Commentaries on:

MODEL STATE STATUTE

FOR REGULATING BILLBOARD AND OTHER FORMS OF OUTDOOR ALCOHOL ADVERTISING

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For:
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COMMENTARIES ON MODEL STATE STATUTE

REGULATING BILLBOARD AND OTHER FORMS OF OUTDOOR ALCOHOL ADVERTISING

States and Local Communities Seek to Limit Alcohol Advertising to Youth

State and local communities are increasingly alarmed by the alcohol industry's aggressive marketing campaigns. The alcohol industry spends more than $5.7 billion[1] each year marketing its products. Of particular concern to governments is the exposure of underage youth, that is, persons under 21 years of age, to advertising and promotional messages that glamorize alcohol, downplay or ignore risks associated with alcohol use, and tout alcohol as an integral part of becoming an adult. Underage youth are exposed heavily to alcohol marketing with its youthful themes and images and its placements in media with large youth audiences. Limiting youth exposure to alcohol marketing is a major public health goal since underage drinking is a significant contributor to youth alcohol-related motor vehicle crashes, other forms of injury, violence, suicide, and problems associated with school and family.

Research clearly indicates that, in addition to parents and peers, alcohol advertising and marketing have a significant impact on youth decisions to drink. 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. 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 have

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[1] $1.9 billion was spent on alcohol advertising in measured media (television, radio, print, outdoor, major newspapers and Sunday supplements) in 2002 (TNS Media Intelligence/CMR; Spending on radio from Miller-Kaplan Associates). Working from alcohol company documents submitted to them, 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 its expenditures for measured media advertising (Federal Trade Commission, Self-Regulation in the Alcohol Industry, Appendix B: Alcohol Advertising Expenditures, iii). This would mean that the alcohol industry spent a total of $5.7 billion or more on advertising and promotion in 2002.

seen. Exposure and attraction to alcohol advertisements affect whether young people will drink alcohol. 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.

Alcoholic beverage outdoor advertisements, including billboards, are a unique and distinguishable type of product promotion and brand marketing that subjects the public to involuntary and unavoidable forms of solicitation. Youth 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. Outdoor alcohol advertising, erected or maintained in areas where youth reside, play, recreate, and attend religious services and school, severely undercuts government efforts to reduce youth alcohol use and prevent youth alcohol-related problems.

Although there is strong public support for action, few local governments have actually restricted alcoholic beverage outdoor advertising. However, states and local jurisdictions can take effective, practical steps to lessen youth exposure to alcoholic advertising.

States have the authority to regulate outdoor advertising. Accordingly, this memorandum sets forth a model statute for developing effective statewide regulation of alcoholic beverage outdoor advertising. The Model Statute should be used in conjunction with the accompanying commentary and the following memorandum, which analyzes the underlying First Amendment issues in detail.

Individual states will need to modify the statute to fit their specific needs and circumstances. Adoption of a statute based on the Model Statute will not guarantee, however,

that there will be no challenge to its constitutionality. Nevertheless, the Model Statute serves as a strong foundation for defending against such a challenge.

The Legal History Supporting the Model Statute

Central Hudson

In *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y*, 447 U.S. 557 (1980), the U.S. Supreme Court enunciated a four-prong test for determining whether a regulation of commercial speech is valid under the First Amendment:

1. Whether the speech concerns lawful activity and is not misleading.
2. Whether the government's interest in regulating the speech is substantial.
3. Whether the regulation directly advances the asserted government interest.
4. Whether the regulation is narrowly tailored to serve the government's interest.

If the first prong is met – the speech concerns lawful activity and is not misleading – then the remaining three requirements must be established by the governmental entity restricting the speech. Since outdoor alcohol advertising, including billboards, concerns lawful activity (at least as it promotes alcohol to adults) and may be accurate, statutes regulating this form of commercial speech must therefore meet the requirements of the remaining three prongs of the *Central Hudson* test.

There is little debate that a properly crafted statute regulating alcohol advertising meets the requirements of the second prong. A state clearly has a substantial interest in promoting the welfare and temperance of minors by reducing their exposure to publicly visible advertisements of alcoholic beverages and in projecting a wholesome, family-oriented city image, which rejects alcohol consumption by underage youth. Both the U.S. Supreme Court and several federal

circuit courts have held that this portion of the *Central Hudson* test has been met even in cases where more restrictive bans on alcohol advertising have been challenged.

