

**MODEL STATE STATUTE
FOR REGULATING BILLBOARD AND OTHER FORMS OF OUTDOOR ALCOHOL
ADVERTISING**

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For:

The Center on Alcohol Marketing and Youth

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MODEL STATUTE
FOR REGULATING BILLBOARD AND OTHER FORMS OF OUTDOOR ALCOHOL
ADVERTISING

STATUTE No. _____

SECTION 1: PURPOSE

The primary purposes of this statute are to promote the welfare and temperance of persons under 21 years of age by reducing their exposure to certain publicly visible advertisements of alcoholic beverages and to promote wholesome, family-oriented social settings when children are present that reject the purchase, consumption or possession of alcoholic beverages by persons less than 21 years of age.

SECTION 2: FINDINGS

The governing body of [name of state], after completing a legally noticed public hearing, finds the following:

- a) WHEREAS, Section [XXX] State Alcoholic Beverage Code [insert appropriate citation] makes it unlawful for a person under the age of 21 years to purchase, attempt to purchase, possess, or consume alcoholic beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under the age of 21 years [i.e., restate here text of relevant state statute setting forth prohibited conduct];
- b) WHEREAS, according to both state and federal surveys, alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels. A child who begins alcohol use prior to age 15 is four times more likely to experience alcohol dependence than one who refrains from alcohol use until age 21;¹
- c) WHEREAS, the National Research Council and Institute of Medicine stated that underage drinking has many serious consequences, including accidental death or injury, violence, risky sexual behavior, poor school performance, suicide and unwanted sexual activity;²
- d) WHEREAS, Monitoring the Future, the annual federal survey of drug use among school children, found that nationally in 2002, 47% of eighth-graders, 66.9% of 10th-graders and

78.4% of 12th-graders reported alcohol use, while 21.3% of eighth-graders, 44% of 10th-graders and 61.6% of 12th-graders reported that they had experienced drunkenness;³
[Insert state statistics if available]

- e) WHEREAS, the United States Supreme Court has recognized repeatedly that children deserve special solicitude because they lack the ability to assess and analyze fully the information presented through commercial media;⁴
- f) WHEREAS, the federal courts have held that there is a positive relationship between both alcoholic beverage advertising and consumption of the advertised products;⁵
- g) WHEREAS, an extensive set of research studies supports the federal courts' judicial notice that alcoholic beverage advertising influences underage drinking.⁶ These and other studies have shown that:
 - 1. Youth with greater exposure to alcohol advertisements in magazines, on television, and at sporting and music events are more aware of the advertising and more likely to remember the advertisements they had seen;⁷
 - 2. Youth who are more aware of televised beer advertisements hold more favorable views on drinking and express intentions to drink more often as adults than do children who are less aware of these ads;⁸
 - 3. Exposure to and liking of alcohol advertisements affects whether young people will drink alcohol;⁹
 - 4. African-American youth are exposed to more alcohol advertising per capita than youth who are not African-American, and Hispanic youth are exposed to more alcohol advertising per capita than youth who are not Hispanic;¹⁰
 - 5. [Local studies or surveys of youth of the [local jurisdiction] of _____ show that _____;]
 - 6. Similar studies of the influence of tobacco advertising show that tobacco advertising and promotional materials influence the likelihood of young teenagers experimenting with tobacco;¹¹
- h) WHEREAS, recent studies have shown that those research reports that have failed to find a causal connection between alcohol advertising and youth consumption are methodologically

flawed and do not provide a basis for refuting the evidence that such a connection does exist;¹²

