

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To amend, on a temporary basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to establish a mandatory drug and alcohol testing program for certain District of Columbia government applicants and employees; to establish a criminal background check program for employees and volunteers of District of Columbia agencies that provide direct services to children and youth, and for employees of the Child Support Enforcement Division of the Office of the Corporation Counsel; to establish uniform health screening requirements and the use of uniform health forms for all District of Columbia children; to authorize the Director of the Department of Human Services to take a child into custody when a child committed to the legal custody of the Department absconds from a community-based placement or violates any of the terms of his or her placement; to establish an Early Intervention Program to provide early intervention services for infants and toddlers from birth to 2 years of age and their families; to amend the District of Columbia Public School Nurse Assignment Act of 1987 to require that nurses be assigned to public charter schools; to amend the District of Columbia Uniform Controlled Substances Act of 1981 to designate all areas within 1000 feet of public charter schools as drug free zones; and to establish a Postsecondary Education Assistance Trust Fund to assist needy children with the cost of postsecondary education, utilizing funds generated by an individual income tax check-off.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004".

TITLE I. MANDATORY DRUG AND ALCOHOL TESTING PROGRAM.

Sec. 101. Short title.

This title may be cited as the "Mandatory Drug and Alcohol Testing for the Protection of Children Temporary Amendment Act of 2004".

Sec. 102. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended by adding a new title XX-C to read as follows:

"TITLE XX-C

"MANDATORY DRUG AND ALCOHOL TESTING FOR
CERTAIN EMPLOYEES WHO SERVE CHILDREN.

"Sec. 2031. Definitions.

"For the purposes of this title, the term:

"(1) "Applicant" means any person who has filed any written employment application forms to work for the District of Columbia government, or has been tentatively selected for employment.

"(2) "Children" means individuals 12 years of age and under.

"(3) "District" means the District of Columbia.

"(4) "District employee" means an employee of the District of Columbia government.

"(5) "Drug" means an unlawful drug and does not include over-the-counter prescription medications.

"(6) "Employee" means any person employed in a position for which he or she is paid for services on any basis.

"(7) "Post-accident employee" means a District employee in a safety-sensitive position who, while on-duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.

"(8) "Probable cause" or "reasonable suspicion" means a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

"(9) "Random testing" means drug or alcohol testing conducted on a District employee at an unspecified time for purposes of determining whether any District employee subject to drug testing has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties.

"(10) "Reasonable suspicion referral" means referral of an employee in a safety-sensitive position for testing by the District for drug or alcohol use.

"(11) "Safety-sensitive position" means employment in which the employee has direct contact with children and youth, is entrusted with the direct care or custody of children and youth, and whose performance of his or her duties may affect the health, welfare, or safety of children and youth.

"(12) "Youth" means individuals between 13 and 17 years of age, inclusive.

"Sec. 2032. Employee testing.

"(a) The following individuals shall be tested by the District government for drug and alcohol use:

- "(1) Applicants for employment in safety-sensitive positions;
 - "(2) Applicants for employment in positions in the Child Support Enforcement Division of the Office of the Corporation Counsel, including temporary and contractual positions;
 - "(3) Those employees who have had a reasonable suspicion referral;
 - "(4) Post-accident employees, as soon as reasonably possible after the accident;
- and
- "(5) District government employees or contractual employees who work in safety-sensitive positions.

"(b) The District shall only subject employees in subsection (a)(3) and (a)(5) of this section to random testing.

"(c) Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

"(d) Employees shall be given at least a 30-day (calendar) written notice from March 26, 2002 that the District is implementing a drug and alcohol testing program. Upon receipt of a written notice of the program, each employee shall be given one opportunity to seek treatment, if he or she has a drug or alcohol problem. Following March 26, 2002, the Department shall procure a testing vendor and testing shall be implemented as described in this title.

"Sec. 2033. Motor vehicle operators.

"Any District government employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the conditions in this title, to the testing of the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has probable cause or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person's breath contains .08 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof, or while that person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.

"Sec. 2034. Testing methodology.

"(a) Testing shall be performed by an outside contractor at a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job-related drug and alcohol forensic testing.