The third and fourth prongs, however, have presented difficult obstacles for proponents of alcohol (and tobacco) advertising restrictions. The brief discussion below provides an overview of the legal issues involved.

44 Liquormart

In 1996 the Supreme Court decided the *44 Liquormart* case, which involved a Rhode Island statute that prohibited all advertising "in any manner whatsoever," of the price of alcoholic beverages except for price tags or signs displayed with the beverages and not visible from the street.[2] The State contended that this ban on price advertising served the State's interest in promoting temperance by keeping alcohol prices high and therefore consumption low.[3] The Supreme Court held the blanket ban unconstitutional. The Court found that the state had met the second prong of the *Central Hudson* test (the state has a substantial interest in promoting temperance), but the ban was not sufficiently related to this interest and was too broad a restriction on what was admitted to be truthful speech. The statute was therefore "an abridgement of speech protected by the First Amendment."[4]

Anheuser-Busch v. Schmoke

In 1996, in the post-*44-Liquormart* decision *Anheuser-Busch v. Schmoke,* the Fourth Circuit Court of Appeals upheld against a constitutional challenge a city ordinance prohibiting the placement of stationary, outdoor advertising that advertises alcoholic beverages in certain

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[2] *44 Liquormart,* 517 U.S. at 489-490.

[3] *See ibid.*

[4] *44 Liquormart*, 517 U.S. at 515.

areas of Baltimore City.[5] The ordinance was designed to promote the welfare and temperance of minors exposed to advertisements for alcoholic beverages by banning such advertisements in particular areas where children were expected to walk to school or play in their neighborhood.[6]

Applying the four-prong test for evaluating commercial speech announced in *Central Hudson*, the appellate court concluded that the ban of outdoor advertising of alcoholic beverages in limited areas directly and materially advanced Baltimore's interest in promoting the welfare and temperance of minors.[7] The Fourth Circuit recognized the reasonableness of Baltimore City's legislative finding that there is a "definite correlation between alcoholic beverage advertising and underage drinking."[8] It also concluded that the regulation of commercial speech was no more extensive than necessary to serve the governmental interest. Noting that in the regulation of commercial speech there is some latitude in the "fit" between the regulation and the objective, the appellate court concluded "no less restrictive means may be available to advance the government's interest."[9]

While the court in *Anheuser-Busch* acknowledged that the geographical limitation on outdoor advertising could also reduce the opportunities for adults to receive the information, the court recognized that there were numerous other means of advertising to adults that did not subject the children to "involuntary and unavoidable solicitation [while] ... walking to school or playing in their neighborhood."[10] The court concluded that although no ordinance of this kind

[5] *Anheuser-Busch v. Schmoke*, 101 F.3d 325, 327 (4th Cir. 1996).

[6] *Ibid.*

[7] *See Anheuser-Busch*, 101 F.3d at 327.

[8] *Ibid.*

[9] *Ibid*

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[10] *Ibid.*

could be so perfectly tailored as to all and only those areas to which children are daily exposed, Baltimore's efforts to tailor the ordinance by exempting commercial and industrial zones from its effort rendered it not more extensive than is necessary to serve the governmental interest under consideration.[11]

Lorillard

In the 2001 Supreme Court decision *Lorillard,* Massachusetts had promulgated regulations governing the advertising and sale of cigarettes, smokeless tobacco, and cigars. Applying the *Central Hudson* test, the Supreme Court assumed that the First Amendment protected the rights of manufacturers and sellers to sell and advertise their tobacco products and that the State had an interest in preventing the use of tobacco by minors, but then struck down virtually all of the regulations.