- i) WHEREAS, \$1.9 billion was spent on alcohol advertising in measured media (television, radio, print, outdoor, major newspapers and Sunday supplements) in 2002,¹³ and, working from alcohol company documents submitted to it, the Federal Trade Commission estimated in 1999 that the alcohol industry's total expenditures to promote alcohol (including through sponsorship, Internet advertising, point-of-sale materials, product placement, brand-logoed items and other means) were three or more times the alcohol industry's expenditures for measured media advertising,¹⁴ suggesting that the alcohol industry spent at least \$5.7 billion on advertising and promotion in 2002;
- j) WHEREAS, the state of _____ has strongly supported classroom education and other youth programs designed to reduce youth alcohol use and prevent youth alcohol-related problems, including _____; and, outdoor alcohol advertising that encourages and glamorizes alcohol use in areas where children reside, play, recreate, and attend civic events, religious services, and school undercuts these educational efforts;
- k) WHEREAS, [relevant local educational, child protection, and public health groups] strongly endorse a restriction on outdoor alcohol advertising as a means to promote consistent educational messages to children and to reduce youth alcohol-related problems;
- l) WHEREAS, outdoor advertisements, including billboards, are a unique and distinguishable type of product promotion and brand marketing that subject the public to involuntary and unavoidable forms of solicitation;¹⁵
- m) WHEREAS, children often are exposed to billboards and other outdoor advertisements advertising alcohol simply by walking to school or playing in their neighborhoods, and there is no practical way for parents to monitor or limit the exposure of their children to the public advertisements;¹⁶
- n) WHEREAS, this statute only applies to locations adjacent to youth-oriented facilities, where youth are most likely to be present thereby excluding areas that are primarily adult-oriented locations;

- o) WHEREAS, this statute *does not* attempt to enact either a blanket ban or overbroad ban on advertising of alcohol as were prohibited in the U.S. Supreme Court cases *44 Liquormart v. Rhode Island* and *Lorillard Tobacco Co. v. Reilly*. In *44 Liquormart*, the U.S. Supreme Court struck down Rhode Island’s blanket prohibition against truthful, nonmisleading speech about a lawful product, finding there was no question that the ban served an end unrelated to consumer protection. In *Lorillard*, the U.S. Supreme Court struck down Massachusetts regulations governing advertising of various tobacco products, which failed to target advertising and promotion practices that appeal to youth, encompassing instead all forms of communication, and even restricting a retailer’s ability to answer inquiries from adults about its tobacco products. No similar problems exist here. This statute thus leaves unaffected areas that are primarily adult-oriented locations and leaves advertisers with numerous alternative venues available to them, including but not limited to television, radio, magazines, newspapers, and point-of-sale;
- p) WHEREAS, this statute only restricts the “time, place and manner” of alcoholic beverage outdoor signs in areas frequented by persons under the age of 21 years; it does not directly regulate the sale of alcohol and does not unduly burden legitimate business activities or persons licensed by the [appropriate licensing body] to advertise and sell alcoholic beverages;
- q) WHEREAS, the advertising and marketing codes of the Beer Institute and the Distilled Spirits Council of the United States, Inc. (“DISCUS”), public policy advocacy organizations for the beer and distilled spirits industries, establish for their members voluntary prohibitions on billboard advertisements located within 500 feet from youth-oriented facilities;
- r) WHEREAS, the state of _____ has made numerous and substantial efforts to enforce underage drinking laws, by [list efforts by the state to educate youth with respect to underage drinking and to enforce existing laws to reduce underage drinking or the consequences of underage drinking]. Despite these efforts, alcohol use by the state’s youth remains a serious problem in the state, contributing significantly to the incidence of adolescent crime, suicide, drowning, truancy, and driving under the influence;

- s) WHEREAS, the state of _____ affirmatively opposes the sale of alcoholic beverages to, and drinking of alcoholic beverages by, its underage youth;
- t) WHEREAS, this state legislature therefore determines that this statute regulating outdoor alcohol advertising is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth of the state of _____;

NOW THEREFORE:

BE IT ORDAINED BY THE LEGISLATURE

OF THE STATE of _____:

SECTION 3: DEFINITIONS

- a) “Alcoholic beverage” means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
- b) “Alcoholic beverage outdoor advertisement” means any sign, poster, placard, device, graphic display, or any other form of advertisement bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufacturers, sells, or distributes an alcoholic beverage in publicly visible locations. “Alcoholic beverage outdoor advertisement” does not include (i) advertisements inside licensed premises [as defined by state and/or local law], (ii) any advertisement that contains the name or slogan of the licensed premises that has been placed for the purpose of identifying the licensed premises, (iii) any neon or electronically charged sign, if otherwise allowed by the [local governing authority] Zoning Code, on licensed premises that is provided as part of promotion of a particular brand of alcoholic beverage, (iv) any advertisement on property adjacent to an interstate highway [*optional*], (v) advertisements appearing on radio or television, or (vi) advertisements in a public vehicular conveyance for hire, on a race car while participating at a professional racing event or at a permanent motorized racetrack facility, on a boat participating in a racing event or a boat show, on an aircraft, on a bicycle or on the clothing of a member of a bicycle team participating in an

organized bicycle race, or in a newspaper, magazine, or other literary publication published periodically. For the purpose of this definition, the word “sign,” with respect to a retailer, does not include an identifying label affixed to a container as authorized by law.

