



National Society of IT Service Providers

DRAFT: 2023-02-09

For public comment*

www.nsitsp.org

To: Board of Directors
From: Legislative Committee
Date: February [9], 2023

RE: Draft State Model Act for Information Technology Service Providers

The "proposed legislation" or Model Act prepared by our Committee provides a proof of concept and draft model act as a framework to define professional services delivered by information technology service providers. The model act is intended to facilitate consideration by state legislators and other interested parties in every state to ensure consistency in the recognition of IT services as a profession.

Every state has long established statutes that define industries for attorneys, accountants, contractors, architects, landscape architects, engineers, and numerous other professions. But no state has a statute that defines IT consulting as a profession.

Louisiana did enact a statute in 2020 with respect to managed security services provided by third parties to any state, parish, or municipal government department, office, or other instrumentality (see Louisiana Revised Statutes section 51: 211). The statute requires registration by covered service providers and reporting of cyber incidents. While the statute adopts definitions of "Managed service provider" and "Managed security service provider," the scope and application of the terms are far too narrow for consideration for the industry as a whole.

The Model Act we have prepared achieves the following goals:

- Defines Information Technology Service Providers (ITSP) as a class of professionals.
- Draws a line between IT amateurs and IT professionals.
- Requires each service provider organization register with the state (not each employee or consultant working for them) and requires specific information.
- Establishes clear exemptions for individuals, entities, and activities that either fall outside the scope of services or would otherwise be covered services but are performed under a registered ITSP.
- Creates a public reference list for registered ITSPs.
- Requires a designated contact for each ITSP for critical communication, providing a role similar to a registered agent of an entity.
- Restricts the use of designated contact information except for communications related to cyber security alerts and victim notifications.
- Requires an annual registration for each ITSP with modest \$100 annual fee to cover database maintenance and registration administration. This price should be affordable to anyone in the industry.



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- Provides self-policing enforcement mechanism to minimize administrative costs and encourage compliance by rendering contracts for collection of service fees unenforceable for IT service providers operating in violation of the provisions.

Those familiar with statutes governing other professional service providers (e.g., attorneys, accountants, architects, contractors, etc.) will note the Model Act excludes provisions typically found in statutes applied to other professions such as the following:

- A board or commission has been omitted from the Model Act. The Committee believes the designated state agency will have sufficient capability and resources under this act to implement and administer its requirements.
- Qualifications, examination, continuing education, disciplinary action, and similar requirements have been omitted from the Model Act. This Model Act provides for an umbrella registration requirement of all firms or organizations engaged in Information Technology Services rather than imposing requirements on each individual. Accordingly, customary requirements for individual regulation have been omitted.
- Penalties, fines, and other measures for violations of the chapter have been omitted from the Model Act. The provision for non-enforceability of contracts to collect service fees provides self-enforcement with minimal administration, intervention, or expenses.

Additional topics to consider include: (i) service by out of-state providers and (ii) parties who may be inadvertently covered by the draft that might require additional exemptions.

We encourage you to facilitate solicitation of comments from others in the technology industry including our members, IT service providers who are not yet members of the NSITSP, MSSPs, franchisors, trade associations, manufacturers, distributors, dealers, internet service providers (ISPs), cyber insurance underwriters and brokers, certification and training organizations, federal agencies such as CISA, data center providers, and others.

To facilitate feedback and comments, we recommend the NSITSP establish a clear method or process to solicit and receive feedback and comments on the Model Act.



National Society of IT Service Providers¹

Legislative Committee²

Model Information Technology Service Providers Act³

Chapter 1. Information Technology Service Providers.⁴

Section 1. Short title. This act shall be known as the [State] Information Technology Service Providers Act.

Section 2. Purpose.⁵ The Legislature finds and declares that it is in the best interest and for the protection of public safety and welfare of citizens of this State, including enhancing Information Security⁶ for small businesses and organizations operating in this State, their employees, and their customers, that the provision of Information Technology Services⁷ by any Person⁸ with respect to Commercial Clients⁹ in this State be subject to the requirements set forth herein.¹⁰

Section 3. Defined Terms. The following terms used in this Chapter shall have the meaning set forth below.