"(b) For random testing of employees, the contractor shall, at a location designated by the District to collect urine specimens on-site, split each sample and perform enzyme-multiplied-immunosay technique ("EMIT") testing on one sample and store the split of that sample. Any positive EMIT test shall be then confirmed by the contractor, using the gas chromatography/mass spectrometry ("GCMS") methodology.

"(c) Any District employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS-

certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method.

"(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyser.

"(e) A breathalyser shall be deemed positive by the District's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

"Sec. 2035. Procedure and employee impact.

"A drug and alcohol testing policy shall be issued in advance of implementing the drug and alcohol program to inform employees of the requirements of the program and to allow each employee one opportunity to seek treatment, if he or she has a drug or alcohol program. Thereafter, any confirmed positive drug test results, positive breathalyser test, or a refusal to submit to a drug test or breathalyser shall be grounds for termination of employment in accordance with this act. This testing program shall be implemented as a single program. The results of a random test shall not be turned over to any law enforcement agency without the employee's written consent.

"Sec. 2036. Coverage of private providers.

"Each private provider that contracts with the District of Columbia to provide employees to work in safety-sensitive positions shall establish mandatory drug and alcohol testing policies and procedures that are consistent with the requirements of this title.

"Sec. 2037. Rules.

"The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title."

TITLE II. CRIMINAL BACKGROUND CHECKS.

Sec. 201. Short title.

This title may be cited as the "Criminal Background Checks for the Protection of Children Temporary Act of 2004".

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) "Agency that provides direct services to children and youth" means any public or private District agency that provides to children and youth, or for the benefit of children and youth, services that affect the health, safety, and welfare of children and youth, including individual and youth counseling, therapy, case management, supervision, or mentoring.

(2) "Applicant" means an individual who has filed a written application for

employment with any public or private District agency that provides direct services to children and youth or an individual who has made an affirmative effort through a written application or a verbal request to serve in a volunteer position with a public or private District agency that provides direct services to children and youth. Applicant shall also mean an individual who has filed a written application for employment with the Child Support Enforcement Division of the Office of the Corporation Counsel.

(3) "Children" means individuals 12 years of age and under.

(4) "Criminal background check" means the investigation of a person's criminal history through the record systems of the Federal Bureau of Investigation and the District of Columbia Metropolitan Police Department.

(5) "District" means the District of Columbia.

(6) "Employee" means an individual who is employed on a full-time, part-time, temporary, or contractual basis by a District agency that provides direct services to children and youth.

(7) "FBI" means Federal Bureau of Investigation.

(8) "MPD" means the District of Columbia Metropolitan Police Department.

(9) "Volunteer" means any individual who works without any monetary or any other financial compensation for any District agency that provides direct services to children and youth.

(10) "Youth" means individuals between 13 and 17 years of age, inclusive.

Sec. 203. Criminal background checks required for certain individuals.

The following individuals shall apply for criminal background checks in accordance with the requirements of section 205(a):

(1) Each applicant who is under consideration for employment, either compensated or voluntary, by any public or private District agency that provides direct services to children and youth, as defined by regulations promulgated pursuant to section 208.

(2) Each person who is employed by any public or private District agency that provides direct services to children and youth, as defined by regulations promulgated pursuant to section 208.

(3) Each applicant under consideration for employment by the Child Support Enforcement Division of the Office of Corporation Counsel, as defined by regulations promulgated pursuant to section 208.

(4) Each person employed by the Child Support Enforcement Division of the Office of the Corporation Counsel, as defined by regulations promulgated pursuant to section 208.

Sec. 204. Authorization to obtain records.

(a) The Mayor is authorized to obtain criminal history records maintained by the Federal Bureau of Investigation and the Metropolitan Police Department and traffic records maintained by the Department of Motor Vehicles to investigate a person applying for employment, in either a compensated or a volunteer position, or current employees and volunteers of public and private agencies that provide direct services to children and youth.

(b) Before any applicant for employment, in either a compensated or a volunteer position, with an agency providing direct services to children and youth may be offered a position, the Mayor or the private agency shall inform the applicant that a criminal background check must be conducted on him or her, and in the case of an employee or volunteer who is required to drive a motor vehicle to transport children in the course of performing his or her duties, a traffic record check must also be conducted.

