

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

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

Policy Statement

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

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

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

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

ASSUMPTIONS AND REMEDIAL GOALS

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

SPECIFIC RECOMMENDATIONS

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

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

Section 1. Short Title.

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

Section 2. Legislative Findings.

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMENT

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

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

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

Section 5. Notification of License and Conviction or Reversal.

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

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

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

(c) A clerk of the [appropriate appellate court] shall notify the appropriate licensing authority of the reversal of a conviction for a violation listed in subsection (b) within ten days after the [appropriate appellate court] has overturned the conviction.

COMMENT

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

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

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

Section 6. Suspension or Revocation of License.

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

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

COMMENT

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

Section 7. Reinstatement of License.

A licensed individual sanctioned under Section 6:

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

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

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

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

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

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

COMMENT:

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

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

Section 8. Administrative Procedures.

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

Section 9. Supplemental Powers.

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

Section 10. Severability.

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

Section 11. Effective Date.

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