- (a) **CISA** means the Cybersecurity and Infrastructure Security Agency of the United States.¹¹
- (b) **Commercial Client** means any Person for which Information Technology Services are provided in connection with the planning, organization, establishment, operation, or performance of any business, commercial, or related activities.
- (c) **Department** mean the [proper administrative department of the state to administer the provisions of this Chapter].
- (d) **Designated Contact**¹² means the Individual designated from time to time in connection with the Registration and any Renewal by any Person under this Chapter as the designated contact for the Information Technology Service Provider registered under this Chapter.
- (e) **Firm** means any sole-proprietorship, corporation, limited liability company, partnership, government agency, non-profit organization, association, or other organization or entity of any kind.
- (f) **Individual** means any natural person.



- (g) **Information Security**¹³ means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—
- (A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;
 - (B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and
 - (C) availability, which means ensuring timely and reliable access to and use of information.
- (h) **Information Technology**¹⁴ means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by a Commercial Client. For purposes of the preceding sentence, equipment is used by a Commercial Client if the equipment is used by the Commercial Client directly or is used by a contractor under a contract with the Commercial Client which: (i) requires the use of such equipment; or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product. The term Information Technology includes computers, ancillary equipment, software, firmware, hosted and cloud technology infrastructure, applications, and software and similar procedures, and related resources.
- (i) **Information Technology Services** means the provision of Services in connection with or otherwise related to Information Technology.
- (j) **Information Technology Service Provider** or **ITSP** means any Person properly registered pursuant to this Chapter.
- (k) **ITSP Registration List** means the registration list created and maintained by the Department pursuant to Section 6(a).
- (l) **Services** means the performance of services, labor, or other work by one Person for another Person in exchange for the payment fees or other lawful consideration.
- (m) **Person** means any Individual or any Firm.
- (n) **State** means [this state].
- (o) **Registration** means the process by any Person properly completing and submitting the registration application prescribed by Section 6(b) under this Chapter.
- (p) **Registration Fee** shall be \$100 and shall be payable in connection with Registration in accordance with this Chapter by any Person.
- (q) **Renewal** means the annual renewal process by any Person by properly completing and submitting the renewal application prescribed by Section 6(c) under this Chapter.



- (r) **Renewal Fee** shall be \$100 and shall be payable annually by each Information Technology Service Provider in connection with its Renewal required by this Chapter.

Section 4. Application of Chapter. ¹⁵

- (a) No Person shall perform or offer to the public in this State to perform Information Technology Services except in compliance with the provisions of this Chapter.
- (b) The provision of Information Technology Services within the meaning and intent of this Chapter includes but shall not be limited to:
- (1) Investigation, evaluation, consultation, and advice related to the installation, use, operation, maintenance, or performance of Information Technology.
 - (2) Planning, designing, implementing, installing, configuring, integrating, maintaining, updating, monitoring, or securing the installation, use, operation, maintenance, or performance of Information Technology.
 - (3) Coordination or supervision of the work of technical, special, consultants, or any third-party Persons with respect to the installation, configuration, maintenance, updating, monitoring, or securing the installation, use, operation, maintenance, or performance of Information Technology.
 - (4) Consultation, guidance, advice, and related activities with respect to compliance with applicable laws, regulations, contracts, cyber insurance, or other requirements related to the installation, use, operation, maintenance, or performance of Information Technology.

Section 5. Exemptions from this Chapter. ¹⁶ The provisions of this Chapter do not apply to:

- (a) An Individual serving as an employee, officer, director, member, manager, partner, or other role for an Information Technology Service Provider properly registered under this Chapter who is acting in such capacity on behalf of or under the direction of such Information Technology Service Provider.
- (b) A Person serving as a contractor, subcontractor, or similar role acting in such capacity on behalf of or under the direction of an Information Technology Service Provider properly registered under this Chapter.
- (c) An Individual serving as an employee, officer, director, member, manager, partner, or other role for a Firm acting in such capacity and engaged in activities directly for such Firm, including but not limited to an internal IT director or IT staff member.