One of the regulations ruled unconstitutional prohibited outdoor advertising of smokeless tobacco or cigars within 1,000 feet of schools or playgrounds. The court found that this regulation directly advanced the government's substantial, even "compelling" interest in preventing underage tobacco use, given the evidence before the Court of the problem with underage use of smokeless tobacco and cigars.[12] The Court disagreed with Massachusetts' claim, however, that the regulation met *Central Hudson's* fourth test, concluding that in some metropolitan areas, the regulation, given its wide geographic reach, constituted "nearly a complete ban on the communication of truthful information about smokeless tobacco and cigars to adult consumers."[13] The Court further found that the range of restricted communications,

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[11] *Ibid.*

[12] *Id.* at 562.

[13] *Id.* at 563-564.

including a ban on oral communications and signs of any size, demonstrated a lack of tailoring to target only advertising and promotion practices that appeal to youth, while permitting others.[14]

A Constitutionally Defensible Model Statute

The court decisions in *44 Liquormart*, *Anheuser-Busch*, and *Lorillard* demonstrate that to survive successfully a First Amendment challenge to a jurisdiction's alcohol advertising laws, governments must avoid creating any blanket or overbroad bans against alcohol advertising. The *Lorillard* decision is of particular importance, as illustrated in the recent case of *Eller Media Company v. City of Cleveland, Ohio*.[15] The Sixth Circuit Court of Appeals affirmed a district court's ruling striking down as unconstitutional a city of Cleveland ordinance prohibiting outdoor alcohol advertising in most regions of the city. The ordinance allowed such advertising only in limited parts of the city, such as the business district. The Court, relying on *Lorillard*, held that the ordinance was not adequately tailored since it extended to a substantial geographic area, including a large portion of the city, including most of the city's densely populated areas.

To address these concerns raised by the Courts, the Model Statute is limited by its terms to alcohol advertising locations adjacent to youth-oriented facilities where youth are most likely to be present, thereby excluding areas that are primarily adult-oriented locations. Its geographic requirements draw from the model advertising codes of the Beer Institute and the Distilled Spirits Council of the United States (DISCUS). These codes are applicable to the associations' members and establish a voluntary prohibition on outdoor advertising within a 500-foot distance from any public playground, private playground, playground area in a public park, elementary

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[14] *Id.* at 563.

[15] 326 F.3d 720 (6th Cir. 2003), aff'd Eller Media Co. v. City of Cleveland, Ohio, 161 F.Supp.2d 796 (N.D.Ohio 2001).

school or secondary school, place of worship, or childcare facility. It also provides a procedure for individual advertisers to seek an exemption if they can show that the restrictions effectively deny them the ability to communicate truthful commercial speech to adults in a particular community.

Commentary to Section 1:

Section 1 establishes the primary purposes of the statute, the first of which is "to promote the welfare and temperance of persons under 21 years of age." This addresses the second criterion of the Central Hudson test, which requires that the restriction of commercial speech further a substantial governmental interest (see Introduction for discussion). The statute must clearly state that the purpose is to protect minors rather than adults. The Fourth Circuit Court of Appeals, in Anheuser-Busch, Inc. v. Schmoke, stressed the importance of this purpose when it upheld a First Amendment challenge to a Baltimore, Maryland ordinance prohibiting the placement of stationary, outdoor advertising in locations likely to be frequented by minors. That Court stated:

> *"[¶] Baltimore's interest is to protect children who are not yet independently able to assess the value of the message presented. This decision thus conforms to the Supreme Court's repeated recognition that children deserve special solicitude in the First Amendment balance because they lack the ability to assess and analyze fully the information presented through commercial media."*

Anheuser-Busch, Inc. v. Schmoke, 101 F.3d 325, 329 (4th Cir. 1996), cert. denied 117 S.Ct. 1569 (1997).

The second purpose, "to promote wholesome, family-oriented social settings when children are present that reject the purchase, consumption, or possession of alcoholic beverages by persons under 21 years of age" further addresses the second criterion of the Central Hudson test. Although less significant than the first purpose, it provides additional support for the legislation and further emphasizes the importance of opposing the purchase and sale of alcoholic beverages to minors.

All findings as described below in Section 2 should support the above purposes.

Commentary to Section 2:

The Findings section is critical because it provides a defense to the challenge that the statute violates the second, third, and fourth criteria of the Central Hudson test for determining

the constitutionality of commercial speech restrictions. Subsections (a) through (e) provide further evidence that deterring alcohol consumption and preventing alcohol problems among minors are substantial governmental interests, the requirement of the second prong of the Central Hudson test.