(c) The Mayor is authorized to obtain criminal history records maintained by the Federal Bureau of Investigation and the Metropolitan Police Department and traffic records maintained by the Department of Motor Vehicles to investigate a person employed by the Child Support Enforcement Division of the Office of Corporation Counsel.

(d) Before any applicant for employment with the Child Support Enforcement Division of the Office of the Corporation Counsel may be offered a position, the Mayor shall inform the applicant that a criminal background check must be conducted on him or her, and in the case of an employee who is required to drive a motor vehicle to transport children in the course of performing his or her duties, a traffic record check must also be conducted.

Sec. 205. Criminal background checks required before offer of employment

(a) An individual described in section 203 shall not be offered employment until a criminal background check has been conducted on that person and the person is determined to meet the requirements of this title. The individual shall submit to a criminal background check by means of fingerprint and National Criminal Information Center checks conducted by the Mayor and the FBI. The individual shall provide a complete set of legible fingerprints on a fingerprint card, in a form approved by the FBI. These fingerprints shall be available for use by the Mayor and the FBI to conduct a local and national criminal history record check of the individual.

(b) The Mayor shall conduct a criminal background check once the applicant has provided:

- (1) A set of qualified fingerprints;
- (2) Written approval authorizing the Mayor to conduct a criminal background check;
- (3) A confirmation that he or she has been informed by the Mayor or the District agency that the Mayor is authorized to conduct a criminal background check on the applicant;

(4) Any additional identification that is required, such as name, social security number, birth date, and gender;

(5) An affirmation that he or she has not been convicted of a crime in the District of Columbia or in any other state or territory, for any of the following felony offenses or their equivalent in another state or territory:

- (A) Murder, attempted murder, manslaughter or arson;
- (B) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
- (C) Burglary;
- (D) Robbery;
- (E) Kidnapping;
- (F) Theft, fraud, forgery, extortion, or blackmail;
- (G) Illegal use or possession of a firearm;
- (H) Trespass or injury to property;
- (I) Rape, sexual assault, sexual battery, or sexual abuse;
- (J) Child abuse or cruelty to children; or
- (K) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance;

(6) An acknowledgment that the Mayor or the District agency has notified the applicant of the applicant's right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report; and

(7) An acknowledgment that the Mayor or the District agency may choose to deny the applicant employment or a volunteer position based on the outcome of the criminal background check.

(c) Each employee or volunteer shall be required to submit to periodic criminal background checks while employed by or volunteering at any District agency covered by this title.

Sec. 206. Establishment of office to conduct criminal background checks.

The Mayor shall establish a District government office to conduct the criminal background checks, including the fingerprinting of individuals required by section 205. The office shall be staffed, at minimum, by one FBI-approved person to fingerprint applicants for criminal background checks and one person to provide clerical services. The office shall conduct criminal background checks in accordance with FBI policies and procedures and shall be housed in an FBI-approved environment.

Sec. 207. Confidentiality of information to be maintained.

All criminal background records received by the Mayor shall be confidential and are for the exclusive use of making employment-related determinations under this title. The records

shall not be released or otherwise disclosed to any person except when:

(1) Required as one component of an application for employment with a District agency covered under this title;

(2) Requested by the Mayor or his or her designee during an official inspection or investigation;

(3) Ordered by a court;

(4) Authorized by the written consent of the person being investigated; or

(5) Utilized for a corrective or adverse action in a personnel proceeding.

Sec. 208. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title. The rules shall include:

(1) Standards for determining whether public or private agencies are required to comply with the requirements of this title;

(2) Procedures for agencies to challenge the determination that they are required to comply with this title;

(3) Procedures for an applicant or employee to challenge allegations that he or she committed a proscribed offense;

(4) A sliding fee schedule for the payment of the cost of criminal background checks; and

(5) A description of the corrective or adverse actions that may be taken against an agency or employee that violates the provisions of this title.

Sec. 209. Submission of names of public and private agencies that provide direct services to children and youth.

(a) Each District government agency shall submit to the Mayor the names of any public or private agency that provides direct services to children and youth with employees or volunteers that it believes should be subject to the criminal background check requirements of this title within 30 days of March 26, 2002.

