TurningPoint
Collaborating for a New Century in Public Health

A National Program Supported by The Robert Wood Johnson and W.K. Kellogg Foundations

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Vincent Lafronza, EdD
Program Director

January 31, 2003

Dear Public Health Supporter:

We invite your comments on the attached draft Model State Public Health Act, presented by the Turning Point Public Health Statute Modernization Collaborative as a tool for state, local and tribal governments to use in revising or updating public health statutes and administrative rules.

Public health has existed as a fundamental public service carried out by governments in the United States for more than 200 years. Public health laws have long been considered an essential tool of public health practice, defining the responsibilities of individuals and the duties of government to act for the health of society.

Many existing state public health codes were built in layers during the 20th century in response to specific diseases or health threats. Due to varying diseases and other health threats that may affect population groups and to changes in health systems, government structures, and other laws, public health laws in many jurisdictions are outdated. These laws may be ineffective in responding to contemporary health threats.

Although experts have recommended statutory reform to improve the public health system since the 1980s, a straightforward model has not been available. The Public Health Statute Modernization Collaborative was formed in April 2000 to address this need. Funded by the Robert Wood Johnson Foundation as part of its Turning Point Initiative to strengthen the public health system in the United States, the Collaborative is a multi-disciplinary group comprised of representatives from five states and nine national organizations and government agencies, assisted by experts in specialty areas of public health. The State of Alaska Division of Public Health is responsible for coordinating the Collaborative. Individual members of the group and the consultants who assisted in the development of this draft product are listed in the introductory material accompanying the Act.

The Collaborative does not advocate that the draft Model State Public Health Act presents a mandate to states, nor that it be "swallowed whole." The Model State Public Health Act is intended as a means for state, local and tribal governments to assess their existing public health laws and make the changes they deem necessary. The Act strives to address modern conditions which impact public health; incorporate modern scientific developments in the areas of disease control and epidemiology; equip public health officials with a range of flexible powers needed to control infectious diseases and other conditions; define relationships among public health agencies and other partners in the public health system; and comport with current legal standards of privacy, due process, and risk assessment.

The Collaborative encourages all interested parties to review the Act and submit comments, criticisms, and suggestions for improvement in writing on or before March 31, 2003. Instructions for returning comments by email, fax or mail are included in the introductory material. The Act will be revised by the Collaborative in consideration of these suggestions and published in final form in October 2003.

Sincerely,

Patricia Nault, MPA
Alaska Division of Public Health
Public Health Statute Modernization Collaborative Coordinator

The Turning Point National Excellence Collaboratives

This draft MODEL STATE PUBLIC HEALTH ACT is a product of the Public Health Statute Modernization Collaborative, part of the Turning Point Initiative begun in 1997 and funded by the Robert Wood Johnson Foundation and the W. K. Kellogg Foundation. The purpose of Turning Point is to transform and strengthen the public health system in the United States to make the system more effective, more community-based, and more collaborative.

Formed in April 2000, the Turning Point Public Health Statute Modernization Collaborative is a partnership comprised of representatives from five states and nine national organizations and government agencies. The goal of this group is to develop a MODEL STATE PUBLIC HEALTH ACT and related tools to assist state and local governments to assess their existing public health laws and update laws to effectively address a range of modern public health issues. The authors of the ACT work under contract to the Collaborative.

The Turning Point Public Health Statute Modernization Collaborative is one of five National Excellence Collaboratives that focus on strengthening specific aspects of the nation's public health system. The other Collaboratives and their goals include:

Information Technology – to assess, evaluate, and recommend innovative ways to improve the public health system through use of information technology. The group focuses on data systems that will assist in prioritizing community health needs, evaluating the effectiveness of interventions, and measuring the performance of health systems.

Performance Management – to develop useful performance management models for states and support the application of performance management as a core discipline of public health practice. The group focuses on system-wide approaches to performance management in public health.

Social Marketing – to promote the application of social marketing principles and practices to improve public health across the nation. The Collaborative seeks to provide state and local health programs with the skills and tools needed to effectively apply social marketing research and practice to public and community health issues within their communities.

Leadership Development – to increase collaborative leadership capacity at all levels of public health practice. This style of leadership emphasizes building trust among stakeholders with diverse interests to achieve a common goal. Based on key research activities, the Collaborative is developing tools to enhance collaborative leadership capacity among the public health workforce and its partners.

Further information about the Turning Point Initiative and the work of the National Excellence Collaboratives is available at http://www.turningpointprogram.org/index.html

A Summary of
The Model State Public Health Act

presented by

The Turning Point Public Health Statute Modernization Collaborative

January 31, 2003

The MODEL STATE PUBLIC HEALTH ACT (hereinafter "Act") presents a comprehensive, model state law on public health practice, procedures and powers. Though designed primarily to apply to state and local public health systems, the Act is adaptable to tribal public health systems as well. The Act's provisions are based on modern constitutional, statutory, and case-based law at the national and state levels, as well as current scientific and ethical principles.

Organized into nine (9) Articles with various sections, the Act incorporates a systematic approach to the implementation of public health responsibilities and authorities. It focuses on the organization and provision of essential public health services as defined in *Public Health in America*[1] and sets a broad mission for these services to be carried out in collaboration with other public and private entities within the public health system.

Many of the Act's provisions are based on existing state statutory and regulatory provisions. Laws that were directly used in the drafting of specific sections are acknowledged in *Legislative Sources* statements following relevant sections. In some cases prominent, non-legislative sources are also noted. A brief summary of each of the Act's Articles is set forth below:

ARTICLE I, PURPOSES AND DEFINITIONS, provides statements of legislative findings and purposes, as well as key definitions that shape the scope and context of the Act.

ARTICLE II, MISSION AND FUNCTIONS, clarifies the mission of public health, states generally the powers of state or local public health agencies, and promotes collaboration among public and private sectors within the public health system.

ARTICLE III, PUBLIC HEALTH INFRASTRUCTURE, addresses the need to develop a strong infrastructure through coordinated efforts of state or local public health agencies and others within the public health system to: identify and provide leadership for the provision of essential public health services; develop performance management standards for the public health system and the public health workforce; develop and provide effective training for the public health workforce; evaluate performance management and training efforts; and plan for the accomplishment of essential public health services through a public health advisory council.

ARTICLE IV, COLLABORATION AND RELATIONSHIPS WITH PUBLIC AND PRIVATE SECTOR PARTNERS, addresses relationships among public and private sector partners within the public health system and enables coordination through formal agreements, public health districts or partnerships, privatization of some services or functions, and tools for improving communication and collaboration. Specific provisions authorize the use of inter-state, intra-local, and inter-tribal agreements between tribal, state, and local public health agencies.

ARTICLE V, PUBLIC HEALTH AUTHORITIES/POWERS, specifies powers and authorities of state and local public health agencies to prevent and control conditions of public health importance. Core powers and authorities include: surveillance activities; reporting; epidemiologic

investigation; partner notification; testing, examination, and screening; medical treatment; quarantine and isolation; vaccination; licenses; abating public health nuisances; and administrative searches and inspections. The exercise of these powers/authorities is framed under a series of guiding principles.

ARTICLE VI, PUBLIC HEALTH EMERGENCIES, presents a series of provisions for preparing for and responding to serious public health emergencies. This Article is largely based on the MODEL STATE EMERGENCY HEALTH POWERS ACT (MSEHPA)[2] drafted by the *Center for Law and the Public's Health* following the terrorist events of 9/11/01.

ARTICLE VII, PUBLIC HEALTH INFORMATION PRIVACY, presents specific standards for the responsible acquisition, use, disclosure, and storage of identifiable health information by state and local public health agencies. This Article is also based on the provisions of an existing model law. The MODEL STATE PUBLIC HEALTH PRIVACY ACT[2] was originally drafted by Lawrence O. Gostin and James G. Hodge, Jr. in 1999 under the auspices of the Centers for Disease Control and Prevention and in collaboration with a national expert committee comprising public health officials, civil libertarians, and community representatives.

ARTICLE VIII, ADMINISTRATIVE PROCEDURES, CIVIL AND CRIMINAL ENFORCEMENT, AND SOVEREIGN IMMUNITY, contains key sections on various administrative matters that apply throughout the Act. For example, unless otherwise stated within each section, provisions in Article VIII authorizing administrative rulemaking by the state public health agency, establishing procedural due process requirements, and suggesting criminal and civil remedies for violations apply throughout the Act. General immunity of state and local governmental agencies from civil actions absent gross negligence or willful misconduct is covered in § 8-107.

ARTICLE IX contains **MISCELLANEOUS PROVISIONS**, including (1) the short title of the Act and clarification that titles and subtitles of Articles, sections, and subsections are instructive, but not binding; (2) a uniformity of the law provision; (3) a severability clause; (4) a clause for repeals of existing state law; (5) a provision concerning unintended conflicts of federal and existing state laws; (6) an effective date of the Act, and (7) a requirement for post-implementation reports to the State legislature on the impact of the Act on state and local public health agencies.

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[1] *See* PUBLIC HEALTH FUNCTIONS STEERING COMMITTEE, USPHS OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, PUBLIC HEALTH IN AMERICA (1994) [available at http://www.health.gov/phfunctions/public.htm].

[2] Available at http://www.publichealthlaw.net/Resources/Modellaws.htm.

[3] Available at http://www.publichealthlaw.net/Resources/Modellaws.htm.

The Model State Public Health Act

A Tool for Assessing Public Health Laws

Presented by

The Turning Point
Public Health Statute Modernization
Collaborative

http://www.hss.state.ak.us/dph/deu/turningpoint/nav.htm

DRAFT

For Comment Only

Released January 31, 2003

Acknowledgments

The Turning Point Public Health Statute Modernization Collaborative gratefully acknowledges the indispensable contributions of its consultants in the development of the MODEL STATE PUBLIC HEALTH ACT.

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[*Please note that the Model Act and any accompanying comments do not necessarily reflect the official policy or views of the governmental bodies, departments, institutions, or organizations with which the members of the Collaborative are employed or affiliated*].

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Development of the Model State Public Health Act

This draft MODEL STATE PUBLIC HEALTH ACT is a product of the Public Health Statute Modernization Collaborative, part of the Turning Point Initiative begun in 1997 and funded by the Robert Wood Johnson Foundation. The purpose of Turning Point is to transform and strengthen the public health system in the United States to make the system more effective, more community-based, and more collaborative.

Formed in April 2000, the Turning Point Public Health Statute Modernization Collaborative is a partnership comprised of representatives from five states and nine national organizations and government agencies. The goal of this group is to develop a MODEL STATE PUBLIC HEALTH ACT and related tools to assist state and local governments to assess their existing public health laws and update laws to effectively address a range of modern public health issues. The authors of the ACT work under contract to the Collaborative.

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Social Marketing – to promote the application of social marketing principles and practices to improve public health across the nation. The Collaborative seeks to provide state and local health programs with the skills and tools needed to effectively apply social marketing research and practice to public and community health issues within their communities.

Leadership Development – to increase collaborative leadership capacity at all levels of public health practice. This style of leadership emphasizes building trust among stakeholders with diverse interests to achieve a common goal. Based on key research activities, the Collaborative is developing tools to enhance collaborative leadership capacity among the public health workforce and its partners.

The Public Health Statute Modernization Collaborative's membership roster is included in this document. The MODEL ACT and any accompanying comments do not necessarily reflect the official policy or views of the organizations with which these members are affiliated.

Why a Model Public Health Law?

The need for public health statute reform was cited by the Institute of Medicine (IOM) (part of the National Academy of Sciences chartered by the U.S. Congress) in its 1988 report on the future of public health. The report found that state public health laws are in many cases seriously outdated and recommended that states review their public health statutes and make revisions necessary to

(1) clearly delineate the basic authority and responsibility entrusted to public health entities and (2) support a set of modern disease control measures that address contemporary health problems and threats.

In its November 2002 report, *The Future of the Public's Health in the 21st Century*, the IOM noted again that "public health law at the federal, state and local levels is often outdated and internally inconsistent." The IOM recommends the U. S. Department of Health and Human Services appoint a national commission to provide guidance to states in reforming their laws to meet modern scientific and legal standards. The report specifically references the Turning Point Model State Public Health Act as a resource in this process.

Invitation to Review and Comment

This draft of the MODEL STATE PUBLIC HEALTH ACT is intended as a starting point. To achieve a useful and effective final product, the Public Health Statute Modernization Collaborative invites comments, criticisms, and suggestions for editions from all interested parties. Comments will be considered by the Collaborative and incorporated into a revised version of the ACT. The expected publication date for the final version of the ACT is October 2003.

Deadline for comments: March 31, 2003

The Collaborative requests that comments be submitted in writing to Patricia Nault, Alaska Turning Point Coordinator and staff to the Public Health Statute Modernization Collaborative through the following addresses:

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Comments written directly on the relevant pages of this document can be mailed or faxed. When sending comments by letter or email, please refer to the Section, sub-section and any further delineation necessary to identify the passage to which the comment applies. Please note that written comments may be shared with members of the Collaborative, consultants to the project, and others providing assistance to the Collaborative toward the development of the final draft.

Availability of Legal Information about the Model State Public Health Act

Inquiries seeking substantive information on the Act, e.g., how the Act comports with constitutional norms or the meaning of specific legal language, can be directed to:

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Availability of Additional Copies of this Document Online or in Print

To read, search, or download this draft of the MODEL STATE PUBLIC HEALTH ACT in Adobe Acrobat Reader on the Internet, visit:

http://turningpointprogram.org/Pages/publichealth2.html
or
http://www.hss.state.ak.us/dph/deu/turningpoint/publications.htm

Please direct requests for additional print copies of this report to:

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Additional information about the Public Health Statute Modernization Collaborative as well as electronic copies of its previous publications are available at http://www.hss.state.ak.us/dph/deu/turningpoint/nav.htm.

Prefatory Notes

The Turning Point Public Health Statute Modernization National Collaborative is a partnership comprised of representatives from five states, nine national organizations and government agencies, and experts in specialty areas of public health. Funded by the Robert Wood Johnson Foundation, the Collaborative's mission is to transform and strengthen the legal framework for the public health system through a collaborative process to develop a model state public health law.

Through intensive research and consensus building among national, tribal, state, and local public health representatives, the MODEL STATE PUBLIC HEALTH ACT (hereinafter "Act") presents a comprehensive, model state law that sets forth statutory language on public health administration and practice for consideration by existing public health agencies at the state and local levels.

The Act's provisions reflect modern constitutional, statutory, and case-based law at the national and state levels, as well as current scientific and ethical principles underlying modern public health practice. It presents a template and checklist of issues for public health law reform. As such, the Act does not represent a mandate to states considering public health law reform, nor are its provisions intended to be adopted without adaptation or edition in any state.

The Act is divided into nine (9) Articles with various Sections [*see* Table of Contents below]. Consistent with recent findings from the Institute of Medicine (IOM) in *The Future of the Public's Health in the Twenty-First Century* (2002), the Act adopts a systematic approach to the implementation of public health responsibilities and authorities. It focuses on the organization and provision of essential public health services and functions based on their definition in *Public Health in America*.[1]

The Act presents a broad mission for state and local public health agencies to be carried out in collaboration with various public and private actors within the public health system. Much of the substance of the Act concerns traditional powers of state or local public health agencies (e.g., contagious disease control, nuisance abatement, and inspections). These powers are articulated within a framework of modern jurisprudence and public health science that balances the protection of the public's health with respect for the rights of individuals and groups. For a summary of the scope of the Act, please see the discussion of its organizational content below.

Though comprehensive, the scope of the Act is limited in the following ways:•

- The Act does not cover some distinct areas of law despite their strong public health relevance. For example, laws relating to mental health, alcohol and substance abuse, or environmental health or health services are not specifically addressed. The Act also does not address the provision of health care services or health insurance, whether through Medicare or Medicaid programs, or other federal, state, tribal, or private programs.
- Correspondingly, the Act does not include model provisions for all existing laws that impact the public's health (*e.g.*, seat belt provisions, DUI laws, and tobacco control regulations) or for specific program areas within public health.

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[1]. *See* PUBLIC HEALTH FUNCTIONS STEERING COMMITTEE, USPHS OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, PUBLIC HEALTH IN AMERICA (1994) [available at http://www.health.gov/phfunctions/public.htm].

- Nor does the Act include extensive language concerning areas of the law that are traditionally covered elsewhere in state statutes (*e.g.*, tax provisions, administrative procedures, disabilities protections).
- As a model statutory law, the Act does not specify the regulations needed to implement statutes, which can be important in public health practice. Regulations are left to the discretion of executive agencies through the promulgation of administrative rules authorized by the Act.
- The Act is intended for consideration and potential adoption in the states based on existing administrative and organizational structures within the state. It does not attempt to design a model public health department or present an ideal state/local organizational structure. Variations in the structure and organization of state and local public health systems preclude a model statutory format that would uniformly apply across the United States.[2]

The organizational content of the Act is briefly summarized below. Please see the text of the Act itself for precise language and comments.

ARTICLE I, PURPOSES AND DEFINITIONS, sets forth legislative findings and purposes, as well as definitions that shape the scope and context of the Act.

The definition of "**condition(s) of public health importance**" (a disease, syndrome, symptom or threat to health that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community) extends the scope of the Act beyond disease-specific classifications featured in many existing state public health codes.

The definition of "**essential public health services and functions**" (as defined in § 2-102) mirrors principles from *Public Health in America*, and is the basis for the mission of state or local public health agencies and the public health system. **State** or **local public health agencies** are defined as any organization operated by the state (or local government) that principally acts to protect or preserve the public's health. States considering adopting portions of the Act may specifically name these state or local agencies according to their existing legislative titles.

The Act vests state or local public health agencies with a series of powers and the duty to accomplish the mission of "**public health**" (to assure the conditions in which the population can be healthy). As IOM noted in its recent report (referenced above), accomplishing the mission of public health is not solely the responsibility of state or local public health agencies. Rather, IOM emphasizes the continued development of an intersectoral public health system. The Act correspondingly adopts principles for widespread collaboration among public and private sectors within the "**public health system**," which is broadly defined to include:

"**public sector partners**"– international, federal, tribal, or other state or local governments and their public health agencies that provide essential public health services and functions or work to improve public health outcomes with a state or local public health agency; and

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[2] For more information on existing state and local public health systems, *see* Lawrence O. Gostin, Public Health Law: Power, Duty, Restraint (University of California Press and Milbank Memorial Fund, 2000); Lawrence O. Gostin and James G. Hodge, Jr., *State Public Health Law: An Assessment* (2002) available at www.hss.state.ak.us/dph/deu/turningpoint/publications.htm.

