1. Does the model act do what it's supposed to do?

**EXAMPLE**

*The American Legislative Exchange Council Affordable Baccalaureate Degree Act as summarized would require colleges and universities to offer bachelor's degrees that can be completed in four years for no more than $10,000 – but the model act itself doesn't include that requirement.*

**Summary**

To aid students and their parents in their efforts to pursue a college degree, the Affordable Baccalaureate Degree Act would require all public four-year universities to offer bachelor’s degrees costing no more than $10,000, total, for four years of tuition, fees, and books. The Act would require that ten percent of all public, four-year university degrees awarded reach this price-point within four years of passage of this act.

To achieve this price-point, universities would be instructed to capitalize on the opportunities and efficiencies provided by (1) web-based technology and (2) competency-based programs.

**Model Policy**

*Section 1. Title.* This Act shall be known as “Affordable Baccalaureate Degree Act.”

*Section 2. Applicability.*

(A) In this Act, “institutions of higher learning” is restricted to four-year, public colleges and universities, as defined in this section.

(B) This section applies to all four-year public institutions of higher education.

*Section 3. Affordable Baccalaureate Degree.*

(A) The {insert appropriate state education board} shall maintain for each institution to which this subchapter applies all relevant information regarding which degrees at which schools satisfy this requirement, and will make this information publicly available online for use by prospective students of the institution and their parents, but also available to the public, legislators and other interested policy makers.

(B) The powers and duties of {insert appropriate state education board} apply to the Affordable Baccalaureate Degree Act as outlined in {insert state higher education regulations if applicable}.

(C) The duties of institutions of higher education apply to the Affordable Baccalaureate Degree Act as outlined in {insert state higher education regulations if applicable}.
(D) Information regarding the content and availability of degree programs satisfying the Affordable Baccalaureate Degree Act will be made available to the public, legislators and other interested policy makers on the {insert appropriate state education board website and the institution’s website in accordance with procedures outlined in {insert state higher education regulations if applicable}. 

Section 4. Severability clause.
Section 5. Repealer clause.
Section 6. Effective date.

2. Does the model act conflict with your state's constitution?

EXAMPLES

Separation of powers

Delegation of legislative authority: Texas and some other states have doctrines prohibiting the delegation of legislative authority. A model that incorporates standards promulgated by an outside body, e.g., the International Residential Code or NAIC audit standards, may be an unconstitutional delegation unless a specific version in existence is incorporated or a state official is granted discretion to adopt an appropriate version.

Texas Open Courts provision and Limitation on Liability provision: A model that caps or eliminates money damages might run afoul of these provisions.

One-subject rule: If your state has a constitutional one-subject rule, breaking a model covering diverse subjects into more than one bill might be advisable.

3. Does the model act conflict with your state's existing statutes?

EXAMPLE

Texas Uniform Disclaimer of Property Interests Act (Chapter 240, Property Code): Scope of the act is broader than and differed from existing disclaimer law, which resulted in the repeal of disclaimer provisions in the Estates Code, a new title in the Property Code, and the update of numerous cross-references to the old law to replace with a reference to the new law (conforming amendments).

4. How much latitude do you have to modify the model act?

EXAMPLE

Uniform Interstate Family Support Act (2008 Amendments)

SECTION 202. DURATION OF PERSONAL JURISDICTION. Personal jurisdiction acquired by a tribunal of this State in a proceeding under this Act or other law of this
State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211.

Introduced Bill Language
(Delaware 148th General Assembly, S.B. 85)

§ 6-202. Duration of personal jurisdiction.
Personal jurisdiction acquired by a tribunal of this State in a proceeding under this chapter or other law of this State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by § 6-205, § 6-206, and § 6-211 of this title.

Sometimes the check on your latitude to modify a model act may come from outside the legislature. The ULC Version of UIFSA (2008 Amendment) came with a requirement from the federal Office of Child Support Enforcement (“OCSE”) that the Act be adopted verbatim. This restricted our latitude to modify this Act.

However, in the Act, the ULC made the decision to delete “this State” and replace it with “this state”. This change would have been inconsistent with Delaware drafting standards. We debated the “verbatim” requirement from the OCSE in light of the “this State” to “this state” change required by the Act and, ultimately, Delaware did not adopt this change. The Senator who sponsored this legislation and the Division of Child Support Enforcement, who worked with the Senator, granted us wide latitude to make changes, or not make changes, consistent with Delaware drafting standards.