(b) The Mayor shall publish a notice in the District of Columbia Register requesting that District residents and agencies submit the names of public and private agencies that provide direct services to children and youth and whose employees and volunteers should be subject to the criminal background check requirements of this title within 45 days from the date of publication of the notice.

Sec. 210. Assessment of information on public and private agencies.

The Mayor shall review the information on public and private agencies submitted pursuant to section 209 and any other available information to make a decision on the agencies that will be required to comply with this title.

Sec. 211. Notice to agencies for employees and volunteers to obtain criminal background checks.

(a) The Mayor shall publish in the District of Columbia Register a notice that applicants for employment with and employees of clearly identified private agencies that provide direct services to children and youth are required to apply for criminal background checks within 45 days from the date of publication of the notice.

(b) The notice shall inform agencies subject to the requirements of this title of the location of the office in which applications for criminal background checks are to be made.

Sec. 212. Licensure requirements and reimbursement for cost of criminal background checks.

(a) Prior to the issuance or the renewal of any license for an agency that provides direct services to children and youth to operate, the agency shall provide evidence that criminal background checks have been conducted on its employees and volunteers who provide direct services to children and youth. A license shall not be issued or renewed for any private agency that has employees or volunteers who provide direct services to children and youth in the District of Columbia and who have not had criminal background checks.

(b) The Mayor shall establish, by regulation, a sliding fee schedule for the payment of the cost of criminal background checks by public and private agencies in the District of Columbia.

Sec. 213. Penalty for providing false information.

An applicant for employment or a volunteer position with any District agency that provides direct services to children and youth who provides false information in the course of applying for the position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405).

Sec. 214. Penalties for disclosing confidential information.

(a) An individual who discloses confidential information in violation of section 207 is guilty of a criminal offense and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both.

(b) Prosecutions for violations of this title shall be brought in the name of the District upon information by the Corporation Counsel.

TITLE III. CHILD HEALTH REQUIREMENTS.

Sec. 301. Short title.

This title may be cited as the "Uniform Child Health Screening Requirements and Reporting Form Temporary Act of 2004".

Sec. 302. Purpose.

The purpose of this legislation is:

- (1) To establish uniform health screening requirements for all children, from birth to 21 years of age, in the District of Columbia, regardless of their insurance status, including children who are wards of the District and children with special needs who reside or are receiving services in another state;
- (2) To improve the overall health status of all children by ensuring consistency in health screening and early detection of health problems and enabling children to obtain the necessary prevention, treatment, and intervention services at the earliest opportunity;
- (3) To reduce parental stress and increase parental satisfaction and compliance with health screening requirements by using a uniform health form for participation or enrollment in all child-related health, human or social services, and educational programs; and
- (4) To provide the Mayor with the information necessary to effectively plan, establish, and evaluate a comprehensive system of appropriate preventive services for children for early detection of potential health problems.

Sec. 303. Definitions.

For the purposes of this title, the term:

- (1) "Child-related educational program" means public and private schools, including pre-kindergarten, kindergarten, and special education.
- (2) "Child-related health program" means Medicaid, Children Health Insurance Program ("CHIP"), Healthy Start, Healthy Families, Early Intervention, and private health insurance.
- (3) "Child-related human or social services program" means child-care programs, children in foster care, Head Start, and Women, Infants and Children.
- (4) "Uniform health form" means a standardized form developed by the Mayor for use during periodic physical examinations of children.

Sec. 304. Establishment of uniform health screening requirements and forms.

(a) The Mayor shall establish uniform health screening requirements consistent with the standards and schedules of the American Academy of Pediatrics for all children, from birth to 21 years of age, in the District of Columbia, regardless of insurance status, including children who are wards of the District and children with special needs who reside or who are receiving services in another state.

(b) The Mayor shall develop a uniform health form for enrollment of children in child-related health, human or social services, and educational programs.

Sec. 305. Payment for health screenings.

(a) An insurer's health benefits plan shall include the uniform health screening requirements for children from birth to age 21 years in the District, including children with special needs who reside or who are receiving services in another state.

(b) The enrollments for Medicaid, Head Start, Healthy Families, and CHIP are expanded to include the requirement of uniform health screenings for all children.