"**private sector partners**"– non-governmental persons, including community organizations, contractors, educational institutions, health care facilities, health care providers, health insurers, private businesses, media, nonprofit organizations, and volunteers, that provide essential public health services and functions or work to improve public health outcomes in collaboration with a state or local public health agency.

ARTICLE II, MISSION AND FUNCTIONS, clarifies the mission of public health, thus framing the scope and structure of the Act. Unlike many state public health statutory codes, the Act prescribes an affirmative policy of the state to protect the public's health in collaboration with the public health system while also respecting individual rights to bodily integrity, privacy, nondiscrimination, and other legally-protected interests. Article II ties the mission of public health to essential public health services and functions, states generally the powers of state or local public health agencies, and promotes collaboration among various actors within the public health system.

ARTICLE III, PUBLIC HEALTH INFRASTRUCTURE, concerns the "**public health infrastructure**," defined as the competencies and resources that enable public health agencies, in collaboration with other components of the public health system, to provide essential public health services and functions throughout the state. Sections within Article III assert the need to develop a strong infrastructure, which requires the coordinated efforts of state or local public health agencies and others within the public health system to:

- Identify and provide leadership for the provision of essential public health services and functions;
- Develop performance management standards for the public health system and the public health workforce that are tied to improvements in public health outcomes;
- Develop and provide effective training for the public health workforce that is based on performance-based standards;
- Evaluate performance management and training efforts; and
- Comprehensively set priorities for the accomplishment of essential public health services and functions via active planning organized through a public health advisory council.

ARTICLE IV. COLLABORATION AND RELATIONSHIPS WITH PUBLIC AND PRIVATE SECTOR PARTNERS, builds further on the concepts of Articles II and III by addressing relationships among public and private sector partners within the public health system. Ongoing relationships among these various entities are facilitated and encouraged through formal agreements, public health districts or partnerships, privatization of some services or functions, and tools for improving communication and collaboration. Specific provisions authorize the use of inter-state, intra-local, and inter-tribal agreements between tribal, state, and local public health agencies. As well, various options to ensure coordination in the provision of essential public health services and functions among participants in the health care system (e.g., health care facilities and providers, and health insurers) are stated.

ARTICLE V, PUBLIC HEALTH AUTHORITIES/POWERS, provides model language on some core powers and authorities of state and local public health agencies to prevent and control conditions of public health importance. These powers include: surveillance activities; reporting; epidemiologic investigation; partner counseling and referral services (*i.e.*, partner notification); testing, examination, and screening; medical treatment; quarantine and isolation; vaccination; licenses; abating public health nuisances; and administrative searches and inspections. Please refer to the corresponding Sections related to these powers and authorities (*see* Table of Contents below) for specific language and context.

The exercise of these powers/authorities is framed under a series of guiding principles in § 5-101[b]. These principles include:

- **Public health purpose**. The exercise of any public health authority or power should further or support improving or sustaining the public's health by accomplishing essential public health services and functions.
- **Scientifically-sound practices**. Whenever possible, a state or local public health agency shall exercise its authorities or powers through procedures, practices, or programs that are based on modern, scientifically-sound principles and evidence.
- **Well-targeted intervention**. A state or local public health agency shall strive to design and implement interventions that are well targeted to accomplishing essential public health services and functions. An agency shall avoid using compulsory power in a manner that is over-broad (applying to more individuals than is necessary for the public's health).
- **Least restrictive alternative**. A state or local public health agency shall consider, adopt, and employ the least restrictive alternative in the exercise of its authorities or powers, especially compulsory powers.
- **Nondiscrimination.** State and local public health agencies shall not discriminate in an unlawful manner against individuals on the basis of their race, ethnicity, nationality, religious beliefs, sex, sexual orientation, or disability status.
- **Respect for dignity**. State and local public health agencies shall respect the dignity and worth of each individual under their jurisdiction, regardless of their nationality, citizenship, or residency status.
- **Respect for individual beliefs**. An agency shall not use compulsory powers that require testing, screening, treatment, or vaccination where an individual (or legal representative) objects in a written, signed affidavit issued pursuant to judicial review on the basis that the exercise of such power interferes with the free exercise of the individual's (or legal representative's) sincere religious, moral, or philosophical beliefs.
- **Community Involvement**. Protecting the public's health requires ongoing public health education to encourage, facilitate, and promote community participation in accomplishing public health goals.

  Though the principles support an ethic of voluntarism in public health practice, the Act provides for potential criminal and other sanctions against those whose actions may pose a danger to the public's health.

ARTICLE VI, PUBLIC HEALTH EMERGENCIES, is based on the MODEL STATE EMERGENCY HEALTH POWERS ACT (MSEHPA).[3] The MSEHPA was drafted by the *Center for Law and the Public's Health* following the terrorist events of 9/11/01 and subsequent anthrax exposures in several states. It presents a series of provisions for preparing for and responding to serious public health emergencies based on recommendations from national bioterrorism law and policy experts, existing state laws, and other input.[4]

The provisions of the MSEHPA have been altered or adapted to the framework, scope, and specifics of this larger, comprehensive model public health act. Correspondingly, substantial reorganization and substantive editions have been made to reflect the structure and intent of the larger model act.

Like Article VI, **ARTICLE VII, PUBLIC HEALTH INFORMATION PRIVACY,** is also based on the provisions of an existing model law. The MODEL STATE PUBLIC HEALTH PRIVACY ACT[5] was originally drafted in 1999 by Professors Lawrence O. Gostin and James G. Hodge, Jr. under the auspices of the Centers for Disease Control and Prevention and in collaboration with a national expert committee comprising public health officials, civil libertarians, and community representatives. It presents a "gold standard" for the responsible acquisition, use, disclosure, and storage of identifiable health information by state and local public health agencies.[6]

Various Sections of the model privacy act are incorporated into this larger Act. Many state laws fail to specify privacy protections for public health information. As a result, the privacy provisions in the larger Act may be more specific than other Articles concerning the requirements of state and local public health agencies.

ARTICLE VIII, ADMINISTRATIVE PROCEDURES, CIVIL AND CRIMINAL ENFORCEMENT, AND SOVEREIGN IMMUNITY, contains key Sections on various administrative matters that apply throughout the Act. For example, unless otherwise stated within each Section, provisions in Article VIII authorizing administrative rulemaking by the state public health agency, setting forth procedural due process requirements, and suggesting criminal and civil remedies for violations apply to all applicable Sections of the Act. The general immunity of state and local governmental actors from civil actions absent gross negligence or willful misconduct is proclaimed in § 8-107.

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[3] Available at http://www.publichealthlaw.net/Resources/Modellaws.htm.

[4] For more information, *see* Gostin, LO, Sapsin, J, Teret, SP, Burris, S, Mair, JS, Hodge, JG, Vernick, J. The Model State Emergency Health Powers Act: Planning and Response to Bioterrorism and Naturally Occurring Infectious Diseases. Journal of the American Medical Association 2002; 288: 622-688; Gostin, LO, Hodge, JG. The Model State Emergency Health Powers Act Commentary. Seattle: Turning Point Statute Modernization Committee, 2002; 1-42.

[5] Available at http://www.publichealthlaw.net/Resources/Modellaws.htm

[6] For more information, *see* Gostin, LO, Hodge, JG, Valdiserri RO. Informational privacy and the public's health: the model state public health privacy act. American Journal of Public Health 2001; 91:1388-1392.

ARTICLE IX contains **MISCELLANEOUS PROVISIONS**, including (1) the short title of the Act (the MODEL STATE PUBLIC HEALTH ACT) and clarification that titles and subtitles of Articles, Sections, and subsections are instructive, but not binding; (2) a uniformity of the law provision; (3) a severability clause; (4) a clause for repeals of existing state law; (5) a provision concerning unintended conflicts of federal and existing state laws; (6) an effective date of the Act, and (7) a requirement for reports to be generated and issued to the State legislature concerning the potential impact on state or local public health agencies if passed.

Brief statements of the ***Legislative Sources*** [or existing sections of state law that were used as models or guides] are provided for relevant sections of the Act. Many of the provisions of the Act were developed after reviewing literally hundreds of existing state statutory and regulatory provisions. Accordingly, ***Sources*** statements acknowledge only those laws that were directly used in the drafting of specific sections. In some cases, prominent, non-legislative sources have also been noted. However, many additional non-legislative sources have not, to date, been referenced.

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ARTICLE I
PURPOSES AND DEFINITIONS

Section 1-101. Legislative Purposes

The [*State legislature*] states that the purposes of this Act are to:

(1) Identify and strengthen the public health infrastructure and improve public health outcomes in the state through statutory reform;

(2) Set a broad mission for providing essential public health services and functions principally through the efforts of state and local public health agencies in collaboration with others in the public health system;

(3) Identify roles and responsibilities of state or local public health agencies to provide essential public health services and functions through various powers that underlie government's responsibility to protect the public's health while also respecting individual rights;

(4) Select and provide leadership for the provision of essential public health services and functions;

(5) Craft performance management standards for the public health system that are tied to improvements in public health outcomes or other measures;

(6) Develop and provide effective training for members of the public health workforce based on performance standards;

(7) Comprehensively plan and set priorities for improving and sustaining the public's health through the accomplishment of essential public health services and functions using an ongoing, inclusive, and systematic planning process;

(8) Assure the provision of essential public health services and functions through state and local public health agencies;

(9) Promote and build strong relationships among state or local public health agencies and their public and private sector partners within the public health system;

(10) Promote cooperation and formal collaborative agreements between the state and tribes, tribal organizations, and the Indian Health Service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, jurisdiction, full faith and credit and comity of state and tribal court orders issued in this [*State*], and other matters addressed in this Act;

(11) Create scientifically- and legally-sound and effective powers and duties of state and local public health agencies for the prevention and control of conditions of public health importance among the population that are consistent with guiding principles authorizing the responsible use of power and respect for individual rights;

(12) Respond to potential public health emergencies through formal declarations and triggering of special public health powers concerning the management of property and protection of individuals during an emergency;

(13) Address privacy and security issues arising from the acquisition, use, disclosure, and storage of protected health information by state and local public health agencies;

(14) Implement administrative rulemaking authority by the state public health agency and set affirmative procedures for protecting due process;

(15) Provide fair and appropriate criminal and civil penalties for violations of the provisions of this Act, as well as declare immunities of specific actors where justified; and

(16) Require regular reporting and accountability for state and local public health agencies in the state.

Section 1-102. Definitions

As used in this Act, these terms shall be defined as follows:

(1) "**Acquire**," "**Acquired**,"or "**Acquisition**" means, within Article VII, to collect or gain possession or control of protected health information for public health purposes.

(2) "**Act**" means the Model State Public Health Act.

(3) "**Amend**" means to indicate one or more disputed entries in protected health information or [and] to change the entry without obliterating the original information.

(4) "**Bioterrorism**" means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population.

(5) "**Chain of custody**" means the tracking of specimens for the purpose of maintaining control from initial collection to final disposition of the specimens and being accountable at each stage of collecting, handling, testing, storing, and transporting the specimens and reporting test results.

(6) "**Condition of public health importance**" means a disease, syndrome, symptom or threat to health that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community.

(7) "**Confidentiality statement**" means a written statement dated and signed by an applicable individual which certifies the individual's agreement to abide by the privacy and security policy of a state or local public health agency, as well as this Act.

(8) "**Contagious disease**" means an infectious disease that can be transmitted from individual to individual.

(9) "**Contractor**" means any non-governmental person who provide services or functions to or on behalf of a state or local public health agency pursuant to a contract or other agreement.

(10) "**Court**" means any State or local court of competent jurisdiction under the laws of the [*State*], as well as and may include tribal courts (where appropriate under existing laws).

(11) "**Disclose**," "**Disclosed**," or "**Disclosure**" means, within Article VII, to release, transfer, disseminate, provide access to, or otherwise communicate or divulge all or any part of any protected health information to any person, other than a state or local public health agency or authorized public health official.

(12) "**Disease outbreak**" means the sudden and rapid increase in the number of cases of a disease or other condition of public health importance in a population.

(13) "**Epidemic**" means the occurrence in a community or region of a group of similar conditions of public health importance that are clearly in excess of normal expectancy and derived from a common or propagated source.

(14) "**Essential public health services and functions**" means those services and functions as defined in § 2-102 of the Act.

(15) "**Expunge**,""**Expunged**," or "**Expunging**" means to permanently destroy, delete, or make non-identifiable.

(16) "**Health care facility**" means any non-federal or non-tribal institution, building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. This includes, but is not limited to: ambulatory surgical facilities, community health centers, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, long term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatments facilities, skilled nursing facilities, and adult day-care centers. This also includes, but is not limited to, the following when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities; health personnel training and lodging facilities; patient, guest, and health personnel food service facilities; and offices and office buildings for persons engaged in health care professions or services.

(17) "**Health care provider**" means any person that provides health care services including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, registered and other nurses, paramedics, emergency medical or laboratory technicians, community health workers, and ambulance and emergency medical workers.

(18) "**Health insurer**" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the [*State insurance commissioner*], that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization (HMO), a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services.

(19) "**Health oversight agency**" means a person that performs or oversees an assessment, investigation, or prosecution relating to compliance with legal or fiscal standards concerning fraudulent claims regarding health care, health services or equipment, or related activities; and is a public executive branch agency, acts on behalf of or pursuant to a requirement of the agency, or carries out such activities under federal or state law.

(20) "**Individual**" means a natural human being.

(21) "**Infectious disease**" means a disease caused by a living organism or other pathogen, including a fungus, bacteria, parasite, protozoan, or virus. An infectious disease may, or may not, be transmissible from individual to individual, animal to individual, or insect to individual.

(22) "**Infectious waste**" means—

[a] "**biological waste**," including blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;

[b] "**cultures and stocks**," including etiologic agents and associated biologicals; specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production of biologicals and serums; and discarded live and attenuated vaccines;

[c] "**pathological waste**," including biopsy materials and all human tissues; anatomical parts that emanate from surgery, obstetrical procedures, necropsy or autopsy and laboratory procedures; and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, but does not include teeth, formaldehyde, or other preservative agents; and

[d] "**sharps**," including needles, I.V. tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers.

(23) "**Institutional review board**" means any board (including privacy boards), committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects, including privacy rights.

(24) "**Isolate**," "**Isolated**," or "**Isolation**" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

(25) "**Legal representative**" means the parents, court-appointed legal guardians, or other individual(s) lawfully authorized to make health care decisions for a minor or individual who lacks the capacity to act on his or her own behalf.

(26) "**License**,""**Licensed**," or "**Licensure**" means an authorization that conditionally allows the recipient to conduct, for a specified period of time, activities that would be unlawful without the authorization.

(27) "**Local public health agency**" means any organization operated by a local government in the state (including local public health boards, agencies, commissions, or offices) that principally acts to protect or preserve the public's health.

(28) "**Mental health support personnel**" means any person authorized or trained to provide mental health support to individuals, including psychiatrists, psychologists, social workers, and volunteer crisis counselors or groups.

(29) "**Non-identifiable health information**" means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and

[a] does not reveal the identity of the individual whose health status is the subject of the information, or

[b] there is no reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be, known to be available to predictable recipients of such information) to reveal the identity of that individual.

(30) "**Nuisance**" means a condition, act, or failure to act that unreasonably interferes with the health or safety of the community by endangering life, generating or spreading infectious diseases, or otherwise injuriously affecting the public's health.

(31) "**Organized militia**" means any military force organized under the laws of this State including the State National Guard, the army national guard, or the air national guard.

(32) "**Partner**" means an individual who has been identified as having been exposed, or potentially been exposed, to a contagious or possibly contagious disease through another individual with the contagious or possibly contagious disease.

(33) "**Partner counseling and referral services (PCRS)**" means outreach activities for finding partners to inform them of their possible exposure and provide counseling, testing, and referral services to prevent the further spread of disease.

(34) "**Person**" means an individual, corporation (for-profit or nonprofit), estate, trust, partnership, limited liability company, association, institution, joint venture, governmental body, tribe or tribal organization, or any other legal or commercial entity.

(35) "**Predictive value**" ("PV") means the ability of a test or exam to accurately predict the presence or absence of a condition of public health importance in a population. The PV is determined by the test's validity (i.e., sensitivity and specificity), reliability, and the prevalence of the condition in the population.

(36) "**Private sector partner**" means non-governmental persons, including community organizations, contractors, educational institutions, health care facilities, health care providers, health insurers, private businesses, media, nonprofit organizations, and volunteers, that provide essential public health services and functions or work to improve public health outcomes in collaboration with a state or local public health agency.

(37) "**Privatization**" means those techniques or activities that promote involvement of the private sector, tribes, and tribal organizations in providing essential public health services and functions that have traditionally been provided by state or local public health agencies.

(38) "**Protected health information**" means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and

[a] reveals the identity of the individual whose health care is the subject of the information, or

[b] there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

(39) "**Public health**" means assuring the conditions in which the population can be healthy. This includes population-based or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality, or the promotion of health in the community, such as assessing the health needs and status of the community through public health surveillance and epidemiological research, developing public health policy, and responding to public health needs and emergencies.

(40) "**Public health agency**" means any organization operated by federal, tribal, state, or local government that principally acts to protect or preserve the public's health.

(41) "**Public health agent**" means any official (including a public health official) or employee of a state or local public health agency who is authorized to carry out provisions of this Act.

(42) "**Public health emergency**" means an occurrence or imminent threat of an illness or health condition that:

[a] is believed to be caused by any of the following:

(i) bioterrorism;

(ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or

(iii) a natural disaster, a chemical attack or accidental release, or a nuclear attack or accident; and

[b] poses a high probability of any of the following harms:

(i) a large number of deaths in the affected population;

(ii) a large number of serious or long-term disabilities in the affected population; or

(iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(43) "**Public health infrastructure**" means the competencies and resources that enable public health agencies, in collaboration with other components of the public health system, to provide essential public health services and functions throughout the state.