5. Where in your state's statutes does the model act belong?

EXAMPLE

Louisiana R.S. 17:1990, Recovery School District
Placement in Louisiana's Education Title

RS 17:1989.1 Legislative intent
RS 17:1989.2 Definitions
RS 17:1989.3 Governor's Program for Gifted Children; legislative establishment; location; governance; relationship with educational boards and state superintendent
* * *
RS 17:1990 Recovery School District; creation; governance; operation
RS 17:1991 CAREER EDUCATION AND REHABILITATION
RS 17:1992 [Repealed]
RS 17:1993 Implementation of career education by board and department
RS 17:1994 Regional coordination and planning of postsecondary vocational-technical education; establishment and composition of regions
Options for placement in Texas' Education Code

Chapter 11. School Districts
Chapter 39. Public School Accountability

*Texas Legislative Council drafter chose Chapter 39, since the purpose of the recovery school district appeared to be to create another way of handling low-performing schools. In the committee substitute for the bill (not drafted by TLC), the provisions were placed in Chapter 11.*

6. Can an existing state agency enforce or administer the model act?


*Comment*

The office of Secretary of State has been designated as the administrator of existing acts regulating the activities of athlete agents more frequently than any other office. The office of Secretary of State is referred to in subsection (b) and throughout this act. It is recognized, however, that the appropriate state office to administer this act may vary from State to State and, therefore, references to the Secretary of State are in brackets.

7. Does the model act have problematic definitions?

**EXAMPLE (SUBSTANTIVE DEFINITION)**

Introduced Bill Language
(Delaware 147th General Assembly, H.B. 230)

§ 2403D. Definitions.

The following definitions apply in this subchapter:

(f) “Original creditor” means the entity, other than a debt collector, to which a consumer debtor made his or her last payment on a consumer debt before it was first sold to a debt buyer, or, if the consumer never made a payment, the entity that last sent the consumer a bill or demand for payment before the debt was first sold to a debt buyer. When this chapter requires the original creditor to be identified, the name shall be that which was used in its dealings with the consumer.

*H.B. 230 is the Model Family Financial Protection Act, promulgated by the National Consumer Law Center. The last sentence of the definition for “original creditor” is substantive and should be moved to a provision separate from the definition section.*
EXAMPLE (ARTIFICIAL DEFINITION)

From Texas Legislative Council Drafting Manual:

Sec. 1. DEFINITION. In this Act, “statewide elected officer” means the holder of an office filled by an election at which all qualified voters in the state are eligible to vote, including a person appointed to fill a vacancy in such an office, and including a member of the governing body of a municipality with a population of more than 500,000.

Suggested alternative: An applicability section that specifies the "elected officers" to which the Act applies would probably eliminate the need for a defined term.

EXAMPLE (CIRCULAR DEFINITION)

The definitions and uses of "computer network" and "Internet" in the American Legislative Exchange Council's Pursue and Control Child Predators Act:

Definitions

***

2. “Computer network” means the computer network commonly known as the Internet and any other local, regional or global computer network that is similar to or is a predecessor or successor of the Internet.

3. “Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks.

***

The Act's substantive provisions alternate between "Internet" and "computer network;" one defined term would probably suffice.

Section 7. {Internet sexual exploitation of a child}

1. A person commits internet sexual exploitation of a child if a person, who is at least four years older than a child who is under fifteen years of age, knowingly requests or encourages the child through communication via the Internet or other computer network to:

***
Section 8. {Internet luring of a child}

1. A person more than four years older than the child commits internet luring of a child if the person knowingly communicates a statement or an image over a computer or computer network to a child under fifteen years of age, describing or depicting sexual conduct, and, in connection with the communication, makes a statement persuading or inviting the child to meet the person for purposes of criminal sexual conduct.

8. Reorganize the model act as needed: put similar concepts together; separate concepts that do not belong together.

EXAMPLE 1

Introduced Bill Language
(Delaware 147th General Assembly, H.B. 230)

§ 2405D. Requirements for Debt Collection; No Imprisonment for Debt.

(g) Notwithstanding any other law, it is lawful for a consumer to record any telephone conversation between the consumer and a debt collector or debt buyer, without the knowledge or consent of the collector. Any such recording shall be admissible in any court or other legal proceedings respecting debt collection practices or seeking collection of a consumer debt.
(h) Notwithstanding any other law, a debt collector shall not seek a warrant for the arrest of a debtor for any action or failure to act that arises or relates to a civil lawsuit, unless the debtor has committed a violation of Title 11 of this Code.
(i) Notwithstanding any other law, a debtor shall not be imprisoned for failing to pay a consumer debt or for violating an order to pay a consumer debt.

H.B. 230 is the Model Family Financial Protection Act, promulgated by the National Consumer Law Center. Subsections (g) through (i) follow 6 subsections covering 3 pages of text relating to the requirements placed on debt collectors in the debt collection process. Subsection (g) is a legal right given to consumers in the debt collection process and subsections (h) and (i) prohibit certain legal recourses for the failure to pay a debt. These 3 provisions should be separate from § 2405D.
### EXAMPLE 2