- (d) The provision of services to any single Person for fees in the aggregate that do not exceed \$100 per month, \$1,000 per year, or \$1,000 for any project by a Person who does not advertise or otherwise hold themselves out to the public as a provider of Information Technology Services.
- (e) The provision by any Person of services to any Individual as residential customers who are not expected to use or operate such Information Technology in connection with any Firm or any business, commercial or related activities.
- (f) Wholesale or retail sale and support of Information Technology by the manufacturer or authorized dealers or distributors of such manufacturer with respect to such Information Technology which is developed or manufactured, sold, and supported by the manufacturer.
- (g) Services provided by any Person whose services are otherwise expressly regulated by the laws of this state, including but not limited to, accountants, lawyers, architects, and contractors, and such services are related to or incidental to such regulated profession.
- (h) Retail and warranty hardware repair services, including but not limited to computer and cell phone repair shops.
- (i) Activities, events, tests, certifications, presentations, and similar activities for the purpose of education, training, certification, and qualification.

Section 6. Registration List & Process.

- (a) **ITSP Registration List.** The Department shall create and maintain a list of all Persons properly registered as Information Technology Service Providers under and in compliance with this Chapter. The Department shall make a list of the names and addresses of all registered ITSPs available to the public, including via online access (provided the name, address, email, and telephone number of the Designated Contacts shall be kept confidential). The Department shall not use the ITSP Registration List except as permitted in this Chapter.
- (b) **Initial Registration.** Any Person who desires to engage in Information Technology Services in this State shall first register with the Department of this State by submitting a Registration accompanied by the Registration Fee in accordance with Section 7(a).
- (c) **Renewal Registration.** Any Information Technology Service Provider properly registered under this chapter shall renew such registration each calendar year by submitting a Renewal accompanied by the Renewal Fee for each successive calendar year in accordance with Section 7(b).



- (d) **Registration Changes.** In the event any information submitted by an Information Technology Service Provider with the Initial Registration or Renewal Registration changes, then such ITSP shall update its registration information within 30 days of such change.

Section 7. Registration Applications and Changes.

- (a) **ITSP Registration Application.** The Department shall create and maintain an application form and online registration process for the Registration for each applicant who desires to register under this Chapter as an Information Technology Service Provider. The Registration application shall include the following information:
- (1) The legal name of the applicant.
 - (2) If the applicant is a Firm, the legal form and jurisdiction of organization of the applicant.
 - (3) The mailing address of the applicant.
 - (4) The physical address of the applicant.
 - (5) The name of an Individual who serves as the Designated Contact for the applicant.
 - (6) The title or role of the Designated Contact.
 - (7) The mailing address of the Designated Contact.
 - (8) The physical address of the Designated Contact.
 - (9) The email address of the Designated Contact.
 - (10) The telephone number of the Designated Contact.
- (b) **ITSP Renewal.** The Department shall create and maintain an application form and online process for each Information Technology Service Provider registered under this Chapter to submit the Renewal registration and confirm or update the information required in Section 7(a).

Section 8. Information Security Collaboration.

- (a) The Department shall collaborate with other agencies of this State and the United States Federal Government whose mission and responsibility are to understand, manage, and reduce risk to the cyber, electronic, physical, and related infrastructure of this State and the United States of America, including without limitation CISA.
- (b) In connection with such collaboration under this Section 8, the Department may utilize the ITSP Registration List to disseminate critical alerts and notifications of actionable



measures and guidance for Information Technology Service Providers to undertake in connection with Information Technology Services with their Commercial Clients to enhance cybersecurity of businesses and organizations operating in this State, their employees, and their customers. By way of example, such alerts and guidance may include notification and guidance in connection with the Known Exploited Vulnerabilities Catalog¹⁷ maintained and published by CISA.