(44) "**Public health official**" means the head officer or official of a state or local public health agency who is responsible for the operation of the agency and has the authority to manage and supervise the agency's activities.

(45) "**Public health system**" means state and local public health agencies and their public and private sector partners.

(46) "**Public health workforce**" means state and local public health agents and other persons working within the public health system, to provide essential public health services and functions in the state.

(47) "**Public information**" means information that is generally open to inspection or review by the public.

(48) "**Public safety authority**" means a primary public safety agency, department, division, bureau, or agency of state, local, or tribal governments that act principally to protect or preserve the public safety; or any person directly authorized to act on behalf of a public safety agency.

(49) "**Public sector partner**" means international, federal, tribal, or other state or local governments and their public health agencies that provide essential public health services and functions or work to improve public health outcomes with a state or local public health agency.

(50) "**Quarantine**" means the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.

(51) "**Screen**," "**Screened**," or "**Screening**" means the systematic application of a test or exam to a defined population.

(52) "**Specimen**" means blood, sputum, urine, stool, or other bodily fluids, wastes, tissues, and cultures necessary to perform required tests.

(53) "**State public health agency**" means any organization operated by the state (including the state board, department, division, or office of public health) that principally acts to protect or preserve the public's health.

(54) "**Store**," "**Stored**," or "**Storage**" means, within Article VIII, to hold, maintain, keep, or retain all or any part of protected health information.

(55) "**Test**,""**exam**,""**testing**," or "**examination**" mean any diagnostic or investigative analyses or medical procedures that determine the presence or absence of a condition of public health importance, or its precursor, in an individual.

(56) "**Tribe**" means the same as the term "Indian tribe" in 25 U.S.C. § 450b(e), section 4(e) of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended.

(57) "**Tribal public health agency**" means any program or organization operated by a tribe or tribal organization (including boards, agencies, commissions, or offices) that principally acts or is responsible to protect or preserve the public's health and shall include the health programs of any tribal organization that carries out essential public health services and functions or otherwise acts to protect or preserve the public's health.

(58) "**Tribal organization**" means the same as the term in 25 U.S.C. § 450b(*l*), section 4(*l*) of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended.

(59) "**Use**" or "**Used**" means, within Article VII, to employ or utilize all or any part of any protected health information for a public health purpose.

(60) "**Vaccinate**," "**Vaccinated**," **Vaccination**," or "**Vaccine**" means a suspension of attenuated or noninfectious microorganisms or derivative antigenic proteins administered to stimulate antibody production or cellular immunity against a pathogen for the purpose of preventing, ameliorating, or treating an infectious disease.

(61) "**Volunteer**" means any person who provides services or functions to or on behalf of a state or local public health agency on a voluntary, unpaid basis.

ARTICLE II
MISSION AND FUNCTIONS

Section 2-101. Mission Statement

[a] It is the policy of this [*State*] that the health of the public be protected and promoted to the greatest extent possible through the public health system while respecting individual rights to bodily integrity, health information privacy, nondiscrimination, due process, and other legally-protected interests.

[b] The mission of state and local public health agencies is to provide leadership and protect and promote the public's health by:

(1) Assuring the conditions in which people can be healthy;

(2) Providing essential public health services and functions (as defined in § 2-102);

(3) Encouraging collaboration among public and private sector partners in the public health system; and

(4) Seeking adequate funding to provide essential public health services and functions or accomplish public health goals through public or private sources.

[c] This Section shall not be construed to require an individual or agency within the public health system to provide specific health services or to mandate state and local public health agencies to implement unfunded programs.

Section 2-102. Essential Public Health Services and Functions

For the purposes of this Act, "essential public health services and functions" means services and functions to:

[a] Monitor health status to identify and solve community health problems;

[b] Diagnose and investigate health problems and health hazards in the community;

[c] Inform, educate, and empower people about health issues;

[d] Mobilize public and private sector collaboration and action to identify and solve health problems;

[e] Develop policies and plans that support individual and community health efforts;

[f] Enforce laws and regulations that protect health and ensure safety;

[g] Link individuals to needed personal health services and assure the provision of health care when otherwise unavailable;

[h] Assure a competent public health workforce;

[i] Evaluate effectiveness, accessibility, and quality of personal and population-based health services; and

[j] Research for new insights and innovative solutions to health problems.

2-103. Roles and Responsibilities

[a] **Generally**. State and local governments are responsible for assuring that the public health system accomplishes the mission of public health.

[b] **Collaboration**. While certain public health functions must be performed by state and local public health agencies, these agencies must also rely on active collaboration with public and private sector partners within the public health system. The provision of essential public health services and functions are shared goals of the public health system to achieve the mission of public health.

[c] **Individual Rights.** All persons within the public health system shall seek to accomplish the mission of public health while respecting individual rights including:

(1) Respect for the dignity and autonomy of each individual;

(2) Protection of health information privacy for each individual consistent with Article VII of this Act and any applicable federal, state, or local laws;

(3) Provision of adequate due process as required by this Act or other applicable federal, state, or local laws; and

(4) Avoidance of explicit or implicit discrimination in an unlawful manner of individuals on the basis of their race, ethnicity, nationality, religious beliefs, sex, sexual orientation, or disability status.

2-104. Public Health Powers - Generally

To carry out the mission of public health, state and local public health agencies are authorized to provide or implement essential public health services and functions, including services or functions to:

[a] Identify, assess, prevent, and ameliorate conditions of public health importance through surveillance, epidemiological research or investigations, administrative inspections, or other techniques;

[b] Utilize a broad range of flexible powers to protect and promote the public's health, including compulsory powers as defined in the Act;

[c] Abate public health nuisances through administrative procedures;

[d] Provide public health information programs or messages to the public that promote healthy behaviors or lifestyles, or educate individuals about health issues;

[e] Promote efforts among public and private sector partners to develop and fund programs or initiatives that identify and solve health problems;

[f] Develop and implement comprehensive plans through administrative regulations, formal policies, or collaborative recommendations that guide or support individual and community public health efforts;

[g] Enforce existing laws and administrative regulations (including emergency regulations), and propose new laws, amendments to existing laws, or administrative regulations that may serve as tools to protect the public's health;

[h] Promote the availability and accessibility of quality health care services through health care facilities or providers;

[i] Promote availability of and access to preventive and primary health care when not otherwise available through the private sector, including acute and episodic care, prenatal and postpartum care, child health, family planning, school health, chronic disease prevention, child and adult immunization, dental health, nutrition, and health education and promotion services;

[j] Conduct performance management and training programs and evaluations to improve the public health system and workforce; and

[k] Systematically and regularly review the public health system to recommend modifications in its structure or other features to improve public health outcomes.

ARTICLE III
PUBLIC HEALTH INFRASTRUCTURE

Section 3-101. Public Health Infrastructure

[a] **Generally.** A strong public health infrastructure is needed to achieve the mission of public health set forth in § 2-101, and provide essential public health services and functions, in collaboration with public and private sector partners within the public health system.

[b] **Goals.** Developing a strong public health infrastructure requires the coordinated efforts of state and local public health agencies and their public and private sector partners within the public health system to:

(1) Identify and provide leadership for the provision of essential public health services and functions;

(2) Develop performance management standards for the public health system and workforce that are tied to improvements in public health outcomes or other measures;

(3) Develop and provide effective training for members of the public health workforce that is focused on performance-based standards;

(4) Evaluate performance management standards and training efforts within the public health system; and

(5) Comprehensively plan and set priorities for the accomplishment of essential public health services and functions.

[c] **Resources.** To fulfill these and other goals underlying the development of a strong public health infrastructure, state and local public health agencies and others within the public health system shall consult and attempt to utilize national guidelines, initiatives, programs, and recommendations relating to improvements in public health infrastructure provided they are consistent with accomplishing the mission of public health in the state.

Section 3-102. Public Health Workforce

[a] **Leadership.** State and local public health agencies and their public and private sector partners within the public health system may identify and encourage leaders to work through the state public health agency to develop, administer, and fulfill the requirements of this Article, and ensure the provision of essential public health services and functions.

[b] **Performance management.** To improve the public's health, the state public health agency shall manage performance related to public health infrastructure and capacity, processes, and outcomes at the state and local levels. The state public health agency shall seek to establish and implement performance standards, measures, and processes for quality or performance improvement that are accessible, affordable, and

non-punitive. These include the following:

(1) Performance measurement for the public health system. Consistent with the National Public Health Performance Standards Program, the state public health agency shall adopt and administer performance measurements within the public health system as a means of improving the quality of state and local public health practice and improving system accountability.

(2) Accreditation of state or local public health agencies. The state public health agency shall adopt and administer a voluntary accreditation program for state or local public health agencies. The accreditation program is to be based on criteria developed by the state public health agency that focus on the ability of agencies to provide essential public health services and functions.

(3) Certification or credentialing for the public health workforce. Consistent with any national system of public health workforce certification or credentialing, the state public health agency shall adopt and administer public health workforce certification or credentialing programs for members of the public health workforce. These programs should be designed to develop knowledge, skills, and abilities in relevant and contemporary public health practice areas, and may be based on:

(i) basic, core, or technical competencies (and corresponding curriculum) for public health workers; or

(ii) professional codes for public health professionals.

[c] **Training.** The state public health agency shall directly, or in conjunction with educational institutions or others within the public health system, make available or assure effective programs, continuing education, or other tools for training public health agents and others within the public health workforce.

(1) Training programs, continuing education, or other tools may be based on or include national initiatives developed by the Centers' for Disease Control and Prevention Office of Workforce Policy and Planning, the Health Resources and Services Administration (HRSA), or other federal agencies or national public health organizations. They may be tied to certification or credentialing requirements pursuant to subsection [b](3), and offered on-site or through distance learning or other electronic venues.

(2) Various individuals within the public health system may be required by the state public health agency to meet minimal training requirements to assist the individual in providing essential public health services and functions.

[d] **Incentives.** The state public health agency may set incentives to meet performance management or training requirements, including:

(1) Organizational accountability awards;

(2) Accreditation recognition for public health agencies or their contractors or volunteers;

(3) Certification or credentialing titles or recognition for individuals;

(4) Other career development initiatives, including financial benefits.

[e] **Evaluation.** The state public health agency shall:

(1) Adopt a framework for evaluations of performance management;

(2) Develop standards to consistently evaluate the effectiveness and delivery of training programs, continuing education, and other tools; and

(3) Consistently evaluate performance management and training programs, continuing education, and other tools pursuant to these frameworks or standards.

Legislative Sources. Section 3-102 is largely based on the recommendations and findings in DHHS, HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH (2000); CDC, PUBLIC HEALTH WORKFORCE: AN AGENDA FOR THE 21ST CENTURY (1997); CDC/ATSDR, STRATEGIC PLAN FOR PUBLIC HEALTH WORKFORCE DEVELOPMENT (2000); Resolutions 01-01, 01-02, and 01-03 of the NATIONAL ASSOCIATION OF COUNTY AND CITY HEALTH OFFICIALS; and INSTITUTE OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE TWENTY-FIRST CENTURY (2002).

Section 3-103. Public Health Assessment, Planning, and Priority Setting

[a] Public Health Advisory Council. A public health advisory council shall be created by [*insert date*] to serve as an advisory body to the state public health agency and the Governor on all matters related to the public health system.

(1) The council shall be composed of [*fifteen*] members appointed by the Governor in consultation with state and local public health agencies or others within the public health system. The appointment of each of the members shall be for staggered terms of [*five years*], and be subject to legislative approval.

(2) Specific members shall be appointed to represent the state public health agency, local public health agencies, tribal public health agencies in the state, other state or local governmental bodies (e.g., relating to environment, insurance, education, and labor), health care facilities, health care providers, health insurers, and the general public. Additional members representing other relevant interests or organizations may also be appointed. Members of the council shall select their own chairperson who must also be a member.

(3) The council may create subcouncils to serve as forums for addressing specific areas or needs concerning the public health system. In the

discretion of the council chair, individuals may participate on a voluntary basis in subcouncil meetings.

(4) Council members shall be compensated in accordance with existing state law concerning council representatives or committee members of pre-existent advisory councils.

(5) The council shall be adequately funded and staffed to conduct its operations and meet at least quarterly each year.

[b] **Comprehensive Public Health Plan.** To ensure the provision of essential public health services and functions, the public health advisory council shall create a comprehensive public health plan that assesses and sets priorities for the state public health system. The plan shall be produced by [*insert date*].

[c] **General Scope.** The plan shall:

(1) Guide the public health system in targeting essential public health services and functions through program development, implementation, and evaluation;

(2) Strive to increase the efficiency and effectiveness of the public health system; and

(3) Identify areas needing greater resource allocation to effectively combat public health threats or decrease disparities in the provision of essential public health services and functions.

[d] **Input.** The public health advisory council shall develop the plan in consultation with representatives from public and private sector partners within the public health system. The plan may rely on existing or available surveillance data or other information acquired pursuant to this Act, as well as national guidelines or recommendations concerning public health outcomes/improvements.

[e] **Elements.** The plan shall include or address the following elements:

(1) Identification and quantification of existing public health problems, disparities, or threats at the state and local levels;

(2) Declaration of the goals of the plan;

(3) Identification of specific recommendations for meeting these goals;

(4) Explanation for the prioritization of one or more public health problems, disparities, or threats;

(5) Identification of the specific at-risk populations targeted;

(6) Detailed description of the programs and activities that will be pursued to address existing public health problems, disparities, or threats.

(7) Estimation of costs of implementing the plan;

(8) Time-line for implementing various elements of the plan;

(9) Strategy for coordinating service delivery within the public health system; and

(10) Measurable indicators of effectiveness and success.

[f] **Duration.** The plan shall prospectively cover [*five years*], subject to annual revisions. Future plans shall be produced every [*five years*]

[g] **Local Public Health Plans.** The state public health agency may require local public health agencies to prepare a local public health plan consistent with the comprehensive public health plan required under subsection [b].

(1) Local public health plans shall address how local public health agencies will coordinate with the state public health agency and others within the public health system to accomplish goals and priorities identified in the comprehensive public health plan. It may also address additional goals or priorities of the local public health agency.

(2) The state public health agency shall provide technical assistance to local public health agencies that request such assistance and otherwise work with local public health agencies to generate the plan.

[h] **Reports.** The public health advisory council shall issue a copy of the comprehensive public health plan required under subsection [b] to the Governor and the [*State legislature*], including any recommendations for legislative amendments. A local public health agency may issue a copy of the comprehensive public health plan and any local public health plan produced under subsection [g] to the [*local legislative body*], including any recommendations for amendments to local laws.

Legislative Sources. Section 3-103[a] is based on ARIZ. REV. STAT. § 36-109; W.V. REV. STAT. ANN. § 16-1-16 *et seq.* The remaining sections are largely based on the recommendations and findings in CDC, PUBLIC HEALTH WORKFORCE: AN AGENDA FOR THE 21ST CENTURY (1997); INSTITUTE OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE TWENTY-FIRST CENTURY (2002); and WIS. STAT. ANN. § 250.07 *et seq*. (West 2001).

ARTICLE IV

COLLABORATION AND RELATIONSHIPS WITH PUBLIC AND PRIVATE SECTOR PARTNERS

Section 4-101. Relationships Among Federal, Tribal, and State or Local Public Health Agencies

[a] **Generally.** State or local public health agencies shall seek to establish strong, working relationships with corresponding federal, tribal, other state or local public health agencies, or other public sector partners, engaged in the provision of essential public health services and functions within the public health system.

[b] **Inter-state Agreements.** The state public health agency may form an agreement with any other state or its agencies to coordinate the provision of essential public health services and functions among the states that are parties to the agreement.

[c] **Agreements Between Local Public Health Agencies and Adjoining States and Municipalities.** A local public health agency that borders a state line may form an agreement with an adjoining state or municipality in the other state to coordinate the provision of essential public health services and functions. The local public health agency shall submit any agreement pursuant to this section to the state public health agency for prior approval.

[d] **Inter-local Agreements.** Any local public health agency may form agreements with other local public health agencies in the state to coordinate the provision of essential public health services and functions consistent with [*the state's existing interlocal cooperation act (if any)*]. The local public health agency shall submit any agreement pursuant to this section to the state public health agency.

[e] **Tribal Agreements.** A state or local public health agency may form agreements with tribes and tribal public health agencies in the state, and a state public health agency may form agreements with tribes and tribal public health agencies in adjoining states, to coordinate the provision of essential public health services and functions or to promote cooperation in addressing specific public health needs of tribal populations, non-Indians living within the boundaries of tribal reservations, or Indians who reside outside the boundaries of tribal reservations. Among other purposes, these agreements may work to:

(1) Develop, test, or demonstrate solutions for specific public health needs that, if proven effective, may be applied by other public health agencies, tribes, tribal organizations, or tribal public health agencies, inter-tribal organizations, or other entities;

(2) Fund start-up and recurring costs of cooperative programs to deliver public health services to individuals located within tribal service areas;

(3) Conduct public health needs assessments and studies related to public health or health care issues concerning individuals located within tribal service areas;

(4) Provide for data sharing among state, local and tribal public health agencies, including sharing of protected health information;

(5) Provide for coordinated development of public health plans; or

(6) Encourage and support any other activity that will assist state, local and tribal public health agencies to improve or maintain the public's health.

[f] **Public Health Districts.** Public health districts consisting of two or more local or tribal public health agencies may be created for the purpose of improving the provision of essential public health services and functions for the affected population whenever these agencies shall by resolution establish a district. The public health district shall consist of all the area of the combined public health agencies, and be classified and governed in accordance with existing statutory provisions related to local public health agencies.

