable option for supplementing current funding levels.

STATE BLOCK GRANT PROGRAM

As this program has been shown to eliminate waste and duplication, increase efficiency, and cut federal costs, the state block grant program should be extended and expanded so that all states are eligible to participate. ALEC believes that the program should be structured to allow states the maximum flexibility in the administration of grants.

DEVELOPMENT

ALEC supports a coordinated national plan of development as long as state plans for investment are included. As part of the development of the National Airspace System Architecture, the Federal Aviation Administration (FAA) should make every effort to consider state input.. The economies of many parts of the country are dependent on the modernization of the nation's aviation system. Federal policies should support state efforts to address capacity problems through expansion. ALEC supports the increased use of former and current military airports to provide immediate capacity relief for the aviation system.

REGULATION

ALEC supports efforts to increase airport capacity and competition within the airline industry. However, ALEC remains concerned over the preservation of state authority over certain airline actions and practices.

Federal preemption of state regulatory authority over air carriers should not be extended to include the surface transportation component of an air carrier's operations.

ALEC supports the continued deregulation of the commercial aviation industry, and opposes efforts to reregulate the industry, thru either legislation or federal agency rules.

FEDERAL-AID PROGRAM

Federal support for research and development of facilities and equipment should be increased to meet the demands of the next century's air travelers. Reforms in the FAA technology procurement process should be considered.

While ALEC opposes any and all federal mandates and preemption, federal funding should be made available to offset the costs of current federal mandates imposed on airports relative to security and the environment.

Adopted by ALEC's Trade & Transportation Task Force March, 1999. Approved by full ALEC Legislative Board April 22, 1999.

The Water/Wastewater Utility Public-Private Partnership Act

Model Legislation

{Title, Enacting clause, etc.}

Be it enacted by the legislature of the state of *[insert state]*

Section 1. Definitions

1. Governmental agency refers to any state agency, state district, city, county, city and county, including a chartered city or county, school district, community college district, public district, county board of education, joint powers authority, water or sewer district, special district, or any other public or municipal corporation.
2. Private entity refers to a person, business entity, combination of persons and business entities, or a combination of business entities.
3. Best value refers to a combination of project quality and outcomes and of price that, taken together, provide the most benefit to the taxpayers. I.e., a better project, though more costly, might be a best value relative to a lower cost, but lower quality, project.
4. Competitive negotiation refers to a process where a winner is chosen based on best value rather than strictly lowest bid.

Section 2. Findings

1. The nation's water and sewer infrastructure is deteriorating. At the same time, complying with the Safe Drinking Water Act and Clean Water Act requires extensive upgrades of many water and sewer utilities. The US EPA estimates that nearly \$300 billion dollars in infrastructure investments will be needed to ensure safe drinking water and clean waterways in our nations communities. *[Insert state environmental agency findings]*
2. Many local governments may not be able to borrow sufficient funds to finance needed water and sewer infrastructure expansions or upgrades due to borrowing volume caps or voter unwillingness to approve new bond issues.
3. Sufficient federal funding for state revolving funds and other grants is unlikely.

4. Infrastructure that provides user-fee based services, such as water and wastewater utilities, are particularly amenable to public-private partnerships. Compared to many government entities, private entities can often build and operate systems at lower cost, can often bring capital to provide for system upgrades when public funds may not be available, and often have better access to personnel trained in the latest technologies and environmental compliance rules. Separately or together, these capabilities can make compliance with environmental standards possible, while minimizing rate increases for essential services.

5. Without the ability to utilize private sector investment capital, some local government agencies will not be able to adequately, competently, or satisfactorily retrofit, reconstruct, repair, or replace existing infrastructure and will not be able to adequately, competently, or satisfactorily design and construct new infrastructure.

Section 3. Application

A. It is the intent of the Legislature that:

1.) Local government agencies have the authority and flexibility to utilize private investment capital and private entity services to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, water and wastewater utilities.

2.) This [chapter/section] be construed as creating a new and independent authority for government entities to utilize private sector investment and private entity services to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, water and wastewater utilities.

3.) This authority is independent of any existing authority. This authority may be used by government entities when they deem it appropriate in the exercise of their discretion. However, government entities that have been found consistently (more than 90 days) out of compliance with SDWA, CWA, or state environmental standards, must consider exercising this authority.

4.) This act creates no new governmental entities.

B. Any government entity entering into agreements with private entities to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, water and wastewater utilities:

1.) Shall ensure that the contractor is selected pursuant to a competitive negotiation process. The competitive negotiation process shall:

a) Utilize, as the primary selection criteria, a combination of demonstrated competence and qualifications and best value. The selection criteria shall also ensure that prices charged the users of the facility's services are either set by the contractor or are contractually established.

b) Not require selection based on low bid, but rather selection shall be based on best value.

c) Specifically prohibit practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful considerations, and prohibit government entity employees from participating in the selection process when those employees have a relationship with private entity seeking a contract under this Act, or as proscribed by existing state or local contracting law.

2.) May select at their discretion projects proposed by private entities.

3.) May propose and select projects individually or as part of a related or larger project.

4.) Are not subject, other than as specified in this act, to the provisions of other state and local contract or procurement codes.

C. Public-private partnerships formed under this act may include the sale, lease, or joint venture, for the whole or part of any existing facility, or the planning, design, construction, or operation of the whole or any part of a new facility, or the contract for services for the whole or any part of an existing or new facility.

D. An agreement between a government entity and a private entity formed under the authority of this act shall, where relevant, include, but need not be limited to, provisions to ensure the following:

1.) Compliance with *[insert relevant state environmental quality act or codes]*. A facility need not be in compliance with the [state environmental acts or codes] prior to the act of selecting a proposed project or a private entity, or the execution of an agreement with a private entity. However, one of two conditions must be met before the execution of the agreement:

a) appropriate compliance occurs before project development commences; or

b) the agreement establishes responsibility for compliance with the private entity, and sets a specific timeline for achieving it.

2.) For construction projects, reasonable security for the construction of the facility to ensure its completion.

3.) Adequate financial resources of the private entity to meet the expectation of the project.

4.) Authority for the government entity to impose user fees for use of the facility in an amount sufficient to protect the revenue streams necessary to protect the financing of the project.

5.) Require the private entity to maintain the facility in good operating condition at all times, including, in the event of a lease or O&M contract, the time the facility reverts to the government entity or to another private entity.

6.) Provision for a buyout by the government entity of the private entity in the event of termination or default before the end of the agreement.

7.) Provision for appropriate indemnity promises between the government entity and the private entity.

8.) Provision requiring the private entity to maintain insurance as deemed appropriate by the government entity.

E. In order to use the authority conferred by this act to the maximum extent, a government entity may use private financing for a project under this act as the exclusive revenue source, or as a supplemental revenue source with federal, state, or local funds.

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 13, 1999. Approved by full ALEC Legislative Board September, 1999.

Community Transportation Corporation Act

Article I. Summary

Article II. Model Legislation

Section 1. {Short Title.} This Act shall be known as the Community Transportation Corporation Act.

Section 2. {Legislative Declarations.}

The general assembly declares that:

- (1) The present and prospective traffic congestion and limited roadways in many areas of this state, and the limited availability of state funds, require as a public purpose the promotion and development of public transportation facilities and systems by new and alternative means;
- (2) The creation of transportation corporations by private parties in cooperation with the commission is essential to the continued economic growth of this state, is in the public interest, and will promote the health, safety and general welfare of the citizens of this state by securing for them expanded and improved transportation facilities and systems;
- (3) Transportation corporations will perform an essential function by acting to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems;
- (4) Transportation will perform many functions normally undertaken by the commission and its staff, and thus will reduce the burdens and demands on limited funds available to the commission, thereby increasing the effectiveness and impact of those funds available to the commission;
- (5) Transportation corporations will act in promoting and developing public transportation facilities and systems and in promoting economic development in this state, and will not act as the agent or instrumentality of any private interests even though many private interests may be benefited by the transportation corporations, as will the general public. Transportation corporations shall periodically make a showing to the state transportation department of a good faith effort of development and implementation of a women and minority employment and business plan. Only after such a showing of a good faith effort may transportation corporations waive the general policy of women and minority employment and business plan and involvement. If such policy is waived, transportation corporations shall make a showing of a good faith effort of development and implementation of a women and minority employment and business plan every three months until such policy is again in effect.

Section 3. {Definitions.}

- (1) "Board", the board of directors of the corporation;
- (2) "Commission", the highways and transportation commission;
- (3) "Corporation" or "transportation corporation", any transportation corporation organized under sections _____;
- (4) "Local transportation authority", a county, city, town, village, county highway commission, special road district, interstate compact agency, or any local public authority or political subdivision having jurisdiction over

any bridge, street, highway, dock, wharf, ferry, lake or river port, airport, railroad, light rail or other transit improvement or service;

(5) "Pay", paying a toll by cash, by permitting a charge against a valid account with the authority or by another means of payment approved by the corporation at the time;

(6) "Photo monitoring system", a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of toll collection regulations;

(7) "Project" includes any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or other mass transit and any similar or related improvement or infrastructure;

(8) "Toll" or "tolls", charges prescribed by the corporation for the use of its property;

(9) "Toll collection regulations", those rules and regulations of a corporation providing for and requiring the payment of tolls for the use of bridges under its jurisdiction or those rules and regulations of a corporation making it unlawful to refuse to pay or to evade or to attempt to evade the payment of all or part of any toll for the use of bridges under the jurisdiction of the corporation;

(10) "Vehicle" or "motor vehicle", every device in, upon or by which a person or property is or may be transported or drawn upon a highway except devices used exclusively upon stationary rails or tracks.

Section 4. {Creation of a Community Transportation Corporation. }

(A) Corporation, creation of, purpose—organization, nonprofit—tax-exempt status.

(1) A corporation may be created to fund, promote, plan, design, construct, maintain, and operate one or more projects or to assist in such activity.

(2) The corporation shall be a nonmember, nonstock corporation. It shall be organized under and governed by the provisions of the general not-for-profit corporation law. Any provision of this chapter shall take precedence over any conflicting provision of the not-for profit section.

(3) No part of the earnings or assets of a transportation corporation shall inure to the benefit of any private interests, person, or entity.

(4) Property held by and activities of a corporation exist and are conducted for purely civic, social welfare, and charitable purposes. A transportation corporation shall be exempt from taxation. The corporation shall not be required to pay any taxes or assessments upon or with respect to a project or property acquired or used by the corporation or upon income therefrom.

(B) Formation, procedures, requirements—hearing, duties of commission—approval, when.

(1) Any number of natural persons, not less than three, each of whom is at least twenty-one years of age and a registered voter within this state, may file with the commission a written application with preliminary plans and specifications for a project requesting that the commission authorize the creation of a transportation corporation to act within a designated area. The application shall also provide a proposed plan for financing the project. The commission may charge a filing fee for the application.

(2) The commission shall order a local public hearing and shall cause to be published notice that the commission is considering authorizing a project and the incorporation of a transportation corporation. The notice shall specify the time, date, and place of the hearing and shall be given by publication in a newspaper published in the county or counties in which all or part of the project is to be located which has a general circulation once a week for four consecutive weeks. The last publication shall be at least fifteen days prior to the date of the hearing. The commission shall also give at least fifteen days written notice of such hearing to the owners of all fee interests of record in all tracts of real property located within the area proposed to be included within the limits of the project.

(3) The commission shall also serve written notice on each county, city, town and village in which all or part of a project is to be located that the commission is considering authorizing a project and the incorporation of the transportation corporation. Each such county, city, town and village shall be entitled to review the written application with preliminary plans and specifications. Approval of the project by the governing body of each such county, city, town and village is a condition precedent to approval of the project and the corporation by the commission.

(4) After the hearing, the commission shall consider the matter of authorizing the project and the incorporation of the transportation corporation at a regular commission meeting. If the commission by minute finds that the project will improve or is a necessary or desirable extension of the state highways and transportation system and that the proposed corporation will have adequate funds to finance the proposed project, the commission may approve the articles of incorporation for the corporation and the project subject to the corporation making any revisions in the plans and specifications required by the commission and the corporation entering into a mutually satisfactory agreement regarding development and future maintenance of the project.

(5) The commission shall designate the area of the state in which the corporation may act, and such area may include territory within one or more counties, municipalities or other political subdivisions of the state. The commission may authorize creation of one or more corporations to act within the same designated area, provided that the commission minute approving the creation of each corporation shall specify the public purposes which each corporation will further.

(6) No corporation may be formed unless the commission has duly adopted a commission minute which shall be conclusive evidence of the commission's approval of the project and the articles of incorporation.

(B) Articles of incorporation, contents, amendment—filing.

(1) The articles of incorporation shall set forth:

- (a) The purposes for which the corporation is organized including the project description, scope, area, and proposed sources of funding;
- (b) That the corporation has no members and is a nonstock corporation; and
- (c) A recital that the commission has specifically authorized the corporation to act, has approved the articles of incorporation, and the date of such authorization.

(2) The articles of incorporation may be amended if the board files with the commission a written application specifying the proposed amendments and the commission approves the application by commission minute.

(3) The articles of amendment shall be executed in duplicate for the corporation by its president and verified by

its secretary. The articles of amendment shall set forth the fact that such amendment was approved by the commission and the date of such approval.

(4) The articles of incorporation, and any amendments thereto, shall be duly authenticated and filed by the corporation with the secretary of state and with the commission to be effective.

(D) Board members.

(1) The corporation shall have a board of directors. All powers of the corporation shall be vested in the board which shall consist of any number of directors, not less than six, each of whom shall be appointed by the commission for a term of no more than six years. Each director may be removed by the commission for cause. The terms shall be staggered in length, so that not more than one-third of the terms of the board of directors shall expire in a given year. The directors shall serve as such without compensation except that they shall be reimbursed by the corporation for their actual expenses incurred in the performance of their duties.

(2) No person shall be appointed or continue to serve on the board who owns land on which or adjacent to which a project to be developed by the corporation shall be located.

(3) The commission shall appoint one or more advisors to the board, who shall have no vote but shall have authority to participate in all board meetings and discussions, whether open or closed, and shall have access to all records of the corporation and its board of directors.

(4) At the first meeting of the board, it shall elect a chairman from its members. The board shall appoint an executive director, corporation secretary, treasurer and such other officers or employees as it deems necessary.

(5) The board may appoint any number of advisory directors to advise and assist the directors in the development of a project. The advisory directors shall serve at the will of the directors, but advisory directors shall have no vote in the affairs of the corporation, shall not receive any compensation for their services, and shall not receive any reimbursement for expenses incurred by them.

(E) Bylaws, adoption and approval.

The board shall adopt corporation bylaws which shall be approved by a minute of the commission. The bylaws of a corporation shall not be amended without approval by a minute of the commission.

Section 5. {Operation of Community Transportation Corporation.}

(A) Project plans, commission approval of.

Before construction of any project, the corporation shall submit the final financing plan and final construction plans and specifications to the commission for its approval. The corporation shall make any revisions in the plans and specifications required by the commission. After the commission approves the final financing plan, construction plans and specifications, the corporation shall obtain prior commission approval of any modification of such plans or specifications.

(B) Funding mechanisms.

(1) A corporation may use any one or more of the funding methods specifically authorized by this Act and any other lawful funding the corporation may obtain for the project.

(2) The commission may by contract with a corporation receive any revenue received by a corporation. Such revenue shall be deposited by the commission, and applied by the commission to project costs including debt service on revenue bonds or refunding bonds issued by the corporation or the commission.

(3) (a) The corporation may, subject to commission approval:

- (i) Establish and impose fees for services provided by the corporation; and
- (ii) Charge and collect tolls, fees and rents for use of a project to pay project costs or operation and anticipated future maintenance costs of a project; and
- (iii) Enforce collection of tolls in conjunction with the department of transportation, highway patrol or any other law enforcement official in the state.

(b) To construct a toll facility, a corporation may relocate an existing state highway subject to approval by the commission or an existing local public street or road subject to approval by the local transportation authority having control and jurisdiction over such street or road. A corporation shall not incorporate an existing free public street, road, or highway into a corporation project that will be subject to tolls, unless the corporation can demonstrate that the facility cannot be reconstructed, rehabilitated, or widened with existing revenue sources.

(4) Indebtedness authorized--bonds, may be issued.

(a) A corporation may contract and incur liabilities appropriate to accomplish its purposes.

(b) It may borrow money for its corporate purposes at such rates of interest as the corporation may determine.

(c) It may issue bonds, notes and other obligations, and may secure any of such obligations by mortgage, pledge, or deed of trust of any or all of the property and income of the corporation. The corporation shall not mortgage, pledge or give a deed of trust on any real property or interests which it obtained by eminent domain or acquired from the state or any agency or political subdivision thereof.

(5) Revenue bonds.

(a) A corporation may at any time authorize or issue revenue bonds for the purpose of paying all or any part of the cost of any project. Every issue of such bonds shall be payable out of the property and revenues of the corporation and may be further secured by other property of the district which may be pledged, assigned, mortgaged, or a security interest granted for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds pledging any specified property or revenues. Such bonds shall be authorized by resolution of the corporation board, and if issued by the corporation, shall bear such date or dates, and shall mature at such time or times, but not in excess of forty years, as the resolution shall specify. Such bonds shall be in such denomination, bear interest at such rate or rates, be in such form, either coupon or registered, be issued as current interest bonds, compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in such place or places and be subject to redemption as such resolution may provide. The bonds may be sold at either public or private sale, at such interest rates, and at such price or prices as the corporation shall determine.

(b) Any issue of corporation bonds outstanding may be refunded at any time by the corporation by issuing its refunding bonds in such amount as the district may deem necessary. Such bonds may not

exceed the amount sufficient to refund the principal of the bonds so to be refunded together with any unpaid interest thereon and any premiums, commissions, service fees, and other expenses necessary to be paid in connection with the refunding. Any such refunding may be effected whether the bonds to be refunded then shall have matured or thereafter shall mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds being refunded or by the exchange of the refunding bonds for the bonds being refunded with the consent of the holder or holders of the bonds being refunded. Refunding bonds may be issued regardless of whether the bonds being refunded were issued in connection with the same project or a separate project and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or different dates or shall be serially or otherwise.

(c) The corporation may contract with the commission to assist it in issuing corporation revenue bonds and refunding bonds. The corporation may also contract with the commission to issue commission revenue bonds and refunding bonds and to loan the proceeds thereof to the corporation. Such bonds shall be authorized by commission minute and shall be issued subject to conditions applicable to bonds issued by the corporation but as determined by the commission rather than the corporation.

(d) Bonds issued under this section shall exclusively be the responsibility of the corporation payable solely out of corporation funds and property and shall not constitute debt or liability of the state or any agency or political subdivision of the state. Neither the corporation nor the commission shall be obligated to pay such bonds with any funds other than those specifically pledged to repayment of the bonds. Any such bonds issued by a corporation or the commission shall state on their face that they are not obligations of the state or any agency or political subdivision thereof.

(e) Bonds issued under this section, the interest thereon, or any proceeds from such bonds, are exempt from taxation in the state for all purposes except the state estate tax.

(C) Property, corporation may purchase and control access.

The corporation may, subject to commission approval:

- (1) Purchase land or receive contributions of land and cash for project right-of-way;
- (2) Limit and control access from adjacent property to a corporation project; and
- (3) Sell and convey excess right-of-way for fair market value to any person or entity.

(D) Condemnation, subject to commission approval—procedures—relocation expenses to be paid, how.

(1) The commission is authorized to condemn lands for the corporation in the name of the state, upon prior approval by the commission as to the necessity for the taking, the description of the parcel, and the interest taken in that parcel.

(2) If condemnation becomes necessary, the commission shall act for the corporation, and may condemn a fee simple or other interest in land.

(3) Whenever a corporation undertakes any project which results in the acquisition of real property or in any person or persons being displaced from their homes, businesses, or farms, the commission shall act for the corporation to provide relocation assistance and to make relocation payments to such displaced persons and to do such other acts and follow such procedures as would be necessary to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

(4) The corporation after prior notice to the owner may enter upon private property to survey and determine the most advantageous route and design. The corporation shall be liable for all damages done to the property by such inspection.

(5) Any person who involuntarily transfers any interest in land to a corporation which becomes insolvent and comes under the jurisdiction of a court may reacquire that property by paying to the corporation the total amount of the condemnation award for that parcel, plus simple interest at the statutory rate from the date of taking on the amount of that award, if the project will not be completed by either the corporation or the commission.

(E) Contractual powers.

The corporation may contract with:

- (1) A federal agency, a state or its agencies and political subdivisions, the commission, a local transportation authority, a corporation, partnership or individual regarding funding, promotion, planning, designing, constructing, improving, maintaining or operating a project or to assist in such activity;
- (2) The commission to transfer the project to the commission free of cost or encumbrance on such terms set forth by contract; and
- (3) A person, a corporation, a local transportation authority, the commission, the state, or a federal agency for the purpose of jointly paying the cost of a project.

(F) Powers—generally.

In addition to all other powers granted by this Act and all powers granted to general not-for-profit corporations, the corporation shall have the following general powers:

- (1) To sue and be sued in its own name, and to receive service of process, which shall be served upon the corporation secretary;
- (2) To fix compensation of its employees and contractors and to disburse funds for its activities. The corporation shall advertise and let construction contracts in the same manner as the letting of public works contracts by the department of transportation.
- (3) To purchase, lease, lease-purchase, or acquire by gift or grant any real or personal property necessary or convenient for its activities;
- (4) To purchase insurance; and
- (5) To exercise such other implied powers necessary or convenient for the corporation to accomplish its purposes which are not inconsistent with its express powers.

(G) Indemnification of directors, employees.

- (1) The corporation may indemnify any current or former director or employee for expenses actually and reasonably incurred by him in connection with any claim asserted against him in the absence of his gross negligence, intentional misconduct, or other willful and wrongful acts or omissions.
- (2) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or employee has been asserted or any court having the jurisdiction of an action instituted by such director or employee on his claim for indemnity may assess indemnity against the corporation, its receiver, or

trustee for expenses authorized by this section.

(H) Commission may provide assistance, how.

The commission may contract with a corporation to provide it assistance in project funding, promotion, planning, design, right-of-way acquisition, relocation assistance services, construction, maintenance, and operation. The commission may charge the corporation a reasonable fee, not exceeding the actual cost of providing the service.

(I) Rules, commission may adopt.

The commission is authorized to adopt reasonable administrative rules regarding transportation corporations.

(J) Projects, regulation of--treatment as part of highway system, when.

(1) For the purpose of law enforcement, a corporation project shall be treated as a commission highway project.

(2) All laws of this state relating to maintaining, signing, damaging, and obstructing roads shall apply to corporation projects. The duties and powers imposed by such laws on certain officials shall devolve upon the corporation engineer or other employee designated by the board.

(3) For outdoor advertising and junkyard control purposes, a corporation project may be designated by the commission as a part of the state primary highway system.

Section 6. {Dissolution of Community Transportation Corporations.}

(A) Transfer of project to commission, when--dissolution of corporation, required when--procedures.

(1) When a project is completed and all outstanding bonds, notes, obligations, liabilities or other debts of the corporation have been paid and retired or the corporation has provided for payment or retirement as determined by the commission, title to the project shall be transferred to the commission pursuant to contract. The commission shall then be responsible for all future maintenance costs of the project pursuant to contract. At such time, the corporation shall be dissolved unless the board amends the articles of incorporation to allow the corporation to commence work on another project.

(2) If a corporation is dissolved or liquidated and after all of its outstanding debts have been paid in full, all other income or assets of the corporation shall be liquidated and deposited in the state road fund and shall become the property of the commission.

(3) If a corporation must be dissolved or liquidated before all of its outstanding debts and obligations have been paid in full, such liquidation shall be through a receivership action instituted in the appropriate circuit court of this state or as otherwise provided by law.

(4) If the corporation or the commission does not elect to complete a project, any real property obtained for the project from the state of Missouri or any agency or political subdivision shall be returned. The state, its agency or political subdivision shall repay or return to the corporation all moneys or property it received from the corporation as consideration for the original transaction.

(5) Bonds, notes, obligations, liabilities or other debts of the corporation shall exclusively be the responsibility of the corporation payable solely out of corporation funds and property provided herein and shall not constitute

debt or liability of the state of Missouri or any agency or political subdivision of the state.

(B) Dissolution by commission, procedures, limitations.

(1) The commission may alter the organization, project or activities of the corporation by written directions to the board.

(2) The commission may dissolve the corporation. The commission shall not dissolve the corporation until all outstanding debts and obligations of the corporation have been paid in full, or until any receivership or other appropriate action to conclude the affairs of an insolvent corporation has been completed. The commission shall only dissolve a corporation by judicial proceedings.

(C) Dissolution by board, procedures.

(1) Whenever the board by resolution shall determine that the purposes for which the corporation was formed have been complied with and that all obligations of the corporation have been fully paid or that appropriate judicial action to conclude the affairs of an insolvent corporation has been completed, the board shall, with the commission's prior written approval, dissolve the corporation.

(2) It is unnecessary for the board of an insolvent corporation or the commission to take any action to dissolve that corporation if a receivership or other appropriate judicial action has already concluded the affairs of that corporation. A copy of the appropriate order or decree in the judicial proceeding shall be filed with the secretary of state, who shall issue a certificate of dissolution of that insolvent corporation without charge.

(D) Articles of dissolution, execution of—secretary of state to issue certificate, when.

(1) Articles of dissolution shall be executed in triplicate by the corporation by its president and attested to by its secretary. Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of (state law), he shall, without charge:

- (a) Endorse on each of such originals the word "filed" and the month, day, and year of the filing thereof;
- (b) File one of such originals in his office; and
- (c) Issue two certificates of dissolution to each of which he shall affix an original.

(2) A certificate of dissolution together with an original of the articles of dissolution affixed thereto by the secretary of state shall be returned to the representative of the dissolved corporation and to the commission. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors and officers.

<B.(E) to b facility.< toll near posted be methods—notice collection, and assessment authority--toll enforcement, Toll>

(1) The commission may authorize transportation corporations which operate a toll facility to enforce the payment of tolls against the operator of a vehicle for the failure of an operator of such vehicle to comply with the toll collection regulations.

(2) An authorized corporation may use any method for assessing and collecting tolls, including but not limited

to toll tickets, barrier toll facilities, billing accounts, commuter passes and electronic recording or identification devices. The display of a recording or identification device issued or authorized by a corporation for these purposes on or near the windshield of a motor vehicle shall not be a violation of any law or rule in the state of Missouri, unless the device is attached in a way that obstructs the driver's clear view of the highway or an intersecting highway.

Adopted by ALEC's Trade & Transportation Task Force at the States and Nation Policy Summit December 14, 2002. Approved by full ALEC Legislative Board January, 2003.

Resolution Commending the Use of Remote Control Locomotive Technology

Model Resolution

WHEREAS, a safe and efficient railroad system is vital for businesses and industries currently operating in [state] and for future economic development in the state; and

WHEREAS, innovations that enhance the safety of railroad operations in [state] benefit both the general public and railroad employees; and

WHEREAS, innovations that improve the efficiency of railroads in [state] help hold down freight rates and thereby enhance the competitive position of businesses and industries in the state that rely on railroads to transport both raw materials and finished products; and

WHEREAS, the two major railroads in Canada have been using remote controlled locomotives for over a decade with dramatic reductions in their accident rates and in their operating costs; and

WHEREAS, the remote control technology encompasses numerous safety features to prevent accidents; and

WHEREAS, the remote control technology enables the railroad employees on the ground to move cars around as needed without depending on someone in the locomotive cab and without risking a miscommunication with possibly devastating results; and

WHEREAS, the Federal Railroad Administration (FRA) has issued guidelines for operation of remote controlled locomotives on railroads in the United States; and

WHEREAS, in addition to these guidelines, current FRA regulations govern the training of remote control operators and inspections of these devices; and

WHEREAS, railroads have begun to utilize remote controlled locomotives for switching operations in various terminals in [state] and other states; and

WHEREAS, one major railroad in [state] recently completed its first year of experience using remote control switching operations with a 60 percent reduction in its accident rate as compared to conventional switching operations;

NOW THEREFORE, BE IT RESOLVED that the railroads of [state] are hereby recognized and commended for their exemplary efforts to improve their safety and efficiency by embracing the proven and innovative technology that makes it possible to safely perform switching operations with remote controlled locomotives.

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting July 31, 2003. Approved by full ALEC Legislative Board August, 2003.

Resolution in Support of the Expanded “Highway Watch” Program

WHEREAS, the events of September 11, 2001 have heightened an awareness for the need to maintain vigilant homeland security measures; and

WHEREAS, the trucking industry hauls 87 percent of the freight moved in the United States (measured by value) and more than 75 percent of America’s communities are dependent solely on trucking for safe receipt of their goods; and

WHEREAS, the nation’s three million professional truck drivers will play a vital role in keeping essential highways open, safe and secure; and

WHEREAS, America’s “Highway Watch” program trains drivers to spot and report emergency and safety situations to appropriate state authorities; and

WHEREAS, the “Highway Watch” program enlists the nation’s trucking industry to work cooperatively with law enforcement officers in identifying circumstances and incidents which may jeopardize the security of a city, a state, a regional area, or the nation; and

WHEREAS, the impending expansion of the “Highway Watch” program will establish an Operations Center and Information Sharing and Analysis Center (Truck ISAC) to coordinate trucking industry emergency planning and response activities with those of federal, state and local emergency planning agencies and in the sharing of actionable information;

NOW THEREFORE BE IT RESOLVED that the American Legislative Exchange Council endorses the trucking industry's Anti-Terrorism Action Plan utilizing the expanded “Highway Watch” program, further encourages each ALEC member's state to adopt the “Highway Watch” program and engage in cooperative efforts with the “Highway Watch” Operations Center and Truck ISAC; and

BE IT FURTHER RESOLVED, that copies of this Resolution should be sent to all Governors, all Members of Congress, the United States Secretaries of Transportation and Homeland Security, the Federal Motor Carrier Safety Administrator, the Transportation Security Administrator and all State Legislative Leaders (Speaker and Senate President).

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting July 31, 2003. Approved by full ALEC Legislative Board August, 2003.

Resolution Opposing Federal Non-Commercial Driver's License Standards

Summary

This resolution outlines the State of _____ opposition to federally mandated non-commercial drivers' license standards. Such standards, which are currently proposed in Congressional legislation in reaction to the revelation that some of the 9/11 terrorists fraudulently obtained state driver's licenses, is an unfunded mandate on our state and a violation of the Tenth Amendment to the US Constitution. Moreover, as currently proposed, these standards would establish the infrastructure and legal framework for a national identification system, which we oppose as well.

Model Resolution

WHEREAS the first driver's license was issued in Rhode Island in 1908 and in 2001 alone states issued more than 71,000,000 licenses and identification cards; and

WHEREAS today every state, the District of Columbia and the 5 US territories independently implement their own definitions, methods and customs for issuing state driver's licenses and identification; and

WHEREAS this independence and flexibility is vitally important in order for each state to meet the needs of those who live within its borders based upon economic, social and other considerations; and

WHEREAS every state may alter, without a federal mandate, its own identity and driver's license standards to promote more secure state-issued identification, including that issued for citizens and non-citizens alike; and

WHEREAS the Tenth Amendment to the US Constitution guarantees that the states, not the federal government, have the right to issue driver's licenses since no such right is conferred to Congress in the Constitution, nor is it prohibited by it to the states; and

WHEREAS the standards currently proposed by federal lawmakers establishes the DRIVERs system, which makes it possible for federal and state governments to establish a national identification system under the guise of making driver's licenses more secure; and

WHEREAS the purpose of issuing driver's licenses is to certify that the applicant is safe to drive in a particular state and understands that state's rules of the road; and

WHEREAS state department of motor vehicle employees do not have the training nor the mandate necessary to operate a national identification system; and

WHEREAS, using the driver's license as a national identity document or certificate will undermine the primary purpose of issuing driver's licenses; and

WHEREAS a national identification card will undermine the civil liberties of every citizen of the United States of America;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) opposes federal standards for state-issued identification and non-commercial driver's license; and

BE IT FURTHER RESOLVED, that the State/Commonwealth of (insert state) opposes a national

identification system, whether a federal or state mandate, and believes that such a mandate will dilute the original purpose of the driver's license.

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 8, 2002. Approved by full ALEC Legislative Board September, 2002.

Resolution Opposing the U.S. Department of Transportation's Proposal on Truck Driver Hours of Service

WHEREAS, the trucking industry employs more than nine million people, delivers 87 percent of the nation's freight measured by value and is the exclusive provider of freight services to 75 percent of U.S. communities;

WHEREAS, the trucking industry is a critical component of the United States' economy;

WHEREAS, truck safety is an important public policy concern;

WHEREAS, the current Federal regulations that are meant to reduce truck driver fatigue are in need of revision;

WHEREAS, the Federal Motor Carrier Safety Administration (FMCSA) recently issued a Notice of Proposed Rulemaking on revisions to the Federal Hours of Service rules for commercial drivers;

WHEREAS, the FMCSA's proposal would decrease the overall number of hours a truck driver could work, requiring the addition of more trucks and drivers to deliver the nation's freight;

WHEREAS, this impact would likely compromise safety by generating more exposure to crashes, putting thousands of inexperienced drivers on the road, exacerbating the shortage of rest area parking spaces and creating long periods of idle time for truck drivers;

WHEREAS, the increased costs generated by the need for additional trucks and drivers, as well as operational changes, under the proposal, would inflate delivery expenses and raise business and consumer costs;

WHEREAS, the proposal requires some trucks to carry on-board recorders for enforcing the hours of service regulations;

WHEREAS, this recorder requirement is unlikely to impact safety and raises serious, legitimate concerns regarding the privacy of the information and potential for abuse of the information, and would place additional financial burdens on the trucking industry, with small business being the most severely and disproportionately affected;

WHEREAS, the proposal rescinds current provisions that give states the flexibility to address certain unique requirements that cannot be met under the limitations of a general hours of service regulation, such as the ability to effectively respond to emergencies and to meet seasonal agricultural needs;

WHEREAS, the proposal unjustifiably removes an exemption for agricultural transporters that is critical to farmers during harvest season and will severely disrupt the carefully orchestrated system of transporting fresh food from farm to market;

WHEREAS, the proposal unjustifiably removes exemptions for intrastate operations that currently give states a measure of flexibility to address special circumstances within their own borders;

WHEREAS, FMCSA inexplicably removes exemptions for drivers engaged in emergency operations, including exemptions for drivers of utility service vehicles, and for snow and ice removal drivers, and that the loss of these exemptions will prevent workers engaged in emergency operations from properly carrying out their duties, possibly putting public safety at risk;

WHEREAS, the law enforcement community has raised concerns about the ability of commercial vehicle safety inspectors to effectively enforce the proposed regulations;

WHEREAS, the FMCSA's cost-benefit analysis of the proposal is incomplete and fails to completely account for all trucking industry and economy-wide costs, and inflates the safety benefits of the proposal.

NOW, THEREFORE, BE IT RESOLVED, that _____ opposes the proposed hours of service rule and urges the FMCSA to issue a new proposal that is not similar in substance to its previous proposal, and that is based on sound science, enhances public safety, and strengthens the ability of the trucking industry to meet the needs of the American economy,

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the United States Secretary of Transportation, the Administrator of the Federal Motor Carrier Safety Administration, the chairmen and ranking members of relevant committees of the United States Senate and House of Representatives.

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 3, 2001. Approved by full ALEC Legislative Board September, 2001.

The State Driver's License and Identification Security Act

Summary

This Act provides greater security in issuing state driver's licenses and identification by raising the verification standards for originating documents. It authorizes the State Department of Motor Vehicles to refuse to issue a license, permit or identification if reasonable doubt to the authenticity of verifying documents exists. In addition, this legislation requires that, for non-citizens, the driver's license expires no later than the expiration date of the visa. It also provides for increased penalties for those who possess, sell or use fraudulent documents to obtain a driver's license or other identification.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the State Driver's License Identification and Security Act.

Section 2. {Legislative Declarations.}

Section 3. {Definitions.}

(A.) "Driver's license" means.

(B.) "Identification card" means.

Section 4. {Proof of Identity.}

(A.) No person shall sit for an examination or road test for any license, identification card or permit unless that person presents two forms of identification for proof of identity, age and residence deemed valid by the Department of Motor Vehicles. Such identification must include one (1) primary identity document and one (1) secondary identity document.

Acceptable primary documents are the following:

- (1) Birth certificate
- (2) Driver's license issued after the implementation date of this Act
- (3) State identification card issued after the implementation date of this Act
- (4) Military identification card
- (5) Social security card

Acceptable secondary documents are the following

- (1) Selective service card
- (2) W-2 form
- (3) Marriage license
- (4) Pilot's license

(B.) In addition to requiring an applicant for a driver's license, permit, or identification card satisfactory proof of identity and age, the director or staff also shall require the applicant to provide, as a condition for obtaining a permit, license, or identification card, proof that the applicant's presence in the United States is authorized under federal law. This means that applicant must produce a valid visa, work permit, or I-94 form. A consulate card issued by a foreign government is not considered valid proof of residence, or valid primary identification for the issuance of a U.S. driver's license.

Section 5. {Standards for Refusal to Issue a License, Permit or Identification Card.}

If the director or staff suspects that any document presented by an applicant as proof of identity, age, or legal residency is altered, false or otherwise invalid, the director or staff shall refuse to grant the permit, license or identification card until such time as the document may be verified by the issuing agency.

Section 6. {License, Permit, Identification Card Expiration Date.}

If the Department of Motor Vehicles issues a license, permit or identification card to a person who has demonstrated authorization to be present in the United States for a period time shorter than the standard period of the license, permit or identification card, the Department of Motor Vehicles shall fix the expiration date of the license, permit or identification card no later than the date at which the person's authorization to be present in the United States expires. The Department of Motor Vehicles may only renew such a license, permit or identification card if it is demonstrated that the person's continued presence in the United States is authorized under federal law.

Section 7. {Reprisals Prohibited.}

Reprisals against any employee of the Department of Motor Vehicles for enforcing any section of this Act is hereby prohibited. This includes but is not limited to threats against the employee's person, property, family or employment. Those accused of making such reprisals will be prosecuted under the appropriate section (s) of this states criminal code.

Section 8. {Fraud Punishable Under the Law.}

A person convicted of any of the following shall be guilty of a crime in this State.

(A.) A person who knowingly sells, offers or exposes for sale, or otherwise transfers with the intent to sell, offer or expose for sale, or otherwise transfer, a document, printed form or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age.

(B.) A person who knowingly makes, or possesses devices or materials to make, a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age.

(C.) A person who knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age.

(D.) A person who knowingly possesses a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age.

(E.) Every person convicted of or adjudicated delinquent for a violation of any offense defined in this section shall forfeit his right to operate a motor vehicle in this state for a period to be fixed by the court at not less than six months or more than two years which shall commence on the day the sentence is imposed.

Section 9. {Severability Clause.}

Section 10. {Repealer Clause.}

Section 11. {Effective Date.}

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting July 30, 2004. Approved by full ALEC Legislative Board August, 2004.

Public Transportation Consumer Protection Act

Summary

ALEC's model Public Transportation Consumer Protection Act is designed to provide the lowest possible cost of public transportation, consistent with service quality and safety standards by creating a competitive environment in which both public transit agencies and private transportation providers are fairly considered for operation of services.

Model Legislation

(Title, enacting clause, etc.)

Section 1. {Short Title.} This Act shall be known and may be cited as the Public Transportation Consumer Protection Act.

Section 2. {Legislative Findings and declarations.} The legislature finds and declares that:

(A) Public transportation services are provided to assist the transit dependent and the poor, to provide travel

options for all, to relieve congestion, and to minimize automobile pollution.

(B) Protection of consumers, the public transit riders and tax-payers, requires that public transportation service be provided at the lowest possible cost consistent with service quality and safety standards.

(C) Private transportation providers have been used under competitive contracts to provide public transportation services at lower costs and with lower annual cost increases.

(D) Decisions on whether a public transportation service should be operated by a public agency or a private company should be made on economic and service quality considerations rather than on institutional considerations.

(E) Obtaining cost effective public transportation services requires a competitive environment and a mechanism for competitive contracting of such services.

(F) Facilities and vehicles purchased for public transportation service are public assets which are held in the public trust for service to public transit riders and the taxpayers.

Section 3. {Definitions.} The following words and phrases when used in this act shall have the meanings given in this section unless the context clearly indicates otherwise.

(A) "Attributable fully allocated cost." Operating and capital cost of a public transportation service including the direct costs of driver labor and benefits based upon actual driver work assignments for the service, and a reasonable allocation of costs for replacement and spare drivers and all other costs of providing and administering transportation and maintenance for the service, minus the cost of any function not to be competitively contracted.

(B) "Public transit operator." Any public agency that provides or sponsors public transportation service and receives public subsidy.

Section 4. {Competitive proposal requirement.}

(A) On an annual basis, each public transit operator shall seek competitive proposals on at least ten percent of its fixed route bus service. The annual competitive proposal requirement shall be met only by the requests for proposal for services not currently operated under competitive proposals. The annual competitive proposal requirement shall be based upon the annual vehicle miles for the latest fiscal year for which information is available.

(B) Notwithstanding the requirement of section (A), the competitive contracting required under this Act shall be accomplished through attrition of the public transit operator's full-time drivers and mechanics in the employ of the public transit operator on the effective date of this Act. A public transit operator may hire new permanent drivers and mechanics only to the extent necessary to operate services that the public transit operator has been awarded through competitive proposals.

(C) Any fixed route bus services operated under competitive proposals on the effective date of this Act or thereafter shall be subject to a new competitive proposal at least every five years. In no case shall a service operated under competitive proposal be returned to operation not subject to competitive proposal. Renewal options that extend a contract beyond five years shall be prohibited.

(D) The public transit operator shall determine the routes, schedules, and fares to be included in any request for

proposal.

(E) Savings obtained through competitive service provisions shall be used only for the benefit of consumers, including increased service levels, reduced passenger fares, new capital facilities and reduction of public transportation subsidies.

(F) Each public transit operator shall make all buses purchased through use of public transportation subsidy available for operation under nominal leases.

(G) Each public transit operator shall maintain a list of interested proposers, which shall include all organizations that have requested inclusion on such lists. The public transit operator shall advertise for additions to the interested proposers list at least annually in accordance with its general procurement policy.

(H) A public transit operator may replace service with alternative service provision methods to be in the public interest.

(I) A public transit operator may execute standby competitive contracts with one or more private transportation providers to operate any service on an interim basis in the event that the public transit operator determines such operation to be required for the public welfare. Any service operated under a standby contract shall be subject to competitive proposal within six months of standby contract service commencement.

Section 5. {Standards and requirements.}

(A) Within six months of the effective date of this Act, each public transit operator shall promulgate reasonable standards with respect to experience, safety records, and financial responsibility by which private transportation providers can be qualified to provide bus services pursuant to this Act. Such standards shall be clearly defined in each request for proposals issued by each public transit operator and shall not be designed to restrict the number of eligible participants in the competitive proposal process.

(B) Within six months of the effective date of this Act, each public transit operator shall prepare a standard form of agreement to provide bus services. Such contract shall include:

- (1) Reasonable passenger comfort, safety, and vehicle maintenance standards;
- (2) Standards for access to bus services for persons with disabilities, which shall be as specified in the public transit operator's plan for such services;
- (3) Standards for training and safety records to be required of any driver;
- (4) Requirements for reasonable insurance protecting the public transit operator from liability for the acts, negligence, or omission of private transportation providers, their agents, and their employees;
- (5) Reasonable penalties for inadequate performance, including the public transit operator's right to cancel contracts.

(C) Each public transit operator shall develop reasonable standards for reliability, on-time performance, and other appropriate service quality considerations for each service parcel for which competitive proposals are sought. Such standards shall be clearly defined in each request for proposals issued by each public transit operator.

(D) A public transit operator may not establish any requirement relating to the wages, benefits, or union organization of contractor employees. All contractors shall comply with and give adequate certification of compliance with all applicable federal and state labor laws.

(E) No change in contract payment amount to a private transportation provider shall be made except as specified in the contract. Payment changes in a contract shall be limited to indices, escalators, deflators, changes in service level and other expressly stated or calculable amounts, consistent with the request for proposal and the proposal of the private transportation provider awarded the contract.

(F) Contract expiration dates shall be rotated to the maximum extent feasible to minimize the number of contract awards under consideration at any particular time.

Section 6. {Requests for proposals.}

(A) Each request for proposals shall specify the route, service frequency, fares, and exact service level in terms of annual revenue service hours and miles to be assumed in the cost proposal as determined by the public transit operator.

(B) The public transit agency shall seek the widest reasonable distribution of each request for proposals, and at a minimum shall send each request for proposals to each organization on the interested proposers list and to each additional organization which requests the specific request for proposal.

(C) The public transit operator shall advertise each request for proposals within 10 days of issuance, and in accordance with its general procurement policy.

(D) Proposals shall be required not less than 60 days from the advertisement date, except in emergency circumstances.

(E) Services shall commence under any request for proposal as soon as reasonably practical within the parameters of the service requirements.

(F) Each request for proposals shall be limited to the least amount of service as may be commercially practicable so that the largest possible number of private transportation providers may respond.

(G) Any private transportation provider may respond to any request for proposals. Each public transit operator shall ensure that disadvantaged business enterprises, as defined in part 23 of title 49 of the Code of Federal Regulations, as amended, have the greatest possible opportunity to respond.

(H) With respect to each request for proposals, the public transit operator shall award the contract to the private transportation provider or public transit operator whose responsible and responsive proposal offers the lowest cost.

(I) No company, subsidiary of a company, parent of a company, or company related to a company holding a contract to manage the public transit operator shall be qualified to submit a proposal or be awarded any contract to operate public transportation services for the public transit operator.

Section 7. {Public transit operator proposals.}

A public transit operator, including a public transit operator issuing the competitive procurement, may submit a proposal, and be awarded any such service, subject to the following conditions:

(A) That it submit a sealed proposal before the advertised deadline for such proposals, that the proposal not be altered after that deadline, and that the proposal be publicly opened and made public at such deadline.

(B) That any labor provision assumed in the proposal either be specified in currently effective labor contracts or be executed before the proposal deadline in a written and binding agreement between the public transit operator and the appropriate labor organization.

(C) That it define in advance and implement procedures to ensure an objective and fair evaluation process, including prohibition of proposal evaluation participation by personnel or departments that were involved in preparing the public transit operator's proposal.

(D) That its proposal price be not less than its attributable fully allocated cost for the service, and that its proposal price not be based on part-time labor provisions or other less costly labor provisions to a greater percentage than such provisions are employed in the public transit operator's fixed route bus services which have not been subjected to competitive proposals, and that its proposal price be consistent with currently adopted budgets and financial plans.

(E) That it shall make or be bound by no contract, agreement, or assurance that creates or extends any form of obligation for continued employment or employee compensation with respect to employees assigned to the service, beyond the expiration date of the competitively contracted service.

(F) That it shall be bound by the same terms, conditions, and performance and other standards as would have applied to a private transportation provider awarded the contract under the request for proposal.

(G) That its costs per vehicle mile, exclusive of capital costs, for fixed route bus services that have not been subject to competitive proposals shall not at any point during the contract rise by a percentage greater than the cost per vehicle mile, exclusive of capital costs, for the competitive service in the public transit operator's proposal for the corresponding period.

(1) Each adopted budget or budget revision and each United States Department of Transportation Urban Mass Transportation Administration Section 15 annual report shall be reviewed by the public transit operator to determine compliance with this provision;

(2) If the public transit operator's cost performance is not in compliance with this provision, the public transit operator shall relinquish the contract and a new request for proposal for the service shall be issued within 90 days.

Section 8. {Performance audit.}

Each public transit operator shall contract with an independent certified accounting firm, other than the public transit operator's regular auditor, for a neutral and unbiased performance audit to be completed and reported to the legislature within two years after the effective date of this Act. Such performance shall analyze, in a fair and equitable fashion, the implementation of this Act including, but not limited to, compliance with the competitive proposal process, compliance with fully allocated costing requirements, the level of contract compliance by private transportation providers, the cost of such compliance and whether such costs will be recurring or may be reduced, the application of savings to consumer benefit, and taxes paid by private transportation providers.

Section 9. {Facilities and vehicles.}

(A) The planning of all maintenance facilities, operations facilities, and garages shall include a thorough review of competitive alternatives available for efficient development, management, and or operations for such facilities. The planning process shall include private transportation providers, and any application for funding assistance shall include a full description of such alternatives reviewed.

(B) No public transit vehicle, maintenance, or operating facility purchased or leased after the effective date of this Act shall be encumbered by any contract, agreement, or assurance that limits its use by private transportation providers in the operation of public transportation service under contract, subject to the policy control of the public transit operator.

Section 10. {Restrictive agreements.} No public transit operator shall make or be bound by any contract, agreement, or assurance that restricts its ability to comply with this Act in any respect.

Section 11. {Severability clause.}

Section 12. {Repealer clause.}

Section 13. {Effective date.}

ALEC's Sourcebook of American State Legislation 1995

Pupil Transportation Cost-Effectiveness Act

Summary

ALEC's model Public Transportation Cost-Effectiveness Act is designed to reduce school bus expenditures, without reducing quality or safety, by competitively contracting out school bus services. Key components to the bill include:

Model Legislation

Section 1. {Short title.} This Act shall be known and may be cited as The Pupil Transportation Cost Effectiveness Act

Section 2. {Legislative findings and declarations.} The legislature finds and declares that:

(A) It is in the public interest for school pupil transportation services to be provided subject to high safety and quality standards;

(B) It is in the interests of the taxpayers that school pupil transportation services be provided at the lowest possible cost consistent with high safety and quality standards;

(C) Decisions on whether school pupil transportation service should be operated by a school district itself or by a private company should be made on economic considerations rather than on institutional considerations;

(D) School districts should routinely examine all available options for improving the cost efficiency of school pupil transportation services.

Section 3. {Definitions.} The following words and phrases when used in this act shall have the meaning given in this section unless the context clearly indicates otherwise:

(A) "Make or buy analysis." A process in which a school district arranges for the most cost-efficient provision of the school bus service that it administers. Make or buy analysis includes:

- (1) Issuance of a request for proposals (RFP) for school bus service;
- (2) Qualification of private companies for eligibility to provide school bus service;
- (3) Evaluation of proposals received in response to the RFP;
- (4) Decision to either (a) award a contract for the services described in the RFP or (b) continue to operate the services under the school district transportation division.

(B) "School district transportation division." The school pupil transportation department of the school district issuing the RFP.

(C) "Qualified and responsive proposer." A private company that meets the qualification set by the school district and has submitted a proposal that demonstrates sufficient capability and understanding to provide the school bus service according to school district service specifications.

(D) "Proposer." A private company.

(E) "Contractor." A private company with which the school district has executed a contract for school bus service.

(F) "Unit Cost." Any reasonable indicator of cost used by a school district in requesting and evaluating proposals as a part of make or buy analysis, including, but not limited to cost per mile, cost per hour, cost per transported pupil and cost per school bus.

Section 4. {Make or buy analysis.}

(A) Each school district shall complete the applicable make or buy analysis requirements above within one year of the effective date of this act.

(B) Make or buy analysis shall be repeated for applicable school bus services at least once every three years. The department of education may not distribute money to a local education agency unless the local education agency establishes that it is providing services at a competitive cost.

(C) In the event of a contract award to a contractor, all school district-owned buses assigned to the corresponding service may be sold or leased or made available to the contractor for use in the school bus service.

(D) Contractors shall reasonably consider displaced school district employees for employment.

Section 5. {Qualifications and specifications.}

(A) Each school district shall prepare reasonable service specifications which shall be included in any RFP for

school bus service and any contract for school bus service. The service specifications shall describe minimum standards with respect to, but not limited to:

- (1) Passenger safety and vehicle maintenance standards;
- (2) Qualification, training requirements, and safety records for school bus drivers;
- (3) School bus safety programs and records;
- (4) Requirements for insurance protecting the school district from liability for the acts, negligence, or omission of private companies, their agents, and their employees;
- (5) School bus vehicles;
- (6) Maintenance and preservation of school buses or other assets owned by the school district and leased to contractors;
- (7) Remedies for unsatisfactory performances and contract termination provisions.

(B) No school district may establish any requirement relating to the wages, benefits, or union organization of contractor employees. All contractors shall comply with and give adequate certification with all applicable federal and labor laws.

Section 6. {Requests for Proposals.}

- (A) Each school district shall seek the widest reasonable distribution of each RFP.
- (B) A school district may require private companies to submit qualification information either reasonably in advance of proposal submittal or as a part of the proposal.
- (C) Each RFP shall specify the school bus services sought by the school district, qualifications, service specifications, and any other information necessary to a complete understanding of the school bus service being requested and the proposed terms and conditions.
- (D) Each RFP shall specify the district-owned school buses and capital facilities that will or may optionally be made available for use in the specified services.
- (E) Each school district shall require that private company costs be proposed in such a format that only the costs of qualified and responsive private companies shall be reviewed, and that any cost submittal by a private company determined to be not qualified and responsive be returned unopened to the private company.
- (F) Each school district shall require that costs be proposed as:
- (G) Fixed costs based upon unit costs for each year covered by the proposal, including option years; and/or as
- (H) Fixed costs based upon unit costs for the first year with subsequent year unit costs adjusted based upon the change in appropriate and broadly accepted indicators of the change in prices, such as the Consumer Price Index.
- (I) Each school district shall ensure that disadvantaged business enterprises, as defined in part-23 of title-49 of

the Code of Federal Regulations, as amended, have the greatest possible opportunity to respond.

Section 7. {Contracts.}

(A) With respect to each request for proposals, the school district shall award a contract to the qualified proposer whose responsive proposal offers the highest quality for the lowest public cost.

(B) No change in contract payment rate shall be made except as specified in the contract, in accordance with the unit costs in the proposal of the organization awarded the contract.

(C) A school district may execute contracts with private companies to operate any service on an interim basis in the event of an emergency that does not permit sufficient time for make or buy analysis.

Section 8. {School bus provider equity.}

(A) Notwithstanding any other provision of law, no state financial expenditure or reimbursement for school pupil transportation shall result in a preference for operation of school bus service by school district transportation divisions over operation of school bus service by private companies.

(B) Notwithstanding any other provision of law, no state policy or regulation relating to school pupil transportation shall result in a preference for operation of school bus service by school district transportation divisions over operation of school bus service by private companies.

Section 9. {Facilities and Vehicles.}

The planning of all school bus maintenance facilities, operations facilities, and garages shall include a thorough review of alternatives available for efficient development, management, and/or operations with private school transportation companies.

Section 10.

No school district shall make or be bound by any contract, agreement, or assurance that restricts its ability to comply with this Act in any respect.

Section 11. (Severability clause.)

Section 12. (Repealer clause.)

Section 13. (Effective date.)

Resolution on Secondary Boycotts

Summary

ALEC's model resolution highlights the impact and problems of secondary boycotts and calls for Congress to amend the Railway Labor Act to include rail and airline unions in prohibiting this unfair labor practice.

Model Resolution

WHEREAS, in 1947 Congress enacted the Taft-Hartley amendments to the National Labor Relations Act prohibiting striking unions from engaging in boycotts against parties who were not involved in a dispute with the union- so called secondary boycotts; and

WHEREAS, in 1986 railroad unions adopted nationwide secondary boy-cott tactics in an effort to force settlement of dispute with a regional rail-road in New England; and

WHEREAS, subsequently the Supreme Court ruled that since Congress had not amended the Railway Labor Act, which covers the railroad and air-line industry, to prohibit secondary boycotts, such tactics were lawful for unions in those industries; and

WHEREAS, in 1989 the machinists union, in the context of a dispute with Eastern Airlines, threatened to picket various railroads and to disrupt ser-vice on heavily used commuter rail lines in an effort to force the appointment of a presidential emergency board; and

WHEREAS, as the law now stands, a local dispute involving one employer can result in the disruption of vital transportation services throughout the nation and be transformed into a national crisis; and

WHEREAS, by being able to engage in secondary boycotts, rail and airline unions can inflict hardship on neutral parties as a means of exacting conces-sions that could not otherwise be gained through the normal collective bargaining process; and

WHEREAS, the ability to engage in secondary boycotts permits rail and airline unions to wield power specifically denied to all other unions and to hold the nation hostage to their parochial interests; and

WHEREAS, permitting rail and airline unions to engage in secondary boy-cotts has the potential for great harm and has no rationale in labor law or public policy;

NOW THEREFORE BE IT RESOLVED that the Legislature of (state) memorialize Congress to amend the Railway Labor Act to extend to rail and airline unions the prohi-bitions on secondary boycotts that apply to all other unions under the National Labor Relations Act; and

BE IT FURTHER RESOLVED that the clerk of the House of Representatives and Senate transmit copies of this resolution to the President of the United States, to the Speaker of the United States House of Representatives, to the President of the United States Senate, to the Secretary of Labor of the United States and to each Member of Congress of the United States.

Resolution on the Federal Employer's Liability Act

Summary

ALEC's model Resolution on the Federal Employer's Liability Act calls for Congress to repeal the Federal Employer's Liability Act (FELA) and place the railroad industry under no-fault worker's compensation laws, thus avoiding costly legal expenses.

Model Resolution

WHEREAS, the railroad industry is covered by the Federal Employers' Liability Act (FELA), a fault-based law enacted in 1908 to provide compensation to employees suffering work-related injuries; and

WHEREAS, since the enactment of FELA, no-fault worker's compensation laws have been adopted by every state to cover virtually all other American workers; and

WHEREAS, FELA imposes inordinate costs on the railroad industry that serve to put it at a competitive disadvantage with respect to other transportation modes that are covered by no-fault systems; and

WHEREAS, FELA is characterized by excessive transaction costs, with a large portion of the monies paid out as compensation going to trial lawyers rather than injured employees; and

WHEREAS, FELA requires both employer and employee to prove the other is at fault following an accident, therefore creating antagonism between railroads and their workers and a disincentive to the cooperation necessary to determine the true causes of workplace accidents; and

WHEREAS, because of its reliance on litigation, FELA often creates a disincentive for employees to seek speedy rehabilitation and return to the job;

NOW THEREFORE, BE IT RESOLVED, that the Legislature of (state) memorialize Congress to repeal FELA and put the railroad industry under the jurisdiction of the no-fault workers' compensation laws of the several states under the same terms and conditions as are other American workers; and

BE IT FURTHER RESOLVED, that the clerk of the (House of Representatives and Senate) transmit copies of this resolution to the President of the United States, to the Speaker of the United States House of Representatives, to the President of the United States Senate, to the Secretary of Transportation of the United States, and to each Member of the Congress of the United States.

ALEC's Sourcebook of American State Legislation 1995

Urban Transit Authority Act

Summary

ALEC's Urban Transit Administration Act is designed to achieve greater efficiency through competitively contracting transit services. This will be fulfilled through a "Regional Transit Policy Commission" that shifts at least five percent of non-competitive bus services and at least five percent of non-competitive paratransit

services to public-private competition.

Model Legislation

Section 1. {Short Title} This act may be cited as the Urban Transit Administration Act

Section 2. {Legislative Declarations} The legislature finds and declares that:

(A) Increased use of public transit service has the potential to improve air quality and traffic congestion in urban areas.

(B) Public transit service provides essential mobility to people with low incomes.

(C) Public transit's share of urban trips has continued to decline.

(D) Public transit unit costs have risen considerably ahead of competitive market rates.

(E) Public transit service has been planned and operated by public agencies, which have not been regulated despite their monopoly nature.

(F) Widespread experience has demonstrated the ability of private providers of public transit service to attract new riders to services and to improve system-wide cost effectiveness.

(G) Nonetheless, private providers of public transit service continue to be systematically denied the opportunity to participate in the production of public transit service, the consequences of which are that the public has not been provided with innovative new services and transit services are more costly than necessary.

(H) Experience in the United States and around the world, both in public transit and in other economic sectors, demonstrates that competition improves customer service and cost effectiveness.

(I) An agency that plans service cannot objectively choose between itself and other organizations for operation of services, even where service provision by others is in the public interest.

(J) Public transit needs to be reorganized to ensure that riders receive the broadest array of services at affordable fares and that funding contributed by taxpayers be used most cost effectively.

Section 3. {Definitions} The following words and phrases when used in this act shall have the meanings give in this section unless the context clearly indicates otherwise.

(A) "Entrepreneurial service." A service provided by a private company without public subsidy.

(B) "Non-competitive service." A regional service that is not provided through public-private competition.

(C) "Public-private competition." A process under which the Regional Transit Policy Commission seeks competitive proposals from private and public organizations for the provision of any regional transit service.

(D) "Regional transit service." A transit service deemed to be regional in nature, and contained in the service plan. It shall not include any service not supported by federal, state or regional subsidies and provided under the auspices of a county or a city.

(E)"Regional transit service plan." An annual plan that includes all regional transit services intended to be operated during the next year, including modes of services, route alignments, timetable, vehicle appearance and markings, safety specifications and other service specifications.

(F)"Substantial duplication." A service which duplicated at least 75 percent of a particular regional transit service. It shall not mean any service operated within a geographical area designated as either an empowerment zone by any unit of government.

Section 4. {Establishment of the commission}.

(A) A Regional Transit Policy Commission is established in each metropolitan area with more than 500,000 residents according to the most recent decennial census.

(B) The Regional Transit Policy Commission shall be composed of the following members. (Delineation of appointing authorities and number of appointments such that, to the degree possible, all citizens are equally represented.)

(C) As soon as practicable following each decennial United States census, and no later than six months following the release of the final population counts for local jurisdictions within a metropolitan area of more than 500,000 residents, the state auditor shall propose such realignments of Regional Transit Policy Commission appointments as may be necessary to achieve equal representation.

(1) Such realignments should become effective 120 days following publication unless rejected by a house of the Legislature;

(2) In the event of a legislative rejection, the Legislature should adopt a realignment achieving equal representation within 120 days of the rejection.

(D) Notwithstanding any other provision of law, the commission shall have the following exclusive powers with respect to regional transit services:

(1) Determination of regional transit services;

(2) National transit planning, which shall include development of an annual transit plan, alignment of transit routes, scheduling of transit routes, marketing of services;

(3) Contracting, with any public or private organization for services within the regional transit system.

(4) Establishing fare structures;

(5) Authorizing entrepreneurial services.

(E) Notwithstanding any other provision of law, the commission shall be prohibited from:

(1) Directly operating public transit services;

(2) Employing personnel who operate transit vehicles, whether directly or through automatic mechanisms.

Section 5. {Service Contracts}.

(A) The commission shall contract for regional transit services as follows:

(1) Each year at least five percent of non-competitive bus services shall be converted to public-private competition measured by vehicle miles;

(2) Each year at least five percent of non-competitive paratransit services shall be converted to public-private competition measured by vehicle miles.

(3) Non-competitive rail transit services operated over publicly owned rights of way shall be converted to public-private competition at the greatest feasible rate;

(4) No service provided through public private competition shall revert to non-competitive operation.

(B) Contracts for non-competitive transit services shall be executed with public operators for services not yet subjected to public-private competition.

(1) Contract prices shall be based upon cost per mile in service to the public;

(2) Initial non-competitive service contract rates shall be no greater than the cost per mile for the previous to the contract year, minus the fully allocated cost per mile of the functions assumed by the commission;

(3) Year to year contract prices shall change at a rate no greater than the Consumer Price Index minus three percentage points. At the beginning of the fourth year, the commission shall make recommendations to the legislature for any changes it deems necessary to the cost increase limit for the next five years.

(C) With respect to services operated under public-private competition:

(1) All service shall be subjected to public-private competition at least every five years;

(2) At no time may any individual contract for bus or paratransit services exceed a peak requirement of 50 vehicles.

(3) A contract shall specify all contract rates for the duration of the contract, including renewal option periods, based upon the results of the competitive process, in actual amounts or in a base amount to be periodically adjusted in relation to the change in an indexation system specified in the competitive process.

(4) A rate adjustment may be negotiated to equitably account for increases or decreases in service levels that exceed 20 percent of the service level specified in the original contract;

(5) A contract shall contain no provision relating to the employee compensation, union representation, staffing levels, work rules or any other conditions of employment with respect to a contractor or a contractor's employees;

(6) Notwithstanding any other provision of this act, the commission shall have authority to use public-private competition for the provision of services in emergencies, according to the terms and conditions it finds to be in the public interest, for a maximum of six months.

Section 6. {Entrepreneurial services}

(A) The commission shall authorize entrepreneurial services as follows:

(1) Non-rail services that are part of the regional transit plan shall be subjected to the following conditions:

- (a) The service shall be provided without subsidy.
- (b) The service shall operated in accordance with the regional fare and transfer structure.
- (c) The service shall meet the specification of the regional transit plan.
- (d) The service shall be initiated no sooner than the expiration of the contract for such service.
- (e) At least three month's notice shall be provided of the intention to discontinue a service.
- (f) The operator shall post a reasonable performance bond, consistent with a regulation to be adopted by the commission within three months of the effective date of this act.
- (g) The operator shall demonstrate proof of insurance that meets the requirements of the state public utilities commission for similar services.

(2) Non-rail services that are not a part of the regional transit plans shall be subjected to the following conditions;

- (a) The service shall not substantially duplicate any service in the regional transit plan.
- (b) At least three month's notice shall be provided of the intention to provide service.
- (c) At least three month's notice shall be provided of the intention to discontinue a service.
- (d) The operator shall demonstrate proof of insurance that meets the requirements of the state public utilities commission for similar service.

Section 7. {Funding}

- (A) The use of all regional, state and federal subsidies for any regional transit service shall be subject to the approval of the commission.
- (B) The commission shall not receive federal funding.
- (C) The commission shall be the recipient of all state and regional funding.
- (D) The commission shall reduce its payment to a public operating company by the amount of federal funding received by the public operating company.
- (E) The commission may establish a separately administered public agency to administer federal funding and federally assisted assets, which may have no more than the following authority:
 - (1) Receipt of federal funding;
 - (2) Disbursement of such funding according to standards established by the commission;

(3) Ownership and leasing of federally assisted assets.

Section 8. {Publicly Owned Operating Companies }

(A) The publicly owned operators of regional transit service shall be reconstructed as one or more publicly owned operating corporations (public operating companies) by the governing board.

(B) A public operating company shall receive subsidies only as approved by the commission.

Section 9. {Report on Private Ownership }

(A) By *{insert date}* the commission shall prepare a report to the legislature regarding the potential for sale of public operating corporations to private interests. The report shall include:

- (1) An assessment of the commercial viability of each public operating company.
- (2) At least one recommended procedure for sales of public operating corporations, including a tentative schedule.
- (3) Delineation of proposed safeguards to ensure that the public receives no less than a representative market price for any public operating company.
- (4) Draft legislative provisions required to authorize sales consistent with the recommended procedure.

Section 10. {Severability clause.}

Section 11. {Repealer clause.}

Section 12. {Effective date.}

ALEC's Sourcebook of American State Legislation 1995

Workers' Compensation Reform

Independent Contractor Definition Act

Summary

Many workers often characterize themselves as independent contractors due to beneficial tax incentives, etc. However, when the worker is injured on the job, the worker may want to characterize him/herself as an employee in order to draw from the workers' compensation system, even though the worker may not have paid into the system. Confusion in the precise definition of an independent contractor has contributed to conflicting decisions by the courts on this matter. The Independent Contractor Definition Act simplifies the criteria used to define independent contractors with respect to private and public employees for the purpose of workers' compensation.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Independent Contractor Definition Act.

Section 2. {Legislative Declarations.}

(A) Simplifying the rules with respect to independent contractors was the top vote-getter at the 1995 White House Conference on Small Business. Conference delegates recommended that government needs to "recognize the legitimacy of an independent contractor." The Conference found that the current common law is "too subjective" and called upon the government to establish "realistic and consistent guidelines."

(B) It is in the best interests of business and government to have fair and objective rules for determining who is an employee and who is an independent contractor.

Section 3. {Definition Clarified; Private Employment.}

(A) "Employee," with respect to private employment, means any person in the service of an employer subject to the provisions of this chapter under any express or implied, oral or written contract of hire except a railroad engaged in interstate commerce whose rights are governed by the Federal Employers' Liability Act. If they elect to be personally covered by this chapter, "employee" includes persons who regularly operate businesses or practice their trades, profession, or occupations, whether individually, or in partnership, or association with other persons, whether or not they hire others as employees.

(B) (1) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, who performs services for pay for an employer, is presumed to be an employee. This presumption may be rebutted by proof that an individual meets all of the following criteria:

- (a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.
- (b) The person has control and discretion over the means and manner or performance of the work in achieving the result of the work.
- (c) The person has control over the time when the work is performed, and the time performance is not dictated by the employer. However, this criterion does not prohibit the employer from reaching agreement with the person as to completion schedule, range of work hours and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.
- (d) The person holds himself or herself out to be in business for himself or herself.
- (e) The person is not required to work exclusively for the employer, or, if not exempt from the definition of "employee" under subparagraph (B)(1) of this section, the person signs a written contract with the employer which:
 - (i) states the employer's intent to hire the person as an independent contractor; and
 - (ii) states that the person is presumed to be an employee unless all provisions specified in subparagraphs (B)(1)(a) through (B)(1)(d) of this section are met, in which case the person shall be classified as an independent contractor; and

(iii) explicitly and accurately details the provisions specified in subparagraphs (B)(1)(a) through (B)(1)(d) of this section in such a way that the criteria is clear and fully understandable without having to physically reference this section within state statutes.

(2) For the purpose of this subparagraph, "qualified real estate broker or agent" means a person who is a licensed real estate broker or licensed real estate salesman and whose remuneration as such is directly related to sales or other output including performance of services, rather than to the number of hours worked.

(3) For the purposes of this subparagraph, "direct seller" means a person:

(a) Engaged in selling or soliciting the sale of consumer products, services or intangibles to any buyer on a buy-sell basis, deposit-commission basis or any similar basis for resale by the buyer or any other person in the home or other than in a permanent retail establishment; or engaged in selling or soliciting the sale of consumer products, services or intangibles in the home or otherwise than in a permanent retail establishment; and

(b) Who receives substantially all remuneration as such in a direct relationship to sales or other output including the performance of services, rather than the number of hours worked; and

(c) Whose services are performed pursuant to a written contract with the person for whom the services are performed, which provide that the individual will not be treated as an employee for federal tax purposes.

(4) For the purposes of this subparagraph, "real estate appraiser" means a person who is a real estate appraiser and whose remuneration as such is by way of a fee and is directly related to services or other work product rather than to the number of hours worked.

Section 4. {Definition Clarified; Public Employment.}

(A) "Employee," with respect to public employment, means:

(1) Any person in the service of an employer, including member of the general court, under an express or implied contract of hire and every elected or appointed official or officer of the state or any political subdivision or agency thereof while performing official duties.

(2) Any person who is a call firefighter or special police officer, volunteer or auxiliary member of a fire or police department, ambulance or rescue service, or the state police, whether paid or not, for purposes of this title, shall be deemed to be an employee of the political subdivision in which the department is organized.

(3) Any person who is a regularly enrolled volunteer member or trainee of the emergency management corps of this state, for purposes of this title, shall be deemed to be an employee of the state.

(4) Any person who fights a forest or other type of fire and who is either voluntarily under the direction of those authorized to give direction in the fighting of fires or who is under statutory compulsion to fight fires, for purposes of this title, shall be deemed to be an employee of the state or municipality.

(5) Any person who assists in a search for or an attempted rescue of another, and who is voluntarily under the direction of those authorized to give direction in searching for or attempting to rescue or

rescuing another, for purposes of this title only, shall be deemed to be an employee of the state with respect to such activity.

(B) "Employee," with respect to public employment shall not include any inmate of a correctional facility who is required to work or perform services for which no significant remuneration is provided or any volunteer not otherwise specified who performs services for which no significant remuneration is provided.

Section 5. {Severability Clause.}

Section 6. {Repealer Clause.}

Section 7. {Effective Date.}

1996 Sourcebook of American State Legislation

Workers' Compensation Fraud Warning Act

Summary

The Workers' Compensation Fraud Warning Act authorizes an insurer or self-insured employer to provide notice to an injured worker on or with a check for temporary disability benefits that it is unlawful to make any knowingly false or fraudulent material statement for the purpose of obtaining worker' compensation. The notice would state that the acceptance of employment with a different employer that requires the performance of activities that the worker has stated that he or she cannot perform because of injury could constitute fraud and result in criminal prosecution.

Model Legislation

Section 1. {Short Title} The Workers' Compensation Fraud Warning Act

Section 2. {Legislative Declarations} The state finds and declares that:

- A. Workers' compensation fraud is the largest source of fraud within the property/casualty industry accounting for more than one-third of all property/casualty insurance fraud; and
- B. The cost of workers' compensation insurance fraud is passed on to employers in the form of higher premium costs; and
- C. Insurers and self-insured employers should have the right to notify workers' compensation claimants that certain actions following the acceptance of benefits may constitute fraud.

Section 3. {Definitions}

Section 4. {Warning Notice} An insurer or self-insured employer may provide the following notice to an injured worker on or with a check for temporary disability benefits:

Warning: Acceptance of employment with a different employer that requires the performance of activities you have stated that you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud and could result in criminal prosecution. If convicted, you could lose your rights

to workers' compensation benefits and face imprisonment up to {blank} years and fine of up to {blank} or double the amount of the fraud, whichever is greater.

Section 5. {Severability}

Section 6. {Effective Date}

Adopted by the CIED Task Force and approved by the ALEC Legislative Board in 1999.

The Employer Standing Act

Summary

The Employer Standing Act gives employers legal standing before the appropriate board or commission to dispose of a workers' compensation claim fraudulently filed by an employee.

Model Legislation

Section 1. {Short Title} The Employer Standing Act

Section 2. {Legislative Declarations} The state finds and declares that:

- A. Workers' compensation fraud is the largest source of fraud within the property/casualty industry accounting for more than one-third of all property/casualty insurance fraud; and
- B. The cost of workers' compensation insurance fraud is passed on to employers in the form of higher premium costs; and
- C. Employers should have the right to dispose of claims filed by employees convicted of workers' compensation insurance fraud.

Section 3. {Definitions} "Commission" means the state industrial commission or other board granted the authority to dispose of fraudulent workers' compensation claims.

Section 4. {Employer Standing} After an employee has been convicted of an offense involving a fraudulent workers' compensation claim an employer has standing before the commission for the sole purpose of filing and seeking disposal of the claim.

Section 5. {Severability}

Section 6. {Effective Date}

Adopted by the CIED Task Force November 13, 1999. Approved by the ALEC Legislative Board December 1999.

The Workplace Responsibility Act

Summary

The Workplace Responsibility Act requires that employees show that their drug and alcohol use did not cause a workplace accident, and that accidents caused by drug and alcohol use are not compensable by worker's compensation. Currently, the burden is on employers to show that drug and alcohol use caused a workplace accident, which is a nearly impossible standard to prove.

Model Legislation

Section 1. {Short Title} The Workplace Responsibility Act

Section 2. {Legislative Declarations} The legislature finds and declares that the burden of proof to prove that a workplace accident was not caused by drug or alcohol use shift from the employer to the employee

A. Because it is estimated that drug and alcohol related injuries substantially drive the costs of worker's compensation up; and

B. Due to the fact that it is nearly impossible for employers to prove that drug and alcohol use substantially contributed to a workplace injury

Section 3. {Definitions}

A. For purposes of this section "Controlled substance" means any drug proscribed by Title___, Chapter___ that the employee engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

B. "Incapacitated" means that the employee is physically unable, because of a disability, to testify at the initial compensation hearing.

C. "Initial compensation hearing" means the first formal hearing in front of an administrative law in which the administrative law judge takes formal and recorded testimony.

D. "Refuses to cooperate" means that the employee unjustifiably engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

E. "Proximate cause" means that the injury would not have occurred if the employee had not been under the influence of alcohol per se pursuant to section___ or under the influence of a controlled substance pursuant to 49 code of federal regulations part 40.

Section 4. {Scope}

A. Every employee coming within the provisions of this chapter who is injured, and the dependents of every such employee who is killed by accident arising out of and in the course of his employment, wherever the injury occurred, unless the injury was purposely self-inflicted, shall be entitled to receive and shall be paid such compensation for loss sustained on account of the injury or death, such medical, nurse and hospital services and medicines, and such amount of funeral expenses in the event of death, as are provided by this chapter.

B. Every employee who is covered by insurance in the state compensation fund and who is injured by accident arising out of and in the course of employment, and the dependents of every such employee who is killed, provided the injury was not purposely self-inflicted, shall be paid such compensation from the state compensation fund for loss sustained on account of the injury and shall receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses in event of death, as provided in this chapter.

Section 5. {Non-Compensable Injuries/Death}

A. An employee's injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter if the impairment of the employee is due to the employee's use of alcohol or the unlawful use of any controlled substance and is proximate cause of the employee's personal injury or death. This subsection does not apply if the employer had actual knowledge of and permitted, or condoned, the employee's use of alcohol or the unlawful use of the controlled substance.

B. Notwithstanding subsection C of this section, if the employer has established a policy of drug testing or alcohol impairment testing in accordance with chapter __, article __ of this title, is maintaining that policy on an ongoing manner and, before the date of the employee's injury, the employer files the written certification with the industrial commission as required by subsection D of this section, an employee's injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter, if the employee of such an employer fails to pass, refuses to cooperate with or refuses to take a drug test for the unlawful use of any controlled substance or fails to pass, refuses to cooperate with or refuses to take an alcohol impairment test that is administered by or at the request of the employer not more than twenty-four hours after the employer receives actual notice of the injury, unless the employee proves any of the following:

1. The employee's use of alcohol or the employee's use of any unlawful substance proscribed by title __, chapter __ was not the proximate cause of the employee's injury or death.
2. The alcohol impairment test indicates that the employee's alcohol concentration was lower than the alcohol concentration that would constitute a violation of ____, and would not create a presumption that the employee was under the influence of intoxicating liquor pursuant to section ____.
3. The drug test or alcohol impairment test used cutoff levels for the presence of alcohol, drugs or metabolites that were lower than the cutoff levels prescribed at the time of the testing for transportation workplace drug and alcohol testing programs under 49 code of federal regulations part 40.

C. Notwithstanding Subsection B, if an employee dies or becomes incapacitated prior to the initial compensation hearing, the injury shall be compensable pursuant to this chapter unless the employer proves that the employee's use of alcohol or the employee's use of a controlled substance was the proximate cause of the employee's death or injury.

D. Subsection B of this section does not apply if the employer had actual knowledge of and permitted or condoned the employee's use of alcohol or the employee's unlawful use of any controlled substance.

E. An employer that establishes a policy of drug testing or alcohol impairment testing in accordance with chapter __, article __ of this title shall file a written certification to that effect with the industrial commission. On or before January 15 of each year, an employer that has previously established a policy of drug testing or alcohol impairment testing and is maintaining that policy shall both file a written certification to that effect with the industrial commission and provide notification to its employees in a manner consistent with section __ that the employer is maintaining that policy.

F. Nothing contained in this section shall be construed to enhance or expand the reporting requirements prescribed in section ____.

Section 6. {Severability}

Section 7. {Effective Date}

Adopted by the CIED Task Force at the States and Nation Policy Summit on December 13, 2003. Approved by the ALEC Legislative Board January 2004.

Workers' Compensation Medical Records Disclosure Act (2004)

Summary

Current legislative proposals to protect the privacy of individually identifiable financial and medical information severely restrict, or do not sufficiently address, the rights of employers in workers' compensation, and other employee entitlement, claim cases. While the cognizant of the overwhelming public demand for medical and financial record privacy, there is an inherent need for employers to have access to all relevant information, including medical information, regarding these claims in order to: (1) ensure prompt, and accurate, claims processing procedures; (2) provide safety programs to mitigate recurring injuries that are similar in nature; (3) alleviate the possibility of fraudulent claims; and (4) ensure that they have the ability to prepare an adequate claims defense. Without employer oversight of carriers, and the ability to defend themselves against claims, it is likely that the premium pricing structure will result in increases in the cost of workers' compensation insurance and other employee entitlements. This bill would allow employer access to all relevant information pertaining only to injuries sustained on the job and would not allow employer access to other non-claims related information.

Both employers who purchase their workers' compensation insurance from carriers and those who are self-insured need information for auditing or claims-review purposes. Some proposed regulations and legislation prevent this basic information from the medical provider to the carrier, 3rd party administrator, and subsequently to the employer, from occurring. This legislation would also aid in the prevention of claimant fraud, especially "malingering fraud" which occurs when the claimant receives a legitimate injury but continues to collect monies by either falsely reporting the occurrence of another injury, or claiming that the payment for the initial injury has not occurred. Currently, workers' compensation fraud is the highest in the properly/casualty insurance sector, with some studies estimating the fraud level in claims may be as high as twenty-five percent, at an annual cost of over \$5 billion dollars.

Model Legislation

Section 1. {Title.} This Act shall be known and may be cited as the Workers' Compensation Medical Records Disclosure Act.

Section 2. {Definitions} For purposes of this Act, "Relevant medical information" to be disclosed to the employer in a workers' compensation or employee entitlement claim cases shall be defined as information:

- (1) regarding the nature of injury for which a benefit is claimed;
- (2) pertaining to diagnosis, costs, and the nature of treatment of the injury which benefits are claimed;
- (3) regarding the injury for which a benefit is claimed that is necessary for the employer to have in order to modify the employee's work duties, to make other reasonable accommodations for the employee's return to work, to institute hazard prevention programs, and to evaluate the employee's eligibility for other employee benefits.
- (4) that is necessary for the employer to defend itself in adjudicated cases.

Section 3. Employers' shall be allowed access to all relevant medical information, without the express authorization or consent, of the employee in all cases in which an employee files a claim under employer provided workers' compensation insurance or any other employer provided entitlement. The insurance carriers or administrator shall provide and discuss relevant documents of the claim file that shall affect the employer's premium with the employer, and shall supply copies of the documents that affect the premium.

Section 4. The right of employers provided in this Act shall not extend to medical information that is not directly related to employee workers' compensation or other employee entitlement claim cases.

Section 5. Nothing in this act shall allow employers to disclose to any other persons or entities any of the relevant information that has been disclosed to the employer under the provision of Section 3, without the consent of the injured employee who has field the workers' compensation or other employee benefit, claim.

Adopted by the CIED Task Force at the States and Nation Policy Summit on December 10, 2003. Approved by the ALEC Legislative Board in January 2004.

Workplace Drug Testing Act

Summary

ALEC's model Workplace Drug Testing Act provides that an employer may test for drugs and alcohol in accordance with provisions in the Act, and establishes testing standards and procedures, and protections for the employee and employer.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act shall be known and may be cited as the Workplace Drug Testing Act.

Section 2. {Definitions.} As used in this Act:

(A) "Alcohol" means ethyl alcohol or ethanol.

(B) "Drugs" means any substance described in (cite controlled substance act.)

(C) "Employer" means any person, firm, or corporation, including any public utility or transit district, which has one or more workers or operators employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.

(D) "Employee" means any person in the service of an employer, as defined in Subsection (C) of this Section.

(E) "Prospective employee" means any person who has made application to an employer, whether written or oral, to become an employee.

(F) "Sample" means urine, blood, breath, saliva, or hair.

Section 3. {Applicable conditions for a legal policy.} It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this Act, as a condition of hiring or continued employment. However, employers and management in general must submit to the testing themselves on a periodic basis.

Section 4. {Collection of samples.} In order to test reliably for the presence of drugs or alcohol, an employer may require samples from employees and prospective employees, and may require presentation of reliable identification to the person collecting the samples. Collection of the sample shall be in conformance with the requirements of this Act. The employer may designate the type of sample to be used for this testing.

Section 5. {Test scheduling.}

(A) Any drug or alcohol testing by an employer shall occur during or immediately after the regular work period. Such testing by the employer shall be deemed work time for the purposes of compensation and benefits for current employees

(B) An employer shall pay all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a location other than the workplace.

Section 6. {Testing procedures.} All sample collection and testing of drugs and alcohol under this Act shall be performed in accordance with the following conditions:

(A) The collection of samples shall be performed under reasonable and sanitary conditions;

(B) Sample collections shall be documented, and said documentation procedures shall include:

- (1) labeling of samples so as to reasonably preclude the probability of erroneous identification of test result; and
- (2) an opportunity for the employee or prospective employee to provide any information that may be considered relevant to the test, including identification of current or recently used prescriptions or non-prescription drugs, or other relevant medical information.

(D) Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the probability of sample contamination or adulteration; and

(E) Sample testing shall comply with scientifically accepted analytical methods and procedures. Testing shall be conducted at a laboratory approved or certified by either a state or federal agency. Testing shall include verification or confirmation of any positive test results by gas chromatography, mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any action by an employer.

Section 7. {Testing policy requirements.}

(A) Testing or re-testing for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy that has been distributed to every employee and is available for review by prospective employees.

(B) Within the terms of the written policy, an employer may require the collection and testing of samples for the following purposes:

- (1) investigation of possible individual employee impairment;
- (2) investigation of accidents in the workplace or incidents of workplace theft;
- (3) maintenance of safety for employees or the general public; or

(4) maintenance of productivity, quality of products or services, or security of property or information.
 (C) The collection and testing of samples shall be conducted in accordance with this Act and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee.

(D) The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this Act.

Section 8. {Disciplinary procedures.} Upon receipt of a verified or confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a sample, an employer may use said test or refusal as the basis for disciplinary or rehabilitative actions, which may include the following:

(A) A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;

(B) suspension of the employee with or without pay for a period of time;

(C) termination of employment;

(D) refusal to hire a prospective employee; or

(E) other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement.

Section 9. {Employer protection from litigation.} No cause of action arises in favor of any person against an employer who has established a policy and initiated a testing program in accordance with this Act, for any of the following:

(A) failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;

(B) failure to test for, or if tested for, failure to detect, any specific drug or other substance, disease, infectious agent, virus, or other physical abnormality, problem, or defect of any kind; or

(C) termination or suspension of any drug or testing program or policy.

Section 10. {Employer protection from litigation.}

(A) No cause of action arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this Act, unless the employer's action was based on a false test result.

(B) In any claim, including a claim under this Act, where it is alleged that an employer's action was based on a false test result:

(1) there is a rebuttable presumption that the test result was valid if the employer complied with the provisions of this Act; and

(2) the employer is not liable for monetary damages if reliance on a false test result was reasonable and in good faith.

Section 11. {Employer protection from litigation.} No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this Act, unless:

- (A) the results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee;
- (B) the information disclosed was a false test result;
- (C) the false test result was disclosed with malice; and
- (D) all elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law are satisfied.

Section 12. {Employer protection from litigation.} No cause of action arises in favor of any person based upon the failure of an employer to establish a program or policy of drug or alcohol testing.

Section 13. {Confidentiality of results.} All information, interviews, reports, statements, memoranda, or test results received by the employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer under this Act.

Section 14. {Severability clause.}

Section 15. {Repealer clause.}

Section 16. {Effective date.}

1995 Sourcebook of American State Legislation

Workers' Compensation as Exclusive Remedy Resolution

Summary

ALEC's Workers' Compensation as Exclusive Remedy Resolution reasserts the traditional no-fault principle upon which the system is based.

Model Resolution

{Title}

WHEREAS, since the early 1900s every state has adopted some type of workers' compensation system that provides workers with medical, wage loss, and other benefits on a no-fault basis for injuries or death arising during the course of employment; and

WHEREAS, the system is intended to remove all disputes between the employer and employee from the tort system and to be the exclusive remedy for employees; and

WHEREAS, in exchange for employees giving up their right to sue their employer, the employer has agreed to compensate all employees on a no-fault basis; and

WHEREAS, tort immunity is thus a fundamental and necessary element of the workers' compensation system; and

WHEREAS, new legal theories have been advanced in recent years to permit tort recovery from employers for injuries subject to the workers' compensation system; and

WHEREAS, such theories threaten to weaken or destroy the exclusive remedy concept thereby permitting recovery against the employer under both the workers' compensation and the tort system, for the same injury; and

WHEREAS, the workers' compensation was intended to remove all disputes between employer and employee from the tort system and to be the exclusive remedy for employees;

NOW THEREFORE BE IT RESOLVED, that the State of (insert state) specifically reaffirms the principle of workers' compensation as the exclusive remedy and rejects the rationale for tort liability based on legal theories such as dual capacity/dual persona, intentional injury without proof that the employer acted with deliberate intention to cause the injury, or third party action against employers for work-related injuries.

1995 Sourcebook of American State Legislation

Workers' Rights and Labor Union Reform

Public Prerogatives Act

Summary

Union contracts often constrain public agencies from obtaining or producing public services for the lowest cost. In the competitive private sector, the cost of contract provisions that limit contracting or the ability of management to assign work and employees efficiently may be avoided by buyers. However, taxpayers are compelled to bear the costs of restrictive contract provisions in the public sector. It should not be possible for a public agency to abdicate its duty to obtain public services for the lowest cost possible. This Act would forbid public agencies from bargaining over matters of inherent public prerogative. (Public prerogative has also been called "management rights" legislation.)

Legislation

Section 1. {Short Title}

This act may be cited as the Public Prerogatives Act

Section 2. {Legislative Declarations}

(A) The cost of providing government services is increasing nationwide, leading to budget deficits, increased taxes, and lower levels of economic growth. Much of these costs are attributed to the costs of collective labor agreements and uncompetitive services arrangements.

(B) While citizens bear increased taxes, they express a growing dissatisfaction with the quality of government services. Lawmakers should explore policies that ensure that citizens receive a higher quality of vital public services at reduced costs.

(C) Many governments have greatly reduced costs and improved services through public-private partnerships and complete contracting.

(D) Lawmakers should maintain the prerogative to negotiate competitive arrangements to ensure that citizens receive improved quality of services at the lowest cost possible to taxpayers and the economy.

Section 3. {Definitions.}

(A) “Pre-hire agreement” means any bid requirements relating to representation, working conditions, compensation, or benefits.

(B) Political jurisdiction means any of the following: the state, a county, a city, a school district, or a public agency, including organization owned by any public agency.

(C) Inherent public prerogative means the authority of a political jurisdiction to determine whether public service are produced by its own employees or otherwise delivered, leased, contracted for, or purchased through a competitive process on either a temporary or permanent basis.

Section 4. {Limitation on.}

(A) A political jurisdiction shall not have the authority to bargain collectively with regard to any matter of inherent public prerogative and shall have no authority to execute or renew any collective bargaining agreement that contains any provision with regard to any matter to inherent public prerogative.

(B) A political jurisdiction shall not have the authority to enter into a pre-hire agreement. This prohibition shall extend to all agents and contractors of a political jurisdiction with respect to activities performed on behalf of a political jurisdiction.

(C) No arbitrator or arbitration panel have the authority to impose any labor contract provision or any other order concerning any matter of inherent public prerogative.

Section 5. {Severability Clause.}

Section 6. {Repeals.}

Section 7. {Effective Date.}

Public Pay Equity Act

Summary

This bill establishes an annual ceiling limiting public employee compensation to the same change as has occurred over the last year in the private sector. If private compensation has increased, average public compensation can increase by no more than that amount. Similarly, if private compensation has decreased, average public compensation must decrease by at least that same percentage.

Legislation

Section 1. {Legislative Findings.}

The legislature hereby finds and declares that:

- (A) State and local governments rely solely upon taxes and user fees collected from individuals and enterprises in the private sector to fund government functions and services.
- (B) Continued funding of government functions and services requires a healthy and expanding private sector.
- (C) In the competitive market, competitive forces operate to efficiently allocate resources, minimizing the prices of goods and services and benefiting society by broadening economic affluence.
- (D) In non-competitive private markets, where competitive forces less effectively limit the prices of goods and services, government imposes economic regulation, seeking to reproduce the operation of the competitive market to obtain its benefits.
- (E) In the competitive market, employee compensation is determined by the interplay of competitive forces, while in non-competitive private markets employee compensation is determined by regulating that seeks to reproduce competitive forces.
- (F) Government is non-competitive, and as result is neither sufficiently subject to completeive forces nor to regulatory reproduction of competitive forces. Government employee compensation is therefore insufficiently subject to competitive forces.
- (G) The insufficient influence of competitive forces has led to a situation whereby the rate of increase in state and local government employee compensation has exceeded that of private sector employees in the state.
- (H) It is in the public interest for the compensation of government employees to be influenced by competitive forces, just as the compensation of private sector employees is influenced by competitive forces.
- (I) To accomplish the purpose of applying competitive forces to the determination of government employee compensation, the state hereby establishes a program of public pay equity, which shall limit the annual percentage increase in average government employee compensation to that of private sector employees in the state.

Section 2. {Definitions.}

- (A) "Compensation:" means wages, salaries, and employer-paid benefits.

(B) “Full time equivalent employees:” means a number of employees calculated by dividing the straight time hours for work or paid leave paid to employees divided by the number of hours constituting full time employment.

(C) “Employer paid non-wage benefits:” means any payment by a government entity to an employee, former employee, or dependent of an employee former employee which would not have been made if the employee or former employee had not been employed by a government entity. Employer-paid benefits shall not include any payment from any insurance trust or fund which is offset by previous payments by a government entity or employees of a government entity.

(D) “Government entity:” means any of the following: The state, a local government, a special district, or any other public body authorized or established under the laws or authority of the state (this includes counties, cities, towns, townships, villages, special districts, government enterprises, publicly owned utilities, school districts, transit districts, etc.).

(E) “Public pay equity ceiling:” means an amount, annually calculated by each government entity, which shall represent the maximum average compensation for employees of the government entity.

(F) “Wages and salaries:” means gross cash amounts paid to employees, including pay for time worked, employer paid wage benefits (all paid leave, including holidays, vacations, sick time) and supplemental pay (shift differentials, overtime pay, etc.).

Section 3. {Establishing public pay equity}

(A) *Limitation of Public Compensation Rate of Change to that of the Private Sector:* Notwithstanding any other provision of law, the year to year annual percentage increase in average annual compensation per full time equivalent employee of any government entity shall not exceed the annual percentage increase in average compensation per employee of the of the private sector in the state for the corresponding period. In the event that average compensation per employee of the private sector declines on a year-to-year basis, the average annual compensation per full time equivalent employee of any government entity shall decline by at least the same percentage.

Note: The intention is to establish an annual ceiling limiting public employee compensation to the same change as has occurred over the last year in the private sector. If private compensation has increased, average public compensation can increase by no more than that amount. Similarly, if private compensation has decreased, average public compensation must decrease by at least that same percentage.

(B) *Annual Calculation of Public Pay Equity Ceiling:* To comply with the provision immediately above, each government entity shall calculate, on an annual basis, a public pay equity ceiling using the formula specified in this act, according to the format supplied by the (state fiscal officer). The average annual employee compensation for any government entity in any year shall not exceed the public pay equity ceiling for the government entity.

(C) *Ceiling not to be Construed as an Entitlement:* The public pay equity ceiling should not be construed to create any economic right or entitlement for employees of a government entity.

Note: The intention of this provision is ensure the authority of a government entity to have average employee compensation at lower than the public equity ceiling.

(D) *Calculation Method*: The Act should specify the calculation method, indices, and the data to be used (it should not be left to administrative determination or interpretation). The language would be developed from the calculation method in the Appendix, or specify an alternative approach.

(E) *Full Time Equivalent Employee Assumption Fixed*: For any government entity, the number of weekly hours used to define a full time equivalent employee in the first public pay equity ceiling calculation shall be used in all subsequent annual public pay equity ceiling calculations.

(F) *State Fiscal Officer to Provide Calculation Information*: By (date) of each year, the (state fiscal officer) shall provide to each government entity a calculation form, which shall specify the numeric values necessary to calculate the amount by which the public pay equity ceiling shall change in relation to the previous year's average employee compensation.

(G) *Limitation on Arbitration Awards*: Notwithstanding any other provision of law, no arbitrator or arbitration panel shall have the authority to impose any labor contract, labor contract provision, or any other order that would cause a government entity to become out of compliance with this Act.

Note: A similar provision should place the strongest possible limits on the courts as well (subject to constitutional limitations).

(H) *Limitation on Government Entity Collective Bargaining Authority*: Notwithstanding any other provision of law, no government entity shall have the authority to execute any labor contract, labor contract provision, or any other agreement that would cause a government entity to become out of compliance with this Act.

(I) *Adjustments Required for Compliance*: Notwithstanding any other provision of law, each government entity shall make such equitable adjustments to arbitration awards and labor contracts as are necessary to effect compliance with this Act. All arbitration awards and labor contracts shall contain a clause acknowledging the necessity of modification based upon this provision.

Note: The purpose of his provision is to ensure that no government entity is out of compliance with the Act as a result of the combined impact of individual labor negotiations or arbitration awards.

(J) *Reorganization of Government Entities*: In the event of any reorganization combining or dividing government entities, the annual public pay equity ceiling calculations shall be based upon employee compensation data as it would have been if the reorganized structure had been in place.

Section 4. {reporting Requirements.}

(A) *Annual Reporting by Government Entities*: By (date) of each year, each government entity shall file a public pay equity report with the (state fiscal officer), in format to be defined by the (state fiscal officer). Such format shall include, at a minimum:

(1) For the fiscal year preceding imposition of public pay equity:

- (a) Total employee compensation
- (b) Percentage of total employee compensation paid in non-wage employer paid benefits.
- (c) Number of full time equivalent employees
- (d) Average annual employee compensation

(2) For the fiscal year previous to the fiscal year most recently ended:

- (a) Total employee compensation
- (b) Percentage of total employee compensation paid in non-wage employer paid benefits
- (c) Number of full time equivalent employees
- (d) Average annual employee compensation
- (e) Percentage change from the fiscal year preceding imposition of public pay equity

(3) For the fiscal year most recently ended:

- (a) Total employee compensation
- (b) Percentage of total employee compensation paid in non-wage employer paid benefits
- (c) Number of full time equivalent employees
- (d) Average annual employee compensation
- (e) Percentage change from the fiscal year preceding imposition of the public pay equity
- (f) Percentage change from the previous fiscal year

(B) *Annual Reporting by the State Fiscal Officer:* By (date) of each year, the (state fiscal officer) shall submit a report to the governor and to the legislature containing, at a minimum, all of the information reported by the government entities in the provision immediately above. Such report shall also include:

(1) For the fiscal year preceding imposition of public pay equity:

- (a) With respect to state government employees
 - (i) Total employee compensation
 - (ii) Percentage of total employee compensation paid in non-wage employer paid benefits.
 - (iii) Number of full time equivalent employees
 - (iv) Average annual employee Compensation
- (b) With respect to local government employees
 - (i) Total employee compensation
 - (ii) Percentage of total employee compensation paid in non-wage employer paid benefits.
 - (iii) Number of full time equivalent employees
 - (iv) Average annual employee compensation
- (c) With respect to private sector employees: Average statewide private sector employees wages and salaries

(2) For the fiscal year previous to the fiscal year most recently ended:

- (a) With respect to state government employees
 - (i) Total employee compensation
 - (ii) Percentage of total employee compensation paid in non-wage employer paid benefits
 - (iii) Number of full time equivalent employees
 - (iv) Average annual employee compensation
 - (v) Percentage change from the fiscal year preceding imposition of public pay equity
- (b) With respect to local government employees
 - (i) Total employee compensation
 - (ii) Percentage of total employee compensation paid in non-wage employer paid benefits
 - (iii) Number of full time equivalent employees

- (iv) Average annual employee compensation
- (v) Percentage change from the fiscal year preceding imposition of public pay equity

(c) With respect to private sector employees

- (i) Average statewide private sector employees wages and salaries
- (ii) Percentage change from the fiscal year preceding imposition of public pay equity, with adjustment to account for the percentage change in non-wage employer paid benefits (see note).

(3) For the fiscal year most recently ended:

(a) With respect to state government employees

- (i) Total employee compensation
- (ii) Percentage of total employee compensation paid in non-wage employer paid benefits
- (iii) Number of full time equivalent employees
- (iv) Average annual employee compensation
- (v) Percentage change from the fiscal year preceding imposition of public pay equity
- (vi) Percentage change from the previous fiscal year

(b) With respect to local government employees

- (i) Total employee compensation
- (ii) Percentage of total employee compensation paid in non-wage employer paid benefits
- (iii) Number of full time equivalent employees
- (iv) Average annual employee compensation
- (v) Percentage change from the previous fiscal year

(c) With respect to private sector employees

- (i) Average statewide private sector employees wages and salaries
- (ii) Percentage change from the fiscal year preceding the imposition of public pay equity, with adjustment to account for the percentage change in non-wage employer paid benefits (see note).
- (iii) Percentage change from the previous fiscal year, with adjustment to account for the percentage change in non-wage employer paid benefits (see note).

Note: The U.S. Department of Commerce does not maintain state by state data on employer paid non-wage benefits. An adjustment formula can be developed using the regional Employment Cost Index to account for the changes in employee benefits. If statewide employee benefits data is available for private employers, it should be used instead.

Section 5. {Severability clause}

Section 6. {Repealer clause}

Section 7. {Effective date}

Appendix

Proposed Calculation Method. This is an example of one alternative for calculation the public pay equity ceiling. Each government entity would use this format to calculate its annual public pay equity ceiling. It assumes implementation in 1989, with base year of 1988.

1. Base Year: 1987-88

Calculation Base: Calculate base year average total wage, salary and benefit figure per full time equivalent employee, using actual data (it is assumed that each government entity will be responsible to ensure its own compliance with the Act, subject to state review. All government entities should be included; cities, counties, special districts, school districts, transit districts, etc.).

2. Calculation of First Year's Average Pay Ceiling: Year 1988-89

a. A state fiscal officer (treasurer or appropriate) publishes the figures to be used in the calculations, and provides a format for calculation in a form (the indices and sources would be specified in law, leaving no need for interpretation of the figures. The state fiscal officer's role would merely be to ensure that all government entities use the same data).

b. The calculation base is adjusted fro the estimated change in private wages and benefits since the base year (1987-88). The calculations as follows:

- Develop ECI Adjustment Factor: Change in the Employment Cost Index (ECI) for Compensation (Wages, Salaries and Benefits) of Private Employees in the region (the U.S. Department of Labor, Bureau of Labor Statistics published this data quarterly, with year-end data published in January. Regional data is published for the Northeast, the Midwest, the South, and the West).
- Modify the ECI Adjustment Factor (above) to account for the experience in the state, using a State Factor developed as follows:
- Determine the annualized 10-year rate of change in the regional ECI for private sector workers for *wages and salaries only* (this calculation relies on wage and salary data, excluding benefits data, since the feral government does not publish benefit data in the private sector by state).
- Determine the annualized 10 year rate of change for average private sector pay (wages and salaries) in the state.
- Divide by the annualized state rate by the annualized regional ECI Wage and salary rate, to determine the State Factor.
- Multiply the *State Factor* by the ECI Adjustment Factor to obtain the Annual Adjustment Factor.
- Calculate the 1988-89 Public Pay Equity Ceiling by multiplying the 1987-88 average pay by the Annual Adjustment Factor.

3. Calculation of Second Year's Average Pay Ceiling: Year 1989-90

a. Repeat #2-a, above

b. Late Data Adjustment: This adjustment corrects any errors the estimate made the ECI data in #2-b, above. Adjust the previous year's Public Pay Equity Ceiling to account for the actual data (reported too late to be used in last year's calculation), as follows:

- Determine the percentage change in private employee pay (reported for calendar years each following August by the U.S. Department of Labor, Bureau of Labor Statistics).

- Divide by the State Factor that was calculated applied in the pervious year. Multiply by the Calculation Base form 2 years ago, which yields a Calculation base for 1988-89 (beginning in the third year, the Calculation base from two years ago is used instead).

c. Repeat #2-b above using data for appropriate years

4. Calculation Of Subsequent Year's Average Pay Ceiling

Repeat procedure for second year.

1995 Sourcebook of American State Legislation

Obtained and released by:
Common Cause and
The Center for Media and Democracy

Right to Work Act

Summary

ALEC's model Right to Work Act provides that no employee need join or pay dues to a union, or refrain from joining a union, as a condition of employment. The Act establishes penalties and remedies for violations of the Act's provisions.

Model Legislation

{Title, enacting clause, etc.}

Section 1. { Title.} This Act may be cited as the Right to Work Act.

Section 2. {Declaration of public policy.} It is hereby declared to be the public policy of the State of (state), in order to maximize individual freedom of choice in the pursuit of employment and to encourage an employment climate conducive to economic growth, that the right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.

Section 3. {Labor organization.} The term "labor organization" means any organization of any kind, or agency or employee representation committee or union, that exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of work, other conditions of employment, or other forms of compensation.

Section 4. {Freedom of choice guaranteed, discrimination prohibited.} No person shall be required, as a condition of employment or continuation of employment:

- (A) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- (B) to become or remain a member of a labor organization;
- (C) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
- (D) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or
- (E) to be recommended, approved, referred, or cleared by or through a labor organization.

Section 5. {Voluntary deductions protected.} It shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.

Section 6. {Agreements in violation, and actions to induce such agreements, declared illegal.} Any agreement, understanding, or practice, written or oral, implied or expressed, between any labor organization and employer that violates the rights of employees as guaranteed by provisions of this chapter is hereby declared to be unlawful, null and void, and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce an employer to enter into any agreement

prohibited under this chapter is hereby declared to be for an illegal purpose and is a violation of the provisions of this chapter.

Section 7. {Coercion and intimidation prohibited.} It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or employer, or officer thereof, by any threatened or actual intimidation of an employee or prospective employee, or an employee's or prospective employee's parents, spouse, children, grand-children, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to an employee's or prospective employee's property, to compel or attempt to compel such employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or otherwise forfeit any rights as guaranteed by provisions of this chapter. It shall also be unlawful to cause or attempt to cause an employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employees.

Section 8. {Penalties.} Any person who directly or indirectly violates any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding (insert amount) or imprisonment for a period of not more than (insert time period), or both such fine and imprisonment.

Section 9. {Civil remedies.} Any employee harmed as a result of any violation or threatened violation of the provisions of this chapter shall be entitled to injunctive relief against any and all violators or persons threatening violations and may in addition thereto recover any and all damages, including costs and reasonable attorney fees, of any character resulting from such violation or threatened violation. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this chapter.

Section 10. {Duty to investigate.} It shall be the duty of the prosecuting attorneys of each county (or the attorney general of this state) to investigate complaints of violation or threatened violations of this chapter and to prosecute all persons violating any of its provisions, and to take all means at their command to ensure its effective enforcement.

Section 11. {Prospective application.} The provisions of this chapter shall apply to all contracts entered into after the effective date of this chapter and shall apply to any renewal or extension of any existing contract.

Section 12. An emergency existing therefore, which emergency is hereby declared to exist, this Act shall be in full force and effect on and after its passage and approval.

Section 13. {Severability clause.}

Section 14. {Repealer clause.}

Section 15. {Effective date.}

Prohibition of Negative Check-off Act

Summary

The Prohibition of Negative Check-Off Act delineates the enforcement of financial arrangements that are not entered into by the payer. The Act declares that nonvoluntary payments and negative check-off plans are void as against public policy.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Prohibition of Negative Check-Off Act.

Section 2. {Legislative Declaration.}

Section 3. {Definitions.}

(A) "negative check-off plan" means a plan whereby a payer, by his or her inaction is deemed to have agreed to a payment or series of payments.

(B) "voluntary" means an action or choice given freely, as evidenced by some affirmative act on the part of the payer. A charitable contribution made by a payer pursuant to authorization given by such payer is deemed to be voluntary.

Section 4. {Negative check-off plans prohibited.}

(A) It shall be a deceptive trade practice to, in the course of one's business, vocation, or occupation, receive funds from an individual whereby such funds are not given on a voluntary basis, unless such an arrangement is required pursuant to a court order. Such involuntary payments are void as against public policy. A payment made pursuant to a negative check-off plan shall not be considered to have been made on a voluntary basis.

(B) Nothing in any other state law shall affect the validity or application of this section as it applies to any employee, including, but not limited to, persons employed by the state or a local government or any governmental subdivision or agency thereof, without exception.

Section 5. {Severability Clause.}

Section 6. {Repealer Clause.}

Section 7. {Effective Date.}

Resolution in Opposition to Frivolous Complaints and Permit Extortion

Summary

The Resolution in Opposition to Frivolous Complaints and Permit Extortion recognizes that some unions have engaged in questionable pressure tactics to put open shop companies out of business or force them to join a union. These harassment and intimidation tactics have come in the form of frivolous and unwarranted complaints and environmental permit delays that are contrary to good public policy. This Resolution urges governments at all levels to enforce appropriate laws and to pass legislation to deter such tactics. The costs associated with defending frivolous complaints in legal and administrative actions have literally put some companies out of business. In the construction trades, such tactics can cause major delays, which can impose millions of dollars in additional costs. Often, when open shops concede to union demands, the complaints mysteriously disappear.