The third criterion of the Central Hudson test requires that the regulation directly advance the governmental interest. This requirement is addressed in subsections (f) through (m), which establish a direct link between restricting alcohol advertising and promoting the welfare and temperance of minors; reject studies that argue that such a connection does not exist; state that outdoor advertising undermines school and other educational efforts to reduce youth alcohol consumption and alcohol problems; and highlight the unique risks to children posed by outdoor advertising.

In Anheuser-Busch, Inc. v. Schmoke, the federal appeals court found that the third criterion was satisfied in the Baltimore ordinance based on a similar but less complete set of findings. The court recognized a "definite correlation between alcoholic beverage advertising and underage drinking" and held that "restricting the outdoor advertising of alcoholic beverages directly and materially advances the campaign against underage drinking." (Id., 101 F.3d at 327.)

The fourth criterion states that the regulation must be narrowly tailored so that it is not more extensive than necessary to serve the government interest. This is the most controversial portion of the Central Hudson test and was the basis for the strongest challenge to the Baltimore ordinance. States should therefore address this issue with care.

Subsections (l) and (m) establish the unique nature of outdoor advertising and the impact of outdoor advertising on minors, therefore providing a justification for singling it out for special regulation. Subsection (n) states that the statute only applies to locations adjacent to youth facilities and does not apply to primarily adult-oriented locations. This is a critical provision. The Fourth Circuit relied heavily on the fact that Baltimore had included a provision in its outdoor advertising ordinance that excluded from its reach primarily adult locations.

The United States Supreme Court has recognized a public entity's considerable discretion to convey its own message. For instance, in Lorillard Tobacco Co. v. Reilly, 533 U.S.

525 (2001), wherein the Court struck down on overbreadth grounds Massachusetts regulations governing the advertising and sale of cigarettes, smokeless tobacco, and cigars, the Court nevertheless recognized the government's "compelling" interest in preventing the use of tobacco products by minors. Likewise, here, a state surely has a right to affirm to its residents and visitors what message the state wishes to convey with respect to the state's position on alcohol consumption by underage youth. Subsections (s) and (k) articulate the state's effort to send a message opposing drinking by underage youth and to avoid a misimpression that it endorses alcohol consumption by underage youth.

Under Central Hudson, litigants have been permitted to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether and have even been permitted to justify restrictions based solely on history, consensus, and "simple common sense." Edenfield v. Fane, 507 U.S. 761, 770-771, 113 S.Ct. 1792, 123 L.Ed.2d 543 (1993)); Florida Bar v. Went For It, Inc., 515 U.S. 618, 628, 115 S.Ct. 2371. Consequently, states should be generous in their gathering of all evidence, including any local, state, and regional data available, that they may obtain to justify outdoor signage restrictions.

Subsections (o) and (p) state that the statute is not a blanket or overbroad ban on alcohol advertising. Instead, it is a "time, place, and manner" restriction tailored to meet the specific governmental interest of protecting minors. The Fourth Circuit in the Baltimore case used this as an additional rationale. The U.S. Supreme Court has stated that commercial speech can be subject to more stringent time, place, and manner restrictions than noncommercial speech in order to proceed against deceptive, misleading, unfair, or aggressive sales techniques. These subsections thus offer further evidence that the statute is appropriately tailored to meet the government interest.

Subsection (q) makes clear that the alcoholic beverage industry's own advocacy organizations support restrictions locating alcoholic beverage outdoor advertisements at least 500 feet from youth-oriented facilities.

Subsection (r) makes clear that state and local efforts of education and enforcement of underage drinking laws have not been successful, necessitating the regulation of alcohol advertising. This provision defends against the argument that the statute is unconstitutional

because "less restrictive means," that is, means other than advertising restrictions, are available for addressing underage drinking.

Finally, subsections (s) and (t) articulate the state's own "message" that a state may convey when it is acting in its proprietary capacity, i.e., that it affirmatively opposes the sale of alcoholic beverages to, and drinking of alcoholic beverages by, its underage youth.