Legislative Sources. Section 4-101[a](3) was adapted from TEX. HEALTH & SAFETY § 31.016. Section 4-101[b](2) was adapted from ARK. CODE ANN. § 14-54-201 and § 14-54-205. Drafter's Note: Many states have delegated authority to form interlocal agreements to county or local governments. Because the local public health agency is under the authority of these governmental units, Sections 4-101[c, d] may be unnecessary or contradict state laws delegating power to local governments. *See, e.g.*, FLORIDA INTERLOCAL COOPERATION ACT OF 1969, FLA. STAT. ANN. § 163.01. Section 4-101[e] was adapted from WIS. REV. STAT. ANN. § 146.19(2) *et seq*. Section 4-101[f] was adapted from WASH. REV. CODE § 70.46.020.

Section 4-102. Relationships Among Public and Private Sector Partners

[a] **Generally.** Population-based, community-level interventions to improve the conditions in which individuals can be healthy are critical to ameliorating public health outcomes. Accordingly, pursuant to this Section, state or local public health agencies may establish formal or informal working relationships with public and private sector partners within the public health system to improve the provision of essential public health services and functions.

[b] **Formal Agreements With Private Sector Partners.** In addition to the authorization to make formal agreements with public sector partners pursuant to Section 4-101, state or local public health agencies may form contracts or agreements with private sector partners, whether located in-state or out-of-state, to provide essential public health services and functions.

[c] **Community Partnerships.** Outside formal contracts or agreements, state or local public health agencies are encouraged to engage public or private sector partners through community or public/private partnerships to provide essential public health services and functions.

[d] **Coordination.** To facilitate public health activities and functions among many public or private sector partners, the state public health agency shall coordinate the efforts of these persons and local public health agencies. The state public health agency

may use any or all of the following tools for the purpose of coordination activities:

(1) Ongoing and regular communication via electronic or other means;

(2) Widespread incorporation of public and private sector partners into the public health planning process referenced in Section 3-103;

(3) Local, regional, or state-wide conferences or programs to share information or pursue plans for assessment, policy development or strategy, or assurance activities; or

(4) Designation of leading collaborators within specific geographic, topical, or practice areas that can facilitate coordination efforts.

[e] **Privatization.** Nothing in this Section limits the ability of state and local public health agencies to contract with contractors or other private sector partners for the purpose of providing essential health services and functions directly through these private sector entities. State and local public health agencies are specifically authorized to engage contractors or other private sector partners to provide select essential public health services and functions through privatization, provided:

(1) Contracts entered into pursuant to this Section accord with the applicable laws and regulations governing public entities [*pursuant to the Public Procurement Act, where applicable*];

(2) Any privatization of existing public health services and functions is demonstrated in advance to have the potential to improve public health outcomes without causing harm to individuals or the public health system;

(3) Privatized services are fully and regularly monitored by the contracting public health agency or others within the public health system besides those providing the services or functions. The state public health agency may devise, in consultation with others within the public health system, evaluation criteria to be used in conducting performance reviews of any person that provides privatized services or functions; and

(4) Privatized services or functions are provided to the public under the same standards or requirements set forth in this Act or other federal, state, or local laws.

Legislative Sources. Sections 4-102[e] is based in part on VA CODE ANN. §§ 2.2-2620- 2622.

Section 4-103. Relationships Among Participants in the Health Care System

Improving public health outcomes is dependent on the active role of health care providers, health care facilities, and health insurers collaborating with state and local public health agencies to provide essential public health services and functions. Consistent with this Section, state or local public health agencies shall work specifically with these participants in the health care system to build effective

relationships and promote the participant's role in furthering the mission of public health.

[a] **Health Care Providers and Facilities.** A state or local public health agency may engage the following activities with health care providers and health care facilities located, or doing business, in its jurisdiction to ensure coordination in the provision of essential public health services and functions:

(1) Dissemination of information and training regarding the appropriate use of clinical preventive practice guidelines;

(2) Provision of information regarding the services and resources available through the state public health agency related to patient management or medical care practice;

(3) Development of contractual agreements covering medical care and patient services related to the provision of essential public health services and functions;

(4) Development and dissemination of data reporting methods and systems concerning the performance of public health diagnostic and investigative services and functions; and

(5) Development and dissemination of resources and tools for measuring health care provider and facility performance regarding the provision of essential public health services and functions.

[b] **Health Insurers.** The state public health agency may develop standards that promote the provision of essential public health services and functions for incorporation into group and individual insurance and health plan products (including licensed insurance sold by health insurers, HMO products, public employee health plans, and health plans for the state's Medicaid and Children's Health Insurance Program). Such standards may include:

(1) Reporting data related to essential public health services and functions;

(2) Tools and resources for use in measuring the quality of care determined by the health agency relating to essential public health services and functions;

(3) Coverage standards (including minimum benefit classes, permissible amount, duration and scope limitations, and definitions and terms) related to the diagnosis, treatment, and management of physical and mental health conditions during a declared public health emergency;

(4) Standards related to the use of provider networks in the event of a declared public health emergency, including the designation of certain facilities and providers as "in network" entities during such periods;

(5) The incorporation into the contract of coverage of public health clinical practice guidelines:

(i) As part of group and individual health plans generally; and

(ii) For use in assessing, treating, and managing physical and mental health conditions during a public health emergency.

ARTICLE V
PUBLIC HEALTH AUTHORITIES/POWERS

Section 5-101. Prevention and Control of Conditions of Public Health Importance

[a] **Generally.** A state or local public health agency may exercise the authorities and powers set forth in this Article to prevent, control, or ameliorate conditions of public health importance or accomplish other essential public health services and functions.

[b] **Guiding Principles.** In carrying out these authorities or powers, the state or local public health agency shall comply with the following principles:

(1) **Public health purpose.** The exercise of any public health authority or power should further or support improving or sustaining the public's health by accomplishing essential public health services and functions.

(2) **Scientifically-sound practices.** Whenever possible, a state or local public health agency shall exercise its authorities or powers through procedures, practices, or programs that are based on modern, scientifically-sound principles and evidence.

(3) **Well-targeted intervention.** A state or local public health agency shall strive to design and implement interventions that are well targeted to accomplishing essential public health services and functions. An agency shall avoid using compulsory power in a manner that is over-broad (applying to more individuals than is necessary for the public's health).

(4) **Least restrictive alternative.** A state or local public health agency shall consider, adopt, and employ the least restrictive alternative in the exercise of its authorities or powers, especially compulsory powers. This means that where the agency may exercise one or more of its authorities or powers to accomplish essential public health services and functions, it shall, to the extent possible, employ the policy or practice that least infringes on the rights or interests of individuals. The duty to follow the least restrictive alternative does not require the agency to adopt policies or programs that are less effective in protecting the public's health or safety.

(5) **Nondiscrimination.** State and local public health agencies shall not discriminate in an unlawful manner against individuals on the basis of their race, ethnicity, nationality, religious beliefs, sex, sexual orientation, or disability status.

(6) **Respect for dignity.** State and local public health agencies shall respect the dignity and worth of each individual under their jurisdiction, regardless of their nationality, citizenship, or residency status.

(7) **Respect for individual beliefs.** An agency shall not use compulsory powers that require testing, screening, treatment, or vaccination where an

individual (or legal representative) objects in a written, signed affidavit issued pursuant to judicial review on the basis that the exercise of such power interferes with the free exercise of the individual's (or legal representative's) sincere religious, moral, or philosophical beliefs.

(8) **Community Involvement.** Protecting the public's health requires ongoing public health education to encourage, facilitate, and promote community participation in accomplishing public health goals.

Section 5-102. Surveillance Activities - Sources of Information

[a] **Compiling data.** The state or local public health agency shall collect, analyze, and maintain databases of identifiable or non-identifiable information related to:

(1) Behavioral risk factors identified for specific conditions of public health importance;

(2) Morbidity and mortality rates for conditions of public health importance;

(3) Community indicators relevant to conditions of public health importance; and

(4) Any other data needed to accomplish or further the mission or goals of public health, or provide essential public health services and functions.

[b] **Data sources.** The state or local public health agency may obtain such information from federal, tribal, state, and local governmental agencies (including tribal organizations); health care providers or facilities; or other private and public organizations.

(1) The agency may use information available from other governmental and private sources, such as the Behavioral Risk Factor Surveillance System established by the Centers for Disease Control and Prevention, reports of hospital discharge data, information included in death certificates, other vital statistics, and public information.

(2) The agency may request information from or inspect health care records maintained by health care providers that identify patients or characteristics of patients with reportable diseases or other conditions of public health importance.

[c] **Data uses.** Protected health information may only be acquired, used, disclosed, and stored consistent with Article VII of this Act. Non-identifiable data may be acquired, used, disclosed, or stored for any purpose or in any manner.

Legislative Sources. Section 5-102 is based in part on ALASKA STAT. § 18.05.042 (1997) and TEX. HEALTH & SAFETY § 93.053 (2001).

Section 5-103. Reporting

[a] **Generally.** The state public health agency shall establish a list of reportable diseases or other conditions of public health importance. The list may include diseases or conditions of humans or animals caused by exposure to toxic substances, microorganisms, or any other pathogens. The state public health agency:

(1) Shall prescribe the time, manner, and person(s) responsible for reporting for each disease or condition of public health importance.

(2) Shall classify each reportable disease and condition according to its nature and the severity of its effect on the public's health.

(3) Shall regularly maintain and may revise the list of reportable disease and conditions.

(4) May establish registries for reportable diseases and conditions.

(5) Shall fully disseminate reporting requirements to health care providers or other persons required under this Section to report diseases or conditions.

(6) May enter into agreements or other arrangements with federal and tribal public health agencies for receipt and sharing of information regarding reportable diseases or other conditions of public health importance.

[b] **Persons required to report.** Any person (including health care providers, pharmacists, laboratories, coroners, medical examiners, and veterinarians) who is required by the state public health agency to report a disease or other condition of public health importance to the state or local public health agency shall provide all known or suspected cases of individuals having a reportable disease or condition. Any other person who knows or suspects a case of a reportable disease or condition may provide available information concerning the case to the local or state public health agency, especially where the case has not been previously reported as required by the state public health agency.

[c] **Ordinary skill.** Any person who is required to report a disease or other condition of public health importance shall use ordinary skill in determining the presence of the reportable disease or condition. If the determination of the disease or condition is disputable and the disease or condition may have potential public health significance, a state or local public health agency shall request tests through the [*state laboratory*] or a certified laboratory to help resolve uncertainty.

[d] **Information sharing.** Each local public health agency shall transmit to the state public health agency [*at least weekly*] any information requested by the state public health agency concerning the reporting of diseases or conditions. The state public health agency may require expedited reporting by local public health agencies for designated diseases or conditions, including those referred to in subsection [f]. The state public health agency shall make available to federal, tribal, or local public health agencies all information collected regarding reportable diseases consistent with data use principles in Article VII.

[e] **Electronic reporting systems.** The state public health agency shall establish state-wide systems for electronic reporting to improve the accuracy and timeliness of reported or transmitted information. The system shall be technologically designed to ensure compatibility with and other state and federal public health reporting systems.

[f] **Reporting to detect and track a public health emergency.**

(1) **Generally.** A health care provider, coroner, or medical examiner shall report to the state or local public health agency all cases of individuals who harbor any condition of public health importance that may be potential causes or indicators of a public health emergency.

(i) Reportable conditions include, but are not limited to, the diseases caused by the biological agents listed in 42 C.F.R. § 72, app. A (2000) and any illnesses or health conditions identified by the state public health agency.

(ii) For the purposes of this Section, the definition of "health care provider" includes out-of-state medical laboratories, provided that such laboratories have agreed to the reporting requirements of this State.

(2) **Pharmacists.** A pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes or indicators of a public health emergency. Prescription-related events that require a report include, but are not limited to—

(i) an unusual increase in the number of prescriptions of antibiotics or other pharmaceuticals or sales of over-the-counter pharmaceuticals to treat conditions that the state public health agency identifies through regulations; and

(ii) any prescription that treats a disease that is relatively uncommon, may be associated with bioterrorism, or may be caused by a biological agent referred to in Section 5-103[f](1)(i).

(3) **Animal diseases.** Every veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person having the care of animals shall report animals having or suspected of having any diseases or conditions that may be potential causes or indicators of a public health emergency.

(4) **Manner of reporting.** For the purposes of this subsection, the report shall be made electronically or in writing within [*twenty-four (24) hours*] to the state or local public health agency. The report shall include as much of the following information as is available:

(i) the specific disease, illness, or condition that is the subject of the report;

(ii) the patient's name, date of birth, sex, race, occupation, and current home and work addresses;

(iii) the name and address of the reporting individual;

(iv) concerning human cases related to animal or insect bites, the suspected locating information of the biting animal or insect, and the name and address of any known owner;

(v) concerning animal cases, the suspected locating information of the animal, and the name and address of any known owner; and

(vi) any other information needed to locate the human or animal subject for follow-up.

(5) **Information sharing.**

(i) Whenever the public safety authority or other state or local government agency learns of a case of a reportable condition of public health importance, an unusual cluster, or a suspicious event that may be the cause or indicator of a public health emergency, it shall immediately notify the state public health agency.

(ii) Whenever the state or local public health agency learns of a case of a reportable condition of public health importance, an unusual cluster, or a suspicious event that it reasonably believes has the potential to be caused by or be an indicator of bioterrorism, it shall immediately notify the public safety authority, and federal and tribal health and public safety authorities.

(iii) Sharing of information on reportable conditions, unusual clusters, or suspicious events between state and local public health agencies and public safety authorities shall be restricted to the information necessary for the treatment, control, investigation, and prevention of a public health emergency.

[g] **Penalty for non-reporting.** Any person who has knowledge of a case of a reportable disease or condition, is required under this Section to report that disease or condition, and fails to make the required report shall be guilty of a misdemeanor.

Legislative sources. Section 5-103[a] is based on CAL HEALTH & SAFETY § 120130 and TEX. HEALTH & SAFETY § 81.041. Section 5-103[c] is based on WIS. REV. STAT. ANN § 252.05(9). Section 5-103[d] is based on CAL. HEALTH & SAFETY § 120245.

Section 5-104. Epidemiologic Investigation

[a] **Investigating conditions of public health importance.** The state or local public health agency may investigate conditions of public health importance through methods of epidemiological investigation. This includes identifying individuals exposed to or affected by the condition, interviewing and testing those individuals, and examining facilities or materials that may pose a threat to the public's health.

[b] **Investigating non-emergency disease outbreaks and epidemics.** The state or local public health agency may ascertain the existence of a non-emergency disease outbreak or epidemic, investigate potential sources of infection and ensure that they are subject to proper control measures, and define the distribution of the disease outbreak or epidemic.

[c] **Investigating public health emergencies.** The state or local public health agency may ascertain the existence of cases of an illness or other conditions of public health importance that may be potential causes or indicators of a public health emergency, investigate all such cases for sources of infection and to ensure that they are subject to proper control measures, and define the distribution of the illness or other condition.

[d] **Investigation components.** To fulfill these duties, a state or local public health agency may perform the following—

(1) **Identify individuals.** Acting on information developed in accordance with Sections 5-102 and 5-103 of this Article, or other reliable information, the agency shall identify all individuals thought to have been exposed to any agent that may be a potential cause of the disease outbreak, epidemic, or public health emergency.

(2) **Interview and test individuals.** The agency shall counsel, interview, and test such individuals where needed to assist in the positive identification of exposed or affected individuals and develop information relating to the source or spread of the disease or other condition of public health importance. Interviews and tests shall only be conducted with the consent of the individual (or legal representative) to be interviewed or tested.

(3) **Examine facilities or materials.** The agency may, for examination purposes, close, evacuate, or decontaminate any facility or decontaminate or destroy any material when it reasonably believes that such facility or material may endanger investigators, other individuals, or the public's health.

Section 5-105. Partner Counseling and Referral Services

[a] **Partner Counseling and Referral Services program authorized.** The state or local public health agency shall establish voluntary programs for partner counseling and referral services (PCRS). These services shall be available and easily accessible to all individuals with a contagious disease as determined by the state public health agency.

[b] **Notification process.** The administration of any PCRS program shall adhere to written regulations set forth by the state public health agency. In promulgating these regulations, the agency shall incorporate the principles of the subsections under this Section, as well as the following requirements:

(1) All information disclosed to a PCRS counselor or health care provider in the context of PCRS is confidential. Partner names or contact data may be

used only for purposes of surveillance, epidemiologic investigation, and notification by the state or local public health agency.

(2) Any individual with a contagious disease who voluntarily participates in a PCRS program shall be notified that any identified partners may be contacted and informed of their potential exposure to the contagious disease.

(3) A PCRS counselor may notify a partner only after obtaining the informed consent of the individual with the contagious disease who voluntarily provided the partner's name.

(4) When a PCRS counselor reasonably believes that an individual with a contagious disease does not plan to notify known partners, the PCRS counselor may contact those partners without the informed consent of the individual with the contagious disease.

(5) Any disclosure of information about exposure to a contagious disease to a partner by the PCRS counselor shall be made in person (where possible) and in a manner that attempts to protect the privacy of the individual with the contagious disease as well as the partner. A PCRS counselor may not disclose, for example:

i) the name or other identifying information of the individual who gave the partner's name; or

(ii) the date or period of the partner's exposure.

(6) A PCRS program shall provide counseling, testing, or referral services to an individual with a contagious disease regardless of whether the individual discloses the names of any partners.

[c] **Notification information.** Where not otherwise notified, PCRS counselors shall inform any partner of the:

(1) Nature of the contagious disease;

(2) Methods of transmission and prevention of the disease;

(3) Location information for testing or treatment sites (where available); and

(4) Existence of local support groups, mental health services, and medical facilities.

If an individual with a contagious disease chooses to notify a partner, he or she should be encouraged to provide the same information as stated above.

[d] **Program training and evaluation.** A PCRS program shall routinely train and evaluate the performance of counselors and other program personnel to ensure that high quality services are being provided. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control and Prevention for professionals participating in the program.

Legislative Source. Section 5-105 is based on TEX. HEALTH & SAFETY CODE § 81.051 (2002).

Section 5-106. Testing, Examination, and Screening

[a] **Generally.** A state or local public health agency may establish and administer testing, examination, and screening procedures or programs to identify conditions of public health importance among individuals or the population.