Section 9. Consequence of Noncompliance.¹⁸ As a matter of public policy, contracts entered 90 days after the adoption of this Chapter, by any Person for the provision of Information Technology Services without complying with the provisions of this Chapter shall be unenforceable in law or in equity by such Person or any assignee. Notwithstanding the foregoing, this Section 9 shall not prohibit the recovery by such Person of out-of-pocket costs paid to any third-party to procure hardware or software delivered to any Commercial Client.

¹ The National Society of IT Service Providers (NSITSP) is a professional association representing SMB – small and medium business – IT consultants focused on education, professionalism, and promoting the interests of IT professionals everywhere. See <https://nsitsp.org/>

The NSITSP includes over [850] registered members providing Information Technology Services to over [15,000] businesses and organizations in more than [20] states, including California, Illinois, Michigan, North Carolina, Ohio, and [other states].

NSITSP is the voice of the industry, defining the standards for professionalism in IT Services. The association provides pathways to establish high standards and ethics and to improve the perception and credibility of the IT profession through member engagement.

NSITSP's values articulate how our members work together as a team and with partners. As the environment changes, our strategy may change, but our values stay consistent to help meet any challenges our organization may face. Members of the NSITSP align of these core values.

- The professionalism and integrity of our industry are our passion.
- Communication is the cornerstone of our integrity.
- We choose to communicate openly and honestly. Our clients and colleagues always deserve the truth.
- We embrace change and education as the foundation of our industry.
- We are devoted to operating a highly successful member-driven organization.



² The Legislative Committee of the NSITSP consists of the following individuals (non-voting observer*):

Denis Wilson, Chair, DW Information Architects, California
Jason Harrison, Vice Chair, Harrison Technology Consulting, North Carolina
Amy Babinchak,* Harbor Computer Services, Michigan
Joy Beland,* Summit 7, California
Andrew Crawford, Compliance Specialists, California
Trevor Dierdorff, Amnet, Colorado
Bret Erickson,* Passkey Technology, Minnesota
Ted Giesler, Cypress Consulting Group Ltd., Illinois
Jeff Greiner,* Firelands IT Services, Ohio
Heather Johnson,* Gozynta, LLC, Connecticut
Keith Nelson, Vistem Solutions, Inc., California
Karl Palachuk,* National Society of IT Service Providers, California
James Paventi, Attentive IT, California
Ben Yarbrough,* Calyptix Security Corporation, North Carolina

³ “A model act, also called a model law or a piece of model legislation, is a suggested example for a law, drafted centrally to be disseminated and suggested for enactment in multiple independent legislatures. The motivation classically has been the hope of fostering more legal uniformity among jurisdictions, and better practice in legislative wording, than would otherwise occur... Model laws can be intended to be enacted verbatim, to be enacted after minor modification, or to serve more as general guides for the legislatures.” See https://en.wikipedia.org/wiki/Model_act

⁴ This draft sets forth an initial framework to solicit feedback, promote conversation, and drive the professionalism of the IT service industry. This model act seeks to define the scope of the profession and its participants. Those familiar with statutes governing other professional service providers (e.g., attorneys, accountants, architects, contractors, etc.) will note this draft excludes provisions typically found in statutes applied to other professions such as the following:

- A board or commission has been omitted from the draft model act. The Committee believes the designated state agency will have sufficient capability and resources under this act to implement and administer its requirements.
- Qualifications, examination, continuing education, disciplinary action, and similar requirements have been omitted. This model act provides for an umbrella registration requirement of all Persons engaged in Information Technology Services rather than imposing requirements on each Individual. Accordingly, customary requirements for Individual regulation have been omitted.
- Penalties, fines, and other measures for violations of the chapter have been omitted from the model act. The provision for non-enforceability of contracts to collect service fees provides self-enforcement with minimal administration, intervention, or expenses.



Additional topics to consider include: (i) service by out of-state providers and (ii) parties who may be inadvertently covered by the draft that might require additional exemptions.

In addition, comments from other participants within the technology industry should be encouraged, including larger MSPs, MSSPs, franchisors, trade associations, manufactures, distributors, dealers, internet service providers (ISPs), cyber insurance underwriters and brokers, certification and training organizations, federal agencies such as CISA, data center providers, and others.