Sec. 306. Rules.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title.

TITLE IV. AUTHORIZATION FOR THE DEPARTMENT OF HUMAN SERVICES TO TAKE CHILDREN INTO CUSTODY.

Sec. 401. Short title.

This title may be cited as the "Juvenile Protective Custody Temporary Act of 2004".

Sec. 402. Section 16-2309(a) of the District of Columbia Official Code is amended as follows:

Note,
§ 16-2309

(a) Paragraph (7) is amended by striking the word "or" at the end.

(b) Paragraph (8) is amended by striking the period at the end and inserting the phrase "; or" in its place.

(c) A new paragraph (9) is added to read as follows:

"(9) by the Director of the Department of Human Services when a child committed to the legal custody of the Department of Human Services absconds from a community-based placement or violates any of the terms of his or her aftercare placement. For the purposes of this paragraph, the term "aftercare placement" means the placing of a child who has been committed to the legal custody of the Department of Human Services in the community under the supervision of a trained social worker."

TITLE V. ESTABLISHMENT OF THE D.C. EARLY INTERVENTION PROGRAM.

Sec. 501. Short title.

This title may be cited as the "D.C. Early Intervention Program Establishment Temporary Act of 2004".

Sec. 502. Purpose.

The purpose of this legislation is:

- (1) To enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;
- (2) To reduce the educational costs to our society, including our schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;
- (3) To minimize the likelihood for institutionalization of individuals with disabilities and maximize the potential for their independent living in society;
- (4) To enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities;
- (5) To establish collaborative activities among agencies of the District of Columbia that administer programs relating to young children to maximize the quality of early intervention services; and
- (6) To enhance the capacity of city agencies and service providers to identify, evaluate, and meet the special needs of historically under-represented populations, particularly minorities, low-income, and inner-city populations.

Sec. 503. Establishment of Early Intervention Program and Interagency Coordinating Council.

(a) There is established in the District of Columbia an Early Intervention Program ("Program") to provide early intervention services to infants and toddlers, from birth through 2 years of age, and their families. The Program will be administered and supervised by a lead agency designated by the Mayor. The services shall be provided in accordance with the requirements of the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. §§ 1400 *et seq.*).

(b) There is established an Interagency Coordinating Council to advise and assist the Mayor with the implementation of the Program, including the establishment of interagency agreements.

Sec. 504. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title.

TITLE VI. ASSIGNMENT OF NURSES TO PUBLIC CHARTER SCHOOLS.

Sec. 601. Short title.

This title may be cited as the "Public Charter School Nurse Assignment Temporary Amendment Act of 2004".

Sec. 602. Section (2)(a) of the District of Columbia Public School Nurse Assignment Act of 1987, effective December 10, 1987 (D.C. Law 7-45; D.C. Official Code § 38-621(a)), is amended by adding the phrase "and public charter" after the word "public".

Note,
§ 38-621

TITLE VII. DRUG FREE ZONES WITHIN 1000 FEET OF PUBLIC CHARTER SCHOOLS.

Sec. 701. Short title.

This title may be cited as the "Public Charter Schools Drug Free Temporary Amendment Act of 2004".

Sec. 702. Section 407a of the District of Columbia Uniform Controlled Substances Act of 1981, effective March 21, 1995 (D.C. Law 10-229; D.C. Official Code § 48-904.07a(a)), is amended by adding after the phrase "secondary school," the phrase "public charter school,".

Note,
§ 48-904.07a

TITLE VIII. POSTSECONDARY EDUCATION TAX CHECK-OFF FOR NEEDY INDIVIDUALS.

Sec. 801. Short title.

This title may be cited as the "Postsecondary Education Assistance Trust Fund Tax Check-Off Temporary Act of 2004".

PART A

Sec. 802. Definitions.

For the purposes of this title, the term:

- (1) "District" means the District of Columbia.
- (2) "Needy Families" means any family that qualifies for federal assistance as defined by the guidelines in the Federal Application for Student Financial Aid.
- (3) "Tax check-off" means the postsecondary education assistance tax check-off system established in D.C. Official Code § 47-1812.11c.
- (4) "Trust Fund" means the Postsecondary Education Assistance Trust Fund established in section 803.