[b] **Requirements to conduct testing, examination, or screening.** In conducting any test, exam, or screening procedure or program, the state or local public health agency shall adhere to the following requirements:

(1) **Informed consent.** No test, exam, or screening shall be conducted without the prior informed consent of the individual (or legal representative) to whom the test or exam is being administered, except as otherwise provided in this Section;

(2) **Validity.** Concerning the administration of tests or exams, there must be available a valid and reliable test or exam for the condition of public health importance. Concerning screening, scientifically-sound methods that have adequate predictive value must be used;

(3) **Justification.** All testing, examination, or screening programs should identify a condition of public health importance that poses a threat to an individual or the public's health and may be avoided, cured, alleviated, or made less contagious through safe and effective treatment, modifications in individual behavior, or public health interventions;

(4) **Pre-test information.** Prior to testing, examination, or screening, the state or local public health agency must explain to the individual (or legal representative) the nature, scope, purposes, benefits, risks, and possible results of the test, exam, or screening; and

(5) **Post-test information.** In conjunction with or directly after the dissemination of the results of a test, exam, or screening, the state or local public health agency must fully inform the individual (or legal representative) of his or her results. If appropriate, the agency should provide counseling or inform the individual where such counseling services are available locally.

[c] **Mandatory testing and examination.** The state or local public health agency may require testing or medical examination of any individual who has or may have been exposed to a contagious disease that poses a risk or danger to others or the public's health.

(1) The agency, wherever possible, should first request that the individual be tested or examined voluntarily.

(2) All individuals of a defined class may be subjected to the test or exam pursuant to a court order.

(3) Any individual who fails to comply with a court order pursuant to this subsection shall be guilty of a misdemeanor.

(4) The state or local public health agency may also employ other public health interventions to eliminate the risk or danger to others or the public's health.

[d] **Types of screening programs.**

(1) **Compulsory screening.** The state or local public health agency may establish compulsory screening programs for conditions of public heath importance that pose a risk or seriously threaten the public's health.

(i) The agency, wherever possible, should first request that the individual be tested or examined voluntarily.

(ii) All individuals of a defined class may be subjected to the screening program pursuant to a court order.

(iii) Any individual who fails to comply with a court order pursuant to this subsection shall be guilty of a misdemeanor.

(iv) An individual's failure to submit to testing or examination may result in other public health interventions to eliminate the risk or danger to others or the public's health.

(2) **Conditional screening.** The state or local public health agency may establish conditional screening programs when necessary to achieve an important public health objective.

(i) All individuals of a defined class are subjected to the screening test or examination as a condition of participating in or receiving a service or privilege.

(ii) If an individual refuses to undergo the screening test or exam, the state or local public health agency may prevent that individual from participating in or receiving the service or privilege.

(3) **Routine voluntary screening.** The state or local public health agency may establish routine, regular, and ongoing screening programs for conditions of public health importance. All individuals of a defined class are subjected to the screening test or exam unless they choose to "opt-out" (individuals refuse to consent to the screening test or examination).

Section 5-107. Compulsory Medical Treatment

[a] **Duty to provide information.** Any health care provider or public health agent who examines or treats an individual who has a contagious disease shall instruct the individual about:

(1) Measures for preventing reinfection and spread of the disease; and

(2) The need for treatment until the individual is no longer infected.

[b] **Mandatory treatment.** The state or local public health agency may require any individual who has or may have been exposed to a contagious disease that poses a significant risk or danger to others or the public's health to complete an appropriate prescribed course of medication (including through directly-observed therapy where appropriate) to treat the contagious disease and to follow infection control provisions for the disease.

(1) The agency, wherever possible, should first request that the individual be medicated voluntarily.

(2) Any individual of the defined class may be medicated pursuant to a court order, provided the individual will directly benefit from the medication.

(3) Any individual subject to a court order shall pay all expenses of the required medication unless the individual lacks adequate financial means.

(4) Any individual who fails to comply with a court order pursuant to this subsection shall be guilty of a misdemeanor.

(5) The state or local public health agency may also employ other public health interventions to eliminate the risk or danger to others or the public's health.

[c] **Limitation.** Nothing in this Section shall be interpreted to allow the forcible or involuntary administration of medication to any individual.

Legislative Sources. Section 5-107 [a] is based on CAL. HEALTH & SAFETY CODE § 121365 (1996) and TEX. HEALTH & SAFETY CODE § 81.083 (2001). Section 5-107 [b]-[c] are based on TEX. HEALTH & SAFETY CODE § 81.083 (2001).

Section 5-108. Quarantine and Isolation

[a] **Authorization.** A state or local public health agency may isolate or quarantine an individual or group of individuals pursuant to rules or regulations promulgated by the state public health agency consistent with the provisions of this Section.

[b] **Conditions and principles.** The state or local public health agency shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:

(1) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include, but are not limited to, confinement to private homes or other private and public premises.

(2) Isolated individuals must be confined separately from quarantined individuals.

(3) The health status of isolated and quarantined individuals must be monitored regularly to determine if they continue to require isolation or quarantine.

(4) If a quarantined individual subsequently becomes infected or is reasonably

believed to have become infected with a contagious or possibly contagious disease he or she must promptly be removed to isolation.

(5) Isolation and quarantine must be immediately terminated when an individual poses no substantial risk of transmitting a contagious or possibly contagious disease to others.

(6) The needs of individuals who are isolated or quarantined shall be addressed in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, and competent medical care.

(7) Outside premises used for isolation and quarantine shall be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harms to individuals isolated and quarantined.

(8) To the extent possible, cultural and religious beliefs shall be respected in addressing the needs of individuals, and establishing and maintaining isolation and quarantine premises.

[c] **Cooperation.** Individuals subject to isolation or quarantine shall obey the public health agency's rules and regulations. Failure to obey these provisions shall constitute a misdemeanor.

[d] **Entry into isolation or quarantine premises.** The state or local public health agency may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals. Any individual entering an isolation or quarantine premises with or without authorization of the state or local public health agency may be isolated or quarantined where needed to protect the public's health.

[e] **Temporary isolation and quarantine without notice.** The state or local public health agency may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the public health agency's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(1) **Content of directive.** The written directive shall specify the following:

(i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine;

(ii) the premises subject to isolation or quarantine;

(iii) the date and time at which isolation or quarantine commences; and

(iv) the suspected contagious disease.

(2) **Copies.** A copy of the written directive shall be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals

and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises.

(3) **Petition for continued isolation or quarantine.** Within ten (10) days after issuing the written directive, the state or local public health agency shall file a petition pursuant to Section 5-108[f] for a court order authorizing the continued isolation or quarantine of the individual or groups of individuals.

[f] **Isolation or quarantine with notice.** The state or local public health agency may make a written petition to the court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

(1) **Content of petition.** The petition shall specify the following:

(i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine;

(ii) the premises subject to isolation or quarantine;

(iii) the date and time at which isolation or quarantine commences;

(iv) the suspected contagious disease;

(v) a statement of compliance with the conditions and principles for isolation and quarantine of Section 5-108[b]; and

(vi) a statement of the basis upon which isolation or quarantine is justified in compliance with this Section.

The petition shall be accompanied by the sworn affidavit of the state or local public health agency attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

(2) **Notice.** Notice to the individuals or groups of individuals identified in the petition shall be accomplished in accordance with existing rules of civil procedure.

(3) **Hearing.** A hearing must be held on any petition filed pursuant to this subsection within five (5) days of filing of the petition. In extraordinary circumstances and for good cause shown the state or local public health agency may apply to continue the hearing date on a petition filed pursuant to this Section for up to ten (10) days. The court may grant the continuance in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the need for quarantine or isolation, and other evidence.

(4) **Order.** The court shall grant the petition if, by clear and convincing evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(i) An order authorizing isolation or quarantine shall not exceed thirty (30) days.

(ii) The order shall (a) identify the isolated or quarantined individuals or groups of individuals by name or shared or similar characteristics or circumstances; (b) specify factual findings warranting isolation or quarantine pursuant to this Section; (c) include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this Section; and (d) be served on affected individuals or groups of individuals in accordance with existing rules of civil procedure.

(iii) Any individual who fails to comply with a court order pursuant to this subsection shall be guilty of a misdemeanor.

(5) **Continuances.** Prior to the expiration of an order issued pursuant to Section 5-108[f](4), the state or local public health agency may move to continue isolation or quarantine for additional periods not to exceed thirty (30) days each.

[g] **Relief from isolation and quarantine.** An isolated or quarantined individual or group of individuals may apply to the court for an order to show cause why the individual or group of individuals should not be released. The court shall rule on the application to show cause within forty-eight (48) hours of its filing. If the court grants the application, it shall schedule a hearing on the order to show cause within twenty-four (24) hours. The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.

(1) **Remedies for breach of conditions.** An isolated or quarantined individual or groups of individuals may request a hearing in the trial court for remedies regarding breaches of the conditions of isolation or quarantine. A request for a hearing shall not stay or enjoin an isolation or quarantine order.

(i) Where extraordinary circumstances justify the immediate granting of relief, the court shall fix a date for hearing on the alleged matters within twenty-four (24) hours upon receipt of the request.

(ii) Otherwise, the court shall fix a date for hearing on the alleged matters within five (5) days upon receipt of the request.

(2) **Extensions.** In any proceedings brought for relief under this subsection, the state or local public health agency may move the court to extend the time for a hearing based on extraordinary circumstances. The court may grant the extension giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the need, and available evidence.

(3) **Proceedings.** A record of the proceedings pursuant to this Section shall be made and retained. If parties cannot personally appear before the court,

proceedings may be conducted by their legal representatives and be held via any means that allows all parties to fully participate.

(4) **Appointment of Counsel.** The court shall appoint counsel at governmental expense to represent individuals or groups of individuals who are or about to be isolated or quarantined and who are not otherwise represented by counsel. Appointments shall last throughout the duration of the isolation or quarantine of the individual or groups of individuals. The state or local public health agency must provide adequate means of communication between such individuals or groups and their counsel.

(5) **Consolidation of Claims.** In any proceedings brought pursuant to this Section, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, the severity of the need, and available evidence, the court may order the consolidation of individual claims into group or claims where:

(i) The number of individuals affected is so large as to render individual participation impractical;

(ii) There are questions of law or fact common to the individual claims or rights to be determined;

(iii) The group claims or rights to be determined are typical of the affected individuals' claims or rights; and

(iv) The entire group will be adequately represented in the consolidation.

Section 5-109. Vaccination

[a] **Generally.** State and local public health agencies may require vaccination of any individual within their jurisdictions to prevent the introduction or spread of an infectious disease or condition of public health importance for which a safe and effective vaccine exists.

(1) The agency, wherever possible, should first request that the individual be vaccinated voluntarily.

(2) Any individual of the defined class may be vaccinated pursuant to a court order, subject to exceptions within this Section.

(3) Any individual subject to a court order shall pay all expenses of the required vaccination unless the individual lacks adequate financial means.

(4) Any individual who fails to comply with a court order pursuant to this subsection shall be guilty of a misdemeanor.

(5) The state or local public health agency may also employ other public health interventions to eliminate the risk or danger to others or the public's health.

[b] **Requirements to conduct vaccines or vaccination programs.** In administering any vaccine or vaccination program, the state or local public health agency shall adhere to the following requirements:

(1) **Informed consent.** No vaccine or vaccination program shall be administered without the prior informed consent of the individual (or legal representative) to whom the vaccine is being administered, except as otherwise provided in this Section;

(2) **Validity.** The state or local public health agency must employ a valid, reliable, and safe vaccine for the infectious disease or other condition of public health importance;

(3) **Justification.** All vaccination programs should further legitimate public health purposes by addressing a condition of public health importance that poses a threat to individual or public health that may be avoided, cured, alleviated, or made less contagious through safe and effective vaccination; and

(4) **Pre-vaccination information.** Prior to vaccination, the individual (or legal representative) must be informed of the nature, scope, purposes, benefits, risks, and possible results of the vaccination.

[c] **Provision of vaccines.**

(1) Vaccinations may be performed by licensed physicians, paramedical personnel, advanced practice registered nurses, trained pharmacists, or authorized, trained representatives of the state or local public health agency or a health program operated by the federal government, a tribe or tribal organization provided any individual administering a vaccine:

(i) Is competent in the administration of vaccines, including knowledge of all indications and contraindications for the administration of such agents, and recognition and treatment of any emergency reactions to such agents that may endanger to the health or life of the recipient; and

(ii) Possesses, and is capable of administering, medications and equipment as needed to treat any emergency conditions or reactions caused by the vaccination that may endanger the health or life of the recipient.

(2) Any individual (or legal representative) may choose who administers the vaccine under this Section, except when not possible during a public health emergency under Article VI of this Act.

(3) A record of each vaccination shall be maintained by the administering health care provider, and made available upon the request of the individual (or legal representative) for school entry requirements or any other purpose.

[d] **Certification of vaccination.** Any person authorized to perform vaccinations under this Section shall certify on a form developed by the state public health agency that a named individual has been vaccinated on a given date in accordance with applicable rules and regulations. This certification of vaccination shall be the principal means of demonstrating compliance with vaccination requirements. The person providing the vaccination shall file a copy of the certification in the vaccination registry.

[e] **Registry.** The state public health agency shall collect epidemiological information to establish and maintain a comprehensive vaccination registry to aid, coordinate, and promote effective and cost-efficient disease prevention and control efforts. The registry shall serve as a repository of accurate, complete, and current vaccination records in the State. In consultation with health care providers, the agency shall utilize information in the registry to notify individuals (or their legal representatives) concerning the need for and access to a particular type of vaccination pursuant to published vaccination schedules adopted by the agency.

[f] **Vaccination clinics.** Each local public health agency shall establish one or more clinics to provide vaccinations to individuals within its jurisdiction who do not or are unable to receive vaccinations through health care providers.

[g] **School or licensed day-care vaccination requirements.** Except as otherwise provided by law, no individual shall be admitted to a public or private school, or licensed day-care facility, of this state who has not been age-appropriately vaccinated for any diseases or other conditions of public health importance as required by the state public health agency.

(1) The state public health agency shall adopt and promulgate rules and regulations to protect pupils from infectious diseases consistent with the recommendations of the Centers for Disease Control and Prevention Immunization Practices Advisory Committee and the American Academy of Pediatrics Committee of Infectious Diseases. Such rules and regulations shall include at least the following:

(i) The designation of a basic series of vaccinations to be administered consistent with the published schedule of vaccinations recommended by the Centers for Disease Control and Prevention;

(ii) The requirement that all pupils at any age or level of education as determined by the agency shall have been vaccinated prior to enrollment in school or licensed day-care facility; begun the series of vaccinations not later than the time of enrollment, to be completed within a reasonable time as determined by the agency; or presented written documentation of any claim of prior vaccination in the form of a certification of vaccination;

(iii) Provisions for the denial from school or day-care attendance of individuals who have not been vaccinated or who do not meet the requirements for vaccination within the time prescribed; and

(iv) Provisions for written notification to the parent or legal guardian of a minor enrollee regarding a pending exclusion under this subsection.

(2) Responsibility for the enforcement of this subsection, as pertains to school vaccination requirements, rests equally with each school district of this state and with the individual (or legal representative) who is to attend any public or private school.

(3) Each school district shall cooperate with local public health agencies to prevent and control contagious diseases among pupils. The school district may allow any person authorized by this Section to administer a vaccine to any pupil with the pupil's (or legal representative's) consent.

(4) A pupil shall be exempt from these requirements upon presentation of a certification of vaccination pursuant to Section 5-109[d], or upon presentation of a written statement of the pupil's (or legal representative's) objections to vaccination under Section 5-109[h]

(5) During a public health emergency, or if there is a disease outbreak or an epidemic of any contagious disease as determined by the state or local public health agency, any exempted pupil may be temporarily excluded from school attendance unless and until the pupil has been vaccinated consistent with the agency's requirements or the pupil's presence no longer presents any risk to the pupil's or the public's health.

[h] **Exceptions.** No individual shall be required to be vaccinated pursuant to this Section for religious or philosophical reasons under the exceptions stated in Section 5-101[b](7), or when if, in the discretion of anyone who is authorized to administer vaccines under this Section, the individual:

(1) Has an existing physical disability or reasonable certainty of a reaction detrimental to that individual which may contraindicate vaccination;

(2) Has experienced the natural disease against which the vaccination protects, thus rendering the administration of the vaccine ineffectual; or

(3) Has produced laboratory confirmation of the presence of existing adequate immunity.

then a statement affirming any of these factors approved by the state or local public health agency and executed by the authorized vaccine provider may be accepted in lieu of a certification of vaccination.

[i] **Procurement.** The state public health agency shall negotiate for the purchase of vaccines to achieve the purposes of this Section. The agency shall secure and maintain facilities to safely and adequately preserve and store vaccines.

[j] **Immunity.** A person who administers or authorizes the administration of a vaccine under this Section is immune from criminal or civil liability for:

(1) any injury caused by the vaccine if the vaccination was required by the state public health agency, and the administration did not involve willful misconduct or gross negligence; or

(2) the failure to vaccinate a minor or other dependent because of the failure or refusal of a legal representative to consent to the vaccination.

Legislative Sources. Sections 5-109[a-b] are based on VA. CODE ANN. §§ 32.1-43, 48 (2001); GA. CODE ANN. §31-12-3 (2001). Section 5-109[c] is adapted from CAL. BUS. & PROF. CODE §2860.5 (2001); HAW. REV. STAT.§325-33 (2001); WIS. STAT. § 450.035 (2001); TEX. HEALTH & SAFETY CODE §161.004 (2002). Section 5-109[d] is adapted from GA.CODE ANN. §20-2-771 (2001). Section 5-101[g] is adapted from ARK. CODE ANN.§6-18-701 (2001); DEL. HEALTH & SAFETY CODE, tit.14 §131 (2001); CAL.HEALTH & SAFETY CODE §120335 (2001); MINN. STAT. §121A.15 (2001); KY. REV. STAT ANN. §158.150 (2001). Section 5-109[h](1) is based on ARK. CODE ANN.§6-18-702 (2001); CAL. EDUC. CODE §49403 (2002). Section 5-109[h](2) is based on N.J. STAT. ANN. §26:1A-9.1 (2002); HAW. REV. STAT. §325-34 (2001); MASS. ANN. LAWS, ch.76, §15 (2002). Section 5-109[h] is based on DEL. CODE ANN., tit.14 §131 (2001); ARK. CODE ANN.§6-60-504 (2001).