Citations for the Findings section are attached to the Model Statute. These can either be incorporated into the Findings section or placed into the state's record and incorporated by reference. Citations in the Model Statute include national and state research studies. Proponents should include, to the extent possible, studies that address their local, state, and regional populations. Localizing the data adds credibility to the governing body's finding that a substantial governmental interest exists, the regulation of outdoor advertising directly advances that interest, and alternative strategies for reducing underage drinking have not been sufficient so that regulation of outdoor advertising is justified.

<u>Commentary to Section 3</u>:

Section 3 provides important terms that define the scope of the statute. The focus of the statute is on fixed signs. Signs on taxis, buses, trucks, etc. are not included for at least two reasons: (1) The difficulty of enforcement, as vehicles with signs would be legal in some parts of a community but not others; and (2) The risk that a court would view their inclusion as overly broad – the statute would for practical purposes ban the signs even in locations where children are not likely to be present.

The statute explicitly excludes advertising on premises licensed for the sale of alcoholic beverages, which is provided greater First Amendment protection than is off-premises advertising to which the statute applies. It also contains an optional provision omitting signs adjacent to interstate highways. Signs in these locations are typically regulated by separate state and federal laws which should be reviewed prior to their inclusion here.

States may wish to modify the specific types of advertisements included in the Model Statute in order to make this legislation consistent with existing law. States should consider carefully 1) whether the definitions "alcoholic beverage outdoor advertisement" and "publicly visible

outdoor locations" are consistent with definitions of "billboards" and other "outdoor advertising" found in existing laws of the state or local jurisdictions; and 2) whether to limit the types of locations of alcoholic beverage outdoor advertisements subject to regulation by this legislation. See also Commentary to Section 9, below.

Commentary to Section 4:

As discussed in Section 2, the fourth prong of the Central Hudson test requires that a regulation of commercial speech be no more extensive than necessary. While the court in Anheuser-Busch acknowledged that the geographical limitation on outdoor advertising could also reduce the opportunities for adults to receive the information, the court recognized that there were numerous other means of advertising to adults that did not subject the children to "involuntary and unavoidable solicitation [while] ... walking to school or playing in their neighborhood." The court concluded that although no ordinance of this kind could be so perfectly tailored as to all and only those areas to which children are daily exposed, Baltimore's efforts to tailor the ordinance by exempting commercial and industrial zones from its effort supported the conclusion that it was not more extensive than is necessary to serve the governmental interest under consideration.

The importance for cities to tailor their regulations cannot be overemphasized. In the 2001 Supreme Court decision Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001), Massachusetts had promulgated regulations governing the advertising and sale of cigarettes, smokeless tobacco, and cigars. Applying the Central Hudson test, the U.S. Supreme Court assumed that the First Amendment protected the rights of manufacturers and sellers to sell and advertise their tobacco products and that the State had an interest in preventing the use of tobacco by minors, but then struck down virtually all of the regulations.

One of the regulations ruled unconstitutional prohibited outdoor advertising of smokeless tobacco or cigars within 1,000 feet of schools or playgrounds. The court found that this regulation directly advanced the government's substantial, even "compelling" interest in preventing underage tobacco use, given the evidence before the Court of the problem with underage use of smokeless tobacco and cigars. (Id., 533 U.S. at 562.) The Court disagreed with

Massachusetts' claim, however, that the regulation met Central Hudson*'s fourth test, concluding that in some metropolitan areas, the regulation, given its wide geographic reach, constituted "nearly a complete ban on the communication of truthful information about smokeless tobacco and cigars to adult consumers." (*Id*., 533 U.S. at 563-564.) The Court further found that the range of restricted communications, including a ban on oral communications and signs of any size, demonstrated a lack of tailoring to target only advertising and promotion practices that appeal to youth, while permitting others. (*Id*., 533 U.S. at 563.)*