- c) “Publicly visible locations” include, but are not limited to, outdoor billboards, awnings, electric signs, sides of buildings, screens, benches, barriers, stages, fences, signs attached to poles, posts or other figures, and freestanding signboards, wherever located, whether indoor or outdoor, however manufactured, and comprising whatever materials.

SECTION 4: ALCOHOLIC BEVERAGE OUTDOOR ADVERTISEMENTS

- a) No person or business entity may erect or maintain an alcoholic beverage outdoor advertisement within 500 feet of any public playground, private playground, playground area in a public park, elementary school or secondary school, place of worship, or childcare facility.
- b) Any person or entity seeking to place an alcoholic beverage outdoor advertisement within the 500-foot limit established in subsection (a) may apply for an exemption with the [local jurisdiction] in which the exemption would apply. The [local jurisdiction] shall grant the exemption if the applicant demonstrates that the 500-foot limit denies the applicant a reasonable opportunity to communicate truthful information regarding alcoholic beverages to adult consumers who reside and work in that [local jurisdiction]. In determining whether the applicant has been denied such an opportunity, the [local jurisdiction] may consider: (1) potential locations for outdoor advertising that are outside the 500 foot limit and the percentage of the adult population that resides or works in these areas; (2) the availability of other forms of advertising to reach adult audiences and their relative cost; (3) the extent to which adults within the [local jurisdiction] are familiar with the applicant’s alcoholic beverage products; (4) any advertising practices codes with which the applicant voluntarily has agreed to comply; (5) any other relevant evidence.

SECTION 5: PUBLIC SERVICE ADVERTISING

This statute shall not be construed to prohibit the display of public service messages designed to communicate the hazards of alcoholic beverages or to encourage minors to refrain from consuming or purchasing alcoholic beverages. However, this section shall not be construed to permit such a message when it is made in conjunction with the positive display of a representation, image, artwork, photograph, logo, graphic, device, display, regalia, insignia, indicia, design, slogan, trade name, brand name, product name, permittee or licensee name used for marketing or promotion of alcoholic beverages.

SECTION 6: ADMINISTRATION

- a) The state's local jurisdictions shall appoint a staff member of their relevant zoning department, planning department, or other similar department to act as a Sign Administrator. The Sign Administrator is directed to administer and enforce the terms and conditions of this statute. The Sign Administrator is empowered to delegate the duties and powers granted by this section to other persons under his or her direct supervision.
- b) The Sign Administrator shall make such inspections as may be necessary and initiate appropriate action to bring about compliance with this statute and other applicable law if such inspection discloses any instance of noncompliance. The Sign Administrator shall investigate thoroughly any complaints of alleged violations of this statute.

SECTION 7: VIOLATIONS, PENALTIES, CIVIL ACTIONS

- a) Any person or business entity that violates any provision of this statute shall be guilty of an infraction and, upon a finding of such a violation by the Sign Administrator, shall be subject to administrative assessment of civil penalties.
- b) Causing, permitting, aiding, abetting or concealing a violation of any provision of this statute shall constitute a violation of such provision.
- c) Each day of violation is a separate offense.
- d) Penalties for violations are as follows. First violation: \$500, with an additional \$50 per day for each day that the violation continues. Second violation: \$1,000, with an additional \$100 per day for each day the violation continues. Third and subsequent violations: \$2,000, with an additional \$200 per day for each day the violation continues.

Either:

[e) All revenues collected by the [local jurisdiction] shall be placed in a special fund to be administered by the [local jurisdiction] for purposes of enforcing this statute.]

Or:

[e) All revenues collected by the [local jurisdiction] shall be placed into the general funds account.]

f) In addition to the other remedies provided in this Section, any violation of this statute may be enforced by a civil action brought by the [local jurisdiction] in which the affected outdoor advertisement is located. In such action, the [local jurisdiction] may seek, and the court shall grant, as appropriate, any or all of the following remedies:

1. A temporary and/or permanent injunction;
2. Assessment of the violator for costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including but not limited to reasonable costs of preparing and bringing legal action under this subsection, and attorney fees;
3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
4. A finding, after two or more violations of this statute involving the same outdoor advertisement, that the outdoor advertisement constitutes a public nuisance.

g) Other remedies as set forth in the Zoning Code of the [local jurisdiction] in which the affected outdoor advertisement is located shall also apply to this statute.

h) A party found in violation has a right to appeal the finding of violation pursuant to the procedures established in Section 8.