⁵The purpose of this model act is to provide a framework to enhance cybersecurity of small businesses and organizations operating in this state, their employees, and their customers, by creating a registration process for professional IT service providers serving businesses and organizations in this state.

⁶Information Security is defined for NIST purposes at 44 U.S.C. 3542. See https://csrc.nist.gov/glossary/term/information_security.

⁷"Information Technology Services" combines the definition of "Services" with "Information Technology" in Section 3. The definition of "Information Technology" is derived from the U.S.C. and NIST. See below.

⁸The definition of "Person" combines the definitions of "Firm," representing entities such as corporations, limited liability companies and other organizations, with the definition of "Individual," representing any natural person.

⁹"Commercial Clients" limits the applicability of the statute to end customers engaged in business and related activities. However, covered activities may include Services provided to Individuals conducting business activities from a personal residence (e.g., home office or work from home employee).

¹⁰The model act requires registration and annual renewal of all information technology service providers providing services to business customers in the state. One single registration of a Firm will cover activities of all of its employees and contractors conducting business under the registered ITSP. Section 6(1) and (2) exempt employees and subcontractors of any required individual registration so long as performing services under the auspices of a registered ITSP.

Note, an employee of an ITSP providing Information Technology Services moonlighting or as a side-job and not under the direct supervision of his or her employer must either (i) provide such Services under an exemption from Section 6 other than Section 6(a) or (ii) register independently as an ITSP under the model act.



¹¹For information on CISA see <https://www.cisa.gov/about-cisa>. The four enumerate goals in the CISA 2023-2025 Strategic Plan are:

- Spearhead a national effort to ensure the defense and resilience of cyberspace.
- Reduce risks to, and strengthen the resilience of, America's critical infrastructure.
- Strengthen whole-of-nation operational collaboration and information sharing.
- Unify as one CISA through integrated functions, capabilities, and workforce.

See https://www.cisa.gov/sites/default/files/publications/StrategicPlan_20220912-V2_508c.pdf

¹²A Designated Contact is required for each ITSP to identify and ensure a primary Individual takes lead responsibility for the registration and other activities, including receipt of cybersecurity notifications and alerts, that may be generated and delivered under the model act. This concept parallels the role of a registered agent to receive service of process for a corporation, limited liability company, or other entity formed under the laws in most states.

¹³Information Security is defined for NIST purposes at 44 U.S.C. Sec. 3542 as utilized by NIST.

See https://csrc.nist.gov/glossary/term/information_security.

¹⁴Information Technology is defined in U.S.C. 40 Sec. 1401 as utilized by NIST including FIPS 200. See <https://doi.org/10.6028/NIST.FIPS.200>. The definition has been modified as follows:

- (i) by replacing executive agency with Commercial Client,
- (ii) removing references to services and support services, and
- (iii) adding an express reference "hosted and cloud technology infrastructure, applications, and software."

¹⁵The application of the chapter prohibits performance or advertising performance of Information Technology Services in the state in the absence of fulfilling the registration requirements and expands on the meaning and intent of the scope of such services.

¹⁶Exemptions are enumerated to exclude Individuals and Firms as well as activities from the requirements of the model act.

¹⁷The Known Exploitability Catalog maintained and published by CISA illustrates the importance of establishing a reliable and trusted registration and communication medium for professional IT service providers to enhance cybersecurity of small businesses, their employees, and their customers.

See <https://www.cisa.gov/known-exploited-vulnerabilities-catalog>

¹⁸ The inability to enforce collection of fees for services should ensure compliance by IT service providers. To prevent abuse or unjust enrichment, the limited enforcement should not prohibit collection of amounts paid to procure hardware, software, or other third-party solutions which are delivered or provided to the end customer. Note, this section does not prohibit voluntary payment by a



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Commercial Customer of fees to an unregistered service provider. Section 9 provides selective enforcement for end customers. This approach will minimize administrative efforts and expenses, such as those typically associated with alternative approaches such as penalties and fines.

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