In light of the U.S. Supreme Court's reaffirmation in Lorillard *of the importance of tailoring a statute to render it "not more extensive than is necessary to serve the governmental interest," states should carefully draft statutes that target only outdoor signs erected in locations where children likely are present and likely to view the signs. This provision provides two features that distinguish it from the regulations struck down in* Lorillard*. First, it sets a 500 foot, rather than 1,000 foot radius. This substantial reduction in scope minimizes the risk that it will set "nearly a complete ban" on alcohol advertising in a community. The 500-foot radius has been adopted by both the distilled spirits and beer industries in their voluntary codes. Second, it provides a means for individual advertisers to challenge the restrictions. If a challenger can show that he/she has been effectively denied "a reasonable opportunity to communicate truthful information regarding alcoholic beverages to adult consumers who reside and work in that local jurisdiction" then the "local jurisdiction" (or alternative definition used in a given state to refer to a city, town, county, township, village, or other local governmental entity) shall grant an exemption to the statute. Although such a provision has not yet been tested in courts, it provides a second defense to a* Central Hudson *challenge that the statute is overly broad.*

Commentary to Section 5:

The Anheuser-Busch Company argued that the Baltimore ordinance impermissibly restricted noncommercial speech because it did not include an exception for public service announcements. It cited specific billboards it had erected in the city with such messages as: "Let's stop underage drinking before it starts," and "Take a friend home for the holidays—

friends know when to say when." Baltimore responded that it did not intend to enforce the ordinance against noncommercial messages, and the Court refused to render an advisory decision on the issue.

The Model Statute therefore includes this section, permitting public service announcements provided they meet two requirements. First, the message must be "designed to communicate the hazards of alcoholic beverages or to encourage minors to refrain from consuming or purchasing alcoholic beverages." Messages that promote alcohol use are excluded from the exception. Second, the message cannot use a recognized image, artwork, photograph, logo or graphic used in marketing and promoting alcoholic beverages. Only the "positive" use of such images or logos is prohibited, so that public service announcements that parody advertisements are permitted. These criteria ensure that promotional images in public service advertisements are not used to market products.

The section is designed to protect the rights of those wishing to post legitimate public service announcements while deterring the alcohol industry from using the exception as a loophole for marketing messages. Some decisions will need to be made on a case-by-case basis, as the industry may attempt to develop advertising messages that are not clearly communicating the hazards of alcoholic beverages and use images, artwork, graphics, or logos that have only a tangential relationship to alcohol marketing campaigns.

The section is consistent with First Amendment principles. In Bolger v Youngs Drug Products Corp., 463 U.S. 60, 103 S.Ct. 2875 (1983), the U.S. Supreme Court noted that an advertisement for contraceptives constituted commercial speech even though it contained discussions of important public issues such as venereal disease and family planning. As stated by the Court: "We have made clear that advertising which 'links a product to a current public debate' is not thereby entitled to the constitutional protection afforded noncommercial speech." (Id., 460 U.S. at 68 (quoting Central Hudson, 447 U.S. at 563, n. 5).)

Commentary to Section 6:

Subsection (a) of section 6 specifically delegates administrative responsibilities to the Sign Administrator or his or her designee, creates a Sign Administration Section within the

relevant local governmental entity, and lists the specific duties of the Sign Administration Section. It also requires the administrator to investigate thoroughly all complaints of alleged violations.

This provision is designed to enhance the effectiveness of the statute. Many local jurisdictions do not have an official specifically responsible for handling citizen complaints or adequate staff to administer the provisions of outdoor advertising. This provision may need to be modified to conform to existing regulations and administrative structures. Proponents of restrictions on outdoor advertising should ensure that the final statute identifies a specific official who is responsible for administration and mandates that the official actively enforce the statute and thoroughly investigate complaints, including citizen complaints. Note that Section 7 provides funding (through the collection of fines) for offsetting costs associated with this section.

Commentary to Section 7:

Section 7 establishes the penalties for violating any provision of the statute. Subsection (a) provides that any violation by a person or business entity is an infraction subject to administrative assessment of civil penalties. Many statutes impose both criminal and civil penalties for violations. This Model Statute omits criminal penalties for four reasons. First, possible criminal penalties may entitle defendants to jury trials, which can greatly complicate, and increase the cost of, enforcement. Second, civil fines are an effective and appropriate means to deter violations, since the underlying motivation for outdoor advertising is to generate financial profits. Third, it is highly unlikely that a court would impose a jail term for violations of this statute, except in the most egregious circumstances. Fourth, civil fines can be imposed initially in administrative hearings, thus avoiding expensive and lengthy court proceedings. The Model Statute therefore treats violations as a civil matter involving faulty business judgments rather than as an issue of criminal intent that should be punished as a criminal offense. A sign owner may appeal a finding of violation to the relevant local jurisdiction official, legislative council, and/or judicial court. Many local jurisdictions have established procedures for violations of zoning ordinances, including procedures for appeals from findings of violation, and such procedures may be incorporated into the Statute.