<table>
<thead>
<tr>
<th><strong>Model Language</strong></th>
<th><strong>Modified Language</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(California AB 811 (2008))</em></td>
<td><em>(Texas 81(R) HB 1937)</em></td>
</tr>
<tr>
<td><em>(all added to Streets and Highways Code)</em></td>
<td><em>(all added to Local Government Code)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Section 5898.12, Subsection (a)</strong></th>
<th><strong>Sec. 376.001. AUTHORIZED FINANCING.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(statement of legislative intent regarding use of assessments to finance public improvements where the costs of creating an assessment district pursuant to other law would be prohibitively large relative to the cost of the public improvement)</em></td>
<td><strong>Subdivision (1)</strong> <em>(omits &quot;legislative intent&quot; language and simply authorizes a municipality to act)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Section 5898.12, Subsection (b)</strong></th>
<th><strong>Sec. 376.001. AUTHORIZED FINANCING.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(statement of legislative intent regarding use of assessments to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property)</em></td>
<td><strong>Subdivision (2)</strong> <em>(omits &quot;legislative intent&quot; language and simply authorizes a municipality to act)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Section 5898.12, Subsection (c)</strong></th>
<th><strong>Sec. 376.002. CERTAIN FINANCING PROHIBITED.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(prohibition on financing facilities for parcels which are undergoing development)</em></td>
<td><strong>Subdivision (1)</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Section 5898.12, Subsection (d)</strong></th>
<th><strong>Sec. 376.002. CERTAIN FINANCING PROHIBITED.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(prohibition on financing the installation of appliances that are not permanently fixed to real property)</em></td>
<td><strong>Subdivision (2)</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Section 5898.12, Subsection (e)</strong></th>
<th><strong>Sec. 376.003. CONSENT FOR ASSESSMENT REQUIRED.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(requirement that property owner consent to assessments)</em></td>
<td><strong>Omitted</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Sec. 5898.14, Subsection (a)(1)</strong></th>
<th><strong>Omitted</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(legislative findings regarding the necessity of energy conservation efforts)</em></td>
<td><strong>Omitted</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Sec. 5898.14, Subsection (a)(2)</strong></th>
<th><strong>Omitted</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(legislative findings regarding the upfront cost of making real property more energy-efficient, which prevents many property owners from making those improvements)</em></td>
<td><strong>Omitted</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Sec. 5898.14, Subsection (b)</strong></th>
<th><strong>Omitted</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(declaration of public purpose)</em></td>
<td><strong>Omitted</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Sec. 5898.20, Subsection (a)(1)</strong></th>
<th><strong>Sec. 376.004. DESIGNATION OF AREA FOR ASSESSMENT.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(determination by city's legislative body that designating an area in which)</em></td>
<td><strong>Subsection (a)</strong></td>
</tr>
<tr>
<td>Section</td>
<td>Text</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td>Sec. 5898.20, Subsection (a)(2)</td>
<td>determination by city's legislative body that designating an area in which distributed generation renewable energy sources or energy efficiency improvements may be installed would be convenient and advantageous</td>
</tr>
<tr>
<td>Sec. 5898.20, Subsections (a)(1) and (2)</td>
<td>area designated may encompass the entire city</td>
</tr>
<tr>
<td>Sec. 5898.20, Subsection (b)</td>
<td>requirement that legislative body's determination shall be adopted as a resolution</td>
</tr>
<tr>
<td>Sec. 5898.20, Subsection (b)</td>
<td>required contents of resolution in general</td>
</tr>
<tr>
<td>Sec. 5898.20, Subsection (b)</td>
<td>additional required contents of resolution if assessments are to be used to finance the installation of distributed generation renewable energy sources or energy efficiency improvements</td>
</tr>
<tr>
<td>Sec. 5898.20, Subsection (b)</td>
<td>resolution must require appropriate city official to report on assessments</td>
</tr>
<tr>
<td>Sec. 5898.20, Subsection (b)</td>
<td>resolution must require appropriate city official to consult with county officials regarding collection of assessments</td>
</tr>
<tr>
<td>Sec 5898.20, Subsection (c)</td>
<td>definitions of &quot;city&quot; and &quot;legislative body&quot;</td>
</tr>
<tr>
<td>Sec. 5898.21</td>
<td>authorization for direct purchase of energy efficiency improvements by property owner</td>
</tr>
<tr>
<td>Sec. 5898.22</td>
<td>contents of report on assessments</td>
</tr>
<tr>
<td>Section 5898.30</td>
<td>assessment on property constitutes a lien on the property</td>
</tr>
</tbody>
</table>
9. **Delete unnecessary language.**

Model Language with **Deletions** (Louisiana R.S. 17:1990)

(2)(a) The school district may provide for the supervision, management, and operation of a school placed under its jurisdiction and receive, control, and expend the local, state, and federal funding attributable to that school, with all the same power and authority as the prior system from which it was transferred subject to the requirements of this Section, R.S. 17:10.5, or 10.7, or with any other power and authority otherwise granted to the district by law. As it relates to schools transferred pursuant to R.S. 17:10.7, the authority of the school district is also subject to the approval by the state board of the plan submitted pursuant to R.S. 17:10.7(B)(2)(b).

( ) The district may contract with for-profit providers for the general operation of and any needed services for a school under its jurisdiction.

(b) In providing for the operation of schools within its jurisdiction, at any time the district seeks participation by a college or university or a consortium of colleges and universities to provide for the operation of any school or group of schools, colleges, and universities that historically were established to provide education for African American students in the state shall be included in any opportunity to participate.