Section 5-110. Licenses

[a] **License Required to Engage in Specified Activities.** The state public health agency shall promulgate regulations requiring a license to own or operate a place or business or engage in an activity that may be detrimental to the public's health.

[b] **Scope.** The state or local public health agency shall determine those businesses or activities that are subject to license requirements under this Section, including but not limited to the following:

(1) Places or businesses–*(e.g, child care facilities, food service establishments, health care facilities, nursing facilities, retail establishments, tattoo parlors, temporary vendors*).

(2) Activities–*(e.g., barbers, cosmeticians, food handlers or servers, manicurists, medical practitioners, pharmacists*).

[c] **Application.** To obtain a license, a person must submit an application to the state or local public health agency on a form approved by the state public health agency accompanied by the license fee (in an amount to be determined by the agency).

[d] **Issuance.** On receiving a license application, the state or local public health agency may inspect the applicant's facilities, operations, and premises to determine whether the applicant meets the conditions of the license. The agency shall issue a license to each applicant who meets the conditions of the license for conducting the business or activity.

[e] **Revocation.** If the state or local public health agency finds that a violation of a condition of a license has occurred or is occurring, the agency shall give written notice to the recipient describing the nature of the violation and demanding that the violation cease.

(1) The state or local public health agency may initiate proceedings to revoke the license if the recipient refuses or fails to comply with the notice in the time and manner directed in the notice.

(2) When the state or local public health agency determines that a violation of a license presents an imminent threat to the public's health, the agency may take immediate action to halt the activities of the recipient that are in violation of the license.

[f] **Renewal.** A person holding a license must renew the license prior to its expiration date by submitting a renewal application and accompanying fee to be determined by the state or local public health agency. The agency shall not renew the license of a person that has not corrected deficiencies or violations of the license conditions.

Legislative Sources. Section 5-110[a] is adapted from MICH. STAT. ANN. 333.16106. Section 5-110[b] was adapted from TEX. HEALTH & SAFETY § 141.003. Section 5-110[e] was adapted from TEX. HEALTH & SAFETY § 141.012. Section 5-110[f] was adapted from TEX. HEALTH & SAFETY § 141.005.

Section 5-111. Public Health Nuisances

[a] **Nuisance Prohibited.** It is unlawful for any person to create, aggravate, or allow the existence of a nuisance.

[b] **Identification.** A state or local public health agency shall immediately and thoroughly investigate any suspected nuisance upon receiving a complaint of its existence or when there is probable cause to believe that a nuisance exists within the agency's jurisdiction.

[c] **Abatement.** A state or local public health agency may issue an order to avoid, correct, or remove, at the owner's expense, any property or condition that the agency determines to be a nuisance.

(1) The order shall specify the nature of the nuisance and the method(s) to abate the nuisance, including:

(i) To close, direct, and compel the evacuation of, or decontaminate or cause to be decontaminated any real property as needed; or

(ii) To decontaminate or cause to be decontaminated, or destroy, any material, goods, or conditions.

(2) The order shall designate a reasonable time in which the nuisance must be abated.

(3) If a property owner or occupant does not comply with the order within the specified time, the state or local public health agency may cause the nuisance to be removed or abated at the owner or occupant's expense.

(4) Whenever the removal or abatement of a nuisance requires immediate action by the state or local public health agency, the agency may pay the costs of removal or abatement and seek reimbursement for expenses from the responsible persons.

(5) If the person responsible for a nuisance refuses to pay or reimburse expenses incurred by the state or local public health agency, expenses may be:

(i) Assessed against affected real property as a lien;

(ii) Collected from rents paid on real property, pursuant to a court order obtained by the state or local public health agency; or

(iii) Collected in the same manner as personal taxes assessed by the State.

(6) An occupant or other person who caused or permitted a nuisance to exist is liable to the owner of the premises for the amount paid by the owner or assessed against the property.

Legislative Sources. Section 5-111 was generally adapted from 10 N.Y. ADC 8.1; MICH. STAT. ANN. 333.2455; TEX. HEALTH & SAFETY § 341.012; and N.D. CENT. CODE § 23-35-09. Section 5-111[c](5) was adapted from N.Y. PUB. HEALTH § 1301. (See N.Y. PUB. HEALTH § 1307 for execution of lien).

Section 5-112. Administrative Searches and Inspections

[a] **To determine existence of a nuisance.**

(1) Upon consent of the owner or custodian, a public health agent may enter any property at any reasonable time to inspect, investigate, evaluate, conduct tests, or take samples for testing as may be reasonably necessary to determine compliance with any law administered by the state or local public health agency.

(2) If the public health agent is denied entry, application may be made to a court for an administrative search warrant authorizing the investigation, evaluation, inspection, testing, or taking of samples for testing.

(3) When a nuisance is known by a state or local public health agency to exist on the premises and the nuisance poses an immediate threat to an individual's or the public's health, a public health agent may enter the affected property without the consent of the owner or custodian and without an administrative search warrant to inspect, investigate, and evaluate the conditions on the premises as may be reasonably necessary to abate the nuisance.

(4) A public health agent may enter any public place to inspect, investigate, evaluate, conduct tests, or take samples for testing as may be reasonably necessary to determine compliance with the provisions of any law administered by the state or local public health agency.

[b] **To determine compliance with license conditions.** Consistent with the terms and conditions of a license, a public health agent may enter at any reasonable time a property (on which activities are conducted pursuant to a license) to inspect, investigate, evaluate, conduct tests, or take samples for testing where reasonably necessary to determine compliance with the conditions of the license.

[c] **Additional Authority.** This Section shall not limit the authority of any state or local public health agency to conduct an administrative search or inspection of public water or food supplies, restaurants, places of lodging, or any other public or private place under existing federal or state law.

Legislative Sources. Section 5-112[a, b] were adapted from VA. CODE ANN. § 32.1-25. Section 5-112[c] was adapted from VT. HOUSE BILL 664 (1986).

ARTICLE VI
PUBLIC HEALTH EMERGENCIES

Section 6-101. Planning for a Public Health Emergency

[a] **Public Health Emergency Planning Commission.** The Governor shall appoint a Public Health Emergency Planning Commission, consisting of the State directors (or their designees) of federal, tribal, state, and local public health agencies and other agencies the Governor deems relevant to public health emergency preparedness, a representative group of state legislators, members of the judiciary, representatives of tribal governments, and any other persons chosen by the Governor. The Governor shall also designate the chair of the Commission.

[b] **Public Health Emergency Plan.** The Commission shall, within six months of its appointment, deliver to the Governor a plan for responding to a public health emergency that includes provisions or guidelines in compliance with this Article on the following:

(1) Notifying and communicating with the population during a state of public health emergency;

(2) Central coordination of resources, manpower, and services, including responses by persons in the public health system;

(3) The location, procurement, storage, transportation, maintenance, and distribution of essential materials, including medical supplies, drugs, vaccines, food, shelter, clothing, and beds;

(4) The continued, effective operation of the judicial system including the potential identification and training of personnel to serve as emergency judges for matters of isolation and quarantine;

(5) The method of evacuating populations, and housing and feeding the evacuated populations;

(6) The identification and training of health care providers to diagnose and treat individuals with infectious diseases during an emergency;

(7) The treatment and vaccination of individuals;

(8) The safe disposal of infectious wastes and human remains;

(9) The safe and effective protection of individuals isolated, quarantined, vaccinated, tested, or treated during a state of public health emergency;

(10) Ensuring that each state or local public health agency within the state identifies

(i) Sites where individuals can be isolated or quarantined;

(ii) Sites where medical supplies, food, and other essentials can be distributed to the population;

(iii) Sites where public health and emergency workers can be housed and fed; and

(iv) Routes and means of transportation of people and materials;

(11) Relevant cultural norms, values, religious principles, and traditions; and

(12) Other measures necessary to carry out the purposes of this Article.

The Commission shall distribute this plan for comments to those within the public health system who will be responsible for its implementation, other interested persons, and the public, and annually review and modify (as necessary) the plan.

Section 6-102. Declaring a State of Public Health Emergency

[a] **Declaration.** A state of public health emergency may be declared by the Governor upon the occurrence of a public health emergency. Prior to such a declaration, the Governor shall consult with state and local public health agencies and may consult with any additional public health or other experts as needed. The Governor may act to declare a public health emergency without such consultations when the situation calls for prompt and timely action.

[b] **Content of declaration.** A state of public health emergency shall be declared by an executive order that specifies:

(1) The nature of the public health emergency;

(2) The political subdivision(s) or geographic area(s) subject to the declaration;

(3) The conditions that have brought about the public health emergency;

(4) The duration of the state of the public health emergency, if less than thirty (30) days; and

(5) The primary state or local public health agency responding to the emergency.

[c] **Effect of declaration.** The declaration of a state of public health emergency shall activate the disaster response and recovery aspects of the state, local, and inter-jurisdictional disaster emergency plans in the affected political subdivision(s) or geographic area(s). Such declaration authorizes the deployment and use of any forces to which the plans apply and the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or available pursuant to this Article.

[d] **Emergency powers.** During a state of public health emergency, the Governor may:

(1) Suspend the provisions of any regulatory statute prescribing procedures for conducting state business, or the orders, rules and regulations of any state agency, where strict compliance with the same would prevent, hinder, or delay necessary action (including emergency purchases) to respond to the public health emergency by the state or local public health agency, or

increase the health threat to the population.

(2) Utilize all available resources of the state government and its political subdivisions, as reasonably necessary to respond to the public health emergency.

(3) Transfer the direction, personnel, or functions of state departments and agencies in order to perform or facilitate response and recovery programs regarding the public health emergency.

(4) Mobilize all or any part of the organized militia into service. An order directing the organized militia to report for active duty shall state the purpose for which it is mobilized and the objectives to be accomplished.

(5) Provide aid to and seek aid from other states in accordance with any interstate agreements.

(6) Seek aid from the federal government in accordance with federal programs or requirements.

[e] **Coordination.** The state public health agency shall coordinate all matters pertaining to the public health emergency response of the state. The agency shall have primary jurisdiction, responsibility, and authority for:

(1) Planning and executing public health emergency assessment, mitigation, preparedness response, and recovery;

(2) Coordinating public health emergency responses between state and local authorities;

(3) Collaborating with public and private sector partners, and elected officials of other states;

(4) Organizing public information activities regarding public health emergency response operations; and

(5) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies.

[f] **Identification.** After the declaration of a state of public health emergency, special identification for all persons within the public health system shall be issued. The identification shall indicate the authority of the bearer to exercise public health functions and emergency powers during the state of public health emergency. Public health personnel shall wear the identification in plain view.

[g] **Enforcement.** During a state of public health emergency, the state public health agency may request assistance in enforcing orders pursuant to this Article from the public safety authority. The public safety authority may request assistance from the organized militia to enforce the orders of the state public health agency.

[h] **Termination of declaration.**

(1) **Executive order.** The Governor shall terminate the declaration of a state

of public health emergency by executive order upon finding that the circumstances or conditions that caused the emergency no longer exist.

(2) **Automatic termination.** Notwithstanding any other provision of this Article, the declaration of a state of public health emergency shall be terminated automatically after thirty (30) days unless renewed for subsequent thirty (30) day periods by the Governor under the same standards and procedures set forth in this Section.

(3) **State legislature.** By a majority vote in both chambers, the [*State legislature*] may terminate the declaration of a state of public health emergency any time after the date of original declaration upon finding that the circumstances or conditions that caused the emergency no longer exist. Such a termination by the *[State legislature]* shall override any renewal by the Governor.

(4) **Content of termination order.** All orders or legislative actions terminating the declaration of a state of public health emergency shall indicate the nature of the emergency, the area(s) that was threatened, and the conditions that make possible the termination.

[i] **Public Information Regarding a Public Health Emergency.** The state or local public health agency shall inform members of the public when a state of public health emergency has been declared or terminated, how to protect themselves, and what actions are being taken to control the emergency. The agency shall use all available and reasonable means to get the information promptly to the public through one or more languages (if necessary), and in a manner accessible to individuals with disabilities.

Section 6-103. Special Powers During a State of Public Health Emergency: Management of Property

[a] **Emergency measures concerning facilities and materials.** During a state of public health emergency, the state or local public health agency is authorized:

(1) **Close facilities.** To close, direct, and compel the evacuation of, or decontaminate or cause to be decontaminated any facility of which there is reasonable cause to believe that it may endanger the public's health.

(2) **Use of materials and facilities.** To procure, by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. Such materials and facilities include communication devices, carriers, real estate, fuels, food, and clothing.

(3) **Use of health care facilities.** To require a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization or the ability to continue doing business in the state as a health care facility. The use of the health care facility may include

transferring the management and supervision of the health care facility to the state or local public health agency for a limited or unlimited period of time.

(4) **Destruction of materials.** To decontaminate or cause to be decontaminated, or destroy, any material of which there is reasonable cause to believe that it may endanger the public's health.

(5) **Control of materials.** To inspect, control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other commodities, as may be reasonable and necessary to respond to the public health emergency.

[b] **Control of roads and public areas.** During a state of public health emergency, the state or local public health agency is authorized:

(1) To prescribe routes, modes of transportation, and destinations in connection with evacuation of individuals or the provision of emergency services.

(2) To control or limit ingress and egress to and from any stricken or threatened public area, the movement of individuals within the area, and the occupancy of premises therein, if such action is reasonable and necessary to respond to the public health emergency.

[c] **Safe disposal of infectious waste.** During a state of public health emergency, the state or local public health agency is authorized:

(1) **Adopt measures.** To adopt and enforce measures to provide for the safe disposal of infectious waste as may be reasonable and necessary to respond to the public health emergency. Such measures may include the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste.

(2) **Control of facilities.** To require any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this state, and any landfill business or other such property, to accept infectious waste, or provide services or the use of the business, facility, or property if such action is reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as such a business or facility. The use of the business, facility, or property may include transferring the management and supervision of such business, facility, or property to the state or local public health agency for a limited or unlimited period of time.

(3) **Use of facilities.** To procure, by condemnation or otherwise, any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this state and any landfill business or other such property as may be reasonable and necessary to

respond to the public health emergency, with the right to take immediate possession thereof.

(4) **Identification.** To require all bags, boxes, or other containers for infectious waste to be clearly identified as containing infectious waste, and if known, the type of infectious waste (consistent with federal and state laws).

[d] **Safe disposal of human remains.** During a state of public health emergency, the state or local public health agency is authorized:

(1) **Adopt measures.** To adopt and enforce measures to provide for the safe disposal of human remains as may be reasonable and necessary to respond to the public health emergency. Such measures may include the embalming, burial, cremation, interment, disinterment, transportation, and disposal of human remains.

(2) **Possession.** To take possession or control of any human remains.

(3) **Labeling.** To require clear labeling of every human remains prior to disposal with all available information to identify the decedent and the circumstances of death. Any human remains of a deceased individual with a contagious disease shall have an external, clearly visible tag indicating that the human remains is infected and, if known, the contagious disease.

(4) **Identification.** To require persons in charge of disposing of any human remains to maintain a written or electronic record of each human remains and all available information to identify the decedent and the circumstances of death and disposal. If human remains cannot be identified prior to disposal, a qualified individual shall, to the extent possible, take fingerprints and photographs of the human remains, obtain identifying dental information, and collect a DNA specimen. All such information shall be promptly forwarded to the state or local public health agency.

(5) **Disposal.** To order the disposal of any human remains of an individual who has died of a contagious disease through burial or cremation within twenty-four (24) hours after death. To the extent possible, religious, cultural, family, and individual beliefs of the deceased individual or his or her family shall be considered when disposing of any human remains.

(6) **Control of facilities.** To require any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this state to accept any human remains or provide the use of its business or facility if such actions are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as such a business or facility. The use of the business or facility may include transferring the management and supervision of such business or facility to the state or local public health agency for a limited or unlimited period of time.

(7) **Use of facilities.** To procure, by condemnation or otherwise, any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this state as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.

[e] **Control of health care supplies.**

(1) **Procurement.** During a state of public health emergency, the state or local public health agency may purchase and distribute anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, medical supplies, or personal protective equipment to prepare for or control a public health emergency.

(2) **Rationing.** Where a state of public health emergency results in a state-wide or regional shortage or threatened shortage of any product under subsection (1), whether or not such product has been purchased by the agency, the agency may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product. In making rationing or other supply and distribution decisions, the agency may give preference to health care providers, disaster response personnel, and mortuary staff.

(3) **Distribution.** During a state of public health emergency, the agency may procure, store, or distribute any anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. If a public health emergency simultaneously affects more than one state, nothing in this Section shall be construed to allow the state or local public health agency to obtain anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies for the primary purpose of hoarding such items or preventing their fair and equitable distribution among affected states.

[f] **Civil Proceedings.** To the extent practicable consistent with the protection of public health, prior to the destruction of any property under this Article, the state or local public health agency shall institute appropriate civil proceedings concerning the property to be destroyed in accordance with the existing laws and rules of the courts or any such rules that may be developed by the courts for use during a state of public health emergency. Any property acquired by the agency through such proceedings shall, after entry of the decree, be disposed of by destruction as the court may direct.

Section 6-104. Special Powers During a State of Public Health Emergency: Protection of Individuals

[a] **Protection of individuals.** During a state of public health emergency, the state or local public health agency shall use every available means to prevent the

transmission of infectious disease and to ensure that all cases of contagious disease are subject to proper control and treatment.

[b] **Testing, examination, screening, treatment, and vaccination.** During a state of public health emergency, the state or local public health agency may perform or administer tests, examinations, screenings, treatment, or vaccination consistent with the provisions of Sections 5-106, 5-107, and 5-109 or any rules or regulations promulgated by the state public health agency thereto as necessary for the diagnosis or treatment of individuals or to address the public health emergency. Any such actions may be performed by any qualified individual authorized to do so by the state or local public health agency, but must not reasonably be likely to lead to serious harm to the affected individual.