Subsections (b) and (c) define what constitutes a violation. Subsections (c)'s provision that each day of violation is a separate offense is critical to effective enforcement. Without it, there is no incentive for the violator to correct a violation once it has occurred.

Subsection (d) provides a suggested fine schedule. Fines increase from $500 (with a $50/day fine for each day the violation continues) for a first offense to a $2,000 fine (with a $200/day fine for each day the violation continues) for a third or subsequent offense. The Model Statute imposes a set fine schedule for two reasons. First, the regulations are unique to outdoor advertising and require penalties that are tailored to meet their primary purpose. Second, to enhance the effectiveness of the statute, it is important that those subject to the statute can calculate accurately the financial cost of violations.

Section (e) provides two alternatives, one, that revenues collected from the imposition of fines shall be retained by the local jurisdiction and used to enforce the terms of the statute, thereby addressing a major concern of local jurisdictions regarding the lack of funding for administering the state-mandated provisions, or, two, that such revenues be deposited in the general accounts fund where creation of a separate special funds account is not feasible.

Subsections (f) and (g) allow the local jurisdiction to seek remedies in addition to the fines specified in subsection (d). These include injunctions, assessments for costs of investigating the violation and bringing the legal action, costs for correcting the adverse effects of the violation, abatement of the sponsorship signs as a public nuisance if two or more violations occur involving the same placement or display, and any other remedies found in local jurisdiction zoning ordinances.

Taken together, these remedies provide an effective means to ensure compliance with the Model Statute. As with Section 6, Section 7 may need to be modified to conform to existing regulations and procedures. Proponents should ensure that 1) penalties are civil rather than criminal in nature; 2) fines are sufficiently high to deter violations; 3) each day of violation is treated as a separate offense; and 4) adequate additional civil remedies are included.

Commentary to Section 8:

Section 8 establishes procedures for appealing any decision of the Sign Administrator, including findings regarding the 500 foot rule found in Section 4(a), denials of applications exemptions to the 500 foot rule pursuant to Section 4(b), determinations regarding public service advertising pursuant to Section 5, and the imposition of fines and other remedies pursuant to Section 7. Most local jurisdictions already have established procedures for appealing decisions regarding commercial outdoor advertising, usually as part of its local zoning and planning laws. The Model Statute recommends that states rely on these existing appeals procedures to avoid duplicative appellate structures. As with Sections 6 and 7, Section 8 may need to be modified to conform to existing regulations and procedures. The section may need to be revised to conform to other laws addressing these topics. Appellate procedures provide an opportunity for a local jurisdiction to correct an erroneous decision regarding exemptions prior to an aggrieved applicant's seeking a judicial remedy, which can be both lengthy and costly.

Commentary to Section 9:

Section 9 explicitly recognizes the authority of local governments to enact stricter regulations than those contained in the Model Statute. Local communities may wish to tailor their restrictions to their particular circumstances – for example, there may be specific locations where children are commonly present that are outside the 500 foot radius. In legal terms, the section ensures that the Model Statute does not preempt local ordinances, and thus ensures that a weaker state law cannot be used to nullify strict local regulations. To ensure clarity regarding preemption, the section also explicitly states that local ordinances cannot overrule the statute by permitting advertising in locations where it is prohibited in Section 4.

Commentary to Section 10:

Subsection (a) states that the effective date of the statute is one year from the date of enactment. This period allows state and local governmental administrations time to establish the Sign Administrator division and provides advertisers with a reasonable period to comply with the statute's provisions. Shorter time periods may unduly interfere with pre-existing contracts

between advertisers and billboard companies, creating the risk of lawsuits for financial damage being brought against the state.