10. **Resolve issues left to enacting states.**

**From Uniform Guardianship and Protective Proceedings Act (1997)**

**ALTERNATE PROVISIONS ON APPOINTMENT OF A LAWYER**

**Alternative A**

[(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:
(1) requested by the respondent;
(2) recommended by the [visitor]; or
(3) the court determines that the respondent needs representation.]

**Alternative B**

[(b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceeding.]

11. **Fill in gaps.**

**EXAMPLE**

Provision Added to Model (Louisiana R.S. 17:1990)

( ) The commissioner [of education] shall appoint the superintendent of the recovery school district.

*The model language mentions a superintendent but does not provide for appointment or general duties.*
12. Modify language to match your state's substantive laws.

EXAMPLE 1

Introduced Bill Language
(Delaware 147th General Assembly, H.B. 230)

§ 2405D. Requirements for Debt Collection; No Imprisonment for Debt.
(b) Any seller of a consumer debt, whether the original creditor or a debt buyer, shall
provide the following to the buyer or assignee when selling the debt:
(2) a statement disclosing:
(ii) any validation, or lack thereof, that the seller has provided the
consumer pursuant to the federal Fair Debt Collection Practices Act [and
if applicable, any state or local debt collection practices act], or has
received from the original creditor or previous seller in response to a
dispute or request for validation by the consumer;

§ 2408D. Service; Additional Mailing of Notice in an Action.
(b) In any action to collect a consumer debt, the plaintiff shall, at the time of filing with
the clerk of the proof of service of the summons and complaint, submit to the clerk an
envelope properly addressed to the defendant, with first-class postage affixed, together
with a written notice. This notice is in addition to the requirement in any Rule of Civil
Procedure of a Court requiring service of the complaint and summons on the defendant.
This additional notice shall consist exclusively of the following language, or language
prescribed by the [state supreme court or court rules committee] that addresses the
same topics, in clear type of no less than twelve-point in size, in both English and
Spanish:

§ 2408D. Default Judgment.
(a) Prior to entry of a default judgment or summary judgment against a consumer in any
action initiated by a debt collector to collect a consumer debt, the plaintiff shall file:
(1) evidence with the court to establish the amount and nature of the consumer
debt. The only evidence sufficient to establish the amount and nature of the
debt shall be properly authenticated business records that satisfy the
requirements of Delaware’s Uniform Rules of Evidence. The authenticated
business records shall include at least all of the following items:
(x) sufficient information to indicate whether the interest rate exceeded
[cite to state usury cap] at any point.

H.B. 230 is the Model Family Financial Protection Act, promulgated by the National
Consumer Law Center. Each of the proposed Code sections contains bracketed language (bolded
for emphasis) intended to be filled in by the enacting states; however, the drafter has allowed
the bill to be introduced without filling in the necessary information and removing the brackets.
When reviewing model legislation, a drafter must be on the lookout for bracketed language,
resolve the issues indicated by the bracketed language, and remove the brackets.
EXAMPLE 2

From ULC's Uniform Real Property Transfer on Death Act (2009)

(3) “Joint owner” means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant[,,] and owner of community property with a right of survivorship[,] and tenant by the entirety. The term does not include a tenant in common or owner of community property without a right of survivorship.

EXAMPLE 3

In the Texas Insurance Code, "health benefit plan" and "health benefit plan issuer" are the most commonly used terms for what are sometimes referred to in models with other terms, such as "health insurance" (where coverage other than indemnity is clearly included), "health coverage," or "health carrier".

13. Modify language to match your state's drafting standards.

EXAMPLE 1

Draft Bill Language
(Delaware 148th General Assembly, H.B. 76)

§ 1111. Title and Definitions.
(b) For purposes of the Act, the following definitions shall apply on or after the operative date of the valuation manual:

(1) The term “accident and health insurance” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) The term “appointed actuary” means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in Section 1113(b).

Introduced Bill Language
(Delaware 148th General Assembly, H.B. 76)

§ 1111. Title and definitions.
(b) For purposes of the Act, the following definitions shall apply on or after the operative date of the valuation manual:
(1) “Accident and health insurance” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.
(2) “Appointed actuary” means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in Section 1113(b) of this title.

In the draft version of H.B. 76, which was circulated publicly for cosponsorship, the legislative drafter failed to modify the National Association of Insurance Commissioners model language to match Delaware’s drafting standards regarding definitions. In Delaware, the standard, as indicated in the introduced version of H.B. 76, is to begin each definition with the defined term, then provide the definition.

EXAMPLE 2

Example of fixing a problematic definition and modifying language to meet your state’s drafting standards

Model Language
(state agency draft)

[Sec. 61.401. DEFINITIONS. In this subchapter:]
(3) “State authorization reciprocity agreement” means an agreement among states, districts and territories that establishes comparable standards for providing distance education from their postsecondary educational institutions to out-of-state students.

Sec. 61.402. REQUISITE APPROVAL. (a) Public institutions of higher education established outside the boundaries of the State of Texas must have the approval of the coordinating board or formally participate in the state authorization reciprocity agreement before offering a course or a grouping of courses within the State of Texas.

(b) The coordinating board shall have responsibility for entering into agreements for interstate reciprocity regarding the delivery of postsecondary distance education, administering the agreements, and approving or disapproving an application from a postsecondary institution of higher education with its principal campus located in Texas to participate in the agreement.
SECTION 4. Subchapter H, Chapter 61, Education Code, is amended by adding Section 61.406 to read as follows:

Sec. 61.406. STATE AUTHORIZATION RECIPROCITY AGREEMENT. (a) The coordinating board on behalf of the state may enter into a state authorization reciprocity agreement among states, districts, and territories regarding the delivery of postsecondary distance education that establishes comparable standards for the provision of distance education by degree-granting postsecondary educational institutions in each of the states, districts, or territories covered by the agreement to students of the other states, districts, or territories covered under the agreement. The board shall apply to an appropriate regional organization for that purpose.

The modified language places the defined term within the substantive provision and changes passive voice to active.
Appendix 1

Model Law Checklist

____ Model act accomplishes the intended goal.

____ Model act does not conflict with our state's constitution.

    OR

    Model act conflicts with our state's constitution, but the conflict is resolved by
    ________________________________________________________________.

____ Model act does not conflict with existing statute of our state.

    OR

    Model act conflicts with our state's statutes, but the conflict is resolved by
    ________________________________________________________________.

____ The requestor:
    ____ Wants the model act modified as necessary to comply with the substance and style of our state's statutes [wide latitude];
    ____ Wants the model act modified as little as possible [limited latitude]; or
    ____ Does not want the model act modified at all [no latitude].

____ Model act belongs in our state's statutes in ________________________.

____ Model act can be enforced or administered by an existing state agency
    (______________________________________________________________).

    OR

    Model act requires creation of new state agency
    (______________________________________________________________).

____ Problems with the model act's definitions are resolved.

____ Model act is organized to put similar concepts together and to separate concepts that should not be together.

____ Issues left to enacting states are resolved.

____ Unnecessary language in the model act is deleted.

____ Gaps in the model act are filled.

____ Language of the model act is modified to match our state's substantive laws.

____ Language of the model act is modified to match our state's drafting standards.
Appendix 2: DRAFTING TEXAS STYLE

HOW TEXAS ORGANIZES ITS STATUTES

SUBJECT MATTER CODES, e.g., Education Code, Estates Code, Insurance Code, Transportation Code, Utilities Code

Does the request fit neatly into one code, or is it more appropriately divided up in two or more codes? (For instance, a draft that targets undesirable conduct with civil remedies and criminal penalties may need to be divided between Civil Practice and Remedies Code and Penal Code. If the conduct is specific to subject matter covered in another code, it may be appropriate to treat civil and criminal aspects together in that code.)

DIVISION OF CODE INTO SUBPARTS

TITLE 1. TITLE HEADING
   SUBTITLE A. SUBTITLE HEADING
   CHAPTER 101. CHAPTER HEADING
      SUBCHAPTER A. SUBCHAPTER HEADING
         Sec. 101.001. SECTION HEADING. Text....
         Sec. 101.002. SECTION HEADING.
         Sec. 101.003. SECTION HEADING.

PREFERRED ORDER OF STATUTORY PROVISIONS

   General Provisions (short title, purpose and findings, definitions, applicability, construction)
   Administrative Provisions (creation, organization, powers, procedures of governmental unit)
   Substantive Provisions (rights, duties, powers, privileges of class of persons)
   Enforcement Provisions

   For longer chapters, it is usually desirable to create at least one separate subchapter for each of these categories.

DIVISION OF SECTIONS INTO SUBPARTS

Sec. 101.003. DEFINITIONS. In this chapter:
   (1) "Xxx" means....
   (2) "Yyy" includes....
Sec. 101.004. SECTION HEADING. (a) Xxx:
   (1) xxx:
      (A) xxx;
      (i) xxx; or
      (ii) xxx; and
      (B) xxx; and
   (2) Xxxx.
   (b) Xxxx Xxxx. Xxxx Xxxx.
CONFORMING TO TEXAS STATUTES: COMMON CONSIDERATIONS

CODE CONSTRUCTION ACT

1. Definitions provided in CCA need not be repeated in a code.

2. "Shall" vs "must"; "may not" vs "shall not": See Sec. 311.016, Government Code (Code Construction Act). "Shall" imposes a duty. "Must" creates or recognizes a condition precedent. "May" creates discretionary authority or grants permission or a power. "May not" imposes a prohibition and is synonymous with "shall not".


4. "[Citation], as amended": Sec. 311.027, Government Code (Code Construction Act). "Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule."

5. "Including but not limited to": See Sec. 311.005(13), Government Code (Code Construction Act). "'Includes' and 'including' are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded."