Sec. 803. Establishment of the Postsecondary Education Assistance Trust Fund.

(a) There is established a Postsecondary Education Assistance Trust Fund into which shall be deposited the funds generated by the tax check-off established by D.C. Code § 47-1812.11c and any other funds generated by the Trust Fund's Board of Directors.

(b) The Trust Fund shall be used to assist needy residents of the District of Columbia in pursuing postsecondary education opportunities.

Sec. 804. Establishment of Board of Directors.

(a) A self-perpetuating Board of Directors is established to manage the affairs of the Trust Fund. The Board of Directors shall consist of 11 members. The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education, Research and Assistance shall serve as ex-officio members of the Board of Directors. The remaining 8 members shall include parents of individuals who qualify to receive trust funds and representatives of organizations who have demonstrated a knowledge of postsecondary education and who reflect a diversity of gender and ethnicity.

(b) The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education, Research and Assistance shall serve terms as members of the Board of Directors for the same duration as the terms of their respective offices.

(c) The 8 initial nongovernmental members shall serve the following terms: 2 members shall serve 3 years; 3 members shall serve 2 years; and 3 members shall serve one year.

(d) The 8 initial nongovernmental members shall be appointed by the Mayor.

(e) If one of the 8 initial nongovernmental members is unable to serve or is removed, the remaining members shall select a replacement member according to the representational requirements of subsection (a) of this section.

(f) The Board of Directors shall appoint nongovernmental replacement members so that subsequent Board of Directors meet the representational requirements of subsection (a) of this section and the bylaws adopted by the Board of Directors. A succeeding member shall serve the balance of the term of the member that he or she succeeds if the term has not expired. A succeeding member who succeeds a member whose term has expired shall serve a term of 3 years. No member shall serve more than 2 consecutive terms, whether partial or full.

(g) Members shall be compensated only for out-of-pocket expenses incurred in the performance of their responsibilities as members of the Board of Directors.

(h) The Board of Directors shall elect a chairperson from among its members. The Board of Directors may elect other officers and form committees as it considers appropriate.

(i) A member may be removed by a 2/3 vote of the remaining members.

Sec. 805. Powers and responsibilities of the Board of Directors.

The Board of Directors shall:

- (1) Administer the Trust Fund;
- (2) File such papers as may be required by the Recorder of Deeds of the District of Columbia;
- (3) Have the power to adopt, amend, or repeal bylaws for operation of the Trust Fund;
- (4) Meet not less than quarterly, at a time to be determined;
- (5) Assess the needs of postsecondary educational programs in the District;

(6) Develop and implement program recommendations to assist residents with the cost of postsecondary education;

(7) Develop and implement proposal solicitations and establish criteria for the awarding of grants to assist the postsecondary educational needs of District residents;

(8) Review, approve, and monitor the expenditures of the Trust Fund and postsecondary education programs;

(9) Provide information to the public about the purpose and work of the Trust Fund;

(10) Hire and monitor an executive director for the Trust Fund; and

(11) Invite comments and recommendations at least annually from interested postsecondary educational coalitions and community organizations on the Trust Fund's program plans.

Sec. 806. Administration of Trust Fund.

(a) Administrative expenses shall not exceed 10% of the funds available in the Trust Fund.

(b) One year after its original formation, the Board of Directors shall develop a District-wide plan for the distribution of funds from the Trust Fund. The Board of Directors shall develop subsequent plans before September 30th of each year. The purpose of the annual plan is to assure that the funds are awarded to needy District residents.

(c) The Board of Directors shall distribute funds that are generated by the tax check-off system established in D.C. Official Code § 47-1812.11c on a regular schedule, as determined by the Board.

(d) The Board of Directors shall publish guidelines pursuant to which students who are residents of the District of Columbia may apply for funds to pursue secondary educational opportunities.

(e) By September 30th of each year, the Board of Directors shall publish an estimated projection of funds generated by the tax check-off based on the income tax returns filed by April 15th of each year.

(f) The Board of Directors shall submit an annual financial report to the Mayor and the Council no later than March 1st of each year.

(g) The Board of Directors shall publicize the availability of a tax check-off for students who need postsecondary education assistance. The Mayor shall assist the Board of Directors in educating the public regarding the tax check-off and taxpayer participation in the tax check-off.

