

NASBLA Model Act Standards

Organizations draft model acts^{*} for various purposes. For organizations like NASBLA, a “model act” serves as a tool or a framework that a state or other U.S. jurisdiction can consult as it drafts new legislation, amends existing statute, or seeks to bring itself into uniform practice with other jurisdictions or into conformity with federal law. In NASBLA’s case, model acts serve as technical resources for language, standards and functions associated with recreational boating and waterway safety and management.

Model acts (or amendments to existing acts) also represent opportunities for NASBLA to call attention to significant issues that deserve consistent treatment or that need technically sound and feasible methods of resolution through legislative action; to signal jurisdictions that it is time to adopt new provisions and standards acknowledging and accommodating technological or management changes and other trends of growing importance to recreational boating; or to remedy management or enforcement difficulties revealed through experience.

But despite their utility as aids to legislative drafters and as indicators of issues of growing significance, NASBLA model acts, like those of other organizations, have some limitations. NASBLA model acts are not actual legislation, discussions by the NASBLA membership on drafts are not the same as deliberations on bills in a state legislative process, and the membership’s acceptance of a model act does not equate with automatic passage in any jurisdiction. Even if a model act is based substantially on legislation that has already passed in one or a handful of states, it is highly likely that another jurisdiction will have to modify some provisions to suit its unique circumstances.

NASBLA model acts also differ from “uniform state laws” developed by the National Conference of Commissioners on Uniform State Law. While the NCCUSL also focuses on “well conceived,” “well drafted” legislation in specific areas, that organization exists to create and propose for enactment uniform laws where uniformity is not just desirable, but required. That, in itself, accounts for a large part of the meticulous nature of the NCCUSL drafting and approval processes.

Nevertheless, those differences do not diminish the overall value of NASBLA’s model acts and do not mean that its model act drafting process should strive for less than sound and logical reasoning and consistency. A model act should incorporate features that allow users to easily trace the history and context of the draft, to better understand the act’s intent and applicability, and to follow its logic so that its provisions *can* be more readily evaluated, adopted or amended. It is in that spirit that the **NASBLA Model Act Standards** are presented.

These **Standards** incorporate the Model Act Style by which all NASBLA model acts and amendments to acts are to be drafted and presented; guidance for submitting or developing ideas and/or items to the model act drafting process; and criteria, in the form of questions, that can be employed at different stages by NASBLA policy committees and the NASBLA membership in their development and evaluation of the act.

^{*} Some organizations call these drafts “model acts,” “model legislation,” or “suggested legislation.”

NASBLA MODEL ACT STYLE

This style has been applied retroactively to all NASBLA model acts and amended model acts drafted and approved as of September 2004. It should be used in the drafting of all new model acts and amendments to acts initiated as of January 2005.

Introductory Matter

The introductory matter for each model act includes:

- ☑ Date of the model act's initial adoption and date(s) of amendment, if applicable, by the NASBLA membership;
- ☑ Name(s) of the NASBLA policy committee(s) that drafted and recommended the model act or amendment to the membership;
- ☑ Notation(s) on altered language or sections, in the case of amendment(s);
- ☑ Summary of the act's content, NASBLA's intent in drafting the act or amendments, and as warranted, the positions of other organizations, relevant agencies or industry on specific issues addressed in the act;
- ☑ Names of jurisdictions with similar legislation or from which provisions were adapted, if applicable, and the bill or chapter number for each;
- ☑ Title(s) of any related model act(s) already adopted by NASBLA; and
- ☑ Additional information that would help users better understand the act.

Format of Model Act Provisions

The provisions of the model act are presented in a standard format.

Sections, subsections, and paragraphs

- Each model act includes as standard sections a "Short Title," as the first section, and "Effective Date," as the final section.
- Sections typically included are: "Applicability," "Definitions," "Penalty for Violation."
- Sections are enumerated as 1., 2., 3., and so on.
- Each section has a bracketed italicized heading reflecting its subject: Section #. [*Section Title in Italics Reflecting Subject of Section.*].
- Subsections and paragraphs are enumerated as follows:
 - Enumerations for subsections are (a), (b), (c), and so on. Where there is only one subsection within a section, the subsection language runs into the section title and is not enumerated.
 - Enumerations for paragraphs within subsections are (1), (i), (A).

Example

Section 1. [*Short Title.*] This act may be cited as the XYZ Licensing Act.

Section 2. [*Applicability.*] The provisions of this act apply to persons engaged in

Section 3. [*Definitions.*] As used in this act:

(1) "Operate" means ...

Format of Model Act Provisions (continued)

Line numbering

- Every line of the model act is numbered. Line numbers begin at 1 with each section. Blank lines between sections are not numbered.

Example

- 1 Section 2. [*Applicability.*] The provisions of this act apply to persons engaged in
- 1 Section 3. [*Definitions.*] As used in this act:
- 2 (1) “Vessel” means ...

Definitions of terms

- Terms that are used in specific ways and with specific meanings for purposes of the model act are listed in alphabetical order in a separate “Definitions” section typically following the “Short Title” and “Applicability” sections of the act. The “Definitions” section begins with the language, “As used in this act.” Each term to be defined is capitalized and is enclosed in quotation marks. Each term is followed by the word “means” (see example).
- Only terms actually used within the provisions of the act and that have a meaning other than a conventional meaning are included in the Definitions section.
- Definitions already used in approved NASBLA model acts should be reviewed for applicability in model acts under development. However, there may be legitimate reason to develop different language or modify an existing definition based on the content and intent of the act.
- Similarly, federal-level definitions for terms that will be included in the model act also should be consulted during the drafting process for purposes of applicability, conformity and consistency. However, the language may need to be modified for appropriate inclusion in a state-level act.
- Definitions are “definitions” of terms used in provisions within the act. Restrictions, requirements or prohibitions should not be included within the definitions, but should be placed in other appropriate sections of the act.