[c] **Isolation and quarantine.** During a state of public health emergency the state or local public health agency may isolate or quarantine an individual or groups of individuals consistent with the provisions of Section 5-108 or any rules or regulations promulgated by the state public health agency thereto. This includes any individual whose refusal of, or whose inability or unwillingness to undergo testing, examination, screening, treatment, or vaccination for reasons of health, religion, or philosophical objections results in uncertainty regarding whether he or she has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.

[d] **Collection of laboratory specimens; performance of tests.** During a state of public health emergency, the state or local public health agency may collect specimens and perform tests on living and deceased individuals, and any animal (living or deceased), and acquire any previously collected specimens or test results that are reasonable and necessary to respond to the public health emergency.

(1) **Contamination.** Specimen collection, handling, storage, and transport to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration and provide for the safe collection, storage, handling, and transport of such specimen. All specimens shall be clearly marked.

(2) **Chain of custody.** Any person authorized to collect specimens or perform tests shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits.

(3) **Criminal investigation.** Recognizing that, during a state of public health emergency, any specimen collected or test performed may be evidence in a criminal investigation, any person authorized to collect specimens or perform tests shall provide such support as is reasonable and necessary to aid in a relevant criminal investigation.

[e] **Licensing and appointment of health personnel.** During a state of public health emergency, the state or local public health agency is authorized:

(1) **Health care providers.** To require in-state health care providers to assist in the performance of vaccination, treatment, examination, testing, quarantine, or insolation of any individual as a condition of licensure, authorization, or the ability to continue to function as a health care provider in this state.

(2) **Health care providers from other jurisdictions.** To appoint and prescribe the duties of such out-of-state emergency health care providers as may be reasonable and necessary to respond to the public health emergency.

(i) The appointment of out-of-state emergency health care providers shall not exceed the termination of the declaration of a state of public health emergency. The state or local public health agency may terminate the out-of-state appointments at any time or for any reason provided that any such termination will not jeopardize the health, safety, and welfare of the people of this state.

(ii) The state public health agency may waive any or all licensing requirements, permits, or fees required by state code and applicable orders, rules, or regulations for health care providers from other jurisdictions to practice in this state.

(iii) Any out-of-state emergency health care provider appointed pursuant to this Section shall not be held liable for any civil damages as a result of medical care or treatment related to the response to the public health emergency unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of the patient.

(3) **Personnel to perform duties of medical examiner or coroner.** To authorize the state or local medical examiner or coroner to appoint and prescribe the duties of such emergency assistant medical examiners or coroners as may be required for the proper performance of the duties of the office.

(i) The appointment of emergency assistant medical examiners or coroners shall not exceed the termination of the declaration of a state of public health emergency. The medical examiner or coroner may terminate such emergency appointments at any time or for any reason, provided that any such termination will not impede the performance of the duties of the office.

(ii) The medical examiner or coroner may waive licensing requirements, permits, or fees required by state code and applicable orders, rules, or regulations for the performance of these duties.

[f] **Access to mental health support personnel.** During and after the declaration of a state of public health emergency, the state or local public health agency shall provide public information about and referrals to mental health support personnel to address psychological responses concerning the public health emergency.

Section 6-105. Private Liability

[a] During a state of public health emergency, any person owning or controlling real estate or other premises who voluntarily and without compensation permits the designation or use of the whole or any part of such real estate or premises for the purpose of sheltering individuals, together with that person's successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any individual on or about such real estate or premises under permission, or for negligently causing loss of, or damage to, the property of such person.

[b] During a state of public health emergency, any non-governmental person and employees and agents of such person in the performance of a contract with, and under the direction of, the state or its political subdivisions, or who renders assistance or advice at the request of the state or its political subdivisions under the provisions of this Article shall not be civilly liable for causing the death of, or injury to, any individual or damage to any property except in the event of gross negligence or willful misconduct.

[c] The immunities provided in this Section shall not apply to any non-governmental person, or employees and agents of such person, whose act or omission caused in whole or part the public health emergency and who would otherwise be liable therefore.

Section 6-106. Compensation

[a] **Takings.** The State shall pay just compensation to the owner of any facilities or materials that are lawfully taken or appropriated by a state or local public health agency for its temporary or permanent use during a state of public health emergency according to the procedures and standards set forth in this Article.

[b] **Nuisances.** Compensation shall not be provided for facilities or materials that are closed, evacuated, decontaminated, or destroyed pursuant to Section 6-103 when there is reasonable cause to believe that they may endanger the public's health.

[c] **Actions.** Any action against the state with regard to the payment of compensation shall be brought in court in accordance with existing court laws and rules, or any such rules that may be developed by the courts for use during a state of public health emergency.

[d] **Amount.** The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to non-emergency eminent domain procedures, as provided in [*State eminent domain laws*], except that the amount of compensation calculated for items obtained under Section 6-103[e] shall be limited to the costs incurred to produce the item.

ARTICLE VII
PUBLIC HEALTH INFORMATION PRIVACY

Section 7-101. Acquisition of Protected Health Information

[a] **In General.** Protected health information shall not be secretly acquired by a state or local public health agency. A state or local public health agency shall only acquire protected health information where:

(1) The acquisition relates directly to a public health purpose;

(2) The acquisition is reasonably likely to achieve such purpose, taking into account the provisions of this Article and other governing laws, and the availability of resources or means to achieve such purpose; and

(3) The public health purpose cannot otherwise be achieved as well or better with non-identifiable health information.

[b] **Notice Requirements.** Prior to implementation of a determination by a state or local public health agency to acquire or store protected health information, the agency shall announce its intentions to acquire or store protected health information and the purposes for which the information will be used. This announcement shall be made through public written notice distributed and posted in a manner as will reasonably inform members of the affected community.

(1) Such notice shall not identify any individual who is or may be the subject of protected health information.

(2) Where state or local law requires counseling services regarding a reportable disease, such counseling services shall include information that the disease is reportable to the state or local public health agency and a description of the purposes for which the individual's protected health information will be used by such agency.

[c] **Subsequent Acquisition of Protected Health Information.** A state or local public health agency shall not acquire protected health information from another federal, tribal, state, or local public health agency unless the acquisition is consistent with the requirements of this Section.

Section 7-102. Use of Protected Health Information

[a] **In General.** Protected health information shall be used by a state or local public health agency solely for public health purposes that are directly related to the purpose for which the information was acquired.

[b] **Scope of uses.** Non-identifiable health information shall be used by a state or local public health agency whenever possible consistent with the accomplishment of public health purposes.

[c] **Minimum Information.** Any use of protected health information permitted by this Article shall be limited to the minimum amount of information which the public health agent using the information reasonably believes is necessary to accomplish the public health purpose.

[d] **Subsequent Uses.** A state or local public health agency may use protected health information for public health purposes that are not directly related to the purpose for which the information was acquired provided that the agency meets the requirements of Section 7-101[a] and [b] before using such information.

[e] **Commercial Use.** Protected health information shall not be used by a state or local public health agency for commercial purposes.

[f] **Research Use.** A state or local public health agency may use protected health information for public health, epidemiological, medical, or health services research provided that:

(1) It is not feasible to obtain the informed consent of the individual who is the subject of the information;

(2) Identifiable information is necessary for the effectiveness of the research project;

(3) The minimum amount of information necessary to conduct the research is used;

(4) The research utilizing the protected health information will likely contribute to achieving a public health purpose;

(5) The information is made non-identifiable at the earliest opportunity consistent with the purposes of the research project and expunged after the conclusion of the project; and

(6) Such uses are made pursuant to assurances of protections through the execution of a confidentiality agreement after review and approval of an institutional review board. The agreement shall require any person receiving such information to adhere to protections for the privacy and security of the information equivalent to or greater than such protections provided in this Article.

[g] **Expunging Protected Health Information.** Protected health information whose use by a state or local public health agency no longer furthers the public health purpose for which it was acquired shall be expunged in a confidential manner.

Section 7-103. Disclosure of Protected Health Information

[a] **Non-Public Information.** Protected health information is not public information, and may not be disclosed without the informed consent of the individual (or legal representative) who is the subject of the information, except as provided in this Article.

[b] **Informed Consent.** For the purposes of this Article, "informed consent" means a written authorization for the disclosure of protected health information on a form substantially similar to one promulgated by the state public health agency which is signed in writing or electronically by the individual who is the subject of the information. This authorization shall be dated and shall specify to whom the disclosure is authorized, the general purpose for such disclosure, and the time period in which the authorization for the disclosure is effective.

(1) An individual may revoke an authorization in writing at any time. The individual is responsible for informing the person who originally received the authorization that it has been revoked.

(2) If the authorization does not contain an expiration date or has not previously been revoked, it automatically expires [*six months*] after the date it is signed.

(3) A general authorization for the disclosure of health-related information shall not be construed as written authorization pursuant to informed consent for the disclosure of protected health information unless such authorization also complies with this Section.

(4) When the individual is not competent or is otherwise legally unable to give informed consent, written authorization may be provided by the individual's legal representative. For the purposes of this subsection, a minor under the age of [*to be inserted consistent with state law*] years is unable to give informed consent.

[c] **Scope of Disclosures.** Protected health information shall be disclosed with the informed consent of the individual who is the subject of the information to any person and for any purpose for which the disclosure is authorized pursuant to informed consent.

(1) Disclosures shall be limited to the minimum amount of information which the person making the disclosure reasonably believes is necessary to accomplish the purpose of the disclosure, except when the disclosure is authorized through the informed consent of the individual who is the subject of the information.

(2) Disclosures shall be accompanied or followed by (in cases of oral disclosures, within *three days*) a statement in writing concerning the public health agency's disclosure policy, which shall include the following or substantially similar language: "This information has been disclosed to you from confidential public health records protected by state and federal law. Any further disclosure of this information in an identifiable form may be prohibited without the written informed consent of the individual who is the subject of the information or as otherwise permitted by federal or state law. Unauthorized disclosure of this information may result in significant criminal or civil penalties."

[d] **Disclosures Without Informed Consent.** Protected health information may be disclosed without the informed consent of the individual who is the subject of the information where such disclosures are made:

(1) Directly to the individual;

(2) To appropriate federal agencies or authorities as required by federal or state law;

(3) To health care personnel to the extent necessary in a medical emergency or a state of public health emergency to protect the health or life of the individual who is the subject of the information from serious, imminent harm;

(4) To a health oversight agency to enable the agency to perform a health oversight function authorized by law if:

(i) The state or local public health agency itself is the focus of the oversight inquiry;

(ii) The protected health information is not removed from the premises, custody, or control of the state or local public health agency; and

(iii) The health oversight agency does not record the names or other identifying information of individuals who are the subjects of protected health information;

(5) To report information in a certificate of death, autopsy report, or related documents prepared under applicable laws or regulations; or

(6) To identify a deceased individual or the individual's manner of death, or provide necessary information about a deceased individual who is a donor or prospective donor of an anatomical gift.

[e] **Disclosures for Criminal or Civil Purposes.** No protected health information shall be disclosed, discoverable, or compelled to be produced pursuant to subpoena, compelled testimony of public health agents or other persons who have knowledge of such information subsequent to its acquisition by the state or local public health agency, in any civil, criminal, administrative, or other legal proceeding, except:

(1) A state or local public health agency may seek a court order granting the disclosure of protected health information upon an application showing a clear danger to an individual or the public's health that can only be averted or mitigated through a disclosure by the state or local public health agency.

(2) Upon receiving an application for an order authorizing disclosure pursuant to this Section, the court shall enter an order directing that all materials which are part of the application and decision of the court be sealed. Such materials shall not be made available to any person except to the extent necessary to conduct proceedings concerning the application, including

any appeal. Such order shall further direct that all proceedings concerning the application be conducted *in camera*.

(3) Any individual about whom protected health information is sought and any person holding protected health information from whom disclosure is sought

(i) Shall be notified of an application for its disclosure pursuant to this Section; and

(ii) May file a written response to the application, or appear for the limited purpose of providing evidence on the statutory criteria for the issuance of an order pursuant to this Section.

(4) The court may grant an order without such notice or appearance where an application by a state or local public health agency or authorized public health agent requires immediate action to avert or mitigate a clear danger to the public's health. In assessing clear danger, the court shall provide written findings of fact and shall weigh the need for disclosure against individual privacy interests and any public health purpose which may be curtailed by disclosure.

(5) An order authorizing disclosure of protected health information shall:

(i) Limit disclosure to that information which is necessary pursuant to the application;

(ii) Limit disclosure to those persons who need the information and specifically prohibit re-disclosure to any other persons; and

(iii) Include any other measures that the court deems necessary to limit any disclosures not authorized by the order.

[f] **Deceased Rights.** The rights of a deceased individual as provided by this Article may be exercised for a period of [*two*] years after the date of death by one of the individuals in the following order of priority, subject to any written authorization for another person to act by the decedent:

(1) an executor or administrator of the estate of a deceased individual, or one soon to be appointed in accordance with a will or other legal instrument;

(2) a surviving spouse or domestic partner;

(3) an adult child; or

(4) a parent

[g] **Secondary Disclosures.** No person to whom protected health information has been disclosed shall disclose the information to another person except as authorized by this Article. This subsection shall not apply to:

(1) The individual who is the subject of the information;

(2) The individual's legal representative where the individual is unable to give

informed consent under Section 7-103[b](4); or

(3) Any person who is specifically required by federal or state law to disclose the information.

[h] **Record of Disclosures.** A state or local public health agency shall establish a written or electronic record of any of its disclosures of protected health information authorized by this Article. This record shall be treated as protected health information for the purposes of this Article. The record of disclosures shall include the following information:

(1) The name, title, address, and institutional affiliation, if any, of the person to whom protected health information is disclosed;

(2) The date and purpose of the disclosure;

(3) A brief description of the information disclosed; and

(4) The legal authority for the disclosure.

This record shall be maintained by the state or local public health agency for a period of ten years, even if the protected health information disclosed is no longer in the agency's possession.

Section 7-104. Security Safeguards

[a] **Duty to Hold Information Secure.** State and local public health agencies have a duty to acquire, use, disclose, and store protected health information in a confidential manner that safeguards the security of the information.

[b] **Security Measures.** State and local public health agencies and other persons who receive protected health information disclosed by any agency, other than the individual (or legal representative) who is the subject of the information, shall take appropriate measures to protect the security of such information, including:

(1) Maintaining such information in a physically secure environment, that:

(i) Minimizes the physical places in which such information is used or stored; and

(ii) Prohibits the use or storage of such information in places where the security of the information may likely be breached or is otherwise significantly threatened;

(2) Maintaining such information in a technologically secure environment;

(3) Limiting access to such information to those persons who have a demonstrable need to access such information;

(4) Reducing the length of time that such information is used or stored in a personally-identifiable form to that period of time which is necessary for the use of the information;

(5) Eliminating unnecessary physical or electronic transfers of such information;

(6) Expunging duplicate, unnecessary copies of such information;

(7) Developing and distributing written guidelines concerning the preservation of the security of such information;

(8) Assigning personal responsibility to persons who acquire, use, disclose, or store such information for preserving its security;

(9) Providing initial and periodic security training of all persons who acquire, use, disclose, or store such information;

(10) Thoroughly investigating any potential or actual breaches of security concerning such information;

(11) Imposing disciplinary sanctions for any breaches of security when appropriate; and

(12) Undertaking continuous review and assessment of security standards.

[c] **Display of Written Protections.** Wherever protected health information is accessible by public health agents on the premises of a state or local public health agency, there shall be prominently displayed a notice in writing concerning the agency's disclosure policy, which shall include the following or substantially similar language: "Protected health information contains health-related information about individuals which may be highly-sensitive. This information is entitled to significant privacy protections under federal and state law. The disclosure of this information outside state and local public health agencies in an identifiable form is prohibited without the written consent of the individual who is the subject of the information, unless specifically permitted by federal or state law. Unauthorized disclosures of this information may result in significant criminal or civil penalties."

[d] **Individuals on Agency Premises.** All public health agents or other persons having authority at any time to acquire, use, disclose, or store protected health information shall:

(1) Be informed of their personal responsibility for preserving the security of protected health information;

(2) Execute a confidentiality statement prior to entering the premises, or as soon thereafter as possible, pursuant to their review of written guidelines consistent with this Article concerning the preservation of the security of such information;

(3) Fulfill their personal responsibility for preserving the security of protected health information to the degree possible; and

(4) Report to the public health information officer any known security breaches or actions which may lead to security breaches. The identity of any person making a report under this subsection shall not be revealed, without the consent of the person making the report, to anyone other than investigating public health officials or law enforcement officers.

[e] **Establishment of Public Health Information Officer.** State and local public health agencies shall appoint or designate a public health agent as the agency's public health information officer. This individual shall have overall responsibility for preserving the security of all protected health information and shall report directly to the public health official at the agency. Various duties of the public health information officer include:

(1) Monitoring the acquisition, use, disclosure, and storage of protected health information to ensure such activities are conducted in a physically and technologically secure environment;

(2) Developing and implementing written policies and guidelines to preserve the security of protected health information, including a model confidentiality statement pursuant to Section 7-104[d](2);

(3) Coordinating the assignment of personal responsibility to each person who acquires, uses, discloses, or stores such information for preserving its security;

(4) Acting as the agency's principal investigator for each investigation of any security breach;

(5) Recommending disciplinary sanctions for any security breaches to the public health official at the agency who shall be responsible for issuing and implementing any sanctions;

(6) Coordinating with federal, state, or local authorities, where appropriate, in the investigation of any security breach; and

(7) Preparing any report required pursuant to Section 7-103[f].

[f] **Issuance of Public Reports.** State and local public health agencies shall prepare on an annual basis a report concerning the status of security protections of protected health information, which shall be distributed to the public health information officer for the state public health agency. The report shall be prepared in accordance with guidelines issued by the public health information officer for the state public health agency. The public health information officer for the state public health agency shall prepare a summary report on the status of security protections of protected health information for all state or local public health agencies within [*ninety days*] of the date in which reports required under this Section are requested. This report shall be issued to the [*State legislature*] with any recommendations for relevant state laws or amendments that may improve the security of protected health information.