SECTION 8: APPEALS

Any person aggrieved by the action of the Sign Administrator or his/her designee shall have the right to appeal said decision to the [local jurisdiction] in which the affected outdoor advertisement is located or is proposed to be located pursuant to the procedures established by the [local jurisdiction] for appealing other sign violations unless otherwise specified by the [local jurisdiction].

SECTION 9: STRICTER LOCAL REGULATIONS PERMITTED

This statute does not prohibit [local jurisdictions] from enacting any regulation of alcoholic beverage outdoor advertisements that is more restrictive than those contained in the provisions of this statute. No [local jurisdiction] may permit alcoholic beverage outdoor advertisements in locations prohibited by Section 4.

SECTION 10: EFFECTIVE DATE

The effective date of this statute shall be one year from the date of its enactment.

PASSED AND APPROVED this _____ day of _____, 200_

/s/ _____

¹ Grant, B.F. and D.A. Dawson. Age at onset of alcohol use and its association with DSM-IV alcohol abuse and dependence: Results from the National Longitudinal Alcohol Epidemiologic Survey *Journal of Substance Abuse* 9:103-110, 1997.

² National Research Council and Institute of Medicine. *Reducing Underage Drinking: A Collective Responsibility*. Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, Richard J. Bonnie and Mary Ellen O'Connell, Editors. Board on Children, Youth and Families, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, 2003, p. 60.

³ Johnston, L.D., P.M. O'Malley, and J.G. Bachman. *Monitoring the Future National Results on Adolescent Drug Use: Overview of Key Findings, 2002*. Bethesda, MD: National Institute on Drug Abuse, 2003.

⁴ *Denver Area Educ. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 746, 116 S.Ct. 2374, 2386, (1996) (plurality opinion) (upholding restrictions on programming imposed by the Cable Television Consumer Protection and Competition Act as a means of protecting children from indecent programming). In the context of the radio medium, the Court has approved extra restrictions on indecent speech because of the pervasiveness of the medium and the presence of children in the audience. See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685, 106 S.Ct. 3159, 3165, (1986) (cited for the proposition that "[a] high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students"); *FCC v. Pacifica Foundation*, 438 U.S. 726, 750-51, 98 S.Ct. 3026, 3040-41 (1978) (comparing indecent speech during hours when children are listening to the proverbial pig in the parlor); see also *Action for Children's Television v. FCC*, 58 F.3d 654, 657 (D.C.Cir.1995) (upholding the Public Telecommunications Act against a First Amendment challenge based on the state's compelling interest in protecting minors), cert. denied, --- U.S. ---, 116 S.Ct. 701 (1996). Similarly, the Supreme Court has sustained a law that protected children from non-obscene literature. See *Ginsberg v. New York*, 390 U.S. 629, 639-40, 88 S.Ct. 1274, 1280-81 (1968). And, while it has acknowledged a right to private possession of adult pornography in the home, see *Stanley v. Georgia*, 394 U.S. 557, 566, 89 S.Ct. 1243, 1248-49 (1969), the Court has clearly distinguished child pornography and allowed a stronger legislative response "to destroy a market for the exploitative use of children." *Osborne v. Ohio*, 495 U.S. 103, 109, 110 S.Ct. 1691, 1696 (1990); see also *New York v. Ferber*, 458 U.S. 747, 759, 102 S.Ct. 3348, 3355-56 (1982). The underlying reason for the special solicitude of children was articulated long ago: "A democratic society rests, for its continuance, upon the healthy, well- rounded growth of young people into full maturity as citizens." *Prince v. Massachusetts*, 321 U.S. 158, 168, 64 S.Ct. 438, 443 (1944).

⁵ See, e.g., *Central Hudson Gas & Elec. v. Pub. Serv. Comm'n*, 447 U.S. 557, 569 (1980) (regarding advertising and demand for electricity); *Capitol Broadcasting Co. v. Mitchell*, 33 F.Supp. 582, 586 (D.D.C. 1971) (regarding cigarette commercials broadcast on the electronic media and potential influence on young people); *Dunagin v. City of Oxford*, 718 F.2d 738, 747-51 (1983) (regarding alcohol advertising and consumption); *Oklahoma Telecasters Ass'n v. Crisp*, 669 F.2d 490 (10th Cir. 1983), rev'd on other grounds sub nom. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984) (regarding alcohol advertising and consumption); *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), cert. denied 117 S.Ct. 1569 (1997).

⁶ See, e.g., Aiken, P. et al. Television advertisements for alcoholic drinks do reinforce under-age drinking. *British Journal of Addiction* 83:1399-1419, 1988; Atkin, C. and Block, M. *Content and Effects of Alcohol Advertising*. Washington, DC: Bureau of Tobacco, Alcohol and Firearms, Report PB-82-12314, 1981; Grube, J., and Wallack, L. Television beer advertising and drinking knowledge, beliefs, and intentions among schoolchildren. *American Journal of Public Health* 84:254-0, 1994; Grube, J. Television alcohol portrayals, alcohol advertising, and alcohol expectancies among children and adolescents. In Martin, S., ed., *The Effects of the Mass Media on the Use and Abuse of Alcohol*. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Research Monograph No. 28, 1995, pp. 105-21; Kusserow, R. *Youth and Alcohol: Controlling Alcohol Advertising That Appeals to Youth*. Washington, DC: Department of Health and Human Services, Office of Inspector General, OEI-09-01-00654, November 1991; Martin, S.E. et al. Alcohol Advertising and Youth. *Alcoholism-Clinical and Experimental Research* 26:900-906, June 2002; Slater, M., et al. Male adolescents' reactions to TV beer advertisements: The effects of sports content and programming context. *Journal of Studies on Alcohol* 57: 425-33, 1996.

⁷ Collins, R.L., T. Schell, P.L. Ellickson, and D. McCaffrey. Predictors of beer advertising awareness among eighth graders. *Addiction* 98: 1297-1306, 2003.

⁸ Grube, J. Television alcohol portrayals, alcohol advertising, and alcohol expectancies among children and adolescents. In Martin, S., ed., *The Effects of the Mass Media on the Use and Abuse of Alcohol*. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Research Monograph No. 28, 1995, pp. 105-21.

⁹ Grube, J. *Alcohol Advertising—A Study of Children and Adolescents*, available at http://www.prev.org/prc/prc_videopresentations_grube_aasca.html (last accessed December 9, 2003).

¹⁰ Center on Alcohol Marketing and Youth, *Exposure of African-American Youth to Alcohol Advertising* (Washington, D.C.: Center on Alcohol Marketing and Youth, 2003), available at <http://camy.org/research/> (last accessed November 5, 2003); Center on Alcohol Marketing and Youth, *Exposure of Hispanic Youth to Alcohol Advertising* (Washington, D.C.: Center on Alcohol Marketing and Youth, 2003), available at <http://camy.org/research/> (last accessed November 5, 2003).

¹¹ Campaign for Tobacco-Free Kids, *Tobacco Marketing That Reaches Kids Point-of-Purchase Advertising and Promotions* (August 20, 2003), available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0075.pdf> (last accessed November 5, 2003); see, e.g., John P. Pierce, PhD et al, *Tobacco Industry Promotion of Cigarette and Adolescent Smoking*, 279(7) J. Am. Med. Assoc. 511 (1998) (finding “tobacco promotional activities are causally related to the onset of smoking”); U.S. Dep’t of Health & Human Servs. et al, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* 163 (1994).

¹² Saffer, H. Studying the effects of alcohol advertising on consumption. *Alcohol Health & Research World* 20:266-72, 1996; Thorson, E. Studies of the effects of alcohol advertising: Two underexplored aspects. In Martin, S., ed. *The Effects of the Mass Media on the Use and Abuse of Alcohol*. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Research Monograph No. 28, 1995, pp. 159-96.

¹³ TNS Media Intelligence/CMR; Spending on radio from Miller-Kaplan Associates.

¹⁴ Federal Trade Commission. Appendix B. *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers*. Washington, DC: Federal Trade Commission, 1999, p. iii.

¹⁵ *Packer Corp. v. Utah*, 285 U.S. 105, 110-111, 52 S.Ct. 273 (1931) (outdoor advertising); *Anheuser-Busch v. Schmoke*, *supra*, 101 F.3d at 328 (outdoor advertising).

¹⁶ See *Anheuser-Busch v. Schmoke*, *supra*, 101 F.3d at 328 (outdoor advertising).