(h) The Board of Directors shall take any necessary steps to encourage the federal government to match the funds generated through the tax check-off.

(i) The Board of Directors may recommend other means to generate funds to assist needy families with postsecondary education opportunities.

(j) The Board of Directors shall encourage collaborative efforts and foster a public-private partnership in the development of postsecondary education programs.

(k) The Board of Directors shall advise the Mayor and the Council on the actions needed to insure effective funding for postsecondary education for needy families.

Sec. 807. Rules of procedure; contributions.

(a) The Board of Directors may develop rules of organization and procedure pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

(b) The Board of Directors shall encourage and is authorized to accept in-kind contributions from public or private agencies.

(c) The Board of Directors shall publish a list of grant awards in an annual report. The Board of Directors shall request the assistance of the media in publicizing to the general public the grant awards.

Sec. 808. Rules.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title.

(b) The rules shall include standards for:

- (1) The transfer of funds to the Trust Fund; and
- (2) The reimbursement of costs incurred by the Mayor in the collection, processing, accounting, or disbursement of the funds generated by the tax check-off.

Sec. 809. Applicability.

The provisions of this title shall apply to any tax year beginning after December 31, 2001.

Sec. 810. Dissolution.

Except as otherwise provided in a contract or legacy transferring or loaning property to the Trust Fund, upon dissolution of the Trust Fund, all remaining assets shall be transferred to the Mayor. The Mayor shall make every effort to use the assets to provide postsecondary education assistance to needy families.

PART B

Sec. 831. Chapter 18 of Title 47 of the District of Columbia Official Code is amended by adding a new section 47-1812.11c to read as follows:

"§ 47-1812.11c. Postsecondary Education Assistance Tax Check-Off.

"(a) There shall be provided on the District of Columbia individual income tax return a voluntary check-off that indicates an individual may contribute a minimum of \$1 to the

Postsecondary Education Assistance Trust Fund ("Trust Fund") established pursuant to section 803 of the Postsecondary Education Assistance Trust Fund Tax Check-Off Temporary Act of 2004. The contribution shall reduce any refund owed to the individual taxpayer or increase the taxes owed by the individual taxpayer on the taxpayer's income tax return. The funds generated from the tax check-off shall be earmarked for the Trust Fund except that any cost incurred by the Mayor in the collection, processing, accounting, or disbursement of the funds generated by the tax check-off shall be reimbursed to the Mayor from the funds generated by the tax check-off.

"(b) The funds generated by the tax check-off established by subsection (a) of this section shall be transferred to the Trust Fund pursuant to rules issued by the Mayor that establish timetables and procedures for transfer. Check-off funds shall be transferred to the Trust Fund only after the costs of the Mayor described in subsection (a) of this section are reimbursed.

"(c)(1) Except as provided in paragraph (2) of this subsection, any unpaid District income tax liability on an individual income tax return shall render any voluntary tax check-off election void. Any amount paid for the purpose of contributing to the Trust Fund shall be used first to satisfy any unpaid tax liability, in whole or part.

"(2) Any amount that remains after satisfaction of the unpaid tax liability shall be transferred to the Trust Fund.

"(d) The provisions of this section shall apply to any tax year beginning after December 31, 2001."

TITLE IX. APPROPRIATIONS.

Sec. 901. This act shall be subject to the availability of appropriations.

TITLE X. FISCAL IMPACT STATEMENT.

Sec. 1001. (a) The Council adopts the fiscal impact statement submitted by the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

(b) With respect to Title V, the adoption of this act has no fiscal impact.

(c) With respect to Title VIII, the adoption of this act has no fiscal impact because:

(1) All monies generated by the tax check-off, and expended pursuant to the Postsecondary Education Assistance Trust Fund Tax Check-off Temporary Act of 2004, will come from donations by individual taxpayers; and

(2) All administrative cost incurred by the District in collecting, processing, accounting, or disbursing the funds generated by the tax check-off will be paid for by the monies generated by the tax check-off.

TITLE XI. EFFECTIVE DATE.

Sec. 1101. (a) This act shall take effect following approval by the Mayor (or in the event

of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia