

THE WHITE HOUSE

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS



Drug-Free Families, Schools, and Workplaces

December 1993

President's Commission on Model State Drug Laws

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**OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500**

December 1, 1993

Dear Colleague:

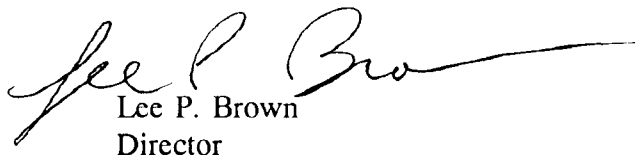
Drug use and drug trafficking have affected virtually every town, city, and State in America. Nearly every family has been touched in some way by illegal drug use and the violence it spawns.

The drug problem pervades all aspects of American life. In response, the President's National Drug Control Strategy calls for a broad-based crusade to reduce the demand for drugs, restrict their availability, and deter drug-related crime and violence. A fundamental principle of this Strategy is the idea that the most effective drug control programs are those designed and carried out at the State and community levels.

In recent years States and localities have responded creatively and energetically to the threat posed by illicit drugs, in part by enacting a broad range of codes and statutes. The President's Commission on Model State Drug Laws, a bipartisan group of distinguished Americans with extensive experience in law enforcement, drug treatment, and prevention, has spent the past year reviewing these codes and statutes.

Based on this review, the Commission has developed a comprehensive package of legislative initiatives, with specific recommendations that address not only the need for more effective criminal laws but also, and just as important, the need for legislation to empower and mobilize communities to confront the drug problem. In addition, the Commission's recommendations provide innovative civil remedies to supplement our criminal codes; facilitate the development of comprehensive educational and prevention tools by which to teach our children to resist the temptation of drugs; encourage businesses and their employees to work cooperatively by establishing effective workplace initiatives and employee assistance programs; and enhance our ability to provide drug treatment to those who need it.

The package of State legislative initiatives compiled by the President's Commission is a valuable resource for State legislators, local officials, and other concerned citizens who are seeking additional ways to confront and overcome the problems created by drug trafficking and drug use. I encourage your careful review of these initiatives.


Lee P. Brown
Director

Executive Director's Preface

Alcohol and other drug addiction erodes the vitality of our nation in ways we do not even realize. Drug-trafficking crimes and crack babies grab headlines, but as a society we fail to acknowledge, and public policy fails to reflect, that many of the other major problems of our day have their roots in widespread substance abuse.

Health care costs, for example, are driven up dramatically by untreated addiction; the average alcoholic or other drug addict is conservatively estimated to be using ten times the medical services of a non-addict. The disease of addiction destroys the body in many ways not commonly known, and all of us pay the costs of treating this physical breakdown through higher taxes or higher insurance premiums. Until the health care system provides sufficient access to effective treatment, as recommended in the Commission's model legislation, health care costs will remain unacceptably high no matter how the health care system is redesigned.

Crime and prison overcrowding is another example. Sixty to eighty percent of criminal defendants are addicted. Those who are convicted and jailed continue their habits in prison, where alcohol and drugs are readily available despite regulations and enforcement to keep them out. Offenders not imprisoned for life or executed will ultimately be released into society, still addicted and still dangerous. It is hardly surprising that crime rates remain high even though the number of people imprisoned in America has increased 168 percent since 1980.

Offenders entering the criminal justice system are in the perfect place at the perfect time to be assessed for addiction and referred to treatment. The burglaries, assaults, thefts, rapes and murders committed by that addicted sixty to eighty percent are closely connected to their alcohol and drug problems. Crime and prison overcrowding will not diminish to an acceptable level until the criminal justice and treatment systems are integrated, as recommended in the Commission's Model Criminal Justice and Treatment Act. It will take years before every person arrested is assessed for substance addiction and where appropriate referred into treatment, but our country cannot afford to do anything but begin this transition.

Productivity in the workplace (which affects our global economic competitiveness) is another area where substance abuse has tremendous impact. Untreated addictions cost American businesses from \$50 billion to \$100 billion each year in increased medical claims and disability costs from illness and injuries, theft, absenteeism, and decreased productivity. These costs are comprehensible when one considers that fully two-thirds of all drug abusers in America are in the workplace.

The workplace is also a highly effective point of intervention for adult abusers. While much of the attention to drug-free workplaces in recent years has focused on drug testing, testing is only one tool to address the problem. A comprehensive drug-free workplace program is essential: written

policy statements, employees assistance programs and rehabilitation resources, employee education programs, supervisor training programs, testing, and confidentiality protections. Employers consistently report that these bring tremendous cost savings.

As staggering as are the obvious economic costs of alcohol and other drug abuse, the costs in human suffering are even greater. Millions of American babies are born into families ruined by the disease of addiction. The neglect, the cruelty and the abuse they suffer rob them of their innate innocence, hope, spontaneity and enjoyment of life. The bewilderment of children who can't count on a rational, nurturing, secure framework to grow up in causes incalculable emotional and spiritual damage.

* * * * *

Those who offer solutions for our country's drug problems have traditionally misunderstood each other. Many law enforcement officials, for example, have been suspicious of those advocating treatment for criminal offenders. They believe that treatment advocates do not care about making criminals pay for their crimes, that they are cavalier about protecting public safety, and that treatment is just a "soft," easy alternative to the hard prison time that serious offenders should be serving. Many treatment advocates, on the other hand, have countervailing suspicions. They believe the law enforcement community is myopically focused on punishment without looking at the broader picture of how to create a safer society by changing addicted offenders' lives.

The President's Commission on Model State Drug Laws was a microcosm of the diverse viewpoints on the drug crisis. The law enforcement perspective was well represented, with three state attorneys general, five big city prosecutors, and two police chiefs. Those representing the treatment and prevention disciplines, though fewer in number, were not deterred from persuasively championing their own perspectives.

The challenge of reaching consensus initially seemed insurmountable to many of us. But after hundreds of hours of frank, honest exchanges about goals, priorities, concerns and doubts, both during formal meetings and hearings, and informally during off hours, something remarkable happened. Virtually every Commissioner learned that the "other" perspectives were not in opposition to his or her own.

Law enforcement Commissioners learned that treatment providers actually need the support of tough law enforcement; that instead of "special breaks," addicted offenders have to be held responsible for their actions like everyone else. Indeed, some treatment providers complained that the criminal justice system too often is not tough enough, and undermines treatment programs by not carrying out their recommendations to jail criminal justice clients who are not cooperating with the course of treatment.

Similarly, the treatment Commissioners found that prosecutors and police are not opposed to treatment per se. They learned that prosecutors' hesitations have sprung primarily from the public misperception that treatment does not work. When presented with compelling evidence that treatment can be effective in substantially reducing both recidivism and relapse, and thereby protects public safety, law enforcement Commissioners unanimously supported the expansion of treatment resources within both the criminal justice system and the public and private health care systems.

* * * * *

The model legislation this Commission created integrates an unprecedented diversity of credible approaches into a single, comprehensive proposal. Bringing together leading professionals from different fields to address a common problem, and seeking to broaden the understanding of each by all the others, is itself a model for effective change.

By opening their minds to the broad picture of drug problems and solutions, these Commissioners were able to contribute to a richer whole than any of us thought possible in the beginning. By sincerely striving to understand approaches and perspectives they weren't always familiar with, they helped to create a package of legislation that will finally, and truly, make a difference.

Gary Tennis
Executive Director

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Introduction

The 1988 Anti-Drug Abuse Amendments created a six month bipartisan presidential commission to develop state legislative responses to the drug problem. Funded in 1991, the 23 member Commission was sworn in on November 16, 1992. Twelve Democrats and eleven Republicans, the Commissioners included an urban mayor, a superior court judge, state legislators, a child advocate, a housing specialist, state attorneys general, police chiefs, treatment providers, district attorneys and private practice lawyers. The Commission's mission was:

to develop comprehensive model state laws to significantly reduce, with the goal to eliminate, illicit drug use in America through effective use and coordination of prevention, education, treatment, enforcement, and corrections.

To facilitate its mission, the Commission held public hearings around the country to gather information on five broad topics:

- Economic remedies against drug traffickers
- Community mobilization and coordinated state drug planning mechanisms
- Crimes code enforcement against drug offenders
- Alcohol and other drug treatment
- Drug-free families, schools, and workplaces

The Drug-Free Families, Schools, and Workplaces hearing was held on March 31, 1993 in Washington, DC. Oral and written testimony was received from a Methodist bishop, child advocates, state legislators, a single state agency director, students, teachers, education professionals, the mayor of Washington, DC, the director of the federal government's workplace program division, drug-free workplace representatives, a labor union representative, and an employee assistance representative. Witnesses discussed the role of the religious community with regards to alcohol and other drug abuse, children of alcoholics, the effect of alcohol and other drugs on the family, the funding of drug-free family initiatives, drug-free initiatives in Washington, DC, creating and maintaining drug-free schools, drug-free workplace policies, drug testing, and substance abuse programs, and labor and management partnerships in drug-free workplaces.

Several months of review, analysis and drafting have culminated in the following model drug-free families, schools, and workplaces acts recommended by the Commission and discussed in Volume V of the Commission's Final Report:

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- Model Underage Alcohol Consumption Reduction Act
 - Model Preventive Counseling Services for Children of Alcoholics and Addicts Act
 - Model State Sensible Advertising and Family Education Act
 - Model Revocation of Professional or Business License for Drug Convictions Act
 - Model Tobacco Vending Machine Restriction Act
 - Model K-12 Substance Abuse Instruction Act
 - Model School Intervention for Students with Substance Abuse Problems Act
 - Model State Safe Schools Act
 - Model Drug Free School Zone Act
 - Model Ban on Tobacco Use in Schools Act
 - Model Alcohol- and Drug-Free Universities and Colleges Act
 - Policy Statement on Truancy, Expulsion, and Children Out of School
 - Model Drug-Free Private Sector Workplace Act
 - Model Drug-Free Workplace Workers' Compensation Premium Reductions Act
 - Model Employee Assistance Programs and Professionals Act
 - Model Drug-Free Public Work Force Act
 - Model Drug-Free Workplace Act
 - Model Employee Addiction Recovery Tax Credit Act

Drug-Free Families, Schools, and Workplaces

Policy Statement

Any comprehensive effort to address the problems of alcohol and other drug abuse must seek to prevent those problems in the first place. These preventive efforts must aid and reinforce those areas where prevention holds the greatest promise: among families, in schools, and in the workplace.

The work of this volume focuses on prevention as its unifying theme. It includes the implementation of a continuum of other services to promote and maintain drug-free families, schools, and workplaces. The prevention efforts proposed here include strategies to avert the onset of alcohol and other drug abuse among children generally and among adults in the home and workplace.

The Commission recognizes that the prevention message will not reach everyone. Thus, the Commission also seeks the implementation of a continuum of other services, encompassing not only prevention, but education, detection, treatment, and rehabilitation to help individuals stop abusing alcohol and other drugs.

The Commission proposes 17 model state laws and one recommendation in the areas of families, schools, and workplaces. Many of the model laws emphasize children and youths, seeking to prevent the onset of alcohol and other drug abuse. The proposed laws also place heavy emphasis on addressing alcohol and tobacco, the most widely abused drugs by children and adults and potential "gateways" to the use of illicit drugs.

In all of the proposed model laws mandating punishment for violations, offenders have an option to seek assistance and rehabilitation. Simply identifying and punishing alcohol and other drug problems usually will not resolve them; dealing with the problems through education, treatment, or rehabilitation programs must be essential components of any alcohol and other drug abuse strategy. Student assistance programs, employee assistance programs, and state-licensed treatment and rehabilitation programs are all vital to this effort.

The model legislation in the drug-free families area recommended to state legislatures will:

- Confront underage alcohol consumption by establishing comprehensive legislation that closes all loopholes by banning the purchase, consumption, and possession of alcoholic beverages by those under the age of 21.
- Eliminate legal barriers to the provision of preventive counseling for children of alcoholics and addicts;
- Mandate health and safety warning messages on alcohol advertising appearing in or on newspapers, magazines, television, and radio;

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- Mandate professional and business license revocation for alcohol and drug law convictions; and
 - Ban tobacco vending machines from all areas accessible to anyone under the age of 18.

The model legislation in the drug-free schools area recommended to state legislatures will:

- Mandate K-12 integrated substance abuse curricula in schools for each and every school year and provide for on-going teacher in-service training and program development;
- Establish additional drug-free school zones law amendments that ban alcohol and tobacco advertising within drug-free school zones, prohibit the sale of alcohol within drug-free school zones, and expand drug-free school zones to include school buses, school bus stops, and colleges and universities.
- Ensure that school officials have the broad authority, consistent with constitutional requirements, to maintain order and safety in the school environment by codifying search and seizure provisions set forth by the U.S. Supreme Court in *New Jersey v. T.L.O.*
- Ban all smoking in schools;
- Provide processes for teacher and school intervention on behalf of students with alcohol and other drug abuse problems;
- Promote alcohol- and drug-free colleges and universities through the development and monitoring of comprehensive alcohol and other drug abuse plans; and
- Offer recommendations on how states and local school districts should address the problems of truancy, expulsion, and children out of school.

The model legislation in the drug-free workplace area recommended to state legislatures will:

- Provide a framework for drug-free private sector workplaces that establishes written policy statements, employee assistance programs or rehabilitation resources, employee education programs, supervisor training, drug testing policies and procedures, and confidentiality protections. Employers that implement such comprehensive workplace substance abuse programs can qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test;
- Establish workers' compensation premium reductions for employers that establish comprehensive drug-free workplace programs that include written policy statements, employee assistance programs or rehabilitation resources, employee education programs, supervisor training, drug testing policies and procedures, and confidentiality protections;
- Establish a process that allows alcoholic or drug-addicted public sector employees to identify their problems and be referred to treatment without the loss of employment; provide for the probationary employment or termination of any public employee, including any elected official, convicted of a criminal drug offense;
- Insure that all contractors, subcontractors, and grantees conducting business with or for the state implement drug-free workplace programs;

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- Establish a state entity or process through which employee assistance professionals are licensed by the state to guarantee consumer protection and an acceptable level of quality employee assistance services; and
 - Establish a tax credit for employers who provide alcoholic and/or drug-addicted employees with alcohol and other drug treatment services.

These model laws and recommendations do not address every aspect of alcohol and other drug abuse prevention; however, they do address many current and urgent concerns. These laws serve as tools that ultimately will help parents and communities raise children free from the problems associated with alcohol and other drugs, will help teachers and schools supplement those efforts by further aiding the development of healthy students, and will help workplaces reinforce the efforts of parents and adults by providing drug-free working environments, education, and assistance.

Model Underage Alcohol Consumption Reduction Act

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Model Underage Alcohol Consumption Reduction Act

Policy Statement

Despite the legal drinking age of 21, vast numbers of youths under the age of 21 consume alcohol. Distressingly, the number of them engaging in abusive alcohol consumption patterns remains high: nearly one-third of high school seniors experience a “binge” of five or more drinks in a row within the previous two weeks. For college students under the age of 21, the numbers approach 50 percent. These drinking patterns can lead to harmful and sometimes deadly consequences. For example, approximately 30 percent of teenage drivers killed in 1991 tested positive for alcohol.

Studies indicate that the later the onset of alcohol consumption, the less likely an individual is to develop problems with alcohol abuse. However, the average age at which young people in this country begin drinking is now 13.

Research also indicates that alcohol can be a “gateway” drug, in some instances leading to tobacco or illicit drug use. By reducing the exposure of children and teens to alcoholic beverages, the Commission intends to reduce the likelihood that those youths will progress through that pattern of increasingly self-destructive behavior.

The Office of the Inspector General of the U.S. Department of Health and Human Services has identified numerous loopholes in state laws pertaining to underage alcohol consumption. These loopholes contribute to the easy access to alcohol and lax attitudes that lead to underage alcohol consumption. While all states have established a minimum legal drinking age of 21, few prohibit all aspects of the purchase, possession, or consumption of alcohol by those under the age of 21. For example, twenty-three states do not prohibit minors from attempting to purchase alcohol. Five states do not have laws to prosecute those who succeed in purchasing alcohol. Sixteen states do not prohibit those under 21 from misrepresenting their age to obtain alcohol. Eighteen states have no laws against the use of fraudulent identification.

This model legislation, developed with the assistance of the National Highway Traffic Safety Administration, establishes a comprehensive prohibition of the purchase, possession, and consumption of alcohol by underage people. It also addresses other important means through which underage drinkers obtain alcohol: older people who provide alcohol to underage drinkers, establishments that knowingly serve underage drinkers, and fraudulent identification use by underage drinkers. The Commission believes that all of these provisions should be included in any comprehensive statute designed to curb underage alcohol abuse.

State laws alone will not prevent or curb underage alcohol abuse. Prevention also must take the form of educational programs, school policy approaches, mass media campaigns, communitywide strategies, alternative programs, and workplace programs. Attitudes and influences must change as well, and those changes can happen. See, for example, the Model State Sensible Advertising and Family Education Act in this volume, addressing alcohol advertising.

Laws express community values and set community standards in strong, unambiguous terms. Laws — an important facet of any comprehensive preventive approach — help to shift attitudes and direct social influences towards socially accepted behaviors. The intent of this model legislation is not only to address a serious problem in the most effective legal manner available, but also to accentuate those community values of health, safety, and the welfare of young people, both now and in the future.

Highlights of the Model Underage Alcohol Consumption Reduction Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes the high prevalence of underage drinking.
- Recognizes the harmful consequences of such underage drinking, including above average rates of traffic fatalities, hangovers, injuries, and legal difficulties as well as the potential for future heavy alcohol and other drug use.
- Recognizes that numerous loopholes exist in state legislation pertaining to underage purchase, possession, and consumption of alcohol and the use of fraudulent identification to obtain alcohol.
- Prohibits the use of fraudulent identification to obtain, possess, or consume alcoholic beverages and establishes penalties to punish the use of such identification.
- Prohibits the sale or furnishing of alcohol to underage persons and establishes penalties to punish such sale or furnishing.
- Prohibits the sale or furnishing of alcoholic beverages to underage persons by a licensed individual or establishment and establishes penalties, including the revocation of the liquor license, for such illegal sale or furnishing.

SPECIFIC RECOMMENDATIONS

- Prohibits the:
 - Purchase, attempt to purchase, or solicitation of someone to purchase any alcoholic beverage;
 - Consumption of any alcoholic beverage; and
 - Possession of any alcoholic beverage with the intent to consume it.
- Authorizes law enforcement officials to seize and/or destroy alcoholic beverages that are in the possession of underage persons.
- Provides penalties, including fines, community service, and the suspension of driver's license, for those who violate underage drinking provisions of this [Act].
- Provides three options for assessing, referring, and treating underage drinkers to appropriate treatment or education services.

Model Underage Alcohol Consumption Reduction Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Underage Alcohol Consumption Reduction Act."

Section 2. Legislative Findings.

(a) Despite a minimum legal drinking age of 21, recent alcohol and other drug use prevalence surveys such as the annual National High School Senior Survey indicate that nearly one-third of all high school seniors experienced a "binge" of five or more drinks in a row within the previous two weeks.

(b) The average age at which young people begin drinking is 13. By age 13, approximately 30 percent of boys and 22 percent of girls classify themselves as drinkers. According to a 1988 National High School Senior Survey, 17 percent of high school seniors reported having been drunk at least once by eighth grade, 37 percent by ninth grade, 54 percent by tenth grade, and 71 percent by twelfth grade. Studies demonstrate that the use of alcohol by individuals before the age of 15 appears to be one of the predictors of later heavy alcohol and other drug use by the individuals.

(c) Parental approval of drinking has been found in a number of studies to be a significant predictor of alcohol consumption by many adolescents, according to an Office of Substance Abuse Prevention Monograph "A Promising Future: Alcohol and Other Drug Problem Prevention Services Improvement."

(d) A Southern Illinois University/College of William and Mary survey of 58,000 college students from 78 different colleges and universities found that students under the age of 21 drink more alcohol and suffer more hangovers, injuries, and legal difficulties than those over 21.

(e) Forty seven percent of traffic fatalities of people age 15-20 were alcohol related in 1991, according to the National Highway Traffic Safety Administration.

(f) A 1991 Office of the Inspector General report indicates that eight million junior and senior high school students drink alcohol weekly. The same report notes that 6.9 million junior and senior high school students purchase their own alcohol from stores.

(g) The Office of Inspector General has found that numerous loopholes exist in state legislation pertaining to underage purchase, possession, and consumption of alcohol and the use of fraudulent identification.

(h) The National Transportation Safety Board has called upon states to eliminate loopholes in state laws by banning the purchase, attempt to purchase, possession, or consumption of any alcoholic beverage by those under the age of 21.

(i) The Join Together Public Policy Panel on Underage Access to Alcohol recommends the following actions to reduce underage drinking, among other recommendations:

- (1) States should lower the Blood Alcohol Concentration (BAC) levels for youths;
- (2) All retail outlets and private individuals should be held liable for negligently providing alcohol to a minor;
- (3) Prominent warning labels about the risks of alcohol consumption should appear on all alcohol advertising; and
- (4) Local government officials and community coalitions around the country should systematically assess youth access to alcohol in their communities and examine ways to reduce this access.

COMMENT

By identifying some of the problems of underage drinking to be addressed by this legislation, this declaration of findings will aid the courts and state agencies in interpreting and implementing the specific provisions of the [Act]. This legislation holds underage persons as well as licensed and unlicensed adults and establishments accountable for curbing underage alcohol consumption.

Section 3. Purpose.

The provisions of this [Act] are intended to establish comprehensive state provisions prohibiting the purchase, possession, and consumption of alcohol by underage persons

Section 4. Definitions.

As used in this [Act]:

- (a) "Furnish" means to give, provide, or supply.
- (b) "Licensee" means any individual or establishment, or their employees or their agents, licensed by the state to sell or distribute alcoholic beverages.
- (c) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.
- (d) "Underage" means less than 21 years of age.

COMMENT

The Commission intends the application of the term "furnish" to be a strict liability offense and recommends that state legislatures express a similar intent if they adopt the term as well. "Furnish" has been used in many state laws concerning underage alcohol consumption. A significant case history exists in which the term "furnish" has been interpreted as a strict liability offense with respect to providing alcohol to underage drinkers.

Section 5. Unlawful Purchase, Consumption, or Possession of Alcohol.

An underage person shall not:

- (a) Purchase, attempt to purchase, or solicit someone to purchase any alcoholic beverage;
- (b) Consume any alcoholic beverage;
- (c) Possess any alcoholic beverage with the intent to consume it. Possession creates a rebuttable presumption of intent to consume.

COMMENT

The prohibitions set forth in this section give direct effect to the primary purpose of this [Act]. Prohibition of the purchase (including attempt to purchase), consumption, and possession of alcoholic beverages by underage persons forms the centerpiece of any effective,

comprehensive package of state underage drinking laws.

Several exceptions may be considered by state legislatures. In subsection (b), a legislature may wish to consider exempting underage consumption of alcoholic beverages during legitimate religious services or activities while under direct adult supervision. In subsection (c), a legislature may wish to allow possession of alcoholic beverages in instances of employment as a bartender, barback, wait staff, busperson, dining establishment host, or sales clerk or stockperson in a liquor store, where allowable by laws regulating those professions. These exemptions should be allowed only when there is direct adult supervision.

Any efforts to curb underage drinking need to begin in the home setting. With that in mind, the Commission recommends against any exception for possession or consumption by underage persons in a private home, with or without adult supervision (as found in a number of state alcohol codes). The Commission feels that such an exception sends mixed and confusing signals to parents and youths alike that underage drinking is tolerable under certain circumstances.

Section 6. Law Enforcement Authorization to Seize Beverages.

(a) A law enforcement officer shall seize any opened or unopened alcoholic beverage that is in the possession of an underage person, provided that such seizure is not inconsistent with the constitution of this state and the United States.

(b) Where a law enforcement officer has seized alcoholic beverages pursuant to this section, such alcoholic beverages shall be destroyed upon determination that the beverages no longer have evidentiary value.

COMMENT

This section should be construed to allow law enforcement officers to seize and destroy alcoholic beverages in the possession of underage persons in accordance with established procedures of their agencies for handling evidence. The conduct of such law enforcement officials in seizing and destroying such alcoholic beverages, of course, must also comply with state and federal constitutional law.

Section 7. Penalties.

A person who violates Section 5 is guilty of a misdemeanor and, upon conviction or adjudication of guilt, shall be punished by:

(a) A minimum fine of not less than [\$250], no part of which shall be suspended, and not less than [24 hours or more than 32 hours] of community service during hours when the person is not employed and is not attending school or a combination of fine and community service as determined by the court.

(b) Suspension of driver's license.

(1) In addition to the penalty set forth in subsection (a), the court shall order the suspension of the convicted or adjudged individual's driver's license for a period of [90 days] for the first offense, [six months] for the second offense, and [one year] for any offense thereafter. The driver's license of that person shall be surrendered to the court. The court shall immediately forward the surrendered license and a certificate of conviction or adjudication of guilt to the state [department of motor vehicles].

(2) If the individual does not have a driver's license or the driver's license of the individual is suspended or revoked at the time the individual is so convicted or adjudged guilty, there shall be a delay in the individual's eligibility to receive a license or have a revoked license reinstated, equal to the level of punishment established in subsection (b)(1).

(3) If an individual is determined by the assessment process established in (c) to have an alcohol and/or other drug problem and is ordered to submit to a treatment program, the individual shall not have his or her license reinstated until after successfully completing the treatment requirement, even if the suspension periods in (1) and (2) have been fulfilled. Should a treatment program, as required by subsection (c), not be immediately available, the offender, after completion of the period of suspension, may have his or her license reinstated if all of the following conditions are met:

(A) The offender is placed on a certified waiting list until a position for the recommended course of treatment becomes available;

(B) The offender remains alcohol- and drug-free and submits to regular alcohol and other drug testing as ordered by the court;

(C) The offender attends, with verification, no fewer than [five] twelve-step recovery meetings per week, until the course of treatment begins.

If the offender for any reason fails to comply with the conditions of this subsection, the license shall not be reinstated unless the court finds in writing that there are extraordinary and compelling reasons to reinstate the license pending the person's participation in the recommended course of treatment by a date certain to be fixed by the court.

[(c) {OPTION 1} In addition to the penalties established in subsections (a) and (b), the violator shall be subject to the full application of the [Model Comprehensive Criminal Justice Treatment Act], found in Volume IV, Treatment].

[(c) {OPTION 2} In addition to the penalties established in subsections (a) and (b), the offender shall submit to an assessment of alcohol and other drug problems.

(1) The assessment shall be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority on alcohol and other drugs], or an inpatient or outpatient treatment program licensed by the [single state authority on alcohol and other drugs].

(2) The court shall order appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.

(3) The [single state authority on alcohol and other drugs] or its designee shall report to the court on the progress of any offender ordered to participate in a treatment program.

(4) Failure to complete the court-ordered treatment shall result in doubling of the fines, incarceration, community service, and duration of loss of licensure otherwise provided in this [Act], or any combination thereof, as determined by the court.]

[(c) {OPTION 3} A person who commits a second or subsequent violation of these sections shall be subject to the penalties prescribed in subsection (a) and, in addition, shall submit to an assessment of alcohol and other drug problems.

(1) The assessment shall be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority on alcohol

and other drugs], or an inpatient or outpatient treatment program licensed by the [single state authority on alcohol and other drugs].

(2) The court shall order appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.

(3) The [single state authority on alcohol and other drugs] or its designee shall report to the court on the progress of any offender ordered to participate in a treatment program.

(4) Failure to complete the court-ordered treatment shall result in doubling of the fines, incarceration, community service, and duration of loss of licensure otherwise provided in this [Act], or any combination thereof, as determined by the court.]

(d) All convictions in state, federal, or foreign jurisdictions for those misdemeanors substantially equivalent to those defined in Section 5 apply in this state and are subject to the penalties defined in this section

COMMENT

This section establishes penalties for those persons who violate Section 5. The penalties established in subsections (a) and (b), which have been recommended to the Commission by the National Highway Traffic Safety Administration, should be taken as minimum recommended levels.

Subsection (c), Option 1 holds offenders of this [Act] to the full application of the Commission's [Model Criminal Justice Treatment Act], found in Volume IV, Treatment, of the Commission's final report. The [Model Criminal Justice Treatment Act] establishes a procedure through which all those who commit felonies and selected misdemeanors, including all DUIs, are subject to alcohol and other drug testing, assessment of any alcohol and other drug problems by the [single state authority on alcohol and other drugs] or its licensed designee, and referral to an appropriate treatment program. The testing and assessment are made a condition of release pre-trial or probation or parole. The testing and monitoring will be handled by a defendant management agency while the treatment programs will be handled by the single state authority on alcohol and other drugs, a designee of the [single state authority on alcohol and other drugs], or a treatment program licensed by the [single state authority].

Because it is anticipated that full implementation of the [Model Criminal Justice Treatment Act] will require several years, the Commission offers Options 2 and 3 to facilitate the speedy adoption of this underage alcohol consumption legislation.

In subsection (c), Option 2, the Commission recommends that an initial assessment of alcohol and other drug problems be conducted after first violation of these provisions. This assessment would be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority], or a treatment program licensed by the [single state authority] and would provide a determination of whether the violator has any alcohol or other drug abuse problem. Early detection of any such problem improves the probability of reducing detrimental alcohol- and other drug-related incidences later in life.

Subsection (c), Option 3 would mandate an assessment of alcohol and other drug problems after a second or subsequent alcohol offense. (The Commission recommends Option 2 over Option 3.)

Subsection (d) holds that penalties will apply to a resident of the state, even if the resident committed the misdemeanor in another state, federal, or foreign jurisdiction.

Section 8. Use of Fraudulent Identification.

It is unlawful for any person:

(a) To use a false or fictitious name in any application for a driver's license or personal identification card or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

(b) To display or cause or permit to be displayed or have in such person's possession any canceled, revoked, suspended, fictitious or fraudulently altered driver's license or personal identification card for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages;

(c) To lend a personal driver's license or personal identification card to any other person for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages;

(d) To display or represent as one's own any driver's license or personal identification card not issued to such person for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages;

(e) To fail or refuse to surrender to the state [department of motor vehicles] upon lawful demand any driver's license that has been suspended, revoked or canceled for the illegal purchase, provision, possession, or consumption of alcoholic beverages;

(f) To permit any unlawful use of a driver's license or personal identification card issued to such person for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages.

COMMENT

This section addresses one of the primary means of access to alcohol by underage persons: the use of fraudulent identification.

Section 9. Penalties for Fraudulent Identification.

A person who violates Section 8 is guilty of a misdemeanor and, upon conviction or adjudication of guilt, shall be punished by:

(a) A minimum fine of not less than [\$250], no part of which shall be suspended, and not less than [24 hours or more than 32 hours] of community service during hours when the person is not employed and is not attending school.

(b) Suspension of driver's license.

(1) In addition to the penalty set forth in subsection (a), the court shall order the suspension of the convicted or adjudged individual's driver's license for a period of [90 days] for the first offense, [six months] for the second offense, and [one year] for any offense thereafter. The driver's license of that person shall be surrendered to the court. The court shall immediately forward the surrendered license and a certificate of conviction or adjudication of guilt to the state [department of motor vehicles].

(2) If the individual does not have a driver's license or the driver's license is suspended or revoked at the time the individual is so convicted, there shall be a delay in the individual's eligibility to receive a license or have a revoked license reinstated, equivalent to the length of punishment established in (b)(1).

(c) All convictions in state, federal, or foreign jurisdictions for those misdemeanors substantially equivalent to those defined in Section 8 apply in this state and are subject to the penalties defined in this section.

COMMENT

This section establishes penalties for violations of Section 8's fraudulent identification provisions. (If the [Model Criminal Justice Treatment Act] is adopted, an alcohol and other drug assessment may be required, in addition to the penalties outlined in this section. If the assessment determines that the offender has an alcohol or other drug problem, then treatment provisions of that [Act] will apply.)

As with Section 7, all penalties will be applied to a resident of the state, even if the resident committed the misdemeanor in another state, federal, or foreign jurisdiction.

Section 10. Selling or Furnishing Alcoholic Beverages to Underage Persons.

(a) Any person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any underage person is guilty of a misdemeanor.

(b) Any person who violates subsection (a) shall be punished by a minimum fine of not less than [\$250], no part of which shall be suspended, and not less than [24 hours or more than 32 hours] of community service during hours when the person is not employed and is not attending school.

(c) All convictions in state, federal, or foreign jurisdictions for those misdemeanors that are substantially equivalent to those defined in subsection (a) apply in this state and are subject to the penalties defined in (b).

COMMENT

This section addresses another primary means of access to alcohol by underage persons: the intercession of other friends, family members, and adults.

Section 11. Selling or Furnishing Alcoholic Beverages to Underage Persons by a Licensed Individual or Establishment.

(a) Any individual or establishment that sells any alcoholic beverage to a person whom the individual or establishment knew or should have known was underage, is guilty of a misdemeanor.

(b) Any individual or establishment that permits a person whom the individual or establishment knew or should have known was underage to consume any alcoholic beverage in the premises is guilty of a misdemeanor.

(c) All individuals or establishments serving alcoholic beverages must make a good faith effort to determine the age of persons seeking to purchase or consume alcoholic beverages in the premises by, at a minimum, requesting and checking the individual's valid identification. Any individual or establishment that fails to make such a good faith effort to determine the age of a person who later proves to be underage shall be deemed in violation of this section.

(d) Any individual or establishment that violates subsections (a) and (b) shall be punished by a fine of not less than [\$1,000 and no more than \$10,000] for a first offense. Any subsequent violations of (a) and (b) by a licensee shall result in the revocation of the liquor license by the state [alcohol beverage control board].

COMMENT

Underage persons access alcohol through liquor stores, bars, eating and drinking establishments, and clubs. While most of the provisions of this [Act] seek to hold underage drinkers accountable for their own actions, this section seeks to hold individuals and establishments accountable for facilitating underage drinking. By specifying "individuals and establishments," this section includes not only individuals and establishments with liquor licenses, but speakeasies as well.

Under subsection (a), individuals and establishments may not sell alcoholic beverages to any person they

know or should know is underage. Under subsection (b), individuals or establishments may not allow persons whom they know or should know is underage to consume alcoholic beverages in the premises.

The "know or should know" standard is established in subsection (c), which states that a good faith effort to determine the person's age by checking valid identification must be made. By implication, subsection (c) allows that a licensee shall have an affirmative defense if there was a good faith effort to verify the individual's age.

Section 12. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 13. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Preventive Counseling
Services for Children of Alcoholics
and Addicts Act

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Model Preventive Counseling Services for Children of Alcoholics and Addicts Act

Policy Statement

Children who are members of a family with an alcoholic, addicted, or alcohol or drug abusing parent, guardian, or other adults, can suffer painful consequences from that relationship. Research and clinical evidence indicate that children of alcoholics or addicts are at higher risk for initiating drug use, are at higher risk for developing alcoholism and other drug dependencies, are at greater risk of physical and sexual abuse, and are more likely to have school, health, and behavior problems than other children.

Education, prevention, and counseling services can enable children of alcoholics and addicts to better understand the disease of alcoholism and its attendant effects, to learn ways to cope with alcoholic or addicted family members and *their problems*, and to empower themselves to improve their own lives. Services for such children can reduce the emotional and physical damage caused by their parents' drinking and reduce the risk of future alcohol and other drug abuse.

However, barriers limit the access of children of alcoholics and addicts to potentially helpful services. First, the denial of alcohol and other drug problems by an alcoholic or drug addicted parent and by other members of the family often serves to keep alcoholism or addiction a family secret. Children of alcoholics and addicts often are urged by family members not to disclose these family problems. In certain circumstances, the children may fear violent reactions to disclosure of this family secret. They may also believe that any disclosure somehow betrays their family members.

Second, in many states, children lack the legal right to receive preventive alcoholism and addiction services without prior permission from a parent or legal guardian. A study by the Children of Alcoholics Foundation found that most states have laws governing whether and in what circumstances minors may consent to their own health care; however, great variation exists in the application of these laws to children of alcoholics and other drug abusers. Some states require parental consent for virtually all services that a minor may need. Other states provide minors with varying degrees of autonomy. Only a few states clearly allow access to preventive services without parental consent. At times, this confusion of laws and rights also inhibit other adults from acting on behalf of the child, for fear of legal action against them.

State consent laws need to take into account the special needs of children of alcoholics and other drug abusers. Given the circumstances of denial and stigma in which children of alcoholics find themselves, consent laws must clearly permit minor children of alcoholics and other drug abusers to receive preventive alcoholism or addiction counseling without obtaining parental consent. The model legislation provides that when requesting parental consent is not in the child's best interest,

counselors may help children if they document the reasons for providing services, keep complete records of the services, and periodically evaluate the desirability of contacting the parents. Family participation in alcoholism and addiction counseling is recommended, but should not be allowed to form a barrier to needed services.

This legislation primarily is directed towards children who make self-referrals for preventive alcoholism and addiction counseling. A companion bill, the Model School Intervention for Students with Substance Abuse Problems Act, primarily is directed towards children who are referred to counseling or treatment by teachers, school administrators, or student assistance professionals. However, neither piece of legislation is meant to exclude the other situation and it is intended that they should be considered in tandem.

This model legislation and policy statement reflects the work of the Children of Alcoholics Foundation. Both the legislation and this policy statement are based on the findings of the Foundation's study of state parental consent laws, entitled "Parental Consent: Helping Children of Addicted Parents Get Help."

Highlights of the Model Preventive Counseling Services for Children of Alcoholics and Addicts Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that children who are members of a family with an alcoholic, addict, or alcohol- or drug-abusing parent, guardian, or other adults, can suffer painful consequences from that relationship.
- Recognizes the potential long-term impact of the alcoholism and/or addiction of a family member on a child.
- Recognizes the importance of education, prevention, and counseling programs targeted at children of alcoholics and addicts in reducing the risk of developing future substance abuse problems.
- Recognizes the denial inherent in the disease of alcoholism and addiction and children's fear of confronting parents about those problems as barriers to the provision of needed services.
- Recognizes that parental consent should not be a mandatory prerequisite to children's ability to obtain counseling.
- Recognizes that in most states, minor children of addicted parents often face substantial difficulty obtaining preventive alcoholism or addiction counseling services without the involvement or permission of their parents.
- Provides that the child must provide a written statement stating the reasons for seeking counseling and the written consent of the child for such services.
- Provides that the facility advise the child of the purpose and nature of the counseling, inform the child that a written record of the services will be maintained, and inform the child that he or she may withdraw consent and cease participating in the counseling at any time.
- Provides certain requirements for the facility to maintain records of the child's assessment, counseling services, and other information.
- Provides for the encouragement of parental and other family involvement in preventive counseling where appropriate.
- Provides a limitation of liability for preventive counselors and those who assist children seeking counseling in order to encourage appropriate, good faith intervention on behalf of children of alcoholics and addicts.
- Provides for the [single state authority on alcohol and other drugs] to establish mechanisms for compensating organizations, programs, and individuals who provide preventive counseling services in cases where children are unable to meet payments.
- Provides for the confidentiality of patients, records, and all other information maintained in connection with the provision of preventive counseling services in accordance with federal and state confidentiality laws and regulations.

SPECIFIC RECOMMENDATIONS

- Provides that a facility licensed by the [single state authority on alcohol and other drugs] may provide preventive alcoholism or addiction counseling services to a child without parental consent if a child refuses permission to contact parent(s) to seek consent, and if a qualified professional reasonably determines in good faith and based on independent evidence that seeking parental consent would not be helpful and would be deleterious to the child.

Model Preventive Counseling Services for Children of Alcoholics and Addicts Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Preventive Counseling Services for Children of Alcoholics and Addicts Act."

Section 2. Legislative Findings.

(a) Children who are members of a family with an alcoholic, addict, or alcohol- or drug-abusing parent, guardian, or other adults, can suffer painful consequences from that relationship. Often, these adverse effects continue into adulthood. Research and clinical evidence indicate that children of alcoholics are at higher risk for developing alcoholism and other drug dependencies.

(b) Education, prevention, and counseling programs targeted at children of alcoholics and addicts can help reduce the risk of developing future substance abuse problems and their many social and economic costs.

(c) The availability and accessibility of competent, sympathetic, and caring preventive alcoholism and addiction counseling by qualified professionals is essential for the well-being of these children and society at large.

(d) While parental and other family involvement in counseling is often beneficial to the entire family and should be strongly encouraged, parental consent should not be a mandatory prerequisite to children's ability to obtain counseling. Parental refusal to permit counseling, due to denial inherent in the disease and children's fear of confronting parents to ask for permission, should be eliminated as barriers to providing needed services.

(e) In most states, minor children of addicted parents often face substantial difficulty obtaining preventive alcoholism or addiction counseling services without the involvement of their parents. Most state consent laws do not take into account the special needs and confidentiality concerns of children of alcoholics and drug abusers.

Section 3. Purpose.

This [Act] is intended to provide legal accessibility to competent preventive alcoholism and addiction counseling for minor children of alcoholics and drug addicts. This [Act] also intends to insure that minor children of alcoholics and addicts receive counseling from credentialed professionals with experience in the treatment of alcoholism, addiction, and other alcohol- and drug-related problems.

Section 4. Definitions.

As used in this [Act]:

(a) "Child" means any person under 18 [and/or use state definition].

(b) "Facility" means an entity licensed by the [single state authority on alcohol and other drugs] to provide outpatient services and that has on its staff one or more qualified professionals who specialize in the treatment of alcoholism, addiction, and other alcohol and drug-related problems.

(c) "Parent" means a biological or adoptive parent, or a legal guardian or other person authorized under state law to act in the minor's behalf.

(d) "Preventive alcoholism and addiction counseling" means services provided by a qualified professional, including individual and group counseling and education about alcohol and other drugs and their effects; general guidance and support, and service coordination, provided to a child of an alcoholic, addicted, or alcohol or other drug-abusing individual in order to prevent alcoholism, addiction, alcohol and drug abuse or related physical, emotional, or mental health problems.

(e) "Qualified professional" means a licensed physician or nurse, credentialed alcoholism or addiction counselor, credentialed social worker who has at least one year's experience in the treatment of alcoholism, addic-

tion, and other alcohol and other drug-related problems, or a licensed psychologist who has at least one year of experience in the treatment of alcoholism, addiction, and other alcohol- and drug-related problems.

(f) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(g) "Willful and wanton misconduct" means conduct that is committed with an intentional or reckless disregard for the safety of others or with an intentional disregard of a duty necessary to the safety of another or another's property.

COMMENT

Some states may have different titles or categories for qualified professionals or may choose to include other professionals in this definition. The intent of this section is to insure that children of alcoholics and addicts receive counseling from credentialed professionals with experience in the treatment of alcoholism, addiction, and other alcohol and other drug-related problems. Such professionals will be best equipped to properly identify and address the counseling needs of the child and any necessary interventions on behalf of the child.

Section 5. Consent Requirements for the Provision of Preventive Alcoholism or Addiction Counseling Services to a Child.

(a) A facility may provide preventive alcoholism or addiction counseling services to a child without parental consent if a child refuses permission to contact parent(s) to seek consent, and if a qualified professional reasonably determines in good faith and based on independent evidence that seeking parental consent would not be helpful and would be deleterious to the child.

(b) Before providing preventive alcoholism or addiction counseling to any child pursuant to subsection (a), the facility shall obtain from the child a statement of his or her reasons for seeking counseling and the written consent of the child for such services.

(c) When requesting a child's written consent for providing preventive alcoholism or addiction counseling, the facility shall:

(1) Advise the child of the purpose and nature of the counseling;

(2) Inform the child that the facility will maintain a written record of the services provided; and

(3) Inform the child that he or she may withdraw consent and cease participating in the preventive alcoholism and addiction counseling at any time.

(d) The written record of the preventive services provided shall include the reasons for the counseling without parental consent and the attempts made to obtain such consent.

COMMENT

This section outlines the primary purpose of this [Act]. Preventive alcoholism or addiction counseling may be provided to a child without parental consent if that child refuses permission to contact parent(s) to seek consent. Recognizing the special circumstances of children of alcoholics or addicts, notably the denial inherent in those diseases, the provision seeks to avert any potential negative consequences of the child's attempts to secure and participate in preventive alcoholism or addiction counseling.

Section 6. Facility Requirements.

Any facility that provides preventive alcoholism or addiction counseling services to a child without parental consent shall at a minimum:

(a) Develop an initial assessment and evaluation to determine the extent of the preventive alcoholism and addiction counseling services needed.

(b) Prepare a written plan for the provision of preventive alcoholism or addiction counseling services based on the individual assessment and evaluation of the child's needs.

(c) Provide preventive alcoholism and addiction counseling services in accordance with the written plan.

(d) Maintain a written record of the services provided that shall include periodic notes relating to the child's progress.

(e) Write a closing summary of the preventive alcoholism or addiction counseling services provided when it has been determined such services are no longer necessary or the child withdraws from the program.

COMMENT

In cases where seeking parental consent is not in the child's best interest, counselors may help children if they document the reasons for providing services, keep complete records of the services, and periodically evaluate the desirability of contacting the parents. This section establishes the record keeping necessary to protect the interests of the counselors and the children receiving the counseling.

Section 7. Encouragement of Family Involvement in Counseling.

Whenever possible, parental and other family involvement in preventive alcoholism or addiction counseling shall be sought. Involvement of [a] parent(s), family member(s), or other(s) close to the child in such counseling shall be sought only with the written consent of the child and in conformity with the confidentiality requirements of this [Act].

Section 8. Limitation of Liability for Preventive Counselors and Those Who Assist Children Seeking Counseling.

Regardless of whether or not the parent(s) of the child are aware of or give permission to a child to receive preventive counseling, any individual who refers, recommends, offers advice, supports, or in any other way assists a child to obtain preventive alcoholism or addiction counseling shall be rebuttably presumed to be acting in good faith. An individual found to be acting in good faith in compliance with this [Act], and absent willful or wanton misconduct, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of actions taken pursuant to this [Act]. Similarly, any qualified professional who provides in accordance with this [Act] any preventive alcoholism or addiction counseling without the permission of the child's parent(s) shall be rebuttably presumed to be acting in good faith. A professional found to be acting in good faith in compliance with this [Act], and absent willful or wanton misconduct, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of action taken pursuant to this [Act].

COMMENT

This section provides immunity from liability for any individual who in good faith assists or enables a child to receive preventive alcoholism or addiction counsel-

ing. The same immunity from liability is extended to any qualified professional who provides such counseling in good faith. This immunity is extended to those individuals to encourage appropriate, good faith intervention on behalf of children of alcoholics or addicts.

Section 9. Fees for Service.

If the child refuses permission to bill the parent(s) for any reason, fees for preventive alcoholism or addiction counseling may be billed to the child. Such fees should be based on the child's ability to pay. To address the issue of children unable to pay for services, the [single state authority on alcohol and other drugs] shall, to the extent that funding is available, establish mechanisms for compensating organizations, programs, and individuals who provide such counseling services.

COMMENT

An alcoholic or drug-addicted parent may refuse to permit counseling of a child, due to the denial inherent in the disease. Similarly, some children will not confront their alcoholic or addicted parent to ask permission to receive preventive counseling, for fear of parental reprisal. In cases where a child refuses permission to bill the parent(s) for any preventive counseling, the child, and not the parent(s), should be billed.

Most [single state authorities on alcohol and other drugs] receive funds for treatment of the destitute. It is intended that the [single state authority on alcohol and other drugs] make every effort to identify public or private funding for the compensation of the child's counselor.

Section 10. Confidentiality.

Identity of patients, records, and all other information maintained in connection with the provision of preventive alcoholism or addiction counseling shall be confidential and may not be disclosed except in compliance with the federal and state laws and regulations mandating confidentiality of the records of alcohol and other drug abuse patients. [Federal cite: 42 U.S.C. 290dd-3 and ee-3, 42 C.F.R. Part 2].

Section 11. Severability.

If any provision of this [Act] or any application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 12. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model State Sensible Advertising and Family Education Act

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Model State Sensible Advertising and Family Education Act

Policy Statement

Alcohol consumption may lead to many serious problems for individuals and society. The litany of these alcohol-related problems is well-established: personal health problems, alcohol dependencies, increased crime, higher insurance rates, fetal alcohol syndrome and other alcohol-related birth defects, and accidents. Society must bear the full costs of these alcohol-related problems, including the costs of prevention and education efforts to reduce the onset of such problems and treatment efforts to restore the health and well-being of individuals debilitated by alcohol problems.

This legislation, modeled after the Sensible Advertising and Family Education Act proposed in the United State Congress by Senator Strom Thurmond and Representative Joseph Kennedy, establishes a sensible advertising standard for alcoholic beverages. This standard would require all alcohol advertising to reflect the reality of the potential dangers of alcohol consumption by requiring health and safety warning messages to be included in all alcohol advertising. Such advertising standards would also provide toll-free phone numbers to enable the public to acquire further information about alcohol-related problems and assistance. By doing so, this legislation serves to educate the public about the potential dangers of alcohol consumption and inform individuals about ways in which those with alcohol-related problems can receive help.

This Act does not seek to ban or limit alcohol advertising. It merely serves to inform viewers of the potential problems related to alcohol consumption. The expense of this warning and information dissemination shall be borne by alcohol manufacturers.

The provisions of this Act mandate that all print advertising carry specific, rotating health and safety messages within the advertisement. For broadcast advertisements (excluding cable broadcasting, which is regulated by the FCC), the health and safety messages required would be read as part of the radio advertisement or would appear at the end of television advertisement.

Highlights of the Model State Sensible Advertising and Family Education Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes the prevalence of alcohol consumption among Americans, particularly the high rate of consumption among underage youths.
- Recognizes the impact of alcohol in terms of economic costs to society, health care utilization, alcoholism and alcohol dependencies, fetal alcohol syndrome and other alcohol-related birth defects, motor vehicle accidents, fatal intentional injuries, homicides, drownings, boating accidents, chronic liver disease, hypertension, and certain types of cancer.
- Recognizes the substantial impact of alcohol advertising.
- Recognizes the findings of a number of national commissions, panels, and polls that recommend the inclusion of health warning messages in alcohol advertising.
- Provides for health and safety warnings to be included and read as part of all alcohol advertising through radio or television broadcasting, excluding cable broadcasting and paid-per-view or subscription television.
- Provides that the [secretary of health] shall establish and maintain the toll free numbers that will appear in all health and safety warnings required by this Act.
- Provides requirements for the presentation of all health and safety warnings required for alcohol advertising by this Act.

SPECIFIC RECOMMENDATIONS

- Provides for written health and safety warnings to be attached to all alcohol advertising in or on magazines, newspapers, brochures, billboards, and promotional displays.

Model State Sensible Advertising and Family Education Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model State Sensible Advertising and Family Education Act."

Section 2. Legislative Findings.

(a) Alcohol is by far the drug most widely used and abused by young people in the United States today, even though it is illegal for youths under age 21 to purchase alcohol in all 50 states.

(b) According to the 1992 National Institute on Drug Abuse survey of high school students and young adults, 89.5 percent of high school seniors in the class of 1990 had used alcohol at least once, and 30 percent had experienced a "binge" of five or more drinks in a row within the past two weeks. Among college students, 43 percent reported occasions of "binge" drinking, including 35 percent of females and 52 percent of males.

(c) The average age at which young people begin drinking is 13. By age 13, approximately 30 percent of boys and 33 percent of girls classify themselves as drinkers. According to the 1988 National High School Senior Survey, 17 percent of high school seniors reported having been drunk at least once by the eighth grade, 37 percent by the ninth grade, 54 percent by the tenth grade, and 71 percent by twelfth grade. Studies demonstrate that the use of alcohol by individuals before the age of 15 appears to be one of the predictors of later heavy alcohol and other drug use by the individuals.

(d) Young people are not well informed about the hazards of alcohol use. Only 43 percent of high school seniors believe there is a great risk of harm from drinking activities such as "binge" drinking once or twice each weekend. More than one quarter of high school seniors do not view heavy, regular daily ("binge") drinking as entailing great risk. More than 40 percent of eighth graders, 45 percent of tenth graders, and 51

percent of twelfth graders do not perceive having five or more drinks once or twice a weekend as entailing a great risk.

(e) According to the Inspector General of the Department of Health and Human Services, the average binge drinker is a 16 year old male in the 10th grade who was 12 years old when he took his first drink.

(f) Employee assistance professionals have estimated that 30 to 40 percent of inpatient hospital admissions are alcohol-related. Also, a Center for Alcohol Studies at Rutgers University study indicates that untreated alcoholics on the average incur general health care costs that are at least 100 percent higher than those of nonalcoholics over pretreatment levels. Also, in the 12 months preceding treatment, the Rutgers study, "Socioeconomic Evaluations of Addictions Treatment," found that alcoholic's costs are close to 300 percent higher than costs of comparable nonalcoholics.

(g) Alcohol in combination with other drugs is the leading cause of emergency room drug abuse episodes.

(h) According to the National Institute on Alcohol Abuse and Alcoholism, an estimated 18 million persons in the United States who are 18 or older currently experience problems as a result of alcohol use. An estimated four and a half million young people are dependent on alcohol or are problem drinkers.

(i) Treatment costs for fetal alcohol syndrome (referred to in this section as "FAS") and other alcohol-related birth defects in the United States are estimated at nearly a third of a billion dollars. FAS is one of the top three known causes of birth defects with accompanying mental retardation and the only one that is preventable among the top three. Among children born to women who drink heavily, the incidence of FAS may be as high as 25 per 1,000 live births, compared to one to three infants per 1,000 live births among children born to other women who drink infrequently or abstain. The incidence of other alcohol-related birth defects is estimated to be three times greater than that of FAS.

(j) According to Healthy People 2000, the National Health Promotion and Disease Prevention Objectives:

- (1) Nearly one-half of all deaths from motor vehicle crashes are alcohol-related;
- (2) Alcohol is implicated in nearly one-half of all fatal intentional injuries, such as suicides and homicides; and
- (3) Victims are intoxicated in approximately one-third of all homicides, drownings, and boating deaths.

(k) In 1989, chronic liver disease, including cirrhosis, was the ninth leading cause of death in the United States. Of the 41,000 deaths attributed to liver disease in the United States, 46 percent diagnostically were associated with alcohol. Heavy alcohol use is considered the most important risk factor for chronic liver disease. Even among liver disease deaths not coded as alcohol-related, approximately 50 percent are thought to be due to alcohol use.

(l) Between five and 24 percent of hypertension cases are associated with alcohol. Many cases diagnosed as essential hypertension (high blood pressure having no known causes) may actually have chronic alcohol ingestion as their cause.

(m) Alcohol abuse is strongly associated with increased risk of certain kinds of cancer, especially cancer of the liver, esophagus, nasopharynx, and larynx. Alcohol is also associated with dietary deficiency that may increase cancer risk.

(n) The alcoholic beverage industry spends approximately \$2 billion each year on advertising and promotions in the United States.

(o) Alcohol advertising, especially in the broadcast media, may represent the single greatest source of alcohol education for persons in the United States. According to a 1990 study of 10- to 13-year-olds, funded by the American Automobile Association Foundation for Traffic Safety, there is a relationship between exposure and attention by an individual to beer advertising, and expectations that the individual drink as an adult.

(p) A major 1981 federally funded study found a significant relationship between:

- (1) Exposure of individuals to alcohol beverage advertising as youth; and
- (2) Drinking behaviors and attitudes of the individuals that can lead to certain forms of problem drinking.

(q) According to the Department of Health and Human Services, sponsorships and promotions on college campuses by alcohol producers and the use of celebrities and youth-oriented musical groups in advertising create a pro-drinking environment.

(r) Over 80 percent of 2,000 adults surveyed in 1988 for the Bureau of Alcohol, Tobacco, and Firearms by the Opinion Research Corporation believe that alcohol advertising influences underage youth to drink alcoholic beverages. The survey also found that the general public feels that the young people of the United States constitute the group that is most at risk from drinking alcoholic beverages.

(s) Both the 1988 Surgeon General's Workshop on Drunk Driving and the 1992 Join Together Public Policy Panel on Underage Access to Alcohol have recommended:

- (1) The level of alcoholic beverage advertising be matched with an equal number of pro-health and pro-safety messages; and
- (2) The inclusion of health warning messages in all alcohol advertising.

(t) Over two-thirds of persons surveyed in a 1989 Wall Street Journal poll favor requiring warnings about the dangers of drinking both on alcoholic beverage containers and in alcohol advertisements. Nearly three-fourths of persons surveyed in a 1990 Gallup Poll favor requiring health warning messages in alcohol advertising.

(u) The National Commission on Drug-Free Schools' 1990 Final Report, "Toward a Drug-Free Generation: A Nation's Responsibility," recommends that states "prohibit alcohol and tobacco advertising and promotion at all state colleges and universities, including sporting events. The same report called for schools and colleges to "prohibit all alcohol and tobacco advertising in school newspapers, at stadiums, and at all school events."

COMMENT

The legislative findings cite unequivocal evidence that inappropriate alcohol consumption leads to a number of serious problems for individuals and society. It also identifies alcohol advertising as an important contributor to such problems. Currently, society must bear the costs of the many alcohol-related problems identified by the state legislature through increased health care costs, increased insurance rates, and personal injuries

and deaths. This legislation intends to shift some of the personal and societal costs of reducing these problems through consumer education back to the industry that profits from alcohol consumption: alcohol manufacturers. By requiring alcohol manufacturers that advertise their products in print, radio, and television advertisements to bear some of the responsibility for health and safety warnings, this legislation requires a sensible advertising standard that reflects the reality of alcohol abuse and educates the public about the potential dangers of such abuse.

Section 3. Purpose.

This [Act] serves to inform viewers of potential health and safety hazards associated with alcohol consumption and abuse. This [Act] requires print, radio, and television advertising to display or be read as part of the advertisement health and safety warning messages.

Section 4. Definitions.

As used in this [Act]:

- (a) "Alcoholic beverage" means any beverage in liquid form that contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.
- (b) "Person" means an individual, a partnership, a joint stock company, a business trust, an association, a corporation, any business or legal entity not described in this subsection, including a receiver, trustee, or liquidating agent, and a state, state agency, or an officer or employee of a state or state agency.
- (c) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

Section 5. Health Warnings.

(a) On and after the expiration of the six-month period following the date of enactment of this [Act], it shall be an unfair or deceptive act or practice under [cite relevant state trade act] for any person to:

- (1) Advertise, or cause to be advertised, within this state through magazines, newspapers, brochures, billboards, and promotional displays originating in this state any alcoholic beverage unless the adver-

tising bears, in accordance with requirements of Section 6(a), one of the following health warnings:

(A) STATE HEALTH WARNING: If you are pregnant, consult your physician before drinking alcohol. Drinking alcohol during pregnancy may cause mental retardation and other birth defects. Avoid alcohol during pregnancy. If you are pregnant and cannot stop drinking, call [insert appropriate toll free number];

(B) STATE HEALTH WARNING: If you are under the age of 21, [it is against the law to buy or consume alcoholic beverages] [you could lose your driver's license for attempting to purchase, purchasing, or consuming alcohol]. For information about teenagers and young adults and drinking, call [insert appropriate toll free number];

(C) STATE HEALTH WARNING: Alcohol is a drug and may be addictive. If you know someone who has an alcohol or other drug problem or has trouble controlling their drinking, or if you have an alcohol or other drug problem or cannot control your drinking, call [insert appropriate toll free number];

(D) STATE HEALTH WARNING: Drive sober. If you don't, you could lose your driver's license. Alcohol impairs your ability to drive a car or operate machinery. If you or people you love drink and drive, call [insert appropriate toll free number];

(E) STATE HEALTH WARNING: Consult your physician before mixing alcohol with over-the-counter, prescription, or illicit drugs. For more information, call [insert appropriate toll free number];

(F) STATE HEALTH WARNING: If you drink too much alcohol too fast, you can die. To find out more about alcohol poisoning, call [insert appropriate toll free number];

(G) STATE HEALTH WARNING: Drinking increases your risks of high blood pressure, liver disease, and cancer. The more you drink, the more likely it is that you will have such health problems. To find out how to prevent such health problems, call [insert appropriate toll free number];

(2) Advertise, or cause to be advertised, through radio or television broadcasting, excluding cable broadcasting and paid-per-view or subscription television, any alcoholic beverage unless the advertising includes, in accordance with Section 6(b), one of the following health warnings:

(A) STATE HEALTH WARNING: If you are pregnant, consult your physician before drinking alcohol. Alcohol may cause mental retardation and other birth defects;

(B) STATE HEALTH WARNING: If you are under the age of 21, [it is illegal to buy or consume alcoholic beverages] [you could lose your driver's license if you attempt to purchase, purchase, or consume alcoholic beverages];

(C) STATE HEALTH WARNING: Alcohol is a drug and may be addictive.

(D) STATE HEALTH WARNING: Drive sober. If you do not, you could lose your driver's license;

(E) STATE HEALTH WARNING: Consult your physician before mixing alcohol with over-the-counter, prescription, or illicit drugs;

(F) STATE HEALTH WARNING: If you drink too much alcohol too fast, you can die of alcohol poisoning;

(G) STATE HEALTH WARNING: Drinking increases your risk of high blood pressure, liver disease, and cancer.

(b) The [secretary of health], in consultation with the [single state authority on alcohol and other drugs], shall be responsible for establishing and maintaining the toll free numbers referred to in the health warnings required by subsection (a)(1). The [secretary of health] shall submit a report to the state legislature annually on the number of calls received from persons using those numbers and the types of referrals made as a result of the calls.

COMMENT

This [Act] is modeled after the Sensible Advertising and Family Education Act proposed in the United States Congress (S. 674 (Thurmond), H.R. 1823 (Kennedy), 103rd Congress, First Session). The purpose of the [Act] is to require alcohol advertisers to attach warning messages to alcohol advertisements appearing within a state through magazines, newspapers, brochures, billboards,

promotional displays, and radio and television broadcasting. Alcohol beverage producers currently must include warnings on the labeling of their containers, but not in their advertising.

Subsection (a)(1) establishes the health and safety warning requirements for print advertising. Subsection (a)(2) establishes the health and safety warning requirements for radio and television broadcasting advertisements, excluding cable broadcasting and paid-per-view or subscription television. See, *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 104 S.Ct. 2694 (1984).

Opponents of this legislation at the federal level have argued that such health warning requirements on advertising are unconstitutional, violating First Amendment rights. However, a careful analysis of legal precedents indicates that such arguments are false.

As constitutional law expert Professor Steven H. Shiffrin of Cornell University noted in testimony before the U.S. Senate Committee on Commerce, Science, and Transportation, "Tobacco advertisers are currently forced to carry warnings in their messages; alcoholic beverage manufacturers are currently required to carry the Surgeon General's warnings on their products. Nothing in the Constitution prevents Congress from requiring the manufacturers of drugs (including alcohol) to disclose the risks of their products in their advertising." (See Appendix for a transcript of Shiffrin's full remarks before the Senate Committee.) A number of cases requiring disclosures or warnings in commercial speech point to the right of Congress or state legislatures to require such warnings. See, e.g., *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).

This [Act] serves to inform viewers of potential health and safety hazards associated with alcohol consumption or abuse. This legislation does not ban advertising in any manner, even though such actions would be constitutional and within the rights of governments. See, *United States and Federal Communications Commission v. Edge Broadcasting Company*, ___ U.S. ___, 113 S. Ct. 2696, 125 L. Ed. 2d 345 (1993); *Posadas De Puerto Rico Associates v. Tourism Co.*, 478 U.S. 328 (1986).

In paragraphs (1)(B) and (2)(B), bracketed alternatives allow those states that adopt the [Model Underage Alcohol Consumption Reduction Act] found in this volume or similar state provisions suspending or revoking driver's licenses for underage alcohol violations to reflect such laws in the health and safety warning messages.

Section 6. Requirements.

(a) The health warnings required for alcoholic beverage advertisements by Section 5(a)(1) shall:

(1) Comply with requirements, determined by the [secretary of health] in regulations to take effect no later than six months after the date of the enactment of this [Act], that:

(A) One such health warning be located in a conspicuous and prominent place in each such advertisement;

(B) All letters in such health warning appear in conspicuous and legible type that is not script or italic; and

(C) Such health warning be in contrast by typography, layout, and color with all other printed material in the advertisement, be surrounded by typographic lines that form a box, and, on an appropriate visual medium, appear on the front of an advertisement as indicated by labeling of the manufacturer or importer; and

(2) Be rotated in an alternating sequence on each advertisement of a brand style in accordance with a plan submitted by such manufacturer or importer to the [secretary of health].

(b) The [secretary of health] shall approve a plan submitted under subsection (a)(2) by a manufacturer or importer assuring that an equal distribution of each of the health warnings is displayed on each sequence of the same or a substantially similar advertisement for a brand style at the same time. If the plan is approved by the [secretary of health], the rotation described in subsection (a)(2) shall apply with respect to the applicant submitting the plan during the one-year period beginning on the date of the approval.

(c) The health warnings required for alcoholic beverage advertisements by Section 5(a)(2) shall:

(1) Comply with requirements, determined by the [secretary of health] in regulations to take effect not later than six months after the date of the enactment of this [Act], that:

(A) One such health warning be included in a conspicuous and prominent manner in each such advertisement;

(B) The health warning be read as part of the advertisement in an audible and deliberate manner and in a length of time that allows for a clear

understanding of the health warning message by the intended audience; and

(C) With respect to each advertisement for television:

(i) a graphic representation of such health warning be included after each such advertisement;

(ii) all letters in such graphic representation appear in conspicuous and legible type that is not script or italic;

(iii) such health warning be surrounded by typographic lines that form a box in the graphic representation; and

(iv) such graphic representation appear in the same length of time as is required for the reading of the message required by clause (ii); and

(2) Be rotated in an alternating sequence on each advertisement of a brand style in accordance with a plan submitted by such manufacturer or importer to the [secretary of health].

(d) The [secretary of health] shall approve a plan submitted under paragraph (c)(2) by a manufacturer or importer that assures that an equal distribution of each of the health warnings is displayed on each sequence of the same or a substantially similar advertisement for a brand style at the same time. If the plan is approved by the [secretary of health], the rotation described in paragraph (1)(B) shall apply with respect to the applicant submitting the plan during the one-year period beginning on the date of the approval.

COMMENT

This section establishes the requirements necessary for all health and safety warning messages to be placed on all print alcohol advertisements. This section also establishes the requirements necessary for all health and safety warning messages to be read as part of any radio or television alcohol advertisement. Alcohol manufacturers or importers seeking to advertise their products must submit plans to the [secretary of health] assuring an equal distribution of each of the health and safety warning messages in all of their advertisements.

Section 7. Report to the Legislature.

(a) Not earlier than two years after the date of the enactment of this [Act], the [secretary of health] shall conduct an appropriate investigation and consult with the [single state authority on alcohol and other drugs] to determine whether available scientific information would justify a change in, an addition to, or deletion of, a health warning set forth in Section 5.

(b) If the [secretary of health] finds that available scientific information would justify the change, addition, or deletion described in subsection (a), the [secretary of health] shall promptly submit a report to the appropriate committees of the legislature containing:

- (1) The information; and
- (2) Specific recommendations for such amendments to this [Act] as the [secretary of health] determines to be appropriate and in the public interest.

Section 8. Severability.

If any provision of this [Act] or any application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end, the provisions of this [Act] are severable.

Section 9. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Appendix C

HEARING ON
THE SENSIBLE ADVERTISING AND FAMILY EDUCATION ACT
S. 674

CONSUMER SUBCOMMITTEE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Prepared Testimony of

Steven H. Shiffrin
Professor of Law
Cornell University

May 13, 1993

(Professor Steven Shiffrin presented the following testimony before the Senate Consumer Subcommittee in support of Senate Bill 674 (Thurmond), the Sensible Advertising and Family Education Act. (A similar bill, H.B. 1823 (Kennedy), was proposed in the House of Representatives.) The Commission's Model State Sensible Advertising and Family Education Act mirrors these bills at the state level.)

I am a Professor of Law at Cornell University. I have also taught in the law schools at Boston University, Harvard University, the University of Michigan, and UCLA. I am the author of The First Amendment, Democracy, and Romance (Harvard University Press 1990) (winner of the Thomas J. Wilson Award) and numerous articles on the first amendment. I am also the co-author of Constitutional Law (7th ed. 1991), one of the most widely used casebooks in the field and a co-author of The First Amendment (1991), the most extensively used casebook in the field.

* * *

I very much appreciate the opportunity to testify concerning the constitutionality of S. 674. I will try to summarize my prepared remarks and would request that they be placed in the record. I have read the findings and warnings set out in the bill. I am no expert on the subject of those findings and warnings, but I am prepared to assume they are reasonable. Assuming that, the bill is constitutional.

For most of the history of this republic, commercial speech has received no protection whatsoever. Today it occupies a subordinate position in the hierarchy of first amendment values. As Justice Clark said some years ago, there is no war between the Constitution and common sense. Nothing in the commercial speech doctrine prevents Congress from taking reasonable steps to address the genuine public health problems associated with alcohol, and it has every reason to believe that those problems are materially aggravated by the advertising of alcoholic beverages. It is entitled to the judgment that the millions of teenagers who watch untold numbers of beer commercials are not uninfluenced by that experience. It is entitled to assume that if fewer people consume alcohol, fewer people will abuse alcohol. And, in any event, Congress is on sure footing in assuring that Americans are aware of the risks associated with the consumption of alcohol.

My understanding, however, is that the bill's opponents claim that the bill is unconstitutional. In support of this claim, some of them apparently contend that corporations can not be forced to disclose the risks associated with their products in their advertising. Drawing upon notions of private property and notions of compelled speech (sometimes even invoking images of school children being forced to salute the flag), they say that corporations can not be forced to use their resources to say what they do not want to say.

But private property is not an absolute and corporations are not school children. Tobacco advertisers are currently forced to carry warnings in their messages; alcoholic beverage manufacturers are currently required to carry the Surgeon General's warnings on their products. Nothing in the Constitution prevents Congress from requiring the manufacturers of drugs (including alcohol) to disclose the risks of their products in their advertising.

Others contend that the required disclosures are so burdensome that they would cause the alcoholic beverage industry to cease advertising on television. More than one observer will greet these predictions with a substantial dose of skepticism,¹ but even if they were more than posturing, even if the legislation caused every last beer advertiser to abandon television advertising, the bill would still pass constitutional muster. Consistent with the first amendment, Congress has the power either to ban alcoholic beverage advertising altogether or to require health warnings.

¹ It is hard, for example, to understand, how the industry could cease advertising without collusion in violation of the antitrust laws. Otherwise, even though the bill may impose an unwelcome burden, some beer manufactures would be tempted to resort to the broadcast media to pick up market share, and then the others would be forced to join.

The Constitutionality of Health Warnings

The law of required disclosures or warnings in commercial speech cases is generally quite clear. Government has broad latitude to require advertisers to make disclosures they do not want to make. The leading case is Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985). There Zauderer, an attorney, argued against disclosures that the state sought to impose in his commercial advertising. He argued that the required disclosures should be subject to the same test the Court had employed in certain other commercial speech cases, a test which we shall later see is itself somewhat relaxed. The Court's response is worth quoting at some length:

"[Zauderer] suggests that the State must establish either that the advertisement, absent the require disclosure, would be false or deceptive or that the disclosure requirement serves some substantial governmental interest other than preventing deception; moreover, he contends that the State must establish that the disclosure requirement directly advances the relevant governmental interest and that it constitutes the least restrictive means of doing so. Not surprisingly, appellant claims that the State has failed to muster substantial evidentiary support for any of the findings required to support the restriction.

"Appellant, however, overlooks material differences between disclosure requirements and outright prohibitions on speech. In requiring attorneys who advertise their willingness to represent clients on a contingent-fee basis to state that the client may have to bear certain expenses even if he loses, Ohio has not attempted to prevent attorneys from conveying information to the public; it has only required them to provide somewhat more information than they might otherwise be inclined to present." *Id.* at 650.

Justice White's opinion for the Court then added:

"Ohio has not attempted to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.' The State has attempted only to prescribe what shall be orthodox in commercial advertising, and its prescription has taken the form of [including] purely factual and uncontroversial² information * * *. Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal." *Id.* at 650-51 (citations omitted; emphasis in original).

The Court did not altogether abandon constitutional protection in this area. It recognized that "unjustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech. But we hold that an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Id.* at 651.

² I do not know if the opponents of the bill contest the underlying substance of the warnings. Clearly they do not doubt that the warnings reflect the position of the Surgeon General. If there were a genuine controversy about the underlying substance, the issue would become closer. Nonetheless, the Court would be loathe to second-guess, not only the view of Congress, but also that of the Surgeon General. I find it overwhelmingly likely the Congress would be upheld if its judgment were better supported than that put forward by the opponents of the bill.

Preventing deception of consumers was the only interest asserted in Zauderer. Other interests such as the public health would certainly qualify as substantial enough to warrant required disclosures.³ Moreover, nothing in Zauderer suggests that government's power to require disclosures is subject to a crabbed conception of deception. If experience showed that consumers were purchasing a product without sufficient awareness of the risks involved, government under Zauderer could appropriately require disclosures.⁴

On its face it seems obvious that S. 674 is "reasonably related" to the interest of assuring that people who decide to consume alcohol are sufficiently aware of the risks. An advertiser's interest in not providing such information is "minimal." This is not a close question.

Indeed, it should be observed that the legislation calls only for the warnings to be given. Consumers are only to be informed of the Surgeon General's judgment. Zauderer itself would go further and allow the government to "prescribe orthodoxy"⁵ in the commercial sphere. That is exactly what happens when government prevents the dissemination of advertising on the ground that it is false or misleading, or when it forces an advertiser to express agreement with the warning in its advertisement. The bill before you does neither of those things.

The Constitutionality of a Total Ban

Opponents of the bill contend that the disclosure requirements of the bill are so burdensome that broadcast advertising of alcoholic beverages would be foreclosed. They assume that would render the bill unconstitutional as applied to the broadcast media.

Their assumption is ill-founded for two reasons. First, Congress has the power to ban the advertising of alcoholic beverages altogether. Second, even if it could not ban such advertising altogether, it might well be able to do so in the broadcast medium.

³ Indeed, as I discuss below, the interest in public health would support a total ban. Indeed, the Court has recognized that interests such as conservation (Central Hudson, cited *infra*) and maintaining the independence of accountant, Edenfield v. Fane, cited *infra*) are sufficient to support a ban when appropriate showings were made.

⁴ See SEC v. Wall Street Institute, 851 F.2d 365, 373 (D.C.Cir. 1988) ("[D]isclosure requirements have been upheld in regulation of commercial speech even when the government has not shown that 'absent the required disclosure, [the speech would be false or deceptive] or that the disclosure requirement serves some substantial government interest other than preventing deception.'")

⁵ In Zauderer (White, J., Rehnquist, C.J., and Stevens, J., dissenting) have voted to uphold the requiring of corporations to help spread controversial messages they oppose even in a non-commercial speech context. Pacific Gas & Electric v. Public Utilities Commission, 475 U.S. 1 (1987). The plurality opinion authored by Powell, J., joined by Burger, C.J., Brennan and O'Connor, JJ., stated in that non-commercial-speech context that Zauderer could not be cited for the proposition that corporations can be required to carry messages contrary to their views. *Id.* at 15.

Even apart from the non-commercial context in which the plurality's statement was made, there are several reasons to believe that it was not intended to apply in a commercial speech of cases holding that persons could not be forced to support ideologies to which they were opposed on the ground that they were not commercial speech cases. The PG&E plurality, which included two justices who had joined the Zauderer opinion, relied on that line of cases. Having already decided that commercial speech cases were distinguishable from other forced speech cases in that the government can prescribe orthodoxy in the commercial sphere, it would be ungenerous to interpret the plurality to assert that Zauderer does not say what it clearly says.

Second, Justice O'Connor, for example, has consistently voted to uphold bans in commercial speech cases (see, eg., the Posadas case and the Peel case, discussed *infra*). It is hard to believe that Justice O'Connor would allow Congress to ban advertising for alcoholic beverages, but would strike down legislation that would permit advertising for alcoholic beverages only if certain warnings were given.

Significantly, Justice O'Connor is the only member of the majority in PG&E remaining on the Court today. Its continuing validity is open to question. See, Meese v. Keene, 481 U.S. 465 (1987) (approving controversial disclosure requirements in certain political movies).

First, Congress has the power to ban the advertising of alcoholic beverages altogether. To be sure, commercial speech is now afforded a measure of first amendment protection. On many occasions, however, the courts have made it clear that even nonmisleading commercial speech for a legal product can be outlawed if the government directly and materially advances a substantial state interest by means no more extensive than necessary to serve that interest (see eg., Central Hudson Gas & Elec. Corp. v. Public Service Comm'n, 447 U.S. 557 (1980)) or by means reasonably tailored to serve that interest. Edenfield v. Fane, 53 CCH S. Ct. Bull. B2110, B2117 (1993).⁶

The most important case for our purpose is Posadas De Puerto Rico Associates v. Tourism Co., 478 U.S. 328 (1986). In Posadas, a gambling casino in Puerto Rico objected to legislation that prohibited gambling casinos from advertising to Puerto Rican residents. The Court squarely held that Puerto Rico had a substantial interest in discouraging its residents from engaging in excessive casino gambling, that an advertising ban directly advanced that interest, that the ban was no broader than necessary, and that these considerations were substantial enough to overcome any first amendment concerns.

The Puerto Rican scheme was an odd patchwork. Puerto Rico permitted advertising of other forms of gambling to its residents including advertising for horse racing, cockfighting, and the lottery. The scheme also permitted the casinos to advertise to non-residents. Thus, casinos could advertise in the New York Times, but not in the San Juan Star. Nonetheless, despite the patchwork ad hoc character of the Puerto Rican program, and even without legislative findings, the Court exhibited substantial deference to the Puerto Rican legislative scheme and upheld it.

I submit that if the Court would accept Puerto Rico's determination to ban casino gambling advertising in the context of a patchwork scheme even without legislative findings,⁷ the Court would accept a considered Congressional judgment to proceed with a disclosure bill even if it functioned as a de facto ban⁸ on the broadcast advertising of alcoholic beverages. Indeed, the Posadas Court explicitly mentions alcoholic beverages in its opinion:

"It would be a strange constitutional doctrine which would concede to the legislature the authority to totally ban a product or activity, but deny to the legislature the authority to forbid the stimulation of demand for the product or activity through adver-

⁶ The statement of the test is variously phrased in various cases. On any statement of the commercial speech test, however, this legislation (or even a total ban) would meet the necessary requirements.

⁷ Among other things the Puerto Rican legislature made no finding that the casino advertising in fact stimulated demand for the product. "The Puerto Rico Legislature obviously believed, when it enacted the advertising restrictions at issue here, that advertising of casino gambling aimed at the residents of Puerto Rico would serve to increase the demand for the product advertised. We think the legislature's belief is a reasonable one, and the fact that appellant has chosen to litigate this case all the way to this Court indicates that appellant shares the legislature's view. *Id.* at 341-2 (emphasis added). The Court also quoted from Central Hudson, *supra*, at 569: "There is an immediate connection between advertising and electricity. Central Hudson would not contest the advertising ban unless it believes that promotion increases its sales."

⁸ Again, I am making this assumption for purposes of argument. I have seen no reason to credit it otherwise. In addition to assuming that beer advertisers would withdraw from the airwaves, I am also assuming that legislation resulting in advertiser withdrawal from the airwaves is a "ban" and not an industry cover for evasion of the antitrust laws or the occasion of a voluntary decision to redirect budgets. Alcoholic beverage advertising may stimulate enough demand to cause social problems, but not enough demand to justify the cost of the advertising.

tising on behalf of those who would profit from such increased demand.⁹ Legislative regulation of products or activities deemed harmful, such as cigarettes, alcoholic beverages, and prostitution, has varied from outright prohibition on the one hand to legalization of the product or activity with restrictions on stimulation of its demand on the other To rule out the latter, intermediate kind of response would require more than we find in the First Amendment." *Id.* at 346-7 (emphasis added)

Posadas thus makes it clear: A total ban on the advertising of alcoholic beverages would be constitutional.¹⁰

Advocates for the tobacco, alcoholic beverage, and advertising industries point to cases subsequent to Posadas and argue that they undermine its authority. But the cases they point to have nothing to do with the advertising of harmful products. In those cases the Court held that Illinois could not interfere with an attorney's right to state on his letterhead that he was certified by a nationally prominent body (Peel v. Attorney Registration and Disciplinary Comm'n, 496 U.S. 91 (1990)); that Florida could not prevent a certified public accountant from soliciting new business clients without an invitation from them to do so (Edenfield v. Fane, 53 CCH S. Ct. Bull. B2110, B2117 (1993)); and that Cincinnati could not categorically ban commercial newsracks from its sidewalks in circumstances where the harm from non-commercial newsracks was equally great (City of Cincinnati v. Discovery Network, Inc., 113 S. Ct. 1505, 1520 (1993)).

Nothing in these decisions bear on the advertising of alcoholic beverages or anything close to it.¹¹ To vote, for example, to uphold Peel's right to tell the truth about his certification is a far cry from interfering with reasonable efforts by a coordinate branch of government to discourage demand for a product that has a long history of tragic abuse with severe consequences for the nation's health and safety, not to mention its economy. Not only do these cases have nothing to do with the advertising of harmful products, these cases taken together reaffirm the principle that nonmisleading commercial speech for a legal product can be outlawed if the government directly and materially advances a substantial state interest by means reasonably tailored to serve that interest. Edenfield

⁹ I personally do not accept this "greater includes the lesser" style of argument. In my view it sweeps in too much. But a ban on alcoholic beverage advertising would meet the more conventional test articulated and applied in Posadas. That is, it would directly advance a substantial public interest (public health) by means no broader than necessary to serve that interest.

¹⁰ Advocates for the tobacco, alcoholic beverage, and advertising industries have struggled mightily to claim otherwise. Last year, for example, an advocate tried in a hearing before the subcommittee to pass Posadas off as a "narrow case, dealing with an improperly targeted audience. If alcohol advertising is directed at children, the Federal Trade Commission should do something about it. That is not protected speech. But Posadas dealt with improperly targeted speech. It, therefore, does not control the advisability of this statute."

The desperate and insulting suggestion that Puerto Rican residents are like children was no part of the Court's opinion. It was the product of the advocate's fertile imagination. The feeble character of the argument does go to show this: Every once in a while there comes a case which even distinguished advocates can not distinguish. Posadas is one such case.

The claim that there is no principle to Posadas is equally remarkable. The principle is that commercial speech can be banned if the appropriate constitutional showings are made. Whatever the merits of the showing made in Posadas, the findings in this bill are more than sufficient.

¹¹ Nor do these cases do anything to change the law regarding disclosure requirements.

v. Fane, 53 CCH S. Ct. Bull. B2110, B2117 (1993). *Posadas* is not questioned in these opinions. Indeed the fact situations are so far removed from *Posadas* that the case is not even mentioned.¹² It borders on the bizarre to suggest that *Posadas* has been overruled by any of these decisions.¹³

Instead the most important post-*Posadas* opinion is Justice Scalia's majority opinion in *Board of Trustees v. Fox*, 492 U.S. 469 (1989). A number of commentators had observed that *Posadas* had applied extremely lax standards in reviewing the Puerto Rican statute by comparison with cases like *Central Hudson* which had applied a least restrictive means test. In *Fox*, Justice Scalia's opinion for the Court confronts the differential treatment and rejects the least restrictive means test. In doing so, he cites the *Posadas* case with approval at some length:

"[O]ur decisions upholding the regulation of commercial speech cannot be reconciled with the doctrine of least restrictive means. In *Posadas*, for example, where we sustained Puerto Rico's blanket ban on promotional advertising of casino gambling to Puerto Rican residents, we did not first satisfy ourselves that the governmental goal of deterring casino gambling could not adequately have been served (as the appellant contended) 'not by suppressing commercial speech that might encourage such gambling, but by promulgating additional speech designed to discourage it.' Rather, we said that it was 'up to the legislature to decide' that point so long as its judgment was reasonable." *Id.* at 479 (emphasis in original).

Despite the several prior decisions stating a view more protective of commercial speech, Justice Scalia concluded that all the holdings of the cases actually required was a reasonable fit between the legislature's ends and the means chosen to accomplish those ends:

"What our decisions require is a "'fit" between the legislature's ends and the means chosen to accomplish those ends,' [citing *Posadas*, 478 U.S. at 341] — a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is 'in proportion to the interest served' [citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)]; that employs not necessarily the least restrictive means, but, as we have put it in the other contexts discussed above, a means narrowly tailored to achieve the desired objective. Within these bounds we leave it to governmental decisionmakers to judge what manner of regulation may best be employed." 492 U.S. at 480-81.

Justice Scalia's reaffirming *Posadas* is not surprising. Eight members of the current Court recognize the principle that nonmisleading commercial speech for legal product or services can be outlawed if the comparatively relaxed standards for commercial speech are satisfied.¹⁴ No member of the

¹² For a case on the Court's docket that is closer to the mark, see note 15 *infra*.

¹³ In addition, there may be an important difference between the informational speech evident in *Peel*, (information about certification by a nationally recognized body) *Edenfield*, (information about the character of an accountant's services) and *Discovery Network* (information about the availability of real estate properties and about adult educational, recreational, and social programs to individuals in Cincinnati) and the universe of beer commercials which seems to consist more of catchy tunes, inviting scenarios, and concocted joy than of informational text.

¹⁴ Despite his own reservations about the application of the commercial speech standard to such a fact situation, the ninth member Blackmun, J., thinks "it highly unlikely that according truthful, noncoercive commercial speech the full protection of the first amendment will erode the level of that protection. I have predicted that 'the Court will never provide child pornography or cigarette advertising the level of protection customarily granted political speech.'" *City of Cincinnati v. Discovery Network, Inc.* 113 S.Ct. 1505, 1520 (1993) (Blackmun, J., concurring) (citations omitted).

Court including the dissenters in Posadas has ever stated that the advertising of harmful products like tobacco and alcoholic beverages enjoy a privileged immunity from Congressional prohibition. Posadas is currently the law. It has not been overruled. There is no good reason to believe it ever will.¹⁵

The Special Characteristics of Broadcasting

There is a final possibility. Even, in the unlikely event that Posadas were overruled, there would be a separate questions as to whether a ban on commercial speech might be upheld in the broadcast media wholly apart from the question of whether such a ban could be sustained in other contexts. The Court has applied a less speech protective test in considering speech prohibitions in the broadcast media. See FCC v. League of Women Voters, 104 S.Ct. 3106 (1984) (ban on editorializing by public broadcasters invalidated but subjected to a lower degree of scrutiny because “broadcast regulation involves unique considerations”); See also FCC v. Pacifica Foundation, 438 U.S. 726 (1978) (upholding broadcast ban on indecent speech in part to protect youth while noting that the same material could be sold in record stores).

In this connection it is obviously important to mention that the Court has upheld the Congressional ban on cigarette advertising in the broadcast medium. Capital Broadcasting Co. v. Mitchell, 333 F.Supp. 582 (D.D.C. 1971), *aff’d sub nom. Capital Broadcasting Co. v. Acting Attorney General*, 405 U.S. 1000 (1972). Although some commentators have contended that Mitchell does not survive

¹⁵ United States v. Edge Broadcasting, 20 Media L. Rptr. 1904 (1992) (unpublished), *cert. granted*, 113 S.Ct. 809 has been argued this term and is awaiting decision. At issue is an FCC regulation that has the effect of forbidding a North Carolina broadcast station from advertising the Virginia lottery in circumstances where (1) North Carolina’s laws forbid gambling, but (2) the audience for the border station’s broadcasts are estimated to be 92.2 percent from Virginia, and (3) Virginia stations are permitted under the regulation to advertise the lottery. The lower court struck down the regulation as applied to this unusual factual circumstance. It is conceivable that the Supreme Court will not revisit Posadas in this case (the residents in North Carolina who receive Edge broadcasting’s signal are deluged with advertisements from Virginia stations, so it is argued that the regulation does not advance much).

If the justices revisit Posadas in Edge Broadcasting, it will be reaffirmed. Even supporters of the advertising industry have recognized that. See Colford, Justices’ Questions Seem to Favor FCC Gambling Limit, ADVERTISING AGE 12 (April 26, 1993) (counting Rehnquist, C.J., and O’Connor, Scalia, Thomas, and White, JJ., as likely votes in favor of the ad ban in light of the oral argument).

Rehnquist, C.J., O’Connor, and White were part of the Posadas majority and are certain votes to reaffirm it if the issue is presented. Scalia, J., cited Posadas with approval in Fox. He is most unlikely to turn against that decision. Thomas, J., dissented in Discovery Network along with Rehnquist, C.J., and White, J. That vote shows he accords commercial speech an extremely low place in the hierarchy of first amendment values. Those are the five votes even Advertising Age counts in the Posadas corner.

In addition, Souter, J., voted with the majority in Discovery Network and Edenfield, but he is respectful of precedent and does not lightly overturn it. Moreover, those cases did not involve harmful products. Although Justice Kennedy voted to protect commercial speech in Peel, Discovery Network, and Edenfield, he joined Justice Scalia’s opinion in Fox which cites Posadas with approval. Stevens, J., who dissented in Posadas, has explicitly left open how he would decide a case involving a ban of harmful products or services: “Whether a State may ban all advertising of an activity that it permits but could not prohibit — such as gambling, prostitution or the consumption of marijuana or liquor — is an elegant question of constitutional law. It is not, however, appropriate to address that question in this case because Puerto Rico’s rather bizarre restraints on speech are so plainly forbidden by the First Amendment.” 478 U.S. at 359.

That leaves Blackmun, J., who is prepared to afford more generous protection to truthful advertising than anyone on the Court. But again, even Justice Blackmun thinks “it highly unlikely that according truthful, noncoercive commercial speech the full protection of the first amendment will erode the level of that protection. I have predicted that ‘the Court will never provide child pornography or cigarette advertising the level of protection customarily granted political speech.’” City of Cincinnati v. Discovery Network, Inc. 113 S.Ct. 1505, 1520 (1993) (Blackmun, J., concurring) (citations omitted).

If the issue is reached by the Court in Edge Broadcasting, the question is not whether Posadas will be reaffirmed, but by what margin.

the creation of the commercial speech doctrine in Virginia State Board of Pharmacy v. Virginia Citizens Council, 425 U.S. 748 (1976), the Virginia Pharmacy case itself stated that in protecting commercial speech it was dealing with a circumstance in which the “special problems” of the electronic medium were not presented. *Id.* at 773. See also, eg., Posadas, 478 U.S. at 344, citing Mitchell with approval.

My own view is that given the current structure of the broadcast medium, Congress rightly has greater power to add to the broadcast marketplace, but should have no greater power to ban speech in the broadcast medium than it does elsewhere. I do not believe, save special cases, that there are “special problems” or “unique considerations” justifying any greater ability to prohibit speech in the broadcast medium.

But that is my view, not the Court’s. Given what the Court has already done in the broadcast area, a ban of alcoholic beverage advertising would seem to be on quite secure footing. Given the history of alcohol abuse in this country, for example, it would be exceedingly odd if government could protect children from the broadcast of indecent language, but not from the thousands of commercials encouraging them to believe that the consumption of alcohol is an integral part of the good and merry life.

Conclusion

The first amendment protects the dissenters, those who would challenge existing customs, habits, and institutions. It protects the citizen critic participating in a democracy. But commercial speech has always been a stepchild in the first amendment family. Indeed, for most of our history, speech hawking products has been afforded no first amendment protection; it has never received generous first amendment protection.

The existing case law plainly supports the constitutionality of S. 674.¹⁶ Specifically, consistent with the first amendment:

- Congress has the power to require the Surgeon General’s warnings to appear in commercial advertisements for alcoholic beverages;
- Congress has the power to ban commercial advertisements for alcoholic beverages in all media;
- Congress has special power to protect children from advertisements for alcoholic beverages in the broadcast media.

¹⁶ I do not necessarily believe it would be upheld in all its applications. The question of whether the sanctions of the Federal Trade Commission Act could be constitutionally applied to the press that carries an advertisement for alcoholic beverages as opposed to or in addition to the advertiser is more complicated than the easy commercial speech issues that the bill primarily presents. Compare Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241 (1974) with Pittsburgh Press Co. v. Human Relations Comm’n, 413 U.S. 376 (1973). Even if the bill could not be constitutionally applied to the press in such a circumstance, the thrust of the bill would remain unscathed.

Model Revocation of Professional or Business License for Alcohol and Other Drug Convictions Act

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Model Revocation of Professional or Business License for Alcohol and Other Drug Convictions Act

Policy Statement

Each year, doctors, lawyers, teachers, tradespersons, and others who receive state-issued licenses are convicted of alcohol and other drug law violations. These individuals with specialized skills are not exempt from the alcohol and other drug abuse problems which permeate society in general. However, their substance involvement poses a special risk to public health and safety. Imagine an alcoholic doctor performing surgery, a cocaine-addicted lawyer arguing a death penalty case, or a substance abusing construction worker setting the foundation for a building. Their addictions can result in impaired skills which lead to substantial injury and financial damage.

This heightened risk of public harm will continue if a substance abusing individual retains his or her professional or business license. The license signals consumers that the state views the individual as fully qualified to engage in a particular occupation. Consumers will transact business with the offender, unaware of the individual's alcohol and other drug problem. Therefore, the state has a responsibility to suspend or revoke an individual's license as soon as there is a reason to believe the individual may be abusing alcohol or illegal substances. An illegal drug conviction, or conviction for driving while under the influence of alcohol and other drugs, provides the necessary reasonable belief.

The Model Act therefore authorizes the appropriate state agency to revoke, suspend, or restrict an individual's license upon conviction for specified offenses involving alcohol and other drugs. Early intervention with an offender can also effect early assessment and commencement of treatment. The revocation or suspension procedure can benefit the licensed individual by providing the motivation to constructively engage in the treatment process. With this in mind, the Model Act conditions reinstatement of a person's license upon successful completion of an appropriate treatment program.

Highlights of the Model Revocation of Professional or Business License for Alcohol and Other Drug Convictions Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that the state requires licenses of doctors, lawyers, teachers, tradespersons, and hundreds of others to conduct an occupation, business, or trade.
- Recognizes that illegal drug convictions or convictions for driving while under the influence of alcohol and/or other drugs suggests possible alcohol and other drug problems and the potential impairment of professional or business skills.
- Recognizes that license suspension or revocation can be an important point of intervention to encourage or motivate an alcohol or other drug-abusing offender to participate in a treatment program.
- Recognizes that such license suspension or revocation serves to protect consumers from potentially impaired services or products.

SPECIFIC RECOMMENDATIONS

- Suspends or revokes a state-issued license for a conviction involving a controlled substances violation, or a driving while under the influence of alcohol and/or other drugs violation.
- Defines license broadly to include any state permit or authorization required to conduct an occupation. (e.g., teaching certificates, plumber's license, etc.)
- Allows reinstatement of a license upon successful completion of a treatment program.
- Provides immediate reinstatement of a license upon reversal of a conviction that was the sole reason for the suspension or revocation.

Model Revocation of Professional or Business License for Alcohol and Other Drug Convictions Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Revocation of Professional or Business License for Alcohol and Other Drug Convictions Act."

Section 2. Legislative Findings.

(a) Each year, doctors, lawyers, teachers, tradespersons, and hundreds of others receive state approval to conduct an occupation, business, or trade.

(b) A conviction involving alcohol and other drugs reflects behavior that violates the state's policy of reducing or eliminating substance abuse, and suggests possible impairment of professional or business skills. Therefore, a conviction involving illegal drugs or driving under the influence of alcohol and other drugs justifies restriction, suspension, or revocation of a state-issued license.

(c) License suspension or revocation can be an important point of intervention to encourage or motivate a substance-abusing offender to constructive participate in a treatment program.

Section 3. Purpose. The purposes of this [Act] are:

(a) To insure state licensees fully comply with state alcohol and other drug control policies and laws;

(b) To protect the public health and safety from substance-involved licensees where professional and business skills are impaired; and

(c) To encourage substance-abusing licensees to enter and successfully complete a treatment program.

Section 4. Definitions. As used in this [Act]:

(a) "Convicted" or "conviction" means a final conviction in [an appropriate trial court] or the acceptance of a plea of guilty or nolo contendere.

(b) "License" means any permission, permit, registration, certification, or other authorization by a department, agency, board, bureau, or other entity of state government.

(c) "Licensed individual" means any individual to whom any department, agency, board, bureau, or other entity of state government has issued any license to conduct a licensed occupation.

(d) "Licensed occupation" means any occupation, profession, business, trade, or other commercial activity that requires for its lawful conduct the issuance to an individual of any license. For the purpose of this [Act], the practice of law shall constitute a licensed occupation and the [highest state court of appeals] shall be the licensing authority for the practice of law.

(e) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

COMMENT

"License" is defined to include any state-issued authorization necessary to conduct business or a profession. This type of statute often targets lawyers, accountants, doctors, and others deemed to be professionals. However, the [Act's] expansive definition of license also encompasses teachers, plumbers, and other tradespersons.

"Conviction" is defined to allow initiation of the revocation or suspension process upon entry of judgement by a trial court. Application of the [Act] does not await conclusion of an appeal from a lower court decision. Appeals are often lengthy, taking weeks, months, or

longer to complete. A delay in the [Act's] application due to pendency of an appeal may increase opportunities for substance-abusing licensees to cause harm. As indicated in the policy statement, an individual's alcohol or other drug conviction may be a manifestation of an addiction that impairs the individual's ability to conduct an occupation. Allowing licensees to continue working during an appeal puts numerous unknowing consumers at risk of personal injury or property damage. Moreover, there is less incentive for substance-abusing offenders to confront their alcohol or other drug problem. It becomes less necessary to seriously engage in the treatment process if they can undertake business as usual.

Section 5. Notification of License and Conviction or Reversal.

(a) At the time of sentencing of an individual convicted for a violation listed in subsection (b), the individual shall notify the [appropriate trial court] of any license possessed by the individual to which this [Act] shall apply.

(b) A clerk of the [appropriate trial court] shall notify the appropriate licensing authority of a conviction of a licensed individual within ten days after the individual has been sentenced for a violation of:

- (1) [the state controlled substance act];
- (2) [the state imitation and counterfeit substances act];
- (3) [the Model State Chemical Control Act or similar state law];
- (4) [state laws prohibiting conspiracy, attempt or solicitation of a violation of paragraphs (1)-(3)];
- (5) [state laws prohibiting driving while under the influence of alcohol or other drugs];
- (6) any law in any other jurisdiction that is substantially similar to the laws in paragraphs (1)-(5).

(c) A clerk of the [appropriate appellate court] shall notify the appropriate licensing authority of the reversal of a conviction for a violation listed in subsection

(b) within ten days after the [appropriate appellate court] has overturned the conviction.

COMMENT

This section institutionalizes a reporting mechanism to ensure the licensing authority has access to conviction

information. In this respect, the [Act] differs from the 1990 Georgia Law, 16-13-111, on which it is substantially based. During the first year and a half of the law's enactment, Georgia officials revoked or suspended approximately 10-15 licenses. Their practical experience surfaced a weakness with the law's lack of a mandated reporting process. Georgia officials currently are researching whether a central clearinghouse of conviction data exists that can provide the necessary information to licensing authorities. In the absence of such an identified repository, the Commission has placed the reporting requirement upon the court system.

The list of offenses in subsection (b) is the narrowest list that the Commission recommends as triggering the [Act's] application. States may choose to add offenses appropriate to their jurisdiction.

Section 6. Suspension or Revocation of License.

Upon notification of a conviction of a licensed individual for a violation listed in Section 5(b), the appropriate licensing authority:

- (a) May, upon a first misdemeanor conviction, suspend or restrict the use of the license of the licensed individual to conduct a licensed occupation;
- (b) Shall, upon the first felony conviction, suspend the license of the licensed individual to conduct a licensed occupation for a minimum of [three months];
- (c) Shall, upon the second or subsequent conviction, revoke the license of a licensed individual to conduct a licensed occupation.

COMMENT

This section establishes a graduated procedure of license restriction, suspension, and revocation. The type of conviction (misdemeanor or felony, first or subsequent) determines the action that the licensing authority may take in a particular circumstance. The procedure is borrowed from Georgia's license revocation law, 16-13-111(b).

Section 7. Reinstatement of License.

A licensed individual sanctioned under Section 6:

- Option 1 [(a) May be entitled to reinstatement of his or her license to conduct a licensed occupation upon successful completion of an alcohol and other drug

treatment program in which the individual is required to participate pursuant to [Model Criminal Justice Treatment Act.]

Option 2 [(a) May be entitled to reinstate of his or her license to conduct a licensed occupation upon successful completion of a court-ordered alcohol and other drug treatment program. The court shall:

- (1) Order an assessment to be conducted by an assessment program as defined by the [single state authority on alcohol and other drugs] to determine the sanctioned individual's needs regarding substance abuse or addiction treatment;
- (2) Order the sanctioned individual to participate in a treatment program recommended by the assessment program;
- (3) Designate a treatment program as defined by the [single state authority on alcohol and other drugs] to provide treatment to the sanctioned individual.

Nothing in this [Act] shall prevent a designated treatment program from refusing a referral under this [Act] if the program deems the person inappropriate for admission. In addition, a treatment program has the right to immediately discharge any person who fails to comply with the program rules and treatment expectations or who refuses to constructively engage in the treatment process.]

(b) Shall be entitled to reinstatement of his or her license to conduct a licensed occupation upon the reversal of a conviction for a violation listed in Section 5(b), if the conviction was the sole reason for the suspension, restriction, or revocation. The [appropriate licensing authority] shall reinstate the appropriate license within [ten] days after notification of the reversal, and promptly notify the licensed individual of such reinstatement.

COMMENT:

This section underscores the Commission's recurring theme of building a cooperative relationship between the criminal justice and treatment systems. The criminal justice system supplies the necessary information for a license revocation or suspension. The revocation or suspension serves as leverage to motivate an individual to constructively participate in the treatment process. Through successful completion of a treatment program, the individual may obtain reinstatement of a license. Subsection (a) provides two treatment options.

The first applies in states which adopt the [Model Criminal Justice Treatment Act], while the second establishes a distinct assessment and treatment requirement for this [Act]. Reinstatement is expeditiously provided upon reversal of a conviction for a violation listed in Section 5(b).

Section 8. Administrative Procedures.

The administrative procedures for the implementation of this [Act] for each licensed occupation shall be governed by the appropriate provisions applicable to each licensing authority.

Section 9. Supplemental Powers.

The provisions of this [Act] shall be supplemental and not mutually exclusive. They do not preclude and are not precluded by any other provision of law. Nothing in this [Act] shall prohibit the licensing authority from establishing and implementing additional or more stringent sanctions for violations of the provisions listed in Section 5.

Section 10. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 11. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date]reference to specific date].

Model Tobacco Vending Machine Restrictions Act

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Model Tobacco Vending Machine Restrictions Act

Policy Statement

Most states ban the sale of tobacco products to those under the age of 18. However, tobacco vending machines allow adolescents the opportunity to purchase tobacco products without having to approach a salesperson or to ask an adult to buy tobacco products for them.

Eighteen states and a number of cities have banned or restricted the sale of tobacco through vending machines. Restrictions on tobacco vending machines either limit where such machines may be placed or ban them from certain places. Most of the current state statutes restrict vending machines to areas that fall under the supervision of an adult or to other areas where adults are more likely to frequent than adolescents, such as workplaces. These restrictions appear to rely on the intercession and monitoring of the machines by adults. With this legislation, based on a statute from the state of Hawaii, the Commission intends to go a step further, removing the responsibility of tobacco vending machine monitoring itself from adult supervision. By placing such vending machines only in areas where the minimum age of admission is 18 years old, the Commission hopes to reduce the accessibility of such machines to those under the age of 18.

Clearly, tobacco vending machines are but one small part of the larger tobacco use and distribution problem. However, tobacco vending machines are one aspect of the tobacco problem that governments can regulate realistically and in a cost-effective manner. It certainly is easier to limit the placement of tobacco vending machines than to keep older parents, siblings, and friends from purchasing tobacco products for underage smokers.

This legislation makes it slightly more difficult for underage persons to obtain tobacco products. The Commission hopes that this measure will prevent some youths from beginning to smoke and encourage others who have already begun to quit. Prevention, education, and treatment programs are needed to lower tobacco use rates further.

Highlights of the Model Tobacco Vending Machine Restrictions Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that the vast majority of smokers (90 percent) begin to smoke before they turn 18 years old.
- Recognizes that more than 434,000 Americans died from health problems caused by smoking in 1988 alone.
- Recognizes that smoking is the number one cause of preventable death in the United States and is responsible for or contributes to approximately one-fifth of all deaths each year.
- Recognizes the cost of smoking-related illnesses and death to the nation, in terms of health care expenditures, lost hours of work due to smoking-related sicknesses and disease, and government costs.
- Provides for the state to produce and distribute warning stickers that shall be placed on every tobacco vending machine manufactured, owned, leased, or placed in the state.
- Provides penalties for those individuals and companies that violate this Act by placing vending machines, or allowing their placement, in unauthorized locations.

SPECIFIC RECOMMENDATIONS

- Prohibits the installation, placement, or authorization to place public cigarette vending machines, except where the vending machine is located in a bar, tavern, cabaret, club, or any other establishment in which the minimum age for admission is eighteen.

Model Tobacco Vending Machine Restrictions Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Tobacco Vending Machine Restriction Act."

Section 2. Legislative Findings.

(a) Ninety percent (90%) of all smokers begin to smoke before they turn 18 years old, according to the American Cancer Society.

(b) More than 434,000 Americans died in 1988 from health problems caused by smoking, according to the Centers for Disease Control. Smoking is the number one cause of preventable death in the United States and is responsible for or contributes to approximately one-fifth of all deaths each year.

(c) The federal government estimates that the cost of smoking-related illnesses and death to the nation is approximately \$65 billion each year in terms of health care expenditures, lost hours of work due to smoking-related sickness and disease, and government costs.

Section 3. Purpose.

This [Act] is intended to restrict the sale and accessibility of cigarettes and other tobacco products through public vending machines to minors under the age of 18.

Section 4. Definitions.

As used in this [Act]:

(a) "Vending machine" means a self-service device that can dispense cigarettes, cigars, tobacco, chewing tobacco, or any other product containing tobacco.

(b) "Cigarette" means any roll of tobacco wrapped in paper or in any substance not containing tobacco, or any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of

tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette.

Section 5. Prohibited Acts.

It is unlawful to install, place, or authorize the placement of a public vending machine for the purpose of selling cigarettes or other tobacco products unless the vending machine is located in a bar, tavern, cabaret, club, or any other establishment in which the minimum age for admission is eighteen.

COMMENT

In most states, the legal age for purchasing cigarettes is 18 years old. However, cigarette vending machines offer the opportunity for anyone to purchase cigarettes, regardless of age. Some state cigarette vending machine statutes allow the placement of vending machines in public places, provided they are under the supervision of an adult. It may be unreasonable to assume that an adult will supervise such machines at all times. Other state cigarette vending machine statutes allow the placement of vending machines in private locations, such as business workplaces. However, as more and more businesses become "smoke-free environments," such legislation may become obsolete, in that context.

The Commission believes that the sale of cigarettes from public vending machines should be prohibited unless the vending machine is located in an establishment in which the minimum age for admission is 18 years old.

There is ample evidence that delaying the onset of tobacco use reduces the likelihood that tobacco use will begin later in life. Given the hundreds of thousands of deaths per year due to tobacco related diseases and ailments, the tens of thousands of deaths per year due to second-hand tobacco smoke-related diseases, the Commission believes that any steps taken to reduce the availability of such products to underage smokers and smokers in general are beneficial to society.

Section 6. Warning Notifications.

The [state agency that enforces tobacco and other health-related issues] shall produce and distribute warning stickers that shall be placed on every tobacco vending machine manufactured, owned, leased, or placed in this state.

(a) The sticker should read: "It is a violation for this machine to be accessible in any manner to youths under the age of 18. Please report any violation to the [state agency that enforces tobacco and other health-related issues]" and should provide a phone number for such reporting. Similar messages reflecting the intent of this [Act] may be substituted, provided they are approved by the [state agency that enforces tobacco and other health-related issues].

(b) The sticker should be permanently and prominently affixed to all tobacco vending machines manufactured, owned, leased, or placed in this state.

COMMENT

The tobacco vending machine warning stickers will allow the enforcing agency to monitor the placement of any tobacco vending machine in the state as well as to encourage the general public to report any violations of this Act.

Section 7. Fines.

(a) A person who violates Section 5 shall be fined no less than [\$100] per day and no more than [\$1,000] per day for each violation. The fine(s) shall begin on the day of unlawful installation or placement of the vending machine that is the subject of the violation.

(b) A person who violates Section 6 in addition to Section 5 shall be fined no less than [\$200] per day and no more than [\$2,000] per day for each violation. The fine(s) shall begin on the day of unlawful installation or placement of the vending machine that is the subject of the violation.

(c) A person who violates only Section 6 shall be fined no less than [\$50] per day and no more than [\$500] per day for each violation. The fine(s) shall begin on the day of unlawful installation of the vending machine that is the subject of the violation.

COMMENT

The person, organization, or company that installs, places, or authorizes the placement of a tobacco vending machine, whether or not the person, organization, or company manages or otherwise controls the premises are liable for any violations of Section 5 and/or Section 6 of this [Act] and are subject to the fines described in this section. In addition, the owner of any premises upon which a tobacco vending machine is placed also is liable for any violations of this [Act] and is subject to the fines.

Section 8. Enforcing Agency.

The [state agency that enforces tobacco and other health-related issues] shall be responsible for the enforcement of this [Act] and shall promulgate all rules and regulations applicable thereto.

Section 9. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 10. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model K-12 Substance Abuse Instruction Act

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Model K-12 Substance Abuse Instruction Act Policy Statement

The development and implementation of a kindergarten through twelve grade substance abuse instruction curriculum is a critical component in the development and maintenance of drug-free schools. The Commission recognizes that schools and their students will not become alcohol- and drug-free simply through exposure to a substance abuse curriculum. Education must be a component of a broader community-based effort against alcohol and other drug abuse, including school policies against alcohol and other drugs, mass media campaigns, communitywide strategies, alternative programs, and workplace programs. But an alcohol and other drug education curriculum must be an important component of any multi-faceted strategy to combat alcohol and other drugs in the schools and among school children.

Research on school based preventive substance abuse education has not always demonstrated effectiveness of such efforts. Some education efforts were poorly designed, focusing on “scare tactics” or simply providing information about drugs. Many education efforts excluded alcohol and tobacco. Other education efforts were too broad, ignoring differences between subgroups of students, geographical differences, and different problems.

School-based substance abuse education programs that seem to hold promise recognize that alcohol and other drug abuse education must be taught beginning at an early age. However, at early ages, the emphasis must shape health-related attitudes and behaviors, not deal exclusively with alcohol and other drugs. Promising approaches also reflect an understanding that alcohol and other drug use occurs in settings far removed from formal educational settings. The substance abuse education that students receive in the classroom must reflect the reality of those settings, including the influences of peers, parents, surroundings, and economics of the drug trade. The social skills needed to handle such influences can be taught and reinforced, particularly at older ages.

Substance abuse education continues to be needed. Recent surveys by the National High School Senior Survey and by PRIDE, Inc. indicate that the cycle of decreasing drug use by students may be ending as a trend towards increased drug use and dependence begins. In short, despite the national effort against drugs, drug abuse among students remains a persistent problem. Alcohol use continues to manifest itself not only in high rates of use and abuse, but in student accidents, injuries, poor school performance, and even deaths.

Substance abuse education programs can teach youths about alcohol and other drugs, and can impact social skills and problem solving skills to reject the social pressures to abuse alcohol and

other drugs. Such programs can draw parents and the community into a closer partnership to address the problems of alcohol and other drugs in a comprehensive, inclusive manner. That mission is as important today as it was five, ten, or twenty years ago.

This legislation impacts upon the education system by describing system mandates. However, it does not prescribe individual activities and programs to be undertaken by the local school districts. Alcohol and other drug abuse activities, programs, and instruction are left to the discretion of local school districts to better reflect local needs and concerns and to gain local support during the development of those programs.

This Act has six primary provisions. First, it mandates age-appropriate and developmentally-based K-12 substance abuse instruction. It does not institute occasional programs in the school auditorium, but rather, a sequential learning process involving all students throughout their kindergarten through high school education. Equally important, the alcohol and other drug abuse curriculum must be integrated throughout all appropriate areas of the school curriculum, emphasizing healthy bodies and minds instead of focusing on risks and problems.

Second, the legislation mandates collaboration between state level agencies as well as between their local level counterparts to develop such curricula. Third, it provides a process for implementation and guarantees effectiveness by requiring in-service training. This training, occurring at the state and the local level, insures that instructors are able and trained to implement the curriculum properly.

Fourth, the legislation strongly encourages the development of student assistance programs to aid students experiencing alcohol or other drug related problems. Fifth, the legislation strongly encourages the development of employee assistance programs to aid teachers, administrators, and staff with any alcohol or other drug related problems or other work-related problems. Finally, the Act builds in an evaluation component that measures the effectiveness and usefulness of the alcohol and other drug abuse curricula.

This legislation is based on a Pennsylvania state substance abuse education statute enacted in 1990. The Pennsylvania experience to date has been one of collaboration and community development. At the state level, the Pennsylvania law mandates collaboration of the various agencies involved in the development of alcohol and other drug curricula, including the state Department of Education and the state Department of Health. At the local level, the law mandates that local school districts work with local prevention agencies during the curriculum development.

Also, the law requires in-service training at the state and local levels to train staff to implement the substance abuse education and prevention curricula. That mandated state-level in-service training serves as a linkage vehicle. Community meetings have been held in locations throughout the state and have been attended by thousands of partners in the education process, including parents, teachers, law enforcement, prevention specialists, clergy, and community members.

With the training and the ideas that arose from such training, instructors have proven able to develop substance abuse lessons that are integrated within health and various other disciplines. English teachers have developed curriculum additions to literature units already in place. (For example,

some have examined the alcoholic Pap in *Huckleberry Finn* and government-dispensed Soma in *Brave New World*.) Alcohol and other drug abuse lessons have also been taught in social studies and government classes, drivers' education classes, and other disciplines.

A Pennsylvania English teacher summarized the effect of the Pennsylvania substance abuse instruction in this respect:

"We know that school does not take place in a sterile totally safe environment. We know that students bring what happens to them outside of school right into our classrooms. The addition of [the substance abuse] curriculum units to English classes helps open up some of those walls we sometimes construct to separate the "real world" from the classroom. Teachers who encourage student expression through writing and discussion often become aware of the fact that a student is in difficulty; we can then refer that student to the appropriate support personnel. Rather than force us to become drug and alcohol counselors, [the substance abuse instruction act] has probably made us better English teachers in a difficult world."

Through this model legislation, the Commission intends to replicate such successes elsewhere.

Highlights of the Model K-12 Substance Abuse Instruction Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that the incidences of student drug use are beginning to rise following a decade of declining usage.
- Recognizes the importance of providing comprehensive drug education and prevention programs to primary and secondary school students.
- Recognizes schools as an important point of intervention to help identify students with alcohol and other drug abuse problems and to refer them to appropriate counseling and treatment services.
- Recognizes the importance of role models in the development of drug-free students and recognizes the importance of detecting and referring to treatment adult school employees with alcohol and other drug problems.
- Provides that each school district develop and offer prevention and education programs on alcohol and other drug abuse to educate and inform parents of students about alcohol and other drug abuse, generally, and about the integrated substance abuse curriculum, specifically. School districts should develop incentives to encourage parental participation in these programs.
- Provides that the state develop curriculum guidelines for instruction on alcohol and other drug abuse and the laws governing their use and misuse.
- Provides that the state make available to all school districts in-service training programs based upon the instructional requirements and curriculum guidelines established by this Act.
- Provides that each school district give in-service programs on alcohol and other drugs for all instructors whose teaching responsibilities include courses of study in which mandated on-going alcohol and other drug abuse instruction is integrated.

SPECIFIC RECOMMENDATIONS

- Provides that each and every school student in the state, including private school students where allowable, shall receive mandatory instruction in alcohol and other drug abuse, including tobacco, in every year in every grade from kindergarten through grade twelve.
- Provides that such instruction be integrated within all appropriate curriculum requirements.
- Provides that the instruction:
 - Shall be developmentally-based;
 - Shall be sequential in method of study;
 - Shall encourage drug-free lifestyles; and
 - Shall communicate that the use of illicit drugs and the abuse of legally-obtained drugs is wrong.
- Provides, where constitutionally allowed, that each county loan to all students attending non-public schools within the county all educational materials developed pursuant to this Act for the instruction of public school students on the nature and effects of alcohol and other drugs.
- Provides that the [secretary of education] recommend to the legislature a plan to require and assist each school district in establishing and maintaining student assistance programs and employee assistance programs.
- Provides that the state develop a system for evaluating the effectiveness of the K-12 substance abuse curricula and educational programs each year.

Model K-12 Substance Abuse Instruction Act

Section 1. Short Title.

This provisions of this [Act] shall be known and may be cited as the "Model K-12 Substance Abuse Instruction Act."

Section 2. Legislative Findings.

(a) The September 1989 Presidential Education Summit set the goal for the nation to maintain safe, disciplined, and drug-free schools by the year 2000.

(b) Recent surveys of sixth through twelve grade students find that incidences of student drug use are beginning to rise, ending a cycle of declining student drug use during the late 1980s and early 1990s. A 1992-1993 survey of nearly 237,000 sixth through twelve grade students by Parents' Resource Institute for Drug Education (PRIDE), Inc., in particular, identified increasing marijuana and hallucinogen usage, mirroring results of recent National Institute on Drug Abuse surveys.

(c) The National Commission on Drug-Free Schools' 1990 final report, "Toward a Drug-Free Generation: A Nation's Responsibility," recommends: "All elementary and secondary school students in public and private schools should have available a comprehensive drug education and prevention program that includes a drug education curriculum, a student assistance program, and a system for referral to community drug treatment services."

(d) The National Commission on Drug-Free Schools also recommends that schools "provide adequate support programs for students and staff who need help combatting drinking and smoking problems."

(e) School age children are especially vulnerable to and influenced by the activities of predatory drug offenders and drug-using peers.

(f) Schools are one of the principal settings where young people are taught personal skills and information that will help them resist alcohol and other drug

abuse. Effective alcohol and other drug abuse instruction must begin during the primary grades and be sustained throughout the student's education.

(g) It is the policy of this state to encourage full involvement of the community in the development of the alcohol and other drug abuse curricula of each school district.

(h) Schools are an important point of intervention to help identify students with alcohol and other drug abuse problems and to refer them to appropriate counseling and treatment services. Efforts to address the problems of alcohol and other drugs in schools must enable students to seek help for their problems through student assistance programs, treatment services, and other avenues designed to foster safe and drug-free school environments and students.

(i) In recognition of the importance of good adult role models in the lives of students, all schools must be equipped to detect and refer to treatment adults with alcohol and other drug problems.

(j) The above policies are adopted as the policies of this state.

Section 3. Purpose.

This [Act] establishes mandatory integrated instruction in alcohol and other drug abuse issues for every school student in the state in every year and every grade from kindergarten through grade twelve. This [Act] also provides for the development of all alcohol and other drug abuse curricula by state and local school districts through consultation with appropriate resources and the use of in-service programs for instructors.

Section 4. Definitions.

As used in this [Act]:

(a) "Employee assistance program" means a worksite-based program using licensed employee assistance

professionals and designed to assist in the identification and resolution of health, behavioral, or productivity problems associated with employees impaired by personal concerns, including alcohol and other drugs, health, emotional, marital, family, financial, legal, stress, or other personal concerns that may adversely affect the employees' well-being or job performance.

(b) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(c) "Student assistance program" means a broad-based program involving a variety of school-based personnel. It is designed to assist in the identification and resolution of school-related problems associated with students who are affected by personal concerns, including, but not limited to: health, family, alcohol and other drugs, financial, legal, emotional, stress, and/or other concerns that may adversely affect student educational performance.

Section 5. Establishing an Integrated K-12 Substance Abuse Curriculum.

(a) Beginning with school year [] and each year thereafter, each [public] school student in the state shall receive mandatory instruction in alcohol and other drug abuse, including tobacco, in every year in every grade from kindergarten through grade twelve. The instruction shall be integrated within appropriate courses of study and shall be integrated into appropriate curriculum requirements as listed in [state education act].

(1) This instruction:

- (A) Shall be developmentally-based.
- (B) Shall be sequential in method of study.
- (C) Shall encourage drug-free lifestyles.
- (D) Shall communicate that the use of illicit drugs and the abuse of legally obtained drugs is wrong.

(2) School districts may use any appropriate public or private materials, personnel, and other resources in developing and implementing this program of instruction. The [single state authority on alcohol and other drugs] shall make available information about appropriate integrated curriculum materials upon request of a school district. In developing its

alcohol and other drug abuse instructional program, each school district shall consult with the [county] agency designated by the [single state authority on alcohol and other drugs] to provide alcohol and other drug abuse services in the school district's area.

(3) All curricula adopted by school districts should be approved jointly by the [single state authority on alcohol and other drugs] and the [state department of education] before implementation.

(b) Each school district is hereby authorized to develop and offer prevention and education programs relating to alcohol and other drug abuse to educate and inform parents of students about alcohol and other drug abuse, generally, and the integrated substance abuse curriculum, specifically. If a school district does develop such programs, the programs shall be developed in consultation with the [county] agency designated by the [single state authority on alcohol and other drugs] to provide alcohol and other drug abuse services in the school district's area. School districts shall also seek input from local law enforcement agencies. Such programs shall be offered at no cost to parents. School districts and the appropriate [county] agency should develop incentives to encourage parental participation in any prevention and education programs.

(c) The [director] of the [single state authority on alcohol and other drugs], in consultation with a committee comprised of the [secretary of education, prevention, treatment, and law enforcement officials], shall develop curriculum guidelines for instruction on alcohol and other drug abuse and the laws governing their use and misuse. These guidelines shall encourage the inclusion of the following elements where appropriate in the instruction:

- (1) Age-appropriate detailed factual information regarding the physiological, psychological, sociological, and legal aspects of substance abuse;
- (2) Detailed information regarding the availability of assistance for students and their families with alcohol and other drug dependency problems;
- (3) The goals of quality education as set forth in [state education act];
- (4) Development of skills needed to evaluate advertisements for and media portrayals of alcohol and other drugs of abuse, including tobacco products; and

(5) Detailed instruction on the need for and the role of lawful authority and law-abiding behavior, including interaction with members of the legal and justice community.

(d) Beginning with the [] school year and each year thereafter, the [state secretary of education], in consultation with the [director] of the [single state authority on alcohol and other drugs], shall make available, to all school districts and intermediate units, in-service training programs based upon the instructional requirements established in subsection (a) and the curriculum guidelines established in subsection (c). The training programs shall provide preparation for the teaching of mandated instruction in alcohol and other drug abuse. The in-service programs may use the [county] agencies designated by the [single state authority on alcohol and other drugs] or such other institutions, agencies, or persons as the [state secretary of education] deems appropriate, including law enforcement, treatment, and prevention specialists and programs.

(e) Beginning with the [] school year, each school district shall provide, as part of its in-service training, programs on alcohol and other drugs, including tobacco, for all instructors whose teaching responsibilities include courses of study in which mandated on-going instruction concerning alcohol and other drug abuse is integrated. To comply with this requirement, a school district may use the programs made available by the [department of education] or use other appropriate alternative programs.

[(f) The governing board of each [county] in which a nonpublic school is located shall have the authority and the duty to loan to all students attending nonpublic schools within the [county] all educational materials developed by either the [state department of education] and/or the [single state authority on alcohol and other drugs] pursuant to this [Act] for the instruction of public school students on the nature and effects of alcohol and other drugs, including tobacco. Local school boards need not expend funds that are not provided by either the federal or state government for drug education programs for the use or loan of these materials. A nonpublic school may use the in-service training programs made available by the [state department of education] through the [county].]

(g) On or before [], the [secretary of education] shall recommend to the legislature a plan to require and assist each school district in establishing and maintaining school-based programs that provide appropriate

on-going student assistance programs to students who experience problems related to the use, abuse, or distribution of alcohol and other drugs, including tobacco.

(h) On or before [], the [secretary of education] shall recommend to the legislature a plan to require and assist each school district in establishing and maintaining a program to provide appropriate on-going employee assistance programs for administrators, teachers, and all other school employees who have any contact with school students. Such a plan may involve the use of employee assistance program consortia to service schools and school districts with fewer employees.

(i) The [state department of education] shall develop a system for evaluating the effectiveness of the K-12 substance abuse curricula and educational programs each year. Such an evaluation may include, but need not be limited to:

- (1) Student alcohol and other drug use prevalence surveys;
- (2) Student alcohol and other drug knowledge and attitudes surveys;
- (3) Teacher and instructor surveys;
- (4) Evaluation of alcohol- and drug-related incidents involving school students;
- (5) Evaluation of counseling and student assistance program utilization and problem resolution;
- (6) Evaluation of student truancy and disciplinary records;
- (7) Accountability of funding to determine that funds are being spent as intended by this [Act]; and
- (8) Recommendations for refinements of the alcohol and other drug abuse curricula and/or teacher in-service instruction based on evaluation findings.

(j) On or before [], the [secretary of education] shall report to the [legislature, governor, and state board of education] concerning the [199_ - 199_] (past/current) school year activities of the [state department of education] pertaining to the provisions of this section and concerning proposed [199_ - 199_] (next) school year activities of the [department of education] pertaining to this section.

(k) The [state department of education] shall adopt rules and regulations necessary for the implementation of this section.

COMMENT

This [Act] is developed within the general context of the federal Drug-Free Schools and Communities Act of 1986. The federal Drug-Free Schools Act establishes programs of drug abuse education and prevention, coordinated with related community efforts and resources. This [Act] is a complementary piece of legislation. While the federal drug-free schools legislation emphasizes comprehensiveness and overall community involvement within the school framework, this [Act] specifically emphasizes the importance of school-based drug education, providing a clear mandate that each student receive instruction at every grade level in every year from kindergarten through twelfth grade, the inclusion of in-service program development and teacher training, and the development of student assistance programs and employee assistance programs.

The Commission recommends that all students in the state, including non-public school students, receive this mandatory instruction in alcohol and other drug abuse. However, in some states, this is not allowable under the state constitution. If this [Act] is applicable to non-public schools, subsection (f) is unnecessary. Where the application of this [Act] violates a state constitution, the state should make available and freely loan to any non-public school any educational or training materials developed in accordance with subsection (f) and the rest of this [Act].

Recognizing the important roles that student assistance and employee assistance programs can play in the development and maintenance of drug-free schools, this [Act] calls upon the [state department of education] to recommend to the state legislature a plan to assist each school district in establishing and maintaining such programs in schools within the state.

This [Act] also instructs the [state department of education] to monitor and evaluate the effectiveness of the K-12 alcohol and other drug abuse curricula and educational programs each year and to recommend refinements to the curricula based on those annual findings.

Section 6. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 7. Effective Date.

This [Act] shall be effective at least one year after its adoption to allow for proper planning and implementation of its sections and shall begin with the [reference to specific date] school year.

Appendix F

Statement of Sue Tiernan to the President's Commission on Model State Drug Laws

March 31, 1993 — Washington, DC

(Sue Tiernan, an English teacher at Henderson Senior High School, West Chester, Pennsylvania, spoke to the Commission about Act 211, a 1990 Pennsylvania law that required annual K-12 substance abuse education for all public school students. She offered the following testimony about the impact of such educational requirements from her perspective as a teacher.)

The Act 211 requirement that every school student receive instruction in alcohol, chemical and tobacco abuse in every grade K-12 meant, for us, adding drug/alcohol components to our English and Social Studies for 11th and 12th graders. At first we said, "Oh no, we are not drug/alcohol counselors. We teach literature. Yes, we do indeed have characters in our literature whose lives are ruined by chemical and alcohol abuse, but how are we to deal with these topics?"

In the past two years, we developed curriculum additions to literature units already in place. First, each work of literature was read by a counselor/health teacher; all references to chemical/alcohol/tobacco use were noted. Next, English teachers wrote activities and objectives with appropriate tasks, activities, and evaluation methods for each work of literature. We are now in the process of incorporating these units into our classrooms. We have worked with the alcoholic Pap in *Huckleberry Finn*, with government-dispensed Soma in *Brave New World*, with Holden Caulfield's substance abuse and dysfunctional behavior in *Catcher in the Rye*, with Willy Loman's dysfunctional family in *Death of a Salesman*, and with the alcoholic dissolution in *The Great Gatsby*. The beauty of this interdisciplinary approach to literature is that while we are discussing a character in a fictional situation, we are also allowing students the opportunity to bring to the classroom their own real world — to discuss it, to write about it, and to consider the realities of their choices.

Because 11th and 12th graders are 16, 17, and 18 years old, they are in fact dealing with drugs and alcohol every day of their lives in one way or another. We know that school does not take place in a sterile, totally safe environment. We know that students bring what happens to them outside of school right into our classrooms. The addition of Act 211 curriculum units to English classes helps open up some of those walls we sometimes construct to separate that "real world" from the classroom. Teachers who encourage student expression through writing and discussion often become aware of the fact that a student is in difficulty; we can then refer that student to the appropriate support personnel. Rather than force us to become drug/alcohol counselors, Act 211 has probably made us better English teachers in a difficult world.

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Model Intervention for Students with Substance Abuse Problems Act

Policy Statement

Education, prevention, and counseling services enable students with alcohol or other drug problems to better understand the disease of alcoholism and its attendant effects and take action to regain control of their lives. Services for such students can reduce the emotional and physical damage caused by their abuse and reduce the risk of future alcohol and other drug abuse.

However, some teachers, school administrators, and student assistance professionals may not feel willing to refer to professional care students with possible alcohol or other drug problems due to fear of legal actions for becoming involved.

This Act is intended to encourage teachers and school administrators to act in the best interest of their students when possible personal or family alcohol and other drug problems interfere with their education. This Act establishes a process through which teachers, school administrators, or student assistance professionals can help students with possible alcohol or other drug problems receive proper counseling, education, or treatment.

Should all of the confidentiality and procedural provisions be met, teachers, school administrators, and student assistance professionals shall qualify for protection from liability for acting in good faith to assist a student to receive substance abuse counseling or assistance.

The important roles of student assistance programs and professionals are highlighted in this Act. Student assistance programs assist in the identification and resolution of school-related problems that affect a student's school performance, including alcohol and other drug related problems. Student assistance professionals that direct such programs are specially trained to refer alcohol and other drug related cases to the necessary and relevant service providers for appropriate diagnosis, treatment, and assistance. For those schools that offer student assistance services, the student assistance professional can be an important link between the identification of alcohol or drug related problems and help for the troubled student. The Commission strongly encourages the development of student assistance programs.

This legislation primarily is directed towards students who are referred to counseling or treatment by teachers, school administrators, or student assistance professionals. A companion bill, the Model Preventive Counseling Services for Children of Alcoholics and Addicts Act, primarily is directed towards children who make self-referrals for preventive alcoholism and addiction counseling. However, neither piece of legislation is meant to exclude the other situation and it is intended that they should be considered in tandem.

Highlights of the Model Intervention for Students with Substance Abuse Problems Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that schools are an important point of intervention to help identify students with alcohol and other drug abuse problems and to refer them to appropriate counseling or treatment services.
- Recognizes that education, prevention, and counseling services can enable students with alcohol and other drug problems to better understand the diseases of alcoholism and addiction and their attendant effects and that such services can reduce the risk of future alcohol and other drug abuse.
- Recognizes that teachers, school administrators, and those who provide children's services can be deterred by a perception of possibly becoming criminally or civilly liable due to their good faith intervention on behalf of an alcohol or other drug abusing student.
- Recognizes that it is in the public interest to protect from liability teachers and school administrators who intervene on behalf of an alcohol or other drug abusing student and the student's family.
- Provides that the school student assistance professional notify the student's parent(s) about the alcohol and/or other drug abuse problem where appropriate and take appropriate action when information is learned about criminal activities of other drug-abusing or drug-distributing students or non-students that jeopardizes the safety of the school and its students.
- Provides, where a school does not have a student assistance professional, a procedure for teachers and school administrators to refer notice of a student alcohol and/or other drug abuse problem to a treatment program licensed by the [single state authority on alcohol and other drugs].
- Provides a limitation of liability for any teacher, school administrator, or student assistance professional who makes a report pursuant to this Act or participates in any resulting judicial proceeding.
- Provides confidentiality provisions in accordance with federal and state laws and regulations.

SPECIFIC RECOMMENDATIONS

- Provides a duty for teachers and school administrators to refer notice of a student alcohol and/or other drug abuse problem to the school student assistance professional, or notice of a student who appears to be affected by a parent's alcohol or other drug abuse problem.

Model Intervention for Students with Substance Abuse Problems Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Intervention for Students with Substance Abuse Problems Act."

Section 2. Legislative Findings.

(a) Schools are an important point of intervention to help identify students with alcohol or other drug abuse problems and to refer them to appropriate counseling or treatment services. Efforts to address the problems of alcohol and other drugs in schools must enable students to seek help for their problems through student assistance programs, treatment alternatives, and other avenues designed to foster safe and drug-free school environments and students.

(b) Education, prevention, and counseling services can enable students with alcohol or other drug problems to better understand the diseases of alcoholism and addiction and their attendant effects. Services for such students can reduce the emotional and physical damage caused by their abuse and reduce the risk of future alcohol and other drug abuse.

(c) The willingness of teachers, school administrators, and those who provide children's services to refer to professional care students with possible alcohol and other drug problems can be deterred by a perception that they put personal assets and careers at risk with the possibility of criminal or civil liability arising from their involvement.

(d) The contributions of teachers and school officials are diminished when such perceptions compromise their willingness to make or become involved in student and family alcohol and other drug problem referrals.

(e) It is in the public interest to protect from liability the teachers or school administrators who exercise their right and duty to act in the best interest of the student and his or her family, absent willful or wanton misconduct on the part of the teacher or school administrator.

Section 3. Purpose.

The provisions of this [Act] are intended to encourage teachers and school administrators to act in the best interest of their students when possible personal or family alcohol and other drug problems interfere with their education. This [Act] establishes a process through which teachers, school administrators, or student assistance professionals can help students with possible alcohol and other drug problems find proper counseling, education, or treatment.

Section 4. Definitions.

As used in this [Act]:

(a) "Alcohol and other drug abuse problem" means any pattern of alcohol and/or other drug use causing impairment in school or social functioning, or that produces physiological dependency evidenced by physical tolerance or withdrawal.

(b) "Parent(s)" means a biological or adoptive parent, or a legal guardian or other person authorized under state law to act in the minor's behalf.

(c) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(d) "Student assistance professional" or "qualified student assistance professional" means an individual who is professionally qualified through appropriate training and experience to provide school-based student assistance services. The student assistance professional is also trained to refer cases to the necessary and relevant service providers for appropriate diagnosis, treatment, and assistance.

(e) "Student assistance program" means a broad-based program involving a variety of school-based personnel. It is designed to assist in the identification and resolution of school-related problems associated with students who are affected by personal concerns, including, but not limited to: health, family, alcohol and

other drugs, financial, legal, emotional, stress, and/or other concerns that may adversely affect educational performance.

(f) "Willful and wanton misconduct" means conduct that is committed with an intentional or reckless disregard for the safety of others or with an intentional disregard of a duty necessary to the safety of another or another's property.

Section 5. Duty to Report.

(a) Whenever any teacher or school administrator with reasonable cause suspects or believes that a child enrolled in the school has an alcohol and/or other drug abuse problem, it is the duty of that teacher, school administrator, or school employee to refer notice of the student's problem to the school student assistance professional. This referral should include as much pertinent information as possible to better enable the student assistance professional to adequately address the problem.

(b) Whenever any teacher or school administrator with reasonable cause suspects that a student is being adversely affected by a parent's alcohol and/or other drug abuse problem, it is the duty of that teacher or school administrator to refer notice of the student's problem to the school's student assistance professional. This referral should include as much pertinent information as possible to enable the student assistance professional to adequately address the problem.

COMMENT

This section establishes for teachers and school administrators a duty to report possible student substance abuse problems to the school student assistance professional. The purpose is to insure that teachers and school administrators intervene on behalf of the student as quickly as possible to allow for timely professional intervention, support, and services.

Section 6. Duties of the Student Assistance Professional.

Once notice of a possible student alcohol or other drug problem has been referred to the student assistance professional, the student assistance professional shall, in addition to his or her professional duties:

(a) Notify the student's parent(s) about the problem, except where the student assistance professional rea-

sonably determines in good faith and based upon independent evidence that such notification would jeopardize the well-being of the student; and

(b) Take appropriate action, in consultation with the school principal, when information is learned about criminal activities of other drug-abusing or drug-distributing students or non-students that jeopardize the safety or well-being of the school, its student body, and its employees.

COMMENT

As part of the student assistance professional's responsibilities, he or she generally will seek the involvement of parent(s) or family member(s) in any counseling of or problem resolution relating to the student. However, in certain circumstances, the student assistance professional may determine that parental notification may jeopardize the well-being of the student.

The student assistance professional shall also take appropriate action, in consultation with the school principal, in situations where information about criminal activities of other drug-involved students that jeopardizes the safety or well-being of the school, its student body, and its employees becomes known.

There is inherent tension between confidentiality statutes concerning the alcohol and other drug records of students and a parent's or family member's desire to know that a child has an alcohol and other drug problem and is seeking or engaging in counseling or treatment. Confidentiality issues — particularly whether parents have a right to access their child's student assistance program files — should be discussed, determined, and publicized before the student assistance program is established in a school.

Section 7. Duties of Schools, Teachers, and School Administrators in the Absence of a Student Assistance Professional.

Where the school does not have a qualified student assistance professional on staff:

(a) The school shall establish and maintain a written referral agreement with one or more alcohol and other drug treatment programs licensed by the [single state authority on alcohol and other drugs] in that school's county or local jurisdiction.

(b) The school shall provide information concerning such programs to all teachers, administrators, or other school employees annually.

(c) Whenever any teacher or school administrator with reasonable cause suspects or believes that a child enrolled in the school has an alcohol and/or other drug abuse problem, it is the duty of the teacher, school administrator, or other school employee to refer notice of the student's problem to a treatment program from the list provided by the [single state authority on alcohol and other drugs], and to notify the principal or his or her designee of this referral.

(d) The treatment program to which notice of the student's problem was referred should inform the student's parents of the problem, except where the program reasonably determines in good faith and based upon independent evidence that such notification would jeopardize the well-being of the child.

(e) Whenever any teacher or school administrator with reasonable cause suspects that a student is being adversely affected by a parent's or other family member's alcohol and/or other drug abuse problem, it is the duty of that teacher or school administrator to refer notice of the student's problem to a treatment program from the list provided by the [single state authority on alcohol and other drugs], and to notify the principal or his or her designee of this referral.

(f) The treatment program to which notice of the student's problem was referred in accordance with subsection (e) shall seek parental or family involvement in the student's counseling and/or treatment. Such involvement shall be sought only with the written consent of the student and in conformity with the confidentiality requirements of this [Act] and the [Model Preventive Counseling Services for Children of Alcoholics and Addicts Act], found in Volume V, Drug-Free Families, Schools, and Workplaces. Parental or family involvement shall not be sought where the program reasonably determines in good faith and based upon independent evidence that such notification would jeopardize the well-being of the student.

COMMENT

This section establishes a process through which students with possible substance abuse problems can be referred to appropriate resources in the absence of a school student assistance professional. A state licensed treatment program will be able to make an initial assessment of the student's situation, provide education or treatment, or refer the case to an appropriate facility for resolution.

Again, parental or family member involvement in the

counseling or treatment process is generally sought, except in circumstances where such involvement jeopardizes the well-being of the student.

Section 8. Duties of the [Single State Authority on Alcohol and Other Drugs].

The [single state authority on alcohol and other drugs] is annually required to:

(a) Provide to every school in the state lists of relevant local or county licensed treatment programs that are qualified to receive students who have been identified in Section 7(b) and (d).

(b) Notify local or county licensed treatment programs of the provisions of this [Act].

Section 9. Limitation of Liability for School Employees.

Any teacher, school administrator, or student assistance professional making a report pursuant to this [Act] or participating in any resulting judicial proceeding shall be presumed to be acting in good faith. A teacher, administrator, or professional found to have acted in good faith in compliance with this [Act], and absent willful or wanton misconduct, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of actions taken pursuant to this [Act]. Similarly, any student assistance professional or qualified professional who provides in accordance with this [Act] any preventive alcoholism or addiction counseling, education, or treatment to a student who has been referred to his or her care shall be rebuttably presumed to be acting in good faith. A professional found to be acting in good faith in compliance with this [Act], and absent willful or wanton misconduct, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

COMMENT

This section provides immunity from liability for any teacher or school administrator who in good faith assists or enables a child to access counseling, education, or treatment resources. The same immunity from liability is extended to any student assistance professional who provides such counseling in good faith. This immunity is extended to those individuals in order to encourage proper, good faith intervention on behalf of children of alcoholics or addicts or alcohol and/or drug abusing students.

Section 10. Confidentiality.

(a) The identity of a student, his or her records, and all other information maintained in connection with the provision of referral services, counseling, education, or treatment shall be confidential and may not be disclosed except in compliance with the federal and state laws and regulations mandating confidentiality of the records of alcohol and drug abuse patients, insofar as the information pertains to the individual student.

(b) Pursuant to Sections 5 and 7, the reporting of an alcohol- or other drug-involved student to a student assistance professional, school administrator, or licensed treatment program shall not constitute a breach of confidentiality. Similarly, the reporting of parental alcohol or other drug use or abuse, abusive behavior towards the student related to alcohol and other drug use, or neglect of the student related to alcohol or other drug use to a student assistance professional, school administrator, or licensed treatment program shall not constitute a breach of confidentiality.

(c) A principal shall take appropriate action when information is learned about the criminal activities of other drug-abusing or drug-distributing students or non-students that jeopardize the safety or well-being of the school, its student body, and its employees. Such reporting of information related to the criminal activity of others shall not constitute a breach of confidentiality.

Section 11. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 12. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model State Safe Schools Act

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Model State Safe Schools Act

Policy Statement

All students, teachers, and administrators have a compelling right to learn and work in a safe environment — one that is conducive to education and free from drugs, weapons, and violence. In order to preserve such an environment, school officials have a substantial interest in maintaining discipline in the classroom and on the school grounds.

This Act, modeled after legislation from the state of Hawaii, is designed to ensure that school officials have the broad authority, consistent with constitutional requirements, to maintain order and to protect the rights and safety of school children. In particular, this Act codifies the search and seizure provisions of the U.S. Supreme Court decision in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). The general rule established by the Supreme Court in *T.L.O.* authorizes that school officials may conduct a search of a student and his or her personal effects, provided that the manner in which the search is conducted is reasonable in its scope, intensity, and duration.

School officials are authorized to search a student and his or her effects if they learned that the student was carrying a weapon, was involved in drug distribution, or otherwise was engaging in behavior that threatened the safety or well-being of the student body, teachers, and school employees. While the rights of the student's privacy must be respected, the rights and safety of the school community at large must be protected as well.

This Act requires an appropriate state educational authority, working in consultation with appropriate law enforcement authorities, to establish rules and regulations to implement the general search and seizure policy. This Act does not seek to impose any mandates governing the conduct of local school officials. Rather, this Act leaves the development and implementation of such rules and regulations to state education officials and requires only that any rules or regulations governing searches conducted by school officials not be more restrictive than the constitutional standard of reasonableness outlined by the Court in *T.L.O.* In doing so, this Act recognizes that the United States Supreme Court has already carefully balanced the constitutional rights of students against the need for school officials to maintain order and discipline and to ensure the safety of all students.

Finally, this Act allows students who have voluntarily surrendered any drugs, drug paraphernalia, or alcohol to a public school official and sought treatment or counseling on their own initiative not to be referred to law enforcement. This amnesty provision, based on the New Jersey Attorney General's Executive Directive Concerning Law Enforcement Operations On or Near School Property, is designed to provide students with an avenue through which to seek assistance for their alcohol and other drug problems, not to identify and punish them for seeking help. As with other statutes offered by the Commission, this amnesty provision underscores the Commission's intent to confront the problems of alcohol and other drug abuse and to develop meaningful solutions.

Highlights of the Model State Safe Schools Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that the eventual success of the state's long term efforts to address this national problem will depend in large measure on programs and initiatives designed to reduce the demand for alcohol and other drugs.
 - Recognizes that schools are one of the principal settings where young people are taught personal skills and information that will help them resist the temptation of drugs. For efforts to provide appropriate drug education curricula to be more effective, schools must become safe havens free from the influence of drugs and violence.
 - Recognizes that schools also are an important point of intervention to help identify students with alcohol or other drug abuse problems and to refer them to appropriate treatment services.
 - Recognizes a need for the continuation, institutionalization, and enhancement of the spirit of cooperation that exists between professional educators and law enforcement officials with respect to alcohol and other drug problems.
 - Recognizes that law enforcement officers must recognize and respect the proper role of school officials and administrators to provide for the safety and discipline of students in their charge.
- There are reasonable grounds to suspect that the search will reveal evidence that the public school student has violated or is violating either the law or the student conduct code; and
 - The manner in which the search is conducted is reasonably related to the purpose of the search and not excessively intrusive in light of the age, sex, or race of the public school student and the nature of the suspected offense.
- Provides that the [state board of education] establish rules and regulations, drafted in consultation with the [state attorney general, county prosecutors, or other appropriate law enforcement officials], to implement the school search and seizure provisions.
 - Provides a limitation of liability for any school official who participates in a search or seizure pursuant to this Act or who participates in any resulting judicial proceeding as long as the official acted in good faith.
 - Provides that no evidence seized or obtained by a public school official acting independently of a law enforcement agency or officer be suppressed in any criminal or juvenile delinquency proceeding unless such suppression is required by law.
 - Provides that a school official turn over any drugs, drug paraphernalia, or alcohol seized during a school search to the appropriate local law enforcement agency.
 - Provides an opportunity for students to voluntarily surrender drugs, drug paraphernalia, or alcohol to public school officials and to seek alcohol or other drug treatment or counseling.

SPECIFIC RECOMMENDATIONS

- Authorizes that a public school official may conduct a search of the person and the personal effects of a public school student, on school premises or during [local board of education] supervised activities, provided that:

Model State Safe Schools Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model State Safe Schools Act."

Section 2. Legislative Findings.

(a) The state seeks to address the problems of alcohol and other drug abuse in a comprehensive, multi-disciplinary manner. Although efforts must continue to reduce the supply and availability of drugs, the eventual success of the state's long term efforts to address this national problem will depend in large measure on programs and initiatives designed to reduce the demand for alcohol and other drugs.

(b) School age children are especially vulnerable to and influenced by the activities of predatory drug offenders and drug-using peers.

(c) Schools are one of the principal settings where young people are taught personal skills and information that will help them resist the temptation of drugs. For efforts to provide appropriate drug education curricula to be more effective, schools must become safe havens free from the influence of drugs and violence.

(d) Schools also are an important point of intervention to help identify students with alcohol or other drug abuse problems and to refer them to appropriate treatment services. Efforts to address the problems of alcohol and other drugs in schools must enable students to seek help for their problems through amnesty programs, student assistance programs, treatment alternatives, and other avenues designed to foster safe and drug-free school environments and students.

(e) School age citizens of this state have a fundamental right to the advantages of a school environment that is conducive to educational goals and prerogatives and totally free of alcohol and other drug abuse, drug trafficking activities, and violence.

(f) The most effective and efficient response to alcohol and other drug problems in the schools requires pro-

fessional educators and law enforcement officials to coordinate their efforts to address the problems and secure the benefits of safe and drug-free schools. There is a demonstrated need for the continuation, institutionalization, and enhancement of the spirit of cooperation that exists between professional educators and law enforcement officials with respect to alcohol and other drug problems.

(g) Law enforcement officers are required by law to use all reasonable diligence in apprehending and prosecuting offenders against the law. They must also act in a manner designed to promote and safeguard a school environment that is conducive to education. However, law enforcement officers must recognize and respect the proper role of school officials and administrators to provide for the safety and discipline of students in their charge.

Section 3. Purpose.

This [Act] authorizes the [state board of education] to establish uniform statewide policies and procedures for school officials to cooperate with law enforcement operations and activities on or near school grounds to ensure a safe school environment. This [Act] further authorizes the [state board of education] to identify the circumstances under which school officials shall refer suspected violations to local law enforcement agencies for handling, pursuant to rules and regulations to be issued by local school districts.

Section 4. Definitions.

As used in this [Act]:

(a) "Drugs" means controlled substances, as defined in [state controlled substances act].

(b) "Drug paraphrenalia" means paraphrenalia, as defined in [state controlled substances act or drug paraphrenalia act].

(c) "Public school official" means any administrator, counselor, teacher, or employee of a [local board of education], or a person who is a volunteer in a school program, activity, or function established, sanctioned, or approved by a [local board of education], or a person hired by a [local board of education] on a contractual basis and engaged in carrying out an educational function.

(d) "Public school student" means any person attending public school classes, including summer school, in grades kindergarten through twelve, that are operated by a [local board of education], or any person attending programs operated by or under the purview of a [local board of education].

(e) "Student conduct code" means conduct prohibited by [state board of education] administrative rules, or rules established by an appropriate local school authority.

Section 5. Standards for Public School Search and Seizure.

(a) Except as otherwise provided by law, a public school official may conduct a search of the person and the personal effects of a public school student, on school premises or during [local board of education] supervised activities, provided that all of the following conditions are met:

(1) Based on the attendant circumstances at the time of the search, there are reasonable grounds to suspect that the search will reveal evidence that the public school student has violated or is violating either the law or the student conduct code; and

(2) The manner in which the search is conducted is reasonably related to the purpose of the search and not excessively intrusive in light of the age, sex, or race of the public school student and the nature of the suspected offense.

(b) The [state board of education] shall establish rules and regulations, drafted in consultation with the [state attorney general, county prosecutors, or other appropriate law enforcement officials], to implement the provisions of subsection (a).

(c) The [state board of education] shall not establish procedures concerning searches and seizures that are more restrictive than required by the minimum standards set forth in this section or pursuant to the Constitution of the United States or this state, and nothing

in this [Act] shall be construed to prohibit a search or seizure otherwise authorized or permitted under the Constitution of the United States or this state.

COMMENT

The purpose of this section is to codify the search and seizure provisions of the U.S. Supreme Court decision in *New Jersey v. T.L.O.* See *New Jersey v. T.L.O.*, 469 U.S. 325, 331 and 334 (1985). In *T.L.O.*, the United State Supreme Court held that the Fourth Amendment prohibition against unreasonable searches and seizures applies to searches conducted by public school officials. While the Court's decision thus imposes limitations on the conduct of public school officials, the Court also recognized that these officials have both the authority and the responsibility to maintain order and discipline within the school environment.

All students, teachers, and administrators have a compelling right to work and learn in a safe environment — one that is conducive to education and free from drugs and violence. In order to preserve such an environment, school officials have a substantial interest in maintaining discipline in the classroom and on the school grounds. The Supreme Court further recognized that maintaining order and discipline in the classroom has never been an easy task, especially in view of the recent proliferation of drugs and violence that has troubled so many schools in the nation. Even in schools that have been spared the most serious disciplinary problems, the preservation of order and a proper educational environment often requires close supervision of school children.

This section is designed to ensure that school officials have the broad authority, consistent with constitutional requirements, to maintain order and to protect the rights and safety of school children to the greatest extent possible. This section is designed to further one of the principal goals of the [Act]: to make certain that schools become "safe havens" where children can learn and play free of the disruptive influence of drugs and violence.

Specifically, subsection (a) codifies the general rule established by the Supreme Court in *T.L.O.* that school officials are authorized to conduct a search provided that the manner in which the search is conducted is reasonable in its scope, intensity, and duration.

Subsection (b) requires an appropriate educational authority, working in consultation with appropriate law enforcement authorities, to establish rules and regula-

tions to implement the general search and seizure policy established in subsection (a). As noted in the *T.L.O.* decision, the legality of a search conducted by school officials depends on the reasonableness of the search under all of the attending circumstances. The cornerstone of reasonableness, moreover, is rudimentary common sense. Although it is not possible in a statute to define the contours of common sense with precision, it is both possible and desirable through the rule making process to provide meaningful guidelines with which to assist school officials in complying with the requirements of the Fourth Amendment. These guidelines should help educators in balancing students' Fourth Amendment rights as against the legitimate and compelling need to preserve order, discipline, and safety within the school environment.

Subsection (c) confirms that this [Act] is designed simply to codify the basic principles established in the *T.L.O.* decision. Accordingly, this subsection makes clear that any rules or regulations governing searches conducted by school officials and promulgated pursuant to subsection (b) should not be more restrictive than the constitutional standard of reasonableness outlined by the Court in *T.L.O.* This provision recognizes that the United States Supreme Court has already carefully balanced the constitutional rights of students against the need for school officials to maintain order and discipline and to ensure the safety of all students. In the circumstances, it would be inappropriate as a matter of state policy to prohibit by statute or rule conduct by school officials that would meet the constitutional test of reasonableness.

Despite the Supreme Court ruling in *T.L.O.*, state legislatures can make it more difficult for school officials to conduct search and seizures by codifying specific, more restrictive regulations. This section seeks to limit such restrictions.

Section 6. Limitation of Liability for School Officials.

Any public school official participating in a search or seizure pursuant to this [Act] or participating in any resulting judicial proceeding shall be presumed to be acting in good faith and, if found to have acted in good faith and in compliance with this [Act], shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of actions taken pursuant to this [Act].

COMMENT

This section provides immunity from liability for any public school official who in good faith participates in a school search or seizure. This immunity is extended to those individuals in order to encourage proper, good faith intervention in order to uphold the school's rules and code of conduct as well as to protect the safety and interests of the school's student body.

Section 7. Admissibility of Evidence.

No evidence seized or obtained by a public school official acting independently of a law enforcement agency or officer shall be suppressed in any criminal or juvenile delinquency proceeding unless such suppression is required by the Constitution of the United States or this state.

COMMENT

In *New Jersey v. T.L.O.*, the United States Supreme Court chose not to decide whether the exclusionary rule should apply to the fruits of unlawful searches conducted by school officials. See, *New Jersey v. T.L.O.*, 469 U.S. at 333, n. 3. This section makes clear as a matter of state legislative policy that any evidence of a crime found during an unlawful search conducted by school officials should not be suppressed or excluded from any resulting criminal prosecution or juvenile delinquency proceeding.

Where a school official conducts a search on his or her own authority and independently of law enforcement, the purpose of the search would not be to secure evidence for use in a criminal prosecution. Rather, the search would have been based on the independent authority of the school official to enforce the student conduct code and to maintain order and discipline within the school environment. This would be true even where the school official is required to turn over any seized drugs or drug paraphernalia to law enforcement authorities pursuant to Section 8.

In the circumstances, the underlying reason for the exclusionary rule, to deter law enforcement misconduct, would simply be inapplicable. In other words, the threat of the exclusion of evidence in a criminal proceeding would not be rationally related to the school official's motivation for conducting the search, and would therefore serve no benefit. It should be noted, however, that this section would not preclude the exclusion of evidence in a criminal prosecution or juvenile delinquency proceeding where that remedy is held to be required under the state or federal constitution.

Section 8. Evidentiary Chain of Custody of Seized Illegal Substances.

Except as otherwise provided in Section 9 of this [Act]:

(a) Pursuant to guidelines to be issued by the [state board of education], whenever a public school official seizes, is given, or comes upon any substance or item believed to be a drug, drug paraphernalia, or alcohol, the public school official shall immediately advise the appropriate local law enforcement agency and shall secure the substance or item pending the response by that law enforcement agency to retrieve and take custody of it. Public school officials having temporary custody of the substance or item must take reasonable precautions, as per [local board of education] procedures, to prevent its theft, destruction, or use by any person. Under no circumstances shall any person destroy or otherwise dispose of any drugs, drug paraphernalia, or alcohol except by turning over such materials to the responding law enforcement officer.

(b) Following the seizure of any drugs or drug paraphernalia discovered during the course of a search conducted by a public school official, the official shall provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure, including the identity of any person from whom the substance or item was obtained.

COMMENT

All drugs, drug paraphernalia, and alcohol seized by public school officials must be turned over to law enforcement officials for processing, evidentiary purposes, and eventual disposal. This is done to effect any investigation of illegal activities as well as to insure the proper collection, identification, and destruction of illicit substances seized.

Section 9. Opportunity for Alcohol or Other Drug Abusing Students to Seek Assistance.

Notwithstanding the provisions of Section 8 of this [Act]:

(a) A public school official shall not be required or expected to refer a violation of the [state controlled substances act] to law enforcement in instances where a student has voluntarily surrendered drugs, drug paraphernalia, or alcohol to a public school official and sought treatment or counseling on his or her own initiative in accordance with the policies and procedures set forth in the guidelines issued by the [state board of

education]. Where a student has voluntarily surrendered drugs, drug paraphernalia, or alcohol to a public school official and has sought alcohol or other drug treatment or counseling on his or her own initiative in accordance with the policies and procedures set forth in the guidelines issued by the [state board of education], the public school official shall not be required or compelled to provide the identity of the student to law enforcement authorities, provided that the student was not involved in drug distribution activities. Nothing in this subsection shall be construed to effect the duty established pursuant to Section 8(a) to turn over the surrendered drugs, drug paraphernalia, or alcohol to law enforcement.

(b) An admission by a student of a violation of the [state controlled substances act], or the act of surrendering drugs, drug paraphernalia, or alcohol, shall not be deemed to be voluntary within the meaning of subsection (a) if it is in response to questioning initiated by a law enforcement officer or public school official, or is motivated, in whole or in part, by circumstances that increase the probability of detection or apprehension. Such circumstances may include, but are not limited to, a belief that the drugs, drug paraphernalia, or alcohol would be discovered during an imminent or anticipated search to be conducted by a law enforcement officer or public school official.

(c) Public school officials shall not provide information concerning the identity of the student from whom drugs or drug paraphernalia was obtained, where the material was turned over to a counselor in the course of or as a result of diagnosis, counseling, or treatment. In addition, information concerning the identity of the student shall not be revealed where the person voluntarily and on his or her own initiative turned over the material to a public school official, provided the student was not involved in distribution activities and the student agrees to participate in an appropriate counseling or treatment program.

COMMENT

Nothing in this section is intended to supersede or take precedence over federal or state confidentiality laws or regulations, to the extent that they apply. Communications between a student and a student assistance professional, for example, remain confidential, as provided for by federal and state confidentiality laws. However, such confidentiality laws may not apply to many of the situations described in this section and this [Act].

Under this section, public school officials still have a duty to turn over drugs or drug paraphernalia to law enforcement for proper disposal, whether they have been surrendered to school officials or seized during a search or investigation. However, the disposal of surrendered drugs or drug paraphernalia that have been turned over to law enforcement should be considered an incidental goal to encouraging or enabling drug abusing students to receive counseling or treatment. The primary purpose of this section is to provide students with an avenue through which to seek assistance for their problems, not to identify and punish students who are seeking help for their drug problems.

This section is not intended to be an evidence disposal mechanism for drug distributing students. Every effort should be made to inform students that this provision applies only to those individuals who voluntarily turn over drugs or drug paraphernalia while seeking assistance for problems associated with their drug involvement.

In subsection (b), some of the language used has been taken from the Model Penal Code formulation of "renunciation." That doctrine allows a person who has attempted to commit a crime to avoid criminal liability by renouncing the purpose to commit the crime. This must be done wholly of the individual's own volition and not in response to the threat of imminent detection or apprehension. See Model Penal Code, Section 5.01.

Section 10. Rules and Regulations Ensuring Cooperation Between Local School Officials and Law Enforcement Officials.

The [state board of education], in consultation with the [state attorney general, county prosecutors, or other appropriate law enforcement officials], shall promulgate rules and regulations offering guidance for local school districts to develop policies and procedures that ensure a safe school environment, enhance cooperation and coordination between local public school officials and law enforcement, and identify the circumstance under which public school officials shall refer violations to the police for handling. The policies and procedures shall address, but need not be limited to:

(a) The unlawful manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of any of the following:

(1) Drugs, as defined in [state controlled substances act];

(2) Drug paraphernalia, as defined in [state controlled substances act]; and

(3) Alcohol.

(b) The planning and conduct of law enforcement activities and operations occurring on school property, including arrest procedures and undercover school operations.

(c) The designation of liaisons to law enforcement agencies and the prescription of their roles and responsibilities by the district chief school administrator.

(d) Specific procedures for and responsibilities of public school officials in summoning appropriate law enforcement authorities onto school property for the purpose of conducting law enforcement investigations, searches, seizures, and arrests.

(e) Specific procedures for and responsibilities of public school officials in promptly referring information or physical evidence to law enforcement authorities concerning suspected violations of the [state controlled substances act].

(f) Specific procedures for and responsibilities of public school officials in cooperating with arrests made by law enforcement authorities on school property.

(g) Specific procedures for and responsibilities of staff in initiating or conducting searches and seizures of pupils, their property, and personal effects. All searches and seizures conducted by school staff shall comply with the standards required by Section 5 of this [Act] and by the United States Constitution or the state constitution.

COMMENT

The policies and procedures suggested in this section are based upon rules and regulations for safe and drug-free schools promulgated by the New Jersey State Board of Education.

By requiring the state [Board of Education] to promulgate such rules and regulations, the Commission intends to provide states with the flexibility to develop policies and procedures reflecting the concerns of those states and their localities. This section does not prescribe specific procedures for school searches, seizures, and cooperation with law enforcement agencies, but compels states to develop their own.

Also, by requiring consultation with various law enforcement agencies, this section intends to aid the development of the necessary cooperative relationships between the education and law enforcement communities.

Section 11. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 12. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Appendix H

(This model memorandum of understanding between education and law enforcement officials has been implemented in more than ninety percent of the school districts in the state of New Jersey by local and county law enforcement authorities and local school districts. It represents the end product of Section 10 of the Model State Safe Schools Act, which calls upon the state board of education to promulgate rules and regulations offering guidance for local school districts to develop policies and procedures that ensure a safe school environment and cooperation and coordination between local school officials and law enforcement. The rules and regulations should encourage the development of a memorandum of understanding similar to this model.)

Memorandum of Understanding Between Education and Law Enforcement Officials

Law Enforcement Activities Occurring on School Grounds and the Reporting of
Suspected Drug and Other Offenses by School Officials to Law Enforcement

PREAMBLE

Statement of Policies, Findings and Objectives

1. Recent History. In 1988, the Department of Law and Public Safety and the Department of Education issued a Model Agreement for use by local law enforcement and education officials. These agreements were eventually signed in every community across the State and documented the commitment by both professional communities to work together to address the State's drug problem as it relates to school-aged children. Since these agreements were first signed, there have been many new developments with respect to the scope and nature of the State's evolving drug and alcohol problem. Accordingly, the undersigned parties hereby recognize the need to update their memorandum of agreement and to reaffirm their commitment to work together as coequal partners in addressing these new and evolving problems.
2. Nature of the Problem. The predecessor memorandum of agreement was designed to ensure cooperation between law enforcement and education officials and ultimately to protect the educational environment. Recent events have made clear that the policies and procedures established in our earlier agreement should not be limited solely to the enforcement of New Jersey's controlled dangerous substance laws. We recognize in this regard that other offenses are occasionally committed on school property, during operating school hours or during school-related functions or activities. These offenses against persons or property may involve violence and the actual or threatened infliction of bodily injury, the unlawful use or possession of firearms or other dangerous weapons, arson or firesetting activities, vandalism and theft. It is understood and agreed that the

commission of serious offenses on school property, whether directed at students, school employees or school property, not only undermines the educational environment, but can directly endanger the safety and well being of members of the school community and thus requires an appropriate and decisive response.

3. Reasons for Special Concern. The parties to this memorandum of agreement are aware of and are concerned by recent events occurring in New Jersey and nearby New York City involving students who were found to be in unlawful possession of firearms and other deadly weapons and who brought such weapons onto school property. It is not our intention to cause undue alarm or to overstate the nature or magnitude of the problem. Nor is it our intention in any way to jeopardize the rights of students. To the contrary, we wish to emphasize that our goal is to safeguard the essential right of all students and school employees to enjoy the benefits of a school environment which is conducive to education and which is free of the disruptive influence of crime, violence, intimidation and fear. Accordingly, the parties to this agreement recognize the need to have in place policies and procedures to deal appropriately and decisively with these inherently dangerous and disruptive situations. It is our hope and expectation that by developing and publicizing the existence of clear policies, we can discourage the commission of serious offenses on school property and thereby protect the safety and welfare of all members of the school community. In developing these policies, it is understood that it is a crime for any person to knowingly have in his or her possession any firearm in or upon the buildings or grounds of any school without the written authorization of the governing officer of the institution. See N.J.S.A. 2C:39-5e. It is agreed and understood that this statute is designed to protect children and the educational environment, and that violations of this statute are especially serious matters which warrant a prompt referral to and response by law enforcement authorities. It is further understood that it is a crime in this State for any person to knowingly have in his or her possession any gravity knife, switchblade knife, dagger, billy, blackjack, metal knuckle, sling shot, cesti or ballistic knife, without having an explainable lawful purpose. See N.J.S.A. 2C:39-3e. Finally, it is understood that it is a crime for any person to dispose of any such weapon, or any firearm unless he or she is licensed or registered to do so. See N.J.S.A. 2C:39-9d.

4. Benefit of Referrals to Law Enforcement Authorities. It is understood that law enforcement officials have access to confidential information which may show that a juvenile offender has previously committed acts of delinquency outside of school property and about which school officials may therefore be unaware. These confidential law enforcement records may concern prior juvenile arrests, adjudications, dispositions, referrals to juvenile conference committees and stationhouse adjustments. For this reason, the failure by school officials to refer a suspected offense to law enforcement authorities may unwittingly prevent the professional actors within the juvenile justice system, including law enforcement and family court officials, from identifying and dealing appropriately with juvenile offenders, and may thus prevent these actors from taking those steps which are necessary and appropriate to intervene, to address the juvenile's problems in a timely fashion and to protect the public safety. In order to enable school officials to make a more informed decision as to whether to refer a suspected act of delinquency to law enforcement authorities, the parties to this agreement understand the need for and benefit of establishing procedures by which law enforcement officials can explain the workings of the juvenile justice system and the options, services and resources which are available through that system to respond to juveniles' needs. It is

thought that such ongoing dialogue will enable school officials to understand the likely consequences of a referral involving a given offense. It is also hoped that in this way, law enforcement and school officials can work to dispel many of the myths about the juvenile justice system, and to develop a better understanding of the resources available to address the needs of juveniles who enter into this system.

5. Anabolic Steroids. The parties to this agreement understand that in 1992, the New Jersey Commissioner of Health promulgated rules and regulations which classify anabolic steroids as Schedule III controlled dangerous substances. The parties to this agreement understand and recognize that the problem of the unlawful use of anabolic steroids is a particularly serious one with respect to school-aged children and that this problem is not limited to student athletes, but also involves students who use these especially dangerous substances to enhance their physical appearance. The parties to this agreement recognize that these substances often have profound, long term adverse side effects and that their unlawful use by children cannot be tolerated.

6. Alcohol Consumption. The parties to this agreement recognize that public attention has been focused on the problem of alcohol consumption on school property. The most recent survey of New Jersey's high school students confirms that alcohol continues to be by far the most commonly used substance by school-aged children. The parties to this agreement recognize and reaffirm that alcohol remains an illicit substance for underaged persons, and that alcohol offenses, especially those occurring on school property or during school-related activities, are serious matters which warrant a decisive and predictable response.

7. Law Enforcement Participation in Substance Abuse Prevention Programs. In recent years, a number of educational programs, such as D.A.R.E., D.A.D., McGruff ("Take a Bite Out of Crime") and similar programs have demonstrated that specially trained police officers can provide substance awareness, drug abuse resistance and crime prevention instruction which is effective and beneficial to students. The parties to this agreement recognize, however, that in providing and promoting such innovative instructional programs, education officials remain ultimately responsible for approving and monitoring all educational curricula. Local education officials also remain responsible for making certain that children receive the approved K-12 chemical awareness curricula in accordance with State law and rules, regulations and policies adopted by the State Board of Education and the Commissioner of Education.

Article 1 - Liaisons

The Union County Prosecutor's Office and the Plainfield Police Department will each designate a person or persons to serve as a liaison to appropriate local and county school officials. The Union County Superintendent of Schools and the Superintendent of Schools of Plainfield will similarly designate a person to serve as a liaison to the county prosecutor's office and to the respective local law enforcement agency. The roles and functions of these liaisons are to:

- Facilitate communication and cooperation;
- Identify issues or problems that arise in the implementation of this Agreement and facilitate the resolution of any such problems;
- Act as the primary contact person between the schools and the affected law enforcement agencies;

- Act together in developing joint training and other cooperative efforts, including information exchanges and joint speaking engagements, and
- Coordinate drug and alcohol abuse intervention and prevention efforts.

Article 2 - Law Enforcement Operations

A. Definitions. As used in this Agreement:

“Controlled Dangerous Substance” shall mean a drug, substance or immediate precursor as defined at N.J.S.A. 2C:35-2, and shall include controlled substance analogs. Pursuant to regulations adopted by the Department of Health, the term also includes anabolic steroids.

“Undercover School Operation” shall mean a planned operation undertaken by a law enforcement agency wherein a law enforcement officer(s) is placed in a school community and poses as a member of the school community for the purpose of identifying and eventually apprehending persons engaged in the illegal distribution of controlled dangerous substances or the unlawful use, possession or distribution of firearms or dangerous weapons.

“Planned Surveillance” shall mean a planned operation wherein a law enforcement officer(s) enters onto school property or buildings in plainclothes during operating school hours for the purpose of observing or participating in activities associated with the use, possession or distribution of any controlled dangerous substance or firearms or dangerous weapons. This term shall not include observations made by a law enforcement officer, whether in uniform or in plainclothes, from any place or property not owned by a school or school board.

“Routine Patrol” shall mean activities undertaken by a law enforcement officer whether in uniform or in plainclothes and whether on foot or in a marked or unmarked vehicle, to patrol areas within a drug-free school zone (see N.J.S.A. 2C:35-7) for the purposes of observing or deterring any criminal violations or civil disturbance.

“Planned Arrest” shall mean an arrest or taking into custody based upon probable cause which was known to a law enforcement officer sufficiently in advance of the time of the actual arrest, whether as a result of an undercover school operation, planned surveillance, or otherwise, so that there was sufficient opportunity for the arresting officer or any other law enforcement officer to apply for and obtain an arrest warrant, even though an arrest warrant may not have been sought or issued. The term shall also include arrests made pursuant to a “clean sweep” (i.e., e.g., multiple arrest) operation as prescribed by Guideline 5.4 of the Attorney General’s Statewide Narcotics Action Plan (SNAP).

“Spontaneous Arrest,” in distinction to a planned arrest, shall mean an arrest or taking into custody based upon probable cause to believe that an offense is being committed in the arresting officer’s presence under circumstances where the officer could not have foreseen with certainty that the specific offense would occur and thus where the arresting officer had no reasonable opportunity to apply for an arrest warrant. The term shall also include any arrest or taking into custody in response to a request by a school official pursuant to subsection G(1) of this Article.

“Operating School Hours” shall include the time in which a school is in session or when students are engaged in school-related activities under the supervision of professional school staff.

“Firearm” means any firearm within the meaning of N.J.S.A. 2C:39-1f, and includes any handgun, rifle, shotgun, machine gun or automatic or semi-automatic rifle regardless of whether such firearm is operable or loaded with ammunition.

“Deadly weapon” means any weapon within the meaning of N.J.S.A. 2C:39-1r, and includes any device readily capable of lethal use or of inflicting serious bodily injury, including but not limited to gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, blackjacks, bludgeons, metal knuckles, cesti or similar leather bands studded with metal filings or razor blades embedded in wood and any weapon or other device which projects, releases or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

B. Undercover School Operations.

1. Requests to Conduct Operations.

- a. All requests by school officials to undertake an undercover school operation in a particular school or school district will be directed to the local chief of police. However, it is understood that the ultimate approval of all undercover school operations can only be granted by the Union County Prosecutor.
- b. A request to undertake an undercover school operation will not be made public by either the requesting school official or the law enforcement agency receiving the request.
- c. The Union County Prosecutor will make a good faith effort to comply with all reasonable requests to initiate an undercover operation, considering the scope and nature of the substance abuse or weapons-related problem in the school or district and the availability of law enforcement resources.
- d. Where the Union County Prosecutor is for any reason unable to comply with a request to undertake an undercover school operation, the Union County Prosecutor will promptly notify the requesting school officials.
- e. The decision to decline a request to undertake an undercover school operation shall not be made public by either the requesting school official(s) or the law enforcement agency receiving the request.
- f. Nothing in this agreement shall be construed to preclude law enforcement officials from initiating a request to conduct an undercover school operation pursuant to Section 2 of this Article.

2. Consultation and Cooperation.

- a. As a practical matter, a successful undercover school operation cannot take place without the assent and continuing cooperation of the building principal and local school superintendent, and, except as may be expressly provided herein, none shall be attempted without such assent and continuing cooperation. Accordingly, prior to the placement of any undercover officer in a school, the school building principal and the local superintendent will be consulted unless there are compelling reasons not to consult with either of these

officials. Where the Attorney General determines that compelling reasons exist, an alternative school official or officials will be designated who will be consulted in lieu of the building principal or local superintendent prior to the placement of an undercover officer in a school and throughout the course of the operation.

b. In any case where the undercover school operation has not been requested by an appropriate school official, the law enforcement agency proposing the operation will advise the building principal and local superintendent of the nature of the proposed operation and will, to the extent possible, explain the reasons why the operation is necessary and appropriate. This explanation should include a description of the extent and nature of the suspected drug trafficking or weapons-related activities occurring within the school environment which would justify the operation. It is understood and agreed that law enforcement officials will not be required or permitted to divulge any information received in confidence, whether from an informant or otherwise, or which would violate the laws or court rules governing the disclosure of juvenile offender information, grand jury information or information derived from electronic surveillance.

c. It is understood and agreed that undercover school operations should not be necessarily limited to schools failing within any particular region or demographic setting (*i.e.*, *e.g.*, rural, suburban, urban center, etc.), or any particular district factoring group (*i.e.*, a composite measure of socioeconomic status within a geographic area). Rather, subject to the availability of resources, undercover school operations should be proposed and conducted where the designated law enforcement and school officials determine that such operations would be beneficial.

d. Information provided by law enforcement to the building principal or local superintendent will be kept strictly confidential and will not be divulged by the building principal or local superintendent to any other person without the express approval of the Union County Prosecutor.

e. No law enforcement officer will disclose the fact that an undercover school operation has been proposed, requested or is being or has been considered with respect to any particular school or school district.

f. The building principal and the local superintendent will be afforded the opportunity to offer specific concerns regarding the conduct of any proposed undercover school operation, and will also be given the opportunity to make general or specific recommendations as to how to minimize the impact of the proposed operation on the educational environment, existing substance abuse counseling programs and the relationship between school authorities, the law enforcement community and the student population. In developing an undercover school operation plan and throughout the course of the operation, the law enforcement agency conducting the operation will give due consideration to the concerns and recommendations offered by the building principal and local superintendent. Furthermore, these school officials will be advised whenever the law enforcement agency conducting the undercover school operation is for any reason unable or unwilling to follow any proposed recommendation. However, it is understood that the law enforcement agency responsible for conducting the undercover operation shall maintain control of the logistics of any operation once begun.

g. The law enforcement agency conducting the undercover school operation will provide to the building principal and local superintendent a detailed briefing concerning the logistical and recordkeeping requirements associated with successfully placing an officer undercover. The building principal and local superintendent may contact the designated liaison who will be available on a 24 hours basis to respond to any problems or inquiries.

3. Security; Limited Disclosure Agreements; Early Termination.

a. The building principal and local superintendent will be informed as to the identify of any person assigned to an undercover investigation unless there are compelling reasons, as shall be determined by the Attorney General, not to inform either of these officials. The building principal and local superintendent, and any other school officials or employees who may be informed as to the identity of the undercover officer, will safeguard the identity of that officer and will not disclose the existence of a contemplated or ongoing undercover school operation to any person.

b. In the event that the building principal, local superintendent or any other school official or employee who may have been informed as to the existence of the operation subsequently learns of any information which suggests that the true identity of the undercover officer has been revealed, or that any person has questioned the identity or status of the undercover officer as a bona fide member of the school community, or that the integrity of the operation has been in any other way compromised, such information will be immediately communicated to the law enforcement agency conducting the operation or to the Union County Prosecutor.

c. The school principal and local superintendent will be advised whenever an undercover school operation has been suspended or terminated or whenever the undercover officer is permanently removed from the school environment.

4. Use of Undercover Officers as School Employees. It is understood that no undercover school operation may be conducted which entails the placement of an undercover officer as a certified member of the school community without prior written approval of the Attorney General with notice given to the Commissioner of Education, or in the case of a non-public school, the chief school officer. It is understood that the Attorney General will base his approval upon a finding that 1) other law enforcement methods would not be effective, and 2) there is a reasonable articulable suspicion that adult school employee(s) or other non-student member(s) of the school community are engaged in drug trafficking or unlawful weapons-related activities. In that event, and upon such findings, the underlying purpose of the operation would not be to identify or to apprehend student offenders, but rather to identify and to apprehend suspected adult or non-student offenders. Furthermore, the law enforcement agency involved will develop in consultation with the building principal and local superintendent those steps which will be taken to minimize the undercover officer's contact with and impact upon the student population. It is understood that no undercover officer will be permitted to teach a formal class of instruction without the approval of the Attorney General and local superintendent, and that in no event will an undercover officer posing as a non-student member of the school community be permitted to establish or to simulate any confidential, trust or counselor relationship with any student.

5. Limitations on Undercover Officer Conduct.

- a. **Entrapment.** No undercover officer will encourage or counsel any student to purchase or use alcohol or any controlled dangerous substance.
- b. **Confidentiality of Treatment Records.** Federal regulations and State policies concerning the confidentiality of treatment and substance abuse counseling program records and information will be strictly safeguarded. No law enforcement activity will be permitted in any way to interfere with, intrude upon or in any way compromise the integrity of any substance abuse counseling or treatment program.
- c. **Treatment.** No undercover officer will discourage any student from seeking drug or alcohol abuse treatment or counseling, or from reporting his or her own alcohol or substance abuse problem or dependency.
- d. **Non-Participation in Treatment.** No undercover officer will in any way participate in or attend any drug or alcohol abuse treatment or counseling program. In the event that an undercover officer is referred to or recommended to participate in a counseling or treatment program by a teacher or school staff member, the undercover officer will report the circumstances of that referral or recommendation to his or her superiors and will decline such referral or recommendation.
- e. **Preservation of Teacher Trust Relationships.** No undercover officer will engage in any activity or conversation which would require any teacher or school official to violate or compromise a trust relationship with any student.
- f. **Use and Distribution Prohibition.** No undercover officer will ingest or inhale (other than passive inhalation) any controlled dangerous substance; nor will any undercover officer be permitted to distribute or dispense any controlled dangerous substance without the express approval of the Union County Prosecutor. Under no circumstances will an undercover officer sell or transfer a firearm on school property or to a student without the express prior approval of the Union County Prosecutor.
- g. **Disciplinary Infractions.** It is understood that an undercover officer cannot be expected to pose as a model student. Nonetheless, no undercover officer will engage in any activities which unduly disrupt the educational environment, or which amount to disciplinary infractions of such a nature and magnitude so as to prevent other students from enjoying the full benefits of that educational environment. An undercover officer will at all times respect the rights of teachers and other students.
- h. **Romantic Involvement.** No undercover officer will encourage or participate in any romantic relationship with any student during the course of an undercover operation.
- i. **Firearms Policy.** It is understood that undercover work concerning drug trafficking activities is inherently dangerous. Accordingly, it is understood and agreed that law enforcement will take all measure which are necessary and appropriate to protect the undercover officer, as well as to protect all students with whom the undercover officer may come into contact, and to avoid potentially violent confrontations whenever possible. In general, an undercover officer will not carry a firearm or otherwise bring onto or maintain

a firearm on school property. An exemption from the general rule prohibiting the carrying or bringing onto school property of a firearm will only be granted with the express approval of the officer's immediate superior, unless otherwise specified in the plan approval process for good cause shown. Any firearm brought onto school property will ordinarily be contained in a closed and fastened case locked in the trunk of an automobile operated by the undercover officer. It is assumed, moreover, that any exemption from the general weapons carrying policy agreed to herein will only be rarely sought, and approval to carry a firearm onto school property will only be granted where alternative means of providing adequate security or support are not feasible.

6. Post-Operation Report. It is understood that following the termination of every undercover school operation, the Union County Prosecutor will prepare a post-operation report which will be transmitted to the Attorney General. The report will discuss the results and impact of the operation and any logistical or policy problems which were encountered. The report will also include recommendations for improved procedures in dealing with potentially recurring problems. The Union County Prosecutor will solicit the comments and recommendations of the building principal and local superintendent, and these comments and recommendations will be included in the post-operation report. The contents of a post-operation report will be publicly disclosed, and a copy will be provided to the building principal, local and county superintendents and the Commissioner of Education.

7. Post-Operation Seminars. To maximize the deterrent impact of an undercover school operation, the law enforcement agency conducting the operation will make officers available to participate in seminars which, upon the invitation of appropriate school officials, may be held in the school in which the operation was conducted. The purpose of these seminars will be to discuss with teachers, parents and/or students the nature of the completed operation, the steps taken to minimize the intrusion into the educational environment, and to discuss the substance abuse or weapon-related problem from a law enforcement perspective. It is our agreed upon policy to promote the frank and open discussion of issues concerning the need for such operations, and to solicit opinions and recommendations from teachers, parents, students and members of the community-at-large.

C. Planned Surveillance.

1. Notice and Consultation. In the absence of compelling or exigent circumstances, as shall be determined by the Union County Prosecutor or the Attorney General or his designee, no planned narcotics surveillance operation as defined in this Agreement will be conducted during operating school hours without first consulting with the building principal or local superintendent of the school involved.

2. Limitation; Targeted Subjects. Nothing in this Agreement shall be construed to prevent any law enforcement officer from making any observations from any place or property not owned by a school or school board, except that a planned surveillance or any other form of observation should, wherever possible, be limited to observing 1) those specific individuals or groups of individuals who are believed to be involved in drug trafficking or weapons-related activities, or 2) those specific areas or places on school property where drug use or trafficking or weapons-related activity is believed to occur frequently.

D. Routine Patrols.

1. **Aggressive Enforcement Plans.** The Plainfield Police Department will maintain at appropriate times a visible police presence within all drug-free school zones, and will file and periodically update a confidential report with the Union County Prosecutor detailing how these zones are to be patrolled.
2. **Notice to School Officials.** Where a patrol plan requires an officer periodically to enter onto school property or buildings, the Plainfield Police Department will advise the appropriate school building principal and local superintendent. It is understood and agreed that any portion of a patrol plan disclosed to school officials in accordance with this subsection will be kept strictly confidential.
3. **On-Site Reporting.** Except when responding to an emergency, no on-duty police officer will enter any school building without first complying with the procedures established by the school for the reporting of visitors. It shall be the responsibility of the Plainfield Police Department to make certain that all officers are familiar and comply with the reporting policies established by each school within the law enforcement agency's jurisdiction.

E. Police Presence at Extra-curricular Events.

1. It is our agreed upon policy that the Plainfield Police Department, working in conjunction with the appropriate school officials, should, whenever possible, provide for the presence of uniformed police officer(s) at all major school sporting events. In the absence of compelling reasons as may be determined by the Union County Prosecutor or the Plainfield Police Department, it is understood and agreed that uniformed police officers will not be assigned to school functions, and especially those functions occurring within school buildings, except with the approval of the building principal or local superintendent.
2. It is understood that the purpose for requesting uniformed police presence on school property is not limited merely to the goal of deterring illegal drug use or trafficking activities; rather, police assistance is often requested for the purpose of maintaining order, crowd and traffic control, and other bona fide public safety reasons. All requests by school officials for law enforcement agencies to provide for a uniformed presence at any school event should be directed to the local police liaison or the Chief of the Plainfield Police Department.

F. Referrals and Evidence Pick-Up.

1. **Procedures Concerning Required Referrals Involving Controlled Substances.** Subject to the provisions of subsection 2 of this section, school officials will promptly notify the Plainfield Police Department whenever any school employee develops reason to believe a violation of the Comprehensive Drug Reform Act has occurred, except that school officials are not required to refer a matter to law enforcement where a student has voluntarily and on his or her own initiative sought treatment or counseling for a substance abuse problem, provided the student agrees to participate in an appropriate treatment or counseling program. For the purposes of this Agreement, an admission by a student of a violation of the Comprehensive Drug Reform Act which is in response to questioning initiated by a law enforcement officer or school employee shall not constitute a voluntary, self-initiated request for counseling and treatment.

2. Non-Applicability to Treatment Program Records and Information. Nothing in this Agreement shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program, and such information or records will be strictly safeguarded in accordance with applicable federal regulations and state policies.

3. Securing Controlled Substances and Paraphernalia Pending Referral and Pick-Up. Wherever a school employee seizes or comes upon any substance believed to be a controlled dangerous substance or drug paraphernalia, school officials will immediately advise the Plainfield Police Department and will secure the substance or item pending the response by the Plainfield Police Department to retrieve and take custody of the substance or paraphernalia. School employees having custody of the substance or item will take reasonable precautions as per local board of education procedures to prevent its theft, destruction or use by any person. In accordance with the requirements of law, see N.J.S.A. 2C:35-10c., it is understood that under no circumstances may any person destroy or otherwise dispose of any controlled dangerous substance or drug paraphernalia except by turning over such substance or item to the responding law enforcement officer.

4. Prompt Response to Controlled Substance Referrals and Request for Pick-Up; Preserving Chain of Custody. The Plainfield Police Department will dispatch an officer as promptly as possible to take custody and secure the controlled dangerous substance or drug paraphernalia. School officials will provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure, including the identity of any person from whom the substance or item was obtained, except that school officials need not provide information concerning the identity of a student from whom the controlled dangerous substance or item was obtained where the substance or item was turned over by a student to a substance abuse counselor in the course of or as a result of diagnosis or treatment, or where: 1) the student voluntarily and on his or her own initiative turned over the substance to a school employee; and 2) there is no reason to believe that the student was involved in distribution activities; and 3) the student agrees to participate in an appropriate treatment or counseling program. Nothing in this section shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program, and such information or records will be strictly safeguarded in accordance with applicable federal regulations and state policies.

5. Procedures Concerning Permissive Referrals. Subject to the provisions of subsections 2 and 6 of this section, it is agreed that the Substance Abuse Counselor should notify the Captain of the Criminal Investigation Bureau whenever any school employee develops reason to believe that a criminal offense has been committed on or against school property, during operating hours or during school-related functions or activities. In deciding whether to refer the matter to the designated law enforcement agency, the principal of the school or his or her designee should consider the nature and seriousness of the offense and the risk that the offense posed to the health or safety of other students, school employees or the general public. Nothing in this subsection shall be construed in any way to relieve the duty to report a violation of the Comprehensive Drug Reform Act as required by subsection 1 of this section and regulations promulgated by the State Board of Education. See N.J.A.C. 6:3-6.1 et. seq. Nor shall this subsection

be construed in any way to relieve the duty to notify appropriate law enforcement and child welfare authorities when a potential missing or abused child situation is detected, as required by N.J.S.A. 18A:36-25.

6. Required Referrals Involving Firearms. Subject only to the provisions of subsection 2 of this section, it is agreed that the Substance Abuse Counselor will immediately notify the Captain of the Criminal Investigation Bureau whenever any school employee in the course of his or her employment develops reason to believe that a firearm has unlawfully been brought onto school property, or that any student or other person is in unlawful possession of a firearm, whether on or off school property, or that any student or other person has committed an offense with or while in possession of a firearm, whether or not such offense was committed on school property or during operating school hours. It is understood that as a matter of rudimentary common sense, school employees should always exercise extreme caution before attempting to seize a known or suspected firearm or other deadly weapon from the control or immediate possession of a student, taking into account not only the rules governing searches and seizures conducted by education officials, but also the safety risks which a physical confrontation with an armed student might pose to the employee, the student involved and all other members of the school community. School officials should therefore consider in each case whether it would be more appropriate to await the arrival of law enforcement officers summoned pursuant to the requirements of this paragraph, and to allow responding law enforcement authorities to assume responsibility for conducting any search or seizure in accordance with the provisions of section I (3) of this Article.

7. Securing Firearms and Dangerous Weapons Pending Referral and Pickup. Whenever a school employee seizes or comes upon any firearm or dangerous weapon, school officials should in the case of a dangerous weapon other than a firearm, and shall in the case of a firearm, immediately advise the Captain of the Criminal Investigation Bureau and secure the firearm or weapon pending the response by the Plainfield Police Department to retrieve and take custody of the firearm or dangerous weapon. School employees having custody of a firearm or dangerous weapon will take reasonable precautions as per local board of education procedures to prevent its theft, destruction or unlawful use by any person. It is understood and agreed that under no circumstances will any person destroy or otherwise dispose of any seized or discovered firearm except by turning over such firearm to the responding police officer.

8. Law Enforcement Response to Permissive Referrals. The Plainfield Police Department receiving information about the commission of an offense pursuant to subsection 5 of this section will respond promptly and, when there is probable cause to believe that an offense has been committed, will handle the matter in accordance with the provisions of the Attorney General's Executive Directive Concerning the Handling of Juvenile Matters by Police and Prosecutors. Except as may be specifically provided in subsection 2 of this section, school officials should in the absence of compelling reasons provide the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure or discovery of any dangerous weapon or item, other than a firearm dealt with in subsection 9 of this section or a controlled dangerous substance or drug paraphernalia dealt with in subsection 3 of this section, which was or may have been unlawfully possessed or used in connection with or derived from criminal activity. Nothing in this subsection shall be construed in any

way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program and obtained in the course of providing diagnosis or treatment where such referral or transmittal would constitute a violation of federal confidentiality regulations, and such information or records will be strictly safeguarded in accordance with such applicable federal regulations and state policies.

9. Prompt Law Enforcement Response to Required Referrals. The Plainfield Police Department receiving information about the existence of an unlawful firearm on school property pursuant to subsection 6 of this section will immediately dispatch an officer to take custody and secure the firearm. Except as may be specifically provided in subsection 2 of this section, school officials will provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure or discovery of the firearm, including the identity of any person from whom the firearm was obtained. Nothing in this subsection shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program and obtained in the course of providing diagnosis or treatment where such referral or transmittal would constitute a violation of federal confidentiality regulations, and such information or records will be strictly safeguarded in accordance with such applicable federal regulations and state policies.

10. Interdiction of Weapons. It is understood and agreed that the Plainfield Police Department will make every reasonable effort to effect the arrest of any student believed to be in the unlawful possession of a firearm or other dangerous weapon while the student is not on school property, so as to prevent whenever possible the bringing of such firearm or weapon onto school property. When this is not feasible, the Plainfield Police Department shall scrupulously comply with the notification requirements for planned arrests as set forth in Article 2, section G(3) of this Agreement.

11. Arrest Protocols Following Permissive Referrals. It is understood and agreed that the arrest protocols set forth in Article 2, section G of this Agreement, which are designed to minimize the disruption of the school environment, will be followed whenever a student is to be arrested on school property for any offense, including offenses which do not involve controlled dangerous substances or drug paraphernalia. Similarly, it is understood and agreed that the notification procedures set forth in Article 2, section H of this Agreement will be followed whenever a student or non-student is arrested on school property, or whenever a student is arrested off of school property during operating school hours, for a violation of any criminal statute, including an offense which does not involve controlled dangerous substances or drug paraphernalia. It is also understood and agreed that the Plainfield Police Department will at all times comply with the patrol notification and on-site reporting procedures set forth in Article 2, section D(2) and (3) of this Agreement, whether the purpose of the law enforcement entry onto school property or buildings is to enforce the Comprehensive Drug Reform Act or any other criminal statute.

12. Notification to School Officials. Where a formal complaint is filed against a student for any offense which if committed by an adult would be an indictable crime, the police department filing the complaint or the Union County Prosecutor will, in accordance with the provi-

sions of N.J.S.A. 2A:4A-60c, provide information on a confidential basis to the building principal of the school at which the student is enrolled concerning the offense charged and any resulting adjudication or disposition.

13. Advice as to Juvenile Justice System Practices and Procedures. The Captain of the Criminal Investigation Bureau and the Union County Prosecutor shall be available on an ongoing basis to explain to school officials the practices and procedures of the juvenile justice system with respect to the handling of juveniles suspected of or formally charged with acts of delinquency. The Captain of the Criminal Investigation Bureau and the Union County Prosecutor shall also provide on an ongoing basis information concerning the services and resources available through the juvenile justice system to deal with delinquent or at-risk youth and families in crisis, including stationhouse adjustments, referrals to Juvenile Conference Committees and other preadjudication diversion programs, and post-adjudication disposition options which are available in the county.

14. Advice as to weapons. It is understood that new weapons have evolved and proliferated which are readily concealable and easily disguised. By way of example, small, single shot firearms have been produced so as to resemble a remote paging device or "beeper." Similarly, dangerous knives can be disguised as belt buckles and other seemingly innocuous items. Accordingly, the Captain of the Criminal Investigation Bureau and the Union County Prosecutor will be available on an ongoing basis to provide school officials with information and advice about such weapons and their prevalence in the district or in the county so that they may be readily identified by school officials.

15. Possession or Consumption of Alcoholic Beverages by Minors. It is understood that it is unlawful for a person under the age of 21 to purchase or knowingly consume an alcoholic beverage on school property or during school sponsored activities. See e.g., N.J.S.A. 2C:33-15 and N.J.A.C. 6:29-6.3(a). So too, it is an offense for an adult to bring or possess an alcoholic beverage on school property without the express written permission of the school board or building principal. See N.J.S.A. 2C:35-16. It is agreed and understood that these statutes are designed to protect children and the educational environment, and that violations of these statutes should be deemed to be serious matters which would ordinarily warrant a referral to and prompt response by law enforcement authorities in accordance with the provisions of subsections 5 and 8 of this section. Where appropriate, the Plainfield Police Department or the Union County Prosecutor may elect to forego formal charging or prosecution in favor of pursuing school disciplinary proceedings or other appropriate juvenile justice alternatives, including but not limited to a "stationhouse adjustment," subject to the requirements of law and the Attorney General's Executive Directive Concerning the Handling of Juvenile Matters by Police and Prosecutors.

G. Arrest Protocols. For the purpose of this Agreement, the term "arrest" shall include the taking into custody of a juvenile for any offense which if committed by an adult would constitute a crime or disorderly persons offense.

1. **Requests by School Officials.** All requests by any school official to summon a law enforcement officer for the purpose of making an arrest on school property, whether for a suspected

violation of the Comprehensive Drug Reform Act or for a suspected violation of any other criminal statute, should be directed to the designated police liaison or the Chief of the Plainfield Police Department.

2. It shall be the general policy of the Plainfield Police Department when effecting any arrest on school grounds to minimize the disruption of the school environment to the greatest extent possible consistent with the requirements of public safety. Accordingly, substantial weight will be given by the law enforcement officer assigned to make the arrest to the specific recommendations of the building principal or local superintendent as to the place and manner for effecting the arrest.

a. So as to minimize any disruption of the educational environment, every reasonable effort should be made to effect the arrest in the building principal's office, or in some other designated area away from the general student population.

b. Where feasible, the responding law enforcement officer(s) should be in plainclothes, use unmarked police vehicle(s) and refrain from using a siren or flashing overhead lights. In addition, the number of responding officers should be kept to a minimum consistent with the requirements of public safety.

3. Other Spontaneous Arrests.

a. In those cases in which a law enforcement agency responds during operating school hours to a suspected offense reported by someone other than the building principal or local superintendent, or where a law enforcement officer observes the occurrence of an offense on school property during operating school hours which would justify a warrantless arrest, or where a person subject to arrest retreats onto school property during operating school hours, the arresting law enforcement officer will notify the building principal as soon as it is practical to do so. Where the arrest involves a student enrolled in the school, the building principal will wherever feasible be notified before the student is taken from school grounds.

b. When effecting any spontaneous arrest on school property during operating school hours, every reasonable precaution will be taken to minimize the disruption of the school environment to the greatest extent possible consistent with the requirements of public safety.

4. Planned Arrests. Whenever a planned arrest is to occur on school property, the building principal or local superintendent will be advised and consulted before the arrest occurs.

H. Notice of Arrests.

1. **Arrests of Students on School Grounds.** Whenever a student has been arrested on school property, the law enforcement officer or agency involved will, as soon as practicable, notify the building principal. Whenever possible, such notice will be given before the student has been taken off of school property. Where the student is a juvenile, all information concerning the circumstances of the arrest will be provided to the building principal on a confidential basis and in accordance with the provisions of N.J.S.A. 2A:4A-60c.

2. **Arrests of Non-Students on School Grounds.** Where a person other than an enrolled student is arrested on school property, the building principal will be advised as to the circum-

stances of the offense and the identity of the offender, provided that where the person arrested is a juvenile, it is understood that the law enforcement agency or officer involved is not permitted to divulge any information which would violate the laws governing the disclosure of juvenile information.

3. **Arrests of Students Off School Grounds During Operating School Hours.** Where a student is arrested off school property during operating school hours, or under circumstances which would lead the arresting officer to believe that a school official was responsible for the care and custody of the student at the time of the arrest, or where the arresting officer reasonably believes that the student was in transit between school and his home at the time of arrest, the arresting officer will as soon as is practicable notify the building principal of the school in which the student is enrolled. All information concerning the basis and circumstances of the arrest will be provided to the building principal on a confidential basis and in accordance with the provisions of N.J.S.A. 2A:4A-60c.

I. School Searches.

1. No law enforcement officer will direct, solicit, encourage or otherwise actively participate in any specific search conducted by a school official unless such search could be lawfully conducted by the law enforcement officer acting on his or her own authority in accordance with the rules and procedures governing law enforcement searches. Nothing in this Agreement shall be construed to preclude a law enforcement officer from taking custody of any item or substance seized by any school employee.

2. School officials will immediately notify law enforcement officers whenever a school employee comes into possession, whether as a result of a search or otherwise, of any substance or item believed to be a controlled dangerous substance, drug paraphernalia or firearm.

3. School officials will permit law enforcement officers upon their arrival to the scene to assume responsibility for conducting any search, in which event the standards governing searches conducted by law enforcement officers will prospectively apply.

4. Any questions by school officials concerning the legality of any contemplated or ongoing arrest, search or seizure conducted by a law enforcement officer on school property should be directed to the Union County Prosecutor.

5. Nothing in this Agreement shall be construed in any way to require any school official to actively participate in any search or seizure conducted or supervised by a law enforcement officer; nor shall this agreement be construed to direct, solicit or encourage any school official to conduct any search or seizure on behalf of law enforcement, or for the sole purpose of ultimately turning evidence of a crime over to a law enforcement agency. Rather, it is understood that any search or seizure conducted by school officials shall be based on the school official's independent authority to conduct reasonable investigations as provided in New Jersey v. T.L.O.

6. Any question by a school official concerning the law governing searches conducted by school officials should be addressed to the Union County Prosecutor or his designee.

J. Interrogations and Interviews. No law enforcement officer will direct, solicit, encourage, attend or otherwise participate in the questioning of any juvenile by school officials unless such questioning could be lawfully conducted by the law enforcement officer acting on his or her own authority in accordance with the rules and procedures governing law enforcement interrogations and interviews. All information obtained by school employees concerning the commission of an offense, whether obtained as a result of the questioning of a student or otherwise, will be referred to the appropriate law enforcement agency, provided however, that nothing in this Agreement shall be construed to authorize or require a school employee to divulge information or records subject to the confidentiality requirements of 42 C.F.R. Part 2, or any other applicable regulation, law or rule of evidence concerning confidential and privileged communications.

K. "Tiplines" and Student Watch Groups.

1. Any "tiplines" which may be established for the reporting of suspicious activity occurring on school property or buses or within Drug-Free School zones will be staffed by law enforcement officers, and it is understood that the role of school officials with respect to the operation of such tiplines is limited to publicizing to members of the school community the existence and purpose of these tiplines.
2. It is understood that the Narcotics Crime Prevention and Public Awareness Working Group, which was created by the Attorney General, has prepared in conjunction with the School Zone Narcotics Enforcement Working Group a model student watch program. The Union County Prosecutor and the Plainfield Police Department will assist school officials who wish to develop and implement such watch groups or similar student-oriented crime prevention and awareness programs.

Article 3 - Joint Training

So as to foster and institutionalize the spirit of communication and cooperation underlying this Agreement, the Substance Abuse Counselor and the Captain of the Criminal Investigation Bureau agree to participate in a joint training program which will be developed in conjunction with the Division of Criminal Justice, the Department of Education and the Union County Prosecutor's Office. It is understood that this program will include a discussion of:

1. The provision of this Agreement;
2. Attorney General Executive Directive 1988-1;
3. The complementary rules and regulations issued by the State Board of Education;
4. The Comprehensive Drug Reform Act, focusing especially on those provisions affecting juveniles or which are designed to protect children and to displace drug trafficking activities from areas adjacent to schools;
5. The Attorney General's Statewide Narcotics Action Plan;
6. The United States Supreme Court decision in New Jersey v. T.L.O. and the Attorney General's School Search Guidelines;
7. The federal regulations on confidentiality for counseling and treatment; and

8. The scope and nature of the problem concerning firearms and other dangerous weapons on school property.

Article 3.1 - Law Enforcement Participation in Educational Programs

A. Law Enforcement's Contribution to Substance Abuse Education and Demand Reduction.

The parties to this Agreement understand and accept that the only viable, long-term solution to the nation's drug epidemic is to reduce the public's demand for illicit substances, and that education emerges as one of the most promising means available by which to provide a generation of students with information, skills and incentives to resist the temptation to experiment with and use chemical substances. However, the parties further understand that the contributions of the law enforcement community to the goal of a drug-free New Jersey need not and should not be limited merely to disrupting the supply of illicit drugs; rather, the law enforcement community can help to reduce the demand for drugs, not only by holding drug users accountable for their unlawful conduct, but also by actively participating in public awareness and prevention programs and educational initiatives. To this end, a number of innovative and highly successful programs have been developed by numerous organizations in which specially trained police officers participate directly in school-based educational programs. These programs are designed to teach students about the nature and dangers of substance abuse, methods to enhance students' self-esteem and proven techniques and skills for resisting peer pressure to experiment with drugs or engage in other dangerous activities. These initiatives include, but are not limited to, the D.A.R.E. program (Drug Abuse Resistance Education), D.A.D. (Defenders Against Drugs), and the McGruff program sponsored by the Crime Prevention Officers Association.

B. Approval and Supervision of Educational Curricula. It is understood and agreed that education officials are at all times ultimately responsible for approving, supervising, monitoring, evaluating and otherwise ensuring the consistent high quality of all educational curricula and instructional programs provided to students, whether the instruction is provided by certified school employees or by specially trained law enforcement officers invited into the school pursuant to section C of this Article. It is also understood and agreed that local school officials remain ultimately responsible for making certain that all substance awareness instructional programs are developed and provided in a manner which is consistent with the requirements of N.J.S.A. 18A:40A-1 et seq., the New Jersey Department of Education's Chemical Health Education Guide (N.J.A.C. 6:29-6.6), and any and all applicable rules, regulations and policies adopted by the State Board of Education or the Commissioner of Education concerning the development, review, monitoring, approval and implementation of K-12 chemical awareness curricula and related courses of instruction.

C. Procedures for Inviting, Soliciting or Promoting Police Participation in Educational Programs. It is understood and agreed that no law enforcement officer shall be permitted to provide a course of instruction to students unless the officer has been invited or requested to provide such course of instruction by the appropriate school official, or the course of instruction has otherwise been approved by the appropriate school official. In order to enhance cooperation between law enforcement and education authorities, it is agreed that all requests by school officials for information concerning the nature and availability of law enforcement instructional programs such as D.A.R.E., D.A.D., McGruff, etc. should be directed to the designated law enforcement liaison, with notice of the request provided to the Union County Prosecutor. All requests by a law enforcement

agency seeking an invitation to provide any such law enforcement instructional program, or seeking to demonstrate the desirability of providing such an instructional program, should be directed to the Substance Abuse Counselor, with notice given to the Union County Prosecutor. The Union County Prosecutor, working in cooperation with the Union County Superintendent of Schools, shall be responsible for coordinating all such invitations or requests for invitations to participate in law enforcement instructional programs. The Union County Prosecutor further agrees to serve on an ongoing basis as an information clearinghouse to provide school officials with information concerning the availability and benefits of such law enforcement instructional programs.

Article 4 - Revisions and Periodic Conferences

It is understood that the Union County Prosecutor, working in conjunction with the Union County Superintendent of Schools, will not less than once each calendar year organize and conduct a meeting of representatives from the law enforcement and educational communities to discuss the implementation of and compliance with the provisions of Attorney General Executive Directive 1988-1 throughout the county, to discuss any other matters of mutual concern, and to recommend revisions to the Attorney General Executive Directive and to this Agreement. It is understood that every chief of police, school building principal and local superintendent will be invited to attend, along with any other persons or organization representatives who could contribute to or benefit from the proceedings. Following each conference, the Union County Prosecutor will thereafter issue a report to the Attorney General as to the results of the meeting, which will include a discussion of any general or specific recommendations concerning the need for revisions to the Attorney General Executive Directive and to this Agreement.

Article 5 - Dispute Resolution Procedures

It is understood and agreed that any dispute or objection as to any proposed or ongoing law enforcement operation or activity on school property will be directed by the appropriate school official to the chief executive officer of the law enforcement agency involved. Where the chief executive office of the agency is for any reason unable to satisfactorily resolve the dispute or objection, the matter will be referred to the Union County Prosecutor who is hereby authorized to work in conjunction with the Union County Superintendent of Schools and, where appropriate, the Division of Criminal Justice, to take appropriate steps to resolve the matter. Any dispute which cannot be resolved at the county level shall be resolved by the Attorney General, whose decision will be binding.

Article 6 - Maintenance of the Agreement

This Agreement shall remain in full force and effect until such time as it may be modified. Modification of this Agreement will be effected only with the mutual agreement of the Plainfield school district, the Union County Superintendent of Schools, the Plainfield Police Department and the Union County Prosecutor. Modifications required by a change in state or federal law, rules or regulations or applicable guidelines or executive directives shall be made on the effective date of such revisions of law, regulations, guidelines or directives. All parties to this Agreement will notify the other parties immediately regarding any such legal or regulatory changes.

The parties to this Agreement recognize the value of cooperation and communication with respect to the drug and weapons problem as it relates to students and school grounds, and believe that entering into this Agreement will help them to be more effective in dealing with these problems and in making certain that schools are safe havens for law abiding children, and not convenient marketplaces or resorts for drug dealers and users.

As an expression of our mutual concern and commitment to students, and to the level of cooperation and understanding described in this Agreement, the undersigned parties do hereby affirm and agree to abide by the standards, procedures, principles and policies set forth in this document.

Model Drug-Free School Zone Act

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Model Drug-Free School Zone Act

Policy Statement

Drug traffickers entice youth into leading a drug-filled life. To these criminal entrepreneurs, recruitment of children makes good business sense. Introducing a new, young generation of people to the addictive power of drugs ensures future customers and profits for drug dealers. Moreover, to the drug trafficker, it is sensible to use juveniles as dealers, lookouts, or other active participants. The perceived risk of interference from the criminal justice system will be less because juveniles are subject to less harsh penalties than adults.

Children therefore become intense targets of campaigns to show them the “good life” associated with illegal drugs. Schools and other locations where children tend to congregate become the battlegrounds on which these campaigns are waged. Too often the campaigns persuade young people that illegal drug involvement is the only means of escape from a discouraging reality. The illegal drug trade becomes more and more a trade among children. For example, one study about the crack epidemic found that “[c]rack is sold through diffuse networks in which teenage dealers play an important role...”

To reduce children’s exposure to illegal drug activity and exploitation by drug traffickers, 45 jurisdictions have created “safe havens” for children. Labelled drug-free school zones, these protected areas are typically within 1,000 feet of a school or other specified school-related property. States attempt to deter illegal drug activity by enhancing punishment for distributing illegal substances within the zone. The intent is to develop learning environments which discourage substance use and teach young persons positive, healthy, productive skills and values. The Model Act incorporates the traditional drug-free school zone concept embodied in state laws and the Uniform Controlled Substances Act, §409.

However, to be truly safe from influences which can lead to abuse of addictive substances, “drug-free” must mean “alcohol and tobacco” free. A young person’s foray into substance use primarily occurs through alcohol and tobacco use. Though illegal, drinking alcoholic beverages and smoking or chewing tobacco products are peer group activities for minors. These activities may seem harmless to young people at the time. However, they can start an individual down a path leading to addiction and its associated health and economic costs. Additionally, use of these addictive substances sometimes motivates use of illegal drugs. Involvement with gateway drugs is encouraged by those who sell alcohol and tobacco to minors. Advertising which is intended to stimulate demand for alcohol and tobacco can also unintentionally encourage use of gateway drugs among juveniles who are exposed to the advertising.

The Model Act addresses gateway drugs in a threefold manner. First, they expand the enhanced punishment provision to include the illegal sale of alcohol and tobacco to underage persons. Second, they prohibit the advertising of alcohol and tobacco by billboard, poster, or other public display intended to stimulate demand for or announce the availability for sale of the substances. Third, they require the appropriate state agency to revoke the license of anyone convicted of illegal sale of alcohol to minors.

Highlights of the Model Drug-Free School Zone Act

- Defines drug-free school zone to include school vehicles, school vehicle stops, buildings where extracurricular school activities are regularly provided, and structures while they are in use for school-sponsored activities.
- Imposes enhanced punishment and mandatory minimum terms of imprisonment for illegal drug distribution within a drug-free school zone.
- Imposes enhanced punishment for illegal sale of alcoholic beverages or tobacco products to minors within a drug-free school zone.
- Prohibits, within specified areas of a drug-free school zone, advertising of alcoholic beverages or tobacco products by billboard, poster, or other public display which stimulates the demand for or announces the availability for sale of the substances.
- Imposes a civil assessment for violation of the advertising ban which is used to fund alcohol and other drug abuse education and treatment services.
- Requires the appropriate state agency to revoke the alcoholic beverage control license of anyone convicted of the illegal sale of alcohol to minors.

Model Drug-Free School Zone Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the “Drug-Free School Zone Act.”

Section 2. Legislative Findings.

- (a) America’s young people are consistently enticed to live a drug-involved life by the promise of luxurious lifestyles financed through illegal drug dealing.
- (b) The age of juveniles using and selling drugs, serving as lookouts, or otherwise actively involved in the illegal drug trade has declined in recent years.
- (c) To protect our youth, approximately 45 states have established drug-free school zones which enhance penalties for specified illegal drug distribution and manufacturing offenses.
- (d) Drug-free school zones use deterrence to prevent exploitation of children by drug traffickers and to reduce children’s exposure to illegal drug activity. These zones are intended to create safe havens in which young people can develop skills to resist the temptations of drug use and learn positive, productive values.
- (e) To effectively achieve the safe haven goal, drug-free school zones must also deter those who illegally introduce our children to alcohol and tobacco. These addictive substances can result in serious personal and social health and economic consequences. Additionally, alcohol and tobacco, often known as gateway drugs, can lead to illegal drug use.
- (f) Alcohol and tobacco advertising undermines schools’ attempts to discourage substance use by their students. Such advertising stimulates the demand for and encourages use of alcohol and tobacco products. Therefore, it is important to restrict alcohol and tobacco advertising within drug-free school zones.

Section 3. Purpose.

The [Act]’s purpose is to create learning environments in which juvenile substance use is discouraged and young people can be taught beneficial skills and values. This purpose is accomplished by:

- (a) Deterring substance abuse activity, including the unlawful sale of alcohol and tobacco to minors, in and around schools and other locations where students congregate; and
- (b) Removing those influences which stimulate demand for and promote use of addictive substances.

Section 4. Definition.

As used in this [Act], a “drug-free school zone” means:

- (a)(1) Any distance within [1,000 feet] of real property comprising a public playground, public or private elementary or secondary school, a public vocational school, a public or private college or university, a building where extracurricular school activities are regularly provided, or an official stop for a school bus; or
- (2) A school bus, whether privately or publicly owned, which is transporting students or any distance within [10 feet] of a parked school bus in service for or waiting for students.
- (b) The terms “school bus” and “official stop” shall have the meaning provided by [citation to laws defining “school bus” and “official stop”][state department of education or other appropriate agency].

COMMENT

Subsection (a)’s “zone” description of 1,000 feet from a playground, school, college, or university echoes the description provided in most state statutes and the Uniform Controlled Substances Act, §409. The intent is to create a geographic area which eliminates the negative, exploitive atmosphere of illegal drug activity. Children are consistently bombarded with images of fast cars, expensive clothes, and other trappings of the “good life” associated with using and dealing illegal drugs.

Illegal drug activity is perceived by many youths as a way of attaining the social status, respect, and material goods. Others simply view it as a normal part of life they must endure.

Drug-free zones provide windows of opportunity to change these perceptions. School officials have time to teach young people the truth about the personal and social devastation of substance abuse and addiction. Equally important, teachers can educate children about positive methods of developing self-esteem and respect. Hope and optimism can replace despair and pessimism when contemplating a child's future, a future without drugs.

To maximize the opportunities provided by drug-free school zones, these safe havens must include all areas where school children tend to congregate. Gone are the days when school activities occurred only within the confines of the school itself. Athletic or music events and other extra-curricular activities often take place in other locations. Therefore, the Commission has broadened the definition of a drug-free school zone in paragraph (a)(1) to include structures where school-sponsored activities take place.

Paragraph (a)(2) is drawn from Hawaii's drug-free school zone law. It protects children while they are on a school bus or are waiting to be transported to and from school.

Section 5. Prohibited Act; Penalties.

(a) A person who violates any of the following laws while in a drug-free school zone is, upon a final conviction, punishable by a term of imprisonment and fine not exceeding [twice] that otherwise authorized:

- (1) [section of state controlled substances act regarding illegal distribution, manufacture, or possession with intent to distribute or manufacture controlled substances];
- (2) [Model Underage Alcohol Consumption Reduction Act or similar state law]; or
- (3) [state laws prohibiting the sale of tobacco products to individuals under 18 years of age].

(b) Upon a second or subsequent final conviction for a violation of subsection (a), a person is punishable by a term of imprisonment not exceeding [three times] that otherwise authorized.

[(c) For a violation of subsection (a)(1):

- (1) Adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld;
- (2) The person must be imprisoned for at least [] ; and
- (3) The person is not eligible for parole before serving the mandatory term of imprisonment prescribed by this subsection.].

[(d) Notwithstanding any other provision of this [Act], the defendant or the attorney for the state may request the sentencing court to reduce or suspend the sentence of an individual who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of a person for a violation of this [Act]. The court shall give the arresting agency an opportunity to be heard in reference to the request. Upon good cause shown, the request may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the assistance rendered was substantial.]

COMMENT

This section provides essentially the same penalty structure as the Uniform Controlled Substances Act (UCSA), §401. Fines and terms of imprisonment are doubled or tripled for convictions involving the illegal distribution or manufacture of controlled substances. Under the UCSA, these types of offenses require imposition of a mandatory minimum term of incarceration. Subsection (c) provides the UCSA language for those states that wish to impose mandatory minimum sentences. Subsection (d), also drawn from the UCSA, allows the court to impose a non-mandatory sentence if the prosecutor so requests because the defendant has provided substantial assistance to law enforcement. States which elect not to impose mandatory minimums should omit subsections (c) and (d).

The Commission has made two significant amendments to this UCSA-based structure. The list of offenses which subject a convicted defendant to enhanced penalties include the sale of alcoholic beverages and tobacco products to underage youths. As stated in the Policy Statement, the Commission intends "drug-free" to mean free of all addictive substances. America's drug control effort has primarily focused on reducing the use of illegal substances. Meanwhile, the abuse of alcohol and tobacco continue to result in significant personal and social costs. A person often initiates use of alcohol and tobacco during the teenage years or earlier. These

attempts to “fit in” or appear “cool” to one’s peers can lead to years of abusing these substances. Use of tobacco and alcohol also motivates some young people to try other potent drugs, such as cocaine or crack.

Individuals who illegally sell alcohol and tobacco to minors willingly help children begin a path of reliance on addictive substances. The Commission thus believes it is appropriate to subject these individuals to enhanced punishment.

Section 6. Ban on Alcohol and Tobacco Advertising.

(a) It shall be unlawful, in an area described in Section 4(a)(1), for a person to advertise alcoholic beverages or tobacco products by billboard, poster, or other public display designed to stimulate the demand for, or announce the availability for sale of, the beverages or products.

(b) Upon a final conviction for a violation of subsection (a), a civil assessment of not less than [] nor more than [] shall be imposed.

(c) Upon a second final conviction for a violation of subsection (a), a civil assessment of [twice] that otherwise authorized under subsection (a) shall be imposed.

(d) Upon a third or subsequent final conviction for a violation of subsection (a), a civil assessment of [three times] that otherwise authorized under subsection (a) shall be imposed.

(e) The assessment provided for in this section shall be collected as provided for the collection of [insert appropriate term, e.g., fines, restitution, etc.], and shall be forwarded to the [single state authority on alcohol and other drugs] for deposit in the Demand Reduction Assessment Fund established under the [Model Demand Reduction Assessment Act].

COMMENT

This section’s advertising restriction is designed to eliminate forms of expression within drug-free school zones which promote substance use. In framing the restriction, the Commission addressed constitutional free speech issues.

The First Amendment affords only limited protection to commercial speech. As noted by professor Steven Shiffrin, a leading constitutional law and First Amendment scholar: “...commercial speech has always been a stepchild in the first amendment family. Indeed, for most of our history, speech hawking products has been afforded no first amendment protection; it has never received generous first amendment protection...”¹

The test for determining the constitutionality of a restriction on commercial speech is well established in case law. See, e.g., *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980); *Posadas De Puerto Rico Associates v. Tourism Company of Puerto Rico*, 478 U.S. 328 (1986); *Edge Broadcasting Company v. United States*, 956 F.2d 263 (1992). A court must decide whether: (1) the First Amendment applies; (2) the asserted governmental interest is substantial; (3) the restriction directly advances the governmental interest; and (4) the restriction is no more extensive than necessary. If the court answers the questions affirmatively, the restriction passes constitutional muster.

Application of this four-pronged test to the advertising ban in subsection (a) indicates that the ban is constitutional. First, the constitution’s free speech protection applies to advertising which concerns lawful activity and is not misleading. For the sake of discussion, the Commission assumes that the advertising described in subsection (a) satisfies these requirements. The Commission necessarily assumes that the advertising is intended to address legal consumption of alcohol and tobacco by adults. Alcohol and tobacco advertising targeting minors concerns illegal activities and is outside the scope of First Amendment protection.

The Commission also assumes the advertising contains no deceptive information. Some people would argue that advertisements suggesting alcohol and tobacco use result in a happier, more rewarding life are misleading. However, to reach the remaining prongs of the constitutionality test, the Commission assumes the advertising at issue is not misleading.

Second, the state’s interest in establishing learning environments which discourage the use of alcohol and tobacco by minors is substantial. In addition to being illegal, use of alcohol and tobacco by youths can lead to abuse of these substances. As noted earlier, use of these

¹ Shiffrin, S.H., Prepared Testimony on The Sensible Advertising and Family Education, S. 674, before the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation 18 (Cornell University, School of Law, May 13, 1993).

gateway drugs can also prompt young people to try illegal drugs. Preventing early development of substance addictions which can cause a lifetime of devastating personal and social consequences is a state priority.

Third, the advertising ban directly advances the interest described above. Impressionable young people are still in the process of refining their value systems. The positive or negative influences to which youths are subject will impact their life choices. Most young people spend the majority of their waking hours in school areas involved in school-sponsored activities. Therefore, those influences found in and around schools will significantly affect a young person's decisions concerning his or her life. Additionally, school is a primary place where many youths can learn worthwhile, productive goals and values. Schools therefore need to open students' minds to the importance and benefits of a drug-free future.

The advertising prohibited in subsection (a) operates contrary to the school's objective. It encourages rather than discourages substance use. The advertising is designed to stimulate increased consumption of alcohol and tobacco among individuals exposed to its message. It is reasonable to assume that the advertising does result in some increased consumption. The majority of individuals who receive the message within drug-free school zones are minors. It is therefore reasonable to believe that the advertising described in subsection (a) encourages, and to some extent, actually increases alcohol and tobacco use by minors. Actual consumption stimulates even further demand for the substances. Removal of the advertising enables schools to more effectively implement alcohol and other drug abuse prevention programs. Teachers can more successfully instill healthy, anti-drug values without the presence of countervailing messages in alcohol and tobacco advertising.

Fourth, the ban in subsection (a) is no more extensive than necessary. It prohibits advertising which is publicly visible to students as they participate in activities on or near school-related property. Billboards, posters, and similar advertising media have the greatest impact on the most students within drug-free school zones. The more students are exposed to alcohol and tobacco advertising, the more likely the advertising will influence them. Public displays provide constant, direct, mass exposure to alcohol and tobacco advertising. By attending class or simply frequenting other areas within a drug-free school zone, students will view the public displays. Unlike commercials and other advertising

forms, students cannot turn off or easily avoid the advertising proscribed in subsection (a). With billboards, posters and other public displays, repeated delivery to many students of a message urging alcohol and tobacco use is inevitable. Therefore, restricting such advertising is reasonably tailored to serve the state's interest in developing school environments which discourage substance use. Moreover, the adults who are intended targets of alcohol and tobacco public relations campaigns can be reached through advertising outside of the zone.

Section 7. Revocation of License to Sell Alcohol.

(a) A clerk of the [appropriate trial court] shall notify the [alcohol beverage control board or other appropriate state agency] of a person's conviction for a violation of Section 5(a)(2) within [ten] days after the imposition of sentence.

(b) Upon notification under subsection (a), the [alcohol beverage control board or other appropriate state agency] shall institute proceedings to revoke the person's state license to sell alcohol or alcoholic beverages.

(c) A clerk of the [appropriate appellate court] shall notify the [ABC Board or other appropriate state agency] of the reversal of a conviction for a violation under Section 5(a)(3) within [ten] days after the conviction has been overturned.

(d) Within [ten] days after notification under subsection (c), the [alcohol beverage control board or other appropriate state agency] shall reinstate the person's license if the conviction was the sole reason for the revocation. The [board or other agency] shall promptly notify the person of such reinstatement.

COMMENT

The license revocation requirement in this section complements the enhanced penalties outlined in Section 5. License revocation is an additional means by which to deter individuals from illegally selling alcohol to minors. To ensure expeditious action by the licensing authority, subsection (a) requires prompt notice of a relevant conviction to the ABC Board or other appropriate state agency. Equally prompt notice of the reversal of a conviction is provided to allow for immediate reinstatement of a license, where appropriate.

Section 8. Invalid Defenses to Violation of the Act.

It shall not be a defense to a violation of this [Act] that the defendant did not know the distance involved.

COMMENT

Patterned after the Uniform Controlled Substances Act, §409, this section closes a loophole which would allow a defendant to easily circumvent this [Act]. Without this provision, a defendant could simply claim lack of knowledge regarding the distance involved. To defeat the defense, the state would need to prove what the defendant subjectively knew about the specified facts. A showing of what the defendant objectively should have known given the information available to him or her is insufficient. Proving the defendant's subjective state of awareness would be extraordinarily difficult, even impossible in several instances.

Section 9. Severability.

If any provisions of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 10. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Ban on Tobacco in Schools Act

Model Ban on Tobacco in Schools Act

Policy Statement

Each year, thousands of Americans die of lung cancer and develop a variety of debilitating respiratory illnesses. The link between these diseases and tobacco use sparked a long-term education campaign about the dangerous health consequences of tobacco use. Gradually, society's attitude toward smoking has changed. Smoking is now banned on domestic airline flights. Restaurants have designated no-smoking sections. Public buildings are often designated as smoke-free areas.

Building on this campaign, states such as Louisiana, Missouri, Minnesota, New Jersey, and Rhode Island have introduced or enacted legislation banning smoking in public schools. The Commission joins these states in encouraging tobacco-free school zones. Schools should provide healthy, safe environments in which to educate our children and help them develop into productive citizens. This Act is one step towards creating the appropriate healthy learning environment.

Schools have an added incentive and responsibility to restrict the use of tobacco beyond these important health-related reasons. Tobacco, specifically its active ingredient nicotine, is a "gateway drug." Youths who smoke or use tobacco products are more likely to use alcohol and other drugs. Because the vast majority of smokers begin smoking before the age of 18 and with the potential for tobacco use leading to other drug use, the goal of preventing tobacco use at an early age is particularly meaningful.

Any effort to prevent or reduce drug use must address the problems of alcohol and tobacco. Since marijuana and other drug use among 6th through 12th grade students appears to be rising, as measured by the annual National High School Senior Survey and the PRIDE 1992-1993 survey, schools can take an important step towards creating healthy, drug-free learning environments by eliminating tobacco use.

This legislation is based in part on rules and regulations promulgated by the New Jersey State Board of Education, the New Jersey Attorney General's Directive Concerning Law Enforcement Operations On or Near School Property, and a Memorandum of Understanding Between Education and Law Enforcement Officials in New Jersey.

Highlights of the Model Ban on Tobacco in Schools Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that in public schools, the right of the nonsmoker to breathe clean air and to learn and work in an environment free of alcohol and other drugs, including tobacco, supersedes the right of the smoker to smoke.
- Recognizes the harmful effects of tobacco on smokers and nonsmokers.
- Recognizes that substance abuse of any kind, including the use of tobacco, is not conducive to a safe, healthy learning environment.
- Recognizes that tobacco is a "gateway drug," a traditional entry substance used by young people, and that prevention efforts must address such substances if such efforts are to reduce drug use.

SPECIFIC RECOMMENDATIONS

- Prohibits the use of tobacco or tobacco products:
 - In any public elementary or secondary school building or educational facility;
 - On the grounds, playgrounds, or parking lots of such school building or educational facility; or
 - On any school bus.
- Provides that such prohibitions be enforced by the [superintendent of schools, school board, principal, or other appropriate school official] or the [official's] designee pursuant to rules, regulations, and penalties promulgated by the [superintendent, school board, principal, or other appropriate official].

Model Ban on Tobacco in Schools Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the "Model Ban on Tobacco Use in Schools Act."

Section 2. Legislative Findings.

(a) The resolution of the conflict between the right of the smoker to smoke and the right of the nonsmoker to breathe clean air involves a determination of when and where, rather than whether, a smoker may legally smoke. It is not the policy of this state to deny anyone over the age of 18 the right to smoke or use tobacco products.

(b) However, in public schools providing education or training, the right of the nonsmoker to breathe clean air and to learn and work in an environment free of alcohol and other drugs, including tobacco, supersedes the right of the smoker to smoke.

(c) Each year, thousands of Americans die from tobacco-related illnesses and develop debilitating diseases due to tobacco use.

(d) In addition to the deleterious effects upon smokers, tobacco smoke is at least an annoyance and a nuisance to a substantial percentage of the nonsmoking public, and a health hazard to a smaller segment of the nonsmoking public, in particular, young, developing children.

(e) Schools should provide environments in which children can learn the necessary skills and values to become healthy, productive citizens. Substance abuse of any kind, including the use of tobacco, is not conducive to such an environment.

(f) Tobacco is a "gateway drug," a traditional entry substance used by young people. Youths who smoke or use tobacco products are more likely to use alcohol and or other drugs. Also, most smokers begin smoking during their teenage years. Such evidence pro-

vides the impetus to focus prevention efforts in environments that house school-aged children.

(g) Barring tobacco use in schools is an important step towards creating a healthy, safe, and drug-free environment conducive to learning.

Section 3. Purpose.

The purpose of this [Act] is to create tobacco-free public schools in this state.

Section 4. Tobacco Prohibition in Schools.

No person shall smoke or otherwise use tobacco or tobacco products:

(a) In a public elementary or secondary school building or educational facility;

(b) On the grounds, playgrounds, or parking lots of such school building or educational facility; or

(c) On any school bus, as defined in [state education act].

COMMENT

The purpose of this section is to prohibit the use of any tobacco product, including cigarettes, cigars, pipes, or chewing tobacco, in public schools, school grounds, or school buses. In doing so, the Commission intends to create tobacco-free school zones. In these zones, no form of substance use, whether alcohol and other drugs or tobacco, will be tolerated.

If schools intend to prevent the onset of drug use by students, they by and large must prevent the onset of "gateway drug" use. By postponing the onset of alcohol and tobacco use, schools may help reduce the potential for student drug use. The recent rise in marijuana use noted in the annual National High School Senior Survey and the 1992-1993 PRIDE student survey sup-

ports the need to prevent alcohol and or other drug use, including tobacco use, among school-aged students.

The Commission recognizes that an outright ban of the use of tobacco products may cause some individuals difficulty, particularly adults with nicotine habits. However, just as a school would not allow a teacher or employee to consume alcohol in the presence of students, schools should not allow adults to use tobacco products in the presence of students, whether in a teacher's lounge or outdoors on school grounds. Adults, and teachers in particular, are role models for students. Tobacco use by adults sends a mixed message to students that tobacco use is "grown-up." The Commission hopes that smokers employed by schools will recognize the important role they play in the lives and development of students and will comply the provisions of this [Act].

Section 5. Enforcement.

This [Act] shall be enforced by the [superintendent of schools, school board, principal, or other appropriate school official] or the [official's] designee pursuant to

rules, regulations, and penalties promulgated by the [superintendent, school board, principal, or other appropriate official].

Section 6. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 7. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Alcohol- and Drug-Free Colleges and Universities Act

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Model Alcohol- and Drug-Free Colleges and Universities Act

Policy Statement

Despite a legal drinking age of 21, alcohol is the drug most widely abused on American college and university campuses. The Office of Substance Abuse Prevention recently summarized the alcohol and other drug abuse situation among college and university students in the following manner:

“Unfortunately, in terms of negative influences and attitudes that foster dangerous and unhealthy behavior related to alcohol and other drug use, the college campus is one of the worst places in the United States for a young person to be. Although illicit drug use is steadily declining among college students, nearly every drinking pattern among college undergraduates (most of whom are under 21) reflects overconsumption, excessive risk taking, and a panoply of destructive outcomes directly caused by alcohol use. These outcomes include freshman dropout rates, auto crashes, date and gang rape, assaults, vandalism, injuries and fatalities, and high rates of death in later life from alcohol-related causes.” (A Promising Future: Alcohol and Other Drug Problem Prevention Services Improvement, OSAP Prevention Monograph 10)

The Commission recognizes the traditional autonomy of colleges and universities and understands that colleges and universities do not wish to have state governments setting their policies. However, the problems associated with alcohol and other drugs by members of the college community are not confined to the boundaries of the campuses. Alcohol and other drug problems involving college students have become public health and public safety concerns that the state legislature feels obligated to address.

This legislation intends to provide a framework for colleges and universities to address alcohol and other drug abuse in a comprehensive fashion. This Act requires colleges and universities to develop and implement comprehensive, detailed strategies that assure to the highest degree possible that underage drinking and alcohol and other drug abuse by students is curbed through the use of preventive and educational programming, student assistance programs, counseling, and referrals to treatment. This legislation also proposes off-campus alcohol consumption reduction strategies and more effective enforcement of policies and laws. This Act is modeled in part after the federal Drug-Free Schools and Campuses Act and proposed legislation in Washington state and Mississippi.

The goal of this legislation is not to identify and punish alcohol or other drug abusing students. This Act seeks to use institutions of higher education as points of intervention to prevent alcohol and other drug abuse where possible, to identify students engaging in abusive behavior involving

alcohol and other drugs, and to enable such students to receive appropriate treatment and education. Also, this legislation is not intended to be burdensome to colleges and universities. Many institutions of higher education already have developed student assistance programs, employee assistance programs, and innovative alcohol and other drug abuse programs and substance abuse rules in place. This legislation builds upon those efforts.

The strategies developed in accordance with this legislation may compel colleges and universities to develop partnerships with local agencies and resources. Partnerships between colleges, universities, local governments, law enforcement, community groups, and prevention and treatment programs can help insure that institutions of higher learning develop effective strategies and programs to reduce the harmful consequences of alcohol and other drugs.

Higher education is not intended to provide a hiatus from responsibility to the laws of this state. College students are just as responsible for maintaining acceptable standards of personal behavior as other citizens. Colleges and universities can play a key role in the development of responsible students by encouraging and demanding responsible behavior.

Alcohol abuse among college and university students poses serious problems that require comprehensive responses. Colleges and universities must lead the effort to reduce alcohol and other drug abuse among their students by honestly addressing those problems and implementing effective responses.

Highlights of the Model Alcohol- and Drug-Free Colleges and Universities Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol is widely used and abused by college-aged students, even though such use is illegal for most undergraduates.
 - Recognizes the scope of alcohol abuse among college and university students.
 - Recognizes the impact of that abuse, in terms of increased injuries, legal difficulties, drop-out rates, criminal activity, and fatalities.
 - Recognizes that much can be done by colleges and universities to address many of the problems of alcohol and other drug abuse among their students.
- Outline or create a process by which students who violate alcohol and other drug policies are assessed for alcohol and/or other drug abuse problems, referred to appropriate education, counseling, or treatment services, and disciplined, where appropriate.
 - Include a description of rules and a plan for their enforcement that will limit the accessibility of alcohol to underage students at school- and student-sponsored events, including sporting events.
 - Include strategies for combatting alcohol and other drug abuse and underage drinking in off-campus student residences or organizations that are officially associated with or recognized by the college or university, such as fraternities or sororities. The strategies shall include, but not be limited to, a program of certification of off-campus student groups.

SPECIFIC RECOMMENDATIONS

- Provides that all colleges and universities receiving any state funding or assistance develop and submit comprehensive plans to combat student alcohol and other drug abuse.
- Provides that the comprehensive plans:
 - Establish rules, regulations, and sanctions concerning the possession, consumption, or use of alcohol and other drugs by members of the student body, and a plan for the enforcement of such procedures and sanctions;
 - Describe a procedure for notifying current and incoming students, parents of students, and faculty members of the existence of such policies;
 - Give details of existing on-campus student assistance programs and describe outreach efforts to inform and encourage students to use these resources;
 - Give details of existing employee assistance programs;
- Provides a procedure for reporting drug trafficking crimes by college and university students to local law enforcement authorities.
- Provides sanctions for the failure of a college or university to develop and implement such a comprehensive plan to combat student alcohol and other drug abuse in accordance with this Act. Such sanctions include the loss of state funding to the college or university or the designation of a portion of such state funding to properly implement the provisions of this Act.

Model Alcohol- and Drug-Free Colleges and Universities Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Alcohol- and Drug-Free Colleges and Universities Act."

Section 2. Legislative Findings.

(a) Alcohol is widely used and abused by college-aged students, even though such use is illegal for most undergraduates.

(b) Students attending colleges and universities get drunk more often than do their counterparts who do not attend colleges and universities, according to annual surveys of high school, college students, and young adults sponsored by the National Institute on Drug Abuse.

(c) College students will spend about \$5.5 billion yearly for alcoholic beverages — more than is spent on operating campus libraries and college scholarships and fellowships combined throughout the United States, according to a 1991 Office for Substance Abuse Prevention White Paper.

(d) The same Office for Substance Abuse Prevention White Paper, "Alcohol Practices, Policies, and Potentials of American Colleges and Universities," notes that as many college students eventually will die of alcohol-related causes — often based on habits begun in college — as will receive their masters' and doctors' degrees. Among those currently in college, between 240,000 and 360,000 eventually will lose their lives due to drinking, roughly equivalent to the entire undergraduate student body of the "Big Ten" universities.

(e) According to extrapolations of data provided by the National Institute on Alcohol Abuse and Alcoholism and the Department of Health and Human Services, college students on average consume 34 gallons of alcoholic beverages per person annually, 30 gallons of soft drinks, and 5.5 gallons of fruit juices.

(f) A Southern Illinois University/College of William and Mary survey of 58,000 college students from 78 different colleges and universities found that students under the age of 21 drink more alcohol and suffer more hangovers, injuries, and legal difficulties than those over 21. The study found that about 48 percent of college students under 21 reported consuming five or more drinks in one sitting during the two weeks before the survey, compared with 35 percent for students over 21.

(g) Alcohol use often is associated with criminal behavior, risky behavior, and accidents. One 1991 college alcohol survey cited by the Office of the U.S. Surgeon General found that alcohol use was associated with damage in residence halls in 68 percent of reported cases, 70 percent of reported cases of violent behavior, 53 percent of physical injuries, 41 percent of academic problems, and 28 percent of drop-outs.

(h) Another campus study found that students who reported committing a campus crime cited more frequent alcohol and other drug use than students who had not committed a crime since enrolling in college. The same study also determined that the more violent campus crimes were associated with more frequent alcohol and other drug use, and victims of campus crimes reported more frequent alcohol and other drug use than students who had not been involved in crime. According to the U.S. Department of Health and Human Services, one study found that among college students who committed rapes or sexual assaults, 55 percent were under the influence of alcohol; 53 percent of rape and sexual assault victims were under the influence of alcohol.

(i) Nearly four percent of college students — nearly one-half million students — drink alcohol every day, according to the Office for Substance Abuse Prevention.

(j) A 1990 Carnegie Foundation survey of college presidents cited alcohol abuse as the campus life issue of greatest concern.

(k) The National Commission on Drug-Free Schools' 1990 final report, "Toward a Drug-Free Generation: A Nation's Responsibility," notes: "Few schools and colleges have developed comprehensive anti-drug programs. Colleges especially are just beginning to address the needs of all students for drug education and prevention programs." The same report recommended that colleges and universities "prohibit all alcohol and tobacco advertising in school newspapers, at stadiums, and at all school events," "include alcohol and tobacco in the school's drug prevention curriculum," "provide adequate support programs for students and staff who need help combatting drinking or smoking problems," and "develop and conduct programs to education and change attitudes of parents and alumni about drugs, including alcohol and tobacco," among other recommendations.

Section 3. Purpose.

This [Act] requires all colleges and universities in the state to develop and submit a comprehensive plan to combat student alcohol and other drug abuse, including underage drinking. By requiring details of related student and employee services, underage drinking reduction programs and strategies, and enforcement activities, this [Act] encourages colleges and universities to focus on the problems associated with student alcohol and other drug abuse and to take proactive steps to address them.

Section 4. Definitions.

As used in this [Act]:

(a) "Alcohol and other drug abuse problem" means any pattern of alcohol and/or other drug use causing impairment in school or social functioning, or that produces physiological dependency evidenced by physical tolerance or withdrawal.

(b) "Employee assistance program" means a worksite-based program using licensed employee assistance professionals and designed to assist in the identification and resolution of health, behavioral, or productivity problems associated with employees impaired by personal concerns, including alcohol and other drugs, health, emotional, marital, family, financial, legal, stress, or other personal concerns that may adversely affect the employees' well-being or job performance.

(c) "Manufacture," "sale," "distribution," and "possession with intent to sell or distribute," "possession,"

and "use" shall have the same meaning as those terms are used in [cite to applicable state controlled substance act].

(d) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(e) "Student assistance program" means a broad-based program involving a variety of school-based personnel. It is designed to assist in the identification and resolution of school-related problems associated with students who are affected by personal concerns, including, but not limited to: health, family, alcohol and other drugs, financial, legal, emotional, stress, and/or other concerns that may adversely affect educational performance.

(f) "Underage" means less than 21 years of age.

Section 5. Formulation of Comprehensive University and College Plans to Combat Student Alcohol and Drug Abuse.

No later than [], each of the state universities, regional universities, and colleges receiving funds or any other form of financial assistance, including participation in any state funded or guaranteed student loan program, from the state or any political subdivision shall submit to the state [higher education coordinating board] and the [single state authority on alcohol and other drugs] a comprehensive plan to combat student alcohol and other drug abuse, including underage drinking. The comprehensive plan must include means for assuring to the highest degree possible that underage drinking and alcohol and other drug abuse by college or university students is curbed.

(a) The comprehensive plan shall:

(1) Establish clear college or university rules, regulations, and sanctions concerning the possession and consumption or use of alcohol and other drugs by members of the student body, and a plan for the enforcement of such procedures and sanctions;

(2) Describe the procedure by which current and incoming students, the parents or guardians of underage students, school employees, and faculty members are notified of the existence of such alcohol and other drugs policies;

(3) Provide details of existing on-campus student assistance programs and alcohol and other drug education and counseling programs available to students and describe outreach efforts to inform and encourage students to use these resources;

(4) Provide details of existing on-campus employee assistance programs and alcohol and other drug education and counseling programs available to faculty members, administrators, and all other school employees and describe outreach efforts to inform and encourage employees to use these resources;

(5) Outline or create a process by which students who violate the college's or university's alcohol and other drug policies are:

(A) Assessed for any alcohol and/or other drug abuse problems, referred to appropriate education, counseling, or treatment services, and disciplined, where appropriate; and

(B) Provided details of services that will be offered to students who are so assessed and referred;

(6) Include a description of rules and a plan for their enforcement that will limit the accessibility of alcohol to underage students at school- and student-sponsored events, which may contain, but not be limited to, the following elements:

(A) Disallowing the service of alcohol at events and locations where it appears probable that at least [two-thirds] of the attendees will be under the minimum drinking age;

(B) Providing that direct access to alcoholic beverages at campus events be limited to designated "servers;"

(C) Using age-indicative school identification cards, such as those bearing student birthdates or featuring profiled head photographs of underage students; and

(D) Enforcing sanctions against students 21 or older who provide alcohol to underage students.

(7) Include strategies for combating alcohol and other drug abuse and underage drinking in off-campus student residences of organizations that are officially associated with or recognized by the university or college, such as fraternities and sororities.

The strategies for combating alcohol abuse and underage drinking shall include, but not be limited to, a program of certification of student groups containing the following elements:

(A) A procedure for certification of student groups and inspections of student housing. In order for a student group that provides housing to ten or more students to be eligible to receive a financial benefit or other benefit of association with the college or university, such as use of campus facilities, lists of incoming students, or lists of students seeking housing, the student group must:

(i) agree to abide by a code of conduct designed to prohibit underage drinking and to curb alcohol and other drug abuse; and

(ii) agree to submit to random inspections of the residence to determine compliance with the code of conduct. The inspection team shall include, but not be limited to, at least one college or university administrator, at least one representative of the student body or student newspaper, and one college or university security officer; and

(B) A progressive penalty scheme for violations of the code of conduct. The first violation of the code within one academic year shall result in the student group being placed on probation with conditions to be determined by the college or university. The second violation of the code within one academic year shall result in a suspension of certification for at least [one month]. The third violation of the code within one academic year shall result in decertification of the student group. Upon decertification of a student group that is a member of a national or other parent organization, the college or university shall immediately notify the national or parent organization that the student group is no longer in good standing at the college or university.

(8) Establish a specific policy statement concerning the use or non-use of alcohol and other drugs at membership recruitment functions, including fraternity/sorority rush, departmental clubs, and special interest groups, whether on or off campus. A process for distributing said policy statement to all

appropriate organizations should be established; and

(9) Establish a specific policy statement concerning the use or nonuse of alcohol and other drugs in athletic facilities or at athletic events, applied equally to all students, faculty and staff members, alumni/ae, and others who attend that college's athletic events or who use its facilities. A process for distributing said policy statement to all students, faculty and staff members, alumni/ae, and other attending athletic events or using athletic facilities should be established.

(b) Copies of the comprehensive plan must be submitted to the [state higher education coordinating board], the [single state authority on alcohol and other drugs], and the appropriate local law enforcement entity or district attorney's office no later than two years after this legislation is enacted.

(c) In subsequent years, the comprehensive plan must be submitted to the [state higher education coordinating board] and the [single state authority on alcohol and other drugs] by July 1 of each year.

(1) In each subsequent year, colleges and universities subject to the provisions of this [Act] must report on what they accomplished and implemented with regard to this [Act] during the past school year.

(2) Each subsequent report must include, but is not limited to:

- (A) Descriptions and data regarding the nature and prevalence of alcohol and other drug problems among their students, faculty, and staff;
- (B) Descriptions of program development and activities; and
- (C) Enforcement activities.

COMMENT

This section, modeled in part after the federal Drug-Free Schools and Campuses Act, requires all colleges and universities in the state to develop and submit a comprehensive plan to combat student alcohol and other drug abuse, including underage drinking. What the Commission intends to achieve by requiring such provisions at the state level is the assurance that colleges and universities do not forsake their responsibility to create and maintain learning environments in which the

goals of the schools are not compromised by alcohol and other drug problems.

Included in the comprehensive university plans must be details of existing on-campus student assistance programs and employee assistance programs to help alcohol and other drug-involved students and employees receive counseling and/or referral to appropriate education and treatment programs. Also, the plan must describe the process by which such assessments and referrals take place. It is the Commission's intent that colleges and universities will seek to use such requirements as a means to identify and assist substance abusing students and employees, rather than simply to punish, expel, or fire them.

The comprehensive plan also requires effort on the part of colleges and universities to devise strategies for limiting the accessibility of alcohol to underage students at school- and student-sponsored events, athletic events, and off-campus student residences of college- or university-affiliated organizations. While these provisions are more stringent than those found in the federal Drug-Free Schools and Campuses Act, the Commission believes they are necessary components of colleges' and universities' attempts to become proactive participants in the effort against student alcohol and other drug abuse.

Colleges and universities have become increasingly concerned about the prevalence of alcohol and drug abuse in general, and underage drinking in particular. Many colleges and universities already have instituted student assistance programs, employee assistance programs, and other services and innovative strategies to address alcohol and other drug abuse. For those that have, this [Act] should not prove burdensome.

For those colleges and universities that have not, the Commission acknowledges that the provisions of this section may create additional costs. However, the Commission anticipates that these costs will be offset in the long run by lower student and employee health care utilization, reduced costs associated with alcohol and other drug related crimes, and other beneficial reductions in alcohol and other drug problems. It is the Commission's hope that colleges and universities will be willing, at a minimum, to take these comprehensive steps to influence or address the areas over which they retain a degree of control to reduce the incidence of alcohol and other drug abuse.

Section 6. Reporting Campus Drug Trafficking Crimes to Local Law Enforcement.

Included in the comprehensive university plan must be a system for reporting drug trafficking crimes by college and university students to local law enforcement authorities.

(a) A designated employee of state universities, regional universities, and colleges receiving funding or tax benefits from the state shall notify the police department or county sheriff of the municipality in which the institution is located if the employee has reasonable grounds to believe that the manufacture, sale, distribution, or possession with intent to sell or distribute marijuana or any controlled substance, as defined by the state [controlled substances act] has occurred on the campus of the institution, or in facilities or off-campus housing of organizations that are associated with or recognized by the college or university, or at an institution-sponsored or institution-related activity on or off the campus, without regard to whether the activity is investigated by campus security personnel.

(b) This section applies to:

(1) Public institutions of higher education, as defined by the [state education code]; and

(2) Private institutions of higher education that receive funds or any other form of financial assistance under any state program, including participation in any state funded or guaranteed student loan program.

(c) The notification under this section will be given within 24 hours after the time the listed activity is first reported to any employee of the institution and must include the name and address of any student who is enrolled in the institution and who is known by the reporter to have been a possible participant in the activity.

(d) Notification is not required by this section if the designated employee reasonably believes that the activity does not constitute a criminal offense.

(e) Each institution subject to this section shall designate an employee to be responsible for the notification required by this section. The employee is not liable in civil damages for reporting in good faith as required by this section. An employee who fails to report as required by this section commits a summary offense.

COMMENT

Although underage college and university students are more likely to abuse alcohol and other drugs than others their age, they often are treated as a privileged class and at times are less likely to be held accountable to the law when caught violating alcohol and other drug abuse laws. In many cases, college students caught violating alcohol laws are only subject to university procedures; however, their same-age counterparts may face criminal charges for similar violations. The purpose of this section is to hold college and university students equally accountable under the law.

It is the intent of the Commission that college and university students be held to the same standard of behavior as their non-college-attending counterparts. However, it is also the intent of the Commission that rather than singularly punitive sanctions being applied, law enforcement, courts, and university sanctioning bodies consider the penalties described in the [Model Underage Alcohol Consumption Reduction Act], found in Volume V, Drug Free Families, Schools, and Workplaces. These penalties seek to address alcohol and other drug abuse while also providing mechanisms through which alcohol- and other drug-involved offenders may find assistance in addressing their substance abuse problems. Strictly punitive approaches to address alcohol and other drug abuse may not help those most in need of assistance, but rather, may drive serious problems underground or further into denial.

While the Commission encourages that colleges and universities assist alcohol or other drug abusing students to enter into treatment, the Commission does not in any way condone drug trafficking violations committed by college or university students. Drug traffickers should be reported to law enforcement agencies, prosecuted for these offenses, and punished upon conviction. The Commission intends that those individuals fulfill those court-ordered sentences. The Commission does not intend this legislation to allow such individuals to avoid their sentences for trafficking offenses by entering into a treatment program in accordance with the provisions of the [Model Underage Alcohol Consumption Reduction Act].

Section 7. Sanctions.

(a) Failure to develop and implement such a comprehensive plan to combat student alcohol and other drug abuse, including underage drinking, within two years after the enactment of this legislation and to maintain such implementation every year thereafter, may result in the following action by the state [higher education coordinating board], in consultation with the [single state authority on alcohol and other drugs]:

(1) Recommending to the state legislature that the college or university not be eligible to receive full annual funding or any other form of financial assistance under any state program, including participation in any state funded or guaranteed student loan program, until the college or university acts in accordance with the provisions of this [Act]; or

(2) Designating by the [higher education coordinating board] a portion of state funding to the college or university deemed sufficient by the state [higher education coordinating board], in consultation with the [single state authority on alcohol and other drugs], to implement the programs and processes required under this [Act]. Under such circumstances, the [single state authority on alcohol and other drugs], or its designee, shall oversee the implementation of such programs, and, if necessary, shall assume responsibility for such implementation until the [higher education coordinating board], in consultation with the [single state authority on alcohol and other drugs], determines that the college or university is acting in accordance with the requirements of this [Act].

(b) The state [higher education coordinating board] shall promulgate rules and regulations to implement and enforce the provisions of this section.

COMMENT

It is imperative that colleges and universities make every effort to combat student alcohol and other drug abuse, including underage drinking. By being required to provide details of related student and employee services, underage drinking reduction programs and strate-

gies, and enforcement activities, colleges and universities will take proactive and effective steps to address this problem.

Again, for those colleges and universities that have already begun to take proactive steps by instituting student assistance programs, employee assistance programs, and other services and innovative strategies to address alcohol and other drug abuse, this [Act] will not prove burdensome. For those colleges and universities that have not, this [Act] will require them to take steps to reduce the incidence of alcohol and other drug abuse on their campuses. The Commission believes that the additional costs incurred by effective, earnest efforts to reduce alcohol and other drug abuse will be offset in the long run by a reduction in problems associated with such abuse.

Failure to develop and implement a comprehensive alcohol and other drug abuse reduction plan, as required by this [Act], could result in drastic action against the college or university, including the loss of state funding or the designation of state funds to that college to be earmarked to fully implement the programs and processes required by this legislation.

Section 8. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 9. Effective Date.

This [Act] shall be effective within two years after its adoption to allow for proper planning and implementation of its sections and shall begin with the [reference to specific date] school year.

Policy Statement on
Truancy, Expulsion,
and Children Out of School

Truancy, Expulsion, and Children Out of School

Policy Statement

The President's Commission on Model State Drug Laws supports the premise that alcohol and other drug prevention strategies must address risk factors and their underlying causes. One risk factor in particular — truancy — creates an unnecessary barrier to the development and maintenance of drug-free communities and schools.

Truancy and dropping out of school have been correlated with alcohol and other drug abuse by youths. According to the U.S. Department of Education:

“High school seniors who are heavy drug users are more than three times as likely to skip school as nonusers. About one-fifth of heavy users skipped three or more school days a month, more than six times the truancy rate of nonusers. In a Philadelphia study, dropouts were almost twice as likely to be frequent drug users as were high school graduates; four in five dropouts used drugs regularly.” (U.S. Department of Education, *What Works: Schools Without Drugs* (Washington, DC: U.S. Department of Education, 1992), p. 11.)

If schools intervene immediately with the problem of truancy, there is a higher probability of preventing the potential onset of criminality and alcohol and other drug problems, of developing healthy students and citizens, or assessing and treating problems. But others outside of the educational system can intervene on the student's behalf as well. Prevention and intervention specialists, treatment, health care, and social service providers, community members, and law enforcement personnel all can be key participants in the effort to reduce student truancy and its attendant problems. An effective response to truancy, then, should be planned by a consortium representative of each of these participants. The Commission recommends that state [Secretaries of Education] convene this broad-based consortium to develop strategies and recommendations that may be implemented at the local level to address student truancy.

The Commission also offers the following recommendations for consideration by such broad-based consortia in the development of local truancy strategies:

(a) Prevention.

- (1) Offer positive activities to encourage students to attend and succeed within the school environment. Examples of these would include citizenship, attendance, or academic excellence awards.

(2) Develop innovative community incentive opportunities in which strong collaboration is developed between families, schools, businesses, and other citizens.

(3) Offer evening, tuition-free parent/student classes for high risk students and their parents.

(b) School-level interventions.

(1) Develop alternative education programs for children who are not succeeding in traditional school settings. Such programs should support the idea that every child can learn and provide every child with an opportunity to receive an appropriate education.

(2) Develop legislation that allows principals to issue [\$10] citations to students or parents for truancy and to use other innovative approaches to address this problem.

(3) Fully explore and attempt all options before chronically truant children are removed from school. Develop alternatives to suspension and expulsion, such as the institution of increasing levels of intervention and supervision with parental consent. These escalating levels of intervention and supervision might limit the child's discretionary time and provide an increasing degree of structure rather than removing students from schools and banishing them to likely unsupervised environments. As an example of such increasing levels:

(A) An 8 hour school day would be imposed for initial infractions;

(B) A more structured 12 hour school day would be imposed if the problem worsens;

(C) A more highly structured 16 hour day would be imposed where the problem continues; and

(D) If necessary, a secure 24 hour residential school.

Such increasing levels of intervention and supervision also should be applied to other school infractions, in lieu of suspension or expulsion where appropriate.

The Commission anticipates higher state and local education expenditures to develop and implement such increasing levels of intervention and supervision. However, the Commission believes that the long term costs to society if truancy is not addressed will outweigh the increased initial education costs. The impact of truant or expelled youths who become criminally-involved can be enormous. Not only are these costs incurred by the police, prosecution, courts, and victims of crime, there are also the personal losses incurred by the truant or expelled individual. The Commission urges policymakers to conduct cost-offset studies that examine the impact of a significant reduction in truancy and expulsions on criminal justice and societal costs and on the increased benefits of encouraging youths towards more productive lifestyles.

(c) Networked interventions. Establish through legislation authority for peace officers to intervene with young people who are not in school during school hours. This authority should allow officers to detain a child who is not in school during school hours and deliver him or her to a designated location, either the school or a non-secure intake center. Schools may be contacted to verify enrollment and attendance patterns. Parents should be contacted and required to come to that location to release their child and return him or her to school. Where parental

involvement with their children is so attenuated that such parental activity is unlikely, follow-up intervention should be required by local social service authorities.

Follow-up contacts may be made to assist with communication between parents, child, and school and provide referral options. An example of this type of program is the THRIVE Program, operating out of the Oklahoma County District Attorney's Office.

(d) Addressing chronically absent or truant students and their parents. Mandate a specific procedure for addressing chronically absent or truant students and their parents as soon as the pattern of absence from school becomes evident. This procedure could include the following steps:

(1) The school contacts parent(s), verifies reason for absence, and attempts to get the child back to the school site.

(2) A representative of the District Attorney's office or other law enforcement agencies holds a meeting with parents of all chronically absent students at the school site and advises both the child and parent(s) of possible legal action if truancy continues. If truancy does continue, the student will then be referred to a Student Attendance Review Board (SARB).

(3) SARBs diagnose and recommend procedures to alleviate the circumstances that are contributing to the truancy, attendance, and behavior problems of a student. SARBs are designed to explore alternatives to adjudication by the juvenile justice system.

(A) A SARB, comprised of a teacher or counselor, an attendance officer, a school administrator, the District Attorney or other local law enforcement officials, a medical practitioner, and a probation officer, reviews the absences and excuses with the child and parent(s) and enters into a contract with them to eliminate future truancy.

(B) Upon the child's first unexcused absence following the SARB conference, a meeting is held to inform parents and child of court action to be taken against parent(s) and/or child if absentee problem continues.

(4) Explore legal remedies for inattentive parents or unresponsive youths.

(A) Parents may be charged with a misdemeanor or an infraction, and upon conviction pay a mandatory fine and attend parent skills training courses and counseling

(B) Youths may be required to do community service, attend counseling sessions, and satisfy attendance requirements.

An example of this type of program is the Abolish Chronic Truancy (ACT) program, operated by the Los Angeles County District Attorney's Office. These interventions should be used in addition to the school interventions discussed in (b).

(e) Examine and correct disincentives for schools to address truancy. In some states, school funding is based in part upon a school's average daily attendance. Therefore, it is to the financial advantage of some schools to ignore the truancy problem as long as the truant students are counted as present in homeroom, rather than to accurately report, investigate, and follow-up on truants. In other areas, funding for truancy officers is either cut during budget crises or re-allocated for other school purposes. All such disincentives should be examined and corrected.

(f) Law enforcement.

(1) Through legislation and school board action, empower peace officers to intervene with school-age children on the streets during school hours. This deters such youths from becoming criminally involved, and reinforces the importance of education. This law enforcement activity may prove to be good crime control policy as well as good education policy. In Oklahoma City, for example, the implementation of such a program contributed to a 27 percent reduction in the city's daytime burglary rate.

(2) Provide sure and certain penalties for cases that do not produce success from other efforts.

Some of these recommendations may apply to certain states and communities. In some locales, these recommendations would need substantial modification. Each state and community must tailor its efforts based on the uniqueness of its own problems, resources, and solutions sought.

It is the Commission's desire to see all children benefit from society's obligation to educate them. Education must be a key component of any effort to enable children to develop into productive members of society. Truancy and expulsion, with all their attendant problems, interferes with such development and must be addressed in a comprehensive and coordinated fashion. Simply ignoring truants and expelling problem students creates greater and more costly problems.

Appendix L

(The following are examples of truancy programs discussed in the Policy Statement on Truancy, Expulsion, and Children Out of School.)

Youth Cornerstone

Youth Cornerstone is a non-profit community based organization devoted to promoting healthy and productive lifestyles for youth in the Oklahoma County area.

Established in 1990, Youth Cornerstone evolved from the efforts of citizens and professionals united by their concern about youth issues. Inspired by District Attorney Robert H. Macy to develop strategies for intervention and prevention at the juvenile level, these citizens developed the THRIVE (Truancy Habits Reduced Increasing Valuable Education) and 3D (Don't Do Drugs) Programs. Begun as pilot projects, both programs have been adopted and continued by Youth Cornerstone.

THRIVE provides an intervention for youth who are truant from school and seeks to reduce the potential for such youth to drop out of school or become involved in criminal activity.

- Over 1,700 children have been processed by THRIVE since 1989.
- The Oklahoma City Police Department reports a 27 percent decrease in daytime burglaries since the inception of THRIVE.
- The Oklahoma City Public School System reports a steady decline in the drop-out rate from 5.9 percent in 1988-1989 to 4.1 percent in 1991-1992.

3D provides young people with positive reasons for becoming and/or staying drug and alcohol free and gives them the opportunity to take a personal stand for a drug-free community.

- Over 1,300 3D Card Carriers in the Oklahoma City metro area.
- According to a survey of 700 3D members, 63 percent reported that having the 3D card is a good reason or excuse to say "No!" to alcohol or drug use.
- 32 percent of 3D Card holders feel that having the card has some influence on their decision not to use drugs or alcohol.

THRIVE Program

(Truancy Habits Reduced Increasing Valuable Education)

The THRIVE Program was developed to address the truancy problem in Oklahoma County, and is a cooperative effort among the Oklahoma City Public Schools, Oklahoma City Police Department, District Attorney's Office, and the Oklahoma Juvenile Bureau. This program is based on legislation that allows local school boards and law enforcement agencies to authorize police officers to act as attendance officers. Through this agreement, police officers may detain minors of school age who

are not in school during school hours and transport them to the THRIVE Center. At that point, THRIVE Center staff conduct an intake interview and contact parents who are required to pick up their child.

Last year, THRIVE implemented a Social Service Intervention Program that is designed to provide a resource to children identified to be at-risk due to truant behavior. Children who have been referred to the THRIVE Center and their families are assisted to identify and access educational or other resource that will assist them to reduce truant behavior and/or address other issues that may be contributing to the child's truancy.

Each child referred to the THRIVE Center is assigned to a Case Manager who provides assessment and referral services following the child's initial contact with the Center. The Case Manager attempts to contact each family by telephone or letter to schedule an interview in the home or at the Center. During this interview, the child and his or her parents are encouraged to discuss concerns related to the truancy referral and to explore alternatives to address these concerns. A plan is mutually agreed upon, and working closely with the school system, the Case Manager assists the family to take the actions necessary to achieve its goals regarding improved school attendance for the child.

The THRIVE Program currently operates two centers. If you have questions or need additional information about the THRIVE Program, please contact a Case Manager at (405) 235-6681.

3D (Don't Do Drugs) Program

The 3D Program is a collaborative effort of the community, local businesses, and school systems to combat the use of alcohol and other drugs among young people in the Oklahoma County area. Based on "rewarding the positive," 3D commends those young people who have made the decision to abstain from alcohol and other drug use by offering tangible incentives. It also gives students an opportunity to make a statement that they have chosen a lifestyle free of alcohol and other drugs while taking a stand for a drug-free community.

With parental consent, students voluntarily submit to a urinalysis test as well as random drug screenings. All drug screenings are performed by laboratories certified by the National Institute on Drug Abuse. Upon testing negative for drug use, students are issued a 3D Photo Identification Card that entitles them to discounts on merchandise and/or services at participating businesses and free admission to special events. Each new member is also given a 3D t-shirt, compliments of Youth Cornerstone.

Currently, there are seven 3D Chapters established within three school districts in the Oklahoma County area. Approximately 1,400 young people are active participants in these chapters. A small corps of volunteers composed of parents, school faculty, and community members is generally available to assist each 3D Chapter. Fifty-three local merchants participate in the 3D Program by offering discounts to 3D members.

Student ownership of 3D is one of the most important aspects of the program. 3D members have been instrumental in planning and conducting events and activities that allow them to associate with their peers in a drug-free environment. Such activities have included pizza parties and free

admission to a local amusement park. Students from one 3D Chapter participated in a state-wide Drug Abuse Prevention Convention earlier this year. 3D members look forward to planning and conducting more such events in the future.

During the past year, 3D published guidelines for implementation of new 3D Chapters. These guidelines provide specific instructions for developing new chapters and will facilitate the start-up process as new chapters are begun in additional schools throughout the metro area.

Future goals of 3D include developing chapters at the middle school level in the already participating school districts and implementing the 3D Program in additional school districts within the area. Youth Cornerstone also hopes to form a scholarship committee to obtain funding and develop selection criteria to provide scholarships for deserving members of 3D.

Model Drug-Free Private Sector Workplace Act

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Model Drug-Free Private Sector Workplace Act Policy Statement

This legislation seeks to institute a standard for effective, comprehensive private sector alcohol and other drug-free workplace programs. These workplace programs are intended to identify and reduce alcohol and other drug use affecting the workplace, to assist employees with the treatment of their drug problems, and to lower the economic costs of alcohol and other drug problems to businesses.

Just as schools offer an appropriate platform for intervention with children and youths with alcohol and other drug problems, the workplace is an appropriate platform for intervention with adults. Two-thirds of adult drug users are employed. Adults also have little opportunity elsewhere to become educated about alcohol and other drug abuse problems and to be directed to any needed assistance.

Employers have two important reasons for wanting to establish alcohol and other drug-free workplace programs. First and foremost, employers are concerned about the health, safety, and well-being of their employees. Second, alcohol and other drug abuse costs businesses billions of dollars each year in increased medical claims, medical disability costs, decreased productivity, injuries, theft, and absenteeism.

This legislation establishes comprehensive private sector alcohol and other drug-free workplace programs. In the past, some employers have considered drug testing in and of itself to be a complete workplace substance abuse program. However, the existence of a substance abuse testing program by itself will only serve to identify alcohol and other drug abusers. Testing does nothing to educate, treat, or rehabilitate alcohol and other drug abusing employees.

The Commission believes that a truly comprehensive drug-free workplace program must include all of the following elements:

- (1) A detailed written policy statement. This statement must express the employer's policy on alcohol and other drug abuse, explaining any substance abuse testing to which employees must submit, and providing information about the employer's employee assistance program or rehabilitation resources for employees seeking assistance for alcohol and other drug problems.
- (2) Employee assistance programs or rehabilitation resources. Employers must make employee assistance programs or rehabilitation resources available to their employees. The provision of such services have shown tremendous cost benefit to employers and do much to restore alcohol and other drug abusing employees to good health and well-being.

(3) Employee education programs. Employers must provide employees with annual education programs on alcohol and other drug abuse, including explanations of the disease of addiction for alcohol and other drugs, information on the company's policies and procedures regarding alcohol and other drug abuse, and information on how employees who wish to obtain alcohol or other drug treatment can do so.

(4) Supervisor training provisions. Employers must also provide supervisors with annual training regarding alcohol and other drug abuse. This training is designed to help supervisors identify substance abusing employees, confront them about their problems, and refer them to appropriate employee assistance or treatment resources.

(5) Substance abuse testing. Employers must implement substance abuse testing as part of any comprehensive drug-free workplace program. Pre-employment, reasonable suspicion, medical fitness, and post-accident testing would be required by a comprehensive drug-free workplace program in compliance with this Act. Random drug testing is neither prohibited nor mandated by this Act.

The testing required by this Act would be conducted by laboratories certified by the U.S. Department of Health and Human Service's National Laboratory Certification Program or the College of American Pathologists, which provide the highest level of employee protections and safeguards with regards to specimen collection, chain-of-custody, and testing procedures.

(6) Confidentiality provisions. Strict confidentiality provisions must be enacted in the workplace to protect employee records and information regarding alcohol and other drug abuse problems.

To encourage private sector employers to establish such comprehensive private sector drug-free workplace programs, this legislation offers protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test. The Commission believes that the implementation of a comprehensive drug-free workplace program will reduce the amount of legal action taken against employers by establishing stringent employee protections, testing standards and safeguards, employee resources, confidentiality provisions, and thorough procedures. The implementation of all of the protections, standards, and safeguards required by this [Act] should eliminate the cause of much of the legal action currently involving employee alcohol and other drug abuse and workplace substance abuse testing.

Highlights of the Model Drug-Free Private Sector Workplace Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the economic potential of employees and their companies.
 - Recognizes the role of employee assistance programs (EAPs) and rehabilitation resources in the workplace, linking the identification of employee substance abuse problems with the employer's workplace program to assess and refer those employees to treatment and rehabilitation.
 - Recognizes that regular and continuing substance abuse education alerts employees to the dangers of alcohol and other drug abuse and enables them to understand and access the employer's workplace substance program services.
 - Recognizes that supervisor training is an integral component of any workplace substance abuse program because it prepares supervisors for potential substance abuse problems among employees and provides the skills to refer those employees to appropriate assistance services.
 - Recognizes that effective, comprehensive private sector workplace programs must include each of the following components: written policy statements, employee assistance programs or rehabilitation resources, employee education, supervisor training, substance abuse testing, laboratory standards, and employee confidentiality provisions.
- Provides protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test, provided that the employers have a comprehensive workplace program.
 - Requires a comprehensive drug-free workplace program to include each of the following components: written policy statements, employee assistance programs or rehabilitation resources, employee education, supervisor training, substance abuse testing, laboratory standards, and employee confidentiality provisions.
 - Provides specific components of any written policy statement on substance abuse, including a general statement on the employer's substance abuse policy, a statement identifying the types of testing to which an employee or job applicant may be required to submit, a statement identifying the actions the employer may take against an employee or job applicant on the basis of a confirmed positive test result, and other information relevant to the employer's substance abuse program.
 - Provides for employee assistance programs or rehabilitation resources and establishes employee notification requirements to facilitate access to such services.
 - Provides annual employee education programs that educate employees on alcohol and other drug abuse, its effects on the workplace, and the employer's policies and procedures regarding alcohol and other drug abuse in the workplace and how employees may access rehabilitation resources.

SPECIFIC RECOMMENDATIONS

- Provides a legal right of employers to test employers or prospective employees for the presence of alcohol or other drugs.
- Provides annual supervisor substance abuse training that enables supervisors to recognize, document, and corroborate employee alcohol and other drug abuse and to refer alcohol and other drug abusing employ-

- ees to the proper treatment providers. Also provides supervisors with information concerning the benefits of referring employees to treatment programs and explains employee health insurance or HMO coverage for alcohol and other drug problems.
- Provides that employers conduct the following types of substance abuse testing in order to qualify as a private sector drug-free workplace and to qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a substance abuse test:
 - pre-employment testing;
 - reasonable suspicion testing;
 - regularly scheduled physical or fitness-for-duty testing;
 - probationary testing due to a positive substance abuse test or mandatory referral to an EAP program; and
 - post-accident testing.
 - Provides that all specimen collection, storage, transportation, and testing procedures be performed in accordance with regulations approved by the U.S. Department of Health and Human Services, the College of American Pathologists, and/or the U.S. Department of Transportation regulations for alcohol testing.
 - Provides that laboratories analyzing initial or confirmation specimens be approved by the U.S. Department of Health and Human Services' National Laboratory Certification Program or the College of American Pathologists, and must conform to regulations that insure the proper handling, reliability, and scientific accuracy of test results.
 - Provides procedures for disclosing to the employer a written test result report within seven working days after receipt of the sample.
 - Provides that all information, interviews, reports, statements, memoranda, and test results received by the employer through a substance abuse testing program are confidential communications as they pertain to the employee only and establishes strict confidentiality standards and procedures regarding those communications.
 - Provides that employers may use a confirmed positive substance abuse test result or a refusal to submit to a substance abuse test as a valid basis for rehabilitative and/or disciplinary action that may include:
 - a requirement that the employee enroll in an employee assistance program or a rehabilitation, treatment, or counseling program;
 - suspension of the employee, with or without pay, for a designated period of time;
 - termination of employment;
 - refusal to hire a prospective employee; and/or
 - other action in conformance with the employer's written policy and procedures.
 - Provides that no cause of action be established for any person against any employer who has established a drug-free workplace policy and initiated a testing program in accordance with this Act for actions in good faith based on the results of a "positive" confirmed substance abuse test, failure to conduct testing, or termination or suspension of any substance abuse prevention or testing program or policy.
 - Provides that no cause of action be established for a person against any employer who has established a drug-free workplace program in accordance with this Act, unless the employer's action was based on a confirmed "false positive" test result, and the employer knew or clearly should have known that the result was in error, and ignored the true test result because of reckless, malicious, or negligent disregard for the truth and/or the willful intent to deceive or be deceived.
 - Provides limits to defamation causes of action.

Model Drug-Free Private Sector Workplace Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Drug-Free Private Sector Workplace Act.”

Section 2. Legislative Findings.

(a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.

(b) A healthy and productive work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of products produced and services rendered, are important to employees, employers, and the general public in this state.

(c) The abuse of alcohol and other drugs creates a variety of workplace health and safety problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

(d) Surveys by the American Management Association indicate that firms combining drug testing with other workplace education and counseling programs have reported lower test-positive rates than companies that employed drug testing only.

(e) Employee assistance programs (EAPs) and rehabilitation resources in the workplace link the identification of substance abuse with the employer’s program to assess the extent of the problem and to direct the employee to treatment and rehabilitation. EAPs also reintegrate rehabilitated employees back into the workplace and monitor compliance of the employer’s substance abuse program. Cost-benefit analyses of EAPs have found a 4:1 return or higher on investment in the programs due to lower health care and workers’ compensation utilization costs and higher worker productivity.

(f) Regular and continuing substance abuse education alerts employees to the dangers of alcohol and other drug abuse and enables them to understand and abide by a workplace substance abuse program. Such education also provides employees with information needed to access treatment and rehabilitation services.

(g) Supervisor substance abuse training is an integral component of any workplace substance abuse program because it instructs supervisors to recognize problems associated with alcohol and other drug abuse, properly confront an employee about possible problems, and refer the employee to appropriate assistance.

(h) In balancing the interests of employers, employees, and the welfare of the general public, the state legislature finds that fair and equitable substance abuse programs, including employee assistance programs or rehabilitation resources, employee and supervisor education, substance abuse testing, laboratory standards, and confidentiality provisions, in accordance with this [Act], are in the best interest of all parties.

Section 3. Purpose.

The purpose of this [Act] is to offer guidance on the development of effective, comprehensive private sector drug-free workplace programs that seek to reduce workplace alcohol and other drug use and to assist employees with the treatment and rehabilitation of their alcohol and other drug problems. Under this [Act], private sector employers shall qualify for protection from litigation regarding certain legal claims for acting in good faith against an employee confirmed to abuse alcohol or other drugs in violation of the employer’s written policy, provided that the employer’s private sector drug-free workplace includes all of the following protections, standards, employee resources, and procedures, as established by this [Act]:

- (a) Written policy statement on substance abuse;
- (b) Employee assistance programs or rehabilitation resources;
- (c) Employee education and supervisor training;
- (d) Substance abuse testing and procedures;
- (e) Confidentiality of certain information; and
- (f) Other matters relative to the foregoing.

Section 4. Definitions.

As used in this [Act]:

- (a) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) "Chain of custody" means the methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results.
- (c) "Confirmation test," "confirmed test," or "confirmed substance abuse test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.
- (d) "Drug" or "drugs" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualene, propoxyphene, or a metabolite of any such substances. An employer may test an individual for any or all of these.
- (e) "Employee" means any person who works for salary, wages, or other remuneration for an employer, including those working part-time or as leased employees.
- (f) "Employee Assistance Program" (EAP) means a program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns. A minimum level of core services must include consulta-

tion and training; professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up and monitoring; employee education; and quality assurance.

(g) "Employer" means a person or entity that is subject to the provisions of this [Act].

(h) "Initial test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent procedure or shall use a more accurate scientifically accepted method approved by the federal Department of Health & Human Services National Laboratory Certification Program or the College of American Pathologists as such more accurate technology becomes available in a cost-effective form.

(i) "Job applicant" means a person who has applied for a position and been offered employment subject to passing a substance abuse test. A job applicant may have begun work pending the results of the substance abuse test.

(j) "Manufacture," "sale," "distribution," "solicitation," "possession with intent to sell or distribute," and "use" shall have the same meaning as those terms are used in [state controlled substance law].

(k) "Medical review officer" means a licensed physician trained in the field of alcohol and other drug testing who provides medical assessment of positive test results, requests re-analysis if necessary, and makes a determination whether or not alcohol or other drug use has occurred.

(l) "Nonprescription medication" means a drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.

(m) "Prescription medication" means a drug or medication lawfully prescribed by a physician for an individual and taken by the individual only in accordance with such prescription.

(n) "Reasonable suspicion testing" means substance abuse testing based on evidence that an employee is using or has used alcohol or other drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn

from those facts in light of experience. Among other things, such facts and inferences may be based upon, but not limited to, the following:

- (1) Observable phenomena while at work such as direct observation of alcohol or other drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use;
 - (2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
 - (3) A report of alcohol or other drug use provided by a reliable and credible source;
 - (4) Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer;
 - (5) Evidence that an employee has caused or contributed to an accident while at work; or
 - (6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.
- (o) "Rehabilitation program" means an established program capable of providing expert identification, assessment, and resolution of employee alcohol and other drug abuse in a confidential and timely manner. This service shall in all cases be provided by persons licensed by the [single state authority on alcohol and other drugs] or appropriately certified as health professionals to provide alcohol and other drug rehabilitative services.
- (p) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.
- (q) "Specimen" means urine, blood, breath, hair, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites. Such tests must meet the [state department of health] standards for scientific and technical accuracy and afford the opportunity for strict forensic chain of custody procedures.
- (r) "Substance" means alcohol or other drugs.
- (s) "Substance abuse test" or "test" means any chemical, biological, or physical instrumental analysis

administered for the purpose of determining the presence or absence of alcohol and other drugs or their metabolites.

(t) "Threshold detection level" means the level at which the presence of alcohol or other drugs can be reasonably expected to be detected by an initial and confirmatory test performed by a laboratory meeting the standards specified in this [Act]. The threshold detection level indicates the level at which a valid conclusion can be drawn that the alcohol or other drugs are present in the employee's specimen.

COMMENT

In subsection (d), states should add or subtract drugs as appropriate. Laboratories participating in the federal Department of Health and Human Services' National Laboratory Certification Program test for the first five drugs listed in the definition. Many employers also desire to test for barbiturates, benzodiazepines, and alcohol, among others. This definition is constructed to accommodate those employers that wish to test more broadly.

In subsections (c) and (h), "confirmation tests" and "initial tests," require testing procedures that have been approved by the federal Department of Health and Human Services' National Laboratory Certification Program, or the College of American Pathologists. It is the sense of the Commission that the National Laboratory Certification Program and the College of American Pathologists offer the highest accepted scientific methodology and protections in this area. Currently, these programs utilize urinalysis testing for drugs of abuse. But states may consider alternative testing procedures to the National Laboratory Certification Program, or the College of American Pathologists, including testing for alcohol and other drugs by scientific methodology associated with hair, saliva, blood, breath, urine, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites, as long as the [state department of health] or the [single state authority for alcohol and other drugs] is satisfied that the scientific methodology equals or exceeds the quality and protection established by the National Laboratory Certification Program's or the College of American Pathologists' certification and testing procedures involving urine.

By including products of the human body other than urine, the definition for "specimen" in subsection (q) is constructed to reflect such use of alternative scientific methodology.

In subsection (e), "employee" includes full- and part-time workers. This definition does not include sub-contracted employees, leaving such inclusion to the discretion of employers.

Section 5. Applicable Conditions for a Legal Policy.

It is lawful for an employer to test employees or prospective employees for the presence of alcohol or other drugs, in accordance with the provisions of this [Act], as a condition of continued employment or hiring. However, in order to qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a substance abuse test, employers must implement and maintain a comprehensive drug-free workplace program and adhere to the procedural safeguards that demand accuracy and fairness as included in subsequent sections of this [Act].

COMMENT

The ultimate goal of this legislation is to reduce alcohol and other drug abuse and their attendant harms in the workplace through the prevention or identification, referral, and treatment of such problems. It is not the intent of this [Act] to interfere with the work relationship between employers and employees. By establishing a rigorous standard for comprehensive private sector drug-free workplace programs and attempting to reduce non-meritorious lawsuits that might otherwise arise in the absence of such rigorous employee assistance, education, testing, and confidentiality standards, the Commission hopes to keep the focus of drug-free workplaces on reducing alcohol and other drug abuse and their attendant harms in the workplace. The Commission strongly encourages employers and employees to recognize the potential benefits of an alcohol- and drug-free workplace during the development and implementation of a rigorous, comprehensive drug-free workplace program and to work together towards achieving that goal.

Section 6. Drug-Free Workplace Elements.

(a) A comprehensive drug-free workplace program must contain the following elements:

- (1) Written policy statement as provided in Section 7.
- (2) Employee assistance programs or rehabilitation resources, in accordance with Section 8.

- (3) Employee education as provided in Section 9.
- (4) Supervisor training in accordance with Section 10.
- (5) Substance abuse testing as provided in Section 11.

(b) In addition to the requirements of subsection (a) of this section, a comprehensive drug-free workplace program must be implemented in compliance with the confidentiality standards provided in Section 12.

COMMENT

A drug-free workplace program must consist of a written policy statement on substance abuse, employee assistance programs or rehabilitation resources, annual employee and supervisor education about substance abuse, substance abuse testing provisions and procedures, and proper confidentiality safeguards.

Each element is an integral component of any comprehensive substance abuse program. Written policy statements notify employees of the employer's position on substance abuse and explain all aspects of the employer's substance abuse program. Employee assistance programs and rehabilitation resources enable a drug-using employee to be assessed, referred to proper treatment programs, and rehabilitated in order that they may become fully functioning. Substance abuse education programs in the workplace insure that employees and supervisors are aware of the problems of substance abuse and that supervisors are well-trained to help an employee receive assistance should a substance abuse problem exist. Testing is useful both as a deterrent to drug use and as a means to identify drug abusing employees who often are in denial about their substance abuse problems. Accurate and fair drug testing procedures are needed to insure that employees are not subject to flawed test results and to protect against improper use of tests by their employers. Confidentiality safeguards protect the rights and records of employees and prevent their abuse by employers.

The absence of one or more of these elements would result in an inadequate substance abuse program, and thus, shall render an employer ineligible for the protection from litigation provided for in Section 5.

Section 7. Written Policy Statement.

A drug-free workplace must provide a written policy statement on substance abuse, including testing, in order to qualify for the provisions of Section 5.

(a) At least one time, prior to testing, and each year thereafter, all employees and job applicants for employment must be given a notice of testing. In addition, all employees must be given a written policy statement from the employer that contains:

(1) A general statement of the employer's policy on substance abuse, including testing, that shall:

(A) Notify employees that the unlawful manufacture, sale, distribution, possession, or use of alcohol or other drugs is prohibited in the person's workplace;

(B) Identify the types of testing to which an employee or job applicant may be required to submit, including the basis used to determine when such testing will be required; and

(C) Identify the actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result;

(2) A statement advising an employee or job applicant of the existence of this [Act];

(3) A general statement concerning confidentiality;

(4) A statement advising the employee of the consequences of a refusal to submit to a substance abuse test;

(5) A statement advising an employee of the employee assistance program, external employee assistance program, or the employer's resource file of employee assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems;

(6) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the employer within seven working days after written notification of the positive test result; and

(7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act or the [state drug-free workplace act], if applicable to the employer.

(b) An employer not having a substance abuse testing program shall ensure that at least 60 calendar days elapse between a general notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place

prior to the enactment of this legislation, shall not be required to provide a 60 day notice period.

(c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. Notices of the employer's substance abuse testing policy must also be posted in appropriate and conspicuous locations on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations.

COMMENT

The written policy statement insures that an employer has notified all employees of exactly what the employer's position on substance abuse entails. This written policy statement must provide employees with all the information they must know about the employer's substance abuse program, including information about the employer's general policy on substance abuse, employee assistance programs and rehabilitation resources, employee alcohol and other drug education, drug testing, confidentiality provisions, and a description of the range of the employer's responses to positive indications that the employee is using alcohol and other drugs.

Section 8. Employee Assistance Programs or Rehabilitation Resources.

In order for an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5, the following must be met:

[Option 1: (a) To insure appropriate evaluation and referral to treatment for employees, any employer with 50 or more employees must have an employee assistance program, or must contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(1) The employer shall notify the employee of the benefits and services of the employee assistance program, or of the external employee assistance providers.

(2) An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services.

(3) The employer must provide the employee with notice of the policies and procedures regarding access to and use of the program.

(4) If an employer contracts with external employee assistance providers, the employer shall post in a conspicuous place a listing of these external employee assistance providers and explore alternative routine and reinforcing means of publicizing such services.

(b) To insure appropriate evaluation and referral to treatment for employees, any employer with less than 50 employees must:

(1) Have an employee assistance program;

(2) Contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems; or

(3) Maintain a resource file of complete and up-to-date information on employee assistance program service providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(c) Pursuant to subsection (b):

(1) An employer must provide employees with notice of the policies and procedures regarding access to and utilization of any programs and services offered.

(2) An employer shall post notice of any employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services.

(3) If an employer contracts with external employee assistance providers, the employer shall post in conspicuous places a listing of these external employee assistance providers and explore alternative routine and reinforcing means of publicizing such services.

(4) If an employer provides a resource file, the employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.]

[Option 2: (a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

COMMENT

Employee assistance programs or rehabilitation resources should be made available to all employees as part of any comprehensive drug-free workplace program. EAPs bridge the gap between the workplace and outside resources, including treatment programs that can help assist an employee and his or her family with a substance abuse problem. EAPs also offer counseling, problem resolution, and employee education services, and assist employees with identifying and resolving job performance problems. Cost-benefit analyses of EAPs have found a 4:1 return or higher on investment in the programs due to lower health care and workers' compensation utilization costs and higher worker productivity.

The Commission strongly recommends that employers allow those employees who test positive to be given an opportunity to seek assistance and rehabilitation through an EAP and other treatment resources. Generally, it is more cost-effective to treat an employee than to terminate him or her, given recruitment, training, and other cost considerations. Also, employment termination does little to address the actual problem of alcohol and other drug abuse. Such positive substance abuse tests and the threat of termination of employment often are the impetus needed to convince an addict or alcoholic to seek help.

The Commission strongly recommends that all employers provide employee assistance programs, whether internal or external, to their employees and encourages employers to use EAPs to link substance abuse testing to employee treatment and rehabilitation programs. Legislators or employers who are concerned with the costs of an employee assistance program or alcohol and other drug treatment should examine the [Model Addiction Cost Reduction Act] in Volume IV, Treatment, and the employee assistance program allowance tax credit offered in [Model Employee Assistance Professionals Act] in this volume.

However, should this recommendation not prove feasible, this section offers state legislatures two options. Option 1 mandates that all employers with 50 or more employees must have an EAP, or must contract with an external EAP provider, and must inform its employees of those available services. Should the employer have less than 50 employees, the employer must either have an EAP, must contract with an external EAP, or must maintain a resource file of other assistance providers. The Commission endorses Option 1.

Option 2 mandates that an employer having an EAP must inform its employees of those services. If an employer does not have an EAP, it must maintain a resource file of other employee assistance providers so that employees are given some avenue of assistance for their substance abuse problems.

For both options, employers must develop ways to publicize the availability of employee assistance programs and/or rehabilitation resources. Notice of the existence of such programs and the ways in which employees may access them should be posted in conspicuous locations. Also, employers should develop innovative routine and reinforcing means of notifying and encouraging employees to use such resources. Describing such programs and processes in paycheck envelopes or in the employee benefits handbook are two examples.

An employer must implement one of the two options adopted by the legislature in order to qualify for the provisions of Section 5.

Section 9. Employee Education.

An employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under this [Act]. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour should include, but is not limited to the following information:

- (a) The explanation of the disease of addiction for alcohol and other drugs;
- (b) The effects and dangers of the commonly abused substances in the workplace; and
- (c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

COMMENT

In order to qualify for the provisions of Section 5, an employer must provide all employees with annual education programs on alcohol and other drug abuse. An employer must also provide such a program before it institutes a drug-free workplace program in accordance with this [Act].

This education program should be provided by an employer's employee assistance professional, certified addiction counselor, labor relations attorney, or other individuals or programs with expertise in the areas of alcohol and other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate educational programs for employees. In addition, employers are encouraged to fully explain and discuss with employees all policies, rules, procedures, and rights associated with the development, implementation, and maintenance of a drug-free workplace program.

Section 10. Supervisor Substance Abuse Training.

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5, and in addition to the education program provided in Section 9, an employer must provide all supervisory personnel a minimum of two hours of training prior to the institution of a drug-free workplace program under this [Act], and each year thereafter, which should include, but is not limited to, the following:

- (a) Recognition of evidence of employee alcohol and other drug abuse;
- (b) Documentation and corroboration of employee alcohol and other drug abuse;
- (c) Referral of alcohol and other drug abusing employees to the proper treatment providers;
- (d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and
- (e) Explanation of any employee health insurance or HMO coverage for alcohol and other drug problems.

COMMENT

An integral part of any drug-free workplace program is annual alcohol and other drug abuse training for all supervisors. This training must be provided in addition to the annual employee alcohol and other drug education programs. Supervisors need instruction in the recognition of alcohol and other drug abuse, documentation and corroboration of employee substance abuse, and referral to appropriate EAPs or outside treatment providers. They also need to know how to help employees understand and access available assistance for any alcohol or other drug problems.

This training can be provided by the employer's employee assistance professional, certified addiction counselors, labor relations attorneys, or other individuals or programs with expertise in the area of alcohol and other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate educational programs for supervisors.

Section 11. Substance Abuse Testing.

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5:

- (a) All testing conducted by an employer shall be in conformity with the standards and procedures established in this [Act] and all applicable rules adopted pursuant thereto. This [Act] does not establish a legal duty for employers to conduct drug tests of employees or job applicants. However, if an employer fails to maintain a drug-free workplace program in accordance with the standards, procedures, and rules established in or pursuant to this [Act], the employer shall not qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test, as provided in Section 5.
- (b) An employer is required to conduct the following types of tests in order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5:

(1) An employer must require job applicants to submit to a substance abuse test after extending an offer of employment and may use a refusal to submit or a positive confirmed test as a basis for not hiring the job applicant;

(2) An employer must require an employee to submit to reasonable suspicion testing;

(3) An employer must require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group;

(4) If the employee in the course of employment enters an employee assistance program or rehabilitation program as the result of a positive test or if the employee has been mandatorily referred to an EAP as a result of a positive test, the employer must require the employee to submit to a substance abuse test as a follow-up to such program. However, if an employee voluntarily entered the program, follow-up testing is not required. If follow-up testing is conducted, the frequency of such testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee; and

(5) If the employee has caused or contributed to an accident during the course of employment, the employer must conduct post-accident testing.

(c) Nothing in this section shall prohibit a private employer from conducting random testing or other lawful testing of employees.

(d) All specimen collection and testing under this section shall be performed in accordance with the following procedures:

(1) A specimen shall be collected in accordance with the specimen collection procedures described in regulations approved by the Department of Health & Human Services, the College of American Pathologists, and/or United States Department of Transportation regulations for alcohol testing;

(2) A specimen shall be collected with due regard to the privacy of the individual providing the specimen, and in a manner reasonably calculated to prevent substitution or contamination of the specimen;

(3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration;

(4) An employee or prospective employee shall have an opportunity to provide notification of any information that may be considered as relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs, or other relevant medical information. This may be accomplished by providing procedures for review by a qualified medical professional in the case of a sample that tests "positive" in a confirmatory test;

(5) Each initial and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory certified by the federal Department of Health and Human Service's National Laboratory Certification Program or the College of American Pathologists as described in subsection (e) of this section, and/or, for alcohol, handled in accordance with United States Department of Transportation regulations relating to alcohol testing;

(6) A specimen for a test may be taken or collected by any of the following persons:

(A) A physician, a physician's assistant, a registered professional nurse, a licensed practical

nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment;

(B) A qualified person certified or employed by a laboratory certified by the federal Department of Health & Human Service's National Laboratory Certification Program; or

(C) A qualified person certified or employed by a specimen collection company.

(7) Within seven working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant;

(8) The employer shall provide to the employee or job applicant, upon request, a copy of the test results;

(9) An initial test having a positive result must be verified by a confirmation test, or it shall be certified as a negative result;

(10) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested;

(11) An employer shall pay the cost of all initial and confirmation substance abuse tests that the employer requires of job applicants or employees;

(12) An employee or job applicant shall pay the cost of any additional tests that he or she requests; and

(13) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances that formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee and the original documentation shall be kept confidential by the employer pursuant to Section 12 and retained by the employer for at least one year, or maintained throughout the duration of any legal proceedings resulting from the testing.

(e) No laboratory may analyze initial or confirmation drug specimens unless:

(1) The laboratory is approved by the National Lab-

oratory Certification Program or the College of American Pathologists;

(2) The laboratory has written procedures to ensure the chain of custody; and

(3) The laboratory follows proper quality control procedures including, but not limited to:

(A) The use of internal quality controls including the use of samples of known concentrations that are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy;

(B) An internal review and certification process for substance abuse test results, conducted by a person qualified to perform that function in the testing laboratory;

(C) Security measures implemented by the testing laboratory to preclude adulteration of specimens and test results; and

(D) Other necessary and proper actions taken to ensure reliable and accurate test results.

(f) A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state:

(1) The name and address of the laboratory that performed the test and the positive identification of the person tested;

(2) Positive results on confirmation tests only, or negative results, as applicable;

(3) A list of the drugs for which the drug analyses were conducted; and

(4) The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests. No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this [Act];

(g) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or non-prescription medication taken by the employee or job applicant;

(h) All positive initial tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate and scientific

ally accepted method approved by the National Laboratory Certification Program or the College of American Pathologists as such technology becomes available in a cost-effective form.

COMMENT

Substance abuse testing in and of itself is not a comprehensive drug-free workplace program, nor will it singularly end alcohol and other drug abuse in the workplace. It is, however, an important tool to help employers and employees achieve a drug-free workplace.

National Labor Relations Board rulings have made drug testing a mandatory subject of bargaining, where private sector employees are represented by a union. Recognizing this, the Commission cannot nor does it seek to preempt federal law or any collective bargaining agreements pursuant to federal law. What the Commission hopes to achieve with this legislation is to establish a model state law that defines a rigorous drug testing procedure that clearly articulates all necessary employee protections, including specimen collection, chain-of-custody, and laboratory procedures.

(a) This [Act] does not establish a legal duty for employers to conduct drug testing. Employers that choose not to conduct drug testing in their workplaces are not subject to the provisions of this [Act]. However, employers that wish to qualify for the provisions of Section 5 and the rest of this [Act] must implement a drug testing program. While recognizing the contentious nature of the drug testing issue, it is the sense of the Commission that drug testing is an important element of any drug-free workplace program. Substance abuse testing often serves to deter employee drug use. In addition, treatment proponents often point out that substance abuse testing helps to identify employees who are in denial about their substance abuse problem and who otherwise would continue their substance abuse patterns if not confronted with the seriousness of their problem.

(b) The Commission recommends that employers conduct substance abuse testing in the following contexts: pre-employment, reasonable suspicion, regularly scheduled fitness-for-duty medical examinations, alcohol and other drug treatment follow-up, and post-accident. These forms of substance abuse testing must be implemented in order for an employer to qualify for the provisions of Section 5.

(c) The Commission does not preclude an employer's use of random drug testing. The goal in doing so is to

provide employers and employees flexibility in creating their drug-free workplace programs. The U.S. Supreme Court has called random drug testing an effective deterrent to substance abuse in the workplace. Also, some employee representatives view random testing, implemented properly, as an equitable form of substance abuse testing, as it removes employer discretion as to who will be subject to any particular test. The use of random drug testing is not required in order for an employer to qualify for the provisions of Section 5.

(d) and (e) By defining "drugs" broadly, the Commission allows latitude for states to add or subtract drugs for which to be tested as it deems appropriate. Laboratories participating in the federal Department of Health and Human Services' National Laboratory Certification Program test for the first five drugs listed in the definition. Many employers also desire to test for barbiturates, benzodiazepines, and alcohol, among others. This definition is constructed to accommodate those employers that wish to test more broadly.

Insofar as alcohol is concerned, the U.S. Department of Transportation has developed rigorous standards for the use of evidentiary breathalyzer testing for alcohol use or intoxication. States should follow as closely as possible to the Department of Transportation rules and regulations concerning alcohol testing. However, the Commission recommends that any positive breathalyzer test must be confirmed by a blood alcohol content test.

Initial tests and confirmation tests require testing procedures that have been approved by the federal Department of Health and Human Services' National Laboratory Certification Program or the College of American Pathologists. It is the sense of the Commission that the National Laboratory Certification Program and the College of American Pathologists offer the highest accepted scientific methodology in this area. Currently, these programs utilize urinalysis testing for drugs of abuse. But states may consider alternative testing procedures to the National Laboratory Certification Program or the College of American Pathologists, including testing for alcohol and other drugs by scientific methodology associated with hair, saliva, blood, breath, urine, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites, as long as the state [Department of Health] or the [single state authority on alcohol and other drugs] is satisfied that the scientific methodology equals or exceeds the quality and protection established by the National Laboratory Certification Program's or the Col-

lege of American Pathologists' certification and testing procedures involving urine. If a state chooses to adopt such alternative testing procedures, the legislation should be adjusted accordingly.

By including products of the human body other than urine, specimen, as defined by this [Act], will encompass such future use of alternative scientific methodology.

Should the state determine that such alternative testing procedures equal or exceed the quality and protection established by the National Laboratory Certification Program or the College of American Pathologists, alternative language should be included in this section to allow for appropriate specimen collection and for testing to be conducted by laboratories deemed to be of equal scientific competence as those certified by the National Laboratory Certification Program or the College of American Pathologists. For example, some states currently allow agencies such as the state [department of health] to develop reliable and effective licensing procedures for drug testing laboratories. Those states may choose to rely on laboratories that meet the licensing standards established by such state agencies. In these instances, alternative language should also allow tests and specimens to be handled by the employees of such laboratories.

(h) All positive initial substance abuse test results must be confirmed by a confirmation test using gas chromatography/mass spectrometry methods or an equivalent or more accurate and scientifically accepted method become available. No adverse action shall be taken against an employee, except in the interest of health and safety, until a positive initial substance abuse test result has been confirmed by a confirmation test.

Section 12. Confidentiality.

(a) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications as they pertain to the employee only and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this [Act].

(b) Employers, laboratories, medical review officers, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under

any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) The name of the person who is authorized to obtain the information;
 - (2) The purpose of the disclosure;
 - (3) The precise information to be disclosed;
 - (4) The duration of the consent; and
 - (5) The signature of the person authorizing release of the information.
- (c) Nothing in this [Act] shall be construed to call for actions that may violate federal or state confidentiality statutes for employee assistance professionals and alcohol and other drug abuse counseling or treatment providers.
- (d) Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in any such criminal proceeding.
- (e) Nothing contained in this [Act] shall be construed to prohibit the employer, agent of the employer, or laboratory conducting a test from having access to employee test information when consulting with legal counsel in connection with actions related to this [Act] or when the information is relevant to its defense in a civil or administrative matter.

Section 13. Rehabilitative and/or Disciplinary Procedures.

Upon receipt of a confirmed "positive" substance abuse 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 testing sample, an employer may use that confirmed test result or test refusal as a valid basis for rehabilitative and/or disciplinary actions, which may include, among other actions, the following:

- (a) A requirement that the employee enroll in an employee assistance program, or an employer-provided or -approved rehabilitation, treatment, and/or

counseling program licensed by the [single state authority on alcohol and other drugs] as discussed in Section 8. These may include additional substance abuse testing, participation in which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies;

- (b) Suspension of the employee, with or without pay, for a designated period of time;
- (c) Termination of employment;
- (d) Refusal to hire a prospective employee; and/or
- (e) Other action in conformance with the employer's written policy and procedures, including any applicable collective bargaining agreement provisions.

COMMENT

All positive initial substance abuse test results must be confirmed by a confirmation test using gas chromatography/mass spectrometry methods or an equivalent or more accurate and scientifically accepted method if one becomes available. Upon receipt of a positive confirmed substance abuse 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 testing sample, an employer may use that confirmed test result or test refusal as a valid basis for rehabilitative and/or disciplinary actions.

The Commission strongly recommends that employers allow those employees who test positive to be given an opportunity to seek assistance and rehabilitation through an EAP and other treatment resources, rather than solely taking disciplinary action. Disciplinary action and treatment often go hand in hand. There is ample evidence that disciplinary action can reinforce positive treatment outcomes.

Section 14. Authority of Employer.

- (a) Nothing in this [Act] shall be construed to prevent an employer from establishing reasonable work rules relating to employee manufacture, sale, distribution, possession, or use of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.
- (b) Nothing in this [Act] shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of non-

itoring exposure of employees to lead, asbestos, or other toxic or unhealthy materials in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to any rule or regulation issued pursuant thereto, unless prior written consent of the employee is obtained for other tests.

Section 15. Employer Protection from Litigation.

No cause of action is or shall be established for any person against an employer who has established a substance abuse program in accordance with this [Act], for any of the following:

- (a) Actions in good faith based on the results of a “positive” confirmed substance abuse test;
- (b) Failure to test for alcohol and other drugs, or failure to test for a specific drug or other controlled substance;
- (c) Failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition, or any mental, emotional, or psychological disorder or condition; or
- (d) Termination or suspension of any substance abuse prevention or testing program or policy.

COMMENT

Again, the goal of this legislation is to reduce alcohol and other drug abuse and their attendant harms in the workplace. It is not the intent of this [Act] to interfere with the work relationships between employers and employees. By establishing a rigorous standard for comprehensive private sector drug-free workplace programs and by attempting to reduce legal action that might otherwise arise in the absence of such rigorous testing, employee assistance and rehabilitation, education, training, and confidentiality standards, the Commission hopes to keep the focus of drug-free workplaces on reducing alcohol and other drug abuse and their attendant harms in the workplace. The Commission strongly encourages employers and employees to recognize the potential benefits of a drug-free workplace during the development and implementation of a rigorous, comprehensive drug-free workplace program and to work together towards achieving the goal of this legislation.

Section 16. Causes of Action Based on Test Results.

(a) No cause of action is or shall be established for any person against an employer who has established a substance abuse program in accordance with this [Act], unless the employer’s action was based on a confirmed “false positive” test result, and the employer knew or clearly should have known that the result was in error, and ignored the true test result because of reckless, malicious, or negligent disregard for the truth and/or the willful intent to deceive or be deceived.

(b) In any claim, including a claim under this [Act], where it is alleged that an employer’s action was based on a confirmed “false positive” 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 above and beyond any lost wages, benefits, and direct economic harm suffered by the employee if the employer’s reliance on a “false positive” test result was reasonable and in good faith.

(c) There is no liability for any action taken related to a “false negative” substance abuse test.

Section 17. Limits to Defamation Causes of Action.

No cause of action for defamation of character, libel, slander, or damage to reputation is or shall be established for any person against an employer who has established a substance abuse program in accordance with this [Act], unless:

- (a) The results of that test were disclosed to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee, or the tested prospective employee, or the authorized agent or representative of the employee;
- (b) The information disclosed was a “false positive” test result;
- (c) The “false positive” test result was disclosed with negligence or by intentional conduct;
- (d) All elements of an action for defamation of character, libel, slander, or damage to reputation as established by [cite relevant state libel, slander, and damage to reputation sections from state code, where applicable] or common law, are satisfied.

Section 18. Absence of a Cause of Action.

No cause of action arises in favor of any person against an employer based upon the failure of the employer to establish a substance abuse program in accordance with this [Act].

COMMENT

No cause of action shall arise against an employer simply because the employer declined to implement a drug testing program.

Section 19. Absence of Physician-Patient Privilege.

No physician-patient relationship is created between an employee or job applicant and an employer, medical review officer, or substance abuse testing laboratory performing or evaluating a substance abuse test solely by the establishment, implementation, or administration of a substance abuse testing program.

Section 20. Collective Bargaining.

Nothing in this [Act] shall be construed to infringe on, contradict, preempt, or otherwise conflict with the valid provisions of any existing collective bargaining agreement, or to otherwise abridge or infringe on the rights and responsibilities of all parties in the collective bargaining process to negotiate to agreement on any collective bargaining agreement provision. Such contract provisions are fully valid and enforceable, notwithstanding the provisions of this [Act].

Section 21. Retroactivity of Act.

Nothing in this [Act] shall be construed to operate retroactively, and nothing in this [Act] shall abrogate the right of an employer under state law to conduct substance abuse tests, or implement employee substance abuse testing programs, prior to enactment of this legislation, provided, however, only those programs that meet the criteria outlined in this [Act] qualify for the provisions of Section 5.

Section 22. Repeal of Laws in Conflict with This Act.

All laws and parts of laws in conflict with this [Act] are repealed.

Section 23. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 24. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Drug-Free Workplace
Workers' Compensation
Premium Reduction Act

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Model Drug-Free Workplace Workers' Compensation Premium Reduction Act

Policy Statement

This legislation seeks to institute a standard for effective, comprehensive drug-free workplace programs and to reward employers establishing such programs with a workers' compensation premium reduction. As with the Model Drug-Free Private Sector Workplace Act, these drug-free workplace programs are intended to identify and reduce drug use affecting the workplace, to assist employees with the treatment of their drug problems, and to lower the economic costs of alcohol and other drug problems to businesses.

Just as schools offer an appropriate platform for intervention with children and youths with alcohol and other drug problems, the workplace is an appropriate platform for intervention with adults. Two-thirds of adult drug users are employed. Adults also have little opportunity elsewhere to become educated about alcohol and other drug abuse problems and directed to any needed assistance.

Employers have two important reasons for wanting to establish drug-free workplace programs. First and foremost, employers are concerned about the health, safety, and well-being of their employees. Second, alcohol and other drug abuse costs businesses billions of dollars each year. The Alcohol, Drug Abuse, and Mental Health Administration estimates the annual cost of alcohol and other drug problems to American business to be nearly \$100 billion in increased medical claims, medical disability costs, decreased productivity, injuries, theft, and absenteeism.

This legislation establishes comprehensive alcohol- and other drug-free workplace programs. In the past, some employers have considered drug testing in and of itself to be a complete workplace substance abuse program. However, the existence of a substance abuse testing program by itself will only serve to identify alcohol and other drug abusers. Testing does nothing to educate, treat, or rehabilitate alcohol and other drug abusing employees.

The Commission believes that a truly comprehensive drug-free workplace program must include all of the following elements:

- (1) A detailed written policy statement. This statement must express the employer's policy on alcohol and other drug abuse, explaining any substance abuse testing to which employees must submit, and providing information about the employer's employee assistance program or rehabilitation resources for employees seeking assistance for alcohol and other drug problems.

(2) Employee assistance programs or rehabilitation resources. Employers must make employee assistance programs or rehabilitation resources available to their employees. The provision of such services have shown tremendous cost benefit to employers and do much to restore alcohol and other drug abusing employees to good health and well-being.

(3) Employee education programs. Employers must provide employees with annual education programs on alcohol and other drug abuse, including explanations of the disease of addiction for alcohol and other drugs, information on the company's policies and procedures regarding alcohol and other drug abuse, and information on how employees who wish to obtain alcohol or other drug treatment can do so.

(4) Supervisor training provisions. Employers must also provide supervisors with annual training regarding alcohol and other drug abuse. This training is designed to help supervisors identify substance abusing employees, confront them about their problems, and refer them to appropriate employee assistance or treatment resources.

(5) Substance abuse testing. Employers must implement substance abuse testing as part of any comprehensive drug-free workplace program. Pre-employment, reasonable suspicion, medical fitness, and post-accident testing would be required by a comprehensive drug-free workplace program in compliance with this Act. Random drug testing is neither prohibited nor mandated by this Act.

The testing required by this Act would be conducted by laboratories certified by the U.S. Department of Health and Human Service's National Laboratory Certification Program or the College of American Pathologists, which provide the highest level of employee protections and safeguards with regards to specimen collection, chain-of-custody, and testing procedures.

(6) Confidentiality provisions. Strict confidentiality provisions must be enacted in the workplace to protect employee records and information regarding alcohol and other drug abuse problems.

To encourage employers to establish such comprehensive alcohol- and other drug-free workplace programs, this legislation, based in part on a Georgia state statute, offers employers a workers' compensation premium reduction. Studies indicate that drug abusing employees are five times more likely to file workers' compensation claims than non-drug abusing employees. The Commission believes that the implementation of a comprehensive alcohol- and other drug-free workplace program will reduce the health care, mental health care, and workers' compensation utilization costs associated with alcohol and other drug abuse by reducing the incidence of alcohol and other drug abuse among employees.

Highlights of the Model Drug-Free Workplace Workers' Compensation Premium Reduction Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the economic potential of employees and their companies.
- Recognizes the role of employee assistance programs (EAPs) and rehabilitation resources in the workplace, linking the identification of employee substance abuse problems with the employer's workplace program to assess and refer those employees to treatment and rehabilitation.
- Recognizes that regular and continuing substance abuse education alerts employees to the dangers of alcohol and other drug abuse and enables them to understand and access the employer's workplace substance program services.
- Recognizes that supervisor training is an integral component of any workplace substance abuse program because it prepares supervisors for potential substance abuse problems among employees and provides the skills to refer those employees to appropriate assistance services.
- Recognizes that effective, comprehensive private sector workplace programs must include each of the following components: written policy statements, employee assistance programs or rehabilitation resources, employee education, supervisor training, substance abuse testing, laboratory standards, and employee confidentiality provisions.
- Recognizes that cost-benefit studies have found that the average amount per employee paid annually in workers' compensation benefits decrease significantly for companies using employee assistance programs.

SPECIFIC RECOMMENDATIONS

- Provides a five percent reduction to an employer's workers' compensation insurance premium if the employer establishes and maintains a comprehensive drug-free workplace program that complies with the requirements of this Act.
- Requires a comprehensive drug-free workplace program to include each of the following components: written policy statements, employee assistance programs or rehabilitation resources, employee education, supervisor training, substance abuse testing, laboratory standards, and employee confidentiality provisions.
- Provides specific components of any written policy statement on substance abuse, including a general statement on the employer's substance abuse policy, a statement identifying the types of testing to which an employee or job applicant may be required to submit, a statement identifying the actions the employer may take against an employee or job applicant on the basis of a confirmed positive test result, and other information relevant to the employer's substance abuse program.
- Provides for employee assistance programs or rehabilitation resources and establishes employee notification requirements to facilitate access to such services.
- Provides annual employee education programs that educate employees on alcohol and other drug abuse, its effects on the workplace, and the employer's policies and procedures regarding alcohol and other drug abuse in the workplace and how employees may access rehabilitation resources.
- Provides annual supervisor substance abuse training that enables supervisors to recognize, document, and

- corroborate employee alcohol and other drug abuse and to refer alcohol and other drug abusing employees to the proper treatment providers. Also provides supervisors with information concerning the benefits of referring employees to treatment programs and explains employee health insurance or HMO coverage for alcohol and other drug problems.
- Provides that employers conduct the following types of substance abuse testing in order to qualify as a comprehensive drug-free workplace and to qualify for the workers' compensation premium reduction:
 - pre-employment testing;
 - reasonable suspicion testing;
 - regularly scheduled physical or fitness-for-duty testing;
 - probationary testing due to a positive substance abuse test or mandatory referral to an EAP program; and
 - post-accident testing.
 - Provides that all specimen collection, storage, transportation, and testing procedures be performed in accordance with regulations approved by the U.S. Department of Health and Human Services, The College of American Pathologists, and/or the U.S. Department of Transportation regulations for alcohol testing.
 - Provides that laboratories analyzing initial or confirmation specimens be approved by the U.S. Department of Health and Human Services' National Laboratory Certification Program or the College of American Pathologists and must conform to regulations that insure the proper handling, reliability, and scientific accuracy of test results.
 - Provides procedures for disclosing to the employer a written test result report within seven working days after receipt of the sample.
 - Provides that all information, interviews, reports, statements, memoranda, and test results received by the employer through a substance abuse testing program are confidential communications as they pertain to the employee only and establishes strict confidentiality standards and procedures regarding those communications.
 - Provides that employers may use a confirmed positive substance abuse test result or a refusal to submit to a substance abuse test as a valid basis for rehabilitative and/or disciplinary action that may include:
 - a requirement that the employee enroll in an employee assistance program or a rehabilitation, treatment, or counseling program;
 - suspension of the employee, with or without pay, for a designated period of time;
 - termination of employment;
 - refusal to hire a prospective employee; and/or
 - other action in conformance with the employer's written policy and procedures.

Model Drug-Free Workplace Workers' Compensation Premium Reduction Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Drug-Free Workplace Workers' Compensation Premium Reduction Act."

Section 2. Legislative Findings.

(a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.

(b) A healthy and productive work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of products produced and services rendered in this state, are important to employees, employers, and the general public.

(c) The abuse of alcohol and other drugs creates a variety of workplace health and safety problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

(d) The Alcohol, Drug Abuse, and Mental Health Administration estimates the annual cost of alcohol and other drug problems to American business to be nearly \$100 billion. Such estimates typically include calculations of factors such as increased medical claims, medical disability costs, decreased productivity, injuries, theft, and absenteeism.

(e) Surveys by the American Management Association indicate that firms combining drug testing with other workplace education and counseling programs have reported lower test-positive rates than companies that employed drug testing only.

(f) Employee assistance programs and rehabilitation resources in the workplace link the identification of substance abuse with the employer's program in order to assess the extent of the problem and direct the employee to treatment and rehabilitation. EAPs also reintegrate rehabilitated employees back into the work-

place and monitor compliance of the employer's substance abuse program. Cost-benefit analyses of EAPs have found a 4:1 return or higher on investment in the programs due to lower health care and workers' compensation utilization costs and higher worker productivity.

(g) Regular and continuing substance abuse education alerts employees to the dangers of alcohol and other drug abuse and enables them to understand and abide by a workplace substance abuse program. Such education also provides employees with information needed to access treatment and rehabilitation services.

(h) Supervisor substance abuse training is an integral component of any workplace substance abuse program because it instructs supervisors to recognize problems associated with alcohol and other drug abuse, properly confront an employee about possible problems, and refer the employee to appropriate assistance.

(i) The National Institute on Drug Abuse estimates that a typical drug abusing employee is five times more likely to file workers' compensation claims than a non-drug abusing employee.

(j) Cost-benefit studies indicate that the average amount per employee paid annually in workers' compensation benefits decrease significantly for companies using employee assistance programs. Implementation of a comprehensive drug-free workplace program that includes employee assistance programs could further enhance such health, safety, and cost benefits.

Section 3. Purpose.

This [Act] is intended to amend [citation to relevant section of state code, relating to insurance rates, underwriting rules, and related organizations], to provide for a premium reduction applicable to policies of workers' compensation insurance if the insured under such policy establishes and maintains a drug-free workplace program that complies with certain requirements. This [Act]:

- (a) Authorizes rules and regulations by the [single state authority on alcohol and other drugs] and the [commissioner of insurance] to allow employers to certify and verify such drug-free workplaces and premium reductions; and
- (b) Amends [citation to relevant section of state code, relating to workers' compensation], to require:
- (1) Drug-free workplace programs that enable an employer to receive a premium discount on the employer's workers' compensation insurance policy;
 - (2) Written policy statements;
 - (3) Employee assistance programs or rehabilitation resources;
 - (4) Employee education and supervisor training;
 - (5) Substance abuse testing and procedures;
 - (6) Confidentiality of certain information; and
 - (7) Other matters relative to the foregoing.

Section 4. Definitions.

As used in this [Act]:

- (a) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) "Chain of custody" means the methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results.
- (c) "Confirmation test," "confirmed test," or "confirmed alcohol and other drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.
- (d) "Drug" or "drugs" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualone, propoxyphene, or a metabolite of any such substances.

An employer may test an individual for any or all of these.

(e) "Employee" means any person who works for salary, wages, or other remuneration for an employer, including those working part-time or as leased employees.

(f) "Employee Assistance Program" (EAP) means a program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns. A minimum level of core services must include consultation and training; professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up and monitoring; employee education; and quality assurance.

(g) "Employer" means a person or entity that is subject to the provisions of this chapter.

(h) "Initial test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent procedure or shall use a more accurate scientifically accepted method approved by the federal Department of Health & Human Services National Laboratory Certification Program or the College of American Pathologists as such more accurate technology becomes available in a cost-effective form.

(i) "Job applicant" means a person who has applied for a position and been offered employment subject to passing a substance abuse test. A job applicant may have begun work pending the results of the substance abuse test.

(j) "Manufacture," "sale," "distribution," "possession with intent to sell or distribute," "possession," and "use" shall have the same meaning as those terms are used in [state controlled substance law].

(k) "Medical review officer" means a licensed physician trained in the field of drug and alcohol testing who provides medical assessment of positive test results, requesting re-analysis if necessary, and makes an actual determination as to whether alcohol or other drug use has occurred.

(l) "Nonprescription medication" means a drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription

in the treatment of human disease, ailments, or injuries.

(m) "Prescription medication" means a drug or medication lawfully prescribed by a physician for an individual and taken by the individual only in accordance with such prescription.

(n) "Reasonable suspicion testing" means substance abuse testing based on evidence that an employee is using or has used alcohol or other drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon, but not limited to, the following:

(1) Observable phenomena while at work such as direct observation of alcohol and other drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol and other drug use or abuse;

(2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

(3) A report of alcohol and other drug use or abuse provided by a reliable and credible source;

(4) Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer;

(5) Information that an employee has caused or contributed to an accident while at work; or

(6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed with intent to sell or distribute, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

(o) "Rehabilitation program" means an established program capable of providing expert identification, assessment, and resolution of employee alcohol and other drug abuse in a confidential and timely manner. This service shall in all cases be provided by persons licensed by the [single state authority for alcohol and other drugs] or appropriately certified as health professionals to provide alcohol and other drug rehabilitative services.

(p) "[Single state authority on alcohol and other drugs]" means the state agency designated by the gov-

ernor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(q) "Specimen" means urine, blood, breath, hair, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites that the [state department of health] or [single state authority for alcohol and other drugs] determines to meet the same standards for scientific and technical accuracy and affords the opportunity for strict forensic chain of custody procedures.

(r) "Substance" means alcohol and/or other drugs.

(s) "Substance abuse test" or "test" means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of alcohol and other drugs or their metabolites.

(t) "Threshold detection level" means the level at which the presence of alcohol or other drugs can be reasonably expected to be detected by an initial and confirmatory test performed by a laboratory meeting the standards specified in this [Act]. The threshold detection level indicates the level at which a valid conclusion can be drawn that the alcohol or drug is present in the employee's specimen.

COMMENT

In subsection (d), states should add or subtract drugs as appropriate. Laboratories participating in the federal Department of Health and Human Services' National Laboratory Certification Program test for the first five drugs listed in the definition. Many employers also desire to test for barbiturates, benzodiazepines, and alcohol, among others. This definition is constructed to accommodate those employers that wish to test more broadly.

In subsections (c) and (h), "confirmation tests" and "initial tests" require testing procedures that have been approved by the federal Department of Health and Human Services' National Laboratory Certification Program or the College of American Pathologists. It is the sense of the Commission that the National Laboratory Certification Program and the College of American Pathologists offer the highest accepted scientific methodology in this area. Currently, these programs utilize urinalysis testing for drugs of abuse. But states may consider alternative testing procedures to the National Laboratory Certification Program or the College of American Pathologists, including testing for alcohol and other drugs by scientific methodology asso-

ciated with hair, saliva, blood, breath, urine, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites, as long as the [state department of health] or the [single state authority for alcohol and other drugs] is satisfied that the scientific methodology equals or exceeds the quality and protection established by the National Laboratory Certification Program's or College of American Pathologists' certification and testing procedures involving urine.

By including products of the human body other than urine, the definition for "specimen" in subsection (q) is constructed to reflect such use of alternative scientific methodology.

In subsection (e), "employee" includes full- and part-time workers. This definition does not include sub-contracted employees, leaving such inclusion to the discretion of employers.

Section 5. Workers' Compensation Premium Reduction.

[Citation to relevant section of state code, relating to insurance rates, underwriting rules, and related organizations], is amended by adding immediately following the section relating to workers' compensation rates issued to business entities with a majority interest held by the same person, a new section to read as follows:

- (a) For each policy of workers' compensation insurance issued or renewed in the state on or after [July 1, 19__], a five percent reduction in the premium for such policy shall be granted by the insurer if the insured certifies to the insurer that it has established and maintains a drug-free workplace program that complies with the requirements of this [Act].
- (b) The premium discount provided by this section shall be applied to an insured's workers' compensation insurance pro rata as of the date of receipt of certification by the insurer.
- (c) The [state commissioner of insurance], in consultation with the [single state authority on alcohol and other drugs], shall promulgate appropriate forms and procedures to allow self-certification by an insured to its insurer. Certification by an insured shall be required for each year in which a premium discount is granted.
- (d) The insured's workers' compensation insurance policy shall be subject to an additional premium for the purposes of reimbursement of a previously grant-

ed premium discount if it is determined that such insured misrepresented the compliance of its drug-free workplace program within the provisions of this [Act].

- (e) The [commissioner of insurance] shall be authorized to promulgate rules and regulations necessary for the implementation and enforcement of this section.

COMMENT

If an employer complies with all of the provisions of this [Act], that employer shall qualify for a five percent reduction in the premium for each policy of workers' compensation issued or renewed in the state. It is the sense of the Commission that an employer having in place a comprehensive drug-free workplace program will employ workers and supervisors who will be less likely to engage in drug abuse and may show correspondingly lower employee health care and workers' compensation utilization.

The ultimate goal of this legislation is to reduce alcohol and other drug abuse and their attendant harms in the workplace through the prevention or identification, referral, and treatment of such problems. The Commission strongly encourages employers and employees to recognize the potential benefits of a drug-free workplace during the development and implementation of a rigorous, comprehensive drug-free workplace program and to work together towards achieving that goal.

Such a drug-free workplace program must consist of a written policy statement on substance abuse, employee assistance programs or rehabilitation resources, annual employee and supervisor education about substance abuse, substance abuse testing provisions and procedures, and proper confidentiality safeguards that protect the rights and records of employees. The absence of one or more of these elements would result in an inadequate substance abuse program, and thus, shall render an employer ineligible for the workers' compensation premium reduction.

Section 6. Drug-Free Workplace Elements.

- (a) A drug-free workplace program must contain the following elements:
 - (1) Written policy statement as provided in Section 7.
 - (2) Employee assistance programs or rehabilitation resources, in accordance with Section 8.

- (3) Employee education as provided in Section 9.
- (4) Supervisor training in accordance with Section 10.
- (5) Substance abuse testing as provided in Section 11.

(b) In addition to the requirements of subsection (a), a drug-free workplace program must be implemented in compliance with the confidentiality standards provided in Section 12.

COMMENT

A drug-free workplace program must consist of a written policy statement on substance abuse, employee assistance programs or rehabilitation resources, annual employee and supervisor education about substance abuse, substance abuse testing provisions and procedures, and proper confidentiality safeguards.

Each element is an integral component of any comprehensive substance abuse program. Written policy statements notify employees of the employers position on substance abuse and explain all aspects of the employer's substance abuse program. Employee assistance programs and rehabilitation resources enable a drug-using employee to be assessed, referred to proper treatment programs, and rehabilitated in order that they may regain their functioning status. Employee and supervisor substance abuse education insures that employees and supervisors are aware of the problems of substance abuse and that supervisors are well-trained to help an employee receive assistance should a substance abuse problem exist. Testing is useful both as a deterrent to drug use and as a means to identify drug abusing employees who often are in denial about their substance abuse problems. Accurate and fair drug testing procedures are needed to insure that employees are not subject to flawed test results and protect against improper use of tests by their employers. Confidentiality safeguards protect the rights and records of employees and prevent their abuse by employers.

The absence of one or more of these elements would represent that an employer's substance abuse program is inadequate, and thus, shall render an employer ineligible for the workers' compensation premium reduction as provided in Section 5.

Section 7. Written Policy Statement.

A drug-free workplace must provide a written policy statement on substance abuse, including testing, in order to qualify for the provisions of Section 5.

(a) At least one time, prior to testing, and each year thereafter, all employees and job applicants for employment must be given a notice of testing. In addition, all employees must be given a written policy statement from the employer that contains:

(1) A general statement of the employer's policy on substance abuse, including testing, that shall:

(A) Notify employees that the unlawful manufacture, sale, distribution, solicitation, possession with intent to sell or distribute, or use of alcohol or other drugs is prohibited in the person's workplace;

(B) Identify the types of testing to which an employee or job applicant may be required to submit, including reasonable suspicion or other basis used to determine when such testing will be required; and

(C) Identify the actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result;

(2) A statement advising an employee or job applicant of the existence of this [Act];

(3) A general statement concerning confidentiality;

(4) A statement advising the employee of the consequences of a refusal to submit to a substance abuse test;

(5) A statement advising an employee of the employee assistance program, external employee assistance program, or the employer's resource file of employee assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems;

(6) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the employer within five working days after written notification of the positive test result; and

(7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act or the [state drug-free workplace act], if applicable to the employer.

(b) An employer not having a substance abuse testing program shall ensure that at least 60 calendar days elapse between a general notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place prior to the enactment of this legislation, shall not be required to provide a 60 day notice period.

(c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. Notices of the employer's substance abuse testing policy must also be posted in appropriate and conspicuous locations on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations.

COMMENT

The written policy statement insures that an employer has notified all employees of exactly what the employer's position on substance abuse entails. This written policy statement must provide employees with all the information they must know about the employer's substance abuse program, including information about the employer's general policy on substance abuse, employee assistance programs and rehabilitation resources, employee alcohol and other drug education, drug testing procedures, confidentiality provisions, and a description of the range of the employer's responses to positive indications that the employee is using alcohol and other drugs.

Section 8. Employee Assistance Programs or Rehabilitation Resources.

In order for an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5, the following must be met:

[Option 1: (a) To insure appropriate evaluation and referral to treatment for employees, any employer with 50 or more employees must have an employee assistance program, or must contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(1) The employer shall notify the employee of the benefits and services of the employee assistance program, or of the external employee assistance providers.

(2) An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services.

(3) The employer must provide the employee with notice of the policies and procedures regarding access to and use of the program.

(4) If an employer contracts with external employee assistance providers, the employer shall post in a conspicuous place a listing of these external employee assistance providers and explore alternative routine and reinforcing means of publicizing such services.

(b) To insure appropriate evaluation and referral to treatment for employees, any employer with less than 50 employees must:

(1) Have an employee assistance program;

(2) Contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems; or

(3) Maintain a resource file of complete and up-to-date information on employee assistance program service providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(c) Pursuant to subsection (b):

(1) An employer must provide employees with notice of the policies and procedures regarding access to and utilization of any programs and services offered.

(2) An employer shall post notice of any employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services.

(3) If an employer contracts with external employee assistance providers, the employer shall post in conspicuous places a listing of these external employee assistance providers and explore alternative routine and reinforcing means of publicizing such services.

(4) If an employer provides a resource file, the employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.]

[Option 2: (a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.]

COMMENT

Employee assistance programs or rehabilitation resources should be made available to all employees as part of any comprehensive drug-free workplace program. EAPs bridge the gap between the workplace and outside resources, including treatment programs that can help assist an employee and their families with alcohol and other drug abuse problems. EAPs also offer counseling, problem resolution, and employee education services and assist employees with identifying and

resolving job performance problems. Cost-benefit analyses of EAPs have found a 4:1 return or higher on investment in the programs due to lower health care and workers' compensation utilization costs and higher worker productivity.

The Commission strongly recommends that employers allow those employees who test positive to be given an opportunity to seek assistance and rehabilitation through an EAP and other treatment resources. Generally, it is more cost-effective to treat an employee than to terminate him or her, given recruitment, training, and other cost considerations. Also, employment termination does little to address the actual problem of alcohol and other drug abuse. Such positive substance abuse tests and the threat of termination of employment often are the impetus needed to convince an addict or alcoholic to seek help.

The Commission strongly recommends that all employers provide employee assistance programs, whether internal or external, to their employees and encourages employers to use EAPs to link substance abuse testing to employee treatment and rehabilitation programs. Legislators or employers who are concerned with the costs of an employee assistance program or alcohol and other drug treatment should examine the [Model Addiction Cost Reduction Act] in Volume IV, Treatment, and the employee assistance program allowance tax credit offered in [Model Employee Assistance Professionals Act] in this volume.

However, should this recommendation not prove feasible, this section offers state legislatures two options. Option 1 mandates that all employers with 50 or more employees must have an EAP, or must contract with an external EAP provider, and must inform its employees of those available services. Should the employer have less than 50 employees, the employer must either have an EAP, must contract with an external EAP, or must maintain a resource file of other assistance providers. The Commission endorses Option 1.

Option 2 mandates that an employer having an EAP must inform its employees of those services. If an employer does not have an EAP, it must maintain a resource file of other employee assistance providers so that employees are given some avenue of assistance for their substance abuse problems.

For both alternatives, employers must develop ways to publicize the availability of employee assistance programs and/or rehabilitation resources. Notice of the existence of such programs and the ways in which

employees may access them should be posted in conspicuous locations. Also, employers should develop innovative routine and reinforcing means of notifying and encouraging employees to use such resources. Describing such programs and processes in paycheck envelopes or in the employee benefits handbook are two examples.

An employer must implement one of the two options adopted by the legislature in order to qualify for the provisions of Section 5.

Section 9. Employee Education.

An employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under this [Act]. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour should include, but is not limited to the following information:

- (a) The explanation of the disease of addiction for alcohol and other drugs;
- (b) The effects and dangers of the commonly abused substances in the workplace; and
- (c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

COMMENT

In order to qualify for the provisions of Section 5, an employer must provide all employees with annual education programs on alcohol and other drug abuse. An employer must also provide or initiate such a program before it institutes a drug-free workplace program in accordance with this [Act].

This education program should be provided by an employer's employee assistance professional, certified addiction counselor, labor relations attorney, or other individuals or programs with expertise in the areas of alcohol and other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate

educational programs for employees. In addition, employers are encouraged to fully explain and discuss with employees all policies, rules, procedures, and rights associated with the development, implementation, and maintenance of a drug-free workplace program.

Section 10. Supervisor Substance Abuse Training.

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5, and in addition to the educational program provided in Section 9, an employer must provide all supervisory personnel a minimum of two hours of training prior to the institution of a drug-free workplace program under this [Act], and each year thereafter, which should include but is not limited to the following:

- (a) Recognition of evidence of employee alcohol and other drug abuse;
- (b) Documentation and corroboration of employee alcohol and other drug abuse;
- (c) Referral of alcohol and other drug abusing employees to the proper treatment providers;
- (d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and
- (e) Explanation of any employee health insurance or HMO coverage for alcohol and other drug problems.

COMMENT

An integral part of any drug-free workplace program is annual alcohol and other drug abuse training for all supervisors. This training must be provided in addition to the annual employee alcohol and other drug education programs. Supervisors need instruction in the recognition of alcohol and other drug abuse, documentation and corroboration of employee substance abuse, and referral of substance abusing employees to appropriate EAPs or outside treatment providers. They also need to know how to help employees understand and access available assistance for any alcohol or other drug problems.

This training can be provided by the employer's employee assistance professional, certified addiction counselors, labor relations attorneys, or other individuals or programs with expertise in the area of alcohol and

other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate educational programs for supervisors.

Section 11. Substance Abuse Testing.

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5:

(a) All testing conducted by an employer shall be in conformity with the standards and procedures established in this [Act] and all applicable rules adopted pursuant thereto. This [Act] does not establish a legal duty for employers to conduct drug tests of employees or job applicants. However, if an employer fails to maintain a drug-free workplace program in accordance with the standards, procedures, and rules established in or pursuant to this [Act], the employer shall not qualify for the workers' compensation premium reduction, as provided in Section 5.

(b) An employer is required to conduct the following types of tests in order to qualify as a drug-free workplace and to qualify for the provisions of Section 5:

(1) An employer must require job applicants to submit to a substance abuse test after extending an offer of employment and may use a refusal to submit or a positive confirmed test as a basis for not hiring the job applicant;

(2) An employer must require an employee to submit to reasonable suspicion testing;

(3) An employer must require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group;

(4) If the employee in the course of employment enters an employee assistance program or rehabilitation program as the result of a positive test or if the employee has been mandatorily referred to an EAP as a result of a positive test, the employer must require the employee to submit to a substance abuse test as a follow-up to such program. However, if an employee voluntarily entered the

program, follow-up testing is not required. If follow-up testing is conducted, the frequency of such testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee; and

(5) If the employee has caused or contributed to an accident during the course of employment, the employer must conduct post-accident testing.

(c) Nothing in this section shall prohibit a private employer from conducting random testing or other lawful testing of employees.

(d) All specimen collection and testing under this section shall be performed in accordance with the following procedures:

(1) A specimen shall be collected in accordance with the specimen collection procedures described in regulations approved by the Department of Health & Human Services, the College of American Pathologists, and/or United States Department of Transportation regulations for alcohol testing;

(2) A specimen shall be collected with due regard to the privacy of the individual providing the specimen, and in a manner reasonably calculated to prevent substitution or contamination of the specimen;

(3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration;

(4) An employee or prospective employee shall have an opportunity to provide notification of any information that may be considered as relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs, or other relevant medical information. This may be accomplished by providing procedures for review by a qualified medical professional in the case of a sample that tests "positive" in a confirmatory test;

(5) Each initial and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory certified by the federal Department of Health and Human Service's National Laboratory Certification Program or the

College of American Pathologists as described in subsection (e) of this section, and/or, for alcohol, handled in accordance with United States Department of Transportation regulations relating to alcohol testing;

(6) A specimen for a test may be taken or collected by any of the following persons:

(A) A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment;

(B) A qualified person certified or employed by a laboratory certified by the federal Department of Health & Human Service's National Laboratory Certification Program or the College of American Pathologists; or

(C) A qualified person certified or employed by a specimen collection company.

(7) Within seven working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant;

(8) The employer shall provide to the employee or job applicant, upon request, a copy of the test results;

(9) An initial test having a positive result must be verified by a confirmation test, or it shall be certified as a negative result;

(10) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested;

(11) An employer shall pay the cost of all initial and confirmation substance abuse tests that the employer requires of job applicants or employees;

(12) An employee or job applicant shall pay the cost of any additional tests that he or she requests; and

(13) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances that formed the basis of

the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee and the original documentation shall be kept confidential by the employer pursuant to Section 12 and retained by the employer for at least one year, or maintained throughout the duration of any legal proceedings resulting from the testing.

(e) No laboratory may analyze initial or confirmation drug specimens unless:

(1) The laboratory is approved by the National Laboratory Certification Program or the College of American Pathologists;

(2) The laboratory has written procedures to ensure the chain of custody; and

(3) The laboratory follows proper quality control procedures including, but not limited to:

(A) The use of internal quality controls including the use of samples of known concentrations that are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy;

(B) An internal review and certification process for substance abuse test results, conducted by a person qualified to perform that function in the testing laboratory;

(C) Security measures implemented by the testing laboratory to preclude adulteration of specimens and test results; and

(D) Other necessary and proper actions taken to ensure reliable and accurate test results.

(f) A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state:

(1) The name and address of the laboratory that performed the test and the positive identification of the person tested;

(2) Positive results on confirmation tests only, or negative results, as applicable;

(3) A list of the drugs for which the drug analyses were conducted; and

(4) The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests. No report shall disclose the presence

or absence of any drug other than a specific drug and its metabolites listed pursuant to this Act;

(g) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or non-prescription medication taken by the employee or job applicant;

(h) All positive initial tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate and scientifically accepted method approved by the National Laboratory Certification Program or the College of American Pathologists as such technology becomes available in a cost-effective form.

COMMENT

Substance abuse testing in and of itself is not a comprehensive drug-free workplace program, nor will it singularly end alcohol and other drug abuse in the workplace. It is, however, an important tool to help employers and employees achieve a drug-free workplace.

National Labor Relations Board rulings have made drug testing a mandatory subject of bargaining, where private sector employees are represented by a union. Recognizing this, the Commission cannot nor does it seek to preempt federal law or any collective bargaining agreements pursuant to federal law. What the Commission hopes to achieve with this legislation is to establish a model state law that defines a rigorous drug testing procedure that clearly articulates all necessary employee protections, including specimen collection, chain-of-custody, and laboratory procedures.

(a) This [Act] does not establish a legal duty for employers to conduct drug testing. Employers that choose not to conduct drug testing in their workplaces are not subject to the provisions of this [Act]. However, employers that wish to qualify for the provisions of Section 5 and the rest of this [Act] must implement a drug testing program. While recognizing the contentious nature of the drug testing issue, it is the sense of the Commission that drug testing is an important element of any drug-free workplace program. Substance abuse testing often serves to deter employee drug use. In addition, treatment proponents often point out that substance abuse testing helps to identify employees who are in denial about their substance abuse problem and who otherwise would continue their substance abuse patterns if not confronted with the seriousness of their problem.

(b) The Commission recommends that employers conduct substance abuse testing in the following contexts: pre-employment, reasonable suspicion, regularly scheduled fitness-for-duty medical examinations, alcohol and other drug treatment follow-up, and post-accident. These forms of substance abuse testing must be implemented in order for an employer to qualify for the provisions of Section 5.

(c) The Commission does not preclude an employer's use of random drug testing. The goal in doing so is to provide employers and employees as much flexibility as possible in creating their drug-free workplace programs. The U.S. Supreme Court has called random drug testing an effective deterrent to substance abuse in the workplace. Also, some employee representatives view random testing, implemented properly, as an equitable form of substance abuse testing, as it removes employer discretion as to who in particular will be subject to any particular test. The use of random drug testing is not required in order for an employer to qualify for the provisions of Section 5.

(d) and (e) By defining "drugs" broadly, the Commission allows latitude for states to add or subtract drugs as they deem appropriate. Laboratories participating in the federal Department of Health and Human Services' National Laboratory Certification Program test for the first five drugs listed in the definition. Many employers also desire to test for barbiturates, benzodiazepines, and alcohol, among others. This definition is constructed to accommodate those employers that wish to test more broadly.

Insofar as alcohol is concerned, the U.S. Department of Transportation has developed rigorous standards for the use of evidentiary breathalyzer testing for alcohol use or intoxication. States should follow as closely as possible the Department of Transportation rules and regulations concerning alcohol testing. However, the Commission recommends that any positive breathalyzer test must be confirmed by a blood alcohol content test.

Initial tests and confirmation tests require testing procedures that have been approved by the federal Department of Health and Human Services' National Laboratory Certification Program or the College of American Pathologists. It is the sense of the Commission that the National Laboratory Certification Program and the College of American Pathologists offer the highest accepted scientific methodology in this area. Currently, these programs utilize urinalysis testing for drugs of abuse. But states may consider alternative testing procedures to the National Laboratory Certification Program or the

College of American Pathologists, including testing for alcohol and other drugs by scientific methodology associated with hair, saliva, blood, breath, urine, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites, as long as the state [Department of Health] or the [single state authority on alcohol and other drugs] is satisfied that the scientific methodology equals or exceeds the quality and protection established by the National Laboratory Certification Program's or the College of American Pathologists' certification and testing procedures involving urine. If a state chooses to adopt such alternative testing procedures, the legislation should be adjusted accordingly.

By including products of the human body other than urine, specimen, as defined by this [Act], will encompass such future use of alternative scientific methodology.

Should the state determine that such alternative testing procedures equal or exceed the quality and protection established by the National Laboratory Certification Program or the College of American Pathologists, alternative language should be included in this section to allow for appropriate specimen collection and for testing to be conducted by laboratories deemed to be of equal scientific competence as those certified by the National Laboratory Certification Program or the College of American Pathologists. For example, some states currently allow agencies such as the state [department of health] to develop reliable and effective licensing procedures for drug testing laboratories. Those states may choose to rely on laboratories that meet the licensing standards established by such state agencies. In these instances alternative language should also allow tests and specimens to be handled by the employees of such laboratories.

(h) All positive initial substance abuse test results must be confirmed by a confirmation test using gas chromatography/mass spectrometry methods or an equivalent or more accurate and scientifically accepted method become available. No adverse action shall be taken against an employee, except in the interest of health and safety, until a positive initial substance abuse test result has been confirmed by a confirmation test.

Section 12. Confidentiality.

(a) All information, interviews, reports, statements, memoranda, and test results, written or otherwise,

received by the employer through a substance abuse testing program are confidential communications as they pertain to the employee only and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this [Act].

(b) Employers, laboratories, medical review officers, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) The name of the person who is authorized to obtain the information;
- (2) The purpose of the disclosure;
- (3) The precise information to be disclosed;
- (4) The duration of the consent; and
- (5) The signature of the person authorizing release of the information.

(c) Nothing in this [Act] shall be construed to call for actions that may violate federal or state confidentiality statutes for employee assistance professionals and alcohol and other drug abuse counseling or treatment providers.

(d) Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in any such criminal proceeding.

(e) Nothing contained in this [Act] shall be construed to prohibit the employer, agent of the employer, or laboratory conducting a test from having access to employee test information when consulting with legal counsel in connection with actions related to this Act or when the information is relevant to its defense in a civil or administrative matter.

Section 13. Rehabilitative and/or Disciplinary Procedures.

(a) Upon receipt of a confirmed "positive" substance abuse 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 testing sample, an employer may use that confirmed test result or test refusal as a valid basis for rehabilitative and/or disciplinary actions, which may include, among other actions, the following:

- (1) A requirement that the employee enroll in an employee assistance program, or an employer-provided or -approved rehabilitation, treatment, and/or counseling program licensed by the [single state authority on alcohol and other drugs] as discussed in Section 8. These may include additional substance abuse testing, participation in which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies;
- (2) Suspension of the employee, with or without pay, for a designated period of time;
- (3) Termination of employment;
- (4) Refusal to hire a prospective employee; and/or
- (5) Other action in conformance with the employer's written policy and procedures, including any applicable collective bargaining agreement provisions.
- (6) Notwithstanding any provision of this Act, any employee who tests positive in a confirmation test authorized under this statute will have a presumption of impairment or intoxication for the purpose of the workers compensation laws of this state.

COMMENT

All positive initial substance abuse test results must be confirmed by a confirmation test using gas chromatography/mass spectrometry methods or an equivalent or more accurate and scientifically accepted method if one becomes available. Upon receipt of a positive confirmed substance abuse 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 testing sample, an employer may use that confirmed test result or test refusal as a valid basis for rehabilitative and/or disciplinary actions.

The Commission strongly recommends that employers allow those employees who test positive to be given an opportunity to seek assistance and rehabilitation through an EAP and other treatment resources, rather than solely taking disciplinary action. Disciplinary action and treatment often go hand in hand. There is ample evidence that disciplinary action can reinforce positive treatment outcomes.

Section 14. Authority of Employer.

(a) Nothing in this [Act] shall be construed to prevent an employer from establishing reasonable work rules relating to employee manufacture, sale, distribution, possession, or use of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(b) Nothing in this [Act] shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to lead, asbestos, or other toxic or unhealthy materials in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to any rule or regulation issued pursuant thereto, unless prior written consent of the employee is obtained for other tests.

Section 15. Absence of Cause of Action.

No cause of action shall arise in favor of any person against an employer based upon the failure of an employer to establish a substance abuse program in accordance with this [Act].

COMMENT

No cause of action shall arise against an employer simply because the employer declined to implement a drug testing program.

Section 16. Retroactivity of Act.

Nothing in this [Act] shall be construed to operate retroactively, and nothing in this Act shall abrogate the right of an employer under state law to conduct substance abuse tests, or implement employee substance abuse testing programs, prior to enactment of this legislation, provided, however, only those programs that meet the criteria outlined in this [Act] qualify for reduced workers' compensation insurance rates under Section 5.

Section 17. Repeal of Laws in Conflict with This Act.

All laws and parts of laws in conflict with this [Act] are repealed.

Section 18. Absence of Physician-Patient Privilege.

No physician-patient relationship is created between an employee or job applicant and an employer, medical review officer, or any person performing or evaluating a substance abuse test solely by the establishment, implementation, or administration of a substance abuse testing program.

Section 19. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 20. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Employee Assistance
Professionals Act

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Model Employee Assistance Professionals Act

Policy Statement

Employee assistance programs (EAPs) play an integral role in linking the identification of alcohol and other drug problems with workplace programs to assess the extent of the problems and direct the employee to treatment and rehabilitation. Aside from the many benefits that employee assistance programs bring to workforce health, safety, and well-being, EAPs also prove cost effective for employers. Cost-benefit analyses of EAPs have found a 4:1 return or better on investment in the programs due to lower health care and workers' compensation utilization costs and higher worker productivity.

The rapid increase in employee assistance programs and employee assistance professionals during the previous few decades has led to concerns about the nature and quality of services being offered and the qualifications of some employee assistance professionals. The Employee Assistance Professionals Association has sought to remedy some of the industry's growing pains by certifying employee assistance professionals through the Employee Assistance Certification Commission. However, not all employee assistance professionals have submitted to this certification process and many counselors advertising employee assistance services are not trained or experienced in actual employee assistance program service delivery.

This Act developed out of a desire by certified employee assistance professionals to maintain acceptable standards of their industry. It serves as a consumer protection bill. State legislatures with concerns about the quality of services being offered by employee assistance professionals are urged to consider this legislation.

With the inclusion of employee assistance programs in many facets of its proposed legislation, the Commission wishes to insure that public and private employers contract only with qualified employee assistance professionals. This will guarantee an acceptable level of services and professionalism for employees who access employee assistance programs. Adoption of this legislation will signal a state's willingness to impose such acceptable standards.

This legislation was drafted with the assistance of the Employee Assistance Professionals Association. The legislation establishes a state entity to license certified employee assistance professionals to practice in the state. It also establishes the professional standards to which those employee assistance professionals should be held.

Highlights of the Model Employee Assistance Professionals Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes the role of employee assistance programs (EAPs) and rehabilitation resources in the workplace, linking the identification of employee substance abuse problems with the employer's workplace program to assess and refer those employees to treatment and rehabilitation.
- Recognizes the cost-benefit of EAPs to business in terms of lower overall health care and workers' compensation utilization costs, higher worker productivity, lower rates of absenteeism, reduced alcohol and other drug problems among employees, and reduced disciplinary problems.
- Recognizes that the dramatic growth of the employee assistance field points to the need for certification and licensure of all employee assistance professionals.
- Recognizes that the certification and licensure of employee assistance professionals practicing in the state would indicate an acceptable level of competency among employee assistance professionals and would insure consumer protection for companies that hire or contract with such professionals to deliver EAP services.
- Provides processes through which employee assistance professionals must apply for and renew an employee assistance professional license or have such license reinstated.
- Provides that licensure fees collected by the state licensing agency be used to fund the licensing agency's activity and staff.
- Describes the circumstances under which the state may deny, suspend, or revoke any employee assistance professional license.
- Provides for employee assistance programs or rehabilitation resources where an employer conducts substance abuse testing as part of any workplace substance abuse program and establishes employee notification requirements to facilitate access to such services.
- Provides annual employee education programs where an employer conducts substance abuse testing as part of any workplace substance abuse program. The annual employee education programs must educate employees on alcohol and other drug abuse, its effects on the workplace, and the employer's policies and procedures regarding alcohol and other drug abuse in the workplace and how employees may access rehabilitation resources.

SPECIFIC RECOMMENDATIONS

- Provides three options to the legislature for the development of a process by which certified employee assistance professionals must apply for and obtain a license to practice in the state. The first option establishes a [state Board of Employee Assistance Professionals Licensure] to handle such licensure. The second option designates the [single state authority on alcohol and other drugs] as the state licensing agency. The third option designates the [department of state or other appropriate agency] as the state licensing agency.
- Provides annual supervisor substance abuse training where an employer conducts substance abuse testing as part of any workplace substance abuse program. The annual supervisor substance abuse training must enable supervisors to better recognize, document, and corroborate employee alcohol and other drug abuse and to refer alcohol and other drug abusing employees to the proper treatment providers. Also provides supervisors with information concerning the benefits of referring employees to treatment programs and explains employee health insurance or HMO coverage for alcohol and other drug problems.

- Provides that all information, interviews, reports, statements, memoranda, and test results received by the employer through a substance abuse testing program are confidential communications as they pertain to the employee only and establishes strict confidentiality standards and procedures regarding those communications.
- Provides that the state licensing agency develop and issue guidelines to assist employers to evaluate the efficacy of employee assistance programs.
- Provides an employee assistance program tax credit equal to ten percent of the qualified employee assistance program expenditures for each taxable year.
- Provides for the establishment of an Employee Assistance Consortia Demonstration Program to design and implement effective mechanisms for delivering employee assistance program services to employers and employees of small businesses presently not providing or receiving such services.

Model Employee Assistance Professionals Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the "Model Employee Assistance Professionals Act."

Section 2. Legislative Findings.

(a) Employee assistance programs and rehabilitation resources in the workplace link the identification of substance abuse with the employer's program to assess the extent of the problem and to direct the employee to treatment and rehabilitation. Employee assistance programs also reintegrate rehabilitated employees back into the workplace and monitor compliance of the employer's substance abuse program.

(b) Cost-benefit analyses of EAPs consistently have found a 4:1 return or higher on investment in the programs due to lower overall health care and workers' compensation utilization costs, higher worker productivity, lower rates of absenteeism, reduced employee alcohol and other drug problems, and reduced employee disciplinary problems.

(c) The employee assistance field has expanded dramatically in the past few decades. In the 1950s, fewer than 50 employee assistance programs could be found in businesses around the country. Today, over 10,000 employee assistance programs exist.

(d) Such rapid growth in the field of employee assistance points to the need for certification and licensure of all employee assistance professionals. As part of a relatively new field, employee assistance professionals have, at present, no standardized educational prerequisites for their work, but come from highly diverse educational and professional backgrounds. Certification and licensure would establish an acceptable level of knowledge no matter what the educational level of the practitioner.

(e) By requiring that only certified and licensed employee assistance professionals practice in this state, the state legislature demands an acceptable level of

competency among employee assistance professionals. This requirement also insures consumer protection for companies that hire or contract with employee assistance professionals to deliver employee assistance program services.

COMMENT

This [Act] is a consumer protection bill. The rapid increase in employee assistance programs and professionals during the previous few decades has led to concerns about the nature and quality of services being offered and the qualifications of some employee assistance professionals. The Employee Assistance Professionals Association has sought to remedy some of the industry's growing pains by certifying employee assistance professionals through the Employee Assistance Certification Commission. However, not all employee assistance professionals have submitted to this certification process and many counselors advertising employee assistance services are not trained or experienced in actual employee assistance program service delivery.

This [Act], then, grew out of a desire by certified employee assistance professionals to maintain acceptable standards of their industry. State legislatures with concerns about the quality of services being offered by employee assistance professionals are urged to consider this legislation.

With the inclusion of employee assistance programs in many facets of its proposed legislation, the Commission wishes to insure that public and private sector employers contract only with qualified employee assistance professionals, which in turn will guarantee an acceptable level of services and professionalism for employees who access employee assistance programs. Adoption of this model legislation will signal a state's willingness to impose such acceptable standards.

The Commission includes this model legislation on employee assistance professionals because of the integral role that they play in connecting the identification of alcohol and other drug problems with workplace

programs for assessing the extent of the problems and directing the employee to treatment and rehabilitation. The implementation and maintenance of an effective employee assistance program is the most helpful action that an employer can take to comprehensively address the problems of alcohol and other drugs in the workplace.

Section 3. Purpose.

This [Act] is intended to [create a state Board of Employee Assistance Professionals Licensure][require the single state authority on alcohol and other drugs to license employee assistance professionals][require the state department of state or other appropriate state agency to license employee assistance professional]. [This Board][The single state authority on alcohol and other drugs][The department of state or other appropriate agency] shall implement a process by which certified employee assistance professionals must apply for and obtain a license to practice as an employee assistance professional in the state. In addition to establishing licensing requirements, the [Board][single state authority on alcohol and other drugs][department of state] must also establish guidelines for evaluating the efficacy of employee assistance programs (EAPs). The [Act] also establishes the confidentiality of certain records of employee assistance programs, employee assistance professional supervision requirements, a tax credit for employer expenditures for certain employee assistance programs, and a state employee assistance consortia demonstration grant.

COMMENT

This legislation describes the development of a state entity to license certified employee assistance professionals to practice in the state. The Commission offers three alternative structures through which this licensure should occur.

One option creates a Board of Employee Assistance Professionals Licensure. This Board, an independent entity attached to the [state department of labor], would be responsible for licensing certified employee assistance professionals to practice in the state. Another option would establish the [single state authority on alcohol and other drugs], in consultation with the [state department of labor], as the state agency that shall license certified employee assistance professionals to practice in the state. The third option would establish the [department of state or other appropriate state licensing agency], in consultation with the [single state authority

on alcohol and other drugs], as the state licensing agency for employee assistance professionals.

The Commission offers the three options to accommodate differences in state governments and philosophies. The Board allows states a process through which they may establish an independent state agency to implement and monitor the licensing of employee assistance professionals. However, many states are currently downsizing government operations, eliminating many independent regulating agencies. For those states, the use of an already existing and related entity may be more appropriate for particular state budgetary and political conditions.

Subsequent references in this legislation to such state regulating entity will reflect all three options.

Section 4. Definitions. As used in this [Act]:

- (a) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) "Certified employee assistance professional" means an employee assistance professional certified by the Employee Assistance Certification Commission (EACC) who has the necessary professional qualifications to provide employee assistance program services that can be work-site based and are designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns. The specific core activities of employee assistance professionals include:
 - (1) Expert consultation and training of appropriate persons in the identification and resolution of job-performance issues related to the aforementioned employee personal concerns;
 - (2) Confidential, appropriate and timely problem-assessment services;
 - (3) Referrals for appropriate diagnosis, treatment and assistance;
 - (4) Establishment of linkages between workplace and community resources that provide such services; and
 - (5) Follow-up services for employees who use those services.
- (c) "Consortium" means an entity composed of two or more small businesses that collaborate to provide

employee assistance program services for their employees and the family members of such employees.

(d) "Conviction" means a finding of guilt, including a plea of nolo contendere or imposition of sentence or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal law.

(e) "Drug" or "drugs" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualene, propoxyphene, or a metabolite of any such substance.

(f) "Employee Assistance Certification Commission" or "EACC" means the national body that governs certification of individual practitioners in the employee assistance program field. The EACC is responsible for policies; procedures, standards of eligibility, and examination qualifications for certification; certification examination content and construction; examination scoring in accordance with accepted psychometric principles; appeals; fee structure, and; the EACC's internal operation.

(g) "Employee assistance program" (EAP) means a worksite-based program using licensed employee assistance professionals and designed to assist in the identification and resolution of health, behavioral, or productivity problems associated with employees impaired by personal concerns, including alcohol and other drugs, health, emotional, marital, family, financial, legal, stress, or other personal concerns that may adversely affect the employees' well-being or job performance.

(h) "Employee assistance service provider" means entities, including private or non-profit employers, hospitals, trade and professional associations, chambers of commerce, labor, unions, and social service provider groups that provide employee assistance program services and activities as described in subsection (b).

(i) "External employee assistance program" means an employee assistance program provided by an outside service provider with whom the employer contracts.

(j) "Internal employee assistance program" means an employee assistance program that is part of the employer's organizational structure, staffed by on-site employees of the organization.

(k) "Qualified employee assistance program expenditures" means the aggregate amount of deductible expenditures paid or incurred by the employer during

the taxable year in providing for or contributing to an employee assistance program.

(l) "Rehabilitation resources" means, at a minimum, a well-maintained, up-to-date file of employee assistance providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems

(m) "Secretary" means the state Secretary of Labor.

(n) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(o) "Small business" means an employer with less than [250] employees.

(p) "Supervision" means and includes the following:

(1) Frequent and regularly scheduled one-to-one or group discussions between supervisor and supervisee focusing on:

(A) Data from the supervisee's employee assistance service work made available to the supervisor by oral and written clinical reports, direct observation and audio or audiovisual recordings;

(B) Mutually developed goals and objectives for the development of learning.

(2) Maintaining of supervisee's specific cases and his or her skill development by supervisor.

(q) "Unprofessional conduct" or "unethical conduct," or "incompetency," or "ignorance," or "negligence," are defined by the provisions of section 11(a)(7).

Section 5. [Option 1] State Board of Employee Assistance Professionals Licensure.

There is hereby created the state Board of Employee Assistance Professionals Licensure.

(a) The Board shall consist of five members who are residents of the state and who shall be appointed by the governor.

(1) Initial appointments to the Board shall be as follows:

(A) Three independent, external, certified

employee assistance professionals for terms of one year and two professionals for four years respectively;

(B) One person who is not directly or indirectly engaged in the employee assistance profession, for a term of two years; and

(C) One certified employee assistance professional for a term of five years.

(2) All Board members, except the member who is not directly or indirectly engaged in employee assistance, shall be duly licensed or eligible to be licensed by the Board. Subsequent appointees to the Board including the individual not directly or indirectly engaged in the employee assistance profession, shall possess the same professional qualifications required by their predecessors and shall be appointed to five-year terms.

(3) Notwithstanding paragraph (1) of this subsection, members shall serve until their successors are appointed and qualified. Any vacancy occurring on the Board shall be filled by the governor for the balance of the unexpired term.

(b) For each day engaged in the business of the Board, members shall receive as compensation [fifty] dollars and shall also receive actual expenses to be paid in accordance with the comprehensive travel regulations promulgated by the state.

(c) The Chair of the Board shall be appointed by the Governor.

(d) The Board shall meet as frequently as reasonably necessary to implement the provisions of this Act but not less than four times per year. Three or more members of the Board shall constitute a quorum for the purposes of transacting Board business.

(e) For administrative purposes, the Board shall be attached to the [state department of labor], which shall develop all rules and regulations necessary to enable the Board to conduct its business.]

Section 5. [Option 2] Licensure of Certified Employee Assistance Professionals.

The [single state authority on alcohol and other drugs], in consultation with the [state department of labor], shall be responsible for the licensure of certified employee assistance professionals.]

Section 5. [Option 3] Licensure of Certified Employee Assistance Professionals.

The [department of state or other appropriate state licensing agency], in consultation with the [single state authority on alcohol and other drugs], shall be responsible for the licensure of certified employee assistance professionals.]

COMMENT

This section describes the development of a state entity to license certified employee assistance professionals to practice in the state.

Option 1 creates a Board of Employee Assistance Professionals Licensure. This Board, an independent entity attached to the [state department of labor], would be responsible for licensing certified employee assistance professionals to practice in the state. Option 2 would establish the [single state authority on alcohol and other drugs] as the state agency that would license certified employee assistance professionals to practice in the state. This seemingly incongruous placement of responsibility for labor issues in the [single state authority] reflects the historic role employee assistance programs have played in addressing workplace alcohol and other drug problems. The employee assistance movement has its roots in occupational alcoholism programs. Although EAPs currently embrace a "broadbrush" approach, addressing a full-range of behavioral problems that affect job performance, considerable attention still is paid to substance abuse problems. In this respect, the state legislature may feel that the establishment of the [single state authority on alcohol and other drugs] as the state licensing agency for employee assistance professionals is well suited.

Option 3 would establish the [department of state or other appropriate state licensing agency] as the licensing agency for employee assistance professionals.

The Commission offers the three options to accommodate differences in state governments and philosophies. Option 1 would allow states a process through which they may establish an independent state agency to implement and monitor the licensing of employee assistance professionals. However, many states are currently downsizing government operations, eliminating many independent regulating agencies. For those states, Options 2 or 3 may be more appropriate for particular state budgetary and political conditions.

Subsequent references in this legislation to such state regulating entity will reflect all three alternatives.

Section 6. Application for Licensure.

(a) A person who is currently a certified employee assistance professional may apply for a license to practice in the state as an employee assistance professional by:

(1) Submitting an application to the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency], along with the EACC certified employee assistance professional document;

(2) Fulfilling any additional standards, if any, which the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] may establish. Any standards adapted pursuant to this paragraph shall conform with the *Employee Assistance Professional Association Standards: Professional Guidelines*; and

(3) Paying a fee as established by the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency].

(b) During the one year period following [July 1, 19], a provider of employee assistance services shall:

(1) Obtain a valid state employee assistance professional license to provide such services; or

(2) Enter into a contractual agreement with a licensed employee assistance professional to receive supervision in order to obtain such licensure.

(c) The [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] may, at its discretion, grant an employee assistance professional's license without requiring fulfillment of the standards set forth in paragraph (a)(2) to any person residing or employed in the state, who at the time of application is licensed as an employee assistance professional by another state whose standards, in the opinion of the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency], are as stringent as those required by this [Act].

(d) No person shall, by verbal claim, advertisement, letterhead, card, or in any other way represent himself or herself to be a provider of, or shall actually provide, employee assistance services unless such person possesses a valid employee assistance professional license

of registration pursuant to subsection (a).

(e) An individual providing employee assistance program services under any other name shall be deemed to be providing employee assistance program services for the purposes of this [Act]. The determination that employee assistance program services are being provided shall be made by the [Board established by this Act] [single state authority on alcohol and other drugs][department of state or other appropriate agency].

(f) Violation of subsection (d) or (e) is a Class C [or lowest level] misdemeanor, punishable by a fine which shall be set by the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state agency] at a percentage of the value of the contract, but not more than five thousand dollars (\$5,000).

(g) This [Act] shall apply to employee assistance professionals who provide both internal and external employee assistance program services.

COMMENT

This section establishes a procedure through which an employee assistance professional, who has been certified by the Employee Assistance Certification Commission, can apply to obtain a license to practice as an employee assistance professional in this state.

The supervision requirement of subsection (b)(2) pertain to those individuals who do not have the requisite experience to obtain a valid state employee assistance professional license. This requirement will be discussed fully in Section 7.

Under subsection (g), this licensure requirement to practice as an employee assistance professional shall apply to both internal and external employee assistance professionals. Again, this requirement insures consumer protection for the delivery of all employee assistance program services by knowledgeable, trained professionals in the state.

Section 7. Supervision.

(a) The supervision required by Section (6)(b)(2) and defined in Section (4)(p) shall total at least one hour for every thirty hours of clinical contact hours over a three year period. That supervision time shall be in addition to:

(1) Any overall administrative supervision, and:

(2) Any group seminar or group consultation that are deemed appropriate.

(b) Records of the experience and the supervision process must be maintained by both the supervisor and supervisee. The supervisor shall submit verification of supervision directly to the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] on approved forms.

(c) Professional experience as an employee assistance professional before this legislation was adopted shall be credited to the individual's three year supervisory period in accordance with guidelines established by the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency].

(d) The [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] shall issue guidelines pertaining to the credit of professional employee assistance experience prior to the enactment of this [Act], pursuant to subsection (c).

COMMENT

The supervision requirement of this section allows an employee assistance professional to develop the body of knowledge and professional experience needed to qualify for a state license to practice. The Employee Assistance Certification Commission testing requirement for certification of an employee assistance professional demands three years or more of experience in the EAP field. This supervision requirement enables employee assistance professionals to develop such knowledge and experience under the guidance of an experienced, licensed employee assistance professional.

The [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] shall issue guidelines to shorten the three year supervisory requirement for those employee assistance professionals who had professional EAP experience prior to the enactment of this [Act].

Section 8. Employee Assistance Professional License Renewal.

All persons with current, valid certification from the Employee Assistance Certification Commission as a certified employee assistance professionals shall renew their employee assistance professional license as follows:

(a) On or before [insert date] of each year, the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] shall mail an application for renewal to every person holding a valid current employee assistance professional license.

(b) Each applicant shall complete and return such application to the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] on or before [insert date one month after subsection (a) date] of each year.

(c) Annual licensure renewal fees in an amount established by the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] shall accompany each renewal application.

(d) If any holder of a license fails to renew his or her license within sixty (60) days after registration becomes due the license of such person shall be automatically revoked without further notice or hearing unless such hearing is specifically requested prior to the revocation.

COMMENT

This section describes the process by which a certified employee assistance professional shall renew his or her annual license.

Section 9. Disposition of Revenue from Fees.

Licensure fees collected shall be used to fund [Board activities and staff] [activities and staff of the single state authority on alcohol and other drugs, relating to certified employee assistance professionals, EAPs, and other aspects of this Act] [activities and staff of the department of state or other appropriate state licensing agency, relating to certified employee assistance professionals, EAPs, and other aspects of this Act].

COMMENT

The Commission intends that the Board of Employee Assistance Professionals Licensure to be as fiscally self-reliant as possible. All licensure fees shall be used to fund the Board's activities and staff. Should the state legislature opt to handle employee assistance professional licensure through the [single state authority on alcohol and other drugs] or the [department of state], all fees collected should be used to fund those aspects of the [single state authority's] or the [department of state's] activities and staff.

Section 10. License Reinstatement.

Any person licensed to provide employee assistance services in this state who has retired or subsequently may retire from such practice, or otherwise leaves the field of employee assistance services, shall not be required to obtain or maintain licensure as required by this [Act], provided such person files with the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] an affidavit on a form, prescribed by the [Board][single state authority on alcohol and other drugs] [department of state or other state licensing agency], stating the date on which the person retired from such practice or otherwise left the field and such other facts that are required by the [Board][single state authority on alcohol and other drugs] [department of state or other appropriate state licensing agency]. If such person thereafter re-engages in the practice of providing employee assistance services, he or she shall re-apply for licensure with the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] within 60 days of returning to practice as provided by this [Act].

COMMENT

The provision allowing a person who re-engages in an employee assistance practice 60 days to re-apply for licensure is a temporary exception to the provisions of Section 6. Often, those seeking to return to practice will not seek out licensure in a state until a professional position has been secured. This provision allows those individuals who re-engage in employee assistance services to secure a position in a state temporarily before subjecting themselves to state employee assistance professional licensure. However, after the 60 days have elapsed, all certification and licensure requirements of Section 6 apply.

Section 11. License Suspension or Revocation.

(a) The [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] shall have the power to deny, suspend, or revoke any license, or to otherwise discipline an applicant or holder of a license who is found by the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] to have failed to adhere to the EACC Code for Professional Conduct. This includes, but is not limited to:

- (1) Willful or repeated violations of any provision of this [Act] or any rule of the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency];
- (2) Fraud or deception in procuring or attempting to procure a license, presenting to the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] dishonest or fraudulent evidence of qualification, or fraud or deception in the process of examination for the purpose of securing a license;
- (3) Willful failure to display a license;
- (4) Fraud, deception, misrepresentation, dishonest or illegal practices in or connected with the practice of employee assistance;
- (5) Circulation of untrue, fraudulent, misleading, or deceptive advertising or advertising that the professional should have known was untrue, fraudulent, misleading, or deceptive;
- (6) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of practice;
- (7) Unprofessional or unethical conduct, or engaging in practices connected with the practice of employee assistance in violation of the standards of professional conduct established by Employee Assistance Professionals Association and prescribed by the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency], including, but need not be limited to:
 - (A) Circulation of advertising knowing it is untrue, fraudulent, misleading or deceptive;
 - (B) Engaging in sexual activities with clients;
 - (C) Conviction of any crime involving moral turpitude;
 - (D) Habitual intoxication or personal misuse of any drugs, any unlawful use of controlled substances, or the use of intoxicating liquors, controlled substances, or other drugs or stimulants in such a manner as to adversely affect the person's ability to practice employee assistance;

- (E) Failure to inform clients fully about the limits of confidentiality in a given situation, the purposes for which information is obtained, and how it may be used;
- (F) Denial of clients' reasonable requests for access to any records concerning them;
- (G) Failure to protect all client confidences as required by Section 14 of this [Act], including failure to protect the confidences of others contained in those records to which other clients are properly granted access;
- (H) Failure to obtain informed consent of clients before taping, recording, or permitting third party observation of their activities;
- (I) Failure to clarify the nature and directions of the certified employee assistance professional's duties, and to keep all parties informed of their ethical obligations when a conflict of interest exists between a client and the certified employee assistance professional's employing institution;
- (J) Failure to inform consumers fully as to the purpose and nature of an evaluative research, treatment, educational or training procedure, and failure to inform fully any clients, students, or participants in research of their freedom of choice with regard to participation;
- (K) Failure to attempt to terminate a clinical or consulting relationship when it is reasonably clear that the relationship is not benefiting the consumer. Certified employee assistance professionals who find that their services are being used by employers in a way that is not beneficial to the participants or to employees who may be affected, or to significant others, have the responsibility to make such opinions known to the responsible persons and to propose modification or termination of the engagement;
- (L) Failure to avoid dual relationships with clients and/or relationships that might impair their professional judgment or increase the risk of client exploitation;
- (M) Failure to assist clients in finding needed services by making inappropriate referrals in those instances where payment of the usual fee would be a hardship;
- (N) Failure to terminate services to, and professional relationships with, clients when such service and relationships are no longer required. The certified employee assistance professional who anticipates the termination or interruption of service to clients shall notify clients promptly and seek the transfer, referral, or continuation of service in relation to the clients' needs and preferences;
- (O) Setting fees that are unreasonable and not commensurate with the service performed;
- (P) Engaging in the division of fees or agreeing to split or divide the fee received for professional services with any person for bringing or referring a patient; or
- (Q) Accepting gifts, gratuities, or any other favors from clients or their families.
- (8) Conduct reflecting unfavorably on the profession of employee assistance;
- (9) Willful provision of any false statements concerning material in any oath or affidavit required by this [Act];
- (10) Revocation by another state or the Employee Assistance Certification Commission of a employee assistance professional certification or license to practice in that state. The record of such revocation shall be conclusive evidence;
- (11) Conviction of a criminal offense in the courts of this state, or any other state, territory or country which if committed in this state would be a felony:
- (A) The record of conviction in a court of competent jurisdiction shall be sufficient evidence for disciplinary action to be taken as may be considered by the [Board][single state authority on alcohol and other drugs][department of state or other state licensing agency]; and
- (B) A record of conviction of offenses involving unlawful practice, or the unlawful manufacture, sale, distribution, possession with intent to distribute drugs, possession, use, or unlawful driving while under the influence, shall, without any other testimony, be sufficient for the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] to take temporary disciplinary action even

though an appeal for review by a higher court may be pending;

(12) Permitting or allowing another to use the license for the purpose of providing or offering employee assistance services;

(13) Engaging in practice under a false or assumed name, or impersonating another practitioner of a like, similar, or different name;

(14) Knowingly employing or permitting any person who is not a certified employee assistance professional to practice employee assistance in this state or to perform work which, under this [Act], can be done only by certified employee assistance professionals;

(15) Current habitual use of alcohol, or other stimulants or sedatives to such an extent as to detract from the performance of professional obligations and duties;

(16) Illegal use of drugs; or

(17) Being currently adjudicated mentally incompetent by a court of competent jurisdiction or being currently voluntarily or involuntarily committed or admitted to a state hospital or other mental institution. The record of adjudication, judgment, order, or voluntary commitment is conclusive evidence of such mental illness, and upon receipt of a certified copy of any such adjudication, judgment, order or record of voluntary commitment by the [Board][single state authority on alcohol and other drugs][department of state], the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] may suspend the employee assistance professional license of the person so adjudicated or committed, unless such person submits proof that such adjudication or commitment is no longer in effect.

(b) The [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] may on its own motion cause to be investigated any report indicating that a license holder is or may be in violation of the provisions of this [Act]. Any person who in good faith reports to the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] any information that an employee assistance professional license holder is or may be in violation of any provisions of this [Act] shall be immune from any liability, civil or criminal, that might

otherwise be incurred or imposed as a result of action taken pursuant to this [Act].

(c) All administrative proceedings for disciplinary action against a license holder undertaken pursuant to this [Act] shall be conducted in accordance with the [cite state statutory counterpart to Uniform Administrative Procedures Act].

COMMENT

This section reflects a summary of the EACC Code for Professional Conduct. The legislature may wish to review the entire EACC Code for Professional Conduct when developing the provisions of subsection (a).

Subsection (a)(11)(B) should be interpreted narrowly and currently. Often, employee assistance professionals are people in recovery and may have previous records of conviction for alcohol or other drug offenses. It is not the intention of this [Act] that such people be subject to disciplinary actions for earlier convictions.

Subsection (b) provides immunity from liability for individuals who report violations of this [Act] by employee assistance professionals. This immunity is granted to encourage the reporting of illegal activities by employee assistance professionals and to insure acceptable professional and ethical standards in this area.

Section 12. Employee Assistance Program or Rehabilitation Resources, as Adjunct to Substance Abuse Testing.

If an employer conducts substance abuse testing as part of any workplace substance abuse program, an employee assistance program or rehabilitation resources must be provided.

[Option 1: (a) To insure appropriate evaluation and referral to treatment for employees, any employer with 50 or more employees shall have an employee assistance program, or must contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(1) The employer shall notify the employee of the benefits and services of the employee assistance

program, or of the external employee assistance providers.

(2) An employer shall post notice of the employee assistance program in conspicuous places and consider alternative routine and reinforcing means of publicizing such services.

(3) The employer must provide the employee with notice of the policies and procedures regarding access to and use of the program.

(4) If an employer contracts with external employee assistance providers, the employer shall post in a conspicuous place a listing of these external employee assistance providers and consider alternative routine and reinforcing means of publicizing such services.

(b) To insure appropriate evaluation and referral to treatment for employees, any employer with less than 50 employees must:

(1) Have an employee assistance program;

(2) Contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems; or

(3) Maintain a resource file of complete and up-to-date information on employee assistance program service providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(c) Pursuant to subsection (b):

(1) An employer must provide employees with notice of the policies and procedures regarding access to and utilization of any programs and services offered.

(2) An employer shall post notice of any employee assistance program in conspicuous places and consider alternative routine and reinforcing means of publicizing such services.

(3) If an employer contracts with external employee assistance providers, the employer shall post in con-

spicuous places a listing of these external employee assistance providers and consider alternative routine and reinforcing means of publicizing such services.

(4) If an employer provides a resource file, the employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.]

[Option 2: (a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and consider alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance program service providers, drug and alcohol abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.]

COMMENT

Employee assistance programs or rehabilitation resources should be made available to all employees as part of any comprehensive drug-free workplace program. EAPs bridge the gap between the workplace and outside resources, including treatment programs that can help assist an employees and their families with alcohol and other drug problems. EAPs also offer counseling, problem resolution, and employee education services and assist employees with identifying and resolving job performance problems. Cost-benefit analyses of EAPs have found a 4:1 return or higher on invest-

ment in the programs due to lower health care and workers' compensation utilization costs and higher worker productivity.

The Commission strongly recommends that employers allow those employees who test positive to be given an opportunity to seek assistance and rehabilitation through an EAP and other treatment resources. Generally, it is more cost-effective to treat an employee than to terminate him or her, given recruitment, training, and other cost considerations. Also, employment termination does little to address the actual problem of alcohol and other drug abuse. Such positive substance abuse tests and the threat of termination of employment often are the impetus needed to convince an addict or alcoholic to seek help.

The Commission strongly recommends that all employers provide employee assistance programs, whether internal or external, to their employees and encourages employers to use EAPs to link substance abuse testing to employee treatment and rehabilitation programs. Legislators or employers who are concerned with the costs of an employee assistance program or alcohol and other drug treatment should consider the [Model Addiction Cost Reduction Act] in Volume IV, Treatment, and the employee assistance program tax credit offered in Section 18 of this [Act].

However, should the Commission's recommendation not prove feasible, this section offers state legislatures two options. Option 1 mandates that all employers with 50 or more employees must have an EAP, or must contract with an external EAP provider, and must inform its employees of those available services. Should the employer have less than 50 employees, the employer must either have an EAP, must contract with an external EAP, or must maintain a resource file of other assistance providers. The Commission endorses Option 1.

Option 2 mandates that an employer having an EAP must inform its employees of those services. If an employer does not have an EAP, it must maintain a resource file of other employee assistance providers so that employees are given some avenue of assistance for their substance abuse problems.

For both options, employers must develop ways to publicize the availability of employee assistance programs and/or rehabilitation resources. Notice of the existence of such programs and the ways in which employees may access them should be posted in conspicuous locations. Also, employers should develop innovative rou-

tine and reinforcing means of notifying and encouraging employees to use such resources. Describing such programs and processes in paycheck envelopes or in the employee benefits handbook are two examples.

Section 13. Employee Education, as Adjunct to Substance Abuse Testing.

If an employer conducts substance abuse testing as part of any workplace substance abuse program, an employer must provide all employees with an education program on alcohol and other drug abuse prior to the implementation of such employee testing. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour should include, but is not limited to the following information:

- (a) The explanation of the disease of addiction for alcohol and other drugs;
- (b) The effects and dangers of the commonly abused substances in the workplace; and
- (c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

COMMENT

An employer must provide all employees with annual education programs on alcohol and other drug abuse. An employer must also provide or initiate such a program prior to implementing a substance abuse testing program.

This education program should be provided by an employer's employee assistance professional, a certified addiction counselor, a labor relations attorney, or other individuals or programs with expertise in the areas of alcohol and other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate educational programs for employees. In addition, employers are encouraged to fully explain and discuss with employees all policies, rules, procedures, and rights associated with the development, implementation, and maintenance of a drug-free workplace program.

Section 14. Supervisor Substance Abuse Training, as Adjunct to Substance Abuse Testing.

If an employer conducts substance abuse testing as part of any workplace substance abuse program, an employer must provide all supervisory personnel a minimum of two hours of training prior to the institution of a drug-free workplace program pursuant to this [Act], in addition to the educational program provided in Section 13, and each year thereafter. This training should include but is not limited to the following:

- (a) Recognition of evidence of employee alcohol and other drug abuse;
- (b) Documentation and corroboration of employee alcohol and other drug abuse;
- (c) Referral of alcohol and other drug abusing employees to the proper treatment providers;
- (d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and
- (e) Explanation of any health insurance or HMO coverage for alcohol and other drug problems.

COMMENT

An integral part of any drug-free workplace program is annual alcohol and other drug abuse training for all supervisors. This training must be provided in addition to the annual employee alcohol and other drug education programs. Supervisors need instruction in the recognition of substance abuse, documentation and corroboration of employee alcohol and other drug abuse, and referral to appropriate EAPs or outside treatment providers. They also need to know how to help employees understand and access available assistance for any alcohol or other drug problems.

This training can be provided by the employer's employee assistance professional, a certified addiction counselor, a labor relations attorney, or other individuals or programs with expertise in the area of alcohol and other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate educational programs for supervisors.

Section 15. Confidentiality of Certain Records of Employee Assistance Programs.

(a) Confidentiality of certain records of employee assistance programs is hereby established.

(1) Records of the identity, prognosis, assessment and treatment plan, or referral for treatment of any individual that are maintained by any employee assistance program shall be confidential and may be disclosed only as authorized under subsections (b) and (g);

(2) Such confidentiality shall apply to the records without regard to whether the employee assistance program involved is conducted, regulated or directly or indirectly assisted by any department or agency of this state.

(b) Authorized disclosures.

(1) The content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the individual, but only as allowed under regulations prescribed pursuant to subsection (f).

(2) Whether or not the individual referred to in subsection (a) provides consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency;

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluations, but such personnel shall not identify directly or indirectly, any individual in any report of such research, audit, or evaluation, or otherwise disclose client identities in any manner;

(C) If authorized by an appropriate order of a court of competent jurisdiction granted under application showing good cause therefore. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the individual, injury to the relationship between the individual and the employee assistance program involved, or between the individual and any entity providing treatment services pursuant to a referral of any such program. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of the

record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) With respect to any record referred to in subsection (a), any such record of an individual may not, except as authorized by a court order granted under subsection (b)(2)(C), be used to initiate or substantiate any criminal charges against the individual or to conduct any investigation of the individual.

(d) The prohibitions of this section continue to apply to records concerning any individual who has been a client or patient, irrespective of whether or when that person ceases to be a client or patient.

(e) Enforcement.

(1) Any person who violates any provision of this section, or any regulation issued pursuant to this section, shall be liable to the state for a civil penalty assessed by the [Board][single state authority on alcohol and other drugs] in an amount not to exceed \$[5,000] for each such violation.

(2) Any individual who is aggrieved as a result of a violation by any person of any provision of this section or any regulations issued pursuant to this section may, in any court of competent jurisdiction, commence a civil action against such person to obtain appropriate relief, including actual and punitive damages, equitable relief, and reasonable attorney's fee and costs. For a violation of this section or regulation, damages may not be less than the liquidated amount of \$[2,000].

(f) Except as provided in subsection (a), the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definition, safeguards, and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) as deemed necessary by the [Board][single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency].

(g) This section may not be construed:

(1) With respect to alcoholism, alcohol abuse, and drug abuse, to reduce the scope of coverage or apply lesser standards than the coverage established under any other confidentiality law or regulation of this state or the United States; or

(2) To supersede the application of state or local requirements for the reporting of incidents of domestic or child abuse to the appropriate state or local authorities.

COMMENT

Strict confidentiality provisions are essential to the well-being and proper utilization of any employee assistance program service by employees and their family members. Those using the employee assistance program services must feel assured that strict confidentiality of their records and information shall be maintained; otherwise, they will not seek the assistance of such services.

There will be times when court-ordered access to an individual's files may be necessary. Thus, some leeway is given in this section to allow for such access under specific circumstances related to criminal activity. However, in such circumstances, the confidentiality laws of this state or of the federal government shall not be superceded.

Section 16. Promulgation of Rules and Regulations.

The [Board] [single state authority on alcohol and other drugs][department of state or other appropriate state licensing agency] is authorized to promulgate, in accordance with the provisions of [insert state statutory counterpart to Uniform Administrative Procedures Act] rules and regulations as necessary to implement the provisions of this [Act].

Section 17. Evaluation and Assessment of Employee Assistance Programs.

The [Board][department of state or other appropriate state licensing agency], in conjunction with [the single state authority on alcohol and drugs], shall develop and issue guidelines to assist employers to evaluate the efficacy of employee assistance programs. Components of these evaluations may include, but need not be limited to:

(a) Administrative factors.

- (1) Review of EAP policies and procedures;
- (2) Personnel;
- (3) Community networking;
- (4) Employee and supervisor surveys;

- (5) Program utilization;
 - (6) Communications;
 - (7) Recovery rates;
 - (8) Problem resolution analysis; and
 - (9) Information processing.
- (b) Direct cost reductions.
- (1) Health and mental health care cost savings;
 - (2) Accident and injury cost savings;
 - (3) Workers' compensation cost savings; and
 - (4) Unemployment compensation cost savings.
- (c) Indirect cost reductions.
- (1) Turn-over cost savings;
 - (2) Absenteeism cost savings; and
 - (3) Productivity cost savings.
- (d) Subjective factors.
- (1) Job performance of EAP participants;
 - (2) Morale of EAP participants;
 - (3) Discipline of EAP participants;
 - (4) Grievances caused by EAP participants;
 - (5) EAP participation and recovery rates; and
 - (6) Subjective factor analysis of total company workforce.

COMMENT

Proper evaluation and monitoring of employee assistance programs can point to the many benefits to employees and employers alike. However, few employee assistance programs undertake methodologically sound evaluations to determine just what benefits they are serving.

Again, the most rigorous and conservative cost-benefit analyses of employee assistance programs show a 4:1 return or higher on investment in the programs due to lower health care and workers' compensation utilization costs, higher worker productivity, higher employee morale, reduced alcohol and other drug problems, and reduced employee crime. Such analyses reflect the benefits of employee assistance programs for employees as well as employers and encourage employers to make such programs an integral part of any workplace.

The analytic framework offered in this section is based on one developed by Robert T. Thompson, Jr. in *Substance Abuse and Employee Rehabilitation*.

Section 18. Tax Credit for Employer Expenditures for Certain Employee Assistance Programs.

(a) There is established an employee assistance program credit equal to ten percent of the qualified employee assistance program expenditures for each taxable year. Such credit shall not exceed more than [fifty] dollars of qualified employee assistance program expenditures per employee for any taxable year.

(b) Special aggregation and allocation rules.

(1) In determining the amount of the credit under this section, all members of a consortium shall be treated as a single taxpayer, and the credit (if any) allowable by this section to each such member shall be its proportionate share of the qualified employee assistance program expenditures giving rise to the credit.

(2) In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the [department of state or other appropriate state licensing agency].

(c) The credit allowable under this section with respect to an employer's qualified employee assistance program expenditures shall be in addition to any deduction or credit allowed the employer under any other law, statute, rule or regulation.

(d) The amendments made by this section shall apply to taxable years beginning [date].

COMMENT

This section offers the state legislature an opportunity to encourage the implementation of employee assistance programs by offering businesses a ten percent tax credit for employee assistance program costs. Currently, a majority of large businesses have already established EAPs; however, many small and medium sized businesses have not, primarily due to cost constraints. The establishment of incentives such as a tax credit allows businesses to reap the many benefits of employee assistance programs, including reduced alcohol and other drug problems, lower absenteeism rates, lower overall health care and workers' compensation utilization rates, and reduced disciplinary problems, while alleviating the potential obstacle of initial costs.

Section 19. Employee Assistance Consortia Demonstration Grant.

(a) The [state secretary of labor], in consultation with the [single state authority on alcohol and other drugs], shall establish an Employee Assistance Consortia Demonstration Program.

(1) The [state secretary of labor] shall award grants to assist entities with the establishment of employee assistance program consortia. Such consortia shall use amounts received under such grants to design and implement effective mechanisms for delivering employee assistance services to employers and employees of small businesses presently not providing such services.

(2) To be eligible to receive this grant, an entity shall:

(A) Demonstrate that it provides adequate health insurance coverage for substance abuse treatment; and

(B) Prepare and submit to the [secretary of labor] an application at such time, in such form, and containing such information as the [secretary] deems appropriate.

(3) In awarding such grants, the [secretary] shall, to the maximum extent practicable, ensure that a broad cross-section of small businesses are represented and ensure that as many different types of employee assistance service providers as possible are represented.

(4) Such grants shall fund employee assistance program activities identified in Section 4(b) for a term of [] years for [] percent of non-capital expenditures, as deemed appropriate by the [secretary of labor].

(5) No amounts appropriated for purposes of this subsection shall be utilized to replace existing public or private expenditures made available for the purpose of this subsection or to continue existing employee assistance program consortia.

(6) The [single state authority on alcohol and drug abuse] and the [state department of labor] shall consult with and provide technical assistance and training to grantees under paragraph (1) and shall evaluate the programs established using amounts received under such grants to determine the effectiveness of different programs in assisting small businesses in providing employee assistance ser-

vices. The grantees will be required to utilize a portion of the grant money towards documentation for outcome measurements.

(b) Education initiatives.

(1) The [single state authority on alcohol and other drug abuse] and the [state department of labor] shall develop, publicize, and distribute information concerning alcohol and other drug abuse and appropriate programmatic responses targeted to the small business community and their employees.

(2) The [single state authority on alcohol and other drug abuse] and the [state department of labor] shall conduct a comprehensive, multi-media public information campaign concerning the benefits of establishing workplace programs that are responsive to the needs of employees affected by alcohol and other drug problems. Such campaign shall be directed to public and private employers and shall encourage such employers to establish employee assistance programs.

(c) The [secretary of labor] shall promulgate guidelines necessary to carry out this section.

(d) The [secretary of labor] shall conduct a study to determine whether an Office should be established to coordinate all of the [state department of labor's] activities relating to employee assistance programming. No later than one year after the date of enactment of this [Act], the [secretary] shall prepare and submit to the appropriate committees of the state legislature a report concerning the results of such study.

COMMENT

Again, while a majority of large businesses have already established employee assistance programs, many small and medium sized businesses have not, primarily due to cost constraints. A number of small business have formed employee assistance consortia, pooling employee assistance resources in order to manage costs but still provide their employees with employee assistance program services. This section creates a demonstration project to design and implement effective mechanisms for delivering employee assistance services to employers and employees of small businesses presently not providing such services.

Section 20. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given without the invalid provision or application, and to this end, the provisions of this [Act] are severable.

Section 21. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Drug-Free
Public Work Force Act

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Model Drug-Free Public Work Force Act

Policy Statement

Given the trust and responsibility placed upon the public sector, alcohol and other drug abuse should not be tolerated among those employed in the public work force. Public employees, including elected officials, must hold themselves and be held to high professional standards during the course of their employment in the public sector. Unlawful substance abuse does not meet such standards of employment.

The purpose of this Act is to allow public employees who abuse alcohol and other drugs an opportunity to identify their problems and be referred to treatment without the loss of employment. However, those who fail to do so and are subsequently convicted of a criminal offense involving drugs or unlawful driving while under the influence of alcohol or other drugs shall be placed on probationary employment, pending successful completion of a treatment program. A second conviction on any criminal offense involving drugs or unlawful driving while under the influence will result in the immediate termination of employment.

The Commission intends that all employees with alcohol or other drug abuse problems, whether in the public or private sector, be given a chance to undergo treatment before significant adverse job-related action is taken against them. Terminating alcohol or other drug involved employees does little to actually reduce the problems of alcohol or other drug abuse. Such action simply transfers the problems to another employer or adds another individual to the unemployment line. Since two-thirds of drug abusers are employed, the Commission believes that the workplace can be an effective point of intervention for adults with substance abuse problems, if they are given a chance to receive employee assistance program services, proper assessment, and referral to a suitable treatment modality. The Commission also strongly recommends that public employees be subject to the same substance abuse testing policies and procedures as employees in the private sector. The Commission's view of a comprehensive drug-free workplace program is established in the Model Drug-Free Private Sector Workplace Act, found in this volume.

This public work force legislation is based, in part, on a similar Georgia state law.

Highlights of the Model Drug-Free Public Work Force Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the quality of services to the state.
- Recognizes that the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs by public officials and employees are serious threats to the public health, safety, and welfare and violate the public trust.
- Recognizes that drug offenses and driving while under the influence of alcohol and/or other drugs does not meet the high professional standards of employment or service to the state and that the state will take all necessary measures to eradicate such offenses by public officials and employees.
- Provides for the termination of public employment of any public employee who is convicted for the first time of any criminal offense involving the manufacture, sale, distribution, or possession with intent to sell or distribute.
- Provides for the termination of public employment of any public employee who is convicted for the second time of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs.
- Provides opportunities for public employees to voluntarily seek or maintain treatment for alcohol and other drug problems while maintaining public employment. Such opportunities shall exist only so long as those public employees have sought treatment before any contact with the criminal justice system.

SPECIFIC RECOMMENDATIONS

- Provides probationary employment of public employees convicted for the first time of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs. During this probationary employment, the violator shall submit to an assessment of alcohol and other drug problems and actively engage in appropriate supervised treatment or educational services in accordance with the clinical assessment. Provisions are made in instances where no appropriate treatment or education services are available.

Model Drug-Free Public Work Force Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the "Model Drug-Free Public Work Force Act."

Section 2. Legislative Findings.

(a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.

(b) A healthy and productive public work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of services rendered to the state, are important to public employees, the government, and the general public of the state.

(c) The manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs by public officials and employees are serious threats to the public health, safety, and welfare and violate the public trust.

(d) A primary purpose and goal of this state, its agencies and instrumentalities, and its public officials and employees is to take all reasonable steps possible to eradicate the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs, or unlawful driving while under the influence of alcohol and/or other drugs, by public officials and employees.

(e) The state work force must not include any person who would manufacture, sell, distribute, possess with intent to sell or distribute, possess, or use drugs or who drives while under the influence of alcohol and/or other drugs.

(f) Public employees, including elected officials, must hold themselves and be held to high professional standards during the course of their employment. Unlawful substance abuse does not meet such standards of employment.

Section 3. Purpose.

This [Act] allows public employees who abuse alcohol and other drugs an opportunity to identify their problems and be referred to treatment without the loss of employment. This [Act] provides for the probationary employment of any public employee, including any elected official, convicted of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs, provided they enter into and actively engage in a treatment program. However, this [Act] also provides for the termination of any public employee, including any elected official, who is convicted for the second time of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs, or who is convicted for the first time of any drug trafficking offense, or who refuses to actively engage in a treatment program.

Section 4. Definitions.

As used in this [Act]:

(a) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(b) "Convicted" or "conviction" means a finding of guilt, including a plea of nolo contendere or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state alcohol and/or criminal drug statutes.

(c) "Criminal drug offense" means a criminal offense involving the manufacture, sale, distribution, possession with intent to sell or distribute, or possession or use of any drug.

(d) "Drug" or "drugs" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualene, propoxyphene, or a metabolite of any such substance.

(e) "Manufacture," "sale," "distribution," "possession with intent to sell or distribute," "possession," and "use" shall have the same meaning as those terms are used in [cite to applicable state controlled dangerous substance law].

(f) "Public employee" means any person employed on a full-time, part-time, temporary, or intermittent basis by the state, county, or municipality, including any agency, authority, department, bureau, or instrumentality thereof, or by any entity covered under the state merit system or equivalent state entity or system. Such term shall also include all employees, officials, or administrators of any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the state or any agency thereof. Such term, for the purposes of this [Act], shall also mean any elected public official.

(g) "Public employer" means any person or entity that is subject to the provisions of this [Act].

(h) "Public employment" means employment by any public employer.

(i) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

drugs], or a treatment program licensed by the [single state authority on alcohol and other drugs]; and

(2) Actively engage in appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.

(3) Should no suitable treatment or education services be available:

(A) The violator shall place himself or herself on a certified waiting list until a position for the recommended course of treatment becomes available;

(B) The violator shall also remain alcohol- and drug-free and submit to substance abuse testing as ordered by the assessment; and

(C) The violator shall attend, with verification, no fewer than [five] twelve-step recovery meetings per week, until the course of treatment begins.

(4) If the violator for any reason fails to comply with the conditions of paragraphs (2) and (3) and provides written substantiation of active engagement in the recommended treatment process to his or her employer, the public employment shall be terminated, unless it is determined that there are extraordinary and compelling reasons to reinstate the violator pending the person's participation in the recommended course of treatment or education by a date certain to be fixed by the assessment.

Section 5. Probationary Employment or Termination of Public Employees or Elected Officials Convicted of an Alcohol or Other Drug Offense.

(a) Any public employee, including any elected official, who is convicted for the first time under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs or of unlawful driving under the influence of alcohol and/or other drugs, shall be placed on probationary employment for 60 days or until the recommended course of treatment described in this section has been completed successfully, whichever is longer. During such probationary employment, the violator shall:

(1) Submit to an assessment of alcohol and other drug problems, to be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority on alcohol and other

(b) Any public employee, including any elected official, who is convicted for the first time under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, sale, distribution, possession with intent to sell or distribute any drug shall be terminated from his or her public employment and shall be ineligible for other public employment for a period of five years from the most recent date of conviction. Elected officials subject to this subsection shall be removed from office, pursuant to [insert state constitutional provision for removal of elected officials for malfeasance]

(c) Any public employee, including any elected official, who is convicted for a second or subsequent time, under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs or of unlawful driving under the influence of alcohol and/or other drugs shall be terminated from his or her public employment and

shall be ineligible for other public employment for a period of five years from the most recent date of conviction. Elected officials subject to this subsection shall be removed from office, pursuant to [insert state constitutional provision for removal of elected officials for malfeasance].

COMMENT

All public employees, including elected officials, represent their state or local jurisdiction and must hold themselves accountable to the laws of the state and country. Substance abuse offenders in particular, impact adversely on their service to the state. Therefore, any public employee, including any elected official, convicted for the first time of a criminal offense involving the possession or use of drugs or of driving while under the influence of alcohol and/or other drugs, shall be placed on probationary employment for 60 days or pending the successful completion of a recommended treatment or education program.

During this probationary employment, the public employee must submit to an assessment of alcohol and other drug problems and enter into treatment or education programs in accordance with the clinical alcohol and other drug abuse assessment. Failure to comply with the assessment and treatment process or failure to provide written substantiation of compliance will result in termination of the individual's public employment.

Any public employee, including any elected official, who is convicted for a second or subsequent time of a criminal offense involving the possession or use of drugs or of driving while under the influence of alcohol and/or other drugs, shall be terminated from his or her public employment, or, in the case of elected officials, removed from office.

The treatment and rehabilitation provisions of this section should not be construed in any way to protect serious drug trafficking felons. Subsection (b) provides for the termination of those public employees who have been convicted for the first time of such trafficking offenses. Such convicted felons should not remain in the public work force and should fulfill all requirements of any sentence imposed for their offenses. The Commission does not intend this legislation to allow such individuals to avoid their sentences by entering into a treatment program in accordance with the provisions of this [Act]. Public sector employers may consider more stringent public workforce substance abuse policies in accordance with Section 7 to insure that such situations do not occur.

Section 6. Ineligibility for Public Employment of Person Convicted of Drug Offense.

(a) Any person who has been convicted for the first time, under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs, shall be ineligible to enter into any public employment for a period of [three months] from the date of conviction.

(b) Any person who has been convicted two or more times, under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs, or of unlawful driving while under the influence of alcohol and/or other drugs, or who has been convicted at least once of any criminal offense involving the manufacture, sale, distribution, or possession with intent to sell or distribute drugs shall be ineligible to enter into any public employment for a period of five years from the most recent date of conviction.

COMMENT

This section applies to any person convicted of a drug possession or drug use offense or of driving under the influence of alcohol and/or other drugs. In such circumstances, that person shall not be allowed to enter into any public employment within three months from the date of conviction. If a person has been convicted two or more times of a drug possession or drug use offense or of unlawful driving while under the influence of alcohol and/or other drugs, or has been convicted at least once of the manufacture, sale, distribution, or possession with intent to sell or distribute drugs, the ineligibility for public employment shall be five years from the most recent date of conviction.

Section 7. Additional or More Stringent Sanctions Authorized.

The suspension, termination, and ineligibility sanctions prescribed in this [Act] are intended as minimum sanctions, and nothing in this [Act] shall be construed to prohibit any public employer from establishing and implementing additional or more stringent sanctions for criminal offenses and other conduct involving the manufacture, sale, distribution, possession, or use of drugs, or unlawful driving while under the influence of alcohol and/or other drugs.

COMMENT

Public employers may establish more stringent workplace sanctions for criminal drug offenses. In particular, public employers may consider differentiating between alcoholic or addicted employees who need treatment and employees solely involved in drug trafficking.

Section 8. Requirements and Procedures for Continuance of Employment for Drug User.

(a) After the enactment of this legislation, if, prior to an arrest for an offense involving alcohol or other drugs, a public employee notifies the employer that the employee has an alcohol or other drug problem and is receiving or agrees to receive treatment under an alcohol or other drug abuse treatment and education program licensed by the [single state authority for alcohol and other drugs], and approved by the [state personnel board] in the case of employees in the classified service of the state merit system or equivalent state entity or system or the public employer having management and control of the employee in the case of other public employees, the public employee shall be entitled to maintain employment as long as the employee continues to actively engage in the treatment process. During this period, the public employee shall not be separated from public employment solely on the basis of the employee's drug dependence, but the employee's work activities may be restructured if practicable to protect persons and property.

(b) No statement made by the employee to a supervisor of the public employee or other person in order to comply with this section shall be admissible in any civil, administrative, or criminal proceedings as evidence against the public employee.

(c) The rights granted by this section shall be available to a public employee only once during a five-year period.

COMMENT

This section offers a public employee who has an alcohol and/or other drug problem while engaged in public employment an opportunity to seek an assessment, referral, and treatment without being terminated from his or her position. Provisions are also made in instances where treatment may not be available at the time. In order to qualify for such protections, those individuals must seek such assistance before they come in contact with the criminal justice system. This section

also allows those public employees who are currently in treatment to maintain their employment so long as they are actively engaged in the treatment process.

It is assumed that successful completion of a treatment program would entitle a public employee (except elected officials) to return to his or her job, in accordance with applicable state employment laws.

Section 9. Administrative Procedures.

Administrative procedures for the implementation of this [Act] shall be promulgated by the [state personnel board] for the classified service of the state merit system or equivalent state entity or system and by other public employers for other public employees under their management and control. Such procedures shall include those elements of due process of law required by the state constitution and the United States Constitution.

Section 10. Application of Act.

This [Act] shall apply only with respect to criminal offenses committed on or after [date on which this legislation is enacted]. However, nothing in this section shall prevent any employer from imposing additional sanctions for offenses committed prior to [date on which this legislation is enacted].

Section 11. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 12. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Drug-Free Workplace Act

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Model Drug-Free Workplace Act

Policy Statement

The impact of alcohol and other drug abuse in the American workplace is substantial. Alcohol and other drug abuse adversely affects the health, safety, and quality of life of employees and their families. Such abuse also affects workplace performance and production. The Alcohol, Drug Abuse, and Mental Health Administration has estimated the annual cost of alcohol and other drug problems to business in America to be almost \$100 billion. Such estimates typically include calculations of factors such as increased medical claims, medical disability costs, decreased productivity, injuries, theft, and absenteeism.

The products and services delivered in this state must maintain an acceptable level of quality and performance and should not be subject to the problems associated with alcohol and other drug abuse. To help insure this, the Commission believes that employers contracting, subcontracting, or receiving grants from the state must implement and maintain drug-free workplaces.

Again, the Commission recommends that employers provide employees with written policy statements on alcohol and other drug abuse and provisions of employee assistance program services or rehabilitation resources to help reduce and treat employee alcohol and other drug abuse problems. It is the Commission's hope that employers' drug-free workplace programs mirror the comprehensive drug-free workplace provisions established in the Model Drug-Free Private Sector Workplace Act, found in this volume.

This bill mirrors at the state level the Federal Drug-Free Workplace Act passed in 1988.

Highlights of the Model Drug-Free Workplace Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the quality of services to the state.
 - Recognizes that a primary goal of the state is to take all reasonable steps possible to eradicate the manufacture, sale, distribution, possession with intent to distribute, and use of drugs or unlawful driving while under the influence of alcohol or other drugs by public officials and employees, including contractors, subcontractors, and grantees.
- Notify the contracting agency within ten days after receiving such notice from an employee;
 - Require the active engagement in an alcohol and other drug abuse treatment or rehabilitation program by, and/or taking appropriate personnel action against, any employee convicted; and
 - Make a good faith effort to continue to maintain a drug-free workplace.

SPECIFIC RECOMMENDATIONS

- Provides that no business or legal entity may receive a grant within the state or be awarded a contract within the state for any goods, construction, or services for a stated or estimated value of [fifty thousand] dollars or more from any state agency unless that company has certified to the contracting agency that it will provide a drug-free workplace.
 - Provides that a business or legal entity certifying that it has a drug-free workplace must:
 - Publish a written policy statement;
 - Establish an alcohol and other drugs awareness and education program;
 - Distribute the written policy statement annually to its employees;
 - Notify the employee that the employee will abide by the terms of the statement and will notify the employer of any alcohol or other criminal drug statute convictions occurring in the workplace no later than five days after the conviction;
- Provides for similar drug-free certification for any individual entering into a contract within the state or receiving a grant with the state for [fifty thousand] dollars or more.
 - Specifies responses by a grantee, contractor, or subcontractor to notice of an employee who has been convicted of an alcohol or other drug-related offense.
 - Provides for the termination of an employee for failing to give notice to an employer of a drug or DUI/DWI conviction.
 - Provides conditions justifying the suspension or termination of a state grant or contract based on the failure to adhere to the provisions of this Act.

Model Drug-Free Workplace Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the "Model Drug-Free Workplace Act."

Section 2. Legislative Findings.

(a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.

(b) A healthy and productive work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of products produced and services rendered, are important to employees, employers, and the general public in this state.

(c) The abuse of alcohol and other drugs creates a variety of workplace health and safety problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

(d) A primary goal of this state, of all of its agencies and instrumentalities, and of all of its contractors, subcontractors, and grantees is to take all reasonable steps possible to eradicate the manufacture, sale, distribution, possession with intent to sell or distribute, and use of drugs or unlawful driving while under the influence of alcohol or other drugs by public officials and employees, including contractors, subcontractors, and grantees.

Section 3. Purpose.

The purpose of this [Act] is to insure that all contractors, subcontractors, and grantees conducting business with or for the state implement drug-free workplaces in accordance with the provisions of this [Act].

Section 4. Definitions.

As used in this [Act]:

(a) "Alcohol" means ethyl alcohol; hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(b) "Contractor" means the department, division, or other unit of a person responsible for the performance under a contract with a state agency or political subdivision.

(c) "Conviction" means a finding of guilt, including a plea of nolo contendere or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

(d) "Criminal drug statute" means a criminal statute involving manufacture, sale, distribution, possession with intent to sell or distribute, or possession or use of any drug.

(e) "Drug" or "drugs" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualene, propoxyphene, or a metabolite of any such substance.

(f) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract of an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, sale, distribution, possession with intent to sell or distribute, or use of a controlled substance or alcohol in accordance with the requirements of this [Act].

(g) "Employee" means any person who works for salary, wages, or other remuneration for a grantee or contractor engaged in the performance of work pursuant to the provisions of the grant or contract.

(h) "Grantee" means the department, division, or other unit of a person responsible for the performance under a grant.

(i) "Manufacture," "sale," "distribution," "possession with intent to sell or distribute," "possession," and "use" shall have the same meaning as those terms are used in [state controlled substance law].

(j) "Person" means a partnership, a joint stock company, a business trust, an association, a corporation, any business or legal entity not already described in this subsection, including a receiver, trustee, or liquidating agent, and a state, state agency, or an officer or employee of a state or state agency.

(k) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(l) "Subcontractor" means the department, division, or other unit of a person responsible for the performance under a contract with a contractor.

(4) A description of how employees who wish to obtain alcohol and other drug abuse counseling or treatment can do so, and a description of any available alcohol and other drug counseling programs, internal or external employee assistance programs, treatment, and rehabilitation services available; and

(5) An explanation of the penalties that may be imposed upon employees for alcohol and other drug violations;

(c) Requiring that each employee engaged in the performance of the contract annually be given a copy of the statement required by subsection (a);

(d) Notifying the employee in the statement required by subsection (a) that, as a condition of employment on the contract or grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any alcohol or other criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;

(e) Notifying the contracting agency within ten days after receiving notice under subsection (d)(2), from an employee or otherwise receiving actual notice of the conviction;

(f) Requiring the active engagement in an alcohol and other drug abuse treatment or rehabilitation program by, and/or taking appropriate personnel action against, any employee convicted as required under Section 7; and

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

COMMENT

This section mirrors the provisions of the federal Drug-Free Workplace Act. No person, other than an individual, may receive a grant within the state or be awarded a contract within the state for [fifty thousand] dollars or more from any state agency unless the person has certified to the contracting agency that it will provide a drug-free workplace.

The written policy statement insures that employers have notified their employees of exactly what the employer's drug-free workplace program entails. This written policy statement must provide employees with all the information they must know about the employer's substance abuse program, including information

Section 5. Certification that Drug-Free Conditions Exist Required for Eligibility for Certain State Grants and Contracts.

No person, other than an individual, may receive a grant within the state or be awarded a contract within the state for the procurement of any goods, construction, or services for a stated or estimated value of [fifty thousand] dollars or more from any state agency unless the person has certified to the contracting agency that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(b) Establishing an annual alcohol and other drugs awareness and education program that shall include, but need not be limited to, the following information:

(1) An explanation of the disease of addiction for alcohol and other drugs;

(2) An explanation of the effects and dangers of the commonly abused substances in the workplace;

(3) A description of the person's policy in maintaining a drug-free workplace;

about the employer's general policy on substance abuse, yearly alcohol and other drug abuse education programs for employees, the duty to report any alcohol and other drug convictions to an employer subject to this [Act], and alcohol and other drug treatment and rehabilitation possibilities for employees.

Section 6. Individual Required to Certify Absence of Alcohol or Other Drug-Related Activity to Qualify for State Grant or Contract.

No state agency may enter into a contract within the state or make a grant within the state with any individual for a stated or estimated value of [fifty thousand] dollars or more unless the contract or grant includes a certification by the individual that the individual will not engage in the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs, during the performance of the contract.

COMMENT

This section requires similar drug-free workplace notification by individuals who contract with or receive grants valued at fifty thousand dollars or more from a state agency.

Section 7. Required Response to Employee's Conviction of an Alcohol- or Other Drug-Related Offense.

(a) A grantee, contractor, or subcontractor shall, within thirty days after receiving notice from an employee of a conviction pursuant to the [state drug control act and/or state alcohol code]:

(1) Refer the employee to an employee assistance program and/or require the employee to actively engage in an alcohol or other drug abuse assistance or rehabilitation program licensed and/or approved for the purposes by the [single state authority on alcohol and other drugs]; and/or

(2) Take appropriate personnel action against the employee that may include, among other actions, the following:

(A) Suspension of the employee, with or without pay, for a designated period of time;

(B) Termination of employment; or

(C) Other action in conformance with the employer's written policy and procedures, including any applicable collective bargaining agreement provisions.

(b) Failure of an employee to give notice to his or her employer of a conviction pursuant to the [state drug control act and/or state alcohol code] shall result in termination of employment.

COMMENT

The Commission strongly recommends that employers allow those employees, contractors, or subcontractors who are convicted of a drug abuse violation or unlawful driving while under the influence of alcohol or other drugs to be given an opportunity to seek assistance and rehabilitation through an EAP and other counseling and treatment resources, rather than solely taking disciplinary action. Disciplinary action and treatment often go hand in hand. There is ample evidence that disciplinary action can reinforce positive treatment outcomes.

Section 8. Conditions Justifying Suspension or Termination of State Grant or Contract.

Each contract or grant awarded within the state by a state agency is subject to suspension of payments or termination or both, and the contractor, subcontractor, or grantee under the contract or grant or the individual who entered the contract with or received the grant from the state agency or contractor, as applicable, is subject to suspension or debarment in accordance with [cite appropriate state code] if the appropriate [chief procurement officer], as defined in [cite appropriate state code] determines that:

(a) The contractor, subcontractor, or grantee has made a false certification under Section 5 or Section 6 of this [Act];

(b) The contractor, subcontractor, or grantee violates the certification by failing to carry out the requirements of Section 5;

(c) The contractor, subcontractor, or grantee does not require that the employees convicted of alcohol or other drug offenses to enter into an appropriate treatment or education program, and/or does not take appropriate disciplinary action against employees convicted of alcohol or other drug offenses, as specified in Section 7; or

(d) The number of employees of the contractor, subcontractor, or grantee who have been convicted of vio-

lations of criminal drug statutes occurring in the workplace reasonably indicates that the contractor, subcontractor, or grant recipient has failed to make a good faith effort to provide a drug-free workplace as required by this [Act].

Section 9. Duration of Debarment.

Upon issuance of any final decision under this [Act] requiring debarment of a contractor, subcontractor, grantee, or individual, the contractor, subcontractor, grantee, or individual is ineligible for award of any contract or grant by any state agency for a period specified in the decision of at least one year, but not to exceed five years.

Section 10. Technical Assistance with Implementations.

Upon request, the [single state authority on alcohol and other drugs] shall provide technical assistance to any state agency to assist with the implementation of this [Act]. Additionally, upon request, the names and addresses of contractors, subcontractors, and grantees providing a drug-free workplace pursuant to this [Act] must be provided to the [single state authority on alcohol and other drugs].

Section 11. Absence of Cause of Action.

No cause of action arises in favor of any individual against any person based upon the failure of the person to comply with any provision of this [Act].

Section 12. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end, the provisions of this [Act] are severable.

Section 13. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Model Employee Addiction Recovery Act

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Model Employee Addiction Recovery Act

Policy Statement

Untreated alcohol and other drug abuse problems inflict substantial costs in the workplace. These costs — economic, but more importantly, human — are reflected disproportionately in the health care system as people with untreated alcohol and other drug problems repeatedly seek medical treatment for a wide array of addiction-related illnesses and accidents. They are also reflected in the higher rates of employee absenteeism, lower productivity, greater incidences of employee disciplinary problems, and other workplace concerns.

Employers can reduce these costs substantially by implementing a drug-free workplace program that includes written alcohol and other drug abuse policies, employee assistance programs, employee education, supervisor training, substance abuse testing, and stringent confidentiality provisions. Employers can also reduce those costs by enabling employees with alcohol or other drug problems to access a full continuum of alcohol and other drug abuse treatment services. This treatment continuum would include intervention, inpatient detoxification, non-hospital residential alcohol and other drug treatment, outpatient alcohol and other drug treatment, and family co-dependency treatment services.

The costs of funding employee alcohol and other drug treatment programs by employers will be offset by reduced costs associated with alcohol and other drug abuse in the workplace. The cost of addiction treatment in reduced benefit utilization alone can be recovered within one to three years. Those cost benefits are further enhanced by increased productivity, reduced accidents, reduced employee disciplinary problems, and reduced absenteeism. Of course, the reduction of alcohol and other drug abuse problems also will greatly enhance the health, safety, and quality of life of those employees who receive needed treatment services.

This legislation, based on a bill once proposed in the U.S. Congress by former Georgia Representative Ben Jones, would provide employers with a state tax credit for 50 percent of the qualified treatment expenses paid or incurred during a tax year. The goal of this tax credit is to give employers added incentive to provide alcohol and other drug abuse treatment programs for their employees.

Highlights of Model Employee Addiction Recovery Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the quality of services to the state.
- Recognizes that comprehensive workplace substance abuse programs serve to reduce alcohol and other drug abuse and their attendant harms among employees, supervisors, and their families.
- Recognizes that governments can encourage employers to develop and properly implement such comprehensive workplace programs by providing employers with economic incentives to do so, including tax credits for the costs related to employee utilization of treatment programs.
- Recognizes the cost-benefit of addiction treatment to employers and the state and the benefits to addicted employees and their families.

SPECIFIC RECOMMENDATIONS

- Provides for an alcohol and other drug abuse treatment tax credit equivalent to 50 percent of the qualified treatment expenses paid or incurred during a taxable year.
- Provides that qualified treatment expenses include crisis intervention, including assessment, diagnosis, and referral, inpatient detoxification, non-hospital residential alcohol and other drug treatment, outpatient alcohol and other drug treatment, and family co-dependency treatment services.

Model Employee Addiction Recovery Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the "Model Employee Addiction Recovery Act."

Section 2. Legislative Findings.

(a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.

(b) A healthy and productive work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of products produced and services rendered are important to employees, employers, and the general public in this state.

(c) The abuse of alcohol and other drugs creates a variety of workplace health and safety problems, including increased injuries on the job, increased absenteeism, increased burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

(d) Comprehensive workplace substance abuse programs that include written policy statements, employee assistance programs or rehabilitation resources, employee and supervisor education, alcohol and other drug testing, laboratory standards, and confidentiality provisions serve to reduce alcohol and other drug abuse and their attendant harms among employees, supervisors, and their families.

(e) Governments can encourage employers to develop and properly implement comprehensive workplace substance abuse programs by providing such employers with economic incentives.

(f) Specifically, governments can encourage employers to fund employee alcohol and other drug abuse treatment by providing tax credits for the costs related to employee utilization of such treatment programs.

(g) The costs of funding employee alcohol and other drug treatment programs by employers will be offset

by reduced costs associated with alcohol and other drug abuse in the workplace. The cost of addiction treatment in reduced benefit utilization alone can be recovered within one to three years. Those cost benefits are further enhanced by increased productivity, reduced accidents, reduced employee disciplinary problems, reduced absenteeism, and higher worker productivity.

(h) The costs of such tax credits to the state government will be offset by achieving significant social and fiscal goals, including health care cost containment, restoration and healing of families, prevention of child abuse and fetal alcohol/drug syndrome, reduction in incidents of driving under the influence of alcohol and other drugs, reduction in illicit drug trafficking and abuse, reductions in alcohol- and drug-related crimes, with reduced attendant criminal justice and corrections systems costs, and the removal of a major obstacle to successful re-employment and tax-paying self-sufficiency.

COMMENT

Untreated alcohol and other drug abuse problems inflict substantial costs in the workplace. These costs are reflected disproportionately in the health care system as people with untreated alcohol and other drug problems repeatedly seek medical treatment for a wide array of addiction-related illnesses and accidents. They are also reflected in higher rates of employee absenteeism, lower productivity, greater incidences of employee disciplinary problems, and other workplace concerns.

However, these costs can be markedly reduced by providing a full continuum of alcohol and other drug treatment services for employees. One government mechanism for encouraging employers to provide such comprehensive employee alcohol and other drug treatment services is a tax credit for the costs of such services.

Section 3. Purpose.

This [Act] is intended to amend the [state revenue code] to encourage employers to provide alcohol and other drug abuse treatment programs to their employees by providing a state tax credit for the cost of such programs.

Section 4. Definitions.

As used in this [Act]:

(a) "Employee" means any person who works for salary, wages, or other remuneration for an employer, including those working part-time or as leased employees.

(b) "Employer" means a person or entity that is subject to the provisions of this [Act].

(c) "Qualified alcohol and other drug abuse treatment plan" means any written plan of an employer for the exclusive benefit of its employees to provide them with qualified treatment services, but only if such plan meets the following requirements:

- (1) Such plan covers all of the qualified treatment services described in subsection (e);
- (2) The contributions and benefits provided under the plan do not discriminate in favor of highly compensated employees or their dependents;
- (3) The plan benefits a group of employees who qualify under a classification set up by the employer and found by the [secretary of health] not to be discriminatory in favor of highly compensated employees or their dependents;
- (4) The plan does not include any eligibility requirement, or any limitation on benefits, based on prior or existing alcohol and/or other drug abuse or health conditions;
- (5) Reasonable notification of the availability and terms of the plan are provided to eligible employees.

(d) "Qualified treatment expenses" means any amount paid or incurred by an employer to provide (directly or through insurance) qualified treatment services to employees under a qualified alcohol and other drug abuse treatment plan of such employer.

(e) "Qualified treatment services" means any of the following services provided with respect to the treatment of alcohol and other drug abuse:

- (1) Crisis intervention, including assessment, diagnosis, and referral;
- (2) Inpatient detoxification services;
- (3) Non-hospital residential alcohol and other drug treatment services;
- (4) Outpatient alcohol or other drug treatment services;
- (5) Family co-dependency treatment;

Such services shall be provided by programs licensed by the [single state authority on alcohol and other drugs].

COMMENT

For a more complete description of qualified treatment services (e), see the [Model Addiction Costs Reduction Act (ACRA)] in Volume IV, Treatment. Full implementation of ACRA will ensure that medical insurance beneficiaries are provided an acceptable level of alcohol and other drug treatment benefits to meet the minimum requirements of care necessary to provide effective alcohol and other drug treatment for health insurance and HMO policy subscribers and their families. By providing a full continuum of insured treatment services for alcohol and other drug abuse, the implementation of ACRA will maximize the recovery of alcohol and other drug abusers and cost savings in health care and other attendant social and fiscal policy areas.

Under the provisions of this [Act], employers offering insurance coverage for employee alcohol and other drug treatment will receive the tax credit offered by Section 5, based on the health insurance payments that were applied to alcohol and other drug abuse treatment services.

Section 5. Credit for Alcohol and Other Drug Abuse Treatment Programs.

The [state revenue code, relating to business-related credits] is amended by adding the following section:

- (a) For the purposes of the [state general business credit code], the alcohol and other drug abuse treatment credit determined under this section is 50 percent of the qualified treatment expenses paid or incurred by the taxpayer during the taxable year.
- (b) No deduction shall be allowed for any qualified treatment expenses that are taken into account in determining the amount of the credit under subsection (a).

COMMENT

To encourage employers to fund employee alcohol and other drug abuse treatment, this [Act] offers a 50 percent state tax credit for all qualified treatment expenses during any taxable year.

Section 6. Rules and Regulations.

The [state department of revenue], in consultation with the [single state authority on alcohol and other drugs] and the [state department of insurance], shall promulgate rules and regulations to facilitate the implementation of this [Act].

COMMENT

The [department of revenue] shall issue rules and regulations to implement the provisions of this [Act].

Section 7. Severability.

If any provision of this [Act] or any application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end, the provisions of this [Act] are severable.

Section 8. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Epilogue

Statement of Peter Wambach to the President's Commission on Model State Drug Laws

March 31, 1993 — Washington, DC

(Pete Wambach, a former state Pennsylvania state legislator, spoke to the Commission about legislative approaches to address the prevention and treatment needs of underserved and underrepresented populations. The following testimony represents his concluding remarks.)

"In closing, I don't want to kid you about the difficulties you will encounter if you are brave or foolish enough to stand publicly with prevention and treatment issues. I was warned about the denial and the stigma. I was warned and didn't believe it. It all proved true.

Although one in four families, even one in four of those gathered here, today are touched by this disease — still stigma, shame, denial, and an appalling ignorance about addiction continue to drive public policy.

Let me show you what I mean:

- We withhold treatment and wonder why we need to build prisons.
- We sentence without treatment and then complain about repeat offenders.
- We refuse to pay for treatment and then complain about prison overcrowding.
- We withhold addiction treatment and then complain about the high cost of health care.
- We complain about crack babies and remain silent about fetal alcohol syndrome.
- We complain that addicted mothers won't go for help, and when she does, we take her kids away.
- We complain about the disintegration of the family, and separate mother from child.
- We complain about drug and alcohol related chaos in the schools, but have no student assistance programs.
- We complain that the average age of first use of alcohol is going down among kids, but won't touch alcohol advertising.
- We worry about low productivity, about accidents in the workplace, but have no employee assistance programs.
- We say we want drug-free workplaces, but won't hire recovering addicted people.

- We worry about mayhem on our highways, but won't sentence addicted drivers to treatment.
- We pay for capacity expansion and outreach to bring untreated addicts into care and now we pay managed care firms to keep addicted people away from treatment.

While we debate, collaborate, coordinate.... in the meantime, the waiting lists for treatment grow, our prisons are packed, a child drops out of school, an alcoholic teenager takes his life, health care costs rage, Medicaid runs out of control, demand for drugs stays high.

While we debate, collaborate, and contradict ourselves.... a mother and father pace the floor at night, waiting for a child run away from home, a child weeps over an addicted parent stretched across the kitchen floor.

Waiting lists for addiction treatment? This is the time bomb ticking in all our backyards. But while we deliberate, we coordinate.... a child is born in withdrawal, an addict begs for help, a grandmother dies in a crossfire, blood runs in our cities, the waiting list grows, the time bomb ticks.... Blood runs in our streets and in the meantime, quite undeterred, addictive diseases gnaw at the very heart of this great nation.

We must ask ourselves: Who are we doing this for? Who benefits from this morass of contradictory policy? Certainly not our schools. Certainly not our families. Certainly not our children. Ladies and gentlemen — the only beneficiaries I see here are those who would sell drugs and alcohol to our children.

The truth is: addicted people can get all the alcohol and drugs they want, anywhere, anytime they want. But today in every state of this great nation, somewhere a drug and alcohol counselor is being forced to play God and choose with limited resources who to treat and who to turn away, to choose who may live and who may die.

We can do better than this. We must do better than this."

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Commissioners

KENT B. AMOS, of Washington, DC. Mr. Amos has devoted much of his life emotionally and financially encouraging young people to reject drugs and complete their education. Mr. Amos established the Triad Group consulting corporation in 1986, after serving as Director of Urban Affairs for the Xerox Corporation from 1971 to 1986.

RAMONA L. BARNES, of Alaska. Speaker Barnes is Speaker of the Alaska State House of Representatives. She has served as a Member of the Alaska State House of Representatives since 1979. She has served as Chairman of the Alaska House Judiciary Committee, as a member of the Corrections Finance Sub-Committee, and as Chairman of the Legislative Committee. Ms. Barnes is also a member of the Governor's Task Force on State-Federal Tribal Relations, the Citizen's Advisory Commission on Alaska Lands, the Alaska Representative State's Rights Coordinating Council, and the Alaska Delegate Council of State Governments.

RALPH R. BROWN, of Iowa. Mr. Brown has been Partner with the law firm McDonald, Brown and Fagen since 1977. He serves as a member of the Department of Agriculture's Citizen's Advisory Committee on Equal Opportunity. Mr. Brown served as Secretary of the State Senate of Iowa from 1973 to 1975.

RONALD D. CASTILLE, of Pennsylvania. Mr. Castille is with the law firm of Reed, Smith, Shaw, and McClay in Philadelphia. He served for five years as District Attorney of Philadelphia. During that time, he served as Legislative Chairman for the National District Attorney's Association and the Pennsylvania District Attorney's Association. In 1991, Mr. Castille received the National District Attorney's Association President's Award for Outstanding Service.

KAY B. COBB, of Mississippi. Chair of the Commission's Economic Remedies Task Force. Senator Cobb was elected to the Mississippi State Senate in 1991 and serves as Vice Chairman of the Mississippi Senate Judiciary Committee. She is also a member of the Governor's Criminal Justice Task Force. Senator Cobb served as Senior Attorney of the Mississippi Bureau of Narcotics and was Executive Director of the Mississippi State Prosecutor's Association.

SHIRLEY D. COLETTI, of Florida. Chair of the Commission's Drug and Alcohol Treatment Task Force. Ms. Coletti is President of Operation Parental Awareness and Responsibility, and served as a member of the Department of Health and Human Service's National Advisory Council on Drug Abuse. Ms. Coletti served on the Florida Juvenile Justice and Delinquency Prevention Advisory Committee, and as a member of the United States Senate Caucus on International Narcotics Control.

SYLVESTER DAUGHTRY, of North Carolina. Chair of the Commission's Crimes Code Remedies Task Force. Mr. Daughtry is Chief of Police in Greensboro, North Carolina, and was Vice President of the International Association of Chiefs of Police (IACP) during the Commission's tenure. Chief Daughtry was sworn in as President of IACP in October, 1993. Chief Daughtry also serves as a member of the Commission on Accreditation for Law Enforcement Agencies.

DAVID A. DEAN, of Texas. Mr. Dean is currently a Shareholder of Winstead, Sechrest, & Minick P.C., and recently facilitated the establishment of the Texas "Mayors United on Safety, Crime & Law Enforcement" (M.U.S.C.L.E.). He is also active with the Greater Dallas Crime Commission and has served as its Chairman. Mr. Dean is a member of the Executive Committee and the Board of Directors of the National Crime Prevention Council, and chairs its Public Policy Subcommittee. Mr. Dean was General Counsel and Secretary of State to former Texas Governor Bill Clements.

STEPHEN GOLDSMITH, of Indiana. Vice-Chair of the Commission. Mr. Goldsmith is currently Mayor of Indianapolis. He previously served 12 years as Indianapolis District Attorney and has a broad drug policy background. Mayor Goldsmith is a member of the Board of Directors of the American Prosecutors' Research Institute (APRI), and Editor of Prosecutor's Perspective.

DANIEL S. HEIT, of Pennsylvania. Mr. Heit is President of Therapeutic Communities of America, a treatment group involving patients referred from the criminal justice system. He is the Director of the Abraxas Foundation with fifteen treatment centers in Pennsylvania and West Virginia.

JUDGE ROSE HOM, of California. Judge Hom is currently assigned to Criminal Trials on the Los Angeles Superior Court. She was one of the supervising judges in the Juvenile Delinquency Courts sitting in South Los Angeles. Prior to her elevation to Superior Court, she was on the Los Angeles Municipal Court bench. She was previously employed as a Los Angeles County Deputy Public Defender.

RICHARD P. IEYOUB, of Louisiana. Mr. Ieyoub serves as Attorney General of Louisiana after serving as Lake Charles District Attorney. He is the former President of the National District Attorneys Association.

KEITH M. KANESHIRO, of Hawaii. Mr. Kaneshiro has been the Prosecuting Attorney for the City and County of Honolulu since 1989. He previously served as Deputy Attorney General for the state of Hawaii. Mr. Kaneshiro serves on the Board of Directors of the National District Attorneys Association.

VINCENT LANE, of Illinois. Mr. Lane is Chairman of the Chicago Housing Authority and Chairman of the Department of Housing and Urban Development's Severely Distressed Housing Commission. Mr. Lane is the founder of Urban Services and Development, Inc., and in 1987, was chosen by former Chicago Mayor Harold Washington to serve on the Mayor's Navy Pier Development Corporation.

DANIEL E. LUNGREN, of California. Mr. Lungren is the Attorney General of California and served as a Member of the United States House of Representatives from 1979 to 1989. He also is a member of the National Association of Attorneys General (NAAG) Criminal Law Committee, and a member of the Executive Working Group.

ROBERT H. MACY, of Oklahoma. Mr. Macy was President of the National District Attorneys Association (NDAA) during the Commission's tenure. Mr. Macy currently serves as Chairman of the NDAA Board of Directors. He is also former Chairman of NDAA's Drug Control Committee and Chairman of the Board of Directors of the American Prosecutors Research Institute (APRI).

N. HECTOR MCGEACHY, JR., of North Carolina. Mr. McGeachy has been Senior Partner with the law firm of McGeachy and Hudson for over fifty years. He is a former North Carolina State Senator and recipient of a Bronze Star. Mr. McGeachy served as Chairman of the North Carolina Grievance Commission and as a Presidential Conferee to the White House Conference for a Drug-Free America.

EDWIN L. MILLER, JR., of California. Mr. Miller is District Attorney of San Diego County. He is a founding member of the National District Attorneys Association (NDAA) and the American Prosecutor's Research Initiative (APRI). Mr. Miller is also a member of the Executive Working Group for Prosecutorial Relations. He has served as President and Chairman of the Board of NDAA.

MICHAEL MOORE, of Mississippi. Mr. Moore is currently the Attorney General of Mississippi. Mr. Moore recently served as Chairman of the Criminal Law Committee for the National Association of Attorneys General.

JOHN D. O'HAIR, of Michigan. Chair of the Commission's Community Mobilization Task Force. Mr. O'Hair is Wayne County Prosecutor and served for fifteen years as Wayne County Circuit Judge. Also, Mr. O'Hair served on the Common Pleas Court from 1965 to 1968.

JACK M. O'MALLEY, of Illinois. Mr. O'Malley is the State's Attorney for Cook County, Illinois. Mr. O'Malley is a former partner with the law firm Winston and Strawn, a veteran Chicago police officer, and a member of the Chicago Bar Association.

RUBEN B. ORTEGA, of Utah. Mr. Ortega is the Salt Lake City Chief of Police and the former Phoenix, Arizona Chief of Police. He currently serves as a member of the President's Drug Advisory Council. Mr. Ortega served on the Executive Committee of the International Association of Police Chiefs, the U.S. Attorney General's Crime Study Group, and the Police Policy Board of the U.S. Conference of Mayors.

ROBERT T. THOMPSON, JR., of Georgia. Chair of the Commission's Drug-Free Families, Schools, and Workplaces Task Force. Mr. Thompson is with the firm of Thompson and Associates. Mr. Thompson is the author of Substance Abuse and Employee Rehabilitation and has served as a member of the South Carolina Commission on Alcohol and Drug Abuse.