Model Resolution

WHEREAS, regulatory agencies' limited resources are being squandered for harassment purposes, in pursuit of non-life threatening complaints against employers; and

WHEREAS, complaints about Hazard Communication Standards (record keeping) and many other classifications that are "non-serious" violations have become a useful tool to harass employers by escalating the citation to "wilful," "repeat," or "egregious" and thus increase the penalty exposure exponentially; and

WHEREAS, regulators should focus on leading hazards, and should not subject "non-serious" violations to reclassification and/or multiple fines; and

WHEREAS, it is a criminal act to knowingly file a false claim with the NLRB, although the NLRB virtually never prosecutes; and

WHEREAS, it does not cost harassing parties anything to file frivolous claims, whereas companies are often subjected to large attorney fees to defend such claims;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that harassment and intimidation tactics in the form of frivolous and unwarranted complaints and environmental permit delays are contrary to good public policy and urges governments at all levels to enforce current mechanisms and to pass legislation to deter such tactics.

Resolution in Opposition to Salting (Harassing or Disruptive Union Organizing)

Summary

"Salting" abuse is the placing of trained union professional organizers and agents in a nonunion facility to harass or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately put the company out of business. The objectives of the union agents are accomplished through filing frivolous and unfair labor procedure complaints or discrimination charges against the employer with the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC). Salting campaigns have been used successfully in the construction industry and are quickly expanding into other industries across the country. The Resolution In Opposition to Salting (Harassing or Disruptive Union Organizing) affirms the principle that salting activities are contrary to good public policy and urges Congress to pass legislation so that employers are not required to employ any employee or agent of any other person, where the employee or agent seeks access to the employer's workplace in furtherance of their other employment or agency status.

Model Resolution

WHEREAS, the unions' avowed purpose in these salting campaigns is to harass the company, its employees, and to disrupt the workplace until the company is financially devastated or its employees agree to join the union; and

WHEREAS, in defending themselves against these frivolous charges, employers must incur thousands of dollars in legal expenses, delays and lost hours of productivity in time spent fighting the charges, and risk jeopardizing their business through excessive problems they may not endure; and

WHEREAS, unions have trained their members to use state and federal regulatory agencies, including, but not limited to the NLRB, OSHA, and EEOC as offensive weapons against nonunion employers; and

WHEREAS, such agencies waste limited resources investigating frivolous complaints and several small companies have literally been driven out of business defending against such complaints; and

WHEREAS, a manager who finds a particular employee to be disruptive in the workplace, regardless of labor affiliation, should be free to exclude that disruptive employee from the workplace without fear of receiving an unfair labor practice charge; and

WHEREAS, in the recently decided *Town & Country* case, the U.S. Supreme Court held that paid professional union organizers are "bona fide" employees, and therefore, protected under the National Labor Relations Act (NLRA); and

WHEREAS, union's salting tactics frequently result in an abuse of the hiring process and the harassment of employees without serving the interests of any bona fide employees;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that salting activities are contrary to good public policy and urges Congress to pass legislation so that employers are not required to employ any employee or agent of any other person, where the employee or agent seeks access to the employer's workplace in furtherance of their other employment or agency status.

Public Employee Freedom Act

Summary

Excluded from National Labor Relations Act (NLRA), public employees are subject to state and local laws governing collective bargaining. Many of these laws are "monopoly bargaining laws," which means that even if an employee chooses not to join a union, he or she must accept the terms of the contract negotiated for unionized workers in the workplace. This act establishes the workers' right, in mutual agreement with the public employer, to representation by a public employee's own choosing.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Public Employee Freedom Act.

Section 2. {Legislative Declarations.} This legislature finds and declares that:

- A. An employer and employee should be free to contract on their own terms.
- B. Mandatory collective bargaining laws violate this freedom.
- C. As a result, it is against the public policy interests of this State/Commonwealth to impose mandatory collective bargaining laws on public employees and the organizations that represent them in the collective bargaining process.

Section 3. {Definitions.}

A. "Employee organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

B. "Public employee" means a person holding a position by appointment or employment in the government of this State, or any of its political subdivisions, including, but not limited to public schools, and any authority, commission or board, or in any other branch of public service.

(1) "Public employee" does not include employees whose jobs entail managerial, supervisory, or confidential responsibilities.

C. For the purposes of this Act, "public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, school board or special purpose organization that employs one or more persons in any capacity.

Section 4. {Public employee freedom guaranteed.}

A. Public employees shall have the right to represent themselves in their relations with the public employer.

B. No provision of any agreement between an employee organization and a public employer, or any other public policy, shall impose representation by an employee organization on public employees who are not members of that organization.

Section 5. {Prohibition of automatic payroll deductions} No dues, fees, assessments or any other automatic payroll deductions by public employers from public employee payroll compensation shall be allowed for transmission to any public employee organization, any intermediary, or private individual, other than for primary and supplemental pension plans, life, health and other employee benefits, or contributions made to 501C(3) charitable organizations through a workplace givings program.

Section 6. {Agreements in violation, and actions to induce such agreements, declared illegal.} Any agreement, understanding, or practice, written or oral, implied or expressed, between any employee organization and public employer that violates the rights of employees as guaranteed by provisions of this chapter is hereby declared to be unlawful, null and void, and of no legal effect. Any strike, picketing, boycott, or other action by an employee organization for the purpose of inducing or attempting to induce an employer to enter into any agreement prohibited by this chapter is hereby declared to be for an illegal purpose and is a violation of the provisions of this chapter.

Section 7. {Coercion and intimidation prohibited.} It shall be unlawful for any person, employee organization, or officer, agent, or member thereof, by any threatened or actual intimidation of an employee or perspective employee, or an employee or perspective employee's parents, spouse, children, grandchildren, or any other persons residing in the employee's or perspective employee's home, or by any damage or threatened damage to an employee' or perspective employee's property, to compel or attempt to compel such employee to join, affiliate with, or financially support an employee organization.

Section 8. {Penalties.} Any person who directly or indirectly violates any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding (insert amount) or imprisonment for a period of not more than (insert time period), or both such fine or imprisonment.

Section 9. {Duty to investigate} It shall be the duty of the state attorney general to investigate complaints of violation or threatened violations of this chapter and to prosecute any or all persons violating any of its provisions, and to take all means at his or her command to ensure its effective enforcement.

Section 10. {Prospective application} The provisions of this chapter shall apply to all contracts or contract extensions entered into after the effective date of this chapter, but no later than two years hence.

Section 11. {Severability clause.}

Section 12. {Repealer clause.}

Adopted by the CIED Task Force at the States and Nation Policy Summit on December 2, 1998. Approved by the ALEC Legislative Board January 1999.

Public Employer Payroll Deduction Policy Act

Summary

This model bill prohibits the payroll deduction of membership dues by public employers.

Model Legislation

A BILL to amend the Code of _____ by adding a section relating to the payroll deduction policy of public employers.

Section 1. {Short Title} This Act shall be known as the Public Employer Payroll Deduction Policy Act.

Section 2. {Legislative Declarations} The legislature finds and declares:

- A. Employee organizations have no inherent Constitutional, nor statutory right, to deduct membership dues for any purpose by automatic payroll deductions;
- B. That it is in the interest of this State's citizens to ensure that government resources, including public employee time, public property or equipment, and supplies be used exclusively for activities that are essential to carrying out the necessary functions of government;
- C. That necessary governmental functions do not include using government resources to confer the special convenience of deducting membership dues from members' and non-members' paychecks for any private individual or organization, public employee unions and their members;

Be it enacted by the Legislature:

That the Code of _____ is amended by adding a section as follows:

Section 3. {Definitions} For the purposes of this Act, "public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, school board or special purpose organization that employs one or more persons in any capacity.

Section 4. {Public Employer Payroll Deduction Policy} No dues, fees, assessments or any other automatic payroll deductions by public employers from public employee payroll compensation shall be allowed for transmission to any public employee organization, any intermediary, or a private individual, other than for primary and supplemental pension plans, life, health and other employee benefits, or contributions made to 501C(3) charitable organizations through a workplace givings program

Adopted by the CIED Task Force at the States and Nation Policy Summit, December 2, 1998. Approved by the ALEC Legislative Board January 1999.

Political Funding Reform Act

Summary

This model bill prohibits the payroll deduction of monies used for political purposes. It also establishes penalties for a violation of this section.

Model Legislation

Section 1. {Short Title} This Act shall be known as the Political Funding Reform Act.

Section 2. {Legislative Declaration} This legislature finds and declares:

- A. That it is in the interest of this State's citizens to ensure that government resources, including public employee time, public property or equipment, and supplies be used exclusively for activities that are essential to carrying out the necessary functions of government;
- B. That necessary governmental functions do not include using government resources to confer a political benefit or advantage on any private individual or organization, including, but not limited to, public employee unions and their members;
- C. That using government resources in any way to promote, support, or enhance the political activities of any private individual or organization, above that of other citizens or private organizations, is not a necessary or desirable function of government; and
- D. Therefore, it is the public policy of this State to prohibit the use of any government resources to collect or assist in the collection of political funds or to promote or assist in the political activity on behalf of any private individual or organization.

Section 3. {Definitions}

- A. For the purposes of this Act, "public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, school board or special purpose organization that employs one or more persons in any capacity.
- B. For purposes of this act, all money shall be deemed to be "political funds" if any portion thereof is expended upon, or commingled with funds used for political activity, including, but not limited to:
 1. independent expenditures for communications advocating the election or defeat of clearly identified candidates for public office;
 2. participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, or any political party or committee;
 3. supporting or opposing any pending or proposed ballot measure, including but not limited to efforts to collect signatures to place a measure on the ballot, and any efforts, including but not limited to direct mail and media campaigns, to solicit signatures for initiative petitions or to discourage voters from signing initiative petitions;
 4. contributions to, and/or the operations or expenses of, a Political Action Committee; or

5. communications or other activities of organizations where a substantial part of their activity which involves carrying on propaganda, or otherwise attempting to influence voters or legislation or ballot issues.

C. The terms used in this subsection shall have the same meaning as under Section 501(c)(3) of Title 26, United States Code, and regulations promulgated by the Secretary of the Treasury thereunder.

D. This section shall not apply to activities that are necessary to fulfill statutory obligations to inform the electorate and/or the public about the candidates or issues to be voted upon in a forthcoming election.

Section 4. {Prohibitions} A public employer is prohibited from collecting or deducting or transmitting political funds within the meaning of this section.

Section 5. {Penalties}

A. For a period of two years, no public employer shall collect, deduct, or assist in the collection or deduction of funds for any purpose for a person or organization if, in violation of this article, the person or organization has:

1. used as political funds, as defined in section 3(A) or (B), any of the funds collected or deducted for it by any public employer, or
2. commingled funds collected or deducted by any public employer with political funds.
3. whenever funds for multiple levels of an organization (local, regional, state, and/or national) are deducted, collected, and/or transmitted to a single recipient for all affiliates that receive funds from the recipient organization.

B. Any employee whose wages have been deducted in violation of the provisions of this article may bring suit in a court of competent jurisdiction to obtain injunctive relief against the violator or person or public employer threatening violation. If the state enjoys sovereign immunity, nothing in this section shall be considered or otherwise construed to waive, or in any way abrogate such immunity. An employee whose wages have been deducted in violation of this article may bring suit in a court of competent jurisdiction to recover damages equal to:

1. from a public employer violating the provisions of this article, or failing to take appropriate action when informed of the violation, any amounts actually deducted from the public employee's wages; and
2. from any individual or organization acting separately or in league with a public employer to violate the provisions of this article, twice any amounts actually received by said individual or organization from the injured public employee
3. The remedies in i. and ii. above shall not preempt any other causes of action and damage awards which may be available to public employees injured as a result of violations of this act.

C. In any judgment for the plaintiff intended to enforce of this article the court may award reasonable attorneys' fees as part of the court costs.

Section 6. {Void Agreements} Any written or oral agreement, understanding, or practice between a public employer and any individual or organization that is in violation of the provisions of this article shall be deemed void on the effective date of this legislation, or ninety (90) days after its passage, whichever is later.

Section 7. {Severability Clause} If any phrase, clause, or part of this article is found to be unconstitutional by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

Section 8. {Effective Date}

Adopted by the CIED Task Force at the States and Nation Policy Summit on December 2, 1998. Approved by the ALEC Legislative Board January 1999.

Resolution Urging Congress to Oppose Federal Standards for Monopoly Bargaining

Summary

This resolution urges Congress to reject legislation to federalize monopoly collective bargaining laws for state and local public safety employees such as police officers and firefighters. Such legislation would usurp the long-standing principle that state and local jurisdictions have authority over these workers.

Currently, state and local governments are empowered to regulate collective bargaining activities for these employees. Fourteen states, in fact, have decided not to adopt monopoly bargaining for public safety workers. Proposed federal legislation would turn this on its head by granting the Federal Labor Relations Authority (FLRA) the power to impose monopoly bargaining for state and local jurisdictions that have declined until now.

Model Resolution

WHEREAS, Proposed federal legislation would result in overturning present state laws relating to police and firefighters; and

WHEREAS, the sole purpose federal legislation is to force the state of _____ into recognizing union officials as the sole bargaining agent of police and firefighters; and

WHEREAS, federal legislation could result in the Federal Labor Relations Authority (FLRA) mandating the forced payment of union dues or fees as a condition of employment for police and firefighters; and

WHEREAS, federal legislation could create a shortage of volunteer firefighters; and

WHEREAS, federal legislation would create a new unfounded federal mandate on the taxpayers of _____; and

WHEREAS, the Supreme Court ruled on June 23, 1999 in *Alden V. Maine* that Congress does not have the authority to impose federal labor law on state government and therefore provisions of proposed federal legislation calling for enforcement by lawsuits in state courts are almost assuredly unconstitutional;

THEREFORE BE IT RESOLVED that the state of _____ urges Congress to oppose federal legislation granting federal authorities the power to impose collective bargaining laws on public safety employees; and

BE IT FURTHER RESOLVED, that the clerk (of the House or Senate) transmit copies of this resolution to the President and Vice President of the United States and to each member of Congress of the United States.

Adopted by the CIED Task Force at the Spring Task Force Summit on May 6, 2000. Approved by the ALEC Legislative Board June 2000.

Employee Rights Reform Act

Summary

The purpose of this act is to: 1) limit the amount of compelled agency fees which may be exacted from public employees as a condition of continued employment; 2) provide public employees compelled to pay agency fees as a condition of continued employment with an expeditious way to protect their rights to their pro rata share of union expenditures; and 3) minimize litigation over the appropriate share of union dues that is allocated to collective bargaining, contract administration, and grievance adjustment; provided, however, that nothing herein expresses or implies approval of laws requiring workers to pay unions for representation they do not want.

Note: In no way does ALEC endorse agency fee requirements. However, ALEC realizes that full employee choice in the workplace is not currently an available option in every state. Therefore, ALEC is suggesting this legislation for states that currently have agency fees, to alleviate the effects of such requirements.

Model Legislation

Section 1. {Short Title} This Act shall be known as the Employee Rights Reform Act.

Section 2. {Legislative declarations} This legislature finds and declares:

- A. That many public employees are required against their will to pay agency fees for representation they do not want; and
- B. The U.S. Supreme Court has held that the amount of agency fees must not exceed the fee payer's pro rata share of union expenses for collective bargaining, contract administration, and grievance processing; and
- C. That fee payers are unable to protect themselves against excessive fees unless fee payers have prompt access to union audited financial statements and other books and records; and
- D. That legislation is imperative to provide such access and thereby protect agency fee payers from excessive fees.

Section 3. {Definitions}

A. "Agency fee payer" means an individual who is not a union member, but is employed in a bargaining unit represented by an exclusive representative that has negotiated a "union security" or "agency shop" clause subjecting all represented employees to the obligation to either maintain membership in the exclusive representative, or pay some portion of union dues as a condition of continued employment with the public employer. No agency fee payer shall be deemed to have consented to any exaction of agency fees as a condition of continued employment.

B. "Available" means available for inspection at no cost upon written request at the local office of the exclusive representative.

C. "Chargeable activity" means an expenditure or activity for purposes of collective bargaining, contract administration, and grievance adjustment undertaken by the exclusive representative, or an affiliate of the exclusive representative, directly on behalf of the bargaining unit in which the "agency fee payer" is employed.

D. "Expenditure" means all union expenditures of funds in any amount.

E. "Nonchargeable activity" means an expenditure or activity for purposes other than collective bargaining, contract administration, and grievance adjustment undertaken by the exclusive representative, or an affiliate of the exclusive representative, on behalf of the bargaining unit in which the "agency fee payer" is employed, including, but not limited to, organizing activities, social activities, and activities to maintain the exclusive representative's corporate existence.

F. For the purposes of this Act, "public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, school board or special purpose organization that employs one or more persons in any capacity.

Section 4. {Compliance}

A. Public employers negotiating and enforcing "union security" or "agency shop" clauses in their agreements with an exclusive representative of its employees shall exact from nonmembers not more than their pro rata share of the "exclusive representative" chargeable costs, as set forth herein. Under no circumstances shall a public employer deduct full union dues from the wages of any employee not specifically authorizing such deductions.

B. Exclusive representatives of public employees negotiating "union security" or "agency shop" clauses in their agreements with public employers shall, as a condition of enforcement of such agreements:

- 1) require their employees to prepare and maintain contemporaneous records recording the nature of their activities and the amount of time expended in each such activity, and shall allocate those activities into chargeable and nonchargeable categories; and
- 2) make such records available for inspection to all represented employees within fourteen (14) days after a request for inspection.

C. To fulfill the purposes of this Act, exclusive representatives shall allocate all public employee time and expenditures as either "chargeable to agency fee payer" or "nonchargeable to agency fee payers" not later than fourteen (14) days after the date upon which the activity occurs. All activities and expenditures not so allocated within the required period shall be deemed "nonchargeable to agency fee payers."

D. As to determining the "chargeability" of political and ideological activities and expenditures, the exclusive representative shall apply the legal standards set forth in controlling court decisions. As to determining the "chargeability" of all other activities and expenditures, the exclusive representative shall limit the "chargeable" activities to those collective bargaining, contract administration, and grievance adjustment activities undertaken for, or on behalf of the bargaining unit within which the agency fee payer is employed. It is the purpose of this section to limit "chargeable expenditures" to a greater degree than set forth in the Supreme Court's decision in *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991).

E. All allocations of activities and expenditures of an exclusive representative shall be made available to represented employees no later than twenty-eight (28) calendar days after the activity or expenditure. Any activity or expenditure not made available for review within such period shall be deemed "nonchargeable" to agency fee payers.

F. To the extent that the exclusive representative may, by virtue of its affiliation with a regional, state, national, international, or any other form of affiliated labor organization, seek to compel represented employees to subsidize the activities of such affiliate or affiliates, similar records must be provided to, and maintained by the exclusive representative. Payments made by an exclusive representative to any such affiliate not maintaining and providing such records to the exclusive representative shall be deemed "nonchargeable to agency fee payer."

G. For activities or expenditures continuing for more than fourteen (14) days, the exclusive representative shall provide an estimate of the duration and anticipated allocation to "chargeable" and "nonchargeable" costs in records made available for review pursuant to the terms of this section.

H. This section shall be liberally construed to provide represented employees with timely information about the allocations of activities and expenditures of the exclusive representative as chargeable and nonchargeable to agency fee payers.

Section 5. {Penalties}

A. An exclusive representative failing to prepare and make reports available as set forth herein shall be deemed to have surrendered its authority to collect from nonmembers agency fees for a period of one (1) month. After two such occurrences, the exclusive representative shall be deemed to have surrendered its authority to collect from nonmembers agency fees for a period of one (1) year.

B. Upon sworn written notice to a public employer of an exclusive representative's failure to provide a timely opportunity for inspection, a public employer shall suspend deductions of agency fees from all agency fee payers for a period of one (1) month. After two (2) such occurrences, the public employer shall suspend deductions of all agency fees from all agency fee payers for a period of one (1) year.

C. A public employer failing to comply with this section shall be liable to all agency fee payers for an amount equal to twice the fees wrongfully held, plus the costs (including attorney's fees) of any action to recover such fees.

Section 6. {Effective Date}

Section 7. {Severability Clause} The provisions of this Act are severable. If any provision of this measure or its application to any person or circumstance is held invalid, that invalidity shall not affect any other provision or application of this measure which can be given effect without the invalid provision or application. If any provision of this measure is held to be in conflict with federal law, that provision shall remain in full force and effect to the maximum extent permitted by federal law. For purposes of this section, "provision" shall mean any section, subdivision, sentence, phrase or word.

Section 8. {Construction} This Act shall be liberally construed to accomplish its purposes. Compliance herewith is not intended to, nor is to be construed as, substitute for compliance with "the constitutional requirements for the...collection of agency fees." *Teachers Local No. 1 v. Hudson*, 475 U.S. 292 (1986).

Adopted by the CIED Task Force at the States and Nation Policy Summit, December 2, 1999. Approved by the ALEC Legislative Board January 11, 2000.

Labor Peace Agreement Preemption Act

Summary

Local governments are under constant pressure from labor unions to require employers to adopt "labor peace" agreements as a condition for granting business licenses, zoning variances, waivers, and the like. These agreements force employers to waive their ability to express views in opposition to unionization, to forfeit their employees' rights to vote in a secret ballot election conducted by the National Labor Relations Board (NLRB), and to forfeit procedural protections of NLRB decisions regarding appropriate bargaining units and other related issues. This legislation declares this a matter of statewide concern and prohibits local governments from establishing such ordinances.

Model Legislation

Section 1. The Labor-Peace Agreement Preemption Act

Section 2. {Statement of Purpose} The purpose of this legislation is to ensure that employers cannot be compelled by local governments to forfeit rights guaranteed them under the Labor Management Relations Act, the National Labor Relations Act and the Railway Labor Act (the "Acts") in order to obtain zoning variances, waivers, and business licenses.

Section 3. {Definitions} For the purposes of this Section:

- (1) "Employer" means a person, association, legal, or commercial entity receiving services from an employee and, in return, giving compensation of any kind to such employee.
- (2) "Federal labor laws" means the National Labor Relations Act, the Labor Management Relations Act and the Railway Labor Act, hereinafter collectively referred to as "the Acts", Presidential Executive Orders issued relating to labor/management or employee/employer issues and the United States Constitution as amended and as construed by the federal courts. The rights protected under the federal labor laws include but are not limited to:
 - (a) An employer's or employee's right to express views on unionization and any other labor relations issues to the full extent allowed by the First Amendment of the United States Constitution and Section 8(c) of the National Labor Relations Act.
 - (b) An employer's right to demand, and an employee's right to participate in, a secret ballot election under the Acts, including without limitation, the full procedural protections afforded by the Acts for defining the unit, conducting the election campaign and election, and making any challenges or objections thereto.
 - (c) An employer's right not to release employee information and an employee's right to maintain the confidentiality of his or her information to the maximum extent allowed by the Acts.
 - (d) An employer's right to restrict access to its property or business to the maximum extent allowed by the Acts.

(e) An employer's right to negotiate over all mandatory and permissive issues of collective bargaining to the maximum extent allowed by the Acts.

(3) "Governmental body" means any local government or its subdivision, including but not limited to cities, parishes, municipalities, and any public body, agency, board, commission or other governmental, quasi governmental, or quasi public body or any body that acts or purports to act in a commercial, business, economic development, or like capacity of local government or its subdivision.

Section 4. {Legislation}

A. Any agreement, contract, understanding or practice, written or oral, implied or expressed, between any employer and any labor organization in violation of the provisions of this Part is hereby declared to be unlawful, null and void, and of no legal effect.

B. No governmental body may pass any law, ordinance, or regulation, or impose any contractual, zoning, permitting, licensing, or other condition on, with employers' or employees' full freedom to act under the federal labor laws. Such prohibited actions shall include but not be limited to:

- (1) Conditioning any purchase, sale, lease, loan or other business or commercial transaction with any employer on waiver or limitation of any right the employer may have under the federal labor laws.
- (2) Conditioning any regulatory, zoning, permitting, licensing, or any other governmental requirement, or any tax or free abatement, with any employer on waiver or limitation of any right the employer may have under the federal labor laws.
- (3) Enacting any ordinance, regulation, or other action that waives or limits any right the employer may have under the federal labor laws.
- (4) Conditioning or requiring any employer to not deal with another employer on waiver or limitation of any right either employer may have under the federal labor laws.

C. An employer or employee is entitled to and shall receive injunctive relief necessary to prevent any violations of this Section.

Section 5. {Limitations} Nothing in this legislation should be construed as limiting the regulatory, legal or preemptive operation of the National Labor Relations Act, the Labor management Relations Act, or the Railway Labor Act.

Section 6. {Effective Date}

Adopted by the CIED Task Force at the Annual Meeting, August 3, 2001. Approved by the ALEC Legislative Board September 2001.

Resolution in Opposition to Violence in Labor Disputes

Summary

The Anti-Racketeering Act of 1934 (The Copeland Act) marked the beginning of federal authority to prosecute and punish criminal acts of extortion affecting commerce. In response to union fears that the law could be applied to non-violent forms of protest, the bill was amended to read "[t]hat no court of the United States shall

construe or apply any of the provisions of this Act in such a manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objectives thereof, as such rights are expressed in existing statutes of the United States." The Act was later amended by the Hobbs Act which provided that violent acts could be prosecuted under the Copeland Act, even where the acts were carried out in the name of legitimate objectives of bona fide labor organizations. The Hobbs Act was not meant to preempt state and local laws already in place to combat violence, but rather to supplement such laws. However, the corrections made to the Copeland Act by the Hobbs Act were nullified by the Supreme Court's ruling in *United States v. Enmons*, which held that the Hobbs Act is not applicable to violence that takes place in "an effort to promote appropriate collective bargaining demands." The Resolution in Opposition to Violence in Labor Disputes affirms the principle that violence in labor disputes is contrary to good public policy and urges governments at all levels to enforce current mechanisms and pass further legislation to deter such violence.

Model Resolution

WHEREAS, the National Labor Relations Board (NLRB) and the courts have generally held that federal labor laws do not preempt local laws with respect to tortious and criminal conduct by union members; and

WHEREAS, the NLRB generally does not protect employees who engage in such conduct; and

WHEREAS, some cases have been vague as to what constitutes protected union conduct, with the NLRB observing in one case that "the emotional tension of a strike almost inevitably gives rise to a certain amount of disorder and ... conduct on a picket line cannot be expected to approach the etiquette of the drawing room or breakfast table;" and

WHEREAS, many court decisions on the state and federal level have created vague standards with respect to the applicability of criminal laws to union violence; and

WHEREAS, union officials should not be immune from prosecution under federal, state and local law for violence committed in furtherance of union objectives; and

WHEREAS, disputes arising in the labor-management arena are best resolved through open discussion of ideas, and never through senseless violence directed at persons or property; and

WHEREAS, the use of violence is ultimately detrimental to all parties involved, often creating permanent animosities that forever color the working environment and lower productivity;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that violence in labor disputes is contrary to good public policy and urges governments at all levels to enforce current mechanisms and pass further legislation to deter such violence.

Adopted by the CIED Task Force at the Spring Task Force Summit, May 2, 2007. Approved by the ALEC Legislative Board June 2007.

Resolution in Support of Reporting Requirements for Public Sector Unions

Summary

Currently, public sector unions are not required to adhere to the same reporting requirements as private sector unions. The Resolution In Support of Reporting Requirements for Public Sector Unions calls for legislatures to pass reporting requirements for public sector unions that are similar to requirements for private sector unions.

Model Resolution

WHEREAS, private sector unions are required by the National Labor Relations Act (NLRA) to adhere to reporting and disclosure requirements; and

WHEREAS, state and local public sector unions are governed by state and local law and are not required to meet the same requirements under the NLRA; and

WHEREAS, the absence of such requirements results in represented persons not knowing the salaries, benefits, etc. of their so-called "bargaining representatives"; and

WHEREAS, any organization or association of employees, and any agency, employee representation committee, or plan in which employees participate that exists in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work could be defined as a union;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) supports state legislation that will make public sector unions meet similar reporting requirements as private sector unions are required to meet under the NLRA;

BE IT FURTHER RESOLVED that the State/Commonwealth of (insert state) supports federal legislation that requires interstate public sector unions to meet the same reporting required by the NLRA for private sector unions.

Adopted by the CIED Task Force at the Spring Task Force Summit on April 20, 2007. Approved by the ALEC Legislative Board June 2007.

Resolution on Release Time for Union Business

Summary

The Resolution on Release Time for Union Business opposes the practice of public sector union members receiving release time from their primary responsibilities to participate in union business.

Model Resolution

WHEREAS, many public agencies, including school districts, regularly provide release time for union leaders and negotiating team members to conduct union business; and

WHEREAS, such time should be recorded in order to determine how much time an employee spends on union activity as opposed to performing his/her job duties; and

WHEREAS, such union leaders are often senior level employees at the top of the salary schedule; and

WHEREAS, drawing out the negotiating process often causes substantial costs to accrue, especially when an impasse results in prolonged negotiations lasting as long as 6-12 months; and

WHEREAS, the individual agencies or school districts are still responsible for paying the salaries of their employees, even when they are not performing their job functions, but are involved in union business; and

WHEREAS, most agencies and school districts would benefit from requiring unions to pay for the time their representatives work on union business;

NOW THEREFORE LET IT BE RESOLVED, that the State/Commonwealth of (insert state) urges legislatures to revise any policy that allows release time for public employees to conduct union business, and to acknowledge and preserve the role of the states and federal agencies in the interpretation and enforcement of such laws.

Adopted by the CIED Task Force at the Spring Task Force Summit, May 2, 2007. Approved by the ALEC Legislative Board June 2007.

Resolution Opposing “Card Check” and Forced, Compulsory Binding Arbitration

Summary

A resolution opposing efforts to amend the National Labor Relations Act of 1935 removing the private election phase of union recognition campaigns and forcing binding arbitration on employers during union negotiations. Existing labor law provides for a two-phase process of union recognition: the signing of authorization cards and a private election overseen by the National Labor Relations Board.

Model Resolution

WHEREAS, the right to private elections is the cornerstone of American democracy; and

WHEREAS, private ballot elections are the most democratic way to determine employees’ wishes and guarantee an outcome unaffected by outside pressures; and

WHEREAS, federally supervised elections conducted by the National Labor Relations Board have been the accepted law governing union recognition campaigns for 60 years, providing detailed procedures that ensure a fair election, free of fraud, where employees may cast their vote confidentially without peer pressure or coercion from unions or employers; and

WHEREAS, limiting union recognition to signing authorization cards (“card check”) in the presence of union officials, coworkers and employers does not reflect the unbiased will of employees; and

WHEREAS, in recent years the vast majority of businesses targeted by union organizing campaigns have been small businesses with 50 or fewer employees; and

WHEREAS, small businesses are more likely to be held captive at the will of union organizing efforts as they have less resources for the lengthy legal process of union recognition campaigns; and

WHEREAS, efforts to eliminate private elections are an attack on the free speech rights of business and workers' individual rights; and

WHEREAS, compulsory binding arbitration, which would force employers to accept the terms of a first contract if the employer and the union cannot agree, is fundamentally unconstitutional, and will dramatically undermine the ability of any employer to negotiate; and

WHEREAS, compulsory arbitration discourages the parties from offering compromises in bargaining for fear that they may prejudice their position in arbitration.

NOW, THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council (ALEC) opposes proposals seeking to eliminate the private election phase of union recognition campaigns and implement compulsory binding arbitration on employers.

BE IT FURTHER RESOLVED that ALEC supports democracy in the workplace by maintaining every worker's right to privately decide whether or not to allow a particular union to represent their interests.

Adopted by the CIED Task Force at the Spring Task Force Summit on April 20, 2007. Approved by the ALEC Legislative Board May 2, 2007.

Voluntary Contributions Act

Summary

The Voluntary Contributions Act requires labor organizations that engage in political activities to keep a segregated fund for political contributions. It further specifies that contributions to that fund will be on a voluntary basis and the contribution shall be made directly by the donor. In addition, the Act prohibits payroll withholding of funds to be used for political purposes.

Note: This model is adapted from Idaho House Bill 329, enacted, and signed into law in 2003.

Model Legislation

Section 1. {Title} This Act shall be known as the "Voluntary Contributions Act."

Section 2. {Definitions} As used in this Act, the following terms have the following meanings:

- (A). "Ballot proposition" includes initiatives, referenda, proposed constitutional amendments, and any other items submitted to the voters for their approval or rejection.
- (B). "Filing entity" means a candidate, officeholder, political committee, political party, and each other entity required to report contributions under [insert reference to applicable state law]
- (C). "Fund" means the separate segregated fund established by a labor organization for political purposes according to the procedures and requirements of this Act.
- (D). 1. "Labor organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours or condition of employment.

2. Except as provided in (D)(1) of this section, “labor organization” includes each employee association and union for employees of public and private sector employers.

3. “Labor organization” does not include organizations governed by the national labor relations act, 29 U.S.C. section 151, et. seq. or the railway labor act, 45 U.S.C. section 151, et. seq.

(E). “Political activities” means electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee, voter registration campaign, or any other political or legislative cause, including ballot propositions.

(F). “Union dues” means dues, fees, or other moneys required as a condition of membership in a labor organization.

Section 3. {Limits on Labor Organization Contributions}

(A). 1. A labor organization may only make expenditures for political activities if the labor organization establishes a separate, segregated fund that meets the requirements of this Act.

2. A labor organization shall ensure that:

- i. In soliciting contributions for the fund, the solicitor discloses, in clear and unambiguous language on the face of the solicitation, that contributions are voluntary and that the fund is a political fund and will be expended for political activities;
- ii. Union dues are not used for political activities, transferred to the fund, or intermingled in any way with fund moneys;
- iii. The cost of administering the fund is paid from fund contributions and not from union dues; and
- iv. Each contribution is voluntary and shall be made by the member and may not come from or be remitted by the employer of the member.

(B). At the time the labor organization is soliciting contributions for the fund from an employee, the labor organization shall:

1. Affirmatively inform the employee, orally or in writing, of the fund’s political purpose; and
2. Affirmatively inform the employee, orally or in writing, of the employee’s right to refuse to contribute without fear of reprisal or loss of membership in the labor organization.

(C). The labor organization has the burden of proof to establish that the requirements of (A)(2) and (B) of this section are met.

(D). Notwithstanding the requirements of (A)(2)(ii) of this section, a labor organization may use union dues to communicate directly with its own members about political candidates, ballot propositions, and other political issues.

Section 4. {Criminal Acts, Penalties}

(A). 1. It is unlawful for a labor organization to make expenditures for political activities by using contributions:

- i. Secured by physical force or threat of force, job discrimination or threat of job discrimination, membership discrimination or threat of membership discrimination, or economic reprisals or threat of economic reprisals; or

ii. [if necessary, insert the following:] From union dues except as provided in [insert reference to applicable state law].

2. When a labor organization is soliciting contributions for a fund from an employee, it is unlawful for a labor organization to fail to:

- i. Affirmatively inform the employee orally or in writing of the fund's political purpose; and
- ii. Affirmatively inform the employee orally or in writing of the employee's right to refuse to contribute without fear of reprisal or loss of membership in the labor organization.

3. It is unlawful for a labor organization to pay a member for contributing to the fund by providing a bonus, expense account, rebate of union dues, or by any other form of direct or indirect compensation.

(B). Any person or entity violating this section is guilty of a misdemeanor.

Section 5. {Registration, Disclosure} Each fund established by a labor organization under this Act shall:

(A). Register as a political committee as required by [insert reference to applicable state law].

(B). File the financial reports for political committees required by [insert reference to applicable state law].

Section 6. {Prospective Application} The provisions of this Act shall apply to all contracts entered into after the effective date of this Act, and shall apply to any renewal of existing contract.

Section 7. {Severability}

Section 8. {Repealer Clause}

Section 9. {Effective Date}

Adopted by the CIED Task Force at the Spring Task Force Summit, April 30, 2003. Approved by the ALEC Legislative Board May 2004.

Open Contracting Act

Summary

This act prohibits public agencies from imposing labor requirements as a condition of performing public works.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title} This Act shall be known and may be cited as the Open Contracting Act.

Section 2. {Statement of Purpose.} The purpose of this Act is to prohibit public agencies from imposing certain labor requirements as a condition of performing public works.

Section 3. {Prohibited activities.} The State and political subdivisions, agencies and instrumentalities thereof, when engaged in procuring products or services or letting contracts for manufacture of public works, or overseeing such procurement, construction or manufacture, shall ensure that bid specifications, project agreements and other controlling documents, entered into, required or subject to approval by the subdivision, agency or instrumentality, do not:

- (A) Require bidders, offerors, contractors or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects;
- (B) discriminate against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations on the same or related construction projects; or
- (C) require any bidder, offeror, contractor or subcontractor to enter into, adhere to or enforce any agreement that requires its employees as a condition of employment to:
 - (1) become members of or become affiliated with a labor organization; or
 - (2) pay dues or fees to a labor organization, over an employee's objection, in excess of the employee's share of labor organization costs relating to collective bargaining, contract administration or grievance adjustment.

Section 4. {Grants and cooperative agreements.}

- (A) General rule. The State and political subdivisions and any agencies or instrumentalities thereof shall not issue grants or enter into cooperative agreements for construction projects a condition of which requires that bid specifications, project agreements or other controlling documents pertaining to the grant or cooperative agreement contain any of the elements specified in Section 3.
- (B) Duty of State and other public agencies. The State and political subdivisions or any agencies or instrumentalities thereof shall exercise such authority as may be required to preclude a grant recipient or party to a cooperative agreement from imposing any of the elements specified in Section 3 in connection with any grant or cooperative agreement awarded or entered into.

Section 5. {Enforcement.} Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or taxpayer, shall have any standing to challenge any bid specification, project agreement, controlling document, grant or cooperative agreement which violates the Act, and shall be awarded costs and attorney's fees in the event that the challenge prevails.

Section 6. {Severability clause.}

Section 7. {Repealer clause.}

Section 8. {Effective date.}

Prohibition on Compensation Deductions Act

Summary

The Prohibition on Compensation Deductions Act prohibits state agencies and political subdivisions of the state from deducting from the compensation of any employee any money from which a contribution is made to a political committee or to an intermediary through which any amount is provided to a political committee.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Prohibition on Compensation Deductions Act.

Section 2. {Legislative Declarations.}

Section 3. {Definitions.}

(A) "Intermediary" means a person who receives any amount that has been deducted by an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from the compensation of any employee by way of dues, fees, or assessments and who transfers any or all of such amount to a political committee.

(B) "Political committee" means any organization engaged in lobbying, electoral, and political activities which includes, but is not limited to, providing independent expenditures or contributions to any candidate, political party, voter registration campaign or any other political cause.

Section 4. {Deductions Prohibited.}

(A) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall deduct from the compensation of any employee:

- (1) Any money from which a contribution is made directly to a political committee or through an intermediary;
- (2) Any dues, fees, or assessments from which any amount is given, transferred, or donated to a political committee for any reason or from which a contribution is made to a political committee for any reason.

(B) Nothing in this subsection shall be construed as prohibiting an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from making contributions from his or her personal funds to a political committee.

Section 5. {Severability Clause.}

Section 6. {Repealer Clause.}

Section 7. {Effective Date.}

Resolution in Support of Employee Involvement

Summary

The Resolution in Support of Employee Involvement recognizes that employee involvement structures, such as safety committees, quality circles and self-managed work teams can be beneficial to a workplace. However, such structures are threatened by the United States Supreme Court's *Electromation* case, where the Court held that such work teams may be illegal in non-union shops because the National Labor Relations Act (NLRA), Section 8(a)(2) prohibits employer "domination, interference or support" of a "labor organization," i.e., "company unions." Congress is considering legislation known as the TEAM Act that would prevent employee involvement structures from being interpreted as company-dominated unions.

Model Resolution

WHEREAS, the *Electromation* decision threatens to undermine a very positive and important development in United States' labor-management relations; and

WHEREAS, employee-management cooperative programs, sometimes called quality circles, labor-management cooperative teams, or employee involvement teams, share the objective of improving communication, morale, productivity, and product quality by giving workers a greater, more direct voice in decision making; and

WHEREAS, the TEAM Act would protect legitimate employee involvement structures and allow such structures to continue to evolve and proliferate; and

WHEREAS, the TEAM Act would allow employers to give their employees a genuine voice in workplace matters through some mechanism other than collective bargaining; and

WHEREAS, under the *Electromation* case, every employee involvement structure is vulnerable to a charge being filed with the National Labor Relations Board (NLRB) by a union attempting to organize the company, a disgruntled employee or anyone else;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that employee involvement structures are a positive and important development in United States' labor-management relations and urges Congress to pass legislation so that such structures can continue to exist and evolve.

1996 Sourcebook of American State Legislation

Resolution Urging Congress To Modernize the Social Security System With Personal Retirement Accounts (PRA's)

Summary

Urges Congress to address the looming demographic problems of the Social Security system by increasing the system's rate of return, rather than by broadly cutting benefits or raising payroll taxes. Advocates reform legislation permitting workers to allocate a portion of their federal payroll taxes into personal retirement accounts that the workers would own and control.

Model Resolution

WHEREAS, Social Security is a federal program that does not recognize the retirement needs of many Americans; and

WHEREAS, Social Security tax revenues alone will be insufficient to pay current benefits as early as the year 2015; and

WHEREAS, the Social Security Trust Funds may be completely exhausted by the year 2037; and

WHEREAS, the investment return on Social Security contributions made by workers today is significantly below that available from other sources; and

WHEREAS, workers deserve the opportunity to invest more productively for their own retirements; and

WHEREAS, more retirement investment opportunities might dramatically increase workers' savings rate and retain more young adults who otherwise would leave the state for jobs elsewhere; and

WHEREAS, the unfunded liability of the Social Security system exceeds \$9 trillion, according to the Chairman of the Federal Reserve System; and

WHEREAS, many workers are already facing very low or even negative rates of return on their lifetimes of Social Security contributions; and

WHEREAS, the aging of the U.S. population means that fewer and fewer active workers will be supporting more and more retirees under today's pay-as-you-go financing for Social Security; and

WHEREAS, this ratio of retirees to workers has shrunk from 15 to 1 in 1950 to less than 3 to 1 today and soon will fall to less than 2 to 1; and

WHEREAS, raising payroll or income taxes to compensate for this demographic shrinkage will mean that today's workers get an even worse return on their federal retirement contributions than they do now; and

WHEREAS, broadly cutting Social Security benefits also would worsen rates of return; and

WHEREAS, states and localities that allow their own employees to invest a portion of their taxes for retirement have shown that workers can do better for themselves with such accounts than under Social Security; and

WHEREAS, an increasing number of countries, including Australia, Chile, Poland, Sweden and the United Kingdom, now allow their citizens to allocate their taxes to such personal retirement accounts; and

WHEREAS, the Social Security Trustees have consistently and repeatedly stated in their annual reports that the Social Security system will be unable to deliver on its long-term promises under its current financing scheme; and

WHEREAS, the public, especially younger people, are therefore rightfully suspicious of Social Security's ability to deliver on its long-term promises to them; and

WHEREAS, bipartisan Social Security reform proposals now before Congress would address these problems by creating a system of personal accounts with a portion of Social Security taxes; and

WHEREAS, the Social Security Administration's own actuaries have judged these bipartisan proposals to be fiscally sound for the next 75 years; and

WHEREAS, these proposals would reduce or eliminate the pressure for higher taxes or broadly reduced benefits while reducing Social Security's unfunded liability; and

WHEREAS, these proposals would not affect people in or near retirement, or those eligible for or drawing Social Security's disability benefits;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of {Insert State} urges the Congress of the United States to enact legislation amending the Social Security Act and other statutes to allow workers to allocate a portion of their Social Security taxes to personal retirement accounts that they themselves would own and control, and to reject legislation that raises federal retirement taxes, broadly reduces Social Security benefits, or fails to lower Social Security's unfunded liability; and

BE IT FURTHER RESOLVED that copies of this Resolution be sent to each member of Congress.

Adopted by the CIED Task Force at the Spring Task Force Summit, May 6, 2000. Approved by the ALEC Legislative Board June 2000.

Principles of ALEC Regarding "Proposed Socially Conscious" Investments And Controversial Stock Divestiture

Fund managers have a fiduciary duty to their beneficiaries to maximize returns, and these professionals are fully capable of determining whether, ultimately, returns on controversial stocks are good investments. Government should stay out of these decisions and leave the job of picking winners and losers in the marketplace to the professionals.

Today a particular company or industry may be unpopular, like alcohol or tobacco, but tomorrow's controversy could be animal rights, nuclear power, defense contractors, the oil industry, etc. Many profitable companies have businesses that could become controversial and setting the precedent today of restricting choice to advance some "cause" will only result in fewer choices for fund managers later as activists for more and more "causes" are encouraged to protest the latest politically incorrect investment.

Retirees have a right to maximum returns for their hard-earned dollars. These senior citizens justifiably get very nervous when politicians talk about tinkering with their retirement funds in order to advance a cause rather than increase their retirement earnings. Legislatures should not take actions that interfere with the pension returns of senior Americans just to be politically correct.

Activists often seek immediate divestiture, or wholesale dumping of the stocks or other investments of an entire industry. This could obviously depress the price of these investments held by millions of people and thousands of mutual funds, and cause huge financial losses for millions of Americans, all to justify the preferences of a few activists. This violates ALEC's Jeffersonian principles of individual liberty, free markets and limited government.

Adopted by the CIED Task Force at the Annual Meeting, August 10, 1998. Approved by the ALEC Legislative Board September 1998.

Taxpayer Privatization Dividend Act

Summary

This bill establishes a commission on privatization to promote methods of providing a portion or all of formerly government-provided and government-produced programs or services through the private sector. Such methods

may include awarding ownership and control of a public service to the private sector, awarding rights for provision of public service to the private sector while retaining public responsibility, or eliminating regulations. It also creates a taxpayers dividend fund into which a certain amount of saving derived as a result of privatization is deposited. (An example of this bill is Mississippi SB #2495, 1993.)

Model Legislation

{Title, enacting clause, etc}

Section 1. {Short Title.}

This Act may be cited as the Taxpayer Privatization Dividend Act.

Section 2. {Purpose.}

An Act to create the [state] commission on privatization; To provide for the membership and duties of such commission; To establish a sequence of actions that the commission must follow in order to study the potential for privatization under certain conditions; To require certain actions by the commission after the conduct of cost benefit analyses of agencies being considered for privatization; To provide a procedure to contract for services necessary as a result of privatization; To create the taxpayer's dividend from good government fund privatization dividend fund into which a certain amount of the saving derived as a result of privatization shall be deposited; To provide that money in such fund shall be distributed in the form of; [Language to be supplied. Examples include tax rebates and reductions and motor vehicle registration fee rebates] ; To create the technology and productivity procurement revolving fund to be used for loans to state entities to improve technology; To require the legislature to appropriate the amounts it determines will be saved as a result of privatization in a certain manner; and for related purposes.

Section 3. {Definitions.}

For the purposes of this act, the following terms shall have the following definitions ascribed to them:

- (A) "Commission" means the [state] Commission on Privatization created under this act.
- (B) "State entity" means any board, commission, authority, department, agency or institution which employs state or non-state service personnel as defined by [applicable state code].
- (C) "Privatization" means a method of providing a portion or all of a formerly government-provided and government-produced program and/or its services through the private sector using one or more or a combination of the three following categories of activity:

- (1) Divestment;
- (2) Delegation; or
- (3) Deregulation.

(D) Divestment means that the state through a competitive process turns over the ownership, control, financial responsibility, and delivery of a public service to the private sector. Such may be given effect through sale of lie assets necessary to produce the service to a provider of services, or through liquidation of assets wherein the purchaser of assets will not provide the service.

(E) Delegation means that the state assigns the provision of all or part of a function or service through a make or buy analysis, to the private sector, while retaining the responsibility of overseeing its production and/or delivery :o its citizens and or governmental entities.

(F) Deregulation means the passive process by which the government is gradually displaced by the private sector through elimination of regulation.

(G) Attributable fully allocated cost means the operating and capital cost of a public service including direct, indirect and allocated cost minus the cost of any function not to be competitively contracted.

(H) Make or buy analysis means a periodic analysis in which the costs of internal production of a good or service are compared to the costs of production by outside vendors. The process requires the comparison of the true costs of public and private production methods that result in comparable public goods or services.

Section 4. (Commission on Privatization.)

(A) There is hereby created the [state] Commission on Privatization to consist of the Governor, Lieutenant Governor, State Treasurer, the attorney General and the State Auditor of Public Accounts. The Governor shall be chairman of the commission, the Lieutenant Governor shall be vice-chairman, and the State Auditor shall be secretary thereof.

(B) The Lieutenant Governor shall designate three (3) Senators and the Speaker of the House of Representatives shall designate three (3) Representatives to attend any meeting of the commission. The appointing authorities may designate alternate members from their respective houses to serve when a regular designee is unable to attend such meetings of the commission. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the commission. For attending meetings of the commission, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the commission will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the commission without prior approval of the proper committee in their respective houses proposals from both public and private sector.

(C) The Governor, Lieutenant Governor, State Treasurer, Attorney General and State Auditor of Public Accounts shall each appoint to the commission one (1) non-voting associate member from the private sector.

(D) The Office of State Audit shall provide staff support to the commission.

Section 5. (Commission Duties and Responsibilities)

(A) The commission shall have the following duties and responsibilities:

- (1) To advocate, develop and accelerate a privatization program for state entities which ensures private sector competition for provision and/or production of state government services. Such authority shall extend to issuing requests for information and proposals from both public and private sector entities.
- (2) To develop an overall state privatization policy including necessary goals and objectives for privatizing the programs and services of state government.
- (3) To establish all analytical, approving, planning and reporting processes required to carry out the functions of the commission, and to promulgate all rules essential to carry out the commission's mission, including deadlines for state entity, reports, timetables for commission action, standards and criteria governing reports made to the commission, standards for requests for proposals, and rules of order.

(4) To determine, in conjunction with other state entities, the pool of potential program or service candidates for privatization; provided, however, that the commission shall not issue any privatization recommendation regarding any program which:

- (a) Directly and significantly consists of planning and proposing public policy, making public policy, or consists in whole or part of activities which regulate the business, occupation, or profession, or any person, firm, partnership, corporation, or association which is doing business in [state] or is domiciled in this state;
- (b) Directly and significantly affects the investigation or prosecution of criminal acts, the operations of the courts of law, the preservation of peace and order, or the prevention of epidemics; or
- (c) Makes judgements or recommendation relative to the fiscal policy of the state, or judgements pertaining to the making of rules and regulations by which entitlements are granted.

(5) To require information to insure that all state entities whose programs are included in the pool of candidates for privatization assist the commission in performing the managerial, operational, or administrative analysis relative to:

- (a) Determining the privatization potential of a program or activity;
- (b) Performing cost/benefit analysis;
- (c) Performing make or buy analysis; and
- (d) Certifying the profits and savings from privatization projects.

(B) The commission shall, with the assistance of state entities devise evaluation criteria to be used in conducting reviews of any program or activity which is the subject of a privatization recommendation.

(C) To the extent practicable and to the extent resources are available, the commission shall make available its services for a fair compensation to any local entity. The Legislature encourages local government entities to utilize the services of the commission.

Section 6. {Privatization Candidates.}

In carrying out the duties described in this act, the commission shall follow the sequence of activities described in this act. The commission shall, through the use of state entity input, prepare a pool of program or activity candidates for privatization prior to performing any other analytical function. Such pool shall include not less than (10) state entity projects. Subsequent to developing a pool of candidates, the commission shall conduct cost/ benefit studies of all candidates in the pool. Recommendations of privatization may only be issued subsequent to the preparation and commission review of cost/benefit studies. Each year the commission shall complete cost/ benefit studies covering goods or services representing at least five percent of the state operating budget. The annual make or buy analysis shall be limited to public goods or services not currently provided through make or buy analysis under this Act.

Section 7. {Cost Benefit Analysis.}

(A) In conducting a cost/benefit analysis of candidates from the pool, the commission shall consider the use of delegation, divestment, or deregulation as means of privatizing programs or activities. In developing a plan for conducting cost/benefit analysis, the commission shall consider the following:

- (1) The potential annual revenue generating or recurring savings from privatization;

- (2) Potential market for the programs or activities;
- (3) Potential one-time revenues and/or savings from elimination of a program or activity;
- (4) Relative strengths and weaknesses of governmental customer service mechanisms and private sector customer service mechanisms;
- (5) The impact of reduced services on the citizens of the state;
- (6) The private sector's capacity to engage in voluntary self-regulation; and
- (7) Barriers to privatization created by laws, market structure, user expectations, and imperfections in the dissemination and assimilation of information.

(B) The commission shall set appropriate deadlines for reporting of costs and benefits, as well as any other matter germane to privatization. The commission shall also determine the criteria for judging successful privatization, and publish such criteria for evaluation purposes.

(C) The commission shall, upon privatizing a program or service, annually review such privatization project and certify the savings and profits generated by such project.

(D) Subsequent to the preparation of cost/benefit analysis, the commission shall review such cost /benefit analysis to determine the accuracy of the analyst provided. In performing this function, the commission may contract with consultants and other experts for assistance. The commission may refer questions or proposals to the state entities or other experts for assistance. The commission may refer questions or proposals to the state entities or the experts referred to in this act regarding the analysis of the program or activity or the delivery of services.

(E) In the event that the commission finds that the cost/benefit analysis prepared by the state entity or expert fails to address the criteria or regulation promulgated by the commission with respect to cost/benefit analysis, the commission shall direct the state entity or expert to resubmit a revised cost/benefit analysis.

(F) Subsequent to the cost/benefit analysis, the commission shall:

- (1) In the case of divestment or deregulation deemed to be in the public interest, transmit its recommendation to the state entity, the Governor and the Legislature and shall make its recommendation available to the public.
- (2) In the case of delegation anticipated to produce any one-time or annual savings of either the previous year's expenditures for a program or activity, or the proposed aggregate charge for rendering the same program or activity, require the state entity to perform a "make or buy" analysis at the earliest feasible date.

Section 9. (Petition of interest.)

(A) In addition to make or buy analysis required by the commission, the commission shall perform or require the state entity or expert to perform a make or buy analysis covering any service for which the commission has received a qualifying petition of interest from a private company consistent with the process provided for in this act. No more than one (1) make or buy analysis shall be required for a particular good or service within a one-year period.

(B) Private companies interested in providing services for state entities through delegation, may file petitions of interest with the commission.

(C) Petitions of interest shall include:

- (1) A description of the service that the private company would like to provide for the state entity.
- (2) A statement that the private company believes that it can provide the same service, under contract to the state entity, for a lower cost than the present cost with at least comparable quality, efficiency and effectiveness.
- (3) A description of the company's financial capacity to provide the service.
- (4) A request for proposals shall clearly specify the goods or services to be procured and include a draft contract.
- (5) Any state entity may submit its own proposal in response to the request for proposal, subject to the terms and conditions later specified.

(C) The commission shall employ a two-step review process, involving the concurrent submittal of two (2) packages, as follows:

- (1) The first step shall be an evaluation of a package of the financial qualifications and technical proposals from the responders. The commission shall determine whether each such submittal represents a responsive and responsible proposal.
- (2) The second step shall be an evaluation of the cost proposals packages of the responsive and responsible proposers.

(D) With respect to each request for proposals, the state entity shall award the contract based on the above evaluation.

(E) Any service operated under competitive proposals on the effective date of this act or thereafter shall be subject to a new competitive proposal at least every five (5) years. Renewal options that extend a contract beyond five (5) years shall be prohibited.

(F) In no case shall a service operated under competitive proposal be returned to operation not subject to competitive proposal.

(G) A state entity shall not establish or impose any requirement to salaries, wages, benefits or labor union representation, staffing levels, work rules or other conditions of employment of private contractor employees. All contractors shall comply with applicable federal and state labor laws.

(H) Each state entity shall make capital facilities and equipment available for operation under competitive proposals by private contractors to the maximum extent feasible, subject to supervision of the state entity. Capital facilities and equipment should be denied use by private contractors only if they would similarly be denied to use by the state entity itself if it were awarded the contract.

(I) All contract prices shall be competitively determined through a request for proposal. No change in contract payment amount to a private contractor or state entity shall be made except as specified in the contract. Payment changes in a contract shall be limited to indices, escalators, deflators, changes in service level and other expressly stated or calculable amounts, consistent with the request for proposal and proposal of the private contractor or state entity awarded the contract.

(J) A state entity may execute interim standby competitive contracts with one or more private contractors to provide any service on an interim basis in the event that the state entity is required to do so by the public

welfare. Any services operated under a standby contract shall be subject to competitive proposal within six (6) months of standby contract service award.

(K) No state entity shall make or be bound by any contract, agreement or assurance that restricts its ability to comply with this act in any respect.

Section 10. {Make or buy analysis.}

(A) The make or buy analysis shall be performed through the issuance and evaluation of requests for information and proposals from private companies.

(B) The make or buy analysis shall be conducted as follows:

(1) The commission shall seek the widest reasonable distribution of each request for proposals to each organization on the interested proposer's list and to each additional organization which requests the specific request proposal.

(2) The commission shall begin advertising each request for proposals within ten (10) days of issuance. Requests for proposals shall be advertised in each daily newspaper published in the state once a week for three (3) consecutive weeks.

(3) Submission of proposals shall be required no sooner than forty-five (45) days after the request for proposal advertisement date.

(4) A request for proposals shall clearly specify the goods or services to be procured and include a draft contract.

(5) Any state entity may submit its own proposal in response to the request for proposal, subject to the terms and conditions later specified.

(C) The commission shall employ a two-step review process, involving the concurrent submittal of two (2) packages, as follows:

(1) The first step shall be an evaluation of a package of the financial qualifications and technical proposals from the responders. The commission shall determine whether each such submittal represents a responsive and responsible proposal.

(2) The second step shall be an evaluation of the cost proposals packages of the responsive and responsible proposers.

(D) With respect to each request for proposals, the state entity shall award the contract based on the above evaluation.

(E) Any service operated under competitive proposals on the effective date of this act or thereafter shall be subject to a new competitive proposal at least every five (5) years. Renewal options that extend a contract beyond five (5) years shall be prohibited.

(F) In no case shall a service operated under competitive proposal be returned to operation not subject to competitive proposal.

(G) A state entity shall not establish or impose any requirement to salaries, wages, benefits or labor union representation, staffing levels, work rules or other conditions of employment of private contractor employees. All contractors shall comply with applicable federal and state labor laws.

(H) Each state entity shall make capital facilities and equipment available for operation under competitive proposals by private contractors to the maximum extent feasible, subject to supervision of the state entity. Capital facilities and equipment should be denied use by private contractors only if they would similarly be denied to use by the state entity itself if it were awarded the contract.

(I) All contract prices shall be competitively determined through a request for proposal. No change in contract payment amount to a private contractor or state entity shall be made except as specified in the contract. Payment changes in a contract shall be limited to indices, escalators, deflators, changes in service level and other expressly stated or calculable amounts, consistent with the request for proposal and proposal of the private contractor or state entity awarded the contract.

(J) A state entity may execute interim standby competitive contracts with one or more private contractors to provide any service on an interim basis in the event that the state entity is required to do so by the public welfare. Any services operated under a standby contract shall be subject to competitive proposal within six (6) months of standby contract service award.

(K) No state entity shall make or be bound by any contract, agreement or assurance that restricts its ability to comply with this act in any respect.

Section 11. {Proposal guidelines for state entities.}

Any state entity may compete to provide the public service subjected to make or buy analysis by submitting its own proposal, subject to the following conditions:

- (a) That it submit a sealed proposal before the advertised deadline for such proposals, that the proposal not be altered after that deadline and that the proposal be publicly opened and made public at such deadline.
- (b) That any labor provision assumed in the proposal shall have been financially executed and binding on the state entity with respect to the public good or service subjected to make or buy analysis.
- (c) That it take reasonable steps to ensure an objective and fair evaluation process, including prohibition of proposal evaluation participation by personnel or departments which were involved in preparing the state entity's proposal.
- (d) That its proposal price be not less than its attributable fully allocated cost for service, and that its proposal price not be based on part-time labor provisions or other less costly labor provisions to a greater percentage than such provisions are employed in comparable positions within the state entity, and that its proposal price be consistent with currently adopted budgets and financial plans.
- (e) That it shall make or be bound by no contract, agreement or assurance which creates or extends any form of obligation for continued employment or employee compensation, except for pension, beyond the contract expiration date under the provisions of the request for proposal for employees assigned to the service.
- (f) That it shall be bound by the same terms, conditions and performance and other standards as would have applied to a private provider awarded the contact under the request proposal.
- (g) That its costs shall not, at any point during the contract period, rise by an amount greater than that specified for the corresponding period in the state entity's proposal. If the state entity's cost performance is not in compliance with this provision, the state entity shall issue a new request for proposal for the service within ninety (90) days.

Section 12. {Cost savings statement.}

- (A) The state entity privatizing a service shall prepare a statement estimating the cost savings and profits from privatization and submit such estimate to the commission for review.
- (B) The commission shall review all cost savings and profit statements submitted by a state, entity. If the commission has reason to believe that the savings and profits estimates contained in the statement are incorrect, the commission shall arrange for one or more independent audits of the cost before and after the make or buy analysis.
- (C) The commission shall certify to the Legislature and public actual cost savings and profits from privatization and shall identify which portions of the savings and profits that are recurring, and which are one-time, with the total amount of recurring and one-time savings equaling the amount certified.

Section 13. {Commission report.}

(A) On or before October 1 of each year, the commission shall issue a report to the Legislature and the Governor which shall:

- (1) Describe each program or activity in the pool of candidates for privatization;
- (2) Summarize the cost/benefit analysis prepared on each candidate;
- (3) Provide a detailed summary of any all privatization recommendations issued by the commission;
- (4) Evaluate any privatization activity which was recommended by the commission which become effective the first day of the previous fiscal year;
- (5) Prepare a review of the effectiveness and efficiency of any privatization recommended by the commission which has become effective since the commission came into existence;
- (6) Compare the savings that the commission had projected to the savings that were certified, detailing the implications of both the projected and actual savings with respect to taxpayer dividends; and
- (7) Certify the savings and profits achieved through new make or buy analysis in the year ending the previous June 30 and the total recurring savings from previous years and shall recommend that such certified amount be appropriated as provided in this act. Based upon the total savings and profits certified, the commission shall estimate and provide the amount of each dividend as specified by the Taxpayer Dividend From Good Government Fund under this act. This information shall be conveyed to the public and media.

(B) The Legislative Budget Office shall cooperate with the commission in the completion of any report or reporting activity required by this section.

(C) The commission shall report to the Legislature, in conjunction with the above-required report, an analysis of any legal impediments to future privatization. Such report shall also include proposed remedies, including, where appropriate, change to rules and regulations, draft legislation or constitutional amendments.

(D) All reports required under this act shall be provided quarterly to [applicable government evaluation body] for its review.

Section 14. {Taxpayer dividend.}

(A) There is hereby created a special fund in the State Treasury to be known as the "Taxpayer's Dividend From Good Government Fund," into which shall be deposited such amounts that are derived from saving and profits realized as a result of privatization state government activities as may be appropriated to such fund by the

Legislature. Money in such fund at the end of any fiscal year shall not lapse into the General Fund. Interest earned on amounts deposited into such fund shall remain in such fund.

(B) Money in the Taxpayer's Dividend From Good Government Fund shall be distributed biennially beginning July 1, with the first distribution to be as close to July 1, 1995 as practicable. The [applicable government finance body] shall make such distributions as provided in this act to natural persons through: [Language to be supplied. Examples include tax rebates and reductions and motor vehicle registration fee rebates.]

Section 15. {Technology and productivity fund.}

(A) There is hereby created a special fund in the State Treasury to be known as the "Technology and Productivity Procurement Revolving Fund," into which shall be deposited such amounts that are derived from savings realized as a result of privatization of state government activities as may be appropriated to such fund by the Legislature unit the sums distributions to such fund reach One Million Dollars (\$1,000,000). Money in such fund at the end of the fiscal year shall not lapse into the General Fund. Interest earned on amounts deposited into such fund shall remain in such fund.

(B) Money in such fund shall be made available through loans to state agencies to improve technology and productivity under such rules and regulations as may be established by the commission.

Section 16. {Savings appropriation.}

(A) Each fiscal year the legislature shall appropriate the amount it determines to have been saved as a result of privatization of state government activities in the immediately previous fiscal year, both through privatization instituted in such fiscal year and recurring savings from privatization in previous years, based upon the amounts certified by the commission in the report required by this act, as follows:

- (1) Sixty percent (60%) to the Taxpayers Dividend From Good Government Fund created pursuant to this act.
- (2) Fifteen percent (15%) to the Technology and Productivity Procurement Revolving Fund created pursuant to this act, until the sum of all distribution to such fund reaches One Million Dollars (\$1,000,000). After the maximum amount of distributions have been made to the Technology and Productivity Procurement Revolving Fund such appropriation shall be made to the Taxpayer's Dividend From Good Government Fund.
- (3) Ten percent (10%) or Three Hundred Thousand Dollars (\$300,000), whichever is the lesser amount, to the [state] Commission on Privatization created pursuant to this act, to support the operation of the [state] Commission on Privatization.

Section 17. {Severability clause.}

Section 18. {Repeals.}

Section 19. {Effective date.}