Example

- 1 Section 3. [*Definitions.*] As used in this act:
- 2 (1) “Manufacturer” means ...
- 3 (2) “Person” means ...

Formatting to acknowledge variations among jurisdictions

- Optional language or provisions that may vary, such as timeframes, dollar amounts, penalties, and so on, are set in brackets. For example, “.... not to exceed [six] months.” In cases where the committee drafting the model does not have a recommendation or the content is best left to the jurisdiction, a bracketed placeholder is used. For example, “.... a fee of [insert dollar amount].”

Format of Model Act Provisions (continued)

- A “**COMMENTS**” note is used in place of a footnote. Such notes are placed below the section requiring explanation or optional information. They are not numbered, nor are their lines numbered.
- Names of organizational positions or units of sub-national governments are presented as generic terms and not capitalized: for example, “director” or “agency.” Federal agencies and positions are, however, presented in proper form and are capitalized – for example, “United States Coast Guard.”

Example

- 1 Section 11. [*License Expiration.*] A license issued by the agency under this act is valid
2 for a period not to exceed [insert number] years from the date of issuance.

COMMENT: The jurisdictions that have enacted this legislation require

SUBMITTING IDEAS OR ITEMS TO THE MODEL ACT DRAFTING PROCESS

- Ideas for model acts may come a variety of sources, for example:
 - A NASBLA policy committee determines, in the course of fulfilling its charges, that a model act is the most appropriate way of addressing a particular area of concern.
 - A NASBLA state or associate member, not assigned to any particular policy or administrative committee, is aware of or is actively dealing with an issue, and provides the seed of the idea to a committee for consideration.
 - NASBLA's leadership or staff become aware of an issue requiring attention or a piece of recently-enacted and innovative legislation and direct the idea or legislation to the appropriate NASBLA policy committee(s) for its consideration.
- Whatever the original source, all ideas for model acts must be reviewed and evaluated by a NASBLA policy committee (or committees in the event there is content relevant to more than one). If the policy committee's membership deems the idea meritorious, within their scope of work, and relevant to the NASBLA mission, the drafting process will begin. Policy committees – or the drafting subgroups within committees – should use the questions and criteria in **Evaluation of Model Act Drafts** as guideposts in their decision-making. They should use the **Model Act Style** standards to record the development of the act and to put the new or amended language into final form for consideration by the committee, and later, by the NASBLA membership.
- An idea or item that could be the basis for a NASBLA model act, but which has not had the benefit of a policy committee review or drafting process, cannot be presented at the annual business meeting of the NASBLA membership for approval as a model act. Such an idea or item can be referred to an appropriate policy committee at that meeting for future work, however.
- To be considered by the NASBLA membership during its annual business meeting, a model act must already conform to the **Model Act Style** presented in these **Standards**. The membership's deliberations on any model act presented to it should focus primarily on its substantive and policy content and significance.

EVALUATION OF MODEL ACT DRAFTS

For a NASBLA policy committee (or a subgroup of the committee) charged with drafting a new model act or amending an existing act, questions should be asked during the course of the drafting process to “test” the idea or the draft itself. The following list represents basic questions for consideration. Not all will be applicable to every situation.

If we are considering a new model act or a completely new section for an existing act:

- Is there already a NASBLA model act that addresses some aspect of the topic/issue? If so, should we just amend that act, or does the issue warrant a completely new draft?
- Does the issue under consideration rise to the level of need for a legislative and state-level solution through a “model act”? Is there an alternate, more timely or appropriate method through which NASBLA can inform about or promote the issue other than to develop an act?
- Is the issue such that a bill drafter in a state would benefit from having a comprehensive new draft available to review and adapt?
- Will the draft be based upon any existing legislation? Are any jurisdictions currently dealing with the issue? Would it be helpful to wait until one or more tests the provisions in the legislative process?
- Is it likely that the content of a model act in this area could be transferred to and adopted by another jurisdiction, or is the issue being addressed so specific that it would only be relevant to a limited number of jurisdictions and apply to a small number of situations?

Once the decision has been made to move forward and the draft is in development:

- Are we keeping track of all information that will be needed for the Introductory Matter to the act – especially, our reasons for drafting the act or making these amendments? Our findings as to other jurisdictions with similar legislation? Our understanding of the positions of other organizations on the issue(s)?
- Are we creating a practical approach to a problem or need? Are the provisions well thought out and not likely to be subject to immediate challenge?
- Is the draft based on sound reasoning? Does the language we use make sense? Is it clear and unambiguous?
- Are there alternatives to these provisions? Should those alternatives be stated or do we prefer to advance a single approach?
- Does the act or amendment use definitions consistent with those in other model acts? If not, is there good reason why the terms should differ? Is there reason to recommend that other model acts be amended to reflect the updated definition?
- Have all terms with an alternate meaning from conventional use been defined?
- Did we consult everyone that we needed to consult in this process? (e.g., other committees; other experts internal or external to NASBLA; etc.)

NASBLA MODEL ACT STANDARDS – Adopted February 2005

- Have all language, style and format problems been “cleaned up” for final submission of the model act to the NASBLA membership for consideration at the business meeting?