6. Severability language: Sec. 311.032, Government Code (Code Construction Act), provides that the law is severable UNLESS it says it is not. Eliminate unnecessary severability provisions.

STRUCTURE OF CRIMINAL OFFENSES; CRIMINAL PENALTIES

Sec. 123.123. OFFENSE. (a) A person commits an offense if the person [engages in the specified conduct].

(b) An offense under this section is [standard punishment by class] [punishable by specified nonstandard punishment].

TEXAS DRAFTING STANDARDS

ACTIVE VOICE

DO NOT WRITE

If it is found that the applicant is qualified, a license shall be issued.

WRITE INSTEAD

The department shall issue a license if it finds that the applicant is qualified.
EXPRESSIONS OF TIME

1. **Deadlines:**

   **DO NOT WRITE**
   
   "...within 20 days of/from [an event]...

   **WRITE INSTEAD**
   
   "...not later than the 20th day after the date [the event occurs]..."
   
   OR
   
   "...before the 21st day after the date [the event occurs]...

2. **Time period:** Make the first and last days of the period clear.

   **DO NOT WRITE**
   
   "between April 1 and May 31"

   **WRITE INSTEAD**
   
   "after March 31 and before June 1"

**WORD CHOICE**

1. Don't use "and/or".
2. "Deemed" becomes "considered".
3. Don't use "duly".
4. "Herein" becomes "in this [unit of law]".
5. "Prior to" becomes "before".

**POSITIVE EXPRESSION**

**DO NOT WRITE**

If the annexed territory does not have fewer than 10 registered voters...

**WRITE INSTEAD**

If the annexed territory has 10 or more registered voters...
SINGULAR VERSUS PLURAL

Singular is preferred to plural unless referring to a class. See Sec. 311.012(b), Government Code (Code Construction Act). "The singular includes the plural and the plural includes the singular."

DO NOT WRITE

Persons may not operate....

WRITE INSTEAD

A person may not operate....

PRESENT TENSE

DO NOT WRITE

The governor shall be the chief budget officer of the state. (future tense creates false imperative)

WRITE INSTEAD

The governor is the chief budget officer of the state.

DEFINITIONS

OMIT:

DEFINITIONS OF UNUSED TERMS.

REDUNDANT DEFINITIONS: Don't repeat the substance of definitions that are already in the code construction act or other statute that is applicable to the unit of law you are drafting or amending.

AVOID:

SUBSTANTIVE DEFINITIONS, which place operative provisions of law in a segment of law that purports to define the meaning of a word. Move the substance to a separate operative provision.

ARTIFICIAL DEFINITIONS, which provide meanings that are so far from what any ordinary meaning of a term would suggest that confusion may arise. Take a different approach as appropriate.

CIRCULAR DEFINITIONS: If a definition of a term depends on the definition of another term and that other term depends on the definition of the first term, it's not helpful.

REMOTE DEFINITIONS: If a definition is used only once, consider moving the substance of the definition to the provision where the term is used or placing the definition in the section where the term is used rather than defining at the beginning of a long chapter.
BREAKING A SENTENCE INTO SUBPARTS

1. Only appropriate at the end of the amendable unit (usually a subsection)

Proposed language:

(c) In exercising authority, if the authorized person in the document in which the authority is exercised:
   (1) refers to this subsection; or
   (2) asserts [a specified intention]; or
   (3) asserts [a specified intention];
then, to the extent specified in the document in which the authority is exercised, any interest created through the exercise of the authority is deemed to have been exercised at [specified time].

Revision in "council style"

(c) To the extent specified in a document in which an authorized person exercises the authority, an interest created through the exercise of authority is considered to have been created at [specified time], provided that in the document the person:
   (1) refers to this subsection; or
   (2) asserts [a specified intention]; or
   (3) asserts [a specified intention].

2. May be useful to avoid ambiguity

Ambiguous?

A person may do A if the person does X and Y or Z.

Two possibilities:

A person may do A if the person:
   (1) does X; and
   (2) does Y or Z.

A person may do A if the person does:
   (1) X and Y; or
   (2) Z.

ELIMINATING THE SENTENCE WITHIN A SENTENCE

Proposed language:

The written agreement must:
   (1) specify procedures and protocols; The procedures must prescribe a deadline for the destruction of submitted documents;
   (2) require prompt notice to be given; and
   (3) prohibit storage of information;
**Suggested alternative:**

The written agreement must:

1. specify procedures and protocols..., including a deadline for the destruction of submitted documents; ...

Another alternative:

(b) The written agreement must:

1. specify procedures and protocols...;....
   
   (c) The procedures and protocols required by Subsection (b)(1) must prescribe a deadline for the destruction of submitted documents.

**ELIMINATING REPETITION OF SUBSTANTIVE REQUIREMENTS:** Repetition may cause a mistake to be made when the bill is changed during the process or when future amendments to the law are made.

**Proposed language:**

Sec. 123.123. REFUND OF SECURITY DEPOSIT. (a) The landlord shall refund the security deposit to the tenant not later than the 30th day after the date the tenant surrenders the premises. ...

Sec. 123.129. LIABILITY OF LANDLORD. ... (d) A landlord who fails to return a security deposit or to provide a written description and itemized list of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

**Suggested alternative to Sec. 123.129(d):**

Sec. 123.129. LIABILITY OF LANDLORD. ... (d) A landlord who fails to return a security deposit or to provide a written description and itemized list of deductions within the time prescribed by Section 123.123(a) is presumed to have acted in bad faith.
APPENDIX 3: REAL TIME DRAFTING EXERCISES

Exercise 1: Excerpt from NAIC Managed Care Plan Network Adequacy Model Act (1996)
Exercise 2: AARP Caregiver Advise, Record and Enable (CARE) Act
Section 5. Network Adequacy

A. A health carrier providing a managed care plan shall maintain a network that is sufficient in numbers and types of providers to assure that all services to covered persons will be accessible without unreasonable delay. In the case of emergency services, covered persons shall have access twenty-four (24) hours per day, seven (7) days per week. Sufficiency shall be determined in accordance with the requirements of this section, and may be established by reference to any reasonable criteria used by the carrier, including but not limited to: provider-covered person ratios by specialty; primary care provider-covered person ratios; geographic accessibility; waiting times for appointments with participating providers; hours of operation; and the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care.

(1) In any case where the health carrier has an insufficient number or type of participating provider to provide a covered benefit, the health carrier shall ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the benefit were obtained from participating providers, or shall make other arrangements acceptable to the commissioner.

(2) The health carrier shall establish and maintain adequate arrangements to ensure reasonable proximity of participating providers to the business or personal residence of covered persons. In determining whether a health carrier has complied with this provision, the commissioner shall give due consideration to the relative availability of health care providers in the service area under consideration.

(3) A health carrier shall monitor, on an ongoing basis, the ability, clinical capacity, financial capability and legal authority of its providers to furnish all contracted benefits to covered persons.

B. Beginning [insert effective date], a health carrier shall file with the commissioner, in a manner and form defined by rule of the commissioner, an access plan meeting the requirements of this Act for each of the managed care plans that the carrier offers in this state. The health carrier may request the commissioner to deem sections of the access plan an proprietary or competitive information that shall not be made public. For the purposes of this section, information is proprietary or competitive if revealing the information would cause the health carrier's competitors to obtain valuable business information. The health carrier shall make the access plans, absent proprietary information, available on its business premises and shall provide them to any interested party upon request. The carrier shall prepare an access plan prior to offering a new managed care plan, and shall update an existing access plan whenever it makes any material change to an existing managed care plan. The access plan shall describe or contain at least the following:

Drafting Note: Different states will set different requirements for the access plan. This model requires a health carrier to file the plan with the insurance commissioner but does not require the commissioner to take action on the plan. Some states may want to require the commissioner's approval of access plans; other states may prefer that a health carrier not file the access plan with the commissioner but instead maintain the plan on file at the carrier's place of business and make it accessible to the commissioner and others specified by the commissioner. Some states may also specify an agency other than the insurance department as the appropriate agency to receive or approve access plans.

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(1) The health carrier’s network;

(2) The health carrier’s procedures for making referrals within and outside its network;

(3) The health carrier’s process for monitoring and assuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in managed care plans;

(4) The health carrier’s efforts to address the needs of covered persons with limited English proficiency and illiteracy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(5) The health carrier’s methods for assessing the health care needs of covered persons and their satisfaction with services;

(6) The health carrier’s method of informing covered persons of the plan’s services and features, including but not limited to, the plan’s grievance procedures, its process for choosing and changing providers, and its procedures for providing and approving emergency and specialty care;

(7) The health carrier’s system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians, for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(8) The health carrier’s process for enabling covered persons to change primary care professionals;

(9) The health carrier’s proposed plan for providing continuity of care in the event of contract termination between the health carrier and any of its participating providers, or in the event of the health carrier’s insolvency or other inability to continue operations. The description shall explain how covered persons will be notified of the contract termination, or the health carrier’s insolvency or other cessation of operations, and transferred to other providers in a timely manner; and

(10) Any other information required by the commissioner to determine compliance with the provisions of this Act.

Section 6. Requirements for Health Carriers and Participating Providers

A health carrier offering a managed care plan shall satisfy all the requirements contained in this section.

A. A health carrier shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services.
AARP Caregiver Advise, Record and Enable (CARE) Act

Section 1. Definitions.

A. “Hospital” is defined for the purposes of this Act as a facility licensed under [insert applicable state law reference].

B. “After-Care” is defined for the purposes of this Act as any assistance provided by a caregiver to a patient under this Act after the patient’s discharge from a hospital. Such assistance may include, but is not limited to, assisting with basic activities of daily living (ADLs), instrumental activities of daily living (IADLs), or carrying out medical/nursing tasks, such as managing wound care, assisting in administering medications, and operating medical equipment.

C. “Caregiver” is defined for the purposes of this Act as any individual duly designated as a caregiver by a patient under this Act who provides after-care assistance to a patient living in his or her residence. A designated caregiver may include, but is not limited to, a relative, partner, friend, or neighbor who has a significant relationship with the patient.

D. “Discharge” is defined for the purposes of this Act as a patient’s exit or release from a hospital to the patient’s residence following an inpatient admission.

E. “Entry” is defined for the purposes of this Act as a patient’s admission into a hospital for the purposes of medical care.

F. “Residence” is defined for the purposes of this Act as a dwelling that the patient considers to be his or her home. A “residence” for the purposes of this Act shall not include any rehabilitation facility, hospital, nursing home, assisted living facility, or group home licensed by [insert applicable state agency].

Section 2. Caregiver—Opportunity to Designate.

A. A hospital shall provide each patient or, if applicable, the patient’s legal guardian with at least one opportunity to designate at least one caregiver under this Act no later than twenty-four (24) hours following the patient’s entry into a hospital and prior to the patient’s discharge or transfer to another facility.

   a. In the event that the patient is unconscious or otherwise incapacitated upon his or her entry into a hospital, the hospital shall provide such patient or his/her legal guardian with an opportunity to designate a caregiver within twenty-four
(24) hours following the patient’s recovery of his or her consciousness or capacity.

b. In the event that the patient or the patient’s legal guardian declines to designate a caregiver under the Act, the hospital shall promptly document this in the patient’s medical record.

c. In the event that the patient or the patient’s legal guardian designates an individual as a caregiver under this Act:

i. The hospital shall promptly request the written consent of the patient or the patient’s legal guardian to release medical information to the patient’s designated caregiver following the hospital’s established procedures for releasing personal health information and in compliance with all federal and state laws.

1. If the patient or the patient’s legal guardian declines to consent to release medical information to the patient’s designated caregiver, the hospital is not required to provide notice to the caregiver under Section 3 of this Act or provide information contained in the patient’s discharge plan under Section 4 of this Act.

ii. The hospital shall record the patient’s designation of caregiver, the relationship of the designated caregiver to the patient, and the name, telephone number, and address of the patient’s designated caregiver in the patient’s medical record.

d. A patient may elect to change his or her designated caregiver at any time, and the hospital must record this change in the patient’s medical record within twenty-four (24) hours.

B. A designation of a caregiver by a patient or a patient’s legal guardian under this Section does not obligate any individual to perform any after-care tasks for any patient.

C. This section shall not be construed to require a patient or a patient’s legal guardian to designate any individual as a caregiver as defined by this Act.

Section 3. Notice to Designated Caregiver.
A. A hospital shall notify the patient’s designated caregiver of the patient’s discharge or transfer to another hospital or facility licensed by the as soon as possible, which may be after the patient’s physician issues a discharge order, and not later than four (4) hours prior to the patient’s actual discharge or transfer to such facility.

Section 4. Instruction to Designated Caregiver.

A. As soon as possible and not later than twenty-four (24) hours prior to a patient’s discharge from a hospital, the hospital shall consult with the designated caregiver along with the patient regarding the caregiver’s capabilities and limitations and issue a discharge plan that describes a patient’s after-care needs at his or her residence.

a. At minimum, a discharge plan shall include:

   i. The name and contact information of the caregiver designated under this Act;

   ii. A description of all after-care tasks necessary to maintain the patient’s ability to reside at home, taking into account the capabilities and limitations of the caregiver; and

   iii. Contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient’s discharge plan.

B. The hospital issuing the discharge plan must provide caregivers with instruction in all after-care tasks described in the discharge plan.

a. At minimum, such instruction shall include:

   i. A live demonstration of the tasks performed by a hospital employee or individual with whom the hospital has a contractual relationship authorized to perform the after-care task, provided in a culturally competent manner and in accordance with the hospital’s requirements to provide language access services under state and federal law;

   ii. An opportunity for the caregiver and patient to ask questions about the after-care tasks; and

   iii. Answers to the caregiver’s and patient’s questions provided in a culturally competent manner and in accordance with the hospital’s
requirements to provide language access services under state and federal law.

b. Any instruction required under this Act shall be documented in the patient’s medical record, including, at minimum, the date, time, and contents of the instruction.

C. [Insert applicable state agency] is authorized to promulgate regulations to implement the provisions of this Act, including, but not limited to, regulations to further define the content and scope of any instruction provided to caregivers under this Act.

Section 5. Non-Interference with Powers of Existing Health Care Directives.

A. Nothing in this Act shall be construed to interfere with the rights of an agent operating under a valid health care directive under [insert applicable state law].

Section 6. Limitations.

A. Nothing in this act shall be construed to create a private right of action against a hospital, a hospital employee, or an individual, with whom a hospital has a contractual relationship, or to otherwise supersede or replace exiting rights or remedies under any other provision of law.

Section 7. Effective Date.

A. This Act shall be effective immediately upon ratification.