Section 7-105. Fair Information Practice

[a] **Individual Access to Protected Health Information.**

(1) **Definitions.** For the purposes of this Section, "request" means a written, dated, and signed correspondence in paper or electronic form through

which the identity of the individual executing the correspondence can be verified. A "requestor" means any individual (or legal representative) who makes a request.

(2) **Opportunity to Inspect.** Within fourteen days of the receipt of a request to review protected health information, a state or local public health agency shall provide the requestor an opportunity during regular business hours to inspect copies of such information in the possession of the state or local public health agency which concerns or relates to the requestor.

(3) **Copies Furnished.** Within ten days of the receipt of a request for copies of a requestor's protected health information, a state or local public health agency shall provide without charge copies of protected health information in the possession of the agency which the requestor is authorized to inspect.

(4) **Explanations.** Upon request, the state or local public health agency shall provide an explanation of any code, abbreviation, notation, or other marks appearing in the protected health information. A state or local public health agency is not responsible for producing or reformulating protected health information, solely for the purposes of clarification, in other than its original form.

[b] **Limitations Concerning Individual Access to Protected Health Information**

(1) **Reasonable Limitations.** Reasonable limitations may be placed on the time, place, and frequency of any inspection and copying requests. A state or local public health agency may ask to review the protected health information with the requestor upon inspection, although such review shall not be a prerequisite to providing the information.

(2) **Information Related to Other Individuals.** Any information contained in the protected health information of the requestor that relates to the health status or other confidential information of other individuals shall be deleted for the purposes of inspection and copying.

(3) **Unrelated Information.** Any information contained in the protected health information of the requestor that is not related to the requestor's health status may be deleted for the purposes of inspection and copying.

(4) **Withholding Information.** A state or local public health agency may deny a requestor the opportunity to inspect protected health information in the possession of the agency or may deny a request for copies of such information if:

(i) The agency can show via clear and convincing evidence that the review of the protected health information will cause substantial and identifiable harm to the requestor or others which outweighs the requestor's right to access the information;

(ii) A parent or legal guardian has requested access to protected health information concerning an individual over the age of [*to be inserted consistent with State law*] who is the subject of the information and the individual objects to such access of the information within seven days of receipt of written notice of the request by the state or local public health agency in possession of the information; or

(iii) The information is compiled principally in anticipation of, or for use in, a legal proceeding.

(5) **Request Denials.** If a state or local public health agency denies a request to inspect or copy protected health information, it shall notify the requestor in writing of the reasons for denying such request, including that the agency does not possess any protected health information which is subject to the request.

(6) **Appeals.** A requestor may appeal such decisions under administrative review procedures as promulgated by the state public health agency.

[c] **Accuracy of Information.** State and local public health agencies shall reasonably ensure the accuracy and completeness of protected health information.

(1) **Corrections.** After inspection or review of copies of protected health information pursuant to Section 7-105[a], a requestor may request that the state or local public health agency correct, amend, or delete erroneous, incomplete, or false information.

(2) **Duty to Correct.** The agency shall correct, amend, or delete erroneous, incomplete, or false information within fourteen days of a request provided that it determines that such modification is reasonably supported. The requestor has the burden of proving that information needs to be corrected, amended, or deleted.

(3) **Written Notification.** The requestor shall be notified in writing by the agency of any corrections, amendments, or deletions made, or, in the alternative, the reasons for denying any request in whole or part.

(4) **Appeals.** A requestor may appeal any decision of an agency denying a request to correct, amend, or delete erroneous, incomplete, or false information under administrative review procedures as promulgated by the state public health agency.

(5) **Retention of Statement.** A brief, written statement from the requestor challenging the veracity of the protected health information shall be retained by the state or local public health agency for as long as the information is possessed. The agency shall make a notation of the disputed entries in the requestor's protected health information, including the original language and the requestor's proposed change. This statement shall be provided to any person who is authorized to receive the protected health information.

(6) **Subsequent Notifications.** A state or local public health agency shall take reasonable steps to notify all persons indicated by the requestor, or others for which known acquisitions or disclosures have previously been made, of corrections, amendments, or deletions made to protected health information.

[d] **Appeals.** In the event that administrative appeals have been exhausted pursuant to Sections 7-105[b or c], the requestor may appeal decisions of the state or local public health agency in court. The court shall determine whether there exists a reasonable basis for the action or decision of the agency pursuant to an *in camera* review of the relevant protected health information, the administrative record, and other admissible evidence. Individual relief is limited to a judgment requiring the agency to make available the requested information to the requestor for inspection or copying or to correct, amend, or delete erroneous, incomplete, or false information.

Section 7-106. Criminal Penalties

[a] **Public Agents Generally.** Any public agent who, knowing or in reckless disregard of the fact that protected health information is protected by this Article, intentionally acquires or uses such information in violation of this Article, or discloses such information to a person not lawfully entitled to receive it, is guilty of a felony. Upon conviction, the agent is punishable by a fine not to exceed [*$5,000*] or imprisonment for a period not to exceed [*three*] years, or both.

[b] **Unlawful Disclosures.** Any person who, knowing or in reckless disregard of the fact that protected health information is protected from disclosure by this Article, intentionally discloses such information to a person not lawfully entitled to receive it is guilty of a misdemeanor. Upon conviction, the person is punishable by a fine not to exceed [*$5,000*] or imprisonment for a period not to exceed one year, or both.

[c] **Unlawful Access.** Any person who by any unlawful means, including bribery, fraud, theft, false pretenses, or other misrepresentation of identity, purpose of use, or entitlement to information, inspects, copies, examines, or obtains protected health information in violation of this Article is guilty of a felony. Upon conviction, the person is punishable by a fine not to exceed [*$50,000*] or imprisonment for a period not to exceed [*five*] years, or both, for each offense.

[d] **Commercial Gain or Malicious Harm.** Any person who acts in violation of this Article under subsections [a-c] for the purposes of commercial gain, or with intent to cause malicious harm, shall be guilty of a felony. Upon conviction, the person is punishable by a fine not to exceed [*$50,000*] or imprisonment for a period not to exceed [*five*] years, or both, for each offense.

[e] **Enhanced Penalties.** The maximum penalties described in subsections [a-d] shall be doubled for every subsequent conviction of any person arising out of a violation or violations related to a set of circumstances that are different from those involved in the previous violation or set of related violations described in subsections [a-d].

[f] **Statute of Limitations.** Any action under this Section is barred unless the action is commenced within [*three*] years after the cause of action accrues.

[g] **Separate Offense.** Each violation of this Article is a separate and actionable offense.

Section 7-107. Civil Remedies

[a] **Generally.** Any person aggrieved by:

(1) The failure to impose and maintain adequate safeguards for the confidentiality and security of protected health information;

(2) The failure to supervise persons responsible for the acquisition, use, disclosure, or storage of protected health information;

(3) The disclosure of protected health information in violation of this Article; or

(4) Any other violation of this Article,

may maintain an action for relief as provided in this Section.

[b] **Appropriate Relief.** The court may order a state or local public health agency, public health agent, or other persons to comply with this Article and may order any other appropriate civil or equitable relief, including an injunction to prevent non-compliance.

[c] **Compensatory and Punitive Damages.** If the court determines that there is a violation of this Article, the aggrieved person is entitled to recover damages for losses sustained as a result of the violation. The measure of damages shall be the greater of the aggrieved person's actual damages, or liquidated damages of [*$1,000*] for each violation, provided that liquidated damages shall not exceed [*$10,000*] for any particular claim.

[d] **Punitive Damages.** If the court determines that there is a violation of this Article which results from wilful or grossly negligent conduct, the aggrieved person may recover punitive damages not to exceed [*$10,000*], exclusive of any other loss, for each violation from the offending party.

[e] **Attorney Fees.** If the aggrieved person prevails, the court may assess reasonable attorney's fees and all other expenses reasonably incurred in the litigation against the non-prevailing parties.

[f] **Joint and Several Liability.** Responsible parties are jointly and severally liable for any compensatory damages, attorney's fees, or other costs awarded.

[g] **Statute of Limitations.** Any action under this Section is barred unless the action is commenced within [*one*] year after the cause of action accrues or was or should reasonably have been discovered by the aggrieved person (or legal representative).

[h] **Separate Offense.** Each violation of this Article is a separate and actionable offense.

[i] **Pre-existing Remedies.** Nothing in this Section limits or expands the right of an aggrieved person (or legal representative) to recover damages under any other applicable law.

Section 7-108. Immunities

[a] **Disclosure Pursuant to Informed Consent.** No person shall be subject to criminal sanction or civil liability under this Article as a result of disclosing protected health information pursuant to valid informed consent under Section 7-103[b].

[b] **Absence of Accompanying Language with Disclosures.** No person, other than a public health agent, shall be subject to criminal sanction or civil liability as a result of disclosing protected health information in violation of this Article where the original disclosure of information was not accompanied by language required under Section 7-103[c](3). This subsection, however, shall not release from criminal sanction or civil liability the public health agent or other person who failed to include such language in the prior disclosure.

[c] **Parent or Guardian.** No individual who is the parent or legal guardian of a minor, or a non-minor's legal representative, shall be subject to criminal sanction or civil liability under this Section as a result of disclosing protected health information which relates to the individual, provided such parent or representative lawfully obtained such information in accordance with this Article.

ARTICLE VIII

ADMINISTRATIVE PROCEDURES, CIVIL AND CRIMINAL ENFORCEMENT, AND SOVEREIGN IMMUNITY

Section 8-101. Administrative Rulemaking

The state or local public health agency and other affected agencies are authorized to promulgate and implement such rules and regulations as are reasonable and necessary to implement and effectuate the provisions of this Act. The state or local public health agency and other affected agencies shall have the power to enforce the provisions of this Act through the issuance of orders and such other remedies as are provided by law. This Section does not limit specific enforcement powers enumerated in this Act.

Section 8-102. Applicability of State Administrative Procedure Act

Any applicable action of a state or local public health agency made pursuant to this Act, including rendering adjudications, issuing orders, and declaring regulations, shall be governed by the [*State's Administrative Procedure Act (APA)*], unless such procedures interfere with the adoption of any rule required by federal law in which the state or local public health agency is precluded by law from exercising any discretion. Courts may review final agency actions in accordance with the APA, and may stay or permanently enjoin any such action that fails to comport with the requirements of the Act.

Section 8-103. Procedural Due Process

[a] **Notices.** In every case of formal or informal administrative adjudication, unless otherwise specified in this Act, all persons shall be afforded an opportunity for hearing after reasonable notice. Notice must be given to all parties at least [*10 days*] before a scheduled hearing. The notice shall include:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held; and

(3) A short and plain statement of the matters of fact and law asserted.

[b] **Individual Rights.** All persons to formal administrative adjudications shall be entitled to:

(1) Representation by legal counsel;

(2) Submit oral and documentary evidence and rebuttal proofs;

(3) Conduct cross-examination to elicit a full and fair disclosure of the facts; and

(4) A timely completion of the proceedings.

[c] **Subpoenas and witnesses.** The state or local public health agency may (and on request of any party to a case shall) issue subpoenas requiring testimony or the production of physical or other evidence.

(1) Any person who is subpoenaed and who objects may ask the agency to quash or modify the subpoena as illegally or improvidently granted. If the agency refuses, the person may immediately procure by petition a decision on the validity thereof in a court.

(2) Absent any objections, the agency may procure an order of enforcement from a court.

(3) Depositions and requests for admissions may be directed, issued, and taken on order of the agency for good cause shown. These orders or authorizations may be challenged or enforced in the same manner as subpoenas. This subsection does not authorize discovery proceedings.

[d] **Record of proceedings.** The evidence of any hearing shall be recorded and kept by the state or local public health agency as public records subject to judicial notice. The full record or file in every case shall be made available for public inspection consistent with the [*State's Freedom of Information Act*].

[e] **Appeals.** Any person adversely affected by a decision of a state or local public health agency shall have a right to appeal the decision through an appropriate and timely court action against the agency and/or its agents. Judgments of the court are subject to appeal or review by higher courts unless otherwise provided by law.

(1) **Issues on review.** Any person complaining of agency action must show errors of law subject to review by the court. Such laws may include:

(i) Accordance with constitutional right, power, privilege, or immunity;

(ii) Compliance with statutory authority, jurisdiction limitations, or right as to subject matter, the stated objectives for which regulations may be made;

(iii) Observance of required procedure; and

(iv) Evidentiary support for findings of fact.

(2) **Role of court.** The court shall ascertain whether there was substantial evidence in the agency record (or, absent an agency record, any file, minutes, or unofficial records of the agency) on which the agency could reasonably find as it did and whether the agency actions are within the scope of the agency's legal authority.

(3) **Court judgments.** Unless an error of law appears, the court shall dismiss the action or affirm the agency regulation or decision. Where a case decision is found by the court not to be in accordance with law, the court shall suspend or set it aside and remand the matter for further proceedings.

Legislative Sources. Section 8-103 was adapted from VA. CODE ANN. § 2.2-4020 to 4030. Section 8-103[a] is also based in part on ARK. CODE ANN. 25-15-208.

Section 8-104. Criminal Penalties

[a] **Violations by Public Health Agents.** Any public health agent who willfully violates or obstructs the execution of any statute, regulation, or rule, or order under this Act, for which no other penalty is prescribed, shall be guilty of a misdemeanor. Upon conviction, the agent is punishable by a fine not to exceed [*$1,000*] or imprisonment for a period not to exceed [*one*] year, or both.

[b] **Violations Generally.** Any person, other than a public health agent, who willfully violates or obstructs the execution of any statute, regulations, or rule, or order under this Act, for which no other penalty is prescribed, shall be guilty of a misdemeanor. Upon conviction, the official is punishable by a fine not to exceed [*$1,000*] or imprisonment for a period not to exceed [*one*] year, or both.

[c] **Enhanced Penalties.** The maximum penalties described in subsections [a-c] shall be doubled for every subsequent conviction of any person arising out of a violation or violations related to a set of circumstances that are different from those involved in the previous violation or set of related violations.

[d] **Statute of Limitations.** Any action under this Section is barred unless the action is commenced within [*three*] years after the cause of action accrues.

[e] **Separate Offense.** Each violation of this Act is a separate and actionable offense.

Section 8-105. Civil Remedies

[a] **Generally.** Any person aggrieved by any violation of this Act may maintain an action for relief as provided in this Section.

[b] **Appropriate Relief.** The court may order a state or local public health agency, public health agent, or other persons to comply with this Act and may order any other appropriate civil or equitable relief, including an injunction to prevent non-compliance.

[c] **Compensatory Damages.** If the court determines that there is a violation of this Act, the aggrieved person is entitled to recover damages for losses sustained as a result of the violation. The measure of damages shall be the greater of the aggrieved person's actual damages, or liquidated damages of [*$1,000*] for each violation, provided that liquidated damages shall not exceed [*$10,000*] for any particular claim.

[d] **Punitive Damages.** If the court determines that there is a violation of this Act which results from willful or grossly negligent conduct, the aggrieved person may recover punitive damages not to exceed [*$10,000*], exclusive of any other loss, for each violation from the offending party.

[e] **Attorney Fees.** If the aggrieved person prevails, the court may assess reasonable attorney's fees and all other expenses reasonably incurred in the litigation

against the non-prevailing parties.

[f] **Joint and Several Liability.** Responsible parties are jointly and severally liable (where applicable under existing state law) for any compensatory damages, attorney's fees, or other costs awarded.

[g] **Statute of Limitations.** Any action under this Section is barred unless the action is commenced within [*one*] year after the cause of action accrues or was or should reasonably have been discovered by the aggrieved person (or legal representative).

[h] **Separate Offense.** Each violation of this Act is a separate and actionable offense.

[i] **Pre-existing Remedies.** Nothing in this Section limits or expands the right of an aggrieved person (or legal representative) to recover damages under any other applicable law.

Section 8-106. Civil Enforcement

The [*State Attorney General*] or other appropriate State or local law enforcement official may maintain a civil action to enforce this Act. Relief may be ordered by the court as authorized in Sections 8-104 and 8-105 of this Act.

Section 8-107. Immunities

[a] **State immunity.** Neither the state, its political subdivisions, nor, except in cases of gross negligence or willful misconduct, the Governor, a state or local public health agency, or any other state or local agent referenced in this Article, is liable for the death of or any injury to individuals, or damage to property, as a result of complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant thereto.

[b] **Supervisory Officers.** No public health agent who is a superior or supervisory officer over a public health agent who violates any part of this Act shall be subject to civil remedies under this Act on the theory of vicarious liability (absent the officer's gross negligence), provided the superior or supervisory official:

(1) Had no prior actual or constructive knowledge of the violation or actions leading to the violation; and

(2) Was not otherwise directly responsible for ensuring against the occurrence of the violation.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 9-101. Titles

This Act may be cited as the Model State Public Health Act. For the purposes of this Act, titles and subtitles of Articles, Sections, and subsections are instructive, but not binding.

Section 9-102. Uniformity Provision

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Section 9-103. Severability

The provisions of this Act are severable. If any provision of this Act or its application to any person or circumstances is held invalid in a federal or State court, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application.

Section 9-104. Repeals

The following acts, laws, or parts thereof, are explicitly repealed with the passage of this Act:

[a] [*To be inserted in each state considering passage of the Act*]

[b] [*To be inserted in each state considering passage of the Act*]

[c] [*To be inserted in each state considering passage of the Act*] . . .

Section 9-105. Conflicting Laws

[a] **Federal Supremacy.** This Act does not restrict any person from complying with federal law or regulations.

[b] **Prior Conflicting Acts.** In the event of a conflict between this Act and other state or local laws or regulations, or administrative procedures pursuant to the [*State Administrative Procedure Act*], the provisions of this Act apply.

Section 9-106. Reports and Effective Date

[a] **Initial Reports.** No later than [*six*] months after the date of enactment, the public health official at each state or local public health agency shall prepare and submit a report to the state public health agency concerning the impact and effect of this Act on each agency.

[b] **Comprehensive Report.** No later than [*nine*] months after the date of enactment, the state public health agency shall issue a comprehensive report to the [*State legislature*] on behalf of each public health agency concerning the effect of this Act, including any recommendations for legislative amendments.

[c] **Effective Date**. The provisions of this Act shall be effective [*one year*] after